

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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HOUSE BILL 816

Short Title: Environmental Permit Appeals.

(Public)

Sponsors: Representatives Nichols; J. Brown, Reynolds, McMahan, and Weatherly.

Referred to: Health and Environment, if favorable, Judiciary I.

April 11, 1995

A BILL TO BE ENTITLED

AN ACT TO CREATE UNIFORM PROCEDURES FOR AIR, WATER, AND MINING
PERMIT APPEALS AND TO STREAMLINE THE PERMIT APPEAL PROCESS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 150B of the General Statutes is amended by adding the
following new Article to read:

"ARTICLE 3B.

"ENVIRONMENTAL PERMIT HEARINGS.

"§ 150B-42.1. Scope.

This Article applies to the following:

- (1) Mining. – Decisions of the Department of Environment, Health, and Natural Resources subject to the commencement of a contested case pursuant to G.S. 74-61(a);
- (2) Air. – Decisions of the Department of Environment, Health, and Natural Resources subject to the commencement of a contested case pursuant to G.S. 143-215.108(e); and
- (3) Water. – Decisions of the Department of Environment, Health, and Natural Resources subject to the commencement of a contested case pursuant to G.S. 143-215.1(e).

1 "§ 150B-42.2. Commencement of contested case; designation of permit appeal
2 panel; hearing required; notice; intervention.

3 (a) A contested case may be commenced under this Article by filing a petition
4 with the Office of Administrative Hearings. The party who files the petition shall serve a
5 copy of the petition on the agency and, if the filing party is not the permit applicant, the
6 filing party shall also serve a copy of the petition upon the permit applicant. A party who
7 files a petition shall file a certificate of service together with the petition as well as a copy
8 of the contested permit. Service shall be accomplished in accordance with G.S. 1A-1,
9 Rule 45. A petition must be signed by a party or a representative of the party and shall
10 state facts tending to establish that the agency named as the respondent has deprived the
11 petitioner of property or has otherwise substantially prejudiced the petitioner's rights by
12 the agency action and that the agency:

13 (1) Exceeded its authority or jurisdiction;

14 (2) Acted erroneously;

15 (3) Failed to use proper procedure;

16 (4) Acted arbitrarily or capriciously; or

17 (5) Failed to act as required by law or rule.

18 Any person aggrieved by the action of an agency subject to this Article may commence a
19 contested case under this Article.

20 (b) Each contested case petition filed under this Article shall be heard by a permit
21 appeal panel comprised of an administrative law judge designated by the Chief
22 Administrative Law Judge of the Office of Administrative Hearings and four additional
23 members designated by the Chief Administrative Law Judge, as follows:

24 (1) Mining. – For appeals pursuant to G.S. 74-61, two members of the
25 Mining Commission appointed pursuant to G.S. 143B-291(3) as
26 representatives of nongovernmental conservation interests, one member
27 of the Mining Commission appointed pursuant to G.S. 143B-291(2) as a
28 representative of the mining industry, and one member of the Mining
29 Commission appointed pursuant to G.S. 143B-291(4) or (5).

30 (2) Air. – For appeals pursuant to G.S. 143-215.108(e), two members of the
31 Environmental Management Commission with experience relevant to
32 air quality issues and appointed pursuant to G.S. 143B-283(a)(4),(8), or
33 (10), and two members of the Environmental Management Commission
34 appointed pursuant to G.S. 143B-283(a)(7).

35 (3) Water. – For appeals pursuant to G.S. 143-215.1(e), two members of the
36 Environmental Management Commission with experience relevant to
37 water quality issues and appointed pursuant to G.S. 143B-283(a)(4), (6),
38 (8), or (11), and two members of the Environmental Management
39 Commission appointed pursuant to G.S. 143B-283(a)(7).

40 The administrative law judge shall serve as the presiding member of the permit appeal
41 panel.

1 (c) The administrative law judge serving as presiding member may require each
2 party to the contested case to file a prehearing statement. A party's prehearing statement
3 must be served on all other parties to the contested case.

4 (d) The parties to a contested case shall be given a notice of hearing by the Office
5 of Administrative Hearings not less than 15 days before the hearing. If prehearing
6 statements have been filed in the case, the notice shall state the date, hour, and place of
7 the hearing. If prehearing statements have not been filed in the case, the notice shall state
8 the date, hour, place, and nature of the hearing, shall list the particular sections of the
9 General Statutes and administrative rules involved, and shall give a short and plain
10 statement of the factual allegations.

11 (e) Notice shall be given personally or by certified mail. If given by certified mail,
12 notice shall be deemed to have been given on the delivery date appearing on the return
13 receipt. If giving of notice cannot be accomplished either personally or by certified mail,
14 notice shall then be given in the manner provided in G.S. 1A-1, Rule 4(j1).

15 (f) All hearings under this Article shall be open to the public. Hearings shall be
16 conducted in an impartial manner. Hearings shall be conducted according to the
17 procedures set out in this Article, except to the extent and in the particulars that specific
18 hearing procedures and time standards are governed by another law or administrative
19 rule.

20 (g) Unless another State or federal law, rule, or regulation sets a time limitation for
21 the filing of a petition in contested cases against a specified agency, the general limitation
22 for the filing of a petition in a contested case under this Article is 30 days. The time
23 limitation, whether established by another State or federal law, rule, or regulation, or this
24 section, shall commence when notice is given of the agency decision to all persons
25 aggrieved who are known to the agency by personal delivery or by the placing of the
26 notice in an official depository of the United States Postal Service postage paid and
27 wrapped in a wrapper addressed to the person at the latest address given by the person to
28 the agency. The notice shall be in writing, shall set forth the agency action, and shall
29 inform the persons of the right, the procedure, and the time limit to file a contested case
30 petition. When no informal settlement request has been received by the agency prior to
31 issuance of the notice, any subsequent informal settlement request shall not suspend the
32 time limitation for the filing of a petition for a contested case hearing.

33 (h) All hearings conducted under this Article shall be held in Wake County;
34 provided, however, that if a different venue would promote the ends of justice or better
35 serve the convenience of witnesses, the agency, or the permit appeal panel, the
36 administrative law judge serving as presiding member may designate another county
37 upon motion of a party.

