

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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HOUSE BILL 551*
Committee Substitute Favorable 5/3/91

Short Title: Clean Air Act Implementations.

(Public)

Sponsors:

Referred to:

April 1, 1991

1 A BILL TO BE ENTITLED
2 AN ACT TO IMPLEMENT THE REQUIREMENTS OF THE 1990 AMENDMENTS
3 TO THE FEDERAL CLEAN AIR ACT.

4 Whereas, the United States Congress passed, and the President enacted, the
5 Federal Clean Air Act Amendments of 1990 on November 15, 1990; and

6 Whereas, these amendments dramatically increase the responsibilities of
7 North Carolina regulatory agencies under the Federal Clean Air Act, placing a great and
8 imminent burden on the State to finance, develop, and ultimately implement new State
9 air quality programs in the areas of permitting of air emission sources, State
10 implementation planning procedures, nonattainment area permitting, automobile
11 inspection and maintenance, the regulation of toxic air pollutants, acid rain control, and
12 compliance enforcement, among others; and

13 Whereas, the Federal Clean Air Act Amendments of 1990 require the State of
14 North Carolina to make comprehensive changes in many existing State air quality
15 programs; and

16 Whereas, failure of the State to implement the Federal Clean Air Act
17 Amendments of 1990 will subject North Carolina to federal sanctions under the Federal
18 Clean Air Act; and

19 Whereas, the Environmental Management Commission must have all of the
20 statutory authority in place to begin the administrative rule-making process for adoption
21 and implementation of those elements no later than November 15, 1992; and

1 Whereas, it is the State of North Carolina's policy to afford the public a full
2 and complete opportunity for public hearing and comment; Now, therefore,
3 The General Assembly of North Carolina enacts:

4 Section 1. G.S. 143-215.3(a) is amended by adding a new subdivision (1d) to
5 read:

6 (1d) Notwithstanding the provisions of G.S. 143-215.3(a)(1b), the
7 Commission is authorized to adopt and implement a graduated fee
8 schedule sufficient to cover all reasonable direct and indirect costs
9 required for the State to develop and administer a permit program
10 which meets the requirements of Title V of the 1990 amendments to
11 the Federal Clean Air Act (Pub. L. 101-549, 104 Stat. 2635 et seq.), as
12 amended (hereinafter Title V). In adopting and implementing a fee
13 schedule, the Commission shall require that the owner or operator of
14 all air contaminant sources subject to the requirement to obtain a
15 permit under Title V pay an annual fee, or the equivalent over some
16 other period, sufficient to cover costs as provided in section
17 502(b)(3)(A) of Title V. The fee schedule shall be adopted according
18 to the procedures set out in Chapter 150B of the General Statutes.

19 a. The total amount of fees collected under the fee schedule
20 adopted pursuant to subdivision (1d) of this section shall
21 conform to the requirements of section 502(b)(3)(B) of Title V.
22 No fee shall be collected for more than 4,000 tons per year of
23 any individual regulated pollutant, as defined in section
24 502(b)(3)(B)(ii) of Title V, emitted by any source.
25 Notwithstanding the provisions of G.S. 143-215.3(a)(1c), the
26 fees so collected shall be used solely to cover all reasonable
27 direct and indirect costs required to develop and administer the
28 State's permit program.

29 b. The Commission may reduce any permit fee required under this
30 section to take into account the financial resources of small
31 business stationary sources as defined under Title V and
32 regulations promulgated by the United States Environmental
33 Protection Agency.

34 c. When funds in the Title V nonreverting account established in
35 G.S. 143-215.3A exceed the total amount necessary to cover the
36 cost of the Title V program for the next fiscal year, the
37 Secretary shall adjust the amount billed so that the surplus
38 funds are used to supplement program costs in that fiscal year."

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

40 **"§ 143-215.3A. Use of application and permit fees.**

41 (a) There is established a separate nonreverting account within the Department of
42 Environment, Health, and Natural Resources. The account may be used, to the extent
43 appropriated by the General Assembly, to (a) defray the expenses of any project or
44 program supporting the permitting and compliance activities needed to protect the

1 State's surface water, groundwater, and air quality, and (b) establish additional
2 permanent positions, under the Personnel Act, for water, groundwater, and air quality
3 permitting and compliance activities. All application fees and permit administration
4 fees collected by the State for permits issued under Articles 21, 21A, 21B, and 38,
5 except those collected under Part 2 of Article 21A and deposited in the Oil or Other
6 Hazardous Substances Pollution Protection Fund, ~~Fund~~ and those collected under G.S.
7 143-215.3(a)(1d) and deposited in the Title V nonreverting account, and except as
8 provided in G.S. 143-215.28A and G.S. 143-215.3B shall be credited to the account.
9 The total monies collected per year from fees for permits under G.S. 143-215.3(a)(1a),
10 after deducting those monies collected under G.S. 143-215.3(a)(1d), shall not exceed
11 thirty percent (30%) of the total budgets from all sources of environmental permitting
12 and compliance programs within the Department of Environment, Health, and Natural
13 Resources.

