

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

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SENATE BILL 945

Short Title: Timely Environmental Permit Process. (Public)

Sponsors: Senators Hoyle; Clodfelter, Foxx, Garrou, Rucho, Stevens, and Swindell.

Referred to: Agriculture/Environment/Natural Resources.

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT THE SECRETARY OF ENVIRONMENT AND
NATURAL RESOURCES SHALL MODIFY THE PERMIT PROCESS FOR
CERTAIN AIR QUALITY PERMITS, SHALL CONDUCT A THOROUGH
REVIEW OF THE ENVIRONMENTAL PERMIT PROGRAMS TO IDENTIFY
IMPEDIMENTS TO THE TIMELY ISSUANCE OF PERMITS BY THE
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES, AND
SHALL MAKE RECOMMENDATIONS FOR MODIFICATIONS TO THESE
PROGRAMS IN ORDER TO ENHANCE ECONOMIC DEVELOPMENT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-215.108(a) reads as rewritten:

"(a) Except as provided in subsections (a1) and (a2) of this section, no person shall do any of the following things or carry out any of the following activities ~~which that~~ that contravene or will be likely to contravene standards established pursuant to G.S. 143-215.107 or set out in G.S. 143-215.107D unless that person has obtained ~~from the Commission~~ a permit ~~therefor~~ from the Commission and has complied with any conditions of ~~this~~ the permit:

- (1) Establish or operate any air contaminant ~~source;~~ source, except as provided in G.S. 143-215.108A.
- (2) Build, erect, use or operate any equipment ~~which that~~ that may result in the emission of ~~an air contaminants~~ contaminant or ~~which that~~ that is likely to cause air ~~pollution;~~ pollution, except as provided in G.S. 143-215.108A.
- (3) Alter or change the construction or method of operation of any equipment or process from which air contaminants are or may be ~~emitted;~~ emitted.
- (4) ~~Enter into an irrevocable contract for the construction and installation of any air cleaning device, or allow or cause such device to be constructed, installed, or operated."~~

1 **SECTION 2.** G.S. 143-215.108(f) reads as rewritten:

2 "(f) An applicant for a permit under this section for a new facility or for the
3 expansion of a facility permitted under this section shall request each local government
4 having jurisdiction over any part of the land on which the facility and its appurtenances
5 are to be located to issue a determination as to whether the local government has in
6 effect a zoning or subdivision ordinance applicable to the facility and whether the
7 proposed facility or expansion would be consistent with the ordinance. The request to
8 the local government shall be accompanied by a copy of the draft permit application and
9 shall be delivered to the clerk of the local government personally or by certified mail.
10 The determination shall be verified or supported by affidavit signed by the official
11 designated by the local government to make the determination and, if the local
12 government states that the facility is inconsistent with a zoning or subdivision
13 ordinance, shall include a copy of the ordinance and the specific reasons for the
14 determination of inconsistency. A copy of any such determination shall be provided to
15 the applicant when it is submitted to the Commission. The Commission shall not act
16 upon an application for a permit under this section until it has received a determination
17 from each local government requested to make a determination by the applicant. If a
18 local government determines that the new facility or the expansion of an existing
19 facility is inconsistent with a zoning or subdivision ordinance, and unless ~~Unless~~ the
20 local government makes a subsequent determination of consistency with all ordinances
21 cited in the determination or the proposed facility is determined by a court of competent
22 jurisdiction to be consistent with the cited ordinances, the Commission shall attach as a
23 condition of the permit a requirement that the applicant, prior to ~~construction~~ or
24 operation of the facility under the permit, comply with all lawfully adopted local
25 ordinances, including those cited in the determination, that apply to the facility at the
26 time of ~~construction~~ or operation of the facility. If a local government fails to submit a
27 determination to the Commission as provided by this subsection within 15 days after
28 receipt of the request, the Commission may proceed to consider the permit application
29 without regard to local zoning and subdivision ordinances. This subsection shall not be
30 construed to affect the validity of any lawfully adopted franchise, local zoning,
31 subdivision, or land-use planning ordinance or to affect the responsibility of any person
32 to comply with any lawfully adopted franchise, local zoning, subdivision, or land-use
33 planning ordinance. This subsection shall not be construed to limit any opportunity a
34 local government may have to comment on a permit application under any other law or
35 rule. This subsection shall not apply to any facility with respect to which local
36 ordinances are subject to review under either G.S. 104E-6.2 or G.S. 130A-293."

