

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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HOUSE BILL 681*
Committee Substitute Favorable 4/15/93
Committee Substitute #2 Favorable 6/9/93

Short Title: Clean Air Act Implementation.

(Public)

Sponsors:

Referred to:

March 30, 1993

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT THE REQUIREMENTS OF THE 1990 AMENDMENTS TO THE FEDERAL CLEAN AIR ACT, TO REPEAL THE EXPIRATION OF A PORTION OF THE PER GALLON FUEL TAX, TO DEDICATE A PORTION OF THE PROCEEDS OF THE TAX TO THE ADMINISTRATION OF THE AIR QUALITY PROGRAM, TO DEDICATE A PORTION OF THE PROCEEDS OF THE TAX TO THE CLEANUP OF LEAKING PETROLEUM UNDERGROUND STORAGE TANKS, AND TO REPEAL THE EXPIRATION OF THE LEAKING PETROLEUM UNDERGROUND STORAGE TANK CLEANUP ACT OF 1988.

The General Assembly of North Carolina enacts:

Section 1. (a) G.S. 143-213(27) reads as rewritten:

"(27) The term 'Federal-Clean Air Act' refers to the federal Clean Air Act, as amended, codified generally at 42 U.S.C. § 7401 et seq."

(b) G.S. 143-213 is amended by adding a new subdivision to read:

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

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

"(2) To direct that such investigation be conducted as it may reasonably deem necessary to carry out its duties as prescribed by this Article or Article 21B of this Chapter, and for this purpose to enter at reasonable times upon any property, public or private, for the

1 purpose of investigating the condition of any waters and the
2 discharge therein of any sewage, industrial waste or other waste or
3 for the purpose of investigating the condition of the air, air pollution,
4 air contaminant sources, emissions or the installation and operation
5 of any air-cleaning devices, and to require written statements or the
6 filing of reports under oath, with respect to pertinent questions
7 relating to the operation of any air-cleaning device, sewer system,
8 disposal system or treatment works: Provided that any records,
9 reports or information obtained under Articles 21, 21A and 21B (i)
10 shall, in the case of effluent or emission data, be related to any
11 applicable effluent or emission limitations, toxic, pretreatment or
12 new source performance standards, and (ii) shall be available to the
13 public except that upon a showing satisfactory to the Commission by
14 any person that records, reports or information or particular part
15 thereof (other than effluent or emission ~~data~~), data or information
16 necessary to determine compliance with standards adopted pursuant
17 to Article 21B of this Chapter), to which the Commission has access
18 under these Articles, if made public would divulge methods or
19 processes entitled to protection as trade secrets ~~of such person~~,
20 pursuant to G.S. 132-1.2, the Commission shall consider such
21 record, report or information, or particular portion thereof
22 confidential, except that such record or information may be
23 disclosed to ~~employees of the department concerned with carrying out the~~
24 ~~provisions of these Articles~~ any officer, employee, or authorized
25 representative of any federal or state agency if disclosure is
26 necessary to carry out a proper function of the Department or other
27 agency, or when relevant in any proceeding under ~~these Articles~~ this
28 Article or Article 21A or Article 21B of this Chapter. The
29 Commission shall provide for adequate notice to the party
30 submitting the information of any decision that such information is
31 not entitled to confidential treatment and of any decision to release
32 information which the submitting party contends is entitled to
33 confidential treatment. No person shall refuse entry or access to any
34 authorized representative of the Commission or Department who
35 requests entry for purposes of inspection, and who presents
36 appropriate credentials, nor shall any person obstruct, hamper or
37 interfere with any such representative while in the process of
38 carrying out his official duties."

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

40 "(3) To conduct public hearings and to delegate the power to conduct
41 public hearings in accordance with the procedures prescribed by this
42 ~~Article~~ Article or by Article 21B of this Chapter."

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

- 1 (b) (1) Procedures for Public Input. – The Commission may, on its
2 own motion or when required by federal law, request public
3 comments on or hold public hearings on matters within the scope of
4 its authority under this Article or Articles 21A or 21B of this
5 Chapter. To request public comments on a matter, the Commission
6 shall notify appropriate agencies of the opportunity to submit written
7 comments to the Commission on the matter and shall publish a
8 notice in a newspaper having general circulation in the affected area,
9 stating the matter under consideration by the Commission and
10 informing the public of its opportunity to submit written comments
11 to the Commission on the matter. A public comment period shall
12 extend for at least 30 days after the notice is published.
- 13 (2) To hold a public hearing on a matter, the Commission shall notify,
14 by personal service or certified mail, persons directly affected by the
15 matter under consideration and shall publish a notice in a newspaper
16 having general circulation in the affected area, stating the matter
17 under consideration by the Commission and the time, date, and place
18 of a public hearing to be held on the matter. A public hearing shall
19 be held no sooner than 20 days after the notice is published. The
20 proceedings at a public hearing held under this subsection shall be
21 recorded. Upon payment of a fee established by the Commission,
22 any person may obtain a copy of the record of the public hearing.
23 After a public hearing, the Commission shall accept written
24 comments for the time period prescribed by the Commission.
- 25 (3) This subsection ~~applies only to proceedings that are not~~ does not apply
26 to rule-making proceedings or proceedings, contested case
27 hearings, hearings, or the issuance of permits required under Title V.
28 The Commission shall establish procedures for public hearings,
29 public notice, and public comment respecting permits required by
30 Title V as provided by G.S. 143-215.111(4)."

