

GENERAL ASSEMBLY OF NORTH CAROLINA  
1993 SESSION

CHAPTER 400  
HOUSE BILL 681

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

The General Assembly of North Carolina enacts:

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

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

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

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

(c) G.S. 143-213(29) and G.S. 143-215.3(e)(2) are amended by deleting the word "Federal" each time it appears before the words "Clean Air Act".

(d) G.S. 143B-318(g) reads as rewritten:

"(g) The Secretary of Environment, Health, and Natural Resources shall designate an office within the Department of Environment, Health, and Natural Resources to serve as ombudsman for the Small Business Stationary Source Technical and Environmental Compliance Assistance Program established by the Department pursuant to section 507 of Title V of the 1990 amendments to the ~~Federal~~-federal Clean Air Act (Pub. L. 101-549, 104 Stat. ~~2635 et seq.~~-2645, 42 U.S.C. § 7661f(a)(3)). The Small Business Stationary Source Technical and Environmental Compliance Assistance Program shall serve as the secretariat for the development and dissemination of reports and advisory opinions issued by the Panel. The Panel and the ombudsman shall exercise their powers consistent with G.S. 143B-14(b)."

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

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

investigating the condition of the air, air pollution, air contaminant sources, emissions or the installation and operation of any air-cleaning devices, and to require written statements or the filing of reports under oath, with respect to pertinent questions relating to the operation of any air-cleaning device, sewer system, disposal system or treatment works: Provided that any records, reports or information obtained under Articles 21, 21A and 21B (i) shall, in the case of effluent or emission data, be related to any applicable effluent or emission limitations, toxic, pretreatment or new source performance standards, and (ii) shall be available to the public except that upon a showing satisfactory to the Commission by any person that records, reports or information or particular part thereof (other than effluent or emission ~~data~~), data or information necessary to determine compliance with standards adopted pursuant to Article 21B of this Chapter, to which the Commission has access under these Articles, if made public would divulge methods or processes entitled to protection as trade secrets ~~of such person~~, pursuant to G.S. 132-1.2, the Commission shall consider such record, report or information, or particular portion thereof confidential, except that such record or information may be disclosed to ~~employees of the department concerned with carrying out the provisions of these Articles~~ any officer, employee, or authorized representative of any federal or state agency if disclosure is necessary to carry out a proper function of the Department or other agency, or when relevant in any proceeding under ~~these Articles~~ this Article or Article 21A or Article 21B of this Chapter. The Commission shall provide for adequate notice to the party submitting the information of any decision that such information is not entitled to confidential treatment and of any decision to release information which the submitting party contends is entitled to confidential treatment. No person shall refuse entry or access to any authorized representative of the Commission or Department who requests entry for purposes of inspection, and who presents appropriate credentials, nor shall any person obstruct, hamper or interfere with any such representative while in the process of carrying out his official duties."

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

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

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

"(b) (1) Procedures for Public Input. – The Commission may, on its own motion or when required by federal law, request public comments on or hold public hearings on matters within the scope of its authority under this Article or Articles 21A or 21B of this Chapter. To request public comments on a matter, the Commission shall notify appropriate

agencies of the opportunity to submit written comments to the Commission on the matter and shall publish a notice in a newspaper having general circulation in the affected area, stating the matter under consideration by the Commission and informing the public of its opportunity to submit written comments to the Commission on the matter. A public comment period shall extend for at least 30 days after the notice is published.

- (2) To hold a public hearing on a matter, the Commission shall notify, by personal service or certified mail, persons directly affected by the matter under consideration and shall publish a notice in a newspaper having general circulation in the affected area, stating the matter under consideration by the Commission and the time, date, and place of a public hearing to be held on the matter. A public hearing shall be held no sooner than 20 days after the notice is published. The proceedings at a public hearing held under this subsection shall be recorded. Upon payment of a fee established by the Commission, any person may obtain a copy of the record of the public hearing. After a public hearing, the Commission shall accept written comments for the time period prescribed by the Commission.
- (3) This subsection ~~applies only to proceedings that are not~~ does not apply to rule-making proceedings or proceedings, contested case hearings, or the issuance of permits required under Title V. The Commission shall establish procedures for public hearings, public notice, and public comment respecting permits required by Title V as provided by G.S. 143-215.111(4)."

