

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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HOUSE BILL 681\*  
Committee Substitute Favorable 4/15/93

Short Title: Clean Air Act Implementation.

(Public)

Sponsors:

Referred to:

March 30, 1993

1 A BILL TO BE ENTITLED  
2 AN ACT TO IMPLEMENT THE REQUIREMENTS OF THE 1990 AMENDMENTS  
3 TO THE FEDERAL CLEAN AIR ACT, TO REPEAL THE EXPIRATION OF A  
4 PORTION OF THE PER GALLON FUEL TAX, AND TO DEDICATE A  
5 PORTION OF THE PROCEEDS OF THE TAX TO IMPLEMENT THE 1990  
6 AMENDMENTS TO THE FEDERAL CLEAN AIR ACT.

7 The General Assembly of North Carolina enacts:

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

9 "(29c) 'Title III' means Title III of the 1990 amendments to the federal Clean  
10 Air Act (Pub. L. 101-549, 104 Stat. 2531, 42 U.S.C. § 7412 et seq.)."

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

12 "(2) To direct that such investigation be conducted as it may reasonably  
13 deem necessary to carry out its duties as prescribed by this Article or  
14 Article 21B of this Chapter, and for this purpose to enter at reasonable  
15 times upon any property, public or private, for the purpose of  
16 investigating the condition of any waters and the discharge therein of  
17 any sewage, industrial waste or other waste or for the purpose of  
18 investigating the condition of the air, air pollution, air contaminant  
19 sources, emissions or the installation and operation of any air-cleaning  
20 devices, and to require written statements or the filing of reports under  
21 oath, with respect to pertinent questions relating to the operation of  
22 any air-cleaning device, sewer system, disposal system or treatment  
23 works: Provided that any records, reports or information obtained

1 under Articles 21, 21A and 21B (i) shall, in the case of effluent or  
2 emission data, be related to any applicable effluent or emission  
3 limitations, toxic, pretreatment or new source performance standards,  
4 and (ii) shall be available to the public except that upon a showing  
5 satisfactory to the Commission by any person that records, reports or  
6 information or particular part thereof (other than effluent or emission  
7 ~~data~~), data or information necessary to determine compliance with  
8 standards adopted pursuant to Article 21B of this Chapter, to which  
9 the Commission has access under these Articles, if made public would  
10 divulge methods or processes entitled to protection as trade secrets of  
11 ~~such person~~, pursuant to G.S. 132-1.2, the Commission shall consider  
12 such record, report or information, or particular portion thereof  
13 confidential, except that such record or information may be disclosed  
14 to ~~employees of the department concerned with carrying out the provisions~~  
15 ~~of these Articles~~ any officer, employee, or authorized representative of  
16 any federal or state agency if disclosure is necessary to carry out a duty  
17 or responsibility of the Department or other agency, or when relevant  
18 in any proceeding under ~~these Articles~~ this Article or Article 21A or  
19 Article 21B of this Chapter. The Commission shall provide for  
20 adequate notice to the party submitting the information of any decision  
21 that such information is not entitled to confidential treatment and of  
22 any decision to release information which the submitting party  
23 contends is entitled to confidential treatment. No person shall refuse  
24 entry or access to any authorized representative of the Commission or  
25 Department who requests entry for purposes of inspection, and who  
26 presents appropriate credentials, nor shall any person obstruct, hamper  
27 or interfere with any such representative while in the process of  
28 carrying out his official duties."

29 Sec. 3. G.S. 143-215.3(a)(3) reads as rewritten:

30 "(3) To conduct public hearings and to delegate the power to conduct  
31 public hearings in accordance with the procedures prescribed by this  
32 Article or by Article 21B of this Chapter."

33 Sec. 4. G.S. 143-215.4(b) reads as rewritten:

34 "(b) Procedures for Public Input. – The Commission may, on its own motion or  
35 when required by federal law, request public comments on or hold public hearings on  
36 matters within the scope of its authority under this Article or Articles 21A or 21B of this  
37 Chapter. To request public comments on a matter, the Commission shall notify  
38 appropriate agencies of the opportunity to submit written comments to the Commission  
39 on the matter and shall publish a notice in a newspaper having general circulation in the  
40 affected area, stating the matter under consideration by the Commission and informing  
41 the public of its opportunity to submit written comments to the Commission on the  
42 matter. A public comment period shall extend for at least 30 days after the notice is  
43 published.

