

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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HOUSE BILL 836

Short Title: Expedite Environmental Permitting.

(Public)

Sponsors: Representatives McMahan; Aldridge, Allred, Arnold, Baker, Barbee, Black, Bowie, Brawley, J. Brown, W. Brown, Cansler, Capps, Carpenter, Clary, Creech, Culpepper, Cummings, Davis, Dickson, Dockham, Eddins, Edwards, Grady, Hayes, Kiser, Lemmond, Linney, K. Miller, Nichols, Owens, Preston, Pulley, Rayfield, Reynolds, Sharpe, Sherrill, Shubert, Tallent, Weatherly, Wilkins, and C. Wilson.

Referred to: Health and Environment, if favorable, Judiciary I.

April 11, 1995

A BILL TO BE ENTITLED

**AN ACT TO EXPEDITE THE ENVIRONMENTAL PERMITTING PROCESS BY
ALLOWING THE OPTION OF SUBMITTING PERMIT APPLICATIONS
CERTIFIED BY A PROFESSIONAL ENGINEER AND ALLOWING THESE
APPLICATIONS TO BE IMMEDIATELY SENT TO PUBLIC NOTICE AND
HEARING AND SUBJECTED TO SIMULTANEOUS TECHNICAL REVIEW.**

The General Assembly of North Carolina enacts:

Section 1. The General Assembly finds that the increasing complexity of environmental laws and rules have made the environmental permitting process increasingly lengthy and that there are instances where it would be appropriate and beneficial to allow an applicant for an environmental permit the option of submitting an application that meets certain additional standards, which application may be handled expeditiously through the use of immediate notice and public hearing and simultaneous and timely technical review within the Department of Environment, Health, and Natural Resources.

Sec. 2. G.S. 143-215.1 is amended by adding two new subsections to read:

1 "(h) Expedited Review of Applications Certified by a Professional Engineer. – The
2 Commission shall adopt rules governing the submittal of permit applications certified by
3 a professional engineer, including draft permits, that can be sent to public notice and
4 hearing immediately upon receipt and subjected to technical review by personnel within
5 the Department. These rules shall specify, at a minimum, any forms to be used; a
6 checklist for applicants that lists all items of information required to prepare a complete
7 permit application; the form of the certification required on the application by a
8 professional engineer; and the information that must be included in the draft permit. The
9 Department shall process any application submitted with such certification as follows:

10 (1) Immediate Initiation of Review. Upon receipt of an application certified
11 by a professional engineer in accordance with this subsection and the
12 rules adopted pursuant to this subsection and upon a determination that
13 the application is complete pursuant to subdivision (2) of this
14 subsection, the Department shall immediately:

- 15 a. Publish any required notices, using the draft permit included with
16 the application;
17 b. Schedule any required public meetings or hearings on the
18 application and permit; and
19 c. Initiate any and all technical review of the application in a
20 manner to ensure substantial completion of the technical review
21 by the time of any public hearing on the application, or if there is
22 no hearing, by the close of the notice period.

23 (2) Completeness Review. Within 10 working days of receipt of the permit
24 application certified by a professional engineer under this subsection,
25 the Department shall determine whether the application is complete for
26 purposes of this subsection. The Department shall determine whether
27 the permit application certified by a professional engineer is complete
28 by comparing the information provided in the application with the
29 checklist contained in the rules adopted by the Commission pursuant to
30 this subsection.

- 31 a. If the application is not complete, the Department shall promptly
32 notify the applicant in writing of all deficiencies of the
33 application, specifying the items that need to be included,
34 modified, or supplemented in order to make the application
35 complete, and the 10-day time period is suspended after this
36 request for further information. If the applicant submits the
37 requested information within the time specified, the application
38 shall be considered with no delay in the review process, and the
39 10-day time period shall be resumed on the day the additional
40 information was requested. If the additional information is not
41 submitted within the time periods specified, the Department shall
42 return the application to the applicant, and the applicant may treat

