

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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HOUSE BILL 836
Committee Substitute Favorable 5/31/95

Short Title: Expedite Environmental Permitting.

(Public)

Sponsors:

Referred to:

April 11, 1995

A BILL TO BE ENTITLED

1 AN ACT TO EXPEDITE THE ENVIRONMENTAL PERMITTING PROCESS BY
2 ALLOWING THE OPTION OF SUBMITTING PERMIT APPLICATIONS
3 CERTIFIED BY A PROFESSIONAL ENGINEER AND ALLOWING THESE
4 APPLICATIONS TO BE IMMEDIATELY SENT TO PUBLIC NOTICE AND
5 HEARING AND SUBJECTED TO SIMULTANEOUS TECHNICAL REVIEW,
6 AND TO INCREASE THE MAXIMUM AMOUNT OF THE FEE THAT THE
7 ENVIRONMENTAL MANAGEMENT COMMISSION MAY ASSESS FOR
8 PROCESSING AN APPLICATION FOR A PERMIT UNDER THE WATER AND
9 AIR QUALITY PROGRAMS.
10

11 The General Assembly of North Carolina enacts:

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

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

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

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

16 a. Publish any required notices, using the draft permit included with
17 the application;

18 b. Schedule any required public meetings or hearings on the
19 application and permit; and

20 c. Initiate any and all technical review of the application in a
21 manner to ensure substantial completion of the technical review
22 by the time of any public hearing on the application, or if there is
23 no hearing, by the close of the notice period.

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

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

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

1 subsection shall be an option and shall not be required of any applicant.
2 The Department shall not impose any additional fees for the receipt or
3 processing of a permit application certified by a professional engineer.

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

- 10 (1) Determining that the permit application is complete;
- 11 (2) Requesting additional information to determine completeness;
- 12 (3) Determining that additional information is needed to conduct a technical
13 review of the application;
- 14 (4) Completing all technical review of the permit application;
- 15 (5) Holding and completing all public meetings and hearings required for
16 the application;
- 17 (6) Completing the record from reviewing and acting on the application;
18 and
- 19 (7) Taking final action on the permit, including granting or denying the
20 application."

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

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

- 31 (1) Immediate Initiation of Review. Upon receipt of an application certified
32 by a professional engineer in accordance with this subsection and the
33 rules adopted pursuant to this subsection and upon a determination that
34 the application is complete pursuant to subdivision (2) of this
35 subsection, the Department shall immediately:
 - 36 a. Publish any required notices, using the draft permit included with
37 the application;
 - 38 b. Schedule any required public meetings or hearings on the
39 application and permit; and
 - 40 c. Initiate any and all technical review of the application in a
41 manner to ensure substantial completion of the technical review
42 by the time of any public hearing on the application, or if there is
43 no hearing, by the close of the notice period.

- 1 (2) Completeness Review. Within 10 working days of receipt of the permit
2 application certified by a professional engineer under this subsection,
3 the Department shall determine whether the application is complete for
4 purposes of this subsection. The Department shall determine whether
5 the permit application certified by a professional engineer is complete
6 by comparing the information provided in the application with the
7 checklist contained in the rules adopted by the Commission pursuant to
8 this subsection.
- 9 a. If the application is not complete, the Department shall promptly
10 notify the applicant in writing of all deficiencies of the
11 application, specifying the items that need to be included,
12 modified, or supplemented in order to make the application
13 complete, and the 10-day time period is suspended after this
14 request for further information. If the applicant submits the
15 requested information within the time specified, the application
16 shall be considered with no delay in the review process, and the
17 10-day time period shall be resumed on the day the additional
18 information was requested. If the additional information is not
19 submitted within the time periods specified, the Department shall
20 return the application to the applicant, and the applicant may treat
21 the return of the application as a denial of the application or may
22 resubmit the application at a later time.
- 23 b. If the Department fails to notify the applicant that an application
24 is not complete within the time period set forth in this subsection,
25 the application shall be deemed to be complete.
- 26 (3) Time for Permit Decision. For any application found to be complete
27 under subdivision (2) of this subsection, the Department shall issue a
28 permit decision within 60 days of the last day of any public hearing on
29 the application, or if there is no hearing, within 60 days of the close of
30 the notice period.
- 31 (4) Rights if Permit Decision Not Made in Timely Fashion. If the
32 Department fails to issue a permit decision within the time periods
33 specified in subdivision (3) of this subsection, the applicant may take
34 any of the following actions:
- 35 a. Take no action, thereby consenting to the continued review of the
36 application;
- 37 b. Treat the action as a denial of the application and appeal the
38 denial under Article 3 of Chapter 150B of the General Statutes;
39 or
- 40 c. Appeal the denial directly to superior court under Article 4 of
41 Chapter 150B of the General Statutes without the need to file a
42 contested case.