1 To hold a public hearing on a matter, the Commission shall notify, by personal  
2 service or certified mail, persons directly affected by the matter under consideration and  
3 shall publish a notice in a newspaper having general circulation in the affected area,  
4 stating the matter under consideration by the Commission and the time, date, and place  
5 of a public hearing to be held on the matter. A public hearing shall be held no sooner  
6 than 20 days after the notice is published. The proceedings at a public hearing held  
7 under this subsection shall be recorded. Upon payment of a fee established by the  
8 Commission, any person may obtain a copy of the record of the public hearing. After a  
9 public hearing, the Commission shall accept written comments for the time period  
10 prescribed by the Commission.

11 This subsection ~~applies only to proceedings that are not~~ does not apply to rule-making  
12 proceedings or contested case hearings. This subsection does not apply to the issuance  
13 of permits required under Title V. The Commission shall establish procedures for  
14 public hearings, public notice, and public comment respecting permits as required by  
15 Title V as set forth in G.S. 143-215.111(4)."

16 Sec. 5. G.S. 143-215.69 reads as rewritten:

17 **"§ 143-215.69. Enforcement procedures.**

18 (a) Criminal Penalties. –

19 (1) ~~Any~~ Except as provided in subdivision (2) of this subsection, any  
20 person who violates any provisions of this Part or any rules adopted by  
21 the Commission for its implementation shall be guilty of a  
22 misdemeanor and shall be liable to a penalty of not less than one  
23 hundred dollars (\$100.00), nor more than one thousand dollars  
24 (\$1,000) for each violation and each day such person shall fail to  
25 comply after having been officially notified by the Commission shall  
26 constitute a separate offense subject to the foregoing penalty.

27 (2) Any person who violates any provision of this Part or any rule adopted  
28 by the Commission, which Part or rule is a requirement under Title V  
29 or regulations implementing Title V, shall be subject to punishment  
30 under G.S. 143-215.114B.

31 (b) Civil Penalties. – The Commission may assess a civil penalty against a person  
32 who violates this Part or a rule of the Commission implementing this Part. ~~The For~~  
33 persons subject to the provisions of G.S. 143-215.1, the amount of the penalty shall not  
34 exceed the maximum imposed in G.S. 143-215.6A and shall be assessed in accordance  
35 with the procedure set out in G.S. 143-215.6A for assessing a civil penalty. For persons  
36 subject to the provisions of Title V, G.S. 143-215.108 or G.S. 143-215.109, the amount  
37 of penalty shall not exceed the maximum imposed in G.S. 143-215.114A and shall be  
38 assessed in accordance with the procedure set out in G.S. 143-215.114A for assessing a  
39 civil penalty.

40 (c) Injunctive Relief. – Upon violation of any of the provisions of this Part, a rule  
41 implementing this Part, or an order issued under this Part, the Secretary may, either  
42 before or after the institution of proceedings for the collection of the penalty imposed by  
43 this Part for such violations, request the Attorney General to institute a civil action in  
44 the superior court of the county or counties where the violation occurred in the name of

1 the State upon the relation of the Department for injunctive relief to restrain the  
2 violation or require corrective action, and for such other or further relief in the premises  
3 as said court shall deem proper. Neither the institution of the action nor any of the  
4 proceedings thereon shall relieve any party to such proceedings from the penalty  
5 prescribed by this Part for any violation of same."

6 Sec. 6. G.S. 143-215.107(a) reads as rewritten:

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

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

dioxide allowances and nitrogen oxides emissions in accordance with Title IV and implementing regulations promulgated—adopted by the United States Environmental Protection Agency.

