



1           Whereas, it is the policy of the State to afford the public a full and complete  
2 opportunity for public hearing and comment as a part of the administrative rule-making  
3 process; Now, therefore,

4 The General Assembly of North Carolina enacts:

5           Section 1. G.S. 143-213 is amended by adding a new subdivision to read:

6           "(29a) 'Title V' means Title V of the 1990 amendments to the Federal Clean  
7           Air Act (Pub. L. 101-549, 104 Stat. 2635 et seq.)."

8           Sec. 2. G.S. 143-215.3(a) reads as rewritten:

9           "(a) Additional Powers. – In addition to the specific powers prescribed elsewhere  
10 in this Article, and for the purpose of carrying out its duties, the Commission shall have  
11 the power:

12           (1) To make rules implementing Articles 21, 21A, 21B, or 38 of this  
13 Chapter.

14           (1a) To charge fees for the following:

15           a. Processing of applications for permits or registrations issued  
16 under Articles 21, 21A, 21B, and 38 of this Chapter;

17           b. Administering permits or registrations issued under Articles 21,  
18 21A, 21B, or 38 of this Chapter including monitoring  
19 compliance with the terms of those permits; and

20           c. Reviewing, processing, and publicizing applications for  
21 construction grant awards under the Federal Water Pollution  
22 Control Act.

23           No fee may be charged under this provision, however, to a farmer who  
24 submits an application that pertains to his farming operations.

25           (1b) The fee to be charged pursuant to G.S. 143-215.3(a)(1a) for processing  
26 of an application for a permit under G.S. 143-215.1 of Article 21 and  
27 G.S. 143-215.108 and G.S. 143-215.109 of Article 21B of this Chapter  
28 may not exceed four hundred dollars (\$400.00). The fee to be charged  
29 pursuant to G.S. 143-215.3(a)(1a) for processing an application for a  
30 registration under Article 38 of this Chapter may not exceed fifty  
31 dollars (\$50.00) for any single application, except that a penalty of as  
32 much as twenty percent (20%) of the fee may be assessed for late  
33 registration. The fee for administering and compliance monitoring  
34 under G.S. 143-215.1 of Article 21 and G.S. 143-215.108 and G.S.  
35 143-215.109 of Article 21B shall be charged on an annual basis for  
36 each year of the permit term and may not exceed one thousand five  
37 hundred dollars (\$1,500) per year. Fees for processing all permits  
38 under Article 21A and all other Sections of Articles 21 and 21B shall  
39 not exceed one hundred dollars (\$100.00) for any single permit.  
40 Notwithstanding any other provision of this subdivision, the total  
41 payment for fees required for all permits under this subsection for any  
42 single facility shall not exceed seven thousand five hundred dollars  
43 (\$7,500) per year, which amount shall include all application fees and  
44 fees for administration and compliance monitoring. A single facility is

1 defined to be any contiguous area under one ownership and in which  
2 permitted activities occur. For all permits issued under these Articles  
3 where a fee schedule is not specified in the statutes, the Commission,  
4 or other commission specified by statute shall adopt a fee schedule in a  
5 rule following the procedures established by the Administrative  
6 Procedure Act. Such fee schedules shall be established to reflect the  
7 size of the emission or discharge, the potential impact on the  
8 environment, the staff costs involved, relative costs of the issuance of  
9 new permits and the reissuance of existing permits, and shall include  
10 adequate safeguards to prevent unusual fee assessments which would  
11 result in serious economic burden on an individual applicant. A  
12 system shall be considered to allow consolidated annual payments for  
13 persons with multiple permits. In its rulemaking to establish fee  
14 schedules, the Commission is also directed to consider a method of  
15 rewarding facilities which achieve full compliance with administrative  
16 and self-monitoring reporting requirements, and to consider, in those  
17 cases where the cost of renewal or amendment of a permit is less than  
18 for the original permit, a lower fee for such renewal or amendment.

- 19 (1c) Monies collected pursuant to G.S. 143-215.3(a)(1a) shall be used to:
- 20 a. Eliminate, insofar as possible, backlogs of permit applications  
21 awaiting agency action;
  - 22 b. Improve the quality of permits issued;
  - 23 c. Improve the rate of compliance of permitted activities with  
24 environmental standards; and
  - 25 d. Decrease the length of the processing period for permit  
26 applications.

27 (1d) The Commission may adopt and implement a graduated fee schedule  
28 sufficient to cover all reasonable direct and indirect costs required for  
29 the State to develop and administer a permit program which meets the  
30 requirements of Title V. The provisions of subdivision (1b) of this  
31 subsection do not apply to the adoption of a fee schedule under this  
32 subdivision. In adopting and implementing a fee schedule, the  
33 Commission shall require that the owner or operator of all air  
34 contaminant sources subject to the requirement to obtain a permit  
35 under Title V to pay an annual fee, or the equivalent over some other  
36 period, sufficient to cover costs as provided in section 502(b)(3)(A) of  
37 Title V. The fee schedule shall be adopted according to the procedures  
38 set out in Chapter 150B of the General Statutes.

