

Part 4. Environmental Management Commission.

**§ 143B-282. Environmental Management Commission – creation; powers and duties.**

(a) There is hereby created the Environmental Management Commission of the Department of Environmental Quality with the power and duty to promulgate rules to be followed in the protection, preservation, and enhancement of the water and air resources of the State.

- (1) Within the limitations of G.S. 143-215.9 concerning industrial health and safety, the Environmental Management Commission shall have all of the following powers and duties:
  - a. To grant a permit or temporary permit, to modify or revoke a permit, and to refuse to grant permits pursuant to G.S. 143-215.1 and G.S. 143-215.108 with regard to controlling sources of air and water pollution.
  - b. To issue a special order pursuant to G.S. 143-215.2(b) and G.S. 143-215.110 to any person whom the Commission finds responsible for causing or contributing to any pollution of water within such watershed or pollution of the air within the area for which standards have been established.
  - c. To conduct and direct that investigations be conducted pursuant to G.S. 143-215.3 and G.S. 143-215.108(c)(5).
  - d. To conduct public hearings, institute actions in superior court, and agree upon or enter into settlements, all pursuant to G.S. 143-215.3.
  - e. To direct the investigation of any killing of fish and wildlife pursuant to G.S. 143-215.3.
  - f. To consult with any person proposing to construct, install, or acquire an air or water pollution source pursuant to G.S. 143-215.3 and G.S. 143-215.111.
  - g. To encourage local government units to handle air pollution problems and to provide technical and consultative assistance pursuant to G.S. 143-215.3 and G.S. 143-215.112.
  - h. To review and have general oversight and supervision over local air pollution control programs pursuant to G.S. 143-215.3 and G.S. 143-215.112.
  - i. To declare an emergency when it finds a generalized dangerous condition of water or air pollution pursuant to G.S. 143-215.3.
  - j. To render advice and assistance to local government regarding floodways pursuant to G.S. 143-215.56.
  - k. To declare and delineate and modify capacity use areas pursuant to G.S. 143-215.13.
  - l. To grant permits for water use within capacity use areas pursuant to G.S. 143-215.15.
  - m. To direct that investigations be conducted when necessary to carry out duties regarding capacity use areas pursuant to G.S. 143-215.19.
  - n. To approve, disapprove and approve subject to conditions all applications for dam construction pursuant to G.S. 143-215.28; to require construction progress reports pursuant to G.S. 143-215.29.
  - o. To halt dam construction pursuant to G.S. 143-215.29.
  - p. To grant final approval of dam construction work pursuant to G.S. 143-215.30.

- q. To have jurisdiction and supervision over the maintenance and operation of dams pursuant to G.S. 143-215.31.
  - r. To direct the inspection of dams pursuant to G.S. 143-215.32.
  - s. To modify or revoke any final action previously taken by the Commission pursuant to G.S. 143-214.1 and G.S. 143-215.107.
  - t. To have jurisdiction and supervision over oil pollution and dry-cleaning solvent use, contamination, and remediation pursuant to Article 21A of Chapter 143 of the General Statutes.
  - u. To administer the State's authority under 33 U.S.C. § 1341 of the federal Clean Water Act.
  - v. To approve Coastal Habitat Protection Plans as provided in G.S. 143B-279.8.
  - w. To identify, review, and assess reports prepared by the Department of Environmental Quality that are required by an act of the General Assembly and that the Commission finds would have a significant public interest and to include that assessment in its report to the Environmental Review Commission under subsection (b) of this section.
- (2) The Environmental Management Commission shall adopt rules:
- a. For air quality standards, emission control standards and classifications for air contaminant sources pursuant to G.S. 143-215.107.
  - b. For water quality standards and classifications pursuant to G.S. 143-214.1 and G.S. 143-215.
  - c. To implement water and air quality reporting pursuant to Part 7 of Article 21 of Chapter 143 of the General Statutes.
  - d. To be applied in capacity use areas pursuant to G.S. 143-215.14.
  - e. To implement the issuance of permits for water use within capacity use areas pursuant to G.S. 143-215.15 and G.S. 143-215.16.
  - f. Repealed by Session Laws 1983, c. 222, s. 3.
  - g. For the protection of the land and the waters over which this State has jurisdiction from pollution by oil, oil products and oil by-products pursuant to Article 21A of Chapter 143.
  - h. Governing underground tanks used for the storage of oil or hazardous substances pursuant to Articles 21, 21A, or 21B of Chapter 143 of the General Statutes, including inspection and testing of these tanks and certification of persons who inspect and test tanks.
  - i. To implement the provisions of Part 2A of Article 21 of Chapter 143 of the General Statutes.
  - j. To implement the provisions of Part 6 of Article 21A of Chapter 143 of the General Statutes.
  - k. To implement basinwide water quality management plans developed pursuant to G.S. 143-215.8B.
  - l. For matters within its jurisdiction that allow for and regulate horizontal drilling and hydraulic fracturing for the purpose of oil and gas exploration and development.
- (3) The Commission is authorized to make such rules, not inconsistent with the laws of this State, as may be required by the federal government for grants-in-aid for water and air resources purposes which may be made available to the State by the federal government. This section is to be

