

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

S

1

SENATE BILL 860\*

Short Title: Expedite Environmental Permitting.

(Public)

---

Sponsors: Senator Blackmon.

---

Referred to: Agriculture/Environment/Natural Resources

---

April 26, 1995

A BILL TO BE ENTITLED

1  
2 AN ACT TO EXPEDITE THE ENVIRONMENTAL PERMITTING PROCESS BY  
3 ALLOWING THE OPTION OF SUBMITTING PERMIT APPLICATIONS  
4 CERTIFIED BY A PROFESSIONAL ENGINEER AND ALLOWING THESE  
5 APPLICATIONS TO BE IMMEDIATELY SENT TO PUBLIC NOTICE AND  
6 HEARING AND SUBJECTED TO SIMULTANEOUS TECHNICAL REVIEW.

7 The General Assembly of North Carolina enacts:

8 Section 1. The General Assembly finds that the increasing complexity of  
9 environmental laws and rules have made the environmental permitting process  
10 increasingly lengthy and that there are instances where it would be appropriate and  
11 beneficial to allow an applicant for an environmental permit the option of submitting an  
12 application that meets certain additional standards, which application may be handled  
13 expeditiously through the use of immediate notice and public hearing and simultaneous  
14 and timely technical review within the Department of Environment, Health, and Natural  
15 Resources.

16 Sec. 2. G.S. 143-215.1 is amended by adding two new subsections to read:

17 "(h) Expedited Review of Applications Certified by a Professional Engineer. – The  
18 Commission shall adopt rules governing the submittal of permit applications certified by  
19 a professional engineer, including draft permits, that can be sent to public notice and  
20 hearing immediately upon receipt and subjected to technical review by personnel within

1 the Department. These rules shall specify, at a minimum, any forms to be used; a  
2 checklist for applicants that lists all items of information required to prepare a complete  
3 permit application; the form of the certification required on the application by a  
4 professional engineer; and the information that must be included in the draft permit. The  
5 Department shall process any application submitted with such certification as follows:

6 (1) Immediate Initiation of Review. Upon receipt of an application certified  
7 by a professional engineer in accordance with this subsection and the  
8 rules adopted pursuant to this subsection and upon a determination that  
9 the application is complete pursuant to subdivision (2) of this  
10 subsection, the Department shall immediately:

- 11 a. Publish any required notices, using the draft permit included with  
12 the application;  
13 b. Schedule any required public meetings or hearings on the  
14 application and permit; and  
15 c. Initiate any and all technical review of the application in a  
16 manner to ensure substantial completion of the technical review  
17 by the time of any public hearing on the application, or if there is  
18 no hearing, by the close of the notice period.

19 (2) Completeness Review. Within 10 working days of receipt of the permit  
20 application certified by a professional engineer under this subsection,  
21 the Department shall determine whether the application is complete for  
22 purposes of this subsection. The Department shall determine whether  
23 the permit application certified by a professional engineer is complete  
24 by comparing the information provided in the application with the  
25 checklist contained in the rules adopted by the Commission pursuant to  
26 this subsection.

- 27 a. If the application is not complete, the Department shall promptly  
28 notify the applicant in writing of all deficiencies of the  
29 application, specifying the items that need to be included,  
30 modified, or supplemented in order to make the application  
31 complete, and the 10-day time period is suspended after this  
32 request for further information. If the applicant submits the  
33 requested information within the time specified, the application  
34 shall be considered with no delay in the review process, and the  
35 10-day time period shall be resumed on the day the additional  
36 information was requested. If the additional information is not  
37 submitted within the time periods specified, the Department shall  
38 return the application to the applicant, and the applicant may treat  
39 the return of the application as a denial of the application or may  
40 resubmit the application at a later time.

- 41 b. If the Department fails to notify the applicant that an application  
42 is not complete within the time period set forth in this subsection,  
43 the application shall be deemed to be complete.

