

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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SENATE BILL 628

Short Title: WQ Permitting/Compliance Rev. & Submissions. (Public)

Sponsors: Senators Hartsell and Bingham.

Referred to: Agriculture/Environment/Natural Resources.

April 19, 2011

A BILL TO BE ENTITLED

AN ACT TO PROVIDE (1) THAT THE ENVIRONMENTAL MANAGEMENT COMMISSION SHALL DENY A WATER QUALITY PERMIT OR CERTIFICATION WHEN THE APPLICANT KNOWINGLY FALSIFIES INFORMATION OR FAILS TO DISCLOSE RELEVANT INFORMATION IN THE APPLICATION OR SUPPORTING INFORMATION AND (2) THAT THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES SHALL CONDUCT AN ENVIRONMENTAL COMPLIANCE REVIEW OF AN APPLICANT FOR A WATER QUALITY PERMIT OR CERTIFICATION PRIOR TO ISSUANCE OF A PERMIT OR CERTIFICATION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-215.6B(i) reads as rewritten:

"(i) Any person ~~who~~ who (i) intentionally withholds or omits information that is material to a permitting or certification determination; (ii) knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this Article or a rule implementing this Article; ~~or who~~ (iii) knowingly makes a false statement of a material fact in a rulemaking proceeding or contested case under this Article; or ~~who~~ (iv) falsifies, tampers with, or knowingly renders inaccurate any recording or monitoring device or method required to be operated or maintained under this Article or rules of the Commission implementing this Article shall be guilty of a Class 2 misdemeanor which may include a fine not to exceed ten thousand dollars (\$10,000). If information that is material to a permitting or certification determination is intentionally withheld, or if a false statement, representation, or certification is knowingly made in an application to the Commission for a permit or certification or in any data, plan, or other document submitted in support of an application for a permit or certification, then in addition to all other penalties imposed by this Article, the Commission shall deny the permit or certification."

SECTION 2. G.S. 143-215.1 is amended by adding a new subsection to read:

"(i) The Department shall:

(1) Conduct an environmental compliance review of each applicant for a water quality permit or certification under this Article. The environmental compliance review shall evaluate the environmental compliance history of the applicant for a period of five years prior to the date of the application and may cover a longer period at the discretion of the Department. The environmental compliance review of an applicant may include consideration of the environmental compliance history of the parents, subsidiaries, or other affiliates of an applicant or parent that is a business entity, including any business entity or joint venturer with a direct or indirect interest in the



1 applicant, and other facilities owned or operated by any of them. The
 2 Department shall determine the scope of the review of the environmental
 3 compliance history of the applicant, parents, subsidiaries, or other affiliates
 4 of the applicant or parent, including any business entity or joint venturer
 5 with a direct or indirect interest in the applicant, and of other facilities
 6 owned or operated by any of them. An applicant for a permit or certification
 7 shall provide environmental compliance history information for each
 8 facility, business entity, joint venture, or other undertaking in which any of
 9 the persons listed in this subsection is or has been an owner, operator,
 10 officer, director, manager, member, or partner, or in which any of the
 11 persons listed in this subsection has had a direct or indirect interest, as
 12 requested by the Department.

13 (2) Determine the extent to which the applicant, or a parent, subsidiary, or other
 14 affiliate of the applicant or parent, or a joint venturer with a direct or indirect
 15 interest in the applicant has substantially complied with the requirements
 16 applicable to any activity in which any of these entities previously engaged,
 17 including compliance with applicable effluent standards and limitations and
 18 waste management treatment practices, and has substantially complied with
 19 federal and State laws, regulations, and rules for the protection of the
 20 environment. The Department may deny an application for a water quality
 21 permit or certification if the applicant (i) has a history of significant or
 22 repeated violations of statutes, rules, orders, or permit terms or conditions
 23 for the protection of the environment or for the conservation of natural
 24 resources as evidenced by civil penalty assessments, administrative or
 25 judicial compliance orders, or criminal penalties or (ii) has intentionally
 26 withheld or omitted information that is material to a permitting or
 27 certification determination, or has knowingly made a false statement,
 28 representation, or certification in an application to the Commission for a
 29 permit or certification or in any data, plan, or other document submitted in
 30 support of an application for a permit or certification."

31 **SECTION 3.** G.S. 143-215.6B(b) reads as rewritten:

32 "(b) Commission's Power as to Permits. –

- 33 ...
- 34 (4) The Commission shall have the power:
- 35 a. To grant a permit with such conditions attached as the Commission
 - 36 believes necessary to achieve the purposes of this Article.
 - 37 b. To require that an applicant satisfy the Department that the applicant,
 - 38 or any parent, subsidiary, or other affiliate of the applicant or parent:
 - 39 1. Is financially qualified to carry out the activity for which the
 - 40 permit is required under subsection (a) of this section; and
 - 41 2. ~~Has substantially complied with the effluent standards and~~
 - 42 ~~limitations and waste management treatment practices~~
 - 43 ~~applicable to any activity in which the applicant has~~
 - 44 ~~previously engaged, and has been in substantial compliance~~
 - 45 ~~with other federal and state laws, regulations, and rules for~~
 - 46 ~~the protection of the environment.~~
 - 47 3. As used in this subdivision, the words "affiliate," "parent,"
 - 48 and "subsidiary" have the same meaning as in 17 Code of
 - 49 Federal Regulations § 240.12b-2 (April 1, 1990, Edition). For
 - 50 a privately owned treatment works that serves 15 or more
 - 51 service connections or that regularly serves 25 or more

1 individuals, financial qualification may be demonstrated
2 through the use of a letter of credit, insurance, surety, trust
3 agreement, financial test, bond, or a guarantee by corporate
4 parents or third parties who can pass the financial test. No
5 permit shall be issued under this section for a privately owned
6 treatment works that serves 15 or more service connections or
7 that regularly serves 25 or more individuals, until financial
8 qualification is established and the issuance of the permit
9 shall be contingent on the continuance of the financial
10 qualification for the duration of the activity for which the
11 permit was issued.

12"

13 **SECTION 4.** This act is effective when it becomes law and applies to applications
14 for permits or certifications submitted on or after that date.