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

**"§ 143-215.5. Judicial review.**

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

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

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

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

(a) Criminal Penalties. –

- (1) Except as provided in subdivision (2) of this subsection, any Any person who violates any provisions of this Part or any rules adopted by the Commission for its implementation shall be guilty of a misdemeanor and shall be liable to a penalty of not less than one hundred dollars (\$100.00), nor more than one thousand dollars (\$1,000) for each violation and each day such person shall fail to comply after having been officially notified by the Commission shall constitute a separate offense subject to the foregoing penalty.
- (2) Any person who violates any provision of this Part or any rule adopted by the Commission to implement this Part that imposes a requirement that is also a requirement under Title V or any rule adopted by the Commission to implement Title V shall be subject to punishment as provided by G.S. 143-215.114B.

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

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

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

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

- (1) To prepare and develop, after proper study, a comprehensive plan or plans for the prevention, abatement and control of air pollution in the State or in any designated area of the State.

- (2) To determine by means of field sampling and other studies, including the examination of available data collected by any local, State or federal agency or any person, the degree of air contamination and air pollution in the State and the several areas of the State.
- (3) To develop and adopt, after proper study, air quality standards applicable to the State as a whole or to any designated area of the State as the Commission deems proper in order to promote the policies and purposes of this Article and Article 21 most effectively.
- (4) To collect information or to require reporting from classes of sources which, in the judgment of the Environmental Management Commission, may cause or contribute to air pollution. Any person operating or responsible for the operation of air contaminant sources of any class for which the Commission requires reporting shall make reports containing such information as may be required by the Commission concerning location, size, and height of contaminant outlets, processes employed, fuels used, and the nature and time periods or duration of emissions, and such other information as is relevant to air pollution and available or reasonably capable of being assembled.
- (5) To develop and adopt such emission control standards as in the judgment of the Commission may be necessary to prohibit, abate or control air pollution commensurate with established air quality standards. Such standards may be applied uniformly to the State as a whole or to any area of the State designated by the Commission.
- (6) To adopt, when necessary and practicable, a program for testing emissions from motor vehicles and to adopt motor vehicle emission standards in compliance with applicable federal regulations.
- (7) To develop and adopt standards and plans necessary to implement programs for the prevention of significant deterioration and for the attainment of air quality standards in nonattainment areas.
- (8) To develop and adopt standards and plans necessary to implement programs to control acid deposition and to regulate the use of sulfur dioxide allowances and nitrogen oxides emissions in accordance with Title IV and implementing regulations promulgated-adopted by the United States Environmental Protection Agency.
- (9) To regulate the oxygen content of gasoline, to require use of reformulated gasoline as the Commission deems necessary, to implement the requirements of Title II and implementing regulations adopted by the United States Environmental Protection Agency, and to adopt standards and plans to implement this subdivision. Rules adopted under this subdivision may specify standards for a particular area of the State that differ from other areas as may be necessary to improve ambient air quality within a particular area, achieve attainment or preclude violations of the National Ambient Air Quality

Standards, or to meet other federal requirements. Rules may authorize the use of marketable oxygen credits for gasoline as provided in federal requirements.