- 1           (3) Time for Permit Decision. For any application found to be complete  
2 under subdivision (2) of this subsection, the Department shall issue a  
3 permit decision within 60 days of the last day of any public hearing on  
4 the application, or if there is no hearing, within 60 days of the close of  
5 the notice period.
- 6           (4) Rights if Permit Decision Not Made in Timely Fashion. If the  
7 Department fails to issue a permit decision within the time periods  
8 specified in subdivision (3) of this subsection, the applicant may take  
9 any of the following actions:
- 10           a. Take no action, thereby consenting to the continued review of the  
11 application;
- 12           b. Treat the action as a denial of the application and appeal the  
13 denial under Article 3 of Chapter 150B of the General Statutes;  
14 or
- 15           c. Appeal the denial directly to superior court under Article 4 of  
16 Chapter 150B of the General Statutes without the need to file a  
17 contested case.
- 18           (5) Liability. For any application found to be complete under subdivision  
19 (2) of this subsection that the Department approves by granting the  
20 permit substantially in the form submitted by the applicant without  
21 requiring any changes, any liability for such permit review shall be  
22 solely on the applicant and the professional engineer who certified the  
23 application.
- 24           (6) Power to Halt Review. At any time after the permit application certified  
25 by a professional engineer has been determined to be complete under  
26 subdivision (2) of this subsection, the Department may immediately  
27 terminate review of that application, including technical review and any  
28 hearings or meetings scheduled on the application, upon a determination  
29 of one of the following:
- 30           a. The permit application is not in substantial compliance with the  
31 applicable rules; or
- 32           b. The applicant failed to pay all permit application fees.
- 33           (7) Rights if Review Halted. If the Department terminates review of an  
34 application under subdivision (6) of this subsection, the applicant may  
35 take any of the following actions:
- 36           a. Revise and resubmit the application;
- 37           b. Treat the action as a denial of the application and appeal the  
38 denial under Article 3 of Chapter 150B of the General Statutes;  
39 or
- 40           c. Appeal the denial directly to superior court under Article 4 of  
41 Chapter 150B of the General Statutes without the need to file a  
42 contested case.

1           (8) Option; No Fee. The submittal of a permit application certified by a  
2 professional engineer to be considered under this subsection shall be an  
3 option and shall not be required of any applicant. The Department shall  
4 not impose any additional fees for the receipt or processing of a permit  
5 application certified by a professional engineer.

6           (i) Rules for Review of Applications Other Than Those Certified by a  
7 Professional Engineer. – The Commission shall adopt rules governing the times of  
8 review for all permit applications submitted pursuant to this section other than those  
9 certified by a professional engineer pursuant to subsection (h) of this section. Those rules  
10 shall specify maximum times for, among other things, the following actions in reviewing  
11 the permit applications covered by this subsection:

12           (1) Determining that the permit application is complete;

13           (2) Requesting additional information to determine completeness;

14           (3) Determining that additional information is needed to conduct a technical  
15 review of the application;

16           (4) Completing all technical review of the permit application;

17           (5) Holding and completing all public meetings and hearings required for  
18 the application;

19           (6) Completing the record from reviewing and acting on the application;  
20 and

21           (7) Taking final action on the permit, including granting or denying the  
22 application."

23           Sec. 3. G.S. 143-215.108 is amended by adding two new subsections to read:

24           "(h) Expedited Review of Applications Certified by a Professional Engineer. – The  
25 Commission shall adopt rules governing the submittal of permit applications certified by  
26 a professional engineer, including draft permits, that can be sent to public notice and  
27 hearing immediately upon receipt and subjected to technical review by personnel within  
28 the Department. These rules shall specify, at a minimum, any forms to be used; a  
29 checklist for applicants that lists all items of information required to prepare a complete  
30 permit application; the form of the certification required on the application by a  
31 professional engineer; and the information that must be included in the draft permit. The  
32 Department shall process any application submitted with such certification as follows:

33           (1) Immediate Initiation of Review. Upon receipt of an application certified  
34 by a professional engineer in accordance with this subsection and the  
35 rules adopted pursuant to this subsection and upon a determination that  
36 the application is complete pursuant to subdivision (2) of this  
37 subsection, the Department shall immediately:

38           a. Publish any required notices, using the draft permit included with  
39 the application;

40           b. Schedule any required public meetings or hearings on the  
41 application and permit; and

42           c. Initiate any and all technical review of the application in a  
43 manner to ensure substantial completion of the technical review

1                    by the time of any public hearing on the application, or if there is  
2                    no hearing, by the close of the notice period.

