

GENERAL ASSEMBLY OF NORTH CAROLINA
1991 SESSION

CHAPTER 552
HOUSE BILL 551

AN ACT TO IMPLEMENT THE REQUIREMENTS OF THE 1990 AMENDMENTS
TO THE FEDERAL CLEAN AIR ACT.

Whereas, in 1990 the Congress of the United States enacted extensive amendments to the federal Clean Air Act; and

Whereas, these amendments dramatically increase the responsibilities of State regulatory agencies and place a great and imminent burden on the State to finance, develop, and implement new State air quality programs for air emission source permitting, nonattainment area permitting, automobile inspection and maintenance, regulation of toxic air pollutants, acid rain control, and compliance enforcement, among others; and

Whereas, these amendments require the State to make comprehensive changes in existing State air quality programs; and

Whereas, failure to implement these amendments will subject the State to federal sanctions; and

Whereas, the Environmental Management Commission must have all of the statutory authority in place to begin the administrative rule-making process for adoption and implementation of those elements no later than 15 November 1992; and

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

The General Assembly of North Carolina enacts:

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

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

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

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

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

(1a) To charge fees for the following:

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

- b. Administering permits or registrations issued under Articles 21, 21A, 21B, or 38 of this Chapter including monitoring compliance with the terms of those permits; and
- c. Reviewing, processing, and publicizing applications for construction grant awards under the Federal Water Pollution Control Act.

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

- (1b) The fee to be charged pursuant to G.S. 143-215.3(a)(1a) for processing of an application for a permit under G.S. 143-215.1 of Article 21 and G.S. 143-215.108 and G.S. 143-215.109 of Article 21B of this Chapter may not exceed four hundred dollars (\$400.00). The fee to be charged pursuant to G.S. 143-215.3(a)(1a) for processing an application for a registration under Article 38 of this Chapter may not exceed fifty dollars (\$50.00) for any single application, except that a penalty of as much as twenty percent (20%) of the fee may be assessed for late registration. The fee for administering and compliance monitoring under G.S. 143-215.1 of Article 21 and G.S. 143-215.108 and G.S. 143-215.109 of Article 21B shall be charged on an annual basis for each year of the permit term and may not exceed one thousand five hundred dollars (\$1,500) per year. Fees for processing all permits under Article 21A and all other Sections of Articles 21 and 21B shall not exceed one hundred dollars (\$100.00) for any single permit. Notwithstanding any other provision of this subdivision, the total payment for fees required for all permits under this subsection for any single facility shall not exceed seven thousand five hundred dollars (\$7,500) per year, which amount shall include all application fees and fees for administration and compliance monitoring. A single facility is defined to be any contiguous area under one ownership and in which permitted activities occur. For all permits issued under these Articles where a fee schedule is not specified in the statutes, the Commission, or other commission specified by statute shall adopt a fee schedule in a rule following the procedures established by the Administrative Procedure Act. Such fee schedules shall be established to reflect the size of the emission or discharge, the potential impact on the environment, the staff costs involved, relative costs of the issuance of new permits and the reissuance of existing permits, and shall include adequate safeguards to prevent unusual fee assessments which would result in serious economic burden on an individual applicant. A system shall be considered to allow consolidated annual payments for persons with multiple permits. In its rulemaking to establish fee schedules, the Commission is also directed to consider a method of rewarding facilities which achieve full compliance with administrative and self-monitoring reporting requirements, and to consider, in those

cases where the cost of renewal or amendment of a permit is less than for the original permit, a lower fee for such renewal or amendment.

