

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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HOUSE BILL 893
Committee Substitute Favorable 5/8/95

Short Title: Environmental Permit Appeals.

(Public)

Sponsors:

Referred to:

April 12, 1995

A BILL TO BE ENTITLED
AN ACT TO CREATE UNIFORM PROCEDURES FOR REVIEW OF MINING,
HAZARDOUS WASTE, WATER, AND AIR PERMIT DECISIONS AND TO
STREAMLINE THE PERMIT REVIEW PROCESS.

The General Assembly of North Carolina enacts:

Section 1. Article 7 of Chapter 143B of the General Statutes is amended by
adding a new Part to read:

"PART 1A. ENVIRONMENTAL PERMITTING.

"§ 143B-279.10. Definitions.

As used in this Part:

(1) 'Category I permit' means a permit, other than a general permit or a
temporary permit for:

- a. Mining, as defined in G.S. 74-49(7).
- b. A hazardous waste facility, as defined in G.S. 130A-290(a)(9).
- c. An outlet, point source, treatment works, or disposal system
discharging to the surface waters of the State other than an
individual permit for a stormwater discharge issued pursuant to
33 U.S.C. § 1342(p)(2).
- d. Recurring land application involving:

- 1 1. Petroleum-contaminated soil;
- 2 2. Residuals management involving a total application area
- 3 of more than 1,000 acres; or
- 4 3. An expansion of residuals management involving an
- 5 increase in the application area of 500 acres or more.
- 6 e. A facility or source for which a permit is required under Title V,
- 7 as defined in G.S. 143-213(29e).
- 8 f. A facility or source for which a permit for the prevention of
- 9 significant deterioration of air quality (PSD) is required under 40
- 10 Code of Federal Regulations § 51.166 (1 July 1994 Edition).
- 11 (2) 'Category II permit' means any permit issued under Articles 21 and 21B
- 12 of Chapter 143 of the General Statutes that is not a Category I permit.
- 13 (3) 'Category I permit decision' means any of the following actions by the
- 14 Department:
- 15 a. The approval or denial of an application for a Category I permit
- 16 or to renew a Category I permit.
- 17 b. The approval or denial of an application for a modification of a
- 18 Category I permit, other than a minor modification.
- 19 (4) 'Category II permit decision' means any of the following actions by the
- 20 Department:
- 21 a. The approval or denial of an application for a Category II permit
- 22 or to renew a Category II permit.
- 23 b. The approval or denial of an application for a modification of a
- 24 Category II permit.
- 25 c. The approval or denial of an application for a minor modification
- 26 of a Category I permit.
- 27 (5) 'Department' means the Department of Environment, Health, and
- 28 Natural Resources.

29 **"§ 143B-279.11. Applicability.**

30 This Part governs Category I permit decisions by the Department.

31 **"§ 143B-279.12. Notice of permit application.**

32 (a) Not more than 30 days before the date that an application for a Category I

33 permit is filed but prior to the date on which the application is filed, the applicant shall:

- 34 (1) Publish notice of application at least once a week for three consecutive
- 35 calendar weeks in a newspaper having general circulation within the
- 36 county where the activity or facility for which the permit is sought is
- 37 located. The size of the notice shall be at least one-half the size of a
- 38 page of the newspaper in which the notice is published.
- 39 (2) File the notice of application with the office of the manager of each
- 40 incorporated city and county having jurisdiction over the location of the
- 41 activity or facility for which the permit is sought.
- 42 (3) Prominently post the notice of application at the public entrance to the
- 43 facility for which the permit is sought.

1 (4) Mail, by certified mail return receipt requested, a copy of the notice to
2 the owner or owners of each parcel of land that is contiguous to the land
3 on which the activity or facility is located and, in the case of a discharge
4 into the waters of the State, to the owner or owners of each parcel of
5 land that is contiguous to the land where the discharge is located. For
6 purposes of this subdivision, the owner or owners of land shall be
7 deemed to be the owner or owners as shown on the most recent property
8 tax listing for the land.

9 (b) The notice of application shall be continuously posted until the permit is issued
10 or denied. The notice of application shall state, at a minimum, the name of the applicant;
11 the activity for which the Category I permit is sought; the receiving body of water, if any;
12 the location of the discharge, source, treatment works, disposal system, land application,
13 or other permitted activity or facility; the name and telephone number of a contact person
14 for the applicant; and the name and location of the office within the Department to which
15 application will be made.

16 **"§ 143B-279.13. Permit application review by local governments.**

17 An applicant for a Category I permit shall request each local government having
18 jurisdiction over any part of the land on which the facility and its appurtenances are
19 located or to be located to issue a determination as to whether the local government has in
20 effect a zoning, subdivision, or land-use planning ordinance applicable to the facility and
21 whether the proposed activity would be consistent with the ordinance. The request to the
22 local government shall be accompanied by a copy of the 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 chief
25 administrative officer, the chief administrative officer's designee, clerk, or other official
26 designated by the local government to make the determination and, if the local
27 government states that the activity is inconsistent with a zoning, subdivision, or land-use
28 planning ordinance, shall include a copy of the ordinance and the specific reasons for the
29 determination of inconsistency. A copy of any such determination shall be provided to
30 the applicant when the determination is submitted to the Department. The Department
31 shall not act upon an application for a permit under this section until it has received a
32 determination from each local government requested to make a determination by the
33 applicant. Unless the local government makes a subsequent determination of consistency
34 with all ordinances cited in the determination or the proposed activity is determined by a
35 court of competent jurisdiction to be consistent with the cited ordinances, the Department
36 shall attach as a condition of the permit a requirement that the applicant, prior to
37 commencing the activity for which the Category I permit is sought, comply with all
38 lawfully adopted local ordinances, including those cited in the determination, that apply
39 to the activity. If a local government fails to submit a determination to the Department as
40 provided by this subsection within 15 days after receipt of the request, the Department
41 may proceed to consider the application for a Category I permit without regard to local
42 zoning, subdivision, and land-use planning ordinances. This subsection shall not be
43 construed to limit any opportunity a local government may have to comment on a permit

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

4 **"§ 143B-279.14. Procedure for making comment on permit application.**

5 Any person, including the applicant, who believes that any aspect of a proposed
6 permit decision is incorrect must raise all reasonably ascertainable issues and submit all
7 supporting arguments and data not later than the close of the public comment period on
8 the permit. The Department is not required to consider written or oral comment unless
9 the comment is accompanied by the name and current mailing address of the person
10 making the comment. Other than federal or State laws, regulations, or rules, any
11 supporting materials that are submitted shall be included in the hearing record in full and
12 shall not be incorporated by reference, unless the supporting materials are a part of the
13 administrative record in the same proceeding. All permit decisions shall be in writing
14 and shall include a concise written statement explaining, in light of timely comments
15 received, the reasons the Commission issued or denied the permit.

16 **"§ 143B-279.15: Reserved for future codification purposes.**

17 **"§ 143B-279.16: Reserved for future codification purposes.**

18 **"§ 143B-279.17: Reserved for future codification purposes.**

19 **"§ 143B-279.18. Notice of Category I permit decisions.**

20 The Department shall publish notice of a Category I permit decision by publishing the
21 notice in a newspaper having general circulation in the area potentially affected by the
22 decision and by either publishing the notice in the North Carolina Register or by mailing
23 a copy of the notice to each person who submitted comment on the application in a timely
24 manner.

25 (1) At a minimum, the notice shall comply with all of the following
26 requirements:

27 a. Identify the application, including the name of the applicant and
28 the date the application was submitted.

29 b. Clearly identify the location of the activity, including each
30 county in which the activity is located.

31 c. State the decision on the application.

32 d. State the last date on which a contested case petition may be filed
33 in the Office of Administrative Hearings.

34 e. State the name and address of the agency that made the decision.