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

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

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

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

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

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

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

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

(c) The Commission shall have the power:

- (1) To grant and renew a permit with such conditions attached as the Commission believes necessary to achieve the purposes of ~~this section~~, section or the requirements of the Clean Air Act and implementing

regulations adopted by the United States Environmental Protection Agency;

- (2) To grant and renew any temporary permit for such period of time as the Commission shall specify even though the action allowed by such permit may result in pollution or increase pollution where conditions make such temporary permit essential;
- (3) ~~To modify or revoke~~ To terminate, modify, or revoke and reissue any permit upon not less than 60 days' written notice to any person affected;
- (3a) To suspend any permit pursuant to the provisions of G.S. 150B-3(c);
- (4) To require all applications for permits and renewals to be in writing and to prescribe the form of such applications;
- (5) To request such information from an applicant and to conduct such inquiry or investigation as it may deem necessary and to require the submission of plans and specifications prior to acting on any application for a permit;
- (5a) To require that an applicant satisfy the Department that the applicant, or any parent, subsidiary, or other affiliate of the applicant or parent:
  - a. Is financially qualified to carry out the activity for which a permit is required under subsection (a); and
  - b. Has substantially complied with the air quality and emission control standards applicable to any activity in which the applicant has previously engaged, and has been in substantial compliance with federal and state laws, regulations, and rules for the protection of the environment.

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

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

- (d) (1) ~~The Commission shall act on a permit application as quickly as possible. The Commission may conduct any inquiry or investigation it considers necessary before acting on an application and may require an applicant to submit plans, specifications, and other information the Commission considers necessary to evaluate the application. A permit application may not be deemed complete unless it is accompanied by a copy of the request for determination as provided in subsection (f) of this section that bears a date of receipt entered by the clerk of the local government and until the 15-day period for issuance of a determination has elapsed. If the Commission fails to act on an application for a permit deemed complete within 90 days after the applicant submits all information required by the Commission, the application is considered to be approved.~~
- (2) The Commission shall adopt rules specifying the times within which it must act upon applications for permits required by Title V and other permits required by this section. The times specified shall be extended for the period during which the Commission is prohibited from issuing a permit under subdivisions (3) and (4) of this subsection. The Commission shall inform a permit applicant as to whether or not the application is complete within the time specified in the rules for action on the application. If the Commission fails to act on an application for a permit required by Title V or this section within the time period specified, the failure to act on the application constitutes a final agency decision to deny the permit. A permit applicant, permittee, or other person aggrieved, as defined in G.S. 150B-2, may seek judicial review of a failure to act on the application as provided in G.S. 143-215.5 and Article 4 of Chapter 150B of the General Statutes. Notwithstanding the provisions of G.S. 150B-51, upon review of a failure to act on an application for a permit required by Title V or this section, a court may either: (i) affirm the denial of the permit or (ii) remand the application to the Commission for action upon the application within a specified time.
- (3) If the Administrator of the United States Environmental Protection Agency validly objects to the issuance of a permit required by Title V within 45 days after the Administrator receives the proposed permit and the required portions of the permit application, the Commission shall not issue the permit until the Commission revises the proposed permit to meet all objections noted by the Administrator or otherwise satisfies all objections consistent with Title V and implementing regulations adopted by the United States Environmental Protection Agency.
- (4) If the Administrator of the United States Environmental Protection Agency validly objects to the issuance of a permit required by Title V after the expiration of the 45-day review period specified in

