

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

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SENATE DRS65187-LD-63 (03/26)

Short Title: Timely Environmental Permit Process. (Public)

Sponsors: Senator Hoyle.

Referred to:

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.

1 (4) ~~Enter into an irrevocable contract for the construction and installation~~
2 ~~of any air cleaning device, or allow or cause such device to be~~
3 ~~constructed, installed, or operated."~~

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

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

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

42 "**§ 143-215.108A. Control of sources of air pollution; construction of new facilities**
43 **and the expansion of existing facilities.**

1 (a) New Facilities. – A person may not, without obtaining a permit under G.S.
2 143-215.108, construct or operate an air contaminant source, equipment, or associated
3 air-cleaning device at a site or facility where, at the time of the construction, there is no
4 other air contaminant source, equipment, or associated air-cleaning device for which a
5 permit is required under G.S. 143-215.108. A person may, however, construct any
6 component of the facility that is not integral to the operation of the air contaminant
7 source, equipment, or associated air-cleaning device, including any portion of the
8 facility that relates to or supports both the air contaminant source, equipment, or
9 associated air-cleaning device and other functions, such as the foundation, walls, roof,
10 electrical wiring, and vents, if the person complies with the requirements of this section.
11 At least 15 days prior to commencing construction under this subsection, the person
12 who owns the facility shall give notice to the Commission of the person's intent to
13 construct a facility for which a permit will be required under G.S. 143-215.108. The
14 notice to the Commission shall include all of the following:

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

38 (b) Permitted Facilities. – A person who holds a permit under G.S. 143-215.108
39 may apply to the Commission for a modification of the permit to allow the person to
40 alter or expand the physical arrangement or operation of an air contaminant source,
41 equipment, or associated air-cleaning device in a manner that alters the emission of air
42 contaminants. The permittee may not operate the altered, expanded, or additional air
43 contaminant source, equipment, or associated air-cleaning devices in a manner that
44 alters the emission of any air contaminant without obtaining a permit modification

1 under G.S. 143-215.108. A permittee may, however, construct or modify an air
2 contaminant source, equipment, or associated air-cleaning device at a facility permitted
3 under G.S. 143-215.108 if the permittee complies with the requirements of this section.
4 At least 15 days prior to commencing construction or modification under this
5 subsection, the permittee shall give notice to the Commission of the person's intent to
6 construct a facility for which a permit modification will be required under G.S.
7 143-215.108. The notice to the Commission shall include all of the following:

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

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

1 that the plans for the construction be altered in order to address the anticipated inability
2 of the person or permittee to qualify for a permit or permit modification, or the
3 Commission may order that construction or modification cease. If the Commission
4 orders that construction or modification cease, then construction may resume only if the
5 Commission either makes a subsequent determination that the circumstances that
6 resulted in the determination that resulted in the order to cease construction or
7 modification have been adequately addressed or if the Commission issues a permit or
8 permit modification under G.S. 143-215.108 that authorizes construction to resume.
9 Any order by the Commission that construction cease shall be in writing and shall set
10 forth specific reasons for the determination that the person or permittee will not qualify
11 for a permit.

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

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

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

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

1 Commission or by a local air pollution control program certified by the Commission as
2 provided in G.S. 143-215.112.

3 (h) Fee. – A person or permittee who submits a notice of construction under
4 subsection (a) or (b) of this section shall pay a fee of two hundred dollars (\$200.00) for
5 each notice submitted to cover a portion of the administrative costs of implementing this
6 section."

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

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

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

41 **SECTION 4.(c)** The Secretary of Environment and Natural Resources shall
42 recommend legislation necessary to streamline or otherwise change the environmental
43 permit programs or activities of the Department of Environment and Natural Resources

1 that would serve to enhance the State's ability to meet its economic development goals
2 without compromising environmental and natural resource protections.

3 **SECTION 4.(d)** The Secretary of Environment and Natural Resources shall,
4 in cooperation with the Secretary of Administration, review the rules and policies
5 developed by the two departments to implement the Environmental Policy Act, Article
6 1 of Chapter 113A of the General Statutes, and identify any modifications to the
7 Environmental Policy Act and the implementing rules and policies that would remove
8 impediments to economic development where such impediments have no significant
9 environmental or natural resource protection benefit.

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

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

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