- 1 the return of the application as a denial of the application or may
2 resubmit the application at a later time.
- 3 b. If the Department fails to notify the applicant that an application
4 is not complete within the time period set forth in this subsection,
5 the application shall be deemed to be complete.
- 6 (3) Time for Permit Decision. For any application found to be complete
7 under subdivision (2) of this subsection, the Department shall issue a
8 permit decision within 60 days of the last day of any public hearing on
9 the application, or if there is no hearing, within 60 days of the close of
10 the notice period.
- 11 (4) Rights if Permit Decision Not Made in Timely Fashion. If the
12 Department fails to issue a permit decision within the time periods
13 specified in subdivision (3) of this subsection, the applicant may take
14 any of the following actions:
- 15 a. Take no action, thereby consenting to the continued review of the
16 application;
- 17 b. Treat the action as a denial of the application and appeal the
18 denial under Article 3 of Chapter 150B of the General Statutes;
19 or
- 20 c. Appeal the denial directly to superior court under Article 4 of
21 Chapter 150B of the General Statutes without the need to file a
22 contested case.
- 23 (5) Liability. For any application found to be complete under subdivision
24 (2) of this subsection that the Department approves by granting the
25 permit substantially in the form submitted by the applicant without
26 requiring any changes, any liability for such permit review shall be
27 solely on the applicant and the professional engineer who certified the
28 application.
- 29 (6) Power to Halt Review. At any time after the permit application certified
30 by a professional engineer has been determined to be complete under
31 subdivision (2) of this subsection, the Department may immediately
32 terminate review of that application, including technical review and any
33 hearings or meetings scheduled on the application, upon a determination
34 of one of the following:
- 35 a. The permit application is not in substantial compliance with the
36 applicable rules; or
- 37 b. The applicant failed to pay all permit application fees.
- 38 (7) Rights if Review Halted. If the Department terminates review of an
39 application under subdivision (6) of this subsection, the applicant may
40 take any of the following actions:
- 41 a. Revise and resubmit the application;

- 1 b. Treat the action as a denial of the application and appeal the
2 denial under Article 3 of Chapter 150B of the General Statutes;
3 or
4 c. Appeal the denial directly to superior court under Article 4 of
5 Chapter 150B of the General Statutes without the need to file a
6 contested case.

7 (8) Option; No Fee. The submittal of a permit application certified by a
8 professional engineer to be considered under this subsection shall be an
9 option and shall not be required of any applicant. The Department shall
10 not impose any additional fees for the receipt or processing of a permit
11 application certified by a professional engineer.

12 (i) Rules for Review of Applications Other Than Those Certified by a
13 Professional Engineer. – The Commission shall adopt rules governing the times of
14 review for all permit applications submitted pursuant to this section other than those
15 certified by a professional engineer pursuant to subsection (h) of this section. Those rules
16 shall specify maximum times for, among other things, the following actions in reviewing
17 the permit applications covered by this subsection:

- 18 (1) Determining that the permit application is complete;
19 (2) Requesting additional information to determine completeness;
20 (3) Determining that additional information is needed to conduct a technical
21 review of the application;
22 (4) Completing all technical review of the permit application;
23 (5) Holding and completing all public meetings and hearings required for
24 the application;
25 (6) Completing the record from reviewing and acting on the application;
26 and
27 (7) Taking final action on the permit, including granting or denying the
28 application."

29 Sec. 3. G.S. 143-215.108 is amended by adding two new subsections to read:

30 "(h) Expedited Review of Applications Certified by a Professional Engineer. – The
31 Commission shall adopt rules governing the submittal of permit applications certified by
32 a professional engineer, including draft permits, that can be sent to public notice and
33 hearing immediately upon receipt and subjected to technical review by personnel within
34 the Department. These rules shall specify, at a minimum, any forms to be used; a
35 checklist for applicants that lists all items of information required to prepare a complete
36 permit application; the form of the certification required on the application by a
37 professional engineer; and the information that must be included in the draft permit. The
38 Department shall process any application submitted with such certification as follows:

- 39 (1) Immediate Initiation of Review. Upon receipt of an application certified
40 by a professional engineer in accordance with this subsection and the
41 rules adopted pursuant to this subsection and upon a determination that
42 the application is complete pursuant to subdivision (2) of this
43 subsection, the Department shall immediately:

- 1 a. Publish any required notices, using the draft permit included with
2 the application;
- 3 b. Schedule any required public meetings or hearings on the
4 application and permit; and
- 5 c. Initiate any and all technical review of the application in a
6 manner to ensure substantial completion of the technical review
7 by the time of any public hearing on the application, or if there is
8 no hearing, by the close of the notice period.
- 9 (2) Completeness Review. Within 10 working days of receipt of the permit
10 application certified by a professional engineer under this subsection,
11 the Department shall determine whether the application is complete for
12 purposes of this subsection. The Department shall determine whether
13 the permit application certified by a professional engineer is complete
14 by comparing the information provided in the application with the
15 checklist contained in the rules adopted by the Commission pursuant to
16 this subsection.
- 17 a. If the application is not complete, the Department shall promptly
18 notify the applicant in writing of all deficiencies of the
19 application, specifying the items that need to be included,
20 modified, or supplemented in order to make the application
21 complete, and the 10-day time period is suspended after this
22 request for further information. If the applicant submits the
23 requested information within the time specified, the application
24 shall be considered with no delay in the review process, and the
25 10-day time period shall be resumed on the day the additional
26 information was requested. If the additional information is not
27 submitted within the time periods specified, the Department shall
28 return the application to the applicant, and the applicant may treat
29 the return of the application as a denial of the application or may
30 resubmit the application at a later time.
- 31 b. If the Department fails to notify the applicant that an application
32 is not complete within the time period set forth in this subsection,
33 the application shall be deemed to be complete.
- 34 (3) Time for Permit Decision. For any application found to be complete
35 under subdivision (2) of this subsection, the Department shall issue a
36 permit decision within 60 days of the last day of any public hearing on
37 the application, or if there is no hearing, within 60 days of the close of
38 the notice period.
- 39 (4) Rights if Permit Decision Not Made in Timely Fashion. If the
40 Department fails to issue a permit decision within the time periods
41 specified in subdivision (3) of this subsection, the applicant may take
42 any of the following actions:

- 1 a. Take no action, thereby consenting to the continued review of the
2 application;
- 3 b. Treat the action as a denial of the application and appeal the
4 denial under Article 3 of Chapter 150B of the General Statutes;
5 or
- 6 c. Appeal the denial directly to superior court under Article 4 of
7 Chapter 150B of the General Statutes without the need to file a
8 contested case.
- 9 (5) Liability. For any application found to be complete under subdivision
10 (2) of this subsection that the Department approves by granting the
11 permit substantially in the form submitted by the applicant without
12 requiring any changes, any liability for such permit review shall be
13 solely on the applicant and the professional engineer who certified the
14 application.
- 15 (6) Power to Halt Review. At any time after the permit application certified
16 by a professional engineer has been determined to be complete under
17 subdivision (2) of this subsection, the Department may immediately
18 terminate review of that application, including technical review and any
19 hearings or meetings scheduled on the application, upon a determination
20 of one of the following:
- 21 a. The permit application is not in substantial compliance with the
22 applicable rules; or
- 23 b. The applicant failed to pay all permit application fees.
- 24 (7) Rights if Review Halted. If the Department terminates review of an
25 application under subdivision (6) of this subsection, the applicant may
26 take any of the following actions:
- 27 a. Revise and resubmit the application;
- 28 b. Treat the action as a denial of the application and appeal the
29 denial under Article 3 of Chapter 150B of the General Statutes;
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- 31 c. Appeal the denial directly to superior court under Article 4 of
32 Chapter 150B of the General Statutes without the need to file a
33 contested case.
- 34 (8) Option; No Fee. The submittal of a permit application certified by a
35 professional engineer to be considered under this subsection shall be an
36 option and shall not be required of any applicant. The Department shall
37 not impose any additional fees for the receipt or processing of a permit
38 application certified by a professional engineer.
- 39 (i) Rules for Review of Applications Other Than Those Certified by a
40 Professional Engineer. – The Commission shall adopt rules governing the times of review
41 for all permit applications submitted pursuant to this section other than those certified by
42 a professional engineer pursuant to subsection (h) of this section. Those rules shall

1 specify maximum times for, among other things, the following actions in reviewing the
2 permit applications covered by this subsection:

- 3 (1) Determining that the permit application is complete;
- 4 (2) Requesting additional information to determine completeness;
- 5 (3) Determining that additional information is needed to conduct a technical
6 review of the application;
- 7 (4) Completing all technical review of the permit application;
- 8 (5) Holding and completing all public meetings and hearings required for
9 the application;
- 10 (6) Completing the record from reviewing and acting on the application;
11 and
- 12 (7) Taking final action on the permit, including granting or denying the
13 application."