38 (i) Any person aggrieved may petition to become a party by filing a motion to
39 intervene in the manner provided in G.S. 1A-1, Rule 24. In addition, any person
40 interested in a contested case may intervene and participate in the proceeding to the
41 extent deemed appropriate by the administrative law judge serving as presiding member.

42 (j) If someone other than the permit holder files the petition, the administrative
43 law judge shall designate the permit holder as a correspondent with the State agency.

1 **"§ 150B-42.3. Conduct of hearing; answer.**

2 (a) Hearings shall be conducted in a fair and impartial manner. At the hearing, the
3 agency and the parties shall be given an opportunity to present evidence on issues of fact,
4 examine and cross-examine witnesses, including the author of a document prepared by or
5 on behalf of or for the use of the agency and offered into evidence, submit rebuttal
6 evidence, and present arguments on issues of law or policy.

7 (b) If a party fails to appear in a contested case after proper service of notice, and
8 if no adjournment or continuance is granted, the permit appeal panel may proceed with
9 the hearing in the absence of a party.

10 (c) Evidence shall be presented first by the agency.

11 (d) It shall be the burden of the petitioning party to prove the allegations set forth
12 in the petition.

13 **"§ 150B-42.4. Subpoena.**

14 (a) After the commencement of a contested case, subpoenas may be issued for the
15 purposes of obtaining the testimony of a witness at the hearing or to command the person
16 to which it is directed to produce the records, books, papers, documents, or tangible
17 things designated therein. Subpoenas shall be issued by the Office of Administrative
18 Hearings and served in accordance with G.S. 1A-1, Rule 45(a), (c), and (e). In addition
19 to the methods of service in G.S. 1A-1, Rule 45, a State law enforcement officer may
20 serve a subpoena on behalf of an agency that is a party to the contested case by any
21 method by which a sheriff may serve a subpoena under that Rule. Subpoenas shall not be
22 issued for the purpose of taking depositions or compelling the appearance of persons or
23 the production of documents in advance of the hearing.

24 (b) Upon a motion, the administrative law judge serving as presiding member may
25 quash a subpoena if, upon a hearing, the administrative law judge finds that the evidence
26 required to be produced does not relate to a matter in issue, the subpoena does not
27 describe with sufficient particularity the evidence required to be produced, or for any
28 other reason sufficient in law.

29 (c) Witness fees shall be paid by the party requesting the subpoena to the
30 subpoenaed witnesses in accordance with G.S. 7A-314. However, State officials or
31 employees who are subpoenaed shall not be entitled to witness fees, but they shall receive
32 their normal salary and they shall not be required to take any annual leave for the witness
33 days. Travel expenses of State officials or employees who are subpoenaed shall be
34 reimbursed as provided in G.S. 138-6.

35 **"§ 150B-42.5. Record of case; exchange of evidence.**

36 (a) Within 10 days after the initiation of a contested case under this Article, the
37 agency shall file a certified record of its permit decision with the Office of Administrative
38 Hearings and shall serve copies upon the petitioner, corespondent, and any other parties.
39 The certified record shall contain a copy of the application, all documents received by the
40 agency in connection with the action, all records of the agency made in connection with
41 the permit decision, and any other documents directly related to the permit decision. The
42 certified record need not include records related solely to the internal procedures of the
43 agency or records which are exempt from disclosure by law.

1 (b) The administrative law judge serving as presiding member shall require each
2 party to serve all other parties with the following documents and information not less
3 than 30 days prior to the date of hearing; provided, however, that for good cause shown
4 the administrative law judge serving as presiding member may allow additional filings as
5 the interest of justice may require:

- 6 (1) Copies of all documentary evidence the party will offer at the hearing,
7 (2) A list of any other exhibits or nontestimonial evidence the party will
8 offer at the hearing, and
9 (3) A list of witnesses to be called by the party at the hearing, together with
10 a brief summary of each witness's forecasted testimony.

11 Upon motion of any party receiving the witness list in subdivision (3) of this subsection,
12 the administrative law judge serving as presiding member may order the party who
13 prepared the list to serve upon all parties a more definite statement of the forecasted
14 testimony of any witness. Except as provided for in this section, parties shall not be
15 required to engage in discovery.

16 **"§ 150B-42.6. Prehearing conference.**

17 In any action commenced under this Article, the administrative law judge serving as
18 presiding member may direct the parties in the contested case to appear before the
19 administrative law judge for a prehearing conference in accordance with G.S. 1A-1, Rule
20 16(a).

21 **"§ 150B-42.7. Stipulations.**

22 (a) The parties in a contested case may, by a stipulation in writing filed with the
23 administrative law judge serving as presiding member, agree upon any fact involved in
24 the controversy, which stipulation shall be used as evidence at the hearing and shall be
25 binding on the parties thereto. Parties should agree upon facts when practicable.

26 (b) Except as otherwise provided by law, disposition may be made of a contested
27 case by stipulation, agreed settlement, consent order, waiver, default, or other method
28 agreed upon by the parties.

29 **"§ 150B-42.8. Rules of evidence.**

30 (a) In all contested cases under this Article, irrelevant, immaterial, and unduly
31 repetitious evidence shall not be admissible. Except as otherwise provided, the rules of
32 evidence as applied in the trial division of the General Court of Justice shall be followed;
33 however, when evidence is not reasonably available under the rules to show relevant
34 facts, then the most reliable and substantial evidence available shall be admitted. On his
35 own motion, the administrative law judge serving as presiding member may exclude
36 evidence that is inadmissible under this section. It shall not be necessary for a party or a
37 party's attorney to object at the hearing to evidence in order to preserve the right to object
38 to its consideration by the permit appeal panel in making its final decision or by the court
39 on judicial review.

40 (b) Evidence in a contested case under this Article, including records and
41 documents, shall be offered and made a part of the record. Factual information or
42 evidence not made a part of the record shall not be considered in the determination of the
43 case, except as permitted under G.S. 150B-42.9. Documentary evidence may be received

1 in the form of a copy or excerpt or may be incorporated by reference, if the materials so
2 incorporated are available for examination by the parties not less than five days in
3 advance of the hearing. Upon timely request, a party shall be given an opportunity to
4 compare the copy with the original if available.