- (1c) Monies collected pursuant to G.S. 143-215.3(a)(1a) shall be used to:
 - a. Eliminate, insofar as possible, backlogs of permit applications awaiting agency action;
 - b. Improve the quality of permits issued;
 - c. Improve the rate of compliance of permitted activities with environmental standards; and
 - d. Decrease the length of the processing period for permit applications.
- (1d) The Commission may adopt and implement a graduated fee schedule sufficient to cover all reasonable direct and indirect costs required for the State to develop and administer a permit program which meets the requirements of Title V. The provisions of subdivision (1b) of this subsection do not apply to the adoption of a fee schedule under this subdivision. In adopting and implementing a fee schedule, the Commission shall require that the owner or operator of all air contaminant sources subject to the requirement to obtain a permit under Title V to pay an annual fee, or the equivalent over some other period, sufficient to cover costs as provided in section 502(b)(3)(A) of Title V. The fee schedule shall be adopted according to the procedures set out in Chapter 150B of the General Statutes.
 - a. The total amount of fees collected under the fee schedule adopted pursuant to this subdivision shall conform to the requirements of section 502(b)(3)(B) of Title V. No fee shall be collected for more than 4,000 tons per year of any individual regulated pollutant, as defined in section 502(b)(3)(B)(ii) of Title V, emitted by any source. Fees collected pursuant to this subdivision shall be used solely to cover all reasonable direct and indirect costs required to develop and administer the Title V permit program.
 - b. The Commission may reduce any permit fee required under this section to take into account the financial resources of small business stationary sources as defined under Title V and regulations promulgated by the United States Environmental Protection Agency.
 - c. When funds in the Title V nonreverting account established in G.S. 143-215.3A exceed the total amount necessary to cover the cost of the Title V program for the next fiscal year, the Secretary shall reduce the amount billed for the next fiscal year so that the excess funds are used to supplement the cost of administering the Title V permit program in that fiscal year.
- (2) To direct that such investigation be conducted as it may reasonably deem necessary to carry out its duties as prescribed by this Article,

Article or Article 21B of this Chapter, and for this purpose to enter at reasonable times upon any property, public or private, for the purpose of investigating the condition of any waters and the discharge therein of any sewage, industrial waste or other waste or for the purpose of investigating the condition of the air, air pollution, air contaminant sources, emissions or the installation and operation of any air-cleaning devices, and to require written statements or the filing of reports under oath, with respect to pertinent questions relating to the operation of any air-cleaning device, sewer system, disposal system or treatment works: Provided that any records, reports or information obtained under Articles 21, 21A and 21B (i) shall, in the case of effluent or emission data, be related to any applicable effluent or emission limitations, toxic, pretreatment or new source performance standards, and (ii) shall be available to the public except that upon a showing satisfactory to the Commission by any person that records, reports or information or particular part thereof (other than effluent or emission data), to which the Commission has access under these Articles, if made public would divulge methods or processes entitled to protection as trade secrets of such person, the Commission shall consider such record, report or information, or particular portion thereof confidential, except that such record or information may be disclosed to employees of the department concerned with carrying out the provisions of these Articles or when relevant in any proceeding under these Articles. The Commission shall provide for adequate notice to the party submitting the information of any decision that such information is not entitled to confidential treatment and of any decision to release information which the submitting party contends is entitled to confidential treatment. No person shall refuse entry or access to any authorized representative of the Commission or Department who requests entry for purposes of inspection, and who presents appropriate credentials, nor shall any person obstruct, hamper or interfere with any such representative while in the process of carrying out his official duties.

- (3) To conduct public hearings and to delegate the power to conduct public hearings in accordance with the procedures prescribed by this Article.
- (4) To delegate such of the powers of the Commission as the Commission deems necessary to one or more of its members, to the Secretary or any other qualified employee of the Department; provided, that the provisions of any such delegation of power shall be set forth in the rules of the Commission; and provided further that the Commission shall not delegate to persons other than its own members and the designated employees of the Department the power to conduct hearings with respect to the classification of waters, the assignment of classifications, air quality standards, air contaminant source

classifications, emission control standards, or the issuance of any special order except in the case of an emergency under ~~subsection (a)(12)~~ subdivision (12) of this subsection for the abatement of existing water or air pollution. Any employee of the Department to whom a delegation of power is made to conduct a hearing shall report the hearing with its evidence and record to the Commission.

- (5) To institute such actions in the superior court of any county in which a violation of this ~~Article~~ Article, Article 21B of this Chapter, or the rules of the Commission has occurred, or, in the discretion of the Commission, in the superior court of the county in which any defendant resides, or has his or its principal place of business, as the Commission may deem necessary for the enforcement of any of the provisions of this ~~Article~~ Article, Article 21B of this Chapter, or of any official action of the Commission, including proceedings to enforce subpoenas or for the punishment of contempt of the Commission.
- (6) To agree upon or enter into any settlements or compromises of any actions and to prosecute any appeals or other proceedings.
- (7) To direct the investigation of any killing of fish and wildlife which, in the opinion of the Commission, is of sufficient magnitude to justify investigation and is known or believed to have resulted from the pollution of the waters or air as defined in this Article, and whenever any person, whether or not he shall have been issued a certificate of approval, permit or other document of approval authorized by this or any other State law, has negligently, or carelessly or unlawfully, or willfully and unlawfully, caused pollution of the waters or air as defined in this Article, in such quantity, concentration or manner that fish or wildlife are killed as the result thereof, the Commission, may recover, in the name of the State, damages from such person. The measure of damages shall be the amount determined by the Department and the North Carolina Wildlife Resources Commission, whichever has jurisdiction over the fish and wildlife destroyed to be the replacement cost thereof plus the cost of all reasonable and necessary investigations made or caused to be made by the State in connection therewith. Upon receipt of the estimate of damages caused, the Department shall notify the persons responsible for the destruction of the fish or wildlife in question and may effect such settlement as the Commission may deem proper and reasonable, and if no settlement is reached within a reasonable time, the Commission shall bring a civil action to recover such damages in the superior court in the county in which the discharge took place. Upon such action being brought the superior court shall have jurisdiction to hear and determine all issues or questions of law or fact, arising on the pleadings, including issues of liability and the amount of damages. On such hearing, the estimate of the replacement costs of the fish or wildlife destroyed shall be **prima**