- 39 a. The total amount of fees collected under the fee schedule  
40 adopted pursuant to this subdivision shall conform to the  
41 requirements of section 502(b)(3)(B) of Title V. No fee shall be  
42 collected for more than 4,000 tons per year of any individual  
43 regulated pollutant, as defined in section 502(b)(3)(B)(ii) of  
44 Title V, emitted by any source. Fees collected pursuant to this

- 1                    subdivision shall be used solely to cover all reasonable direct  
2                    and indirect costs required to develop and administer the Title  
3                    V permit program.
- 4                    b.    The Commission may reduce any permit fee required under this  
5                    section to take into account the financial resources of small  
6                    business stationary sources as defined under Title V and  
7                    regulations promulgated by the United States Environmental  
8                    Protection Agency.
- 9                    c.    When funds in the Title V nonreverting account established in  
10                    G.S. 143-215.3A exceed the total amount necessary to cover the  
11                    cost of the Title V program for the next fiscal year, the  
12                    Secretary shall reduce the amount billed for the next fiscal year  
13                    so that the excess funds are used to supplement the cost of  
14                    administering the Title V permit program in that fiscal year.
- 15                    (2)    To direct that such investigation be conducted as it may reasonably  
16                    deem necessary to carry out its duties as prescribed by this ~~Article,~~  
17                    Article or Article 21B of this Chapter, and for this purpose to enter at  
18                    reasonable times upon any property, public or private, for the purpose  
19                    of investigating the condition of any waters and the discharge therein  
20                    of any sewage, industrial waste or other waste or for the purpose of  
21                    investigating the condition of the air, air pollution, air contaminant  
22                    sources, emissions or the installation and operation of any air-cleaning  
23                    devices, and to require written statements or the filing of reports under  
24                    oath, with respect to pertinent questions relating to the operation of  
25                    any air-cleaning device, sewer system, disposal system or treatment  
26                    works: Provided that any records, reports or information obtained  
27                    under Articles 21, 21A and 21B (i) shall, in the case of effluent or  
28                    emission data, be related to any applicable effluent or emission  
29                    limitations, toxic, pretreatment or new source performance standards,  
30                    and (ii) shall be available to the public except that upon a showing  
31                    satisfactory to the Commission by any person that records, reports or  
32                    information or particular part thereof (other than effluent or emission  
33                    data), to which the Commission has access under these Articles, if  
34                    made public would divulge methods or processes entitled to protection  
35                    as trade secrets of such person, the Commission shall consider such  
36                    record, report or information, or particular portion thereof confidential,  
37                    except that such record or information may be disclosed to employees  
38                    of the department concerned with carrying out the provisions of these  
39                    Articles or when relevant in any proceeding under these Articles. The  
40                    Commission shall provide for adequate notice to the party submitting  
41                    the information of any decision that such information is not entitled to  
42                    confidential treatment and of any decision to release information  
43                    which the submitting party contends is entitled to confidential  
44                    treatment. No person shall refuse entry or access to any authorized

1 representative of the Commission or Department who requests entry  
2 for purposes of inspection, and who presents appropriate credentials,  
3 nor shall any person obstruct, hamper or interfere with any such  
4 representative while in the process of carrying out his official duties.

5 (3) To conduct public hearings and to delegate the power to conduct  
6 public hearings in accordance with the procedures prescribed by this  
7 Article.

8 (4) To delegate such of the powers of the Commission as the Commission  
9 deems necessary to one or more of its members, to the Secretary or  
10 any other qualified employee of the Department; provided, that the  
11 provisions of any such delegation of power shall be set forth in the  
12 rules of the Commission; and provided further that the Commission  
13 shall not delegate to persons other than its own members and the  
14 designated employees of the Department the power to conduct  
15 hearings with respect to the classification of waters, the assignment of  
16 classifications, air quality standards, air contaminant source  
17 classifications, emission control standards, or the issuance of any  
18 special order except in the case of an emergency under ~~subsection~~  
19 ~~(a)(12)-subdivision (12) of this subsection~~ for the abatement of existing  
20 water or air pollution. Any employee of the Department to whom a  
21 delegation of power is made to conduct a hearing shall report the  
22 hearing with its evidence and record to the Commission.

23 (5) To institute such actions in the superior court of any county in which a  
24 violation of this ~~Article~~ Article, Article 21B of this Chapter, or the  
25 rules of the Commission has occurred, or, in the discretion of the  
26 Commission, in the superior court of the county in which any  
27 defendant resides, or has his or its principal place of business, as the  
28 Commission may deem necessary for the enforcement of any of the  
29 provisions of this ~~Article~~ Article, Article 21B of this Chapter, or of any  
30 official action of the Commission, including proceedings to enforce  
31 subpoenas or for the punishment of contempt of the Commission.

32 (6) To agree upon or enter into any settlements or compromises of any  
33 actions and to prosecute any appeals or other proceedings.

34 (7) To direct the investigation of any killing of fish and wildlife which, in  
35 the opinion of the Commission, is of sufficient magnitude to justify  
36 investigation and is known or believed to have resulted from the  
37 pollution of the waters or air as defined in this Article, and whenever  
38 any person, whether or not he shall have been issued a certificate of  
39 approval, permit or other document of approval authorized by this or  
40 any other State law, has negligently, or carelessly or unlawfully, or  
41 willfully and unlawfully, caused pollution of the waters or air as  
42 defined in this Article, in such quantity, concentration or manner that  
43 fish or wildlife are killed as the result thereof, the Commission, may  
44 recover, in the name of the State, damages from such person. The