(9) To regulate the oxygen content of gasoline, to require use of reformulated gasoline as the Commission deems necessary, to implement the requirements of Title II and implementing regulations adopted by the United States Environmental Protection Agency, and to adopt standards and plans to implement this subdivision. Rules adopted under this subdivision may specify standards for a particular area of the State that differ from other areas as may be necessary to improve ambient air quality within a particular area, achieve attainment or preclude violations of the National Ambient Air Quality Standards, or to meet other federal requirements. Rules may authorize the use of marketable oxygen credits for gasoline as provided in federal requirements.

(10) To develop and adopt standards and plans necessary to implement requirements of the federal Clean Air Act, as amended, and implementing regulations adopted by the United States Environmental Protection Agency."

Sec. 7. 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~~, G.S. 143-215.107 and except as provided in subsection (a1) of this section, 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 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.

(a1) The Commission may by rule establish procedures to allow a permittee who has submitted a complete application to modify the permit to make minor modifications to a permitted facility. At a minimum, such modifications to the permit shall comply with the requirements of 40 Code of Federal Regulations § 70.7(e)(2) (July 1, 1993) while the application is under review. The Commission may by rule establish procedures consistent with section 502(b)(10) of Title V and 40 Code of Federal

1 Regulations § 70.4(b)(12) to allow a permittee to make changes within a permitted  
2 facility without requiring a permit revision.

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

7 (c) The Commission shall have the power:

8 (1) To grant and renew a permit with such conditions attached as the  
9 Commission believes necessary to achieve the purposes of this section;

10 (2) To grant and renew any temporary permit for such period of time as  
11 the Commission shall specify even though the action allowed by such  
12 permit may result in pollution or increase pollution where conditions  
13 make such temporary permit essential;

14 (3) ~~To modify or revoke~~ To terminate, modify, or revoke and reissue any  
15 permit upon not less than 60 days' written notice to any person affected;  
16 affected and to suspend any permit pursuant to the provisions of G.S.  
17 150B-3(c);

18 (4) To require all applications for permits and renewals to be in writing  
19 and to prescribe the form of such applications;

20 (5) To request such information from an applicant and to conduct such  
21 inquiry or investigation as it may deem necessary and to require the  
22 submission of plans and specifications prior to acting on any  
23 application for a permit;

24 (5a) To require that an applicant satisfy the Department that the applicant,  
25 or any parent, subsidiary, or other affiliate of the applicant or parent:

26 a. Is financially qualified to carry out the activity for which a  
27 permit is required under subsection (a); and

28 b. Has substantially complied with the air quality and emission  
29 control standards applicable to any activity in which the  
30 applicant has previously engaged, and has been in substantial  
31 compliance with federal and state laws, regulations, and rules  
32 for the protection of the environment.

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

36 (6) To adopt rules, as it deems necessary, establishing the form of  
37 applications and permits and procedures for the granting or denial of  
38 permits and renewals pursuant to this section; and all permits, renewals  
39 and denials shall be in writing;

40 (7) To prohibit any stationary source within the State from emitting any  
41 air pollutant in amounts ~~which~~ that will prevent attainment or  
42 maintenance by any other state of any national ambient air quality  
43 ~~standard, or interference~~ standard or that will interfere with measures  
44 required to be included in the applicable implementation plan for any

1 other state to prevent deterioration of air quality or protect visibility;  
2 and

- 3 (8) To designate certain classes of activities for which a general permit  
4 may be issued, after considering the environmental impact of an  
5 activity, the frequency of the activity, the need for individual permit  
6 oversight, and the need for public review and comment on individual  
7 permits.

- 8 (d) (1) The Commission shall act on a permit application as quickly  
9 as possible. The Commission may conduct any inquiry or  
10 investigation it considers necessary before acting on an application  
11 and may require an applicant to submit plans, specifications, and  
12 other information the Commission considers necessary to evaluate  
13 the application. A permit application may not be deemed complete  
14 unless it is accompanied by a copy of the request for determination  
15 as provided in subsection (f) of this section that bears a date of  
16 receipt entered by the clerk of the local government and until the 15-  
17 day period for issuance of a determination has elapsed. ~~If the~~  
18 ~~Commission fails to act on an application for a permit deemed complete~~  
19 ~~within 90 days after the applicant submits all information required by the~~  
20 ~~Commission, the application is considered to be approved.~~