facie evidence of the actual replacement costs of such fish or wildlife. In arriving at such estimate, any reasonably accurate method may be used and it shall not be necessary for any agent of the Wildlife Resources Commission or the Department to collect, handle or weigh numerous specimens of dead fish or wildlife.

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

- (8) After issuance of an appropriate order, to withhold the granting of any permit or permits pursuant to G.S. 143-215.1 or 143-215.108 for the construction or operation of any new or additional disposal system or systems or air-cleaning device or devices in any area of the State. Such order may be issued only upon determination by the Commission, after public hearing, that the permitting of any new or additional source or sources of water or air pollution will result in a generalized condition of water or air pollution within the area contrary to the public interest, detrimental to the public health, safety, and welfare, and contrary to the policy and intent declared in this ~~Article~~ Article or Article 21B of this Chapter. The Commission may make reasonable distinctions among the various sources of water and air pollution and may direct that its order shall apply only to those sources which it determines will result in a generalized condition of water or air pollution.

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

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

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

- (9) If an investigation conducted pursuant to this Article or Article 21B of this Chapter reveals a violation of any rules, standards, or limitations adopted by the Commission pursuant to this ~~Article~~, Article or Article 21B of this Chapter, or a violation of any terms or conditions of any permit issued pursuant to G.S. 143-215.1 or 143-215.108, or special order or other document issued pursuant to G.S. 143-215.2 or ~~143-215.109~~, G.S. 143-215.110, the Commission may assess the reasonable costs of any investigation, inspection or monitoring survey which revealed the violation against the person responsible therefor. If the violation resulted in an unauthorized discharge to the waters or atmosphere of the State, the Commission may also assess the person responsible for the violation for any actual and necessary costs incurred by the State in removing, correcting or abating any adverse effects upon the water or air resulting from the unauthorized discharge. If the person responsible for the violation refuses or fails within a reasonable time to pay any sums assessed, the Commission may institute a civil action in the superior court of the county in which the violation occurred or, in the Commission's discretion, in the superior court of the county in which such person resides or has his or its principal place of business, to recover such sums.
- (10) To require a laboratory facility to be certified by the Department before performing any tests, analyses, measurements, or monitoring required under this Article or Article 21B of this Chapter and to establish fees therefor. These fees collected by the Department shall remain available to the Department to be used to offset the cost of certifying commercial, industrial, and municipal laboratory facilities.
- (11) Repealed by Session Laws 1983, c. 296, s. 6, effective May 11, 1983.
- (12) To declare an emergency when it finds that a generalized condition of water or air pollution which is causing imminent danger to the health or safety of the public. Regardless of any other provisions of law, if the Department finds that such a condition of water or air pollution exists and that it creates an emergency requiring immediate action to protect the public health and safety or to protect fish and wildlife, the Secretary of the Department with the concurrence of the Governor, shall order persons causing or contributing to the water or air pollution in question to reduce or discontinue immediately the emission of air contaminants or the discharge of wastes. Immediately after the issuance of such order, the chairman of the Commission shall fix a place and time for a hearing before the Commission to be held within 24 hours after issuance of such order, and within 24 hours after the

commencement of such hearing, and without adjournment thereof, the Commission shall either affirm, modify or set aside the order.