1 measure of damages shall be the amount determined by the  
2 Department and the North Carolina Wildlife Resources Commission,  
3 whichever has jurisdiction over the fish and wildlife destroyed to be  
4 the replacement cost thereof plus the cost of all reasonable and  
5 necessary investigations made or caused to be made by the State in  
6 connection therewith. Upon receipt of the estimate of damages caused,  
7 the Department shall notify the persons responsible for the destruction  
8 of the fish or wildlife in question and may effect such settlement as the  
9 Commission may deem proper and reasonable, and if no settlement is  
10 reached within a reasonable time, the Commission shall bring a civil  
11 action to recover such damages in the superior court in the county in  
12 which the discharge took place. Upon such action being brought the  
13 superior court shall have jurisdiction to hear and determine all issues  
14 or questions of law or fact, arising on the pleadings, including issues of  
15 liability and the amount of damages. On such hearing, the estimate of  
16 the replacement costs of the fish or wildlife destroyed shall be **prima**  
17 **facie** evidence of the actual replacement costs of such fish or wildlife.  
18 In arriving at such estimate, any reasonably accurate method may be  
19 used and it shall not be necessary for any agent of the Wildlife  
20 Resources Commission or the Department to collect, handle or weigh  
21 numerous specimens of dead fish or wildlife.

22 The State of North Carolina shall be deemed the owner of the fish  
23 or wildlife killed and all actions for recovery shall be brought by the  
24 Commission on behalf of the State as the owner of the fish or wildlife.  
25 The fact that the person or persons alleged to be responsible for the  
26 pollution which killed the fish or wildlife holds or has held a certificate  
27 of approval, permit or other document of approval authorized by this  
28 Article or any other law of the State shall not bar any such action. The  
29 proceeds of any recovery, less the cost of investigation, shall be used  
30 to replace, insofar as and as promptly as possible, the fish and wildlife  
31 killed, or in cases where replacement is not practicable, the proceeds  
32 shall be used in whatever manner the responsible agency deems proper  
33 for improving the fish and wildlife habitat in question. Any such funds  
34 received are hereby appropriated for these designated purposes.  
35 Nothing in this paragraph shall be construed in any way to limit or  
36 prevent any other action which is now authorized by this Article.

- 37 (8) After issuance of an appropriate order, to withhold the granting of any  
38 permit or permits pursuant to G.S. 143-215.1 or 143-215.108 for the  
39 construction or operation of any new or additional disposal system or  
40 systems or air-cleaning device or devices in any area of the State. Such  
41 order may be issued only upon determination by the Commission, after  
42 public hearing, that the permitting of any new or additional source or  
43 sources of water or air pollution will result in a generalized condition  
44 of water or air pollution within the area contrary to the public interest,

1 detrimental to the public health, safety, and welfare, and contrary to  
2 the policy and intent declared in this ~~Article~~ Article or Article 21B of  
3 this Chapter. The Commission may make reasonable distinctions  
4 among the various sources of water and air pollution and may direct  
5 that its order shall apply only to those sources which it determines will  
6 result in a generalized condition of water or air pollution.

7 The determination of the Commission shall be supported by  
8 detailed findings of fact and conclusions set forth in the order and  
9 based upon competent evidence of record. The order shall describe the  
10 geographical area of the State affected thereby with particularity and  
11 shall prohibit the issuance of permits pending a determination by the  
12 Commission that the generalized condition of water or air pollution  
13 has ceased.

14 Notice of hearing shall be given in accordance with the provisions  
15 of G.S. 150B-12.

16 A person aggrieved by an order of the Commission under this  
17 subdivision may seek judicial review of the order under Article 4 of  
18 Chapter 150B of the General Statutes without first commencing a  
19 contested case. An order may not be stayed while it is being reviewed.

20 (9) If an investigation conducted pursuant to this Article or Article 21B of  
21 this Chapter reveals a violation of any rules, standards, or limitations  
22 adopted by the Commission pursuant to this ~~Article~~ Article or Article  
23 21B of this Chapter, or a violation of any terms or conditions of any  
24 permit issued pursuant to G.S. 143-215.1 or 143-215.108, or special  
25 order or other document issued pursuant to G.S. 143-215.2 or ~~143-~~  
26 ~~215.109~~, G.S. 143-215.110, the Commission may assess the reasonable  
27 costs of any investigation, inspection or monitoring survey which  
28 revealed the violation against the person responsible therefor. If the  
29 violation resulted in an unauthorized discharge to the waters or  
30 atmosphere of the State, the Commission may also assess the person  
31 responsible for the violation for any actual and necessary costs  
32 incurred by the State in removing, correcting or abating any adverse  
33 effects upon the water or air resulting from the unauthorized discharge.  
34 If the person responsible for the violation refuses or fails within a  
35 reasonable time to pay any sums assessed, the Commission may  
36 institute a civil action in the superior court of the county in which the  
37 violation occurred or, in the Commission's discretion, in the superior  
38 court of the county in which such person resides or has his or its  
39 principal place of business, to recover such sums.

40 (10) To require a laboratory facility to be certified by the Department  
41 before performing any tests, analyses, measurements, or monitoring  
42 required under this Article or Article 21B of this Chapter and to  
43 establish fees therefor. These fees collected by the Department shall

1 remain available to the Department to be used to offset the cost of  
2 certifying commercial, industrial, and municipal laboratory facilities.

3 (11) Repealed by Session Laws 1983, c. 296, s. 6, effective May 11, 1983.