31 Sec. 5. G.S. 143-215.5 reads as rewritten:

32 **"§ 143-215.5. Judicial review.**

33 (a) Article 4 of Chapter 150B of the General Statutes governs judicial review of a
34 final agency decision or order of the Secretary or ~~of an order~~ of the Commission under
35 this Article and Articles 21A and 21B of this Chapter. If a case that concerns an action
36 of the Secretary or of the Commission under this Article or Article 21A or 21B of this
37 Chapter is appealed from the superior court to the ~~Court of Appeals, Appellate Division~~
38 of the General Court of Justice, no bond shall be required of the Secretary or of the
39 Commission.

40 (b) A person aggrieved, as defined in G.S. 150B-2, other than the applicant or
41 permittee, who seeks judicial review of a final agency decision on an application for a
42 permit required under Title V shall file a petition for judicial review under G.S. 150B-
43 45 within 30 days after public notice of the final agency decision is given as provided in
44 rules adopted by the Commission pursuant to G.S. 143-215.4(b)(3). A permit applicant,

1 permittee, or other person aggrieved who seeks judicial review of a failure of the
2 Commission to act on an application for a permit shall file a petition for judicial review
3 under G.S. 150B-45 within 30 days after the expiration of the time specified in rules
4 adopted by the Commission."

5 Sec. 6. G.S. 143-215.69 reads as rewritten:

6 **"§ 143-215.69. Enforcement procedures.**

7 (a) Criminal Penalties. –

8 (1) Except as provided in subdivision (2) of this subsection, any ~~Any~~
9 person who violates any provisions of this Part or any rules adopted
10 by the Commission for its implementation shall be guilty of a
11 misdemeanor and shall be liable to a penalty of not less than one
12 hundred dollars (\$100.00), nor more than one thousand dollars
13 (\$1,000) for each violation and each day such person shall fail to
14 comply after having been officially notified by the Commission shall
15 constitute a separate offense subject to the foregoing penalty.

16 (2) Any person who violates any provision of this Part or any rule
17 adopted by the Commission to implement this Part that imposes a
18 requirement that is also a requirement under Title V or any rule
19 adopted by the Commission to implement Title V shall be subject to
20 punishment as provided by G.S. 143-215.114B.

21 (b) Civil Penalties. – The Commission may assess a civil penalty against a person
22 who violates this Part or a rule of the Commission implementing this Part. ~~The~~ For
23 persons subject to the provisions of G.S. 143-215.1, the amount of the penalty shall not
24 exceed the maximum imposed in G.S. 143-215.6A and shall be assessed in accordance
25 with the procedure set out in G.S. 143-215.6A for assessing a civil penalty. For persons
26 subject to the provisions of Title V, G.S. 143-215.108, or G.S. 143-215.109, the amount
27 of penalty shall not exceed the maximum imposed in G.S. 143-215.114A and shall be
28 assessed in accordance with the procedure set out in G.S. 143-215.114A for assessing a
29 civil penalty. Civil penalties assessed under this subsection shall be credited to the
30 General Fund as nontax revenue.

31 (c) Injunctive Relief. – Upon violation of any of the provisions of this Part, a rule
32 implementing this Part, or an order issued under this Part, the Secretary may, either
33 before or after the institution of proceedings for the collection of the penalty imposed by
34 this Part for such violations, request the Attorney General to institute a civil action in
35 the superior court of the county or counties where the violation occurred in the name of
36 the State upon the relation of the Department for injunctive relief to restrain the
37 violation or require corrective action, and for such other or further relief in the premises
38 as said court shall deem proper. Neither the institution of the action nor any of the
39 proceedings thereon shall relieve any party to such proceedings from the penalty
40 prescribed by this Part for any violation of same."