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

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

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

(f) An applicant for a permit under this section for a new facility or for the expansion of a facility permitted under this section shall request each local government having jurisdiction over any part of the land on which the facility and its appurtenances are to be located to issue a determination as to whether the local government has in effect a zoning or subdivision ordinance applicable to the facility and whether the proposed facility would be consistent with the ordinance. The request to the local government shall be accompanied by a copy of the draft permit application and shall be delivered to the clerk of the local government personally or by certified mail. The determination shall be verified or supported by affidavit signed by the official designated by the local government to make the determination and, if the local government states that the facility is inconsistent with a zoning or subdivision ordinance, shall include a copy of the ordinance and the specific reasons for the determination of inconsistency. A copy of any such determination shall be provided to the applicant when it is submitted to the Commission. The Commission shall not act upon an application for a permit under this section until it has received a determination from each local government requested to make a determination by the applicant. Unless the local government makes a subsequent determination of consistency with all ordinances cited in the determination or the proposed facility is determined by a court of competent jurisdiction to be consistent with the cited ordinances, the Commission shall attach as a condition of the permit a requirement that the applicant, prior to construction or operation of the facility under the permit, comply with all lawfully adopted local ordinances, including those cited in the determination, that apply to the facility at the time of construction or operation of the facility. If a local government fails to submit a determination to the Commission as provided by this subsection within 15 days after receipt of the request, the Commission may proceed to consider the permit application without regard to local zoning and subdivision ordinances. This subsection shall not be construed to limit any opportunity a local government may have to comment on a permit application under any other law or rule. This subsection shall not apply to any facility with respect to which local ordinances are subject to review under either G.S. 104E-6.2 or G.S. 130A-293.

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

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

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

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

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

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

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

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

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

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

- (c) (1) The governing body of any county, municipality, or group of counties and municipalities within a designated area of the State, as defined in this Article and Article 21, subject to the approval of the Commission, is hereby authorized to establish, administer, and enforce a local air pollution control program for the county, municipality, or designated area of the State which includes but is not limited to:
  - a. Development of a comprehensive plan for the control and abatement of new and existing sources of air pollution;
  - b. Air quality monitoring to determine existing air quality and to define problem areas, as well as to provide background data to show the effectiveness of a pollution abatement program;
  - c. An emissions inventory to identify specific sources of air contamination and the contaminants emitted, together with the quantity of material discharged into the outdoor atmosphere;
  - d. Adoption, after notice and public hearing, of air quality and emission control standards, or adoption by reference, without public hearing, of any applicable rules and standards duly adopted by the Commission; and administration of such rules and standards in accordance with provisions of this section.

- e. Provisions for the establishment or approval of time schedules for the control or abatement of existing sources of air pollution and for the review of plans and specifications and issuance of approval documents covering the construction and operation of pollution abatement facilities at existing or new sources;
  - f. Provision for adequate administrative staff, including an air pollution control officer and technical personnel, and provision for laboratory and other necessary facilities.
- (2) Subject to the approval of the Commission as provided in this Article and Article 21, the governing body of any county or municipality may establish, administer, and enforce an air pollution control program by ~~either~~ any of the following methods:
- a. Establishing a program under the administration of the duly elected governing body of the county or ~~municipality~~; municipality.
  - b. Appointing an air pollution control board consisting of not less than five nor more than seven members who shall serve for terms of six years each and until their successors are appointed and qualified. Two members shall be appointed for two-year terms, two shall be appointed for four-year terms, and the remaining member or members shall be appointed for six-year terms. Where the term 'governing body' is referred to in this section, it shall include the air pollution control board. Such board shall have all the powers and authorities granted to any local air pollution control program. The board shall elect a chairman and shall meet at least quarterly or upon the call of the chairman or any two members of the ~~board~~; board.
  - c. Appointing an air pollution control board as provided in this subdivision, and by appropriate written agreement designating the local health department or other department of county or municipal government as the administrative agent for the air pollution control ~~board~~; and board.
  - d. Designating, by appropriate written agreement, the local board of health and the local health department as the air pollution control board and agency.
- (2a) Any board or body which approves permits or enforcement orders shall have at least a majority of members who represent the public interest and do not derive any significant portion of their income from persons subject to permits or enforcement orders under the ~~Federal~~ Clean Air Act and any potential conflicts of interest by members of such board or body or the head of an executive agency with similar powers shall be adequately disclosed.
- (3) If the Commission finds that the location, character or extent of particular concentrations of population, air contaminant sources, the