4 (12) To declare an emergency when it finds that a generalized condition of  
5 water or air pollution which is causing imminent danger to the health  
6 or safety of the public. Regardless of any other provisions of law, if the  
7 Department finds that such a condition of water or air pollution exists  
8 and that it creates an emergency requiring immediate action to protect  
9 the public health and safety or to protect fish and wildlife, the  
10 Secretary of the Department with the concurrence of the Governor,  
11 shall order persons causing or contributing to the water or air pollution  
12 in question to reduce or discontinue immediately the emission of air  
13 contaminants or the discharge of wastes. Immediately after the  
14 issuance of such order, the chairman of the Commission shall fix a  
15 place and time for a hearing before the Commission to be held within  
16 24 hours after issuance of such order, and within 24 hours after the  
17 commencement of such hearing, and without adjournment thereof, the  
18 Commission shall either affirm, modify or set aside the order.

19 In the absence of a generalized condition of air or water pollution  
20 of the type referred to above, if the Secretary finds that the emissions  
21 from one or more air contaminant sources or the discharge of wastes  
22 from one or more sources of water pollution is causing imminent  
23 danger to human health and safety or to fish and wildlife, he may with  
24 the concurrence of the Governor order the person or persons  
25 responsible for the operation or operations in question to immediately  
26 reduce or discontinue the emissions of air contaminants or the  
27 discharge of wastes or to take such other measures as are, in his  
28 judgment, necessary, without regard to any other provisions of this  
29 ~~Article.~~ Article of Article 21B of this Chapter. In such event, the  
30 requirements for hearing and affirmance, modification or setting aside  
31 of such orders set forth in the preceding paragraph of this subdivision  
32 shall apply.

33 (13) Repealed by Session Laws 1983, c. 296, s. 6, effective May 11, 1983.

34 (14) To certify and approve, by appropriate delegations and conditions in  
35 permits required by G.S. 143-215.1, requests by publicly owned  
36 treatment works to implement, administer and enforce a pretreatment  
37 program for the control of pollutants which pass through or interfere  
38 with treatment processes in such treatment works; and to require such  
39 programs to be developed where necessary to comply with the Federal  
40 Water Pollution Control Act and the Resource Conservation and  
41 Recovery Act, including the addition of conditions and compliance  
42 schedules in permits required by G.S. 143-215.1. Pretreatment  
43 programs submitted by publicly owned treatment works shall include,  
44 at a minimum, the adoption of pretreatment standards, a permit or

1 equally effective system for the control of pollutants contributed to the  
2 treatment works, and the ability to effectively enforce compliance with  
3 the program.

4 (15) To adopt rules for the prevention of pollution from underground tanks  
5 containing petroleum, petroleum products, or hazardous substances.  
6 Rules adopted under this section may incorporate standards and  
7 restrictions which exceed and are more comprehensive than  
8 comparable federal regulations.

9 (16) To adopt rules limiting the manufacture, storage, sale, distribution or  
10 use of cleaning agents containing phosphorus pursuant to G.S. 143-  
11 214.4(e), and to adopt rules limiting the manufacture, storage, sale,  
12 distribution or use of cleaning agents containing nitrilotriacetic acid.

13 (17) (Expires December 31, 1998) To adopt rules to implement Part 2A of  
14 Article 21A of Chapter 143."

15 Sec. 3. G.S. 143-215.3A reads as rewritten:

16 "**§ 143-215.3A. Use of application and permit fees.**

17 (a) There is established a separate nonreverting account within the Department of  
18 Environment, Health, and Natural Resources. The account may be used, to the extent  
19 appropriated by the General Assembly, to ~~(a)-(i)~~ defray the expenses of any project or  
20 program supporting the permitting and compliance activities needed to protect the  
21 State's surface water, groundwater, and air quality, and ~~(b)-(ii)~~ establish additional  
22 permanent positions, under the Personnel Act, for water, groundwater, and air quality  
23 permitting and compliance activities. All application fees and permit administration  
24 fees collected by the State for permits issued under Articles 21, 21A, 21B, and 38,  
25 except those collected under Part 2 of Article 21A and deposited in the Oil or Other  
26 Hazardous Substances Pollution Protection Fund, ~~Fund~~ and those collected pursuant to  
27 G.S. 143-215.3(a)(1d) and deposited in the Title V nonreverting account, and except as  
28 provided in G.S. 143-215.28A and G.S. 143-215.3B shall be credited to the account.  
29 The total monies collected per year from fees for permits under G.S. 143-215.3(a)(1a),  
30 after deducting those monies collected under G.S. 143-215.3(a)(1d), shall not exceed  
31 thirty percent (30%) of the total budgets from all sources of environmental permitting  
32 and compliance programs within the Department of Environment, Health, and Natural  
33 Resources.

34 (b) There is also established a separate nonreverting account within the  
35 Department of Environment, Health, and Natural Resources. The account shall be used,  
36 to the extent appropriated by the General Assembly, exclusively for developing and  
37 implementing a permit program that meets the requirements of Title V. The Title V  
38 nonreverting account shall consist of fees collected pursuant to G.S. 143-215.3(a)(1d)  
39 and G.S. 143-215.106A. Expenses of the Air Quality Compliance Advisory Panel, the  
40 ombudsman for the Small Business Stationary Source Technical and Environmental  
41 Compliance Assistance Program, support staff, equipment, legal services provided by  
42 the Attorney General, and contracts with consultants and program expenses listed in  
43 section 502(b)(3)(A) of Title V shall be included among Title V program expenses.