- 21 (2) The Commission shall adopt rules specifying the times within which it  
22 must act upon applications for permits required by Title V and other  
23 permits issued under this section. If the Commission fails to act on an  
24 application for a permit required by Title V or this section within the  
25 time period specified, the failure to act on the application constitutes a  
26 final agency decision to deny the permit. A permit applicant,  
27 permittee, or any person entitled to judicial review under G.S. 143-  
28 215.5 may seek judicial review of a failure to act on the application  
29 under Article 4 of Chapter 150B of the General Statutes.  
30 Notwithstanding the provisions of G.S. 150B-51, upon review of a  
31 failure to act on an application for a permit required by Title V or this  
32 section, a court may either: (i) affirm the denial of the permit or (ii)  
33 remand the application to the Commission for action upon the  
34 application within a specified time.

- 35 (3) If the Administrator of the United States Environmental Protection  
36 Agency validly objects to the issuance of a permit required by Title V  
37 within 45 days after the Administrator receives the proposed permit  
38 and the required portions of the permit application, the Commission  
39 shall not issue the permit until the Commission revises the proposed  
40 permit to meet all objections noted by the Administrator or otherwise  
41 satisfies all objections consistent with Title V and implementing  
42 regulations adopted by the United States Environmental Protection  
43 Agency.

1           (4) If the Administrator of the United States Environmental Protection  
2 Agency validly objects to the issuance of a permit required by Title V  
3 after the expiration of the 45-day review period specified in  
4 subdivision (3) of this subsection as a result of a petition filed pursuant  
5 to section 505(b)(2) of Title V and prior to the issuance of the permit  
6 by the Commission, the Commission shall not issue the permit until  
7 the Commission revises the proposed permit to meet all objections  
8 noted by the Administrator or otherwise satisfies all objections  
9 consistent with Title V and implementing regulations adopted by the  
10 United States Environmental Protection Agency.

11           (d1) No permit issued pursuant to this section shall be issued or renewed for a  
12 term exceeding five years.

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

18           (f) An applicant for a permit under this section for a new facility or for the  
19 expansion of a facility permitted under this section shall request each local government  
20 having jurisdiction over any part of the land on which the facility and its appurtenances  
21 are to be located to issue a determination as to whether the local government has in  
22 effect a zoning or subdivision ordinance applicable to the facility and whether the  
23 proposed facility would be consistent with the ordinance. The request to the local  
24 government shall be accompanied by a copy of the draft permit application and shall be  
25 delivered to the clerk of the local government personally or by certified mail. The  
26 determination shall be verified or supported by affidavit signed by the official  
27 designated by the local government to make the determination and, if the local  
28 government states that the facility is inconsistent with a zoning or subdivision  
29 ordinance, shall include a copy of the ordinance and the specific reasons for the  
30 determination of inconsistency. A copy of any such determination shall be provided to  
31 the applicant when it is submitted to the Commission. The Commission shall not act  
32 upon an application for a permit under this section until it has received a determination  
33 from each local government requested to make a determination by the applicant. Unless  
34 the local government makes a subsequent determination of consistency with all  
35 ordinances cited in the determination or the proposed facility is determined by a court of  
36 competent jurisdiction to be consistent with the cited ordinances, the Commission shall  
37 attach as a condition of the permit a requirement that the applicant, prior to construction  
38 or operation of the facility under the permit, comply with all lawfully adopted local  
39 ordinances, including those cited in the determination, that apply to the facility at the  
40 time of construction or operation of the facility. If a local government fails to submit a  
41 determination to the Commission as provided by this subsection within 15 days after  
42 receipt of the request, the Commission may proceed to consider the permit application  
43 without regard to local zoning and subdivision ordinances. This subsection shall not be  
44 construed to limit any opportunity a local government may have to comment on a



1 permit application under any other law or rule. This subsection shall not apply to any  
2 facility with respect to which local ordinances are subject to review under either G.S.  
3 104E-6.2 or G.S. 130A-293.