5 **"§ 150B-42.9. Official notice.**

6 Official notice may be taken of all facts of which judicial notice may be taken and of
7 other facts within the specialized knowledge of the agency or members of the permit
8 appeal panel. The noticed fact and its source shall be stated and made known to affected
9 parties at the earliest practical time, and any party shall on timely request be afforded an
10 opportunity to dispute the noticed fact through submission of evidence and argument.

11 **"§ 150B-42.10. Disqualification of panel members.**

12 (a) On the filing in good faith by a party of a timely and sufficient affidavit of
13 personal bias or disqualification of a member of the permit appeal panel, including the
14 administrative law judge serving as presiding member, the administrative law judge
15 serving as presiding member shall determine the matter as a part of the record in the case,
16 and this determination shall be subject to judicial review at the conclusion of the
17 proceeding.

18 (b) When the the administrative law judge serving as presiding member is
19 disqualified or it is impractical for him to continue the hearing, the Director of the Office
20 of Administrative Hearings shall assign another administrative law judge to continue with
21 the case unless it is shown that substantial prejudice to any party will result, in which
22 event a new hearing shall be held or the case dismissed without prejudice.

23 (c) When a member of the permit appeal panel other than the the administrative
24 law judge serving as presiding member is disqualified or it is impractical for the member
25 to continue the hearing, the Chief Administrative Law Judge of the Office of
26 Administrative Hearings shall designate another member as provided in G.S. 150B-
27 42.2(b) to continue with the case unless it is shown that substantial prejudice to any party
28 will result, in which event a new hearing shall be held or the case dismissed without
29 prejudice.

30 **"§ 150B-42.11. No ex parte communication; exceptions.**

31 Unless required for disposition of an ex parte matter authorized by law, neither the
32 administrative law judge assigned to a contested case nor a member of the permit appeal
33 panel in the case may communicate, directly or indirectly, in connection with any issue of
34 fact or question of law, with any person, party, or party's representative, except on notice
35 and opportunity for all parties to participate.

36 **"§ 150B-42.12. Powers of administrative law judge.**

37 (a) The administrative law judge serving as presiding member shall stay any
38 contested case under this Article on motion of an agency which is a party to the contested
39 case if the agency shows by supporting affidavits that it is engaged in other litigation or
40 administrative proceedings, by whatever name called, with or before a federal agency,
41 and this other litigation or administrative proceedings will determine the position, in
42 whole or in part, of the agency in the contested case. At the conclusion of the other

1 litigation or administrative proceedings, the contested case shall proceed and be
2 determined as expeditiously as possible.

3 (b) The administrative law judge serving as presiding member may:

4 (1) Administer oaths and affirmations;

5 (2) Sign, issue, and rule on subpoenas in accordance with G.S. 150B-42.4;

6 (3) Rule on all prehearing motions that are authorized by relevant
7 provisions of G.S. 1A-1, Rules of Civil Procedure;

8 (4) Regulate the course of the hearing, set the time and place for continued
9 hearings, and fix the time for filing or service of briefs and other
10 documents;

11 (5) Direct the parties to appear and confer to consider simplification of the
12 issues by consent of the parties;

13 (6) Determine whether the hearing shall be recorded by a stenographer or
14 by an electronic device; and

15 (7) Impose the sanctions provided for in G.S. 1A-1 or Chapter 3 of Title 26
16 of the North Carolina Administrative Code for noncompliance with
17 applicable procedural rules.

18 (c) The administrative law judge serving as presiding member may enter an order
19 returnable in the General Court of Justice, Superior Court Division, to show cause why a
20 person should not be held in contempt. The court shall have the power to impose
21 punishment for contempt for any act which would constitute direct or indirect contempt if
22 the act occurred in an action pending in superior court.

23 (d) Notwithstanding G.S. 150B-42.13, the following decisions made by the the
24 administrative law judge serving as presiding member are final decisions:

25 (1) An order finding that the permit appeal panel lacks jurisdiction.

26 (2) An order pursuant to the authority in G.S. 7A-759(e).

27 (3) An order pursuant to a written prehearing motion that either dismisses
28 the contested case for failure of the petitioner to prosecute or grants the
29 relief requested when a party does not comply with procedural
30 requirements.

31 (4) An order pursuant to a prehearing motion to dismiss the contested case
32 in accordance with G.S. 1A-1, Rule 12(b) when the order disposes of all
33 issues in the contested case.

34 **"§ 150B-42.13. Powers of the permit appeal panel; final agency decision.**

35 (a) The permit appeal panel that hears a contested case under this Article may:

36 (1) Enter a final agency decision affirming the Department's action;

37 (2) Enter a final agency decision reversing the Department's action;

38 (3) Remand the matter to the Department for further consideration
39 consistent with the panel's decision;

40 (4) Stay the contested action by the agency pending the outcome of the
41 case, upon such terms as it deems proper, and subject to G.S. 1A-1,
42 Rule 65; and

43 (5) Determine that a rule as applied in a particular case is void because:

- 1 a. It is not within the statutory authority of the agency,
2 b. It is not clear and unambiguous to persons it is intended to direct,
3 guide, or assist, or
4 c. It is not reasonably necessary to enable the agency to fulfill a
5 duty delegated to it by State law.

6 (b) No orders or decisions issued by the permit appeal panel pursuant to this
7 section shall be made except by affirmative vote of a majority of the panel.

8 (c) A final decision or order in a contested case shall be made by the permit appeal
9 panel in writing. Except as provided in G.S. 150B-42.12(e), the decision or order shall
10 include findings of fact and conclusions of law. Findings of fact shall be based
11 exclusively on the certified copy of the permit decision, the evidence, and on matters
12 officially noted. Findings of fact, if set forth in statutory language, shall be accompanied
13 by a concise and explicit statement of the underlying facts supporting the decision or
14 order. A decision or order shall not be made except upon consideration of the record as a
15 whole and shall be supported by substantial evidence admissible under G.S. 150B-42.7,
16 150B-42.8, or 150B-42.9.

17 **"§ 150B-42.14. Final decision; official record.**

18 (a) A copy of the final decision or order shall be served by the Office of
19 Administrative Hearings upon each party personally or by certified mail addressed to the
20 party at the latest address given by the party to the Office, and a copy shall be furnished
21 to the party's attorney of record.