35 (2) The Department shall, to the extent practicable, mail a copy of the
36 notice described in subdivision (1) of this subsection to persons who
37 provide the Department with a self-addressed envelope with sufficient
38 postage affixed.

39 (3) If the Department has not given notice in accordance with this section
40 within 20 days after it makes the decision, the applicant may give the
41 required notice by publishing the notice in a newspaper having general
42 circulation in the area that includes the facility that is the subject of the

1 permit, and also by submitting the notice for publication in the North
2 Carolina Register for publication.

- 3 (4) Notice of a permit decision given in accordance with this subsection
4 satisfies G.S. 150B-23(f) and initiates the times for seeking
5 administrative and judicial review under this section.

6 **"§ 143B-279.19. Record of decision.**

7 The record for a Category I permit decision shall consist of:

- 8 (1) The complete application and any supporting materials requested by the
9 Department and submitted by the applicant.
10 (2) Any checklist issued to determine that the application is complete.
11 (3) All notices required under this section.
12 (4) The Category I permit decision, including any draft permit on which the
13 Department requested comment.
14 (5) All requests for a public hearing.
15 (6) If a public hearing is held on the application, a list of persons who
16 presented oral comment at the public hearing.
17 (7) A list of persons who submitted written comment containing a specific
18 recommendation regarding the application.
19 (8) All comment received, including oral and written comment submitted at
20 the public hearing, if one is held, and written comment received at any
21 time prior to the close of the comment period.
22 (9) An explanation by the Department of the Category I permit decision
23 along with any supporting material on which the Department relied.
24 (10) Any other material that the agency by rule requires or allows.

25 **"§ 143B-279.20. Reports.**

26 The Department shall report on or before 1 October of each year to the Environmental
27 Review Commission on its implementation of this section, including the time required to
28 make Category I permit decisions, any delays in the processing of permit applications,
29 statistics on administrative and judicial review of actions by the Department and the
30 Commission on permit applications, and any recommendations to improve the efficiency
31 of the permitting process."

32 Sec. 2. Chapter 150B of the General Statutes is amended by adding the
33 following new Article to read:

34 **"ARTICLE 3B.**

35 **"REVIEW OF ENVIRONMENTAL PERMIT DECISIONS.**

36 **"PART 1. GENERAL PROVISIONS.**

37 **"§ 150B-42.1. Definitions.**

38 As used in this Article:

- 39 (1) 'Category I permit' has the same meaning as in G.S. 143B-279.10.
40 (2) 'Category II permit' has the same meaning as in G.S. 143B-279.10.
41 (3) 'Category I permit decision' has the same meaning as in G.S. 143B-
42 279.10.

- 1 (4) 'Category II permit decision' has the same meaning as in G.S. 143B-
2 279.10.
- 3 (5) 'Department' means the Department of Environment, Health, and
4 Natural Resources.
- 5 (6) 'Specific recommendation' means a definite or particular
6 recommendation for a change in a proposed permit or for a specified
7 outcome in a permit decision, method of making a permit decision, or
8 data used in making a permit decision.
- 9 (7) 'Timely manner' means, with respect to the submission of written
10 comment, postmarked prior to the expiration of the comment period
11 stated in the newspaper notice or during any period that the agency
12 holds an application or special order open for receipt of additional
13 information from the applicant. For the purpose of computing all dates
14 and times with respect to an action on an application for a Category I
15 permit under this section, time shall be computed as provided in G.S.
16 1A-1, Rule 6. Unless otherwise specifically provided, periods of time
17 shall commence, or actions shall be deemed complete, when an
18 application, notice, or comment is deposited enclosed in a first-class
19 postpaid, properly addressed wrapper in a post office or official
20 depository under the exclusive care and custody of the Postal Service.

21 **"§ 150B-42.2. Applicability.**

22 (a) This Article governs administrative and judicial review of Category I permit
23 decisions and Category II permit decisions. The provisions of this Article are
24 supplemental to the provisions of Article 3 and Article 4 of this Chapter. In the event that
25 any provision of Article 3 or Article 4 of this Chapter conflicts with this Article, this
26 Article shall control.

27 (b) Any person aggrieved by a Category I permit decision:

- 28 (1) Is entitled to initiate a contested case as provided by Part 2 of this
29 Article.
- 30 (2) Is precluded from contesting a permit decision by filing a petition for a
31 contested case under Article 3 of this Chapter.
- 32 (3) Is precluded from contesting a permit decision by filing a petition for
33 judicial review except as provided in this Article.

34 (c) Any person aggrieved solely by a Category II permit decision:

- 35 (1) Is precluded from initiating a contested case as provided by Part 2 of
36 this Article.
- 37 (2) Is precluded from contesting a permit decision by filing a petition for a
38 contested case under Article 3 of this Chapter.
- 39 (3) Is entitled to judicial review as provided in Part 3 of this Article.

40 "Part 2. Administrative Hearings.

41 **"§ 150B-42.3. Contested case procedures for appeal of environmental permit**
42 **decisions.**

1 (a) Initiating a Contested Case. – Any person aggrieved who is entitled to initiate a
2 contested case or judicial review under subsection (b) of this section may contest a
3 Category I permit decision by filing a petition for a contested case under this Chapter
4 within 30 days after notice of the decision is published in the North Carolina Register.

5 (b) Persons Entitled to Initiate a Contested Case or Judicial Review. – Only a
6 person aggrieved who meets at least one of the following requirements may seek
7 administrative or judicial review of a permit decision under subsection (a) of this section:

8 (1) Submits to the agency in a timely manner, either individually or jointly
9 with other persons, written comment containing a specific
10 recommendation on a permit application or a draft permit.

11 (2) Presents oral comment at a public hearing on a permit application that
12 makes a specific recommendation on the permit application or draft
13 permit, if a public hearing is conducted by the agency.

14 (3) Makes a good cause showing in any petition for a contested case to
15 challenge a permit under G.S. 150B-23 and subsection (e) of this section
16 that the comment was not submitted or presented because there was no
17 reason to have anticipated being adversely affected by the permit
18 decision.

19 (c) Intervention in Contested Case. – When a person other than the applicant or
20 permit holder initiates a contested case or judicial review pursuant to subsection (b) of
21 this section, the assigned administrative law judge shall by order make the permit holder
22 or applicant a party to the contested case. A person aggrieved by a permit decision who
23 is not entitled to initiate a contested case under subsection (b) of this section may petition
24 to intervene in any contested case on the Category I permit decision.

25 (d) Scope of Issues to Be Considered on Administrative Review. – In a contested
26 case, the petitioner or intervenor may not contest an issue that was not raised before the
27 agency, unless the administrative law judge assigned to the contested case makes an
28 exception for good cause shown. The assigned administrative law judge may allow a
29 party to be heard on a new issue only if the administrative law judge finds that the issue
30 could not reasonably have been raised while the contested decision was pending before
31 the agency. If the contested case concerns the approval of an application to renew a
32 permit, the person entitled to initiate a contested case or judicial review pursuant to
33 subsection (b) of this section may contest only a difference between the renewed permit
34 and the former permit unless there is substantial evidence in the administrative record
35 that the conditions set out in the former permit allow significant environmental damage.
36 If a person is denied administrative review of any aspect of a Category I permit decision
37 under this subsection, and the person has submitted oral or written comment within the
38 comment period on the aspect of the Category I permit for which the person is denied
39 administrative review, the right of judicial review shall be fully preserved.

40 (e) Stay During Appeal. – If a permit holder or a person entitled to initiate a
41 contested case or judicial review pursuant to subsection (b) of this section files a petition
42 for a contested case to challenge a permit decision, a stay under G.S. 1A-1, Rule 65, may

1 be granted if the party seeking the stay can establish that all of the requirements of Rule
2 65 are met.