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

12 Sec. 8. G.S. 143-215.111 reads as rewritten:

13 **"§ 143-215.111. General powers of Commission; auxiliary powers.**

14 In addition to the specific powers prescribed elsewhere in this Article and the  
15 applicable general powers prescribed in G.S. 143-215.3, and for the purpose of carrying  
16 out its duties, the Commission shall have the power:

- 17 (1) To make a continuing study of the effects of the emission of air  
18 contaminants from motor vehicles on the quality of the outdoor  
19 atmosphere of the State and the several areas thereof, and make  
20 recommendations to the General Assembly and other appropriate  
21 public and private bodies for the control of such air contaminants.
- 22 (2) To consult, upon request, with any person proposing to construct,  
23 install, or otherwise acquire an air pollution source or air-cleaning  
24 device for the control of air contaminants concerning the efficacy of  
25 such device, or the air problem which may be related to such source, or  
26 device; provided, however, that nothing in any such consultation shall  
27 be construed to relieve any person from compliance with this Article  
28 and Article 21, rules adopted pursuant thereto, or any other provision  
29 of law.
- 30 (3) To encourage local units of government to handle air pollution  
31 problems within their respective jurisdictions and on a cooperative  
32 basis, and to provide such local units technical and consultative  
33 assistance to the maximum extent possible.
- 34 (4) To establish procedures providing for public notice, public comment,  
35 and public hearings on applications for permits required by Title V to  
36 meet the requirements of Title V and implementing regulations  
37 adopted by the United States Environmental Protection Agency.
- 38 (5) To establish procedures providing for notice to the Administrator of  
39 the United States Environmental Protection Agency and affected states  
40 of proposals to issue permits required by Title V and allowing affected  
41 states the opportunity to submit written comment as required by  
42 section 505(a) of Title V and implementing regulations adopted by the  
43 United States Environmental Protection Agency."

44 Sec. 9. G.S. 143-215.112(c) reads as rewritten:

- 1        (c)           (1)       The governing body of any county, municipality, or group  
2                   of counties and municipalities within a designated area of the State,  
3                   as defined in this Article and Article 21, subject to the approval of  
4                   the Commission, is hereby authorized to establish, administer, and  
5                   enforce a local air pollution control program for the county,  
6                   municipality, or designated area of the State which includes but is  
7                   not limited to:
- 8                   a.       Development of a comprehensive plan for the control and  
9                   abatement of new and existing sources of air pollution;
  - 10                  b.       Air quality monitoring to determine existing air quality and to  
11                  define problem areas, as well as to provide background data to  
12                  show the effectiveness of a pollution abatement program;
  - 13                  c.       An emissions inventory to identify specific sources of air  
14                  contamination and the contaminants emitted, together with the  
15                  quantity of material discharged into the outdoor atmosphere;
  - 16                  d.       Adoption, after notice and public hearing, of air quality and  
17                  emission control standards, or adoption by reference, without  
18                  public hearing, of any applicable rules and standards duly  
19                  adopted by the Commission; and administration of such rules  
20                  and standards in accordance with provisions of this section.
  - 21                  e.       Provisions for the establishment or approval of time schedules  
22                  for the control or abatement of existing sources of air pollution  
23                  and for the review of plans and specifications and issuance of  
24                  approval documents covering the construction and operation of  
25                  pollution abatement facilities at existing or new sources;
  - 26                  f.       Provision for adequate administrative staff, including an air  
27                  pollution control officer and technical personnel, and provision  
28                  for laboratory and other necessary facilities.
- 29        (2)       Subject to the approval of the Commission as provided in this Article  
30                   and Article 21, the governing body of any county or municipality may  
31                   establish, administer, and enforce an air pollution control program by  
32                   ~~either~~ any of the following methods:
- 33                  a.       Establishing a program under the administration of the duly  
34                  elected governing body of the county or municipality;
  - 35                  b.       Appointing an air pollution control board consisting of not less  
36                  than five nor more than seven members who shall serve for  
37                  terms of six years each and until their successors are appointed  
38                  and qualified. Two members shall be appointed for two-year  
39                  terms, two shall be appointed for four-year terms, and the  
40                  remaining member or members shall be appointed for six-year  
41                  terms. Where the term 'governing body' is referred to in this  
42                  section, it shall include the air pollution control board. Such  
43                  board shall have all the powers and authorities granted to any  
44                  local air pollution control program. The board shall elect a