22 (b) For each final decision or order entered pursuant to this Article, the Office of
23 Administrative Hearings shall prepare an official record of the case that includes, as
24 applicable:

- 25 (1) Notices, pleadings, motions, and intermediate rulings;
26 (2) Questions and offers of proof, objections, and rulings thereon;
27 (3) Evidence presented;
28 (4) Matters officially noticed, except matters so obvious that a statement of
29 them would serve no useful purpose; and
30 (5) The final decision or order.

31 (c) Proceedings at which oral evidence is presented shall be recorded, but need not
32 be transcribed unless requested by a party. Each party shall bear the cost of the transcript
33 or part thereof or copy of the transcript or part thereof which the party requests, and the
34 transcript or part thereof shall be added to the official record as an exhibit."

35 Sec. 2. G.S. 150B-45 reads as rewritten:

36 **"§ 150B-45. Procedure for seeking review; waiver.**

37 (a) Except as provided in G.S. 150B-52, ~~To~~to obtain judicial review of a final
38 decision under this Article, the person seeking review must file a petition in the Superior
39 Court of Wake County or in the superior court of the county where the person resides.

40 The person seeking review must file the petition within 30 days after the person is
41 served with a written copy of the decision.

1 (b) A person who fails to file a petition within the required time waives the
2 right to judicial review under this Article. For good cause shown, however, the superior
3 court may accept an untimely petition."

4 Sec. 3. G.S. 150B-52 reads as rewritten:

5 **"§ 150B-52. Appeal; stay of court's decision.**

6 (a) A party to a review proceeding in a superior court may appeal to the appellate
7 division from the final judgment of the superior court as provided in G.S. 7A-27.
8 Pending the outcome of an appeal, an appealing party may apply to the court that issued
9 the judgment under appeal for a stay of that judgment or a stay of the administrative
10 decision that is the subject of the appeal, as appropriate.

11 (b) To obtain judicial review of a final agency decision under Article 3B of this
12 Chapter, the person seeking review must file a petition with the appellate division as
13 provided in G.S. 7A-29. The person seeking review must file the petition within 30 days
14 after the person is served with a written copy of the decision."

15 Sec. 4. G.S. 7A-29 reads as rewritten:

16 **"§ 7A-29. Appeals of right from certain administrative agencies.**

17 (a) From any final order or decision of the North Carolina Utilities Commission
18 not governed by subsection (b) of this section, the Department of Human Resources
19 under G.S. 131E-188(b), the Commissioner of Banks under Articles 17, 18, 18A, and 21
20 of Chapter 53 of the General Statutes, the Administrator of Savings and Loans under
21 Article 3A of Chapter 54B of the General Statutes, the North Carolina Industrial
22 Commission, the North Carolina State Bar under G.S. 84-28, the Property Tax
23 Commission under G.S. 105-290 and G.S. 105-342, the Commissioner of Insurance
24 under G.S. 58-2-80, an environmental permit appeal panel under G.S. 150B-52, or the
25 Secretary of Environment, Health, and Natural Resources under G.S. 104E-6.2, appeal as
26 of right lies directly to the Court of Appeals.

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

29 Sec. 5. G.S. 74-61 reads as rewritten:

30 **"§ 74-61. Administrative and judicial review of decisions.**

31 (a) An applicant, permittee, or affected person may contest a decision of the
32 Department to issue, deny, suspend, modify, or revoke a permit or a reclamation plan, or
33 to renew a permit, by filing a petition for a contested case under G.S. 150B-42.2.

34 (b) An applicant, permittee, or affected person may contest a decision of the
35 Department to refuse to release part or all of a bond or other security, or to assess a civil
36 penalty by filing a petition for a contested case under G.S. 150B-23 within 30 days after
37 the Department makes the decision. The Commission shall make the final decision in a
38 contested case under this ~~section~~-subsection. Article 4 of Chapter 150B of the General
39 Statutes governs judicial review of a decision of the Commission."

40 Sec. 6. G.S. 143-215.1 reads as rewritten:

41 **"§ 143-215.1. Control of sources of water pollution; permits required.**

42 (a) Activities for Which Permits Required. – No person shall do any of the
43 following things or carry out any of the following activities until or unless such person

1 shall have applied for and shall have received from the ~~Commission~~ Department a permit
2 therefor and shall have complied with such conditions, if any, as are prescribed by such
3 permit:

- 4 (1) Make any outlets into the waters of the State;
- 5 (2) Construct or operate any sewer system, treatment works, or disposal
6 system within the State;
- 7 (3) Alter, extend, or change the construction or method of operation of any
8 sewer system, treatment works, or disposal system within the State;
- 9 (4) Increase the quantity of waste discharged through any outlet or
10 processed in any treatment works or disposal system to any extent
11 which would result in any violation of the effluent standards or
12 limitations established for any point source or which would adversely
13 affect the condition of the receiving waters to the extent of violating any
14 of the standards applicable to such water;
- 15 (5) Change the nature of the waste discharged through any disposal system
16 in any way which would exceed the effluent standards or limitations
17 established for any point source or which would adversely affect the
18 condition of the receiving waters in relation to any of the standards
19 applicable to such waters;
- 20 (6) Cause or permit any waste, directly or indirectly, to be discharged to or
21 in any manner intermixed with the waters of the State in violation of the
22 water quality standards applicable to the assigned classifications or in
23 violation of any effluent standards or limitations established for any
24 point source, unless allowed as a condition of any ~~permit~~, permit issued
25 by the Department or special order or other appropriate instrument
26 issued or entered into by the ~~Commission~~ Department under the
27 provisions of this Article;
- 28 (7) Cause or permit any wastes for which pretreatment is required by
29 pretreatment standards to be discharged, directly or indirectly, from a
30 pretreatment facility to any disposal system or to alter, extend or change
31 the construction or method of operation or increase the quantity or
32 change the nature of the waste discharged from or processed in such
33 facility;
- 34 (8) Enter into a contract for the construction and installation of any outlet,
35 sewer system, treatment works, pretreatment facility or disposal system
36 or for the alteration or extension of any such facilities;
- 37 (9) Dispose of sludge resulting from the operation of a treatment works,
38 including the removal of in-place sewage sludge from one location and
39 its deposit at another location, consistent with the requirement of the
40 Resource Conservation and Recovery Act and regulations promulgated
41 pursuant thereto;

- 1 (10) Cause or permit any pollutant to enter into a defined managed area of
2 the State's waters for the maintenance or production of harvestable
3 freshwater, estuarine, or marine plants or animals;
4 (11) Cause or permit discharges regulated under G.S. 143-214.7 which result
5 in water pollution.