3 (f) Procedure in Contested Case. – Any contested case involving permits issued
4 under this Article shall be governed by the following procedures:

5 (1) In any contested case regarding a permit decision, the provisions of
6 Article 3 of Chapter 150B of the General Statutes shall apply, except to
7 the extent otherwise provided herein, and except that no formal
8 evidentiary hearing shall be held and the recommended decision shall be
9 made on the basis of the Department's record, along with any exceptions
10 to such record and arguments concerning such record raised by parties
11 to the contested case, unless:

12 a. A party in its initial filing with the Office of Administrative
13 Hearings requests a formal evidentiary hearing; and

14 b. The administrative law judge assigned to the case determines, in
15 a timely manner, that the contested case presents genuine issues
16 of material fact.

17 (2) In any contested case regarding a permit decision, unless altered by
18 agreement of all the parties:

19 a. A petition for a contested case shall be filed with the Office of
20 Administrative Hearings within 30 days after notice of a permit
21 decision is given.

22 b. Any responsive pleading or motion for intervention shall be filed
23 with the Office of Administrative Hearings within 30 days after
24 the petition for a contested case is filed.

25 c. A determination that a formal evidentiary hearing will be held
26 shall be made within 75 days after the petition for a contested
27 case is filed.

28 d. If a formal evidentiary hearing is determined to be necessary and
29 properly requested, such hearing shall be concluded and a
30 recommended decision proposed and served within 180 days
31 after the petition for a contested case is filed.

32 e. If no formal evidentiary hearing is determined to be necessary or
33 properly requested, a recommendation shall be prepared and
34 served within 120 days after the petition for a contested case is
35 filed.

36 (3) If a recommended decision is not prepared and served in the time
37 provided in this subsection, the petitioner may elect to treat the petition
38 as denied and may request a final agency decision based solely on the
39 original permit decision and any additional materials filed with the
40 Office of Administrative Hearings concerning such decision.

41 (g) Final Decision. – Notwithstanding the provisions of G.S. 150B-44, if the
42 agency fails to make a final decision within 45 days of its receipt of the recommended
43 decision, record, and, if requested, the transcript from the Office of Administrative

1 Hearings, any party to the proceedings before the Office of Administrative Hearings may
2 seek judicial review as provided in G.S. 150B-42.4. The time in which the agency must
3 make a final decision may be altered by agreement of all the parties. If a permit
4 applicant, permit holder, or person who is entitled to initiate a contested case or judicial
5 review pursuant to subsection (b) of this section does not file a petition for a contested
6 case within the required time, the decision by the agency is final and is not subject to
7 administrative or judicial review.

8 **"PART 3. JUDICIAL REVIEW.**

9 **"§ 150B-42.4. Judicial review of environmental permit decisions.**

10 (a) Article 4 of this Chapter, as modified by G.S. 7A-29 and this section, governs
11 judicial review of a final decision in a contested case. Article 4 of this Chapter, as
12 modified by this section, governs judicial review of a Category II permit decision and of
13 a final decision for which the administrative remedy of a contested case is not available.

14 (b) Any person who seeks judicial review of a final decision in a contested case
15 must file a notice of appeal with the Court of Appeals within 30 days after the parties to
16 the case are served with a written copy of the decision. Any person who seeks judicial
17 review of a Category II permit decision must file a petition for review with the superior
18 court within 30 days after the Category II permit decision is issued. Any person
19 aggrieved by a final decision for which the administrative remedy of a contested case is
20 not available may obtain judicial review of the decision by filing a petition for review
21 with the superior court within 30 days after the final decision is issued.

22 (c) A petition for judicial review of a permit decision shall be dismissed unless the
23 petitioner is either:

24 (1) A person entitled to initiate a contested case or judicial review pursuant
25 to G.S. 150B-42.3(b) who either filed a contested case petition on the
26 decision or was a party to a contested case on the decision.

27 (2) A person aggrieved only as a result of the final decision in a contested
28 case on the decision.

29 (3) A person aggrieved by a Category II permit decision.

30 (d) On judicial review of a Category II permit decision or of a final decision for
31 which the administrative remedy of a contested case is not available, if the court
32 determines that the record on review is insufficient, the court shall remand the case for
33 additional fact-finding in a contested case pursuant to this section. Any person who seeks
34 judicial review of a final decision in a contested case on a Category II permit decision
35 that is remanded for additional fact-finding must file notice of appeal with the Court of
36 Appeals as provided in subsection (b) of this section.

37 (e) In an appeal to the Court of Appeals pursuant to this section, no bond shall be
38 required of the agency."

39 Sec. 3. G.S. 7A-29 reads as rewritten:

40 **"§ 7A-29. (V2) (Effective October 1, 1995) Appeals of right from certain** 41 **administrative agencies.**

42 (a) From any final order or decision of the North Carolina Utilities Commission
43 not governed by subsection (b) of this section, the Department of Human Resources

1 pursuant to G.S. 131E-188(b), the Commissioner of Banks pursuant to Articles 17 and
2 18, ~~and~~ and 18A, of Chapter 53 of the General Statutes, the Administrator of Savings
3 and Loans pursuant to Article 3A of Chapter 54B of the General Statutes, the North
4 Carolina Industrial Commission, the North Carolina State Bar pursuant to G.S. 84-28, the
5 Property Tax Commission pursuant to G.S. 105-290 and G.S. 105-342, the Board of State
6 Contract Appeals pursuant to G.S. 143-135.9, the Commissioner of Insurance pursuant to
7 G.S. 58-2-80, or the Secretary of Environment, Health, and Natural Resources under G.S.
8 104E-6.2, appeal as of right lies directly to the Court of Appeals. From any final decision
9 by an agency in a contested case under G.S. 150B-42.4, appeal as of right lies directly to
10 the Court of Appeals.

11 (b) From any final order or decision of the Utilities Commission in a general rate
12 case, appeal as of right lies directly to the Supreme Court."

13 Sec. 4. G.S. 74-50 reads as rewritten:

14 "**§ 74-50. Permits – General.**

15 (a) No operator shall engage in mining without having first obtained from the
16 Department an operating permit that covers the affected land and that has not been
17 terminated, revoked, suspended for the period in question, or otherwise become invalid.
18 ~~An operating permit may be modified from time to time to include land neighboring the affected~~
19 ~~land, in accordance with procedures set forth in G.S. 74-52.~~—A separate permit shall be
20 required for each mining operation that is not on land neighboring a mining operation for
21 which the operator has a valid permit. Permits shall be issued in accordance with Part 1A
22 of Article 7 of Chapter 143B of the General Statutes and this Article. In the event that
23 any provision of this Article conflicts with Part 1A of Article 7 of Chapter 143B of the
24 General Statutes, Part 1A of Article 7 of Chapter 143B of the General Statutes shall
25 control.

26 (b) ~~At the time of the application for a new mining permit or permit modifications~~
27 ~~that add owners of record of lands adjoining the permit boundaries, the operator shall~~
28 ~~make a reasonable effort, satisfactory to the Department, to notify all owners of record of~~
29 ~~land adjoining the proposed site, and to notify the chief administrative officer of the~~
30 ~~county or municipality in which the site is located that the operator intends to conduct a~~
31 ~~mining operation on the site in question. The notice shall inform the owners of record and~~
32 ~~chief administrative officers of the opportunity to submit written comments to the~~
33 ~~Department regarding the proposed mining operation and the opportunity to request a~~
34 ~~public hearing regarding the proposed mining operation. Requests for public hearing shall~~
35 ~~be made within 30 days of issuance of the notice.~~

36 (c) No permit shall become effective until the operator has deposited with the
37 Department an acceptable performance bond or other security pursuant to G.S. 74-54. If
38 at any time the bond or other security, or any part thereof, shall lapse for any reason other
39 than a release by the Department, and the lapsed bond or security is not replaced by the
40 operator within 30 days after notice of the lapse, the permit to which the lapsed bond or
41 security pertains shall be automatically revoked.