41 Sec. 7. G.S. 143-215.107(a) reads as rewritten:

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

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

1 adopted under this subdivision may specify standards for a particular
2 area of the State that differ from other areas as may be necessary to
3 improve ambient air quality within a particular area, achieve
4 attainment or preclude violations of the National Ambient Air
5 Quality Standards, or to meet other federal requirements. Rules may
6 authorize the use of marketable oxygen credits for gasoline as
7 provided in federal requirements.

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

12 Sec. 8. G.S. 143-215.108 reads as rewritten:

13 **"§ 143-215.108. Control of sources of air pollution; permits required.**

14 (a) After the effective date applicable to any air quality or emission control
15 standards established pursuant to ~~G.S. 143-215.107~~, G.S. 143-215.107 and except as
16 provided in subsection (a1) of this section, no person shall do any of the following
17 things or carry out any of the following activities which contravene or will be likely to
18 contravene such standards until or unless such person shall have applied for and shall
19 have received from the Commission a permit therefor and shall have complied with
20 such conditions, if any, as are prescribed by such permit:

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

30 (a1) The Commission may by rule establish procedures to allow a permittee who
31 has submitted a complete application to modify the permit to make minor modifications
32 to a permitted facility. At a minimum, minor modifications shall comply with the
33 requirements of 40 Code of Federal Regulations § 70.7(e)(2) (1 July 1993 Edition)
34 while the application is under review. The Commission may by rule establish
35 procedures consistent with section 502(b)(10) of Title V (42 U.S.C. § 7661a(b)(10)) and
36 40 Code of Federal Regulations § 70.4(b)(12) (1 July 1993 Edition) to allow a permittee
37 to make changes within a permitted facility without requiring a revision of the permit.

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

42 (c) The Commission shall have the power:

- 43 (1) To grant and renew a permit with such conditions attached as the
44 Commission believes necessary to achieve the purposes of this

- 1 ~~section;~~ section or the requirements of the federal Clean Air Act and
 2 implementing regulations adopted by the United States
 3 Environmental Protection Agency;
- 4 (2) To grant and renew any temporary permit for such period of time as
 5 the Commission shall specify even though the action allowed by
 6 such permit may result in pollution or increase pollution where
 7 conditions make such temporary permit essential;
- 8 (3) ~~To modify or revoke~~ To terminate, modify, or revoke and reissue any
 9 permit upon not less than 60 days' written notice to any person
 10 affected;
- 11 (3a) To suspend any permit pursuant to the provisions of G.S. 150B-3(c);
- 12 (4) To require all applications for permits and renewals to be in writing
 13 and to prescribe the form of such applications;
- 14 (5) To request such information from an applicant and to conduct such
 15 inquiry or investigation as it may deem necessary and to require the
 16 submission of plans and specifications prior to acting on any
 17 application for a permit;
- 18 (5a) To require that an applicant satisfy the Department that the
 19 applicant, or any parent, subsidiary, or other affiliate of the applicant
 20 or parent:
- 21 a. Is financially qualified to carry out the activity for which a
 22 permit is required under subsection (a); and
- 23 b. Has substantially complied with the air quality and emission
 24 control standards applicable to any activity in which the
 25 applicant has previously engaged, and has been in substantial
 26 compliance with federal and state laws, regulations, and rules
 27 for the protection of the environment.
- 28 As used in this subdivision, the words 'affiliate,' 'parent,' and
 29 'subsidiary' have the same meaning as in 17 Code of Federal
 30 Regulations § 240.12b-2 (1 April 1990 Edition);
- 31 (6) To adopt rules, as it deems necessary, establishing the form of
 32 applications and permits and procedures for the granting or denial of
 33 permits and renewals pursuant to this section; and all permits,
 34 renewals and denials shall be in writing;
- 35 (7) To prohibit any stationary source within the State from emitting any
 36 air pollutant in amounts ~~which~~ that will prevent attainment or
 37 maintenance by any other state of any national ambient air quality
 38 ~~standard, or interference~~ standard or that will interfere with measures
 39 required to be included in the applicable implementation plan for
 40 any other state to prevent deterioration of air quality or protect
 41 visibility; and
- 42 (8) To designate certain classes of activities for which a general permit
 43 may be issued, after considering the environmental impact of an
 44 activity, the frequency of the activity, the need for individual permit

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

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

16 (2) The Commission shall adopt rules specifying the times within which
17 it must act upon applications for permits required by Title V and
18 other permits required by this section. The times specified shall be
19 extended for the period during which the Commission is prohibited
20 from issuing a permit under subdivisions (3) and (4) of this
21 subsection. If the Commission fails to act on an application for a
22 permit required by Title V or this section within the time period
23 specified, the failure to act on the application constitutes a final
24 agency decision to deny the permit. A permit applicant, permittee,
25 or other person aggrieved, as defined in G.S. 150B-2, may seek
26 judicial review of a failure to act on the application as provided in
27 G.S. 143-215.5 and Article 4 of Chapter 150B of the General
28 Statutes. Notwithstanding the provisions of G.S. 150B-51, upon
29 review of a failure to act on an application for a permit required by
30 Title V or this section, a court may either: (i) affirm the denial of the
31 permit or (ii) remand the application to the Commission for action
32 upon the application within a specified time.