3            (2) Completeness Review. Within 10 working days of receipt of the permit  
4            application certified by a professional engineer under this subsection,  
5            the Department shall determine whether the application is complete for  
6            purposes of this subsection. The Department shall determine whether  
7            the permit application certified by a professional engineer is complete  
8            by comparing the information provided in the application with the  
9            checklist contained in the rules adopted by the Commission pursuant to  
10           this subsection.

11           a. If the application is not complete, the Department shall promptly  
12           notify the applicant in writing of all deficiencies of the  
13           application, specifying the items that need to be included,  
14           modified, or supplemented in order to make the application  
15           complete, and the 10-day time period is suspended after this  
16           request for further information. If the applicant submits the  
17           requested information within the time specified, the application  
18           shall be considered with no delay in the review process, and the  
19           10-day time period shall be resumed on the day the additional  
20           information was requested. If the additional information is not  
21           submitted within the time periods specified, the Department shall  
22           return the application to the applicant, and the applicant may treat  
23           the return of the application as a denial of the application or may  
24           resubmit the application at a later time.

25           b. If the Department fails to notify the applicant that an application  
26           is not complete within the time period set forth in this subsection,  
27           the application shall be deemed to be complete.

28           (3) Time for Permit Decision. For any application found to be complete  
29           under subdivision (2) of this subsection, the Department shall issue a  
30           permit decision within 60 days of the last day of any public hearing on  
31           the application, or if there is no hearing, within 60 days of the close of  
32           the notice period.

33           (4) Rights if Permit Decision Not Made in Timely Fashion. If the  
34           Department fails to issue a permit decision within the time periods  
35           specified in subdivision (3) of this subsection, the applicant may take  
36           any of the following actions:

37           a. Take no action, thereby consenting to the continued review of the  
38           application;

39           b. Treat the action as a denial of the application and appeal the  
40           denial under Article 3 of Chapter 150B of the General Statutes;  
41           or

- 1           c.     Appeal the denial directly to superior court under Article 4 of  
2                 Chapter 150B of the General Statutes without the need to file a  
3                 contested case.
- 4       (5)   Liability. For any application found to be complete under subdivision  
5                 (2) of this subsection that the Department approves by granting the  
6                 permit substantially in the form submitted by the applicant without  
7                 requiring any changes, any liability for such permit review shall be  
8                 solely on the applicant and the professional engineer who certified the  
9                 application.
- 10       (6)   Power to Halt Review. At any time after the permit application certified  
11                 by a professional engineer has been determined to be complete under  
12                 subdivision (2) of this subsection, the Department may immediately  
13                 terminate review of that application, including technical review and any  
14                 hearings or meetings scheduled on the application, upon a determination  
15                 of one of the following:
- 16                 a.     The permit application is not in substantial compliance with the  
17                         applicable rules; or
- 18                 b.     The applicant failed to pay all permit application fees.
- 19       (7)   Rights if Review Halted. If the Department terminates review of an  
20                 application under subdivision (6) of this subsection, the applicant may  
21                 take any of the following actions:
- 22                 a.     Revise and resubmit the application;
- 23                 b.     Treat the action as a denial of the application and appeal the  
24                         denial under Article 3 of Chapter 150B of the General Statutes;  
25                         or
- 26                 c.     Appeal the denial directly to superior court under Article 4 of  
27                         Chapter 150B of the General Statutes without the need to file a  
28                         contested case.
- 29       (8)   Option; No Fee. The submittal of a permit application certified by a  
30                 professional engineer to be considered under this subsection shall be an  
31                 option and shall not be required of any applicant. The Department shall  
32                 not impose any additional fees for the receipt or processing of a permit  
33                 application certified by a professional engineer.
- 34       (i)   Rules for Review of Applications Other Than Those Certified by a  
35                 Professional Engineer. – The Commission shall adopt rules governing the times of review  
36                 for all permit applications submitted pursuant to this section other than those certified by  
37                 a professional engineer pursuant to subsection (h) of this section. Those rules shall  
38                 specify maximum times for, among other things, the following actions in reviewing the  
39                 permit applications covered by this subsection:
- 40                 (1)   Determining that the permit application is complete;
- 41                 (2)   Requesting additional information to determine completeness;
- 42                 (3)   Determining that additional information is needed to conduct a technical  
43                         review of the application;