42 (d) An operating permit shall be granted for a period not exceeding 10 years. If the
43 mining operation terminates and the reclamation required under the approved reclamation

1 plan is completed prior to the end of the period, the permit shall terminate. Termination
2 of a permit shall not have the effect of relieving the operator of any obligations that the
3 operator has incurred under an approved reclamation plan or otherwise. Where the
4 mining operation itself has terminated, no permit shall be required in order to carry out
5 reclamation measures under the reclamation plan."

6 Sec. 5. G.S. 74-51 reads as rewritten:

7 **"§ 74-51. Permits – Application, granting, conditions.**

8 (a) Any operator desiring to engage in mining shall make written application to the
9 Department for a permit. The application shall be upon a form furnished by the
10 Department and shall fully state the information called for; in addition, the applicant may
11 be required to furnish any other information as may be deemed necessary by the
12 Department in order adequately to enforce this Article. The application shall be
13 accompanied by a reclamation plan that meets the requirements of G.S. 74-53. No permit
14 shall be issued until a reclamation plan has been approved by the Department. The
15 application shall be accompanied by a signed agreement, in a form specified by the
16 Department, that in the event a bond forfeiture is ordered pursuant to G.S. 74-59, the
17 Department and its representatives and contractors shall have the right to make whatever
18 entries on the land and to take whatever actions may be necessary in order to carry out
19 reclamation that the operator has failed to complete.

20 (b) Before deciding whether to grant a new permit, the Department shall circulate
21 copies of a notice of application for review and comment as it deems advisable. The
22 Department shall grant or deny the permit requested as expeditiously as possible, but in
23 no event later than 60 days after the application form and any relevant and material
24 supplemental information reasonably required shall have been filed with the Department,
25 or if a public hearing is held, within 30 days following the hearing and the filing of any
26 relevant and material supplemental information reasonably required by the Department.
27 Priority consideration shall be given to applicants who submit evidence that the mining
28 proposed will be for the purpose of supplying materials to the Board of Transportation.

29 (c) If the Department determines, based on public comment relevant to the
30 provisions of this Article, that significant public interest exists, the Department shall
31 conduct a public hearing on any application for a new mining permit or for permit
32 modifications that add owners of record of lands adjoining the permit boundaries. The
33 hearing shall be held before the Department reaches a final decision on the application,
34 and in making its determination, the Department shall give full consideration to all
35 comments submitted at the public hearing. The public hearing shall be held within 60
36 days of the end of the 30-day period within which any requests for the public hearing
37 shall be made.

38 (d) The Department may deny the permit upon finding:

- 39 (1) That any requirement of this ~~Article or any rule promulgated hereunder~~
40 Article, any rule adopted under this Article, or Part 1A of Article 7 of
41 Chapter 143B of the General Statutes will be violated by the proposed
42 operation;

- 1 (2) That the operation will have unduly adverse effects on potable
2 groundwater supplies, wildlife, or fresh water, estuarine, or marine
3 fisheries;
- 4 (3) That the operation will violate standards of air quality, surface water
5 quality, or groundwater quality that have been promulgated by the
6 Department;
- 7 (4) That the operation will constitute a direct and substantial physical
8 hazard to public health and safety or to a neighboring dwelling house,
9 school, church, hospital, commercial or industrial building, public road
10 or other public property, excluding matters relating to use of a public
11 road;
- 12 (5) That the operation will have a significantly adverse effect on the
13 purposes of a publicly owned park, forest or recreation area;
- 14 (6) That previous experience with similar operations indicates a substantial
15 possibility that the operation will result in substantial deposits of
16 sediment in stream beds or lakes, landslides, or acid water pollution; or
- 17 (7) That the applicant or any parent, subsidiary, or other affiliate of the
18 applicant or parent has not been in substantial compliance with this
19 Article, rules adopted under this Article, or other laws or rules of this
20 State for the protection of the environment or has not corrected all
21 violations that the applicant or any parent, subsidiary, or other affiliate
22 of the applicant or parent may have committed under this Article or
23 rules adopted under this Article and that resulted in:
- 24 a. Revocation of a permit,
25 b. Forfeiture of part or all of a bond or other security,
26 c. Conviction of a misdemeanor under G.S. 74-64,
27 d. Any other court order issued under G.S. 74-64, or
28 e. Final assessment of a civil penalty under G.S. 74-64.

29 (e) In the absence of any finding set out in subsection (d) of this section, or if
30 adverse effects are mitigated by the applicant as determined necessary by the
31 Department, a permit shall be granted.

32 (f) Any permit issued shall be expressly conditioned upon compliance with all
33 requirements of the approved reclamation plan for the operation and with any other
34 reasonable and appropriate requirements and safeguards that the Department determines
35 are necessary to assure that the operation will comply fully with the requirements and
36 objectives of this Article. These conditions may, among others, include a requirement of
37 visual screening, vegetative or otherwise, so as to screen the view of the operation from
38 public highways, public parks, or residential areas, where the Department finds screening
39 to be feasible and desirable. Violation of any conditions of the permit shall be treated as a
40 violation of this Article and shall constitute a basis for suspension or revocation of the
41 permit.

42 ~~(g) If the Department denies an application for a permit, the Department shall~~
43 ~~notify the operator in writing, stating the reasons for the denial and any modifications in~~

1 ~~the application that would make the application acceptable. The operator may thereupon~~
2 ~~modify and resubmit the application, or file an appeal as provided in G.S. 74-61.~~

3 (h) Upon approval of an application, the Department shall set the amount of the
4 performance bond or other security that is to be required pursuant to G.S. 74-54. The
5 operator shall have 60 days after the Department mails a notice of the required bond to
6 the operator in which to deposit the required bond or security with the Department. The
7 operating permit shall not be issued until receipt of this deposit.

8 (i) When one operator succeeds to the interest of another in any uncompleted
9 mining operation by virtue of a sale, lease, assignment, or otherwise, the Department may
10 release the first operator from the duties imposed upon the operator by this Article with
11 reference to the mining operation and transfer the permit to the successor operator;
12 provided, that both operators have complied with the requirements of this Article and that
13 the successor operator assumes the duties of the first operator with reference to
14 reclamation of the land and posts a suitable bond or other security."

15 Sec. 6. G.S. 74-61 reads as rewritten:

16 **"§ 74-61. Administrative and judicial review of decisions.**

17 ~~An applicant, permittee, or affected person may contest a decision of the Department~~
18 ~~to deny, suspend, modify, or revoke a permit or a reclamation plan, to refuse to release~~
19 ~~part or all of a bond or other security, or to assess a civil penalty by filing a petition for a~~
20 ~~contested case under G.S. 150B-23 within 30 days after the Department makes the~~
21 ~~decision.—~~Administrative and judicial review of a permit decision under this Article is
22 governed by Article 3B of Chapter 150B of the General Statutes. The Commission shall
23 make the final decision in a contested case under this section. ~~Article 4 of Chapter 150B~~
24 ~~of the General Statutes governs judicial review of a decision of the Commission."~~

25 Sec. 7. G.S. 130A-295 reads as rewritten:

26 **"§ 130A-295. Additional requirements for hazardous waste ~~facilities.~~ facilities;**
27 **hazardous waste facility permits.**

28 (a) An applicant for a permit for a hazardous waste facility shall satisfy the
29 Department that:

- 30 (1) Any hazardous waste facility constructed or operated by the applicant,
31 or any parent or subsidiary corporation if the applicant is a corporation,
32 has been operated in accordance, with sound waste management
33 practices and in substantial compliance with federal and state laws,
34 regulations and rules; and
35 (2) The applicant, or any parent or subsidiary corporation if the applicant is
36 a corporation, is financially qualified to operate the proposed hazardous
37 waste facility.