6 In the event that both effluent standards or limitations and classifications and water
7 quality standards are applicable to any point source or sources and to the waters to which
8 they discharge, the more stringent among the standards established by the Commission
9 shall be applicable and controlling.

10 In connection with the above, no such permit shall be granted for the disposal of
11 waste in waters classified as sources of public water supply where the head of the agency
12 which administers the public water supply program pursuant to Article 10 of Chapter
13 130A of the General Statutes, after review of the plans and specifications for the
14 proposed disposal facility, determines and advises the ~~Commission-Department~~ that such
15 disposal is sufficiently close to the intake works or proposed intake works of a public
16 water supply as to have an adverse effect on the public health.

17 In any case where the ~~Commission-Department~~ denies a permit, it shall state in writing
18 the reason for such denial and shall also state the ~~Commission's-Department's~~ estimate of
19 the changes in the applicant's proposed activities or plans which will be required in order
20 that the applicant may obtain a permit.

21 (a1) The Department shall regulate wastewater systems under rules adopted by the
22 Commission for Health Services pursuant to Article 11 of Chapter 130A of the General
23 Statutes except as otherwise provided in this subsection. No permit shall be required
24 under this section for a wastewater system regulated under Article 11 of Chapter 130A of
25 the General Statutes. The following wastewater systems shall be regulated by the
26 Department under rules adopted by the ~~Commission-Commission for Health Services~~:

- 27 (1) Wastewater systems designed to discharge effluent to the land surface
28 or surface waters.
29 (2) Wastewater systems designed for groundwater remediation,
30 groundwater injection, or landfill leachate collection and disposal.
31 (3) Wastewater systems designed for the complete recycle or reuse of
32 industrial process wastewater.

33 (b) ~~Commission's-Department's~~ Power as to Permits. –

- 34 (1) The ~~Commission-Department~~ shall act on all permits so as to prevent, so
35 far as reasonably possible, considering relevant standards under State
36 and federal laws, any significant increase in pollution of the waters of
37 the State from any new or enlarged sources. No permit shall be denied
38 and no condition shall be attached to the permit, except when the
39 ~~Commission-Department~~ finds such denial or such conditions necessary
40 to effectuate the purposes of this Article.
41 (2) The ~~Commission-Department~~ shall also act on all permits so as to
42 prevent violation of water quality standards due to the cumulative
43 effects of permit decisions. Cumulative effects are impacts attributable

1 to the collective effects of a number of projects and include the effects
2 of additional projects similar to the requested permit in areas available
3 for development in the vicinity. All permit decisions shall require that
4 the practicable waste treatment and disposal alternative with the least
5 adverse impact on the environment be utilized.

6 (3) General permits may be issued under rules adopted pursuant to Chapter
7 150B of the General Statutes. Such rules may provide that minor
8 activities may occur under a general permit issued in accordance with
9 conditions set out in such rules. All persons covered under general
10 permits shall be subject to all enforcement procedures and remedies
11 applicable under this Article.

12 (4) The ~~Commission~~Department shall have the power:

13 a. To grant a permit with such conditions attached as the
14 ~~Commission~~Department believes necessary to achieve the
15 purposes of this Article.

16 b. To require that an applicant satisfy the Department that the
17 applicant, or any parent, subsidiary, or other affiliate of the
18 applicant or parent:

19 1. Is financially qualified to carry out the activity for which
20 the permit is required under subsection (a) of this section;
21 and

22 2. Has substantially complied with the effluent standards and
23 limitations and waste management treatment practices
24 applicable to any activity in which the applicant has
25 previously engaged, and has been in substantial
26 compliance with other federal and state laws, regulations,
27 and rules for the protection of the environment.

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

31 c. To modify or revoke any permit upon not less than 60 days'
32 written notice to any person affected.

33 d. To designate certain classes of minor activities for which a
34 general permit may be issued, after considering:

35 1. The environmental impact of the activities;

36 2. How often the activities are carried out;

37 3. The need for individual permit oversight; and

38 4. The need for public review and comment on individual
39 permits.

40 e. To designate certain classes of minor activities for which:

41 1. Performance conditions may be established by rule; and

42 2. Individual or general permits are not required.

43 (b1) Repealed by Session Laws 1991, c. 156, s. 1, effective October 1, 1991.

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

3 (1) All applications for permits and for renewal of existing permits for
4 outlets and point sources and for treatment works and disposal systems
5 discharging to the surface waters of the State shall be in writing, and the
6 ~~Commission-Department~~ may prescribe the form of such applications.
7 All applications shall be filed with the ~~Commission-Department~~ at least
8 180 days in advance of the date on which it is desired to commence the
9 discharge of wastes or the date on which an existing permit expires, as
10 the case may be. The ~~Commission-Department~~ shall act on a permit
11 application as quickly as possible. The ~~Commission-Department~~ may
12 conduct any inquiry or investigation it considers necessary before acting
13 on an application and may require an applicant to submit plans,
14 specifications, and other information the ~~Commission-Department~~
15 considers necessary to evaluate the application.

16 (2) a. The Department shall ~~refer each application for permit, or renewal of~~
17 ~~an existing permit, for outlets and point sources and treatment works~~
18 ~~and disposal systems discharging to the surface waters of the State to its~~
19 ~~staff for written evaluation and proposed determination with regard to~~
20 ~~issuance or denial of the permit. If the Commission concurs in the~~
21 ~~proposed determination, it shall give notice of intent to issue or deny the~~
22 permit, along with any other data that the ~~Commission-Department~~ may
23 determine appropriate, to be given to the appropriate State, interstate
24 and federal agencies, to interested persons, and to the public. The
25 ~~Commission-Department~~ shall prescribe the form and content of the
26 notice.