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

- (13) Repealed by Session Laws 1983, c. 296, s. 6, effective May 11, 1983.
- (14) To certify and approve, by appropriate delegations and conditions in permits required by G.S. 143-215.1, requests by publicly owned treatment works to implement, administer and enforce a pretreatment program for the control of pollutants which pass through or interfere with treatment processes in such treatment works; and to require such programs to be developed where necessary to comply with the Federal Water Pollution Control Act and the Resource Conservation and Recovery Act, including the addition of conditions and compliance schedules in permits required by G.S. 143-215.1. Pretreatment programs submitted by publicly owned treatment works shall include, at a minimum, the adoption of pretreatment standards, a permit or equally effective system for the control of pollutants contributed to the treatment works, and the ability to effectively enforce compliance with the program.
- (15) To adopt rules for the prevention of pollution from underground tanks containing petroleum, petroleum products, or hazardous substances. Rules adopted under this section may incorporate standards and restrictions which exceed and are more comprehensive than comparable federal regulations.
- (16) To adopt rules limiting the manufacture, storage, sale, distribution or use of cleaning agents containing phosphorus pursuant to G.S. 143-214.4(e), and to adopt rules limiting the manufacture, storage, sale, distribution or use of cleaning agents containing nitrilotriacetic acid.
- (17) **(Expires December 31, 1998)** To adopt rules to implement Part 2A of Article 21A of Chapter 143."

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

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

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

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

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

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

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

- (1) Violates any classification, standard or limitation established pursuant to G.S. 143-215.107;
- (2) Is required but fails to apply for or to secure a permit required by G.S. 143-215.108 or who violates or fails to act in accordance with the terms, conditions, or requirements of such permit;

- (3) Violates or fails to act in accordance with the terms, conditions, or requirements of any special order or other appropriate document issued pursuant to G.S. 143-215.110;
- (4) Fails to file, submit, or make available, as the case may be, any documents, data or reports required by this Article or Parts 1 or 7 of Article 21 of this Chapter;
- (5) Violates a rule of the Commission or a local governing body implementing this ~~Article~~-Article or Parts 1 or 7 of Article 21;
- (6) Violates the offenses set out in G.S. 143-215.114B."

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

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

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

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

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

The Commission shall have the power:

- (1) To grant and renew a permit with such conditions attached as the Commission believes necessary to achieve the purposes of this section;
- (2) To grant and renew any temporary permit for such period of time as the Commission shall specify even though the action allowed by such permit may result in pollution or increase pollution where conditions make such temporary permit essential;
- (3) To modify or revoke any permit upon not less than 60 days' written notice to any person affected;
- (4) To require all applications for permits and renewals to be in writing and to prescribe the form of such applications;
- (5) To request such information from an applicant and to conduct such inquiry or investigation as it may deem necessary and to require the

submission of plans and specifications prior to acting on any application for a permit;

- (5a) To require that an applicant satisfy the Department that the applicant, or any parent, subsidiary, or other affiliate of the applicant or parent:
- a. Is financially qualified to carry out the activity for which a permit is required under subsection (a); and
 - b. Has substantially complied with the air quality and emission control standards applicable to any activity in which the applicant has previously engaged, and has been in substantial compliance with federal and state laws, regulations, and rules for the protection of the environment.

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

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

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

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

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

(a) The Air Quality ~~Council~~Compliance Advisory Panel of the Department of Environment, Health, and Natural Resources shall consist of ~~nine members appointed by the Governor. The composition of the Council shall be as follows: one registered professional engineer knowledgeable in matters of air pollution; one representative from municipal government; one representative from county government; one representative of public health; two representatives from industry providing they are from different industries; one representative of agriculture; one licensed physician knowledgeable in the health aspects of air pollution; and one practicing biologist knowledgeable in the principles of air quality management. two members who are not owners or representatives of owners of small business stationary sources, appointed by the Governor to represent the general public; two members appointed one each by the~~

Speaker and the minority leader of the House of Representatives, and who are owners, or who represent owners, of small business stationary sources; two members appointed one each by the President Pro Tempore and the minority leader of the Senate, who are owners, or who represent owners, of small business stationary sources; and one member appointed by the Secretary of the Department of Environment, Health, and Natural Resources.

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

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

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

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

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

(g) The Secretary of Environment, Health, and Natural Resources shall designate an office within the Department of Environment, Health, and Natural Resources to serve as ombudsman for the Small Business Stationary Source Technical and Environmental Compliance Assistance Program established by the Department pursuant to section 507 of Title V of the 1990 amendments to the Federal Clean Air Act (Pub. L. 101-549, 104 Stat. 2635 et seq.). The Small Business Stationary Source Technical and Environmental Compliance Assistance Program shall serve as the secretariat for the development and dissemination of reports and advisory opinions issued by the Panel. The Panel and the ombudsman shall exercise their powers consistent with G.S. 143B-14(b).