37 **SECTION 3.** Article 21B of Chapter 143 of the General Statutes is amended
38 by adding a new section to read:

39 "**§ 143-215.108A. Control of sources of air pollution; construction of new facilities**
40 **and the expansion of existing facilities.**

41 (a) New Facilities. – A person may not, without obtaining a permit under G.S.
42 143-215.108, construct or operate an air contaminant source, equipment, or associated
43 air-cleaning device at a site or facility where, at the time of the construction, there is no
44 other air contaminant source, equipment, or associated air-cleaning device for which a

1 permit is required under G.S. 143-215.108. A person may, however, construct any
2 component of the facility that is not integral to the operation of the air contaminant
3 source, equipment, or associated air-cleaning device, including any portion of the
4 facility that relates to or supports both the air contaminant source, equipment, or
5 associated air-cleaning device and other functions, such as the foundation, walls, roof,
6 electrical wiring, and vents, if the person complies with the requirements of this section.
7 At least 15 days prior to commencing construction under this subsection, the person
8 who owns the facility shall give notice to the Commission of the person's intent to
9 construct a facility for which a permit will be required under G.S. 143-215.108. The
10 notice to the Commission shall include all of the following:

- 11 (1) The name and location of the proposed facility and the name and
12 address of the person who will apply for a permit under G.S.
13 143-215.108.
- 14 (2) The nature of the air contaminant sources and equipment associated
15 with the facility when constructed.
- 16 (3) An estimate of total regulated air contaminant emissions associated
17 with the facility when constructed.
- 18 (4) The air-cleaning devices that are to be employed to address each of the
19 air contaminant sources.
- 20 (5) The construction schedule for the proposed construction.
- 21 (6) An acknowledgment by the person that the actual air contaminant
22 sources, equipment, and associated air-cleaning devices may not be
23 constructed until the person has obtained a permit under G.S.
24 143-215.108.
- 25 (7) An acknowledgment by the person that any construction prior to the
26 issuance of a permit under G.S. 143-215.108 is undertaken at the
27 person's own risk and with the knowledge that the person may be
28 denied a permit under G.S. 143-215.108 without regard to the person's
29 financial investment or construction activities.
- 30 (8) A certification under oath that all of the information contained in the
31 notice is complete and accurate to the best of the person's knowledge
32 and ability, executed by the person or, if the person is a corporation, by
33 the appropriate officers of the corporation.

34 (b) Permitted Facilities. – A person who holds a permit under G.S. 143-215.108
35 may apply to the Commission for a modification of the permit to allow the person to
36 alter or expand the physical arrangement or operation of an air contaminant source,
37 equipment, or associated air-cleaning device in a manner that alters the emission of air
38 contaminants. The permittee may not operate the altered, expanded, or additional air
39 contaminant source, equipment, or associated air-cleaning devices in a manner that
40 alters the emission of any air contaminant without obtaining a permit modification
41 under G.S. 143-215.108. A permittee may, however, construct or modify an air
42 contaminant source, equipment, or associated air-cleaning device at a facility permitted
43 under G.S. 143-215.108 if the permittee complies with the requirements of this section.
44 At least 15 days prior to commencing construction or modification under this

1 subsection, the permittee shall give notice to the Commission of the person's intent to
2 construct a facility for which a permit modification will be required under G.S.
3 143-215.108. The notice to the Commission shall include all of the following:

- 4 (1) The name and location of the facility and the name and address of the
5 permittee.
- 6 (2) The permit number of each permit issued under G.S. 143-215.108 for
7 the facility.
- 8 (3) The nature of the air contaminant sources and equipment associated
9 with the proposed modification of the permit.
- 10 (4) An estimate of total regulated air contaminant emissions associated
11 with the proposed modification of the permit.
- 12 (5) The air-cleaning devices that are to be employed to address each of the
13 air contaminant sources associated with the modification of the permit.
- 14 (6) The construction schedule associated with the proposed modification
15 of the permit.
- 16 (7) An acknowledgment by the permittee that the air contaminant sources,
17 equipment, and associated air-cleaning devices may not be operated in
18 a manner that alters the emission of any air contaminant until the
19 permittee has obtained a modified permit under G.S. 143-215.108.
- 20 (8) An acknowledgment by the permittee that any construction prior to the
21 modification of a permit under G.S. 143-215.108 is undertaken at the
22 permittee's own risk and with the knowledge that the permittee may be
23 denied a modification of the permit under G.S. 143-215.108 without
24 regard to the permittee's financial investment or construction activities.
- 25 (9) A certification under oath that all of the information contained in the
26 notice is complete and accurate to the best of the permittee's
27 knowledge and ability, executed by the permittee or, if the permittee is
28 a corporation, by the appropriate officers of the corporation.