38 (b) An applicant for a permit for a hazardous waste facility shall satisfy the
39 Department that he has met the requirements of subsection (a) of this section before the
40 Department is required to otherwise review the application. In order to continue to hold a
41 permit under this Chapter, a permittee must remain financially qualified and must provide
42 any information requested by the Department to demonstrate that he continues to be
43 financially qualified.

1 (c) No permit for any new commercial hazardous waste treatment, storage, or
2 disposal facility shall be issued or become effective, and no permit for a commercial
3 hazardous waste treatment, storage, or disposal facility shall be modified until the
4 applicant has satisfied the Department that such facility is needed to meet the current or
5 projected hazardous waste management needs of this State or to comply with the terms of
6 any interstate agreement for the management of hazardous waste to which the State is a
7 party. The Commission shall adopt rules to implement this subsection.

8 (d) Permits for hazardous waste facilities shall be issued in accordance with Part
9 1A of Article 7 of Chapter 143B of the General Statutes and this Article. In the event
10 that any provision of this Article conflicts with Part 1A of Article 7 of Chapter 143B of
11 the General Statutes, Part 1A of Article 7 of Chapter 143B of the General Statutes shall
12 control.

13 (e) Administrative and judicial review of a hazardous waste facility permit
14 decision under this Article is governed by Article 3B of Chapter 150B of the General
15 Statutes."

16 Sec. 8. G.S. 143-215.1 reads as rewritten:

17 "**§ 143-215.1. Control of sources of water pollution; permits required.**

18 (a) Activities for Which Permits Required. – No person shall do any of the
19 following things or carry out any of the following activities until or unless such person
20 shall have applied for and shall have received from the Commission a permit therefor and
21 shall have complied with such conditions, if any, as are prescribed by such permit:

- 22 (1) Make any outlets or otherwise discharge any waste into the waters of
23 the State;
- 24 (2) Construct or operate any sewer system, treatment works, or disposal
25 system within the State;
- 26 (3) Alter, extend, or change the construction or method of operation of any
27 sewer system, treatment works, or disposal system within the State;
- 28 (4) Increase the quantity of waste discharged through any outlet or
29 processed in any treatment works or disposal system to any extent
30 which would result in any violation of the effluent standards or
31 limitations established for any point source or which would adversely
32 affect the condition of the receiving waters to the extent of violating any
33 of the standards applicable to such water;
- 34 (5) Change the nature of the waste discharged through any disposal system
35 in any way which would exceed the effluent standards or limitations
36 established for any point source or which would adversely affect the
37 condition of the receiving waters in relation to any of the standards
38 applicable to such waters;
- 39 (6) Cause or permit any waste, directly or indirectly, to be discharged to or
40 in any manner intermixed with the waters of the State in violation of the
41 water quality standards applicable to the assigned classifications or in
42 violation of any effluent standards or limitations established for any
43 point source, unless allowed as a condition of any permit, special order

1 or other appropriate instrument issued or entered into by the
2 Commission under the provisions of this Article;

3 (7) Cause or permit any wastes for which pretreatment is required by
4 pretreatment standards to be discharged, directly or indirectly, from a
5 pretreatment facility to any disposal system or to alter, extend or change
6 the construction or method of operation or increase the quantity or
7 change the nature of the waste discharged from or processed in such
8 facility;

9 (8) Enter into a contract for the construction and installation of any outlet,
10 sewer system, treatment works, pretreatment facility or disposal system
11 or for the alteration or extension of any such facilities;

12 (9) Dispose of sludge resulting from the operation of a treatment works,
13 including the removal of in-place sewage sludge from one location and
14 its deposit at another location, consistent with the requirement of the
15 Resource Conservation and Recovery Act and regulations promulgated
16 pursuant thereto;

17 (10) Cause or permit any pollutant to enter into a defined managed area of
18 the State's waters for the maintenance or production of harvestable
19 freshwater, estuarine, or marine plants or animals;

20 (11) Cause or permit discharges regulated under G.S. 143-214.7 which result
21 in water pollution.

22 (a1) Permits shall be issued in accordance with Part 1A of Article 7 of Chapter
23 143B of the General Statutes and this Article. In the event that any provision of this
24 Article conflicts with Part 1A of Article 7 of Chapter 143B of the General Statutes, Part
25 1A of Article 7 of Chapter 143B of the General Statutes shall control.

26 (a2) In the event that both effluent standards or limitations and classifications and
27 water quality standards are applicable to any point source or sources and to the waters to
28 which they discharge, the more stringent among the standards established by the
29 Commission shall be applicable and controlling.

30 (a3) In connection with the above, no such permit shall be granted for the disposal
31 of waste in waters classified as sources of public water supply where the head of the
32 agency which administers the public water supply program pursuant to Article 10 of
33 Chapter 130A of the General Statutes, after review of the plans and specifications for the
34 proposed disposal facility, determines and advises the Commission that such disposal is
35 sufficiently close to the intake works or proposed intake works of a public water supply
36 as to have an adverse effect on the public health.

37 (a4) In any case where the Commission denies a permit, it shall state in writing the
38 reason-specific reasons for such denial and shall also state the Commission's estimate the
39 denial, including a description of the changes in the applicant's proposed activities or plans
40 which will application, plans, or proposed activities that would be required in order that
41 the applicant may obtain a permit-permit, if a permit could be issued for the proposed
42 activity under the provisions of all applicable federal and State laws, regulations, and
43 rules.

1 ~~(a4)~~ (a5) The Department shall regulate wastewater systems under rules adopted by the
2 Commission for Health Services pursuant to Article 11 of Chapter 130A of the General
3 Statutes except as otherwise provided in this subsection. No permit shall be required
4 under this section for a wastewater system regulated under Article 11 of Chapter 130A of
5 the General Statutes. The following wastewater systems shall be regulated by the
6 Department under rules adopted by the Commission:

- 7 (1) Wastewater systems designed to discharge effluent to the land surface
8 or surface waters.
- 9 (2) Wastewater systems designed for groundwater remediation,
10 groundwater injection, or landfill leachate collection and disposal.
- 11 (3) Wastewater systems designed for the complete recycle or reuse of
12 industrial process wastewater.
- 13 (b) Commission's Power as to Permits. –
- 14 (1) The Commission shall act on all permits so as to prevent, so far as
15 reasonably possible, considering relevant standards under State and
16 federal laws, any significant increase in pollution of the waters of the
17 State from any new or enlarged sources. No permit shall be denied and
18 no condition shall be attached to the permit, except when the
19 Commission finds such denial or such conditions necessary to effectuate
20 the purposes of this Article.
- 21 (2) The Commission shall also act on all permits so as to prevent violation
22 of water quality standards due to the cumulative effects of permit
23 decisions. Cumulative effects are impacts attributable to the collective
24 effects of a number of projects and include the effects of additional
25 projects similar to the requested permit in areas available for
26 development in the vicinity. All permit decisions shall require that the
27 practicable waste treatment and disposal alternative with the least
28 adverse impact on the environment be utilized.
- 29 (3) General permits may be issued under rules adopted pursuant to Chapter
30 150B of the General Statutes. Such rules may provide that minor
31 activities may occur under a general permit issued in accordance with
32 conditions set out in such rules. All persons covered under general
33 permits shall be subject to all enforcement procedures and remedies
34 applicable under this Article.
- 35 (4) The Commission shall have the power:
- 36 a. To grant a permit with such conditions attached as the
37 Commission believes necessary to achieve the purposes of this
38 Article.
- 39 b. To require that an applicant satisfy the Department that the
40 applicant, or any parent, subsidiary, or other affiliate of the
41 applicant or parent:

- 1 1. Is financially qualified to carry out the activity for which
2 the permit is required under subsection (a) of this section;
3 and
- 4 2. Has substantially complied with the effluent standards and
5 limitations and waste management treatment practices
6 applicable to any activity in which the applicant has
7 previously engaged, and has been in substantial
8 compliance with other federal and state laws, regulations,
9 and rules for the protection of the environment.