1 (c) The Department shall make an annual report to the General Assembly and its  
2 Fiscal Research Division on the cost of the State's environmental permitting programs  
3 contained within such Department. In addition, the Department shall make an annual  
4 report to the General Assembly and its Fiscal Research Division on the cost of the Title  
5 V program. ~~The report reports~~ shall include, but ~~is~~ are not limited to, fees set and  
6 established under this Article, fees collected under this Article, revenues received from  
7 other sources for environmental permitting and compliance programs, changes made in  
8 the fee schedule since the last report, anticipated revenues from all other sources,  
9 interest earned and any other information requested by the General Assembly."

10 Sec. 4. G.S. 143-215.114A(a) reads as rewritten:

11 "(a) A civil penalty of not more than ~~five~~ ten thousand dollars ~~(\$5,000)~~ (\$10,000)  
12 may be assessed by the Secretary against any person who:

- 13 (1) Violates any classification, standard or limitation established pursuant  
14 to G.S. 143-215.107;
- 15 (2) Is required but fails to apply for or to secure a permit required by G.S.  
16 143-215.108 or who violates or fails to act in accordance with the  
17 terms, conditions, or requirements of such permit;
- 18 (3) Violates or fails to act in accordance with the terms, conditions, or  
19 requirements of any special order or other appropriate document issued  
20 pursuant to G.S. 143-215.110;
- 21 (4) Fails to file, submit, or make available, as the case may be, any  
22 documents, data or reports required by this Article or Parts 1 or 7 of  
23 Article 21 of this Chapter;
- 24 (5) Violates a rule of the Commission or a local governing body  
25 implementing this ~~Article~~ Article or Parts 1 or 7 of Article 21;
- 26 (6) Violates the offenses set out in G.S. 143-215.114B."

27 Sec. 5. G.S. 143-215.108 reads as rewritten:

28 "**§ 143-215.108. Control of sources of air pollution; permits required.**

29 (a) After the effective date applicable to any air quality or emission control  
30 standards established pursuant to G.S. 143-215.107, no person shall do any of the  
31 following things or carry out any of the following activities which contravene or will be  
32 likely to contravene such standards until or unless such person shall have applied for  
33 and shall have received from the Commission a permit therefor and shall have complied  
34 with such conditions, if any, as are prescribed by such permit:

- 35 (1) Establish or operate any air contaminant source;
- 36 (2) Build, erect, use or operate any equipment which may result in the  
37 emission of air contaminants or which is likely to cause air pollution;
- 38 (3) Alter or change the construction or method of operation of any  
39 equipment or process from which air contaminants are or may be  
40 emitted;
- 41 (4) Enter into a ~~[an]~~ an irrevocable contract for the construction and  
42 installation of any air-cleaning device, or allow or cause such device to  
43 be constructed, installed, or operated.

1 (b) The Commission shall act upon all applications for permits so as to effectuate  
2 the purpose of this section, by reducing existing air pollution and preventing, so far as  
3 reasonably possible, any increased pollution of the air from any additional or enlarged  
4 sources.

5 The Commission shall have the power:

- 6 (1) To grant and renew a permit with such conditions attached as the  
7 Commission believes necessary to achieve the purposes of this section;  
8 (2) To grant and renew any temporary permit for such period of time as  
9 the Commission shall specify even though the action allowed by such  
10 permit may result in pollution or increase pollution where conditions  
11 make such temporary permit essential;  
12 (3) To modify or revoke any permit upon not less than 60 days' written  
13 notice to any person affected;  
14 (4) To require all applications for permits and renewals to be in writing  
15 and to prescribe the form of such applications;  
16 (5) To request such information from an applicant and to conduct such  
17 inquiry or investigation as it may deem necessary and to require the  
18 submission of plans and specifications prior to acting on any  
19 application for a permit;  
20 (5a) To require that an applicant satisfy the Department that the applicant,  
21 or any parent, subsidiary, or other affiliate of the applicant or parent:  
22 a. Is financially qualified to carry out the activity for which a  
23 permit is required under subsection (a); and  
24 b. Has substantially complied with the air quality and emission  
25 control standards applicable to any activity in which the  
26 applicant has previously engaged, and has been in substantial  
27 compliance with federal and state laws, regulations, and rules  
28 for the protection of the environment.

29 As used in this subdivision, the words 'affiliate,' 'parent,' and  
30 'subsidiary' have the same meaning as in 17 Code of Federal  
31 Regulations § 240.12b-2 (1 April 1990 Edition);

- 32 (6) To adopt rules, as it deems necessary, establishing the form of  
33 applications and permits and procedures for the granting or denial of  
34 permits and renewals pursuant to this section; and all permits, renewals  
35 and denials shall be in writing;  
36 (7) To prohibit any stationary source within the State from emitting any  
37 air pollutant in amounts which will prevent attainment or maintenance  
38 by any other state of any national ambient air quality standard, or  
39 interference with measures required to be included in the applicable  
40 implementation plan for any other state to prevent deterioration of air  
41 quality or protect ~~visibility~~-visibility; and  
42 (8) To designate certain classes of activities for which a general permit  
43 may be issued, after considering the environmental impact of an  
44 activity, the frequency of the activity, the need for individual permit

oversight, and the need for public review and comment on individual permits.

