

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009**

S

1

SENATE BILL 699

Short Title: Cement Plant Moratorium and Study. (Public)

Sponsors: Senator Boseman.

Referred to: Agriculture/Environment/Natural Resources.

March 19, 2009

A BILL TO BE ENTITLED

1 AN ACT TO IMPOSE A MORATORIUM ON THE CONSIDERATION OF PERMIT
2 APPLICATIONS AND ISSUANCE OF PERMITS FOR THE CONSTRUCTION AND
3 OPERATION OF CEMENT PLANTS IN THE STATE UNTIL SEPTEMBER 1, 2010,
4 AND TO DIRECT THE ENVIRONMENTAL REVIEW COMMISSION TO STUDY
5 ISSUES RELATED TO THE ENVIRONMENTAL IMPACTS OF CEMENT PLANTS
6 AND THE SITING, DESIGN, AND OPERATIONAL REQUIREMENTS GOVERNING
7 CEMENT PLANTS IN ORDER TO PROTECT PUBLIC HEALTH AND THE
8 ENVIRONMENT.
9

10 Whereas, it is declared to be the public policy of this State to provide for the
11 conservation of its water and air resources; and

12 Whereas, it is the intent of the General Assembly to achieve and maintain a total
13 environment of superior quality for the citizens of the State; and

14 Whereas, recognizing that the water and air resources of the State belong to the
15 people, the General Assembly has affirmed the State's ultimate responsibility for the
16 preservation and development of these resources in the best interest of all its citizens and has
17 declared the prudent utilization of these resources to be essential to the general welfare; and

18 Whereas, cement plants emit pollutants injurious to the environment and human
19 health such as sulfur dioxide, nitrogen oxide, volatile organics, particulate matter, and
20 hazardous air pollutants including dioxins, furans, and mercury; and

21 Whereas, mercury, which is generated from the raw materials and some fuels used
22 in cement-making, is a toxic metal that can damage the brain and nervous system; and

23 Whereas, mercury emissions are converted to the highly toxic form of
24 methylmercury in surface waters; and

25 Whereas, mercury bioaccumulates in fish, which makes siting of facilities with high
26 mercury emissions near public water bodies and in coastal areas of particular concern; and

27 Whereas, consumption advisories for 17 species of ocean fish and eight species of
28 freshwater fish have been issued for sensitive populations such as pregnant and nursing women
29 and children under the age of 15, based on the high level of mercury these fish contain and the
30 potential damaging health effects that may be suffered by these sensitive populations from
31 exposure to high levels of mercury; and

32 Whereas, section 303(d) of the federal Clean Water Act (CWA) requires states to
33 develop a list of waters not meeting water quality standards or that have impaired uses, which
34 waters must be prioritized, and a management strategy or total maximum daily load (TMDL)
35 must subsequently be developed for all listed waters; and at least 49 segments of water bodies
36 in the State (assessment units) are included on the State's 303(d) list of impaired waters as a
37 result of fish advisories due to mercury; and



1 Whereas, in 2007 the United States Environmental Protection Agency (USEPA)
2 initiated a process to collect data from cement kiln companies pertaining to mercury content of
3 all kiln inputs and the results of any mercury tests that had been performed on cement kilns at
4 these facilities at any time. USEPA asserted that it would take until mid-September 2008 to
5 analyze the data, determine the floor levels for emissions limitations, determine whether to
6 propose more stringent beyond-the-floor emission limitations, and issue a proposed rule for
7 public comment; and

8 Whereas, in January 2009 the USEPA noticed a proposed settlement agreement
9 between the USEPA, several environmental groups, the Portland Cement Association, and the
10 States of New York, Connecticut, Illinois, Maryland, Michigan, New Jersey, and the
11 Commonwealths of Massachusetts and Pennsylvania wherein USEPA agreed to take action to
12 establish new mercury emissions limitations from new and existing Portland cement kilns, with
13 a notice taking final administrative action concerning the proposed rule making to be signed by
14 the USEPA Administrator no later than March 31, 2010; and