1 chairman and shall meet at least quarterly or upon the call of the  
2 chairman or any two members of the board;

3 c. Appointing an air pollution control board as provided in this  
4 subdivision, and by appropriate written agreement designating  
5 the local health department or other department of county or  
6 municipal government as the administrative agent for the air  
7 pollution control board; ~~and or~~

8 d. Designating, by appropriate written agreement, the local board  
9 of health and the local health department as the air pollution  
10 control board and agency.

11 Any board or body which approves permits or enforcement orders  
12 shall have at least a majority of members who represent the public  
13 interest and do not derive any significant portion of their income from  
14 persons subject to permits or enforcement orders under the Federal  
15 Clean Air Act and any potential conflicts of interest by members of  
16 such board or body or the head of an executive agency with similar  
17 powers shall be adequately disclosed.

18 (3) If the Commission finds that the location, character or extent of  
19 particular concentrations of population, air contaminant sources, the  
20 geographic, topographic or meteorological considerations, or any  
21 combinations thereof, are such as to make impracticable the  
22 maintenance of appropriate levels of air quality without an area-wide  
23 air pollution control program, the Commission may determine the  
24 boundaries within which such program is necessary and require such  
25 area-wide program as the only acceptable alternative to direct State  
26 administration. Subject to the provisions of this section, each  
27 governing body of a county or municipality is hereby authorized and  
28 empowered to establish by contract, joint resolution, or other  
29 agreement with any other governing body of a county or municipality,  
30 upon approval by the Commission, an air pollution control region  
31 containing any part or all of the geographical area within the  
32 jurisdiction of those boards or governing bodies which are parties to  
33 such agreement, provided the counties involved in the region are  
34 contiguous or lie in a continuous boundary and comprise the total area  
35 contained in any region designated by the Commission for an area-  
36 wide program. The participating parties are authorized to appoint a  
37 regional air pollution control board which shall consist of at least five  
38 members who shall serve for terms of six years and until their  
39 successors are appointed and qualified. Two members shall be  
40 appointed for two-year terms, two shall be appointed for four-year  
41 terms and the remaining member or members shall be appointed for  
42 six-year terms. A participant's representation on the board shall be in  
43 relation to its population to the total population of the region based on  
44 the latest official United States census with each participant in the

1 region having at least one representative; provided, that where the  
2 region is comprised of less than five counties, each participant will be  
3 entitled to appoint members in relation to its population to that of the  
4 region so as to provide a board of at least five members. Where the  
5 term 'governing body' is used, it shall include the governing board of a  
6 region. The regional board is hereby authorized to exercise any and all  
7 of the powers provided in this section. The regional air pollution  
8 control board shall elect a chairman and shall meet at least quarterly or  
9 upon the call of the chairman or any two members of the board. In lieu  
10 of employing its own staff, the regional air pollution control board is  
11 authorized, through appropriate written agreement, to designate a local  
12 health department as its administrative agent.

13 (4) Each governing body is authorized to adopt any ordinances,  
14 resolutions, rules or regulations which are necessary to establish and  
15 maintain an air pollution control program and to prescribe and enforce  
16 air quality and emission control standards, a copy of which must be  
17 filed with the Commission and with the clerk of court of any county  
18 affected. Provisions may be made therein for the registration of air  
19 contaminant sources; for the requirement of a permit to do or carry out  
20 specified activities relating to the control of air pollution, including  
21 procedures for application, issuance, denial and revocation; for  
22 notification of violators or potential violators about requirements or  
23 conditions for compliance; for procedures to grant temporary permits  
24 or variances from requirements or standards; for the declaration of an  
25 emergency when it is found that a generalized condition of air  
26 pollution is causing imminent danger to the health or safety of the  
27 public and the issuance of an order to the responsible person or  
28 persons to reduce or discontinue immediately the emission of air  
29 contaminants; for notice and hearing procedures for persons aggrieved  
30 by any action or order of any authorized agent; for the establishment of  
31 an advisory council and for other administrative arrangements; and for  
32 other matters necessary to establish and maintain an air pollution  
33 control program.