(c) The Commission shall act on a permit application as quickly as possible. The Commission may conduct any inquiry or investigation it considers necessary before acting on an application and may require an applicant to submit plans, specifications, and other information the Commission considers necessary to evaluate the application. If the Commission fails to act on an application for a permit within 90 days after the applicant submits all information required by the Commission, the application is considered to be approved.

(d) No permit issued pursuant to this section shall be issued or renewed for a term exceeding five years.

(e) A permit applicant or permittee who is dissatisfied with a decision of the Commission may commence a contested case by filing a petition under G.S. 150B-23 within 30 days after the Commission notifies the applicant or permittee of its decision. If the permit applicant or permittee does not file a petition within the required time, the Commission's decision on the application is final and is not subject to review.

(f) Any person who is required to hold a permit under this section shall submit to the Department a written description of his current and projected plans to reduce the emission of air contaminants under such permit by source reduction or recycling. The written description shall accompany the payment of the annual permit fee. The written description shall also accompany any application for a new permit, or for modification of an existing permit, under this section. The written description required by this subsection shall not be considered part of a permit application and shall not serve as the basis for the denial of a permit or permit modification."

Sec. 6. G.S. 143B-317 reads as rewritten:

**"§ 143B-317. Air Quality ~~Council~~Compliance Advisory Panel – creation; powers and duties.**

There is hereby created the Air Quality ~~Council~~Compliance Advisory Panel of the Department of Environment, Health, and Natural Resources. The Air Quality ~~Council~~Compliance Advisory Panel shall have the following functions and duties:

- (1) ~~To advise the Environmental Management Commission in the development of rules, regulations and quality standards for air; and To render advisory opinions concerning the effectiveness of the small business stationary source technical and environmental compliance assistance program, difficulties encountered, and degree and severity of enforcement.~~
- (2) ~~To consider and to advise the Commission upon any matter the Commission may refer to it. To make periodic reports to the Administrator of the United States Environmental Protection Agency concerning the compliance of the State Small Business Stationary Source Technical and Environmental Compliance Assistance Program with the requirements of the Paperwork Reduction Act, 44 U.S.C. § 3501 et seq.; the Regulatory Flexibility Act, 5 U.S.C. § 601 et seq.; and the Equal Access to Justice Act, 5 U.S.C. § 504 et seq.~~

1           (3) To review information for small business stationary sources to assure  
2           such information is understandable by the layperson."

3           Sec. 7. G.S. 143B-318 reads as rewritten:

4 **"§ 143B-318. Air Quality ~~Council~~–Compliance Advisory Panel – members;**  
5 **chairman; selection; removal; compensation; quorum; services.**

6       (a) The Air Quality ~~Council~~–Compliance Advisory Panel of the Department of  
7 Environment, Health, and Natural Resources shall consist of nine members appointed by  
8 the Governor. The composition of the Council shall be as follows: one registered professional  
9 engineer knowledgeable in matters of air pollution; one representative from municipal  
10 government; one representative from county government; one representative of public health;  
11 two representatives from industry providing they are from different industries; one  
12 representative of agriculture; one licensed physician knowledgeable in the health aspects of air  
13 pollution; and one practicing biologist knowledgeable in the principles of air quality  
14 management. two members who are not owners or representatives of owners of small  
15 business stationary sources, appointed by the Governor to represent the general public;  
16 two members appointed one each by the Speaker and the minority leader of the House  
17 of Representatives, and who are owners, or who represent owners, of small business  
18 stationary sources; two members appointed one each by the President Pro Tempore and  
19 the minority leader of the Senate, who are owners, or who represent owners, of small  
20 business stationary sources; and one member appointed by the Secretary of the  
21 Department of Environment, Health, and Natural Resources.

22       (b) The Governor shall designate one member of the ~~Council~~–Panel to serve as  
23 chairman at his pleasure.

24       (c) Members shall serve staggered terms of four years. In order to achieve  
25 staggered terms, ~~the Governor~~–the Speaker and the minority leader of the House of  
26 Representatives shall initially appoint ~~three~~–members for terms of two years, the  
27 President Pro Tempore and the minority leader of the Senate shall initially appoint ~~three~~  
28 members for terms of ~~four~~–three years, and three members for terms of six years. At the  
29 end of the respective terms of office of the initial members, their successors shall be  
30 appointed for terms of ~~six~~–four years and until their successors are appointed and  
31 qualify. Any appointment to fill a vacancy on the ~~Council~~–Panel created by the  
32 resignation, dismissal, death or disability of a member shall be for the balance of the  
33 unexpired term.

34       (d) The Governor shall have the power to remove any member of the ~~Council~~  
35 Panel from office for misfeasance, malfeasance or nonfeasance in accordance with the  
36 provisions of G.S. 143B-16 of the Executive Organization Act of 1973. ~~143B-16.~~

37       (e) The members of the ~~Council~~–Panel shall receive per diem and necessary travel  
38 and subsistence expenses in accordance with the provisions of G.S. 138-5.

39       (f) A majority of the ~~Council~~–Panel shall constitute a quorum for the transaction  
40 of their business.

41       (g) The Secretary of Environment, Health, and Natural Resources shall designate  
42 an office within the Department of Environment, Health, and Natural Resources to serve  
43 as ombudsman for the Small Business Stationary Source Technical and Environmental  
44 Compliance Assistance Program established by the Department pursuant to section 507  
45 of Title V of the 1990 amendments to the Federal Clean Air Act (Pub. L. 101-549, 104

1 Stat. 2635 et seq.). The Small Business Stationary Source Technical and  
2 Environmental Compliance Assistance Program shall serve as the secretariat for the  
3 development and dissemination of reports and advisory opinions issued by the Panel.  
4 The Panel and the ombudsman shall exercise their powers consistent with G.S. 143B-  
5 14(b).