15 Whereas, adequate data on mercury emissions from cement plants and conclusion of
16 USEPA's final administrative action to establish new emissions limitations for these facilities
17 are essential to an informed consideration of issues concerning the proper siting, design, and
18 operation of cement plants in the State; and

19 Whereas, improperly sited, designed, or operated cement plants have the potential to
20 cause serious environmental damage, including air and surface water contamination, and
21 threaten human health; and

22 Whereas, it is essential that the State study the siting, design, and operational
23 requirements for cement plants near schools and other places where children regularly
24 congregate as children are thought to be more vulnerable to environmental exposures than
25 adults given that their bodily systems are still developing, and for other reasons; and

26 Whereas, it is essential that the State study the siting, design, and operational
27 requirements for cement plants in environmentally sensitive areas with nearby waterbodies in
28 order to protect public health and the environment; and

29 Whereas, it is essential for the protection of public health and the environment to
30 conduct an environmental review of the primary, secondary, and cumulative impacts of cement
31 plants to ensure both air and water quality issues are considered together prior to the issuance
32 of any permits; Now, therefore,

33 The General Assembly of North Carolina enacts:

34 **SECTION 1.** Moratorium Established. – There is hereby established a moratorium
35 on consideration of applications for permits and on the issuance of permits for cement plants
36 for construction and operation in the State. The purpose of this moratorium is to allow the
37 State to study the environmental impacts of cement plants in order to protect public health and
38 the environment. The Department of Environment and Natural Resources shall not consider a
39 permit application nor issue a permit for a cement plant for the period beginning on the date
40 this act becomes law until September 1, 2010.

41 **SECTION 2.(a)** Study. – The Environmental Review Commission, with the
42 assistance of the Department of Environment and Natural Resources, shall study issues related
43 to cement plants. In conducting this study, the Commission shall consider the findings of any
44 environmental impact statements conducted pursuant to the State Environmental Policy Act
45 and the National Environmental Policy Act for cement plants proposed to be sited in the State.
46 The Commission shall specifically study issues concerning:

- 47 (1) Impacts of mercury and all other pollutants emitted from cement plants on
48 public health in nearby communities, with particular attention to the
49 potential impacts on children's health in schools located in close proximity to
50 cement plants.

- 1 (2) Impacts of accumulations of mercury and other dangerous chemicals in
2 surface waters and aquatic life, and atmospheric deposition of air pollutants
3 upon surface waters and land.
- 4 (3) Impacts of cement plants on regional groundwater and drinking water
5 supplies, including the potential for saltwater intrusion into coastal aquifers.
- 6 (4) Impacts of cement facility operations on nearby communities, including, but
7 not limited to: (i) impacts on local and regional traffic patterns and
8 infrastructure; and (ii) cumulative impacts of cement plants and other heavy
9 industry to regional tourism, commercial and residential development, and
10 recreational activities such as hunting and fishing.
- 11 (5) Siting, design, and operational requirements for cement plants that are
12 proposed for construction and operation in close proximity to schools,
13 communities, public lands and waters, and other environmentally sensitive
14 areas.
- 15 (6) The advisability of requiring the Department to: (i) conduct a study, which
16 meets all of the requirements set forth in G.S. 113A-4 and rules adopted
17 pursuant to G.S. 113A-4, of the environmental impacts of all proposed
18 cement plants; and (ii) consider the study of environmental impacts and any
19 mitigation measures proposed by an applicant in deciding whether to issue
20 or deny a permit for a cement plant.

21 **SECTION 2.(b)** Subcommittee. – In order to facilitate the conduct of this study,
22 the cochairs of the Environmental Review Commission may establish a subcommittee of the
23 Commission. The subcommittee of the Commission may include nonlegislative members who
24 have special knowledge, interest, or expertise in various aspects of cement plants, such as air
25 toxics, atmospheric deposition of airborne pollutants, land conservation, public health, and
26 hydrology, appointed in consultation with the President Pro Tempore of the Senate and the
27 Speaker of the House of Representatives.

28 **SECTION 2.(c)** Report. – The Commission shall report its findings, together with
29 any recommended legislation, to the 2010 Regular Session of the General Assembly upon its
30 convening.

31 **SECTION 3.** This act is effective when it becomes law.