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

- 13 c. To modify or revoke any permit upon not less than 60 days'
14 written notice to any person affected.
- 15 d. To designate certain classes of minor activities for which a
16 general permit may be issued, after considering:
 - 17 1. The environmental impact of the activities;
 - 18 2. How often the activities are carried out;
 - 19 3. The need for individual permit oversight; and
 - 20 4. The need for public review and comment on individual
21 permits.
- 22 e. To designate certain classes of minor activities for which:
 - 23 1. Performance conditions may be established by rule; and
 - 24 2. Individual or general permits are not required.

25 (b1) Repealed by Session Laws 1991, c. 156, s. 1.

26 (c) Applications for Permits and Renewals for Facilities Discharging to the
27 Surface Waters. –

- 28 (1) All applications for permits and for renewal of existing permits for
29 outlets and point sources and for treatment works and disposal systems
30 discharging to the surface waters of the State shall be in writing, and the
31 Commission may prescribe the form of such applications. All
32 applications shall be filed with the Commission at least 180 days in
33 advance of the date on which it is desired to commence the discharge of
34 wastes or the date on which an existing permit expires, as the case may
35 be. The Commission shall act on a permit application as quickly as
36 possible. The Commission may conduct any inquiry or investigation it
37 considers necessary before acting on an application and may require an
38 applicant to submit plans, specifications, and other information the
39 Commission considers necessary to evaluate the application.

- 40 (2) a. The Department shall refer each application for permit, or renewal of
41 an existing permit, for outlets and point sources and treatment works
42 and disposal systems discharging to the surface waters of the State to its
43 staff for written evaluation and proposed determination with regard to

1 issuance or denial of the permit. If the Commission concurs in the
2 proposed determination, it shall give notice of intent to issue or deny the
3 permit, along with any other data that the Commission may determine
4 appropriate, to be given to the appropriate State, interstate and federal
5 agencies, to interested persons, and to the public. The Commission shall
6 prescribe the form and content of the notice.

7 The notice required herein shall be given at least 45 days
8 prior to any proposed final action granting or denying the permit.

9 Public notice shall be given by publication of the notice one time
10 in a newspaper having general circulation within the county.

11 b. Repealed by Session Laws 1987, c. 734.

- 12 (3) If any person desires a public meeting on any application for permit or
13 renewal of an existing permit provided for in this subsection, he shall so
14 request in writing to the Commission within 30 days following date of
15 the notice of intent. The Commission shall consider all such requests for
16 meeting, and if the Commission determines that there is a significant
17 public interest in holding such meeting, at least 30 days' notice of such
18 meeting shall be given to all persons to whom notice of intent was sent
19 and to any other person requesting notice. At least 30 days prior to the
20 date of meeting, the Commission shall also cause a copy of the notice
21 thereof to be published at least one time in a newspaper having general
22 circulation in such county. In any county in which there is more than
23 one newspaper having general circulation in that county, the
24 Commission shall cause a copy of such notice to be published in as
25 many newspapers having general circulation in the county as the
26 Commission in its discretion determines may be necessary to assure that
27 such notice is generally available throughout the county. The
28 Commission shall prescribe the form and content of the notices.

29 The Commission shall prescribe the procedures to be followed in
30 such meetings. If the meeting is not conducted by the Commission,
31 detailed minutes of the meeting shall be kept and shall be submitted,
32 along with any other written comments, exhibits or documents
33 presented at the meeting, to the Commission for its consideration prior
34 to final action granting or denying the permit.

- 35 (4) Not later than 60 days following notice of intent or, if a public hearing is
36 held, within 90 days following consideration of the matters and things
37 presented at such hearing, the Commission shall grant or deny any
38 application for issuance of a new permit or for renewal of an existing
39 permit. All permits or renewals issued by the Commission and all
40 decisions denying application for permit or renewal shall be in writing.
- 41 (5) No permit issued pursuant to this subsection (c) shall be issued or
42 renewed for a term exceeding five years.

1 ~~(6) The Commission shall not act upon an application for a new~~
2 ~~nonmunicipal domestic wastewater discharge facility until it has~~
3 ~~received a written statement from each city and county government~~
4 ~~having jurisdiction over any part of the lands on which the proposed~~
5 ~~facility and its appurtenances are to be located which states whether the~~
6 ~~city or county has in effect a zoning or subdivision ordinance and, if~~
7 ~~such an ordinance is in effect, whether the proposed facility is consistent~~
8 ~~with the ordinance. The Commission shall not approve a permit~~
9 ~~application for any facility which a city or county has determined to be~~
10 ~~inconsistent with its zoning or subdivision ordinance unless it~~
11 ~~determines that the approval of such application has statewide~~
12 ~~significance and is in the best interest of the State. An applicant for a~~
13 ~~permit shall request that each city and county government having~~
14 ~~jurisdiction issue the statement required by this subdivision by mailing~~
15 ~~by certified mail, return receipt requested, a written request for such~~
16 ~~statement and a copy of the draft permit application to the clerk of the~~
17 ~~city or county. If a local government fails to mail the statement required~~
18 ~~by this subdivision, as evidenced by a postmark, within 15 days after~~
19 ~~receiving and signing for the certified mail, the Commission may~~
20 ~~proceed to consider the permit application notwithstanding this~~
21 ~~subdivision.~~

22 (d) Applications and Permits for Sewer Systems, Sewer System Extensions and
23 Pretreatment Facilities, Land Application of Waste, and for Wastewater Treatment
24 Facilities Not Discharging to the Surface Waters of the State. –

25 (1) All applications for new permits and for renewals of existing permits for
26 sewer systems, sewer system extensions and for disposal systems, and
27 for land application of waste, or treatment works which do not discharge
28 to the surface waters of the State, and all permits or renewals and
29 decisions denying any application for permit or renewal shall be in
30 writing. The Commission shall act on a permit application as quickly as
31 possible. The Commission may conduct any inquiry or investigation it
32 considers necessary before acting on an application and may require an
33 applicant to submit plans, specifications, and other information the
34 Commission considers necessary to evaluate the application. If the
35 Commission fails to act on an application for a permit, including a
36 renewal of a permit, within 90 days after the applicant submits all
37 information required by the Commission, the application is considered
38 to be approved. Permits and renewals issued in approving such facilities
39 pursuant to this subsection shall be effective until the date specified
40 therein or until rescinded unless modified or revoked by the
41 Commission. Local governmental units to whom pretreatment program
42 authority has been delegated shall establish, maintain, and provide to the
43 public, upon written request, a list of pretreatment applications received.

1 (2) An applicant for a permit to dispose of petroleum contaminated soil by
2 land application shall give written notice that he intends to apply for
3 such a permit to each city and county government having jurisdiction
4 over any part of the land on which disposal is proposed to occur. The
5 Commission shall not accept such a permit application unless it is
6 accompanied by a copy of the notice and evidence that the notice was
7 sent to each such government by certified mail, return receipt requested.
8 The Commission may consider, in determining whether to issue the
9 permit, the comments submitted by local governments.