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

42 (4) If the Administrator of the United States Environmental Protection
43 Agency validly objects to the issuance of a permit required by Title
44 V after the expiration of the 45-day review period specified in

1 subdivision (3) of this subsection as a result of a petition filed
2 pursuant to section 505(b)(2) of Title V (42 U.S.C. § 7661d(b)(2))
3 and prior to the issuance of the permit by the Commission, the
4 Commission shall not issue the permit until the Commission revises
5 the proposed permit to meet all objections noted by the
6 Administrator or otherwise satisfies all objections consistent with
7 Title V and implementing regulations adopted by the United States
8 Environmental Protection Agency.

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

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

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

1 facility with respect to which local ordinances are subject to review under either G.S.
2 104E-6.2 or G.S. 130A-293.

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

11 Sec. 9. G.S. 143-215.111 reads as rewritten:

12 **"§ 143-215.111. General powers of Commission; auxiliary powers.**

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

- 16 (1) To make a continuing study of the effects of the emission of air
17 contaminants from motor vehicles on the quality of the outdoor
18 atmosphere of the State and the several areas thereof, and make
19 recommendations to the General Assembly and other appropriate
20 public and private bodies for the control of such air contaminants.
- 21 (2) To consult, upon request, with any person proposing to construct,
22 install, or otherwise acquire an air pollution source or air-cleaning
23 device for the control of air contaminants concerning the efficacy of
24 such device, or the air problem which may be related to such source,
25 or device; provided, however, that nothing in any such consultation
26 shall be construed to relieve any person from compliance with this
27 Article and Article 21, rules adopted pursuant thereto, or any other
28 provision of law.
- 29 (3) To encourage local units of government to handle air pollution
30 problems within their respective jurisdictions and on a cooperative
31 basis, and to provide such local units technical and consultative
32 assistance to the maximum extent possible.
- 33 (4) To establish procedures providing for public notice, public
34 comment, and public hearings on applications for permits required
35 by Title V to meet the requirements of Title V and implementing
36 regulations adopted by the United States Environmental Protection
37 Agency.
- 38 (5) To establish procedures providing for notice to the Administrator of
39 the United States Environmental Protection Agency and affected
40 states of proposals to issue permits required by Title V and allowing
41 affected states the opportunity to submit written comment as
42 required by section 505(a) of Title V (42 U.S.C. § 7661d) and
43 implementing regulations adopted by the United States
44 Environmental Protection Agency."

1 Sec. 10. G.S. 143-215.112 reads as rewritten:

2 **"§ 143-215.112. Local air pollution control programs.**

3 (a) The Commission is authorized and directed to review and have general
4 oversight and supervision over all local air pollution control programs and to this end
5 shall review and certify such programs as being adequate to meet the requirements of
6 this Article and Article 21 of this Chapter and any applicable standards and rules
7 adopted pursuant thereto. The Commission shall certify any local program which:

- 8 (1) Provides by ordinance or local law for requirements compatible with
9 those imposed by the provisions of this Article and Article 21 of this
10 Chapter, and the standards and rules issued pursuant thereto;
11 provided, however, the Commission upon request of a municipality
12 or other local unit may grant special permission for the governing
13 body of such unit to adopt a particular class of air contaminant
14 regulations which would result in more effective air pollution control
15 than applicable standards or rules promulgated by the Commission;
16 (2) Provides for the adequate enforcement of such requirements by
17 appropriate administrative and judicial process;
18 (3) Provides for an adequate administrative organization, staff, financial
19 and other resources necessary to effectively and efficiently carry out
20 its programs; and
21 (4) Is approved by the Commission as adequate to meet the
22 requirements of this Article and any applicable rules pursuant
23 thereto.

24 (b) No municipality, county, local board or commission or group of
25 municipalities and counties may establish and administer an air pollution control
26 program unless such program meets the requirements of this section and is so certified
27 by the Commission.