27 The notice required herein shall be given at least 45 days
28 prior to any proposed final action granting or denying the permit.
29 Public notice shall be given by publication of the notice one time
30 in a newspaper having general circulation within the county.

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

32 (3) If any person desires a public meeting on any application for permit or
33 renewal of an existing permit provided for in this subsection, he shall so
34 request in writing to the ~~Commission-Department~~ within 30 days
35 following date of the notice of intent. The ~~Commission-Department~~ shall
36 consider all such requests for meeting, and if the ~~Commission~~
37 ~~Department~~ determines that there is a significant public interest in
38 holding such meeting, at least 30 days' notice of such meeting shall be
39 given to all persons to whom notice of intent was sent and to any other
40 person requesting notice. At least 30 days prior to the date of meeting,
41 the ~~Commission-Department~~ shall also cause a copy of the notice thereof
42 to be published at least one time in a newspaper having general
43 circulation in such county. In any county in which there is more than

1 one newspaper having general circulation in that county, the ~~Commission~~
2 Department shall cause a copy of such notice to be published in as many
3 newspapers having general circulation in the county as the ~~Commission~~
4 Department in its discretion determines may be necessary to assure that
5 such notice is generally available throughout the county. The
6 ~~Commission-Department~~ shall prescribe the form and content of the
7 notices.

8 The ~~Commission-Department~~ shall prescribe the procedures to be
9 followed in such meetings. ~~If the meeting is not conducted by the~~
10 ~~Commission, detailed-Detailed~~ minutes of the meeting shall be kept and
11 shall be submitted, along with any other written comments, exhibits or
12 documents presented at the meeting, ~~to the Commission for its~~
13 ~~consideration-meeting.~~ The Department shall give consideration to the
14 information prior to final action granting or denying the permit.

15 (4) Not later than 60 days following notice of intent or, if a public hearing is
16 held, within 90 days following consideration of the matters and things
17 presented at such hearing, the ~~Commission-Department~~ shall grant or
18 deny any application for issuance of a new permit or for renewal of an
19 existing permit. All permits or renewals issued by the ~~Commission~~
20 Department and all decisions denying application for permit or renewal
21 shall be in writing.

22 (5) No permit issued pursuant to this subsection (c) shall be issued or
23 renewed for a term exceeding five years.

24 (6) The ~~Commission-Department~~ shall not act upon an application for a new
25 nonmunicipal domestic wastewater discharge facility until it has
26 received a written statement from each city and county government
27 having jurisdiction over any part of the lands on which the proposed
28 facility and its appurtenances are to be located which states whether the
29 city or county has in effect a zoning or subdivision ordinance and, if
30 such an ordinance is in effect, whether the proposed facility is consistent
31 with the ordinance. The ~~Commission-Department~~ shall not approve a
32 permit application for any facility which a city or county has determined
33 to be inconsistent with its zoning or subdivision ordinance unless it
34 determines that the approval of such application has statewide
35 significance and is in the best interest of the State. An applicant for a
36 permit shall request that each city and county government having
37 jurisdiction issue the statement required by this subdivision by mailing
38 by certified mail, return receipt requested, a written request for such
39 statement and a copy of the draft permit application to the clerk of the
40 city or county. If a local government fails to mail the statement required
41 by this subdivision, as evidenced by a postmark, within 15 days after
42 receiving and signing for the certified mail, the ~~Commission-Department~~

1 may proceed to consider the permit application notwithstanding this
2 subdivision.

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

6 (1) All applications for new permits and for renewals of existing permits for
7 sewer systems, sewer system extensions and for disposal systems, and
8 for land application of waste, or treatment works which do not discharge
9 to the surface waters of the State, and all permits or renewals and
10 decisions denying any application for permit or renewal shall be in
11 writing. The ~~Commission-Department~~ shall act on a permit application as
12 quickly as possible. The ~~Commission-Department~~ may conduct any
13 inquiry or investigation it considers necessary before acting on an
14 application and may require an applicant to submit plans, specifications,
15 and other information the ~~Commission-Department~~ considers necessary
16 to evaluate the application. If the ~~Commission-Department~~ fails to act on
17 an application for a permit, including a renewal of a permit, within 90
18 days after the applicant submits all information required by the
19 ~~Commission-Department~~, the application is considered to be approved.
20 Permits and renewals issued in approving such facilities pursuant to this
21 subsection shall be effective until the date specified therein or until
22 rescinded unless modified or revoked by the ~~Commission-Department~~.
23 Local governmental units to whom pretreatment program authority has
24 been delegated shall establish, maintain, and provide to the public, upon
25 written request, a list of pretreatment applications received.

26 (2) An applicant for a permit to dispose of petroleum contaminated soil by
27 land application shall give written notice that he intends to apply for
28 such a permit to each city and county government having jurisdiction
29 over any part of the land on which disposal is proposed to occur. The
30 ~~Commission-Department~~ shall not accept such a permit application
31 unless it is accompanied by a copy of the notice and evidence that the
32 notice was sent to each such government by certified mail, return receipt
33 requested. The ~~Commission-Department~~ may consider, in determining
34 whether to issue the permit, the comments submitted by local
35 governments.

36 (d1) Each applicant under subsections (c) or (d) for a permit (or the renewal
37 thereof) for the operation of a treatment works for a private multi-family or single family
38 residential development, in which the owners of individual residential units are required
39 to organize as a lawfully constituted and incorporated homeowners' association of a
40 subdivision, condominium, planned unit development, or townhouse complex, shall be
41 required to enter into an operational agreement with the ~~Commission-Department~~ as a
42 condition of any such permit granted. The agreement shall address, as necessary,
43 construction, operation, maintenance, assurance of financial solvency, transfers of

1 ownership and abandonment of the plant, systems, or works, and shall be modified as
2 necessary to reflect any changed condition at the treatment plant or in the development.
3 Where the ~~Commission-Department~~ finds appropriate, it may require any other private
4 residential subdivision, condominium, planned unit development or townhouse complex
5 which is served by a private treatment works and does not have a lawfully constituted and
6 incorporated homeowners' association, and for which an applicant applies for a permit or
7 the renewal thereof under subsections (c) or (d), to incorporate as a lawfully constituted
8 homeowners' association, and after such incorporation, to enter into an operational
9 agreement with the ~~Commission-Department~~ and the applicant as a condition of any
10 permit granted under subsections (c) or (d). The local government unit or units having
11 jurisdiction over the development shall receive notice of the application within an
12 established comment period and prior to final decision.