34 (5) No permit required by section 305(e) of Title III for a solid waste  
35 incineration unit combusting municipal waste shall be issued by a local  
36 air pollution control program that is administered by the governing  
37 body of a unit of local government that is responsible, in whole or in  
38 part, for the design, construction, or operation of the unit.

39 (d) (1) Violation of any ordinances, resolutions, rules or regulations  
40 duly adopted by a governing body shall constitute a misdemeanor,  
41 punishable as provided in ~~G.S. 143-215.114(b)~~. G.S. 143-215.114B.

42 (1a) Each governing body, or its authorized agent, shall have the power to  
43 assess civil penalties under ~~G.S. 143-215.114(a)~~. G.S. 143-215.114A.  
44 Any person assessed shall be notified of the assessment by registered

1 or certified mail, and the notice shall specify the reasons for the  
2 assessment. If the person assessed fails to pay the amount of the  
3 assessment to the governing body or its authorized agent within 30  
4 days after receipt of notice, or such longer period not to exceed 180  
5 days as the governing body or its authorized agent may specify, the  
6 governing body may institute a civil action in the superior court of the  
7 county in which the violation occurred, to recover the amount of the  
8 assessment. Each day of continuing violation after written notification  
9 from the governing body or its authorized agent shall be considered a  
10 separate offense. In determining the amount of the penalty, the  
11 governing body or its authorized agent shall consider the degree and  
12 extent of harm caused by the violation, the cost of rectifying the  
13 damage, and the amount of money the violator saved by not having  
14 made the necessary expenditures to comply with the appropriate  
15 pollution control requirements.

16 (2) Each governing body, or its duly authorized agent, may institute a civil  
17 action in the superior court, brought in the name of the agency having  
18 jurisdiction, for injunctive relief to restrain any violation or  
19 immediately threatened violation of such ordinances, orders, rules, or  
20 regulations and for such other relief as the court shall deem proper.  
21 Neither the institution of the action nor any of the proceedings thereon  
22 shall relieve any party to such proceedings from the penalty prescribed  
23 by this Article and Article 21 for any violation of same.

24 (3) In addition, each governing body is authorized to expend tax funds,  
25 nontax funds, or any other funds available to it to finance an air  
26 pollution control program and such expenditures are hereby declared  
27 to be for a public purpose and a necessary expense. The governing  
28 body responsible for each local air pollution control program shall  
29 require that the owner or operator of all air contaminant sources  
30 subject to the requirement to obtain a permit under Title V pay an  
31 annual fee, or the equivalent over some other period, sufficient to  
32 cover costs as provided in section 502(b)(3)(A) of Title V and G.S.  
33 143-215.3(a)(1d). Fees collected pursuant to this subdivision shall be  
34 used solely to cover all reasonable direct and indirect costs required to  
35 develop and administer the Title V permit program.

36 (4) Any final administrative decision rendered in an air pollution control  
37 program of such governing body shall be subject to judicial review as  
38 provided by Article 4 of Chapter 150B of the General Statutes, and  
39 'administrative agency' or 'agency' as used therein shall mean and  
40 include for this purpose the governing body of any county or  
41 municipality, regional air pollution control governing board, and any  
42 agency created by them in connection with an air pollution control  
43 program.

1           (5) If a local air pollution program fails to act on an application for a  
2 permit required by Title V or this Article within the time period  
3 specified by the Commission under G.S 143-215.108(d)(2), the failure  
4 to act on the application constitutes a final agency decision to deny the  
5 permit. A permit applicant, permittee, or any person entitled to  
6 judicial review under G.S. 143-215.5 may seek judicial review of a  
7 failure to act on the application under Article 4 of Chapter 150B of the  
8 General Statutes. Notwithstanding the provisions of G.S. 150B-51,  
9 upon review of a failure to act on an application for a permit required  
10 by Title V or this Article, a court may either: (i) affirm the denial of  
11 the permit or (ii) remand the application to the local air pollution  
12 control program for action upon the application within a specified  
13 time."