geographic, topographic or meteorological considerations, or any combinations thereof, are such as to make impracticable the maintenance of appropriate levels of air quality without an area-wide air pollution control program, the Commission may determine the boundaries within which such program is necessary and require such area-wide program as the only acceptable alternative to direct State administration. Subject to the provisions of this section, each governing body of a county or municipality is hereby authorized and empowered to establish by contract, joint resolution, or other agreement with any other governing body of a county or municipality, upon approval by the Commission, an air pollution control region containing any part or all of the geographical area within the jurisdiction of those boards or governing bodies which are parties to such agreement, provided the counties involved in the region are contiguous or lie in a continuous boundary and comprise the total area contained in any region designated by the Commission for an area-wide program. The participating parties are authorized to appoint a regional air pollution control board which shall consist of at least five members who shall serve for terms of six years and until their successors are appointed and qualified. Two members shall be appointed for two-year terms, two shall be appointed for four-year terms and the remaining member or members shall be appointed for six-year terms. A participant's representation on the board shall be in relation to its population to the total population of the region based on the latest official United States census with each participant in the region having at least one representative; provided, that where the region is comprised of less than five counties, each participant will be entitled to appoint members in relation to its population to that of the region so as to provide a board of at least five members. Where the term 'governing body' is used, it shall include the governing board of a region. The regional board is hereby authorized to exercise any and all of the powers provided in this section. The regional air pollution control board shall elect a chairman and shall meet at least quarterly or upon the call of the chairman or any two members of the board. In lieu of employing its own staff, the regional air pollution control board is authorized, through appropriate written agreement, to designate a local health department as its administrative agent.

- (4) Each governing body is authorized to adopt any ordinances, resolutions, rules or regulations which are necessary to establish and maintain an air pollution control program and to prescribe and enforce air quality and emission control standards, a copy of which must be filed with the Commission and with the clerk of court of any county affected. Provisions may be made therein for the registration of air contaminant sources; for the requirement of a permit to do or carry out

specified activities relating to the control of air pollution, including procedures for application, issuance, denial and revocation; for notification of violators or potential violators about requirements or conditions for compliance; for procedures to grant temporary permits or variances from requirements or standards; for the declaration of an emergency when it is found that a generalized condition of air pollution is causing imminent danger to the health or safety of the public and the issuance of an order to the responsible person or persons to reduce or discontinue immediately the emission of air contaminants; for notice and hearing procedures for persons aggrieved by any action or order of any authorized agent; for the establishment of an advisory council and for other administrative arrangements; and for other matters necessary to establish and maintain an air pollution control program.

- (5) No permit required by section 305(e) of Title III (42 U.S.C. § 7429(e)) for a solid waste incineration unit combusting municipal waste shall be issued by a local air pollution control program that is administered by the governing body of a unit of local government that is responsible, in whole or in part, for the design, construction, or operation of the unit.
- (d) (1) Violation of any ordinances, resolutions, rules or regulations duly adopted by a governing body ~~shall constitute a misdemeanor, are~~ punishable as provided in ~~G.S. 143-215.114(b).~~ G.S. 143-215.114B.
- (1a) Each governing body, or its authorized agent, shall have the power to assess civil penalties under ~~G.S. 143-215.114(a).~~ G.S. 143-215.114A. Any person assessed shall be notified of the assessment by registered or certified mail, and the notice shall specify the reasons for the assessment. If the person assessed fails to pay the amount of the assessment to the governing body or its authorized agent within 30 days after receipt of notice, or such longer period not to exceed 180 days as the governing body or its authorized agent may specify, the governing body may institute a civil action in the superior court of the county in which the violation occurred, to recover the amount of the assessment. Each day of continuing violation after written notification from the governing body or its authorized agent shall be considered a separate offense. In determining the amount of the penalty, the governing body or its authorized agent shall consider the degree and extent of harm caused by the violation, the cost of rectifying the damage, and the amount of money the violator saved by not having made the necessary expenditures to comply with the appropriate pollution control requirements.
- (2) Each governing body, or its duly authorized agent, may institute a civil action in the superior court, brought in the name of the agency having jurisdiction, for injunctive relief to restrain any violation or immediately threatened violation of such ordinances, orders, rules, or

regulations and for such other relief as the court shall deem proper. Neither the institution of the action nor any of the proceedings thereon shall relieve any party to such proceedings from the penalty prescribed by this Article and Article 21 for any violation of same.