- 28 (c) (1) The governing body of any county, municipality, or group
29 of counties and municipalities within a designated area of the State,
30 as defined in this Article and Article 21, subject to the approval of
31 the Commission, is hereby authorized to establish, administer, and
32 enforce a local air pollution control program for the county,
33 municipality, or designated area of the State which includes but is
34 not limited to:
35 a. Development of a comprehensive plan for the control and
36 abatement of new and existing sources of air pollution;
37 b. Air quality monitoring to determine existing air quality and to
38 define problem areas, as well as to provide background data to
39 show the effectiveness of a pollution abatement program;
40 c. An emissions inventory to identify specific sources of air
41 contamination and the contaminants emitted, together with the
42 quantity of material discharged into the outdoor atmosphere;
43 d. Adoption, after notice and public hearing, of air quality and
44 emission control standards, or adoption by reference, without

- 1 public hearing, of any applicable rules and standards duly
2 adopted by the Commission; and administration of such rules
3 and standards in accordance with provisions of this section.
- 4 e. Provisions for the establishment or approval of time schedules
5 for the control or abatement of existing sources of air pollution
6 and for the review of plans and specifications and issuance of
7 approval documents covering the construction and operation of
8 pollution abatement facilities at existing or new sources;
- 9 f. Provision for adequate administrative staff, including an air
10 pollution control officer and technical personnel, and provision
11 for laboratory and other necessary facilities.
- 12 (2) Subject to the approval of the Commission as provided in this
13 Article and Article 21, the governing body of any county or
14 municipality may establish, administer, and enforce an air pollution
15 control program by ~~either any~~ of the following methods:
- 16 a. Establishing a program under the administration of the duly
17 elected governing body of the county or ~~municipality~~;
18 municipality.
- 19 b. Appointing an air pollution control board consisting of not less
20 than five nor more than seven members who shall serve for
21 terms of six years each and until their successors are appointed
22 and qualified. Two members shall be appointed for two-year
23 terms, two shall be appointed for four-year terms, and the
24 remaining member or members shall be appointed for six-year
25 terms. Where the term 'governing body' is referred to in this
26 section, it shall include the air pollution control board. Such
27 board shall have all the powers and authorities granted to any
28 local air pollution control program. The board shall elect a
29 chairman and shall meet at least quarterly or upon the call of the
30 chairman or any two members of the ~~board~~; board.
- 31 c. Appointing an air pollution control board as provided in this
32 subdivision, and by appropriate written agreement designating
33 the local health department or other department of county or
34 municipal government as the administrative agent for the air
35 pollution control ~~board~~; and board.
- 36 d. Designating, by appropriate written agreement, the local board
37 of health and the local health department as the air pollution
38 control board and agency.
- 39 (2a) Any board or body which approves permits or enforcement orders
40 shall have at least a majority of members who represent the public
41 interest and do not derive any significant portion of their income
42 from persons subject to permits or enforcement orders under the
43 ~~Federal~~ federal Clean Air Act and any potential conflicts of interest

- 1 by members of such board or body or the head of an executive
2 agency with similar powers shall be adequately disclosed.
- 3 (3) If the Commission finds that the location, character or extent of
4 particular concentrations of population, air contaminant sources, the
5 geographic, topographic or meteorological considerations, or any
6 combinations thereof, are such as to make impracticable the
7 maintenance of appropriate levels of air quality without an area-wide
8 air pollution control program, the Commission may determine the
9 boundaries within which such program is necessary and require such
10 area-wide program as the only acceptable alternative to direct State
11 administration. Subject to the provisions of this section, each
12 governing body of a county or municipality is hereby authorized and
13 empowered to establish by contract, joint resolution, or other
14 agreement with any other governing body of a county or
15 municipality, upon approval by the Commission, an air pollution
16 control region containing any part or all of the geographical area
17 within the jurisdiction of those boards or governing bodies which are
18 parties to such agreement, provided the counties involved in the
19 region are contiguous or lie in a continuous boundary and comprise
20 the total area contained in any region designated by the Commission
21 for an area-wide program. The participating parties are authorized to
22 appoint a regional air pollution control board which shall consist of
23 at least five members who shall serve for terms of six years and until
24 their successors are appointed and qualified. Two members shall be
25 appointed for two-year terms, two shall be appointed for four-year
26 terms and the remaining member or members shall be appointed for
27 six-year terms. A participant's representation on the board shall be in
28 relation to its population to the total population of the region based
29 on the latest official United States census with each participant in the
30 region having at least one representative; provided, that where the
31 region is comprised of less than five counties, each participant will
32 be entitled to appoint members in relation to its population to that of
33 the region so as to provide a board of at least five members. Where
34 the term 'governing body' is used, it shall include the governing
35 board of a region. The regional board is hereby authorized to
36 exercise any and all of the powers provided in this section. The
37 regional air pollution control board shall elect a chairman and shall
38 meet at least quarterly or upon the call of the chairman or any two
39 members of the board. In lieu of employing its own staff, the
40 regional air pollution control board is authorized, through
41 appropriate written agreement, to designate a local health department
42 as its administrative agent.
- 43 (4) Each governing body is authorized to adopt any ordinances,
44 resolutions, rules or regulations which are necessary to establish and