6 (h) All clerical and other services required by the ~~Council~~ Panel shall be supplied  
7 by the Secretary of Environment, Health, and Natural Resources."

8 Sec. 8. G.S. 143B-319 reads as rewritten:

9 **"§ 143B-319. Air Quality ~~Council~~ Compliance Advisory Panel – meetings.**

10 The ~~Council~~ Panel shall meet at least semiannually and may hold special meetings at  
11 any time and place at the call of the chairman or upon the written request of at least ~~five~~  
12 three members."

13 Sec. 9. G.S. 143-215.107(a) reads as rewritten:

14 "(a) Duty to Adopt Plans, Standards, etc. – The Commission is hereby directed  
15 and empowered, as rapidly as possible within the limits of funds and facilities available  
16 to it, and subject to the procedural requirements of this Article and Article 21:

- 17 (1) To prepare and develop, after proper study, a comprehensive plan or  
18 plans for the prevention, abatement and control of air pollution in the  
19 State or in any designated area of the State.
- 20 (2) To determine by means of field sampling and other studies, including  
21 the examination of available data collected by any local, State or  
22 federal agency or any person, the degree of air contamination and air  
23 pollution in the State and the several areas of the State.
- 24 (3) To develop and adopt, after proper study, air quality standards  
25 applicable to the State as a whole or to any designated area of the State  
26 as the Commission deems proper in order to promote the policies and  
27 purposes of this Article and Article 21 most effectively.
- 28 (4) To collect information or to require reporting from classes of sources  
29 which, in the judgment of the Environmental Management  
30 Commission, may cause or contribute to air pollution. Any person  
31 operating or responsible for the operation of air contaminant sources of  
32 any class for which the Commission requires reporting shall make  
33 reports containing such information as may be required by the  
34 Commission concerning location, size, and height of contaminant  
35 outlets, processes employed, fuels used, and the nature and time  
36 periods or duration of emissions, and such other information as is  
37 relevant to air pollution and available or reasonably capable of being  
38 assembled.
- 39 (5) To develop and adopt such emission control standards as in the  
40 judgment of the Commission may be necessary to prohibit, abate or  
41 control air pollution commensurate with established air quality  
42 standards. Such standards may be applied uniformly to the State as a  
43 whole or to any area of the State designated by the Commission.

- 1 (6) To adopt, when necessary and practicable, a program for testing  
2 emissions from motor vehicles and to adopt motor vehicle emission  
3 standards in compliance with applicable federal regulations.
- 4 (7) To develop and adopt standards and plans necessary to implement  
5 programs for the prevention of significant deterioration and for the  
6 attainment of air quality standards in nonattainment areas; provided,  
7 that the Commission shall adopt no standard which is not made  
8 mandatory upon approved State programs by rules, regulations or  
9 published guidelines of the United States Environmental Protection  
10 Agency or the Federal Clean Air Act.
- 11 (8) To regulate the use of sulfur dioxide allowances in accordance with  
12 Title IV of the 1990 amendments to the Federal Clean Air Act (Pub. L.  
13 101-549, 104 Stat. 2584 et seq.), as amended, and regulations  
14 promulgated by the United States Environmental Protection Agency."

15 Sec. 10. Article 21B of Chapter 143 is amended by adding a new section to  
16 read:

17 **"§ 143-215.106A. Assessments to establish Title V program.**

18 (a) The holders of permits issued by the Commission for the control of sources of  
19 air pollution are assessed Title V program implementation fees on an annual basis in  
20 accordance with the schedule established in this section. The assessments are in  
21 addition to any other fees required to be paid by the permit holders in conjunction with  
22 the permits. The assessments shall be deposited in the separate nonreverting account  
23 established by G.S. 143-215.3A(b) for the Title V program, and shall be used only to  
24 defray the eligible expenses of the Title V program. The Secretary shall issue annual  
25 notices of the assessments to permit holders on or before 1 July of each fiscal year.  
26 Each notice of assessment shall include a summary of the data on which the assessment  
27 is based. Assessments shall be payable 30 days after receipt of notice. Failure to make  
28 timely payment within 90 days shall be grounds to revoke the permit and to institute a  
29 collection action against the permit holder by the Attorney General.

30 (b) Assessments are made in accordance with the following schedule:

- 31 (1) Sources emitting at least 100 tons and less than 500 tons per year, two  
32 thousand dollars (\$2,000) for fiscal year 1991-92 and two thousand  
33 five hundred dollars (\$2,500) for each year thereafter;
- 34 (2) Sources emitting at least 500 tons and less than 1,000 tons per year,  
35 four thousand dollars (\$4,000) for fiscal year 1991-92 and twelve  
36 thousand five hundred dollars (\$12,500) for each year thereafter;
- 37 (3) Sources emitting at least 1,000 tons and less than 5,000 tons per year,  
38 six thousand dollars (\$6,000) for fiscal year 1991-92, and twenty-five  
39 thousand dollars (\$25,000) for each year thereafter; and
- 40 (4) Sources emitting at least 5,000 tons per year, six thousand dollars  
41 (\$6,000) for fiscal year 1991-92, and one hundred thousand dollars  
42 (\$100,000) for each year thereafter.