29 (c) Review and Determination by the Commission. – Upon receipt of the notice
30 to the Commission required under subsection (a) or (b) of this section, the Commission
31 may review the information contained in the notice, investigate the site or facility, and
32 comment on the proposed facility or permit modification. If at any time during
33 construction the Commission determines that there is a significant likelihood that a
34 person or permittee will not qualify for a permit or permit modification under G.S.
35 143-215.108, the Commission may request in writing that the person or permittee
36 submit, within 15 days of receipt of the request, specific additional information related
37 to the reasons that give rise to the determination. If, after reviewing any additional
38 information submitted by the person or permittee, the Commission again determines
39 that there is a significant likelihood that a person or permittee will not qualify for a
40 permit or permit modification under G.S. 143-215.108, the Commission may request
41 that the plans for the construction be altered in order to address the anticipated inability
42 of the person or permittee to qualify for a permit or permit modification, or the
43 Commission may order that construction or modification cease. If the Commission
44 orders that construction or modification cease, then construction may resume only if the

1 Commission either makes a subsequent determination that the circumstances that
2 resulted in the determination that resulted in the order to cease construction or
3 modification have been adequately addressed or if the Commission issues a permit or
4 permit modification under G.S. 143-215.108 that authorizes construction to resume.
5 Any order by the Commission that construction cease shall be in writing and shall set
6 forth specific reasons for the determination that the person or permittee will not qualify
7 for a permit.

8 (d) Evaluation of Permit Applications; Administrative and Judicial Review of
9 Permit Decisions. – The Commission shall evaluate an application for a permit or
10 permit modification under G.S. 143-215.108 and make its decision on the same basis as
11 if the construction allowed under this section had not occurred. The Commission shall
12 consider any written comment that it receives in response to a notice by publication
13 given pursuant to subsection (a) or (b) of this section. No evidence regarding any
14 financial investment made, construction activity undertaken, or economic loss incurred
15 by any person or permittee who proceeds under this section without first obtaining a
16 permit under G.S. 143-215.108 is admissible in any contested case or judicial
17 proceeding involving any permit required under G.S. 143-215.108.

18 (e) State, Commission, and Employees Not Liable. – Every person, permittee,
19 and owner of a facility who proceeds under this section shall hold the State, the
20 Commission, and the officials, agents, and employees of the State and the Commission
21 harmless and not liable for any loss resulting from any construction or modification
22 undertaken by any person, permittee, or owner of any facility pursuant to this section.

23 (f) Local Zoning Ordinances Not Affected. – This section shall not be construed
24 to affect the validity of any lawfully adopted franchise, local zoning, subdivision, or
25 land-use planning ordinance or to affect the responsibility of any person to comply with
26 any lawfully adopted franchise, local zoning, subdivision, or land-use planning
27 ordinance.

28 (g) Federal Air Quality Programs Not Affected. – This section does not relieve
29 any person from any preconstruction or construction prohibition imposed by any federal
30 requirement, federal delegation, federally approved requirement in any State
31 Implementation Plan, or federally approved requirement under the Title V permitting
32 program, as determined solely by the Commission or by a local air pollution control
33 program certified by the Commission as provided in G.S. 143-215.112. This section
34 does not apply to any construction or modification that is subject to requirements for
35 prevention of significant deterioration or federal nonattainment new source review, as
36 determined solely by the Commission or by a local air pollution control program
37 certified by the Commission as provided in G.S. 143-215.112. This section does not
38 apply if it is inconsistent with any federal requirement, federal delegation, federally
39 approved requirement in any State Implementation Plan, or federally approved
40 requirement under the Title V permitting program, as determined solely by the
41 Commission or by a local air pollution control program certified by the Commission as
42 provided in G.S. 143-215.112.