14 (b) There is also established a separate nonreverting account within the
15 Department of Environment, Health, and Natural Resources to be used exclusively for
16 development and implementation of the Title V program from the application fees and
17 permit administration fees collected under G.S. 143-215.3(a)(1d). Expenses of the Air
18 Quality Compliance Advisory Panel, the Clean Air Act Advisory Council, the Office of
19 the Ombudsman for the Small Business Stationary Source Technical and Environmental
20 Compliance Assistance Program, support staff, equipment, the Attorney General's
21 Office for legal services, and contracts with consultants and program expenses listed in
22 section 502(b)(3)(A) of Title V of the 1990 amendments to the Federal Clean Air Act
23 shall be included among Title V program expenses.

24 (c) The Department shall make an annual report to the General Assembly and its
25 Fiscal Research Division on the cost of the State's environmental permitting programs
26 contained within such Department. In addition, the Department shall make an annual
27 report to the General Assembly and its Fiscal Research Division on the cost of the Title
28 V program. The ~~report~~ reports shall include, but is not be limited to, fees set and
29 established under this Article, fees collected under this Article, revenues received from
30 other sources for environmental permitting and compliance programs, changes made in
31 the fee schedule since the last report, anticipated revenues from all other sources,
32 interest earned and any other information requested by the General Assembly."

33 Sec. 3. G.S. 143-215.114A(a) reads as rewritten:

34 "(a) A civil penalty of not more than ~~five ten~~ thousand dollars ~~(\$5,000)-(\$10,000)~~
35 may be assessed by the Secretary against any person who:

- 36 (1) Violates any classification, standard or limitation established pursuant
37 to G.S. 143-215.107;
- 38 (2) Is required but fails to apply for or to secure a permit required by G.S.
39 143-215.108 or who violates or fails to act in accordance with the
40 terms, conditions, or requirements of such permit;
- 41 (3) Violates or fails to act in accordance with the terms, conditions, or
42 requirements of any special order or other appropriate document issued
43 pursuant to G.S. 143-215.110;

1 (4) Fails to file, submit, or make available, as the case may be, any
2 documents, data or reports required by this Article or Parts 1 or 7 of
3 Article 21 of this Chapter;

4 (5) Violates a rule of the Commission or a local governing body
5 implementing this ~~Article~~-Article or Parts 1 or 7 of Article 21;

6 (6) Violates the offenses set out in G.S. 143-215.114B."

7 Sec. 4. G.S. 143-215.108 reads as rewritten:

8 "(a) After the effective date applicable to any air quality or emission control
9 standards established pursuant to G.S. 143-215.107, no person shall do any of the
10 following things or carry out any of the following activities which contravene or will be
11 likely to contravene such standards until or unless such person shall have applied for
12 and shall have received from the Commission a permit therefor and shall have complied
13 with such conditions, if any, as are prescribed by such permit:

14 (1) Establish or operate any air contaminant source;

15 (2) Build, erect, use or operate any equipment which may result in the
16 emission of air contaminants or which is likely to cause air pollution;

17 (3) Alter or change the construction or method of operation of any
18 equipment or process from which air contaminants are or may be
19 emitted;

20 (4) Enter into a ~~an~~-an irrevocable contract for the construction and
21 installation of any air-cleaning device, or allow or cause such device to
22 be constructed, installed, or operated.

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

27 The Commission shall have the power:

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

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

34 (3) To modify or revoke any permit upon not less than 60 days' written
35 notice to any person affected;

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

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

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

- 1 a. Is financially qualified to carry out the activity for which a
2 permit 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
5 applicant has previously engaged, and has been in substantial
6 compliance with federal and state laws, regulations, and rules
7 for the protection of the environment.

8 As used in this subdivision, the words 'affiliate,' 'parent,' and
9 'subsidiary' have the same meaning as in 17 Code of Federal
10 Regulations § 240.12b-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
16 air pollutant in amounts which will prevent attainment or maintenance
17 by any other state of any national ambient air quality standard, or
18 interference 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~~-visibility; and

- 21 (8) To issue general permits under rules adopted pursuant to Chapter 150B
22 of the General Statutes consistent with the provisions in section 504(d)
23 of Title V of the 1990 amendments to the Federal Clean Air Act (Pub.
24 L. 101-549, 104 Stat. 2635 et seq., as amended.