liberally construed in order that the State and its citizens may benefit from such grants-in-aid.

- (4) The Commission shall make rules consistent with the provisions of this Chapter. All rules adopted by the Commission shall be enforced by the Department of Environmental Quality.
- (5) The Environmental Management Commission shall have the power to adopt rules with respect to any State laws administered under its jurisdiction so as to accept evidence of compliance with corresponding federal law or regulation in lieu of a State permit, or otherwise modify a requirement for a State permit, upon findings by the Commission, and after public hearings, that there are:
  - a. Similar and corresponding or more restrictive federal laws or regulations which also require an applicant to obtain a federal permit based upon the same general standards or more restrictive standards as the State laws and rules require; and
  - b. That the enforcement of the State laws and rules would require the applicant to also obtain a State permit in addition to the required federal permit; and
  - c. That the enforcement of the State laws and rules would be a duplication of effort on the part of the applicant; and
  - d. Such duplication of State and federal permit requirements would result in an unreasonable burden not only on the applicant, but also on the citizens and resources of the State.
- (6) The Commission may establish a procedure for evaluating renewable energy technologies that are, or are proposed to be, employed as part of a renewable energy facility, as defined in G.S. 62-133.8; establish standards to ensure that renewable energy technologies do not harm the environment, natural resources, cultural resources, or public health, safety, or welfare of the State; and, to the extent that there is not an environmental regulatory program, establish an environmental regulatory program to implement these protective standards.

(b) The Environmental Management Commission shall submit written reports as to its operation, activities, programs, and progress to the Environmental Review Commission by January 1 of each year. The Environmental Management Commission shall supplement the written reports required by this subsection with additional written and oral reports as may be requested by the Environmental Review Commission.

(c) The Environmental Management Commission shall implement the provisions of subsections (d) and (e) of 33 U.S.C. § 1313 by identifying and prioritizing impaired waters and by developing appropriate total maximum daily loads of pollutants for those impaired waters. The Commission shall incorporate those total maximum daily loads approved by the United States Environmental Protection Agency into its continuing basinwide water quality planning process.

(d) The Environmental Management Commission may adopt rules setting out strategies necessary for assuring that water quality standards are met by any point or nonpoint source or by any category of point or nonpoint sources that is determined by the Commission to be contributing to the water quality impairment. These strategies may include, but are not limited to, additional monitoring, effluent limitations, supplemental standards or classifications, best management practices, protective buffers, schedules of compliance, and the establishment of and delegations to intergovernmental basinwide groups.

(e) In appointing the members of the Commission, the appointing authorities shall make every effort to ensure fair geographic representation of the Commission. (1973, c. 1262, s. 19; 1975, c. 512; 1977, c. 771, s. 4; 1983, c. 222, s. 3; 1985, c. 551, s. 1; 1989, c. 652, s. 2; c. 727, s. 218(128); 1989 (Reg. Sess., 1990), c. 1036, s. 1; 1991 (Reg. Sess., 1992), c. 990, s. 1; 1993, c. 348, s. 3; 1996, 2nd Ex. Sess., c. 18, s. 27.4(b); 1997-392, s. 2(a), (b); 1997-400, s. 3.2; 1997-443, s. 11A.119(a); 1997-458, ss. 8.4, 8.5; 1997-496, s. 16; 1998-212, s. 14.9H(f); 1999-328, s. 4.13; 2001-424, s. 19.13(a); 2002-165, s. 1.9; 2007-397, s. 2(c); 2012-143, s. 2(h); 2015-241, s. 14.30(u); 2017-10, s. 4.13(a); 2017-211, s. 3.)