13 (e) Administrative Review. – A permit applicant or permittee who is dissatisfied
14 with a decision of the ~~Commission-Department~~ may commence a contested case by filing
15 a petition under G.S. ~~150B-23-150B-42.2~~ within 30 days after the ~~Commission-Department~~
16 notifies the applicant or permittee of its decision. If the permit applicant or permittee does
17 not file a petition within the required time, the ~~Commission's-Department's~~ decision is
18 final and is not subject to review.

19 (f) Local Permit Programs for Sewer Extension. – Municipalities, counties, local
20 boards or commissions, water and sewer authorities, or groups of municipalities and
21 counties may establish and administer within their utility service areas their own general
22 permit programs in lieu of State permit required in G.S. 143-215.1(a)(2), (3), and (8)
23 above, for construction, operation, alteration, extension, change of proposed or existing
24 sewer system, subject to the prior certification of the ~~Commission-Department~~. For
25 purposes of this subsection, the service area of a municipality shall include only that area
26 within the corporate limits of the municipality and that area outside a municipality in its
27 extraterritorial jurisdiction where sewer service is already being provided by the
28 municipality to the permit applicant or connection to the municipal sewer system is
29 immediately available to the applicant; the service areas of counties and the other entities
30 or groups shall include only those areas where sewer service is already being provided to
31 the applicant by the permitting authority or connection to the permitting authority's
32 system is immediately available. No later than the 180th day after the receipt of a
33 program and statement submitted by any local government, commission, authority, or
34 board the ~~Commission-Department~~ shall certify any local program that:

- 35 (1) Provides by ordinance or local law for requirements compatible with
36 those imposed by this Part and the rules implementing this Part;
- 37 (2) Provides that the Department receives notice and a copy of each
38 application for a permit and that it receives copies of approved permits
39 and plans upon request by the ~~Commission-Department~~;
- 40 (3) Provides that plans and specifications for all construction, extensions,
41 alterations, and changes be prepared by or under the direct supervision
42 of an engineer licensed to practice in this State;

- 1 (4) Provides for the adequate enforcement of the program requirements by
2 appropriate administrative and judicial process;
- 3 (5) Provides for the adequate administrative organization, engineering staff,
4 financial and other resources necessary to effectively carry out its plan
5 review program;
- 6 (6) Provides that the system is capable of interconnection at an appropriate
7 time with an expanding municipal, county, or regional system;
- 8 (7) Provides for the adequate arrangement for the continued operation,
9 service, and maintenance of the sewer system; and
- 10 (8) Is approved by the ~~Commission~~Department as adequate to meet the
11 requirements of this Part and the rules implementing this Part.

12 The ~~Commission~~Department may deny, suspend, or revoke certification of a local
13 program upon a finding that a violation of the provisions in subsection (f) of this
14 section has occurred. A denial, suspension, or revocation of a certification of a local
15 program shall be made only after notice and a public hearing. If the failure of a local
16 program to carry out this subsection creates an imminent hazard, the ~~Commission~~
17 Department may summarily revoke the certification of the local program. Chapter 150B
18 of the General Statutes does not apply to proceedings under this subsection.

19 Notwithstanding any other provision of this subsection, if the ~~Commission~~Department
20 determines that a sewer system, treatment works, or disposal system is operating in
21 violation of the provisions of this Article and that the appropriate local authorities have
22 not acted to enforce those provisions, the ~~Commission~~Department may, after written
23 notice to the appropriate local government, take enforcement action in accordance with
24 the provisions of this Article.

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

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

34 **"§ 143-215.108. Control of sources of air pollution; permits required.**

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

- 42 (1) Establish or operate any air contaminant source;

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

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

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

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

24 (c) The ~~Commission-Department~~ shall have the power:

- 25 (1) To grant and renew a permit with such conditions attached as the
26 ~~Commission-Department~~ believes necessary to achieve the purposes of
27 this section or the requirements of the Clean Air Act and implementing
28 regulations adopted by the United States Environmental Protection
29 Agency;
- 30 (2) To grant and renew any temporary permit for such period of time as the
31 ~~Commission-Department~~ shall specify even though the action allowed by
32 such permit may result in pollution or increase pollution where
33 conditions make such temporary permit essential;
- 34 (3) To terminate, modify, or revoke and reissue any permit upon not less
35 than 60 days' written notice to any person affected;
- 36 (3a) To suspend any permit pursuant to the provisions of G.S. 150B-3(c);
- 37 (4) To require all applications for permits and renewals to be in writing and
38 to prescribe the form of such applications;
- 39 (5) To request such information from an applicant and to conduct such
40 inquiry or investigation as it may deem necessary and to require the
41 submission of plans and specifications prior to acting on any application
42 for a permit;

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

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

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

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

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

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

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

34 (e) A permit applicant or permittee who is dissatisfied with a decision of the
35 ~~Commission-Department~~ may commence a contested case by filing a petition under G.S.
36 ~~150B-23-150B-42.2~~ within 30 days after the ~~Commission-Department~~ notifies the applicant
37 or permittee of its decision. If the permit applicant or permittee does not file a petition
38 within the required time, the ~~Commission's-Department's~~ decision on the application is
39 final and is not subject to review.