- 1           (4) Completing all technical review of the permit application;
- 2           (5) Holding and completing all public meetings and hearings required for
- 3           the application;
- 4           (6) Completing the record from reviewing and acting on the application;
- 5           and
- 6           (7) Taking final action on the permit, including granting or denying the
- 7           application."

8           Sec. 4. G.S. 130A-295 is amended by adding two new subsections to read:

9           "(d) Expedited Review of Applications Certified by a Professional Engineer. – The

10 Commission shall adopt rules governing the submittal of permit applications certified by

11 a professional engineer, including draft permits, that can be sent to public notice and

12 hearing immediately upon receipt and subjected to technical review by personnel within

13 the Department. These rules shall specify, at a minimum, any forms to be used; a

14 checklist for applicants that lists all items of information required to prepare a complete

15 permit application; the form of the certification required on the application by a

16 professional engineer; and the information that must be included in the draft permit. The

17 Department shall process any application submitted with such certification as follows:

- 18           (1) Immediate Initiation of Review. Upon receipt of an application certified
- 19           by a professional engineer in accordance with this subsection and the
- 20           rules adopted pursuant to this subsection and upon a determination that
- 21           the application is complete pursuant to subdivision (2) of this
- 22           subsection, the Department shall immediately:
  - 23           a. Publish any required notices, using the draft permit included with
  - 24           the application;
  - 25           b. Schedule any required public meetings or hearings on the
  - 26           application and permit; and
  - 27           c. Initiate any and all technical review of the application in a
  - 28           manner to ensure substantial completion of the technical review
  - 29           by the time of any public hearing on the application, or if there is
  - 30           no hearing, by the close of the notice period.
- 31           (2) Completeness Review. Within 10 working days of receipt of the permit
- 32           application certified by a professional engineer under this subsection,
- 33           the Department shall determine whether the application is complete for
- 34           purposes of this subsection. The Department shall determine whether
- 35           the permit application certified by a professional engineer is complete
- 36           by comparing the information provided in the application with the
- 37           checklist contained in the rules adopted by the Commission pursuant to
- 38           this subsection.
  - 39           a. If the application is not complete, the Department shall promptly
  - 40           notify the applicant in writing of all deficiencies of the
  - 41           application, specifying the items that need to be included,
  - 42           modified, or supplemented in order to make the application
  - 43           complete, and the 10-day time period is suspended after this

1           request for further information. If the applicant submits the  
2           requested information within the time specified, the application  
3           shall be considered with no delay in the review process, and the  
4           10-day time period shall be resumed on the day the additional  
5           information was requested. If the additional information is not  
6           submitted within the time periods specified, the Department shall  
7           return the application to the applicant, and the applicant may treat  
8           the return of the application as a denial of the application or may  
9           resubmit the application at a later time.

10           b. If the Department fails to notify the applicant that an application  
11           is not complete within the time period set forth in this subsection,  
12           the application shall be deemed to be complete.

13           (3) Time for Permit Decision. For any application found to be complete  
14           under subdivision (2) of this subsection, the Department shall issue a  
15           permit decision within 60 days of the last day of any public hearing on  
16           the application, or if there is no hearing, within 60 days of the close of  
17           the notice period.