14           Sec. 10. Section 25 of Chapter 538 of the 1991 Session Laws reads as  
15 rewritten:

16           "Sec. 25. Section 3.1 of this act becomes effective 30 June 1991. Sections 3, 4, 15,  
17 and 16 of this act become effective 1 January 1992. Section 5 of this act becomes  
18 effective 1 January 1993. ~~Sections 17 and 18 of this act become effective 1 January 1995.~~  
19 ~~Sections 19 and 20 of this act become effective 1 January 1999.~~ Sections 22 and 23 of this  
20 act become effective 1 July 1992. Sections 1, 2, 6 through 14, 21, 24, and 25 of this act  
21 are effective upon ratification."

22           Sec. 11. Sections 17, 18, 19, and 20 of Chapter 538 of the 1991 Session  
23 Laws are repealed.

24           Sec. 12. Effective January 1, 1995, G.S. 105-445 reads as rewritten:

25 **"§ 105-445. Application of proceeds of gasoline tax.**

26           The amount of revenue collected under this Article attributable to a per gallon excise  
27 tax of one-half cent (1/2¢) a gallon shall be credited ~~in equal amounts as follows:~~ (i)  
28 five-eighths to the Commercial Leaking Petroleum Underground Storage Tank Fund and  
29 the Groundwater Protection Loan Fund—Cleanup Fund; (ii) one-eighth to the  
30 Noncommercial Leaking Petroleum Underground Storage Tank Cleanup Fund; and (iii)  
31 one-fourth to the Water and Air Quality Account. Of the remaining tax revenue  
32 collected under this Article, seventy-five percent (75%) shall be credited to the  
33 Highway Fund and the remaining twenty-five percent (25%) shall be credited to the  
34 Highway Trust Fund. A proportionate share of a refund allowed under this Article shall  
35 be charged to the Commercial Leaking Petroleum Underground Storage Tank Cleanup  
36 Fund, the Groundwater Protection Loan Fund, Noncommercial Leaking Petroleum  
37 Underground Storage Tank Cleanup Fund, the Water and Air Quality Account, the  
38 Highway Fund, and the Highway Trust Fund. The Secretary shall credit revenue or  
39 charge refunds to the appropriate Funds on a monthly basis."

40           Sec. 13. G.S. 143-215.3A(a) reads as rewritten:

41           "(a) The Water and Air Quality Account is established as a nonreverting account  
42 within the Department. Revenue in the Account shall be applied to the costs of  
43 administering the programs for which the fees were collected. Revenue credited to the  
44 Account pursuant to G.S. 105-445 shall be used to administer the air quality program.

1 Except for the following fees, all application fees and permit administration fees  
2 collected by the State for permits issued under Articles 21, 21A, 21B, and 38 of this  
3 Chapter shall be credited to the Account:

- 4 (1) Fees collected under Part 2 of Article 21A and credited to the Oil or  
5 Other Hazardous Substances Pollution Protection Fund.
- 6 (2) Fees credited to the Title V Account.
- 7 (3) Fees credited to the Wastewater Treatment Works Emergency  
8 Maintenance, Operation and Repair Fund under G.S. 143-215.3B.
- 9 (4) Fees collected under G.S. 143-215.28A.

10 The total monies collected per year from fees for permits under G.S. 143-215.3(a)(1a),  
11 after deducting those monies collected under G.S. 143-215.3(a)(1d), shall not exceed  
12 thirty percent (30%) of the total budgets from all sources of environmental permitting  
13 and compliance programs within the Department."

14 Sec. 14. Section 5 of Chapter 1035 of the 1987 Session Laws (1988 Regular  
15 Session), as amended by Section 16 of Chapter 652 of the 1989 Session Laws, is  
16 repealed.

17 Sec. 15. Sections 1 through 11 and Sections 14 and 15 of this act are  
18 effective upon ratification. Sections 12 and 13 of this act become effective January 1,  
19 1995.