10 (d1) Each applicant under subsections (c) or (d) for a permit (or the renewal
11 thereof) for the operation of a treatment works for a private multi-family or single family
12 residential development, in which the owners of individual residential units are required
13 to organize as a lawfully constituted and incorporated homeowners' association of a
14 subdivision, condominium, planned unit development, or townhouse complex, shall be
15 required to enter into an operational agreement with the Commission as a condition of
16 any such permit granted. The agreement shall address, as necessary, construction,
17 operation, maintenance, assurance of financial solvency, transfers of ownership and
18 abandonment of the plant, systems, or works, and shall be modified as necessary to
19 reflect any changed condition at the treatment plant or in the development. Where the
20 Commission finds appropriate, it may require any other private residential subdivision,
21 condominium, planned unit development or townhouse complex which is served by a
22 private treatment works and does not have a lawfully constituted and incorporated
23 homeowners' association, and for which an applicant applies for a permit or the renewal
24 thereof under subsections (c) or (d), to incorporate as a lawfully constituted homeowners'
25 association, and after such incorporation, to enter into an operational agreement with the
26 Commission and the applicant as a condition of any permit granted under subsections (c)
27 or (d). The local government unit or units having jurisdiction over the development shall
28 receive notice of the application within an established comment period and prior to final
29 decision.

30 (e) Administrative Review. — ~~A permit applicant or permittee who is dissatisfied~~
31 ~~with a decision of the Commission may commence a contested case by filing a petition~~
32 ~~under G.S. 150B-23 within 30 days after the Commission notifies the applicant or~~
33 ~~permittee of its decision. If the permit applicant or permittee does not file a petition~~
34 ~~within the required time, the Commission's decision is final and is not subject to review.~~
35 Administrative review of a permit decision under this Article is governed by Article 3B
36 of Chapter 150B of the General Statutes.

37 (f) Local Permit Programs for Sewer Extension. – Municipalities, counties, local
38 boards or commissions, water and sewer authorities, or groups of municipalities and
39 counties may establish and administer within their utility service areas their own general
40 permit programs in lieu of State permit required in G.S. 143-215.1(a)(2), (3), and (8)
41 above, for construction, operation, alteration, extension, change of proposed or existing
42 sewer system, subject to the prior certification of the Commission. For purposes of this
43 subsection, the service area of a municipality shall include only that area within the

1 corporate limits of the municipality and that area outside a municipality in its
2 extraterritorial jurisdiction where sewer service is already being provided by the
3 municipality to the permit applicant or connection to the municipal sewer system is
4 immediately available to the applicant; the service areas of counties and the other entities
5 or groups shall include only those areas where sewer service is already being provided to
6 the applicant by the permitting authority or connection to the permitting authority's
7 system is immediately available. No later than the 180th day after the receipt of a
8 program and statement submitted by any local government, commission, authority, or
9 board the Commission shall certify any local program that:

- 10 (1) Provides by ordinance or local law for requirements compatible with
11 those imposed by this Part and the rules implementing this Part;
- 12 (2) Provides that the Department receives notice and a copy of each
13 application for a permit and that it receives copies of approved permits
14 and plans upon request by the Commission;
- 15 (3) Provides that plans and specifications for all construction, extensions,
16 alterations, and changes be prepared by or under the direct supervision
17 of an engineer licensed to practice in this State;
- 18 (4) Provides for the adequate enforcement of the program requirements by
19 appropriate administrative and judicial process;
- 20 (5) Provides for the adequate administrative organization, engineering staff,
21 financial and other resources necessary to effectively carry out its plan
22 review program;
- 23 (6) Provides that the system is capable of interconnection at an appropriate
24 time with an expanding municipal, county, or regional system;
- 25 (7) Provides for the adequate arrangement for the continued operation,
26 service, and maintenance of the sewer system; and
- 27 (8) Is approved by the Commission as adequate to meet the requirements of
28 this Part and the rules implementing this Part.

29 The Commission may deny, suspend, or revoke certification of a local program upon
30 a finding that a violation of the provisions in subsection (f) of this section has
31 occurred. A denial, suspension, or revocation of a certification of a local program shall be
32 made only after notice and a public hearing. If the failure of a local program to carry out
33 this subsection creates an imminent hazard, the Commission may summarily revoke the
34 certification of the local program. Chapter 150B of the General Statutes does not apply to
35 proceedings under this subsection.

36 Notwithstanding any other provision of this subsection, if the Commission determines
37 that a sewer system, treatment works, or disposal system is operating in violation of the
38 provisions of this Article and that the appropriate local authorities have not acted to
39 enforce those provisions, the Commission may, after written notice to the appropriate
40 local government, take enforcement action in accordance with the provisions of this
41 Article.

42 (g) Any person who is required to hold a permit under this section shall submit to
43 the Department a written description of his current and projected plans to reduce the

1 discharge of waste and pollutants under such permit by source reduction or recycling.
2 The written description shall accompany the payment of the annual permit fee. The
3 written description shall also accompany any application for a new permit, or for
4 modification of an existing permit, under this section. The written description required by
5 this subsection shall not be considered part of a permit application and shall not serve as
6 the basis for the denial of a permit or permit modification."

7 Sec. 9. G.S. 143-215.5 reads as rewritten:

8 **"§ 143-215.5. Judicial review.**

9 (a) ~~Article 4 of Chapter 150B of the General Statutes governs judicial review of a~~
10 ~~final agency decision or order of the Secretary or of the Commission under this Article~~
11 ~~and Articles 21A and 21B of this Chapter. If a case that concerns an action of the~~
12 ~~Secretary or of the Commission under this Article or Article 21A or 21B of this Chapter~~
13 ~~is appealed from the superior court to the Appellate Division of the General Court of~~
14 ~~Justice, no bond shall be required of the Secretary or of the Commission. Judicial review~~
15 ~~of a permit decision under this Article is governed by Article 3B of Chapter 150B of the~~
16 ~~General Statutes.~~

17 (b) ~~A person aggrieved, as defined in G.S. 150B-2, other than the applicant or~~
18 ~~permittee, who seeks judicial review of a final agency decision on an application for a~~
19 ~~permit required under Title V shall file a petition for judicial review under G.S. 150B-45~~
20 ~~within 30 days after public notice of the final agency decision is given as provided in~~
21 ~~rules adopted by the Commission pursuant to G.S. 143-215.4(b)(3). A permit applicant,~~
22 ~~permittee, or other person aggrieved who seeks judicial review of a failure of the~~
23 ~~Commission to act within the time specified in rules adopted pursuant to G.S. 143-~~
24 ~~215.108(d)(2) on an application for a permit required by Title V or G.S. 143-215.108~~
25 ~~shall file a petition for judicial review under G.S. 150B-45 within 30 days after the~~
26 ~~expiration of the time specified for action on the application."~~

27 Sec. 10. G.S. 143-215.108 reads as rewritten:

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

29 (a) After the effective date applicable to any air quality or emission control
30 standards established pursuant to G.S. 143-215.107 and except as provided in subsections
31 (a1) and (a2) of this section, no person shall do any of the following things or carry out
32 any of the following activities which contravene or will be likely to contravene such
33 standards until or unless such person shall have applied for and shall have received from
34 the Commission a permit therefor and shall have complied with such conditions, if any,
35 as are prescribed by such permit:

- 36 (1) Establish or operate any air contaminant source;
- 37 (2) Build, erect, use or operate any equipment which may result in the
38 emission of air contaminants or which is likely to cause air pollution;
- 39 (3) Alter or change the construction or method of operation of any
40 equipment or process from which air contaminants are or may be
41 emitted;

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

4 (a1) The Commission may by rule establish procedures that meet the requirements
5 of section 502(b)(10) of Title V (42 U.S.C. § 7661a(b)(10)) and 40 Code of Federal
6 Regulations § 70.4(b)(12) (1 July 1993 Edition) to allow a permittee to make changes
7 within a permitted facility without requiring a revision of the permit.

8 (a2) The Commission may adopt rules that provide for a minor modification of a
9 permit. At a minimum, rules that provide for a minor modification of a permit shall meet
10 the requirements of 40 Code of Federal Regulations § 70.7(e)(2) (1 July 1993 Edition). If
11 the Commission adopts rules that provide for a minor modification of a permit, a
12 permittee shall not make a change in the permitted facility while the application for the
13 minor modification is under review unless the change is authorized under the rules
14 adopted by the Commission.