1 maintain an air pollution control program and to prescribe and
2 enforce air quality and emission control standards, a copy of which
3 must be filed with the Commission and with the clerk of court of any
4 county affected. Provisions may be made therein for the registration
5 of air contaminant sources; for the requirement of a permit to do or
6 carry out specified activities relating to the control of air pollution,
7 including procedures for application, issuance, denial and
8 revocation; for notification of violators or potential violators about
9 requirements or conditions for compliance; for procedures to grant
10 temporary permits or variances from requirements or standards; for
11 the declaration of an emergency when it is found that a generalized
12 condition of air pollution is causing imminent danger to the health or
13 safety of the public and the issuance of an order to the responsible
14 person or persons to reduce or discontinue immediately the emission
15 of air contaminants; for notice and hearing procedures for persons
16 aggrieved by any action or order of any authorized agent; for the
17 establishment of an advisory council and for other administrative
18 arrangements; and for other matters necessary to establish and
19 maintain an air pollution control program.

20 (5) No permit required by section 305(e) of Title III (42 U.S.C. §
21 7429(e)) for a solid waste incineration unit combusting municipal
22 waste shall be issued by a local air pollution control program that is
23 administered by the governing body of a unit of local government
24 that is responsible, in whole or in part, for the design, construction,
25 or operation of the unit.

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

29 (1a) Each governing body, or its authorized agent, shall have the power
30 to assess civil penalties under ~~G.S. 143-215.114(a).~~ G.S. 143-
31 215.114A. Any person assessed shall be notified of the assessment
32 by registered or certified mail, and the notice shall specify the
33 reasons for the assessment. If the person assessed fails to pay the
34 amount of the assessment to the governing body or its authorized
35 agent within 30 days after receipt of notice, or such longer period not
36 to exceed 180 days as the governing body or its authorized agent
37 may specify, the governing body may institute a civil action in the
38 superior court of the county in which the violation occurred, to
39 recover the amount of the assessment. Each day of continuing
40 violation after written notification from the governing body or its
41 authorized agent shall be considered a separate offense. In
42 determining the amount of the penalty, the governing body or its
43 authorized agent shall consider the degree and extent of harm caused
44 by the violation, the cost of rectifying the damage, and the amount of

- 1 money the violator saved by not having made the necessary
2 expenditures to comply with the appropriate pollution control
3 requirements.
- 4 (2) Each governing body, or its duly authorized agent, may institute a
5 civil action in the superior court, brought in the name of the agency
6 having jurisdiction, for injunctive relief to restrain any violation or
7 immediately threatened violation of such ordinances, orders, rules,
8 or regulations and for such other relief as the court shall deem
9 proper. Neither the institution of the action nor any of the
10 proceedings thereon shall relieve any party to such proceedings from
11 the penalty prescribed by this Article and Article 21 for any violation
12 of same.
- 13 (d1) (1) The governing body responsible for each local air pollution
14 control program shall require that the owner or operator of all air
15 contaminant sources subject to the requirement to obtain a permit
16 under Title V pay an annual fee, or the equivalent over some other
17 period, sufficient to cover costs as provided in section 502(b)(3)(A)
18 of Title V (42 U.S.C. § 7661a(b)(3)(A) and G.S. 143-215.3(a)(1d).
19 Fees collected pursuant to this subdivision shall be used solely to
20 cover all reasonable direct and indirect costs required to develop and
21 administer the Title V permit program.
- 22 (2) ~~(3) In addition, each~~ Each governing body is authorized to expend tax
23 funds, nontax funds, or any other funds available to it to finance an
24 air pollution control program and such expenditures are hereby
25 declared to be for a public purpose and a necessary expense.
- 26 (d2) (1) ~~(4)~~ Any final administrative decision rendered in an air
27 pollution control program of such governing body shall be subject to
28 judicial review as provided by Article 4 of Chapter 150B of the
29 General Statutes, and 'administrative agency' or 'agency' as used
30 therein shall mean and include for this purpose the governing body
31 of any county or municipality, regional air pollution control
32 governing board, and any agency created by them in connection with
33 an air pollution control program.
- 34 (2) If a local air pollution program fails to act on an application for a
35 permit required by Title V or this Article within the time periods
36 specified by the Commission under G.S 143-215.108(d)(2), the
37 failure to act on the application constitutes a final agency decision to
38 deny the permit. A permit applicant, permittee, or any person
39 entitled to judicial review under G.S. 143-215.5 may seek judicial
40 review of a failure to act on the application under Article 4 of
41 Chapter 150B of the General Statutes. Notwithstanding the
42 provisions of G.S. 150B-51, upon review of a failure to act on an
43 application for a permit required by Title V or this Article, a court
44 may either: (i) affirm the denial of the permit or (ii) remand the