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

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

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

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

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

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

- (1) To prepare and develop, after proper study, a comprehensive plan or plans for the prevention, abatement and control of air pollution in the State or in any designated area of the State.
- (2) To determine by means of field sampling and other studies, including the examination of available data collected by any local, State or federal agency or any person, the degree of air contamination and air pollution in the State and the several areas of the State.
- (3) To develop and adopt, after proper study, air quality standards applicable to the State as a whole or to any designated area of the State as the Commission deems proper in order to promote the policies and purposes of this Article and Article 21 most effectively.
- (4) To collect information or to require reporting from classes of sources which, in the judgment of the Environmental Management Commission, may cause or contribute to air pollution. Any person operating or responsible for the operation of air contaminant sources of any class for which the Commission requires reporting shall make reports containing such information as may be required by the Commission concerning location, size, and height of contaminant outlets, processes employed, fuels used, and the nature and time periods or duration of emissions, and such other information as is relevant to air pollution and available or reasonably capable of being assembled.
- (5) To develop and adopt such emission control standards as in the judgment of the Commission may be necessary to prohibit, abate or control air pollution commensurate with established air quality standards. Such standards may be applied uniformly to the State as a whole or to any area of the State designated by the Commission.
- (6) To adopt, when necessary and practicable, a program for testing emissions from motor vehicles and to adopt motor vehicle emission standards in compliance with applicable federal regulations.
- (7) To develop and adopt standards and plans necessary to implement programs for the prevention of significant deterioration and for the attainment of air quality standards in nonattainment areas; provided, that the Commission shall adopt no standard which is not made mandatory upon approved State programs by rules, regulations or published guidelines of the United States Environmental Protection Agency or the Federal Clean Air Act.
- (8) To regulate the use of sulfur dioxide allowances in accordance with Title IV of the 1990 amendments to the Federal Clean Air Act (Pub. L. 101-549, 104 Stat. 2584 et seq.), as amended, and regulations promulgated by the United States Environmental Protection Agency."

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

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

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

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

- (1) Sources emitting at least 100 tons and less than 500 tons per year, two thousand dollars (\$2,000) for fiscal year 1991-92 and two thousand five hundred dollars (\$2,500) for each year thereafter;
- (2) Sources emitting at least 500 tons and less than 1,000 tons per year, four thousand dollars (\$4,000) for fiscal year 1991-92 and twelve thousand five hundred dollars (\$12,500) for each year thereafter;
- (3) Sources emitting at least 1,000 tons and less than 5,000 tons per year, six thousand dollars (\$6,000) for fiscal year 1991-92, and twenty-five thousand dollars (\$25,000) for each year thereafter; and
- (4) Sources emitting at least 5,000 tons per year, six thousand dollars (\$6,000) for fiscal year 1991-92, and one hundred thousand dollars (\$100,000) for each year thereafter.

(c) Notices of assessment shall not be issued for any fiscal year in which the permit fees for the Title V program adopted by the Commission pursuant to G.S. 143-215.3(a)(1d) are in effect. Should a Title V program permit fee become due and payable during a fiscal year when the permit holder has paid an assessment, the Title V program permit fee shall be reduced in an amount equal to the pro rata share of the assessment for the months remaining in the fiscal year. The pro rata share is determined by dividing the assessment into 12 equal parts and multiplying that sum by the number of months remaining in the fiscal year."

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

"(b) Research Functions. – The Department shall have the power to conduct scientific experiments, research, and investigations to discover economical and practical corrective methods for air pollution and waste disposal problems. To this end, the Department may cooperate with any public or private agency or agencies in the conduct of such experiments, research, and investigations, and may, when funds permit, establish research studies in any North Carolina educational institution, with the consent of such institution. In addition, the Department shall have the power to cooperate and

enter into contracts with technical divisions of State agencies, institutions and with municipalities, industries, and other persons in the execution of such surveys, studies, and research as it may deem necessary in fulfilling its functions under this ~~Article~~. Article or Article 21B of this Chapter. All State departments shall advise with and cooperate with the Department on matters of mutual interest."

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

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

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

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

- (1) All programs necessary to implement the 1990 amendments to the Federal Clean Air Act, including but not limited to changes in existing State air quality statutes, rules, and programs; permitting and implementation procedures; fee programs; regulatory flexibility; and regulation of air toxics.
- (2) A permit fee program to finance increased State regulatory activity required under the Federal Clean Air Act.

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

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

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

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

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

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

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

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

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

Sec. 15. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 4th day of July, 1991.

James C. Gardner
President of the Senate

Daniel Blue, Jr.
Speaker of the House of Representatives