- (d1) (1) The governing body responsible for each local air pollution control program shall require that the owner or operator of all air contaminant sources subject to the requirement to obtain a permit under Title V pay an annual fee, or the equivalent over some other period, sufficient to cover costs as provided in section 502(b)(3)(A) of Title V (42 U.S.C. § 7661a(b)(3)(A)) and G.S. 143-215.3(a)(1d). Fees collected pursuant to this subdivision shall be used solely to cover all reasonable direct and indirect costs required to develop and administer the Title V permit program.
- (2) ~~(3)~~ Each governing body is authorized to expend tax funds, nontax funds, or any other funds available to it to finance an air pollution control program and such expenditures are hereby declared to be for a public purpose and a necessary expense.
- (d2) (1) ~~(4)~~ Any final administrative decision rendered in an air pollution control program of such governing body shall be subject to judicial review as provided by Article 4 of Chapter 150B of the General Statutes, and 'administrative agency' or 'agency' as used therein shall mean and include for this purpose the governing body of any county or municipality, regional air pollution control governing board, and any agency created by them in connection with an air pollution control program.
- (2) A local air pollution control program shall inform a permit applicant as to whether or not the application is complete within the time specified in the rules for action on the application. If a local air pollution program fails to act on an application for a permit required by Title V or this Article within the time periods specified by the Commission under G.S. 143-215.108(d)(2), the failure to act on the application constitutes a final agency decision to deny the permit. A permit applicant, permittee, or other person aggrieved, as defined in G.S. 150B-2, may seek judicial review of a failure to act on the application as provided in G.S. 143-215.5 and Article 4 of Chapter 150B of the General Statutes. Notwithstanding the provisions of G.S. 150B-51, upon review of a failure to act on an application for a permit required by Title V or this Article, a court may either: (i) affirm the denial of the permit or (ii) remand the application to the local air pollution control program for action upon the application within a specified time.
- (e) (1) If the Commission has reason to believe that a local air pollution control program certified and in force pursuant to the provisions of this section is inadequate to abate or control air pollution in the jurisdiction

to which such program relates, or that such program is being administered in a manner inconsistent with the requirement of this Article, the Commission shall, upon due notice, conduct a hearing on the matter.

- (2) If, after such hearing, the Commission determines that an existing local air pollution control program or one which has been certified by the Commission is inadequate to abate or control air pollution in the municipality, county, or municipalities or counties to which such program relates, or that such program is not accomplishing the purposes of this Article, it shall set forth in its findings the corrective measures necessary for continued certification and shall specify a reasonable period of time, not to exceed one year, in which such measures must be taken if certification is not to be rescinded.
- (3) If the municipality, county, local board or commission or municipalities or counties fail to take such necessary corrective action within the time specified, the Commission shall rescind any certification as may have been issued for such program and shall administer within such municipality, county, or municipalities or counties all of the regulatory provisions of this Article and Article 21. Such air pollution control program shall supersede all municipal, county or local laws, regulations, ordinances and requirements in the affected jurisdiction.
- (4) If the Commission finds that the control of a particular class of air contaminant source because of its complexity or magnitude is beyond the reasonable capability of the local air pollution control authorities or may be more efficiently and economically performed at the State level, it may assume and retain jurisdiction over that class of air contaminant source. Classification pursuant to this subdivision may be either on the basis of the nature of the sources involved or on the basis of their relationship to the size of the communities in which they are located.
- (5) Any municipality or county in which the Commission administers its air pollution control program pursuant to subdivision (3) of this subsection may, with the approval of the Commission, establish or resume a municipal, county, or local air pollution control program which meets the requirements for certification by the Commission.
- (6) ~~Nothing in this Article and Article 21 shall be construed to supersede or oust the jurisdiction of any local air pollution control program in operation on June 22, 1967; provided that within two years from such date any such program shall meet all requirements of this Article and Article 21 for certification by the Commission as an approved local air pollution control program. Any certification required from the Commission shall be deemed granted unless the Commission takes specific action to the contrary.~~