40 (f) An applicant for a permit under this section for a new facility or for the
41 expansion of a facility permitted under this section shall request each local government
42 having jurisdiction over any part of the land on which the facility and its appurtenances
43 are to be located to issue a determination as to whether the local government has in effect

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

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

35 Sec. 8. G.S. 143B-282(a)(1) reads as rewritten:

36 "(1) Within the limitations of G.S. 143-215.9 concerning industrial health
37 and safety, the Environmental Management Commission shall have the
38 following powers and duties:

- 39 a. ~~To grant a permit or temporary permit, to modify or revoke a~~
40 ~~permit, and to refuse to grant permits pursuant to G.S. 143-215.1~~
41 ~~and G.S. 143-215.108 with regard to controlling sources of air~~
42 ~~and water pollution;~~

- 1 b. To issue a special order pursuant to G.S. 143-215.2(b) and G.S.
2 143-215.110 to any person whom the Commission finds
3 responsible for causing or contributing to any pollution of water
4 within such watershed or pollution of the air within the area for
5 which standards have been established;
6 c. To conduct and direct that investigations be conducted pursuant
7 to G.S. 143-215.3 and G.S. 143-215.108(b)(5);
8 d. To conduct public hearings, institute actions in superior court,
9 and agree upon or enter into settlements, all pursuant to G.S.
10 143-215.3;
11 e. To direct the investigation of any killing of fish and wildlife
12 pursuant to G.S. 143-215.3;
13 f. To consult with any person proposing to construct, install, or
14 acquire an air or water pollution source pursuant to G.S. 143-
15 215.3 and G.S. 143-215.111;
16 g. To encourage local government units to handle air pollution
17 problems and to provide technical and consultative assistance
18 pursuant to G.S. 143-215.3 and G.S. 143-215.112;
19 h. To review and have general oversight and supervision over local
20 air pollution control programs pursuant to G.S. 143-215.3 and
21 G.S. 143-215.112;
22 i. To declare an emergency when it finds a generalized dangerous
23 condition of water or air pollution pursuant to G.S. 143-215.3;
24 j. To render advice and assistance to local government regarding
25 floodways pursuant to G.S. 143-215.56;
26 k. To declare and delineate and modify capacity use areas pursuant
27 to G.S. 143-215.13;
28 l. To grant permits for water use within capacity use areas pursuant
29 to G.S. 143-215.15;
30 m. To direct that investigations be conducted when necessary to
31 carry out duties regarding capacity use areas pursuant to G.S.
32 143-215.19;
33 n. To approve, disapprove and approve subject to conditions all
34 applications for dam construction pursuant to G.S. 143-215.28; to
35 require construction progress reports pursuant to G.S. 143-
36 215.29;
37 o. To halt dam construction pursuant to G.S. 143-215.29;
38 p. To grant final approval of dam construction work pursuant to
39 G.S. 143-215.30;
40 q. To have jurisdiction and supervision over the maintenance and
41 operation of dams pursuant to G.S. 143-215.31;
42 r. To direct the inspection of dams pursuant to G.S. 143-215.32;

- 1 s. To modify or revoke any final action previously taken by the
2 Commission pursuant to G.S. 143-214.1 and G.S. 143-215.107;
3 and
4 t. To have jurisdiction and supervision over oil pollution pursuant
5 to Article 21A of Chapter 143.

6 Commission members sitting as members of permit appeal panels pursuant to Article 3B
7 of Chapter 150B of the General Statutes shall have, in the manner and to the extent set
8 out in that Article, the power and duty to decide cases governed by that Article."

9 Sec. 9. G.S. 143B-290(1) reads as rewritten:

10 "(1) The North Carolina Mining Commission shall have the following
11 powers and duties:

- 12 a. To act as the advisory body to the Interstate Mining Compact
13 pursuant to G.S. 74-38(a);
14 b. To adopt and modify rules to implement Chapter 74, Article 6,
15 pursuant to G.S. 74-44(b);
16 e. ~~To hear permit appeals, conduct a full and complete hearing on~~
17 ~~such controversies and affirm, modify, or overrule permit~~
18 ~~decisions made by the Department pursuant to G.S. 74-61; and~~
19 d. To ~~promulgate~~ adopt rules necessary to administer the Mining Act
20 of 1971, pursuant to G.S. 74-63; and
21 e. To ~~promulgate~~ adopt rules necessary to administer the Control of
22 Exploration for Uranium in North Carolina Act of 1983, pursuant
23 to G.S. 74-86.

24 Commission members sitting as members of permit appeal panels pursuant to Article 3B
25 of Chapter 150B of the General Statutes shall have, in the manner and to the extent set
26 out in that Article, the power and duty to decide cases governed by that Article."

27 Sec. 10. G.S. 143B-291 reads as rewritten:

28 **"§ 143B-291. North Carolina Mining Commission – members; selection; removal;**
29 **compensation; quorum; services.**

30 The North Carolina Mining Commission shall consist of ~~nine~~ eleven members
31 appointed by the Governor. ~~The Commission shall be composed of the following: as follows:~~

- 32 (1) one member appointed by the Governor who is the chairman of the
33 North Carolina State University Minerals Research Laboratory
34 Advisory Committee;
35 (2) three members appointed by the Governor who are representatives of
36 mining industries;
37 (3) three members appointed by the Governor who are representatives of
38 nongovernmental conservation interests-interests;
39 (4) one member appointed by the Speaker of the House of Representatives
40 who is a registered engineer with training and experience in mine design
41 or mining technology;
42 (5) one member appointed by the President Pro Tempore of the Senate who
43 has formal training and experience in mining pollution control; and

1 (6) ~~And~~ two members who shall represent the Environmental Management
2 Commission and be knowledgeable in the principles of water and air
3 resources management.

4 The initial members of the North Carolina Mining Commission shall be those
5 members of the present North Carolina Mining Council who shall meet the above
6 requirements for membership on the North Carolina Mining Commission and who shall
7 serve on the North Carolina Mining Commission for a period equal to the remainder of
8 their current terms on the North Carolina Mining Council. The remaining initial members
9 shall be appointed by the Governor to staggered terms of six years. Any appointment to
10 fill a vacancy on the Commission created by the resignation, dismissal, death or disability
11 of a member shall be for the balance of the unexpired term. At the expiration of each
12 member's term, the ~~Governor~~ appointing authority shall replace the member with a new
13 member of like qualifications for a term of six years.

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

17 The members of the Commission shall receive per diem and necessary traveling and
18 subsistence expenses in accordance with the provisions of G.S. 138-5.

19 A majority of the Commission shall constitute a quorum for the transaction of
20 business.

21 All clerical and other services required by the Commission shall be supplied by the
22 Secretary of the Department."

23 Sec. 11. This act becomes effective October 1, 1995, and applies to agency
24 actions for which notice is mailed on or before that date.