25 The Commission shall act on a permit application as quickly as possible. The
26 Commission may conduct any inquiry or investigation it considers necessary before
27 acting on an application and may require an applicant to submit plans, specifications,
28 and other information the Commission considers necessary to evaluate the application.
29 If the Commission fails to act on an application for a permit within 90 days after the
30 applicant submits all information required by the Commission, the application is
31 considered to be approved.

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

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

39 (e) (e) Any person who is required to hold a permit under this section shall
40 submit to the Department a written description of his current and projected plans to
41 reduce the emission of air contaminants under such permit by source reduction or
42 recycling. The written description shall accompany the payment of the annual permit
43 fee. The written description shall also accompany any application for a new permit, or
44 for modification of an existing permit, under this section. The written description

1 required by this subsection shall not be considered part of a permit application and shall
2 not serve as the basis for the denial of a permit or permit modification."

3 Sec. 5. G.S. 143B-317 reads as rewritten:

4 "**§ 143B-317. Air Quality ~~Council~~Compliance Advisory Panel – creation; powers
5 and duties.**

6 There is hereby created the Air Quality ~~Council~~Compliance Advisory Panel of the
7 Department of Environment, Health, and Natural Resources. The Air Quality ~~Council~~
8 Compliance Advisory Panel shall have the following functions and duties:

- 9 - (1) ~~To advise the Environmental Management Commission in
10 the development of rules, regulations and quality standards for air;
11 and~~
12 (2) ~~To consider and to advise the Commission upon any matter the
13 Commission may refer to it.~~
14 (1) To render advisory opinions concerning the effectiveness of the small
15 business stationary source technical and environmental compliance
16 assistance program, difficulties encountered, and degree and severity
17 of enforcement;
18 (2) To make periodic reports to the Administrator of the United States
19 Environmental Protection Agency concerning the compliance of the
20 State Small Business Stationary Source Technical and Environmental
21 Compliance Assistance Program with the requirements of the
22 Paperwork Reduction Act, 44 U.S.C. § 3501 et seq.; the Regulatory
23 Flexibility Act, 5 U.S.C. § 601 et seq.; and the Equal Access to Justice
24 Act, 5 U.S.C. § 504 et seq.; and
25 (3) To review information for small business stationary sources to assure
26 such information is understandable by the layperson."

27 Sec. 6. G.S. 143B-318 reads as rewritten:

28 "**§ 143B-318. Air Quality ~~Council~~Compliance Advisory Panel – members;
29 chairman; selection; removal; compensation; quorum; services.**

30 (a) The Air Quality ~~Council~~Compliance Advisory Panel of the Department of
31 Environment, Health, and Natural Resources shall consist of ~~nine members appointed by
32 the Governor. The composition of the Council shall be as follows: one registered professional
33 engineer knowledgeable in matters of air pollution; one representative from municipal
34 government; one representative from county government; one representative of public health;
35 two representatives from industry providing they are from different industries; one
36 representative of agriculture; one licensed physician knowledgeable in the health aspects of air
37 pollution; and one practicing biologist knowledgeable in the principles of air quality
38 management.~~two members who are not owners or representatives of owners of small
39 business stationary sources, appointed by the Governor to represent the general public;
40 two members appointed one each by the Speaker and the minority leader of the House
41 of Representatives, and who are owners, or who represent owners, of small business
42 stationary sources; two members appointed one each by the President Pro Tempore and
43 the minority leader of the Senate, who are owners, or who represent owners, of small
44 business stationary sources; and one member appointed by the Secretary of the
45 Department of Environment, Health, and Natural Resources.

1 (b) The Governor shall designate one member of the ~~Council Panel~~ to serve as
2 chairman at his pleasure.

3 (c) Members shall serve staggered terms of four years. In order to achieve
4 staggered terms, ~~the Governor the Speaker and the minority leader of the House of~~
5 Representatives each shall initially appoint three members for terms of two years, the
6 President Pro Tempore and the minority leader of the Senate each shall initially appoint
7 three members for terms of four three years, and three members for terms of six years.
8 At the end of the respective terms of office of the initial members, their successors shall
9 be appointed for terms of ~~six~~ four years and until their successors are appointed and
10 qualify. Any appointment to fill a vacancy on the ~~Council Panel~~ created by the
11 resignation, dismissal, death or disability of a member shall be for the balance of the
12 unexpired term.