14 Sec. 4. G.S. 130A-295 is amended by adding two new subsections to read:

15 "(d) Expedited Review of Applications Certified by a Professional Engineer. – The
16 Commission shall adopt rules governing the submittal of permit applications certified by
17 a professional engineer, including draft permits, that can be sent to public notice and
18 hearing immediately upon receipt and subjected to technical review by personnel within
19 the Department. These rules shall specify, at a minimum, any forms to be used; a
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21 permit application; the form of the certification required on the application by a
22 professional engineer; and the information that must be included in the draft permit. The
23 Department shall process any application submitted with such certification as follows:

- 24 (1) Immediate Initiation of Review. Upon receipt of an application certified
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26 rules adopted pursuant to this subsection and upon a determination that
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- 37 (2) Completeness Review. Within 10 working days of receipt of the permit
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39 the Department shall determine whether the application is complete for
40 purposes of this subsection. The Department shall determine whether
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42 by comparing the information provided in the application with the

1 checklist contained in the rules adopted by the Commission pursuant to
2 this subsection.

3 a. If the application is not complete, the Department shall promptly
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11 10-day time period shall be resumed on the day the additional
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34 c. Appeal the denial directly to superior court under Article 4 of
35 Chapter 150B of the General Statutes without the need to file a
36 contested case.

37 (5) Liability. For any application found to be complete under subdivision
38 (2) of this subsection that the Department approves by granting the
39 permit substantially in the form submitted by the applicant without
40 requiring any changes, any liability for such permit review shall be
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- 1 (6) Power to Halt Review. At any time after the permit application certified
2 by a professional engineer has been determined to be complete under
3 subdivision (2) of this subsection, the Department may immediately
4 terminate review of that application, including technical review and any
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17 c. Appeal the denial directly to superior court under Article 4 of
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19 contested case.
20 (8) Option; No Fee. The submittal of a permit application certified by a
21 professional engineer to be considered under this subsection shall be an
22 option and shall not be required of any applicant. The Department shall
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25 (e) Rules for Review of Applications Other Than Those Certified by a
26 Professional Engineer. – The Commission shall adopt rules governing the times of review
27 for all permit applications submitted pursuant to this section other than those certified by
28 a professional engineer pursuant to subsection (h) of this section. Those rules shall
29 specify maximum times for, among other things, the following actions in reviewing the
30 permit applications covered by this subsection:
31 (1) Determining that the permit application is complete;
32 (2) Requesting additional information to determine completeness;
33 (3) Determining that additional information is needed to conduct a technical
34 review of the application;
35 (4) Completing all technical review of the permit application;
36 (5) Holding and completing all public meetings and hearings required for
37 the application;
38 (6) Completing the record from reviewing and acting on the application;
39 and
40 (7) Taking final action on the permit, including granting or denying the
41 application."

42 Sec. 5. The rules to be adopted pursuant to G.S. 143-215.1(h) and G.S. 143-
43 215.1(i), as enacted in Section 2 of this act, the rules adopted pursuant to G.S. 143-

1 215.108(h) and G.S. 143-215.108(i), as enacted in Section 3 of this act, and the rules
2 adopted pursuant to G.S. 130A-295(d) and G.S. 130A-295(e), as enacted in Section 4 of
3 this act, shall be effective no later than 18 months after the ratification of this act.

4 Sec. 6. In order to evaluate the progress towards implementation of this act,
5 including adoption of the rules required in Sections 2 through 4 of this act, the
6 Department shall submit a report by April 1, 1996, to the Environmental Review
7 Commission for consideration and any recommendations for further legislation to be
8 considered by the 1996 Regular Session of the 1995 General Assembly.

9 Sec. 7. This act is effective upon ratification.