- 1 application to the local air pollution control program for action upon
2 the application within a specified time.
- 3 (e) (1) If the Commission has reason to believe that a local air
4 pollution control program certified and in force pursuant to the
5 provisions of this section is inadequate to abate or control air
6 pollution in the jurisdiction to which such program relates, or that
7 such program is being administered in a manner inconsistent with
8 the requirement of this Article, the Commission shall, upon due
9 notice, conduct a hearing on the matter.
- 10 (2) If, after such hearing, the Commission determines that an existing
11 local air pollution control program or one which has been certified
12 by the Commission is inadequate to abate or control air pollution in
13 the municipality, county, or municipalities or counties to which such
14 program relates, or that such program is not accomplishing the
15 purposes of this Article, it shall set forth in its findings the corrective
16 measures necessary for continued certification and shall specify a
17 reasonable period of time, not to exceed one year, in which such
18 measures must be taken if certification is not to be rescinded.
- 19 (3) If the municipality, county, local board or commission or
20 municipalities or counties fail to take such necessary corrective
21 action within the time specified, the Commission shall rescind any
22 certification as may have been issued for such program and shall
23 administer within such municipality, county, or municipalities or
24 counties all of the regulatory provisions of this Article and Article
25 21. Such air pollution control program shall supersede all municipal,
26 county or local laws, regulations, ordinances and requirements in the
27 affected jurisdiction.
- 28 (4) If the Commission finds that the control of a particular class of air
29 contaminant source because of its complexity or magnitude is
30 beyond the reasonable capability of the local air pollution control
31 authorities or may be more efficiently and economically performed
32 at the State level, it may assume and retain jurisdiction over that
33 class of air contaminant source. Classification pursuant to this
34 subdivision may be either on the basis of the nature of the sources
35 involved or on the basis of their relationship to the size of the
36 communities in which they are located.
- 37 (5) Any municipality or county in which the Commission administers its
38 air pollution control program pursuant to subdivision (3) of this
39 subsection may, with the approval of the Commission, establish or
40 resume a municipal, county, or local air pollution control program
41 which meets the requirements for certification by the Commission.
- 42 ~~(6) Nothing in this Article and Article 21 shall be construed to supersede~~
43 ~~or oust the jurisdiction of any local air pollution control program in~~
44 ~~operation on June 22, 1967; provided that within two years from~~

1 such date any such program shall meet all requirements of this
 2 Article and Article 21 for certification by the Commission as an
 3 approved local air pollution control program. Any certification
 4 required from the Commission shall be deemed granted unless the
 5 Commission takes specific action to the contrary.

6 (7) Any municipality, county, local board or commission or
 7 municipalities or counties or designated area of this State for which a
 8 local air pollution control program is established or proposed for
 9 establishment may make application for, receive, administer and
 10 expend federal grant funds for the control of air pollution or the
 11 development and administration of programs related to air pollution
 12 control; provided that any such application is first submitted to and
 13 approved by the Commission. The Commission shall approve any
 14 such application if it is consistent with this Article, Article 21 and
 15 other applicable requirements of law.

16 (8) Notwithstanding any other provision of this section, if the
 17 Commission determines that an air pollution source or combination
 18 of sources is operating in violation of the provisions of this Article
 19 and that the appropriate local authorities have not acted to abate such
 20 violation, the Commission, upon written notice to the appropriate
 21 local governing body, may act on behalf of the State to require any
 22 person causing or contributing to the pollution to cease immediately
 23 the emission of air pollutants causing or contributing to the violation
 24 or may require such other action as it shall deem necessary."