- (7) Any municipality, county, local board or commission or municipalities or counties or designated area of this State for which a local air pollution control program is established or proposed for establishment may make application for, receive, administer and expend federal grant funds for the control of air pollution or the development and administration of programs related to air pollution control; provided that any such application is first submitted to and approved by the Commission. The Commission shall approve any such application if it is consistent with this Article, Article 21 and other applicable requirements of law.
- (8) Notwithstanding any other provision of this section, if the Commission determines that an air pollution source or combination of sources is operating in violation of the provisions of this Article and that the appropriate local authorities have not acted to abate such violation, the Commission, upon written notice to the appropriate local governing body, may act on behalf of the State to require any person causing or contributing to the pollution to cease immediately the emission of air pollutants causing or contributing to the violation or may require such other action as it shall deem necessary."

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

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

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

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

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

The amount of revenue collected under this Article attributable to a per gallon excise tax of one-half cent ( $1/2\phi$ ) a gallon shall be credited ~~in equal amounts as follows:~~ (i) nineteen thirty-seconds ( $19/32$ ) to the Commercial Leaking Petroleum Underground Storage Tank Fund and the Groundwater Protection Loan Fund-Cleanup Fund; (ii) three thirty-seconds ( $3/32$ ) to the Noncommercial Leaking Petroleum Underground Storage Tank Cleanup Fund; and (iii) five sixteenths ( $5/16$ ) to the Water and Air Quality Account. Of the remaining tax revenue collected under this Article, seventy-five percent (75%) shall be credited to the Highway Fund and the remaining twenty-five percent (25%) shall be credited to the Highway Trust Fund. A proportionate share of a refund allowed under this Article shall be charged to ~~the Commercial Leaking Petroleum Underground Storage Tank Fund, the Groundwater Protection Loan Fund, the Highway Fund, and the Highway Trust Fund.~~ each fund or account to which revenue

collected under this Article is credited. The Secretary shall credit revenue or charge refunds to the appropriate Funds on a monthly basis."

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

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

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

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

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

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

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

(c) The Department shall make an annual report to the General Assembly and its Fiscal Research Division on the cost of the State's environmental permitting programs contained within such Department. In addition, the Department shall make an annual report to the General Assembly and its Fiscal Research Division on the cost of the Title

V program. The reports shall include, but are not limited to, fees set and established under this Article, fees collected under this Article, revenues received from other sources for environmental permitting and compliance programs, changes made in the fee schedule since the last report, anticipated revenues from all other sources, interest earned and any other information requested by the General Assembly."

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

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

Sec. 17. Sections 1 through 12 and Sections 15 through 17 of this act are effective upon ratification. Section 13 of this act becomes effective 1 January 1995. Section 14 of this act becomes effective upon ratification except that the amendment to G.S. 143-215.3A(a) made by Section 14 of this act becomes effective 1 January 1995. The Commission shall adopt rules to implement G.S. 143-215.108(d)(2), as enacted by Section 8 of this act, within one year of the date on which the Administrator of the United States Environmental Protection Agency notifies the Governor that the Administrator has approved the State's Title V permit program as provided in 42 U.S.C. §7661a(d), and not later than 1 January 1995.

In the General Assembly read three times and ratified this the 19th day of July, 1993.

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Dennis A. Wicker  
President of the Senate

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Daniel Blue, Jr.  
Speaker of the House of Representatives