43 (c) Notices of assessment shall not be issued for any fiscal year in which the  
44 permit fees for the Title V program adopted by the Commission pursuant to G.S. 143-

1 215.3(a)(1d) are in effect. Should a Title V program permit fee become due and  
2 payable during a fiscal year when the permit holder has paid an assessment, the Title V  
3 program permit fee shall be reduced in an amount equal to the pro rata share of the  
4 assessment for the months remaining in the fiscal year. The pro rata share is determined  
5 by dividing the assessment into 12 equal parts and multiplying that sum by the number  
6 of months remaining in the fiscal year."

7 Sec. 11. G.S. 143-215.3(b) reads as rewritten:

8 "(b) Research Functions. – The Department shall have the power to conduct  
9 scientific experiments, research, and investigations to discover economical and practical  
10 corrective methods for air pollution and waste disposal problems. To this end, the  
11 Department may cooperate with any public or private agency or agencies in the conduct  
12 of such experiments, research, and investigations, and may, when funds permit,  
13 establish research studies in any North Carolina educational institution, with the consent  
14 of such institution. In addition, the Department shall have the power to cooperate and  
15 enter into contracts with technical divisions of State agencies, institutions and with  
16 municipalities, industries, and other persons in the execution of such surveys, studies,  
17 and research as it may deem necessary in fulfilling its functions under this ~~Article~~  
18 Article or Article 21B of this Chapter. All State departments shall advise with and  
19 cooperate with the Department on matters of mutual interest."

20 Sec. 12. (a) There is created the Clean Air Act Advisory Council. The  
21 Council shall consist of 11 members as follows:

- 22 (1) The Secretary of Environment, Health, and Natural Resources or his  
23 designee.
- 24 (2) The Commissioner of Agriculture or his designee.
- 25 (3) The Chair of the Air Quality Committee of the Environmental  
26 Management Commission.
- 27 (4) Two representatives of local government.
- 28 (5) Three representatives of the environmental and conservation  
29 community.
- 30 (6) Three representatives of industry.

31 (b) The Secretary of Environment, Health, and Natural Resources shall  
32 appoint the members of the Council specified in subdivisions (4) through (6) of  
33 subsection (a) of this section, and shall make appointments to fill vacancies in those  
34 positions. At least one of the members appointed by the Secretary shall be a  
35 professional engineer registered pursuant to Chapter 89C of the General Statutes and  
36 who is knowledgeable in matters relating to air pollution. The Secretary shall designate  
37 one member of the Council to serve as Chair.

38 (c) The Council shall assist the Secretary and the Environmental Management  
39 Commission in an advisory capacity on the development of:

- 40 (1) All programs necessary to implement the 1990 amendments to the  
41 Federal Clean Air Act, including but not limited to changes in existing  
42 State air quality statutes, rules, and programs; permitting and  
43 implementation procedures; fee programs; regulatory flexibility; and  
44 regulation of air toxics.

1 (2) A permit fee program to finance increased State regulatory activity  
2 required under the Federal Clean Air Act.

3 (d) The Secretary may remove any member of the Council for misfeasance,  
4 malfeasance, or nonfeasance. A member who fails to attend three consecutive meetings  
5 of the Council shall cease to be a member of the Council.

6 (e) The Council shall meet upon the call of the Chair. A majority of the  
7 Council shall constitute a quorum for the transaction of business.

8 (f) Any person who is a member of the Council may hold such membership  
9 concurrently with and in addition to any other elective or appointive office or offices  
10 such person is permitted to hold under G.S. 128-1.1.

11 (g) Members of the Council who are not State employees shall receive per  
12 diem and necessary travel and subsistence expenses in accordance with the provisions  
13 of G.S. 138-5.

14 (h) All clerical and other services required by the Council shall be supplied  
15 by the Department of Environment, Health, and Natural Resources. The Attorney  
16 General shall provide legal services required by the Council. All expenses of the  
17 Council shall be paid from the nonreverting account established by G.S. 143-215.3A(b).

18 (i) The Council shall submit written reports as to its findings and  
19 recommendations to the Environmental Management Commission and the  
20 Environmental Review Commission. The Council may prepare separate reports on  
21 issues it selects. The Council shall complete its study and make its final written report  
22 on or before 1 May 1992. Upon making its final written report, the Council shall  
23 terminate.

24 (j) Unless deadlines established by the United States Environmental  
25 Protection Agency require that rule making be initiated earlier, the Environmental  
26 Management Commission may not initiate rule making to implement programs and fees  
27 required by Title V of the 1990 amendments to the Federal Clean Air Act (Pub. L. 101-  
28 549, 104 Stat. 2635 **et seq.**) until the earlier of 1 May 1992 or the date on which the  
29 Environmental Management Commission receives the final written report of the  
30 Council.

31 Sec. 13. The Environmental Review Commission shall study issues relating  
32 to reduction of the emission of ozone-depleting chlorofluorocarbons (CFCs) into the  
33 atmosphere. The Environmental Review Commission shall report its findings and  
34 recommended legislation to the 1992 Regular Session of the 1991 General Assembly.

35 Sec. 14. For the 1991-92 fiscal year, notices of assessments pursuant to G.S.  
36 143-215.106A(a), as enacted by Section 10 of this act, shall be issued 30 days after the  
37 date this act becomes effective.

38 Sec. 15. This act is effective upon ratification.