43 (h) Fee. – A person or permittee who submits a notice of construction under
44 subsection (a) or (b) of this section shall pay a fee of two hundred dollars (\$200.00) for

1 each notice submitted to cover a portion of the administrative costs of implementing this
2 section."

3 **SECTION 4.(a)** The Secretary of Environment and Natural Resources shall
4 conduct a thorough examination of the permitting programs in the Department of
5 Environment and Natural Resources to determine modifications that may be made under
6 current law and with current staffing resources to reduce the time required for permit
7 issuance so as to enhance economic development in North Carolina without
8 compromising protection of North Carolina's environment and natural resources. In
9 examining the permit programs of the Department of Environment and Natural
10 Resources, the Secretary of Environment and Natural Resources shall identify all of the
11 following:

- 12 (1) Outdated regulations or policies that serve as impediments to timely
13 issuance of environmental permits.
- 14 (2) Any organizational impediments to reducing the time required for the
15 issuance of environmental permits.
- 16 (3) Ways to streamline the issuance of permits for minor activities, such as
17 utilizing general permits, standard specifications, or permitting by rule.
- 18 (4) Which permit programs currently utilize general permits for minor
19 activities, which minor activities are presently subject to general
20 permits, and opportunities to expand the use of general permits to
21 other minor activities as well as to other permit programs that are not
22 currently utilizing general permits.
- 23 (5) Voluntary options that permit applicants may pursue, such as the
24 payment of higher permit application fees to decrease the time
25 required to issue permits.
- 26 (6) Opportunities to further streamline or eliminate certain permit
27 requirements for minor activities conducted by permit applicants that
28 operate under an independently certified environmental management
29 system.
- 30 (7) Opportunities to expand upon the use of professional engineers,
31 professional geologists, or other individuals certified by the
32 Department of Environment and Natural Resources as having the skills
33 necessary to design and approve emission controls, treatment systems,
34 or structures for minor activities.

35 **SECTION 4.(b)** As used in Section 4(a) of this act, "minor activities" means
36 activities that pose no risk or minimal risk to the environment.

37 **SECTION 4.(c)** The Secretary of Environment and Natural Resources shall
38 recommend legislation necessary to streamline or otherwise change the environmental
39 permit programs or activities of the Department of Environment and Natural Resources
40 that would serve to enhance the State's ability to meet its economic development goals
41 without compromising environmental and natural resource protections.

42 **SECTION 4.(d)** The Secretary of Environment and Natural Resources shall,
43 in cooperation with the Secretary of Administration, review the rules and policies
44 developed by the two departments to implement the Environmental Policy Act, Article

1 1 of Chapter 113A of the General Statutes, and identify any modifications to the
2 Environmental Policy Act and the implementing rules and policies that would remove
3 impediments to economic development where such impediments have no significant
4 environmental or natural resource protection benefit.

5 **SECTION 4.(e)** In conducting the examination of the permit programs of
6 the Department of Environment and Natural Resources and the activities of the
7 Department of Environment and Natural Resources under the Environmental Policy
8 Act, Article 1 of Chapter 113A of the General Statutes, the Secretary of Environment
9 and Natural Resources shall consult with staff of the Department of Environment and
10 Natural Resources, local government officials, manufacturers, business groups,
11 economic developers, professional engineers, professional geologists, land developers,
12 and any other individuals or groups that the Secretary of Environment and Natural
13 Resources believes to possess information that would be of benefit to the examination
14 of the permit programs conducted by the Department of Environment and Natural
15 Resources.

16 **SECTION 4.(f)** On or before December 31, 2003, the Secretary of
17 Environment and Natural Resources shall report the findings and recommendations
18 under subdivisions (1) through (7) of subsections (a) and (b) of this section, along with
19 any other findings and recommendations deemed important by the Secretary of
20 Environment and Natural Resources to fostering a regulatory climate favorable to
21 improving economic development without compromising environmental and natural
22 resources protections, to the Environmental Review Commission and to the Joint
23 Legislative Commission on Governmental Operations.

24 **SECTION 5.** This act is effective when it becomes law and applies to
25 construction of any new facility and construction associated with the modification of a
26 permit for an existing facility that commences on or after the date on which this act
27 becomes law. This act does not apply to any application for a permit or permit
28 modification under G.S. 143-215.108 that is submitted to the Environmental
29 Management Commission prior to the date on which this act becomes law.