15 (a3) Permits shall be issued in accordance with Part 1A of Article 7 of Chapter
16 143B of the General Statutes and this Article. In the event that any provision of this
17 Article conflicts with Part 1A of Article 7 of Chapter 143B of the General Statutes, Part
18 1A of Article 7 of Chapter 143B of the General Statutes shall control.

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

23 (c) The Commission shall have the power:

24 (1) To grant and renew a permit with such conditions attached as the
25 Commission believes necessary to achieve the purposes of this section
26 or the requirements of the Clean Air Act and implementing regulations
27 adopted by the United States Environmental Protection Agency;

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

32 (3) To terminate, modify, or revoke and reissue any permit upon not less
33 than 60 days' written notice to any person affected;

34 (3a) To suspend any permit pursuant to the provisions of G.S. 150B-3(c);

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

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

41 (5a) To require that an applicant satisfy the Department that the applicant, or
42 any parent, subsidiary, or other affiliate of the applicant or parent:

- 1 a. Is financially qualified to carry out the activity for which a permit
2 is required under subsection (a); and
3 b. Has substantially complied with the air quality and emission
4 control standards applicable to any activity in which the applicant
5 has previously engaged, and has been in substantial compliance
6 with federal and state laws, regulations, and rules for the
7 protection of the environment.

8 As used in this subdivision, the words 'affiliate,' 'parent,' and 'subsidiary'
9 have the same meaning as in 17 Code of Federal Regulations § 240.12b-
10 2 (1 April 1990 Edition);

- 11 (6) To adopt rules, as it deems necessary, establishing the form of
12 applications and permits and procedures for the granting or denial of
13 permits and renewals pursuant to this section; and all permits, renewals
14 and denials shall be in writing;
- 15 (7) To prohibit any stationary source within the State from emitting any air
16 pollutant in amounts that will prevent attainment or maintenance by any
17 other state of any national ambient air quality standard or that will
18 interfere with measures required to be included in the applicable
19 implementation plan for any other state to prevent deterioration of air
20 quality or protect visibility; and
- 21 (8) To designate certain classes of activities for which a general permit may
22 be issued, after considering the environmental impact of an activity, the
23 frequency of the activity, the need for individual permit oversight, and
24 the need for public review and comment on individual permits.
- 25 (d) (1) The Commission may conduct any inquiry or investigation it
26 considers necessary before acting on an application and may require
27 an applicant to submit plans, specifications, and other information the
28 Commission considers necessary to evaluate the application. A
29 permit application may not be deemed complete unless it is
30 accompanied by a copy of the request for determination as provided in
31 ~~subsection (f) of this section~~ G.S. 143B-279.13 that bears a date of
32 receipt entered by the clerk of the local government and until the 15-
33 day period for issuance of a determination has elapsed.
- 34 (2) The Commission shall adopt rules specifying the times within which it
35 must act upon applications for permits required by Title V and other
36 permits required by this section. The times specified shall be extended
37 for the period during which the Commission is prohibited from issuing a
38 permit under subdivisions (3) and (4) of this subsection. The
39 Commission shall inform a permit applicant as to whether or not the
40 application is complete within the time specified in the rules for action
41 on the application. If the Commission fails to act on an application for a
42 permit required by Title V or this section within the time period
43 specified, the failure to act on the application constitutes a final agency

1 decision to deny the permit. A permit applicant, permittee, or other
2 person aggrieved, as defined in G.S. 150B-2, may seek judicial review
3 of a failure to act on the application as provided in G.S. ~~143-215.5 and~~
4 ~~Article 4 of Chapter 150B of the General Statutes.~~ 143-215.5.
5 Notwithstanding the provisions of G.S. 150B-51, upon review of a
6 failure to act on an application for a permit required by Title V or this
7 section, a court may either: (i) affirm the denial of the permit or (ii)
8 remand the application to the Commission for action upon the
9 application within a specified time.

10 (3) If the Administrator of the United States Environmental Protection
11 Agency validly objects to the issuance of a permit required by Title V
12 within 45 days after the Administrator receives the proposed permit and
13 the required portions of the permit application, the Commission shall
14 not issue the permit until the Commission revises the proposed permit to
15 meet all objections noted by the Administrator or otherwise satisfies all
16 objections consistent with Title V and implementing regulations
17 adopted by the United States Environmental Protection Agency.

18 (4) If the Administrator of the United States Environmental Protection
19 Agency validly objects to the issuance of a permit required by Title V
20 after the expiration of the 45-day review period specified in subdivision
21 (3) of this subsection as a result of a petition filed pursuant to section
22 505(b)(2) of Title V (42 U.S.C. § 7661d(b)(2)) and prior to the issuance
23 of the permit by the Commission, the Commission shall not issue the
24 permit until the Commission revises the proposed permit to meet all
25 objections noted by the Administrator or otherwise satisfies all
26 objections consistent with Title V and implementing regulations
27 adopted by the United States Environmental Protection Agency.

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

30 (e) ~~A permit applicant or permittee who is dissatisfied with a decision of the~~
31 ~~Commission may commence a contested case by filing a petition under G.S. 150B-23~~
32 ~~within 30 days after the Commission notifies the applicant or permittee of its decision. If~~
33 ~~the permit applicant or permittee does not file a petition within the required time, the~~
34 ~~Commission's decision on the application is final and is not subject to review.~~
35 Administrative and judicial review of a permit decision under this Article is governed by
36 Article 3B of Chapter 150B of the General Statutes.

37 (f) ~~An applicant for a permit under this section for a new facility or for the~~
38 ~~expansion of a facility permitted under this section shall request each local government~~
39 ~~having jurisdiction over any part of the land on which the facility and its appurtenances~~
40 ~~are to be located to issue a determination as to whether the local government has in effect~~
41 ~~a zoning or subdivision ordinance applicable to the facility and whether the proposed~~
42 ~~facility would be consistent with the ordinance. The request to the local government~~
43 ~~shall be accompanied by a copy of the draft permit application and shall be delivered to~~

1 the clerk of the local government personally or by certified mail. The determination shall
2 be verified or supported by affidavit signed by the official designated by the local
3 government to make the determination and, if the local government states that the facility
4 is inconsistent with a zoning or subdivision ordinance, shall include a copy of the
5 ordinance and the specific reasons for the determination of inconsistency. A copy of any
6 such determination shall be provided to the applicant when it is submitted to the
7 Commission. The Commission shall not act upon an application for a permit under this
8 section until it has received a determination from each local government requested to
9 make a determination by the applicant. Unless the local government makes a subsequent
10 determination of consistency with all ordinances cited in the determination or the
11 proposed facility is determined by a court of competent jurisdiction to be consistent with
12 the cited ordinances, the Commission shall attach as a condition of the permit a
13 requirement that the applicant, prior to construction or operation of the facility under the
14 permit, comply with all lawfully adopted local ordinances, including those cited in the
15 determination, that apply to the facility at the time of construction or operation of the
16 facility. If a local government fails to submit a determination to the Commission as
17 provided by this subsection within 15 days after receipt of the request, the Commission
18 may proceed to consider the permit application without regard to local zoning and
19 subdivision ordinances. This subsection shall not be construed to limit any opportunity a
20 local government may have to comment on a permit application under any other law or
21 rule. This subsection shall not apply to any facility with respect to which local
22 ordinances are subject to review under either G.S. 104E-6.2 or G.S. 130A-293.

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

31 Sec. 11. This act becomes effective 1 January 1996, and applies to an
32 application for a new permit, a modification of an existing permit, or a reissuance or
33 renewal of an existing permit filed on or after that date.