13 (d) The Governor shall have the power to remove any member of the ~~Council~~
14 Panel from office for misfeasance, malfeasance or nonfeasance in accordance with the
15 provisions of G.S. ~~143B-16 of the Executive Organization Act of 1973.~~ 143B-16.

16 (e) The members of the ~~Council Panel~~ shall receive per diem and necessary travel
17 and subsistence expenses in accordance with the provisions of G.S. 138-5.

18 (f) A majority of the ~~Council Panel~~ shall constitute a quorum for the transaction
19 of their business.

20 (g) The Secretary of Environment, Health, and Natural Resources shall designate
21 an office within the Department of Environment, Health, and Natural Resources to serve
22 as ombudsman for the Small Business Stationary Source Technical and Environmental
23 Compliance Assistance Program established by the Department pursuant to section 507
24 of the Federal Clean Air Act, as amended. The Small Business Stationary Source
25 Technical and Environmental Compliance Assistance Program shall serve as the
26 secretariat for the development and dissemination of reports and advisory opinions
27 issued by the Panel. The Panel and the ombudsman shall exercise their powers
28 consistent with G.S. 143B-14(b).

29 (h) All clerical and other services required by the ~~Council Panel~~ shall be supplied
30 by the Secretary of Environment, Health, and Natural Resources."

31 Sec. 7. G.S. 143B-319 reads as rewritten:

32 "**§ 143B-319. Air Quality ~~Council~~ Compliance Advisory Panel – meetings.**

33 The ~~Council Panel~~ shall meet at least semiannually and may hold special meetings at
34 any time and place at the call of the chairman or upon the written request of at least ~~five~~
35 three members."

36 Sec. 8. G.S. 143-215.107(a) reads as rewritten:

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

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

43 (2) To determine by means of field sampling and other studies, including
44 the examination of available data collected by any local, State or

1 federal agency or any person, the degree of air contamination and air
2 pollution in the State and the several areas of the State.

3 (3) To develop and adopt, after proper study, air quality standards
4 applicable to the State as a whole or to any designated area of the State
5 as the Commission deems proper in order to promote the policies and
6 purposes of this Article and Article 21 most effectively.

7 (4) To collect information or to require reporting from classes of sources
8 which, in the judgment of the Environmental Management
9 Commission, may cause or contribute to air pollution. Any person
10 operating or responsible for the operation of air contaminant sources of
11 any class for which the Commission requires reporting shall make
12 reports containing such information as may be required by the
13 Commission concerning location, size, and height of contaminant
14 outlets, processes employed, fuels used, and the nature and time
15 periods or duration of emissions, and such other information as is
16 relevant to air pollution and available or reasonably capable of being
17 assembled.

18 (5) To develop and adopt such emission control standards as in the
19 judgment of the Commission may be necessary to prohibit, abate or
20 control air pollution commensurate with established air quality
21 standards. Such standards may be applied uniformly to the State as a
22 whole or to any area of the State designated by the Commission.

23 (6) To adopt, when necessary and practicable, a program for testing
24 emissions from motor vehicles and to adopt motor vehicle emission
25 standards in compliance with applicable federal regulations.

26 (7) To develop and adopt standards and plans necessary to implement
27 programs for the prevention of significant deterioration and for the
28 attainment of air quality standards in nonattainment areas; provided,
29 that the Commission shall adopt no standard which is not made
30 mandatory upon approved State programs by rules, regulations or
31 published guidelines of the United States Environmental Protection
32 Agency or the Federal Clean Air Act.

33 (8) To regulate the use of sulfur dioxide allowances in accordance with
34 Title IV of the 1990 amendments to the Federal Clean Air Act (Pub. L.
35 101-549, 104 Stat. 2584 et seq.), as amended, and regulations
36 promulgated by the United States Environmental Protection Agency."

37 Sec. 9. Article 21B of Chapter 143 is amended by adding a new section to

38 read:

39 **"§ 143-215.106A. Clean Air Act Advisory Council.**

40 (a) Creation. There is created the Clean Air Act Advisory Council.

41 (b) Membership. The Council shall consist of 11 members representing the
42 following interests:

43 (1) The Secretary or his designee;

44 (2) The Commissioner of Agriculture or his designee;

1 (3) The Chair of the Air Quality Committee of the Commission;

2 (4) Two representatives of local government;

3 (5) Three representatives of the environmental and conservation
4 community; and

5 (6) Three representatives of industry.

6 The Secretary shall appoint the members representing subdivisions (4) through (6)
7 above. The Secretary shall designate one member of the Council to serve as Chair.