25 Sec. 11. Section 25 of Chapter 538 of the 1991 Session Laws reads as
 26 rewritten:

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

33 Sec. 12. Sections 17, 18, 19, and 20 of Chapter 538 of the 1991 Session
 34 Laws are repealed.

35 Sec. 13. G.S. 105-445 reads as rewritten:

36 "**§ 105-445. Application of proceeds of gasoline tax.**

37 The amount of revenue collected under this Article attributable to a per gallon excise
 38 tax of one-half cent (1/2¢) a gallon shall be credited ~~in equal amounts as follows:~~ (i)
 39 nineteen thirty-seconds (19/32) to the Commercial Leaking Petroleum Underground
 40 Storage Tank Fund and the Groundwater Protection Loan Fund-Cleanup Fund; (ii) three
 41 thirty-seconds (3/32) to the Noncommercial Leaking Petroleum Underground Storage
 42 Tank Cleanup Fund; and (iii) five sixteenths (5/16) to the Water and Air Quality
 43 Account. Of the remaining tax revenue collected under this Article, seventy-five
 44 percent (75%) shall be credited to the Highway Fund and the remaining twenty-five

1 percent (25%) shall be credited to the Highway Trust Fund. A proportionate share of a
2 refund allowed under this Article shall be charged to ~~the Commercial Leaking Petroleum~~
3 ~~Underground Storage Tank Fund, the Groundwater Protection Loan Fund, the Highway Fund,~~
4 ~~and the Highway Trust Fund.~~ each fund or account to which revenue collected under this
5 Article is credited. The Secretary shall credit revenue or charge refunds to the
6 appropriate Funds on a monthly basis."

7 Sec. 14. G.S. 143-215.3A reads as rewritten:

8 "**§ 143-215.3A. Use Water and Air Quality Account; use of application and permit**
9 **fees.—fees; Title V Account; I & M Air Pollution Control Account;**
10 **reports.**

11 (a) The Water and Air Quality Account is established as a nonreverting account
12 within the Department. Revenue in the Account shall be applied to the costs of
13 administering the programs for which the fees were collected. Revenue credited to the
14 Account pursuant to G.S. 105-445 shall be used to administer the air quality program.
15 Except for the following fees, all application fees and permit administration fees
16 collected by the State for permits issued under Articles 21, 21A, 21B, and 38 of this
17 Chapter shall be credited to the Account:

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

24 (a1) The total monies collected per year from fees for permits under G.S. 143-
25 215.3(a)(1a), after deducting those monies collected under G.S. 143-215.3(a)(1d), shall
26 not exceed thirty percent (30%) of the total budgets from all sources of environmental
27 permitting and compliance programs within the Department.

28 (b) The Title V Account is established as a nonreverting account within the
29 Department. Revenue in the Account shall be used for developing and implementing a
30 permit program that meets the requirements of Title V. The Title V Account shall
31 consist of fees collected pursuant to G.S. 143-215.3(a)(1d) and G.S. 143-215.106A.
32 Fees collected under G.S. 143-215.3(a)(1d) shall be used only to cover the direct and
33 indirect costs required to develop and administer the Title V permit program, and fees
34 collected under G.S. 143-215.106A shall be used only for the eligible expenses of the
35 Title V program. Expenses of the Air Quality Compliance Advisory Panel, the
36 ombudsman for the Small Business Stationary Source Technical and Environmental
37 Compliance Assistance Program, support staff, equipment, legal services provided by
38 the Attorney General, and contracts with consultants and program expenses listed in
39 section 502(b)(3)(A) of Title V shall be included among Title V program expenses.

40 (b1) The I & M Air Pollution Control Account is established as a nonreverting
41 account within the Department. Fees transferred to the Division of Environmental
42 Management of the Department pursuant to G.S. 20-183.7(c)(2) shall be credited to the
43 I & M Air Pollution Control Account and shall be applied to the costs of developing and
44 implementing an air pollution control program for mobile sources.

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

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

13 Sec. 16. The Department of Environment, Health, and Natural Resources
14 shall study options, including alternative fuels and transportation programs, for reducing
15 air pollution from mobile sources through the use of revenues generated under G.S.
16 105-434 and G.S. 105-445. In conducting this study, the Department shall consider the
17 appropriate role of local air pollution control programs certified under G.S. 143-215.112
18 in the reduction of air pollution from mobile sources, including which functions can
19 most appropriately be performed by the Department and by certified local programs,
20 and what portion of the revenues generated under G.S. 105-434 and G.S. 105-445
21 should be appropriated or allocated to certified local programs to support functions
22 performed by certified local programs. The Department shall conduct this study in
23 consultation with representatives of certified local air pollution control programs, local
24 governments, regulated industries, and the environmental and conservation community.
25 The Department shall report its findings and recommendations to the Environmental
26 Review Commission on or before 1 November 1993.

27 Sec. 17. Sections 1 through 12 and Sections 15 through 17 of this act are
28 effective upon ratification. Section 13 of this act becomes effective 1 January 1995.
29 Section 14 of this act becomes effective upon ratification except that the amendment to
30 G.S. 143-215.3A(a) made by Section 14 of this act becomes effective 1 January 1995.
31 The Commission shall adopt temporary rules required by G.S. 143-215.108(d)(2), as
32 enacted by this act, by January 1, 1994.