18           (4) Rights if Permit Decision Not Made in Timely Fashion. If the  
19           Department fails to issue a permit decision within the time periods  
20           specified in subdivision (3) of this subsection, the applicant may take  
21           any of the following actions:

22           a. Take no action, thereby consenting to the continued review of the  
23           application;

24           b. Treat the action as a denial of the application and appeal the  
25           denial under Article 3 of Chapter 150B of the General Statutes;  
26           or

27           c. Appeal the denial directly to superior court under Article 4 of  
28           Chapter 150B of the General Statutes without the need to file a  
29           contested case.

30           (5) Liability. For any application found to be complete under subdivision  
31           (2) of this subsection that the Department approves by granting the  
32           permit substantially in the form submitted by the applicant without  
33           requiring any changes, any liability for such permit review shall be  
34           solely on the applicant and the professional engineer who certified the  
35           application.

36           (6) Power to Halt Review. At any time after the permit application certified  
37           by a professional engineer has been determined to be complete under  
38           subdivision (2) of this subsection, the Department may immediately  
39           terminate review of that application, including technical review and any  
40           hearings or meetings scheduled on the application, upon a determination  
41           of one of the following:

42           a. The permit application is not in substantial compliance with the  
43           applicable rules; or



1           b.     The applicant failed to pay all permit application fees.

2           (7)   Rights if Review Halted. If the Department terminates review of an  
3           application under subdivision (6) of this subsection, the applicant may  
4           take any of the following actions:

5           a.     Revise and resubmit the application;

6           b.     Treat the action as a denial of the application and appeal the  
7           denial under Article 3 of Chapter 150B of the General Statutes;

8           or

9           c.     Appeal the denial directly to superior court under Article 4 of  
10           Chapter 150B of the General Statutes without the need to file a  
11           contested case.

12          (8)   Option; No Fee. The submittal of a permit application certified by a  
13          professional engineer to be considered under this subsection shall be an  
14          option and shall not be required of any applicant. The Department shall  
15          not impose any additional fees for the receipt or processing of a permit  
16          application certified by a professional engineer.

17          (e)   Rules for Review of Applications Other Than Those Certified by a  
18          Professional Engineer. – The Commission shall adopt rules governing the times of review  
19          for all permit applications submitted pursuant to this section other than those certified by  
20          a professional engineer pursuant to subsection (h) of this section. Those rules shall  
21          specify maximum times for, among other things, the following actions in reviewing the  
22          permit applications covered by this subsection:

23           (1)   Determining that the permit application is complete;

24           (2)   Requesting additional information to determine completeness;

25           (3)   Determining that additional information is needed to conduct a technical  
26           review of the application;

27           (4)   Completing all technical review of the permit application;

28           (5)   Holding and completing all public meetings and hearings required for  
29           the application;

30           (6)   Completing the record from reviewing and acting on the application;  
31           and

32           (7)   Taking final action on the permit, including granting or denying the  
33           application."

34          Sec. 5. The rules to be adopted pursuant to G.S. 143-215.1(h) and G.S. 143-  
35          215.1(i), as enacted in Section 2 of this act, the rules adopted pursuant to G.S. 143-  
36          215.108(h) and G.S. 143-215.108(i), as enacted in Section 3 of this act, and the rules  
37          adopted pursuant to G.S. 130A-295(d) and G.S. 130A-295(e), as enacted in Section 4 of  
38          this act, shall be effective no later than 18 months after the ratification of this act.

39          Sec. 6. In order to evaluate the progress towards implementation of this act,  
40          including adoption of the rules required in Sections 2 through 4 of this act, the  
41          Department shall submit a report by April 1, 1996, to the Environmental Review  
42          Commission for consideration and any recommendations for further legislation to be  
43          considered by the 1996 Regular Session of the 1995 General Assembly.

1           Sec. 7. This act is effective upon ratification.