8 (c) Functions and Duties. The Clean Air Act Advisory Council shall assist the
9 Secretary and the Commission in an advisory capacity on:

10 (1) The development of all programs necessary to implement the Federal
11 Clean Air Act Amendments of 1990 including, but not limited to,
12 changes in existing State air quality statutes, rules and programs,
13 permitting and implementation procedures, fee programs, regulatory
14 flexibility, and regulation of air toxics; and

15 (2) The development of a permit fee program to finance increased State
16 regulatory activity required under the Federal Clean Air Act.

17 (d) Terms of Office and Removal from Office. Members shall be appointed for
18 one-year terms effective July 1, 1991. Appointments to fill vacancies shall be for the
19 balance of the unexpired term. A member who fails to attend three consecutive
20 meetings is disqualified from further participation. In addition, the Secretary may
21 remove any member of the Council from office for misfeasance, malfeasance, or
22 nonfeasance.

23 (e) Quorum. A majority of the Council shall constitute a quorum for the
24 transaction of business.

25 (f) Multiple Offices. Any person who is a member of the Council may hold such
26 membership concurrently with and in addition to any other elective or appointive office
27 or offices such person is permitted to hold under G.S. 128-1.1.

28 (g) Compensation. Members of the Council who are not State employees shall
29 receive per diem and necessary travel and subsistence expenses in accordance with the
30 provisions of G.S. 138-5.

31 (h) Staff. All clerical and other services required by the Council shall be
32 supplied by the Department. The Attorney General shall provide legal services required
33 by the Council.

34 (i) Meetings/Reports. The Council shall meet periodically upon the call of the
35 Chair. The Council may prepare separate final reports on issues it selects. The Council
36 shall complete its study and advise the Commission in a written report to the
37 Commission no later than May 1, 1992. A copy of the report shall be filed with the
38 Environmental Review Commission.

39 (j) Commission Rule-Making Authority. Unless deadlines established by the
40 United States Environmental Protection Agency require that rule making be initiated
41 earlier, the Commission shall not initiate rule making to implement the Title V Clean
42 Air Act programs and fees until May 1, 1992, or upon receipt of a final written report by
43 the Council, whichever is earlier."

1 Sec. 10. Article 21B of Chapter 143 is amended by adding a new section to
2 read:

3 **"§ 143-215.106B. Assessments to establish Title V Program.**

4 (a) The holders of permits issued by the Environmental Management
5 Commission for the control of sources of air pollution are assessed Clean Air Act
6 implementation fees on an annual basis in accordance with the schedule established in
7 this section. The assessments are in addition to any other fees required to be paid by the
8 permit holders in conjunction with the permits. The assessments shall be deposited in
9 the separate nonreverting account for the Title V Program established in G.S. 143-
10 215.3A(b) and shall be used only to defray the eligible expenses of the Title V Program.
11 The Secretary shall issue annual notices of the assessments to permit holders on or
12 before July 1 of each fiscal year. Assessments shall be payable 30 days after receipt of
13 notice. Failure to make timely payment within 90 days shall be grounds to revoke the
14 permit and to institute a collection action against the permit holder by the Attorney
15 General.

16 (b) Assessments are made in accordance with the following schedule:

- 17 (1) Sources emitting at least 100 tons and less than 500 tons per year, two
18 thousand dollars (\$2,000) for fiscal year 1991-92 and two thousand
19 five hundred dollars (\$2,500) for each year thereafter;
20 (2) Sources emitting at least 500 tons and less than 1,000 tons per year,
21 four thousand dollars (\$4,000) for fiscal year 1991-92 and twelve
22 thousand five hundred dollars (\$12,500) for each year thereafter;
23 (3) Sources emitting at least 1,000 tons and less than 5,000 tons per year,
24 six thousand dollars (\$6,000) for fiscal year 1991-92, and twenty-five
25 thousand dollars (\$25,000) for each year thereafter; and
26 (4) Sources emitting at least 5,000 tons per year, six thousand dollars
27 (\$6,000) for fiscal year 1991-92, and one hundred thousand dollars
28 (\$100,000) for each year thereafter.

29 (c) Notices of assessment shall not be issued for any fiscal year in which the
30 permit fees for the Title V Program adopted by the Commission pursuant to G.S. 143-
31 215.3(a)(1d) are in effect. Should a Title V Program permit fee become due and
32 payable during a fiscal year when the permit holder has paid an assessment, the Title V
33 Program permit fee shall be reduced in an amount equal to the pro rata share of the
34 assessment for the months remaining in the fiscal year. The pro rata share is determined
35 by dividing the assessment into 12 equal parts and multiplying that sum by the number
36 of months remaining in the fiscal year."

37 Sec. 11. This act is effective upon ratification, provided, however, Section 9
38 of this act expires July 1, 1992.