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

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

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

10 (6) Rights if Review Halted. If the Department terminates review of an
11 application under subdivision (5) of this subsection, the applicant may
12 take any of the following actions:

13 a. Revise and resubmit the application;

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

16 or

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

20 (7) Option; No Additional Fee. The submittal of a permit application
21 certified by a professional engineer to be considered under this
22 subsection shall be an option and shall not be required of any applicant.
23 The Department shall not impose any additional fees for the receipt or
24 processing of a permit application certified by a professional engineer.

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

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

32 (2) Requesting additional information to determine completeness;

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

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

36 (5) Holding and completing all public meetings and hearings required for
37 the application;

38 (6) Completing the record from reviewing and acting on the application;
39 and

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

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

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

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

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

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

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

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

1 subsection shall be an option and shall not be required of any applicant.
2 The Department shall not impose any additional fees for the receipt or
3 processing of a permit application certified by a professional engineer.

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

- 10 (1) Determining that the permit application is complete;
11 (2) Requesting additional information to determine completeness;
12 (3) Determining that additional information is needed to conduct a technical
13 review of the application;
14 (4) Completing all technical review of the permit application;
15 (5) Holding and completing all public meetings and hearings required for
16 the application;
17 (6) Completing the record from reviewing and acting on the application;
18 and
19 (7) Taking final action on the permit, including granting or denying the
20 application."

21 Sec. 5. The rules to be adopted pursuant to G.S. 143-215.1(h) and G.S. 143-
22 215.1(i), as enacted in Section 2 of this act, the rules adopted pursuant to G.S. 143-
23 215.108(h) and G.S. 143-215.108(i), as enacted in Section 3 of this act, and the rules
24 adopted pursuant to G.S. 130A-295(d) and G.S. 130A-295(e), as enacted in Section 4 of
25 this act, shall be effective no later than 18 months after the ratification of this act.

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

31 Sec. 7. G.S. 143-215.3(a)(1b) reads as rewritten:

32 "(1b) The fee to be charged pursuant to G.S. 143-215.3(a)(1a) for
33 processing ~~of~~ an application for a permit under G.S. 143-215.1 of
34 Article 21 and G.S. 143-215.108 and G.S. 143-215.109 of Article
35 21B of this Chapter may not exceed ~~four hundred dollars (\$400.00).~~
36 one thousand dollars (\$1,000). The fee to be charged pursuant to
37 G.S. 143-215.3(a)(1a) for processing a registration under Part 2A of
38 this Article or Article 38 of this Chapter may not exceed fifty dollars
39 (\$50.00) for any single registration. An additional fee of twenty
40 percent (20%) of the registration processing fee may be assessed for
41 a late registration under Article 38 of this Chapter. The fee for
42 administering and compliance monitoring under G.S. 143-215.1 of
43 Article 21 and G.S. 143-215.108 and G.S. 143-215.109 of Article

1 21B shall be charged on an annual basis for each year of the permit
2 term and may not exceed one thousand five hundred dollars (\$1,500)
3 per year. Fees for processing all permits under Article 21A and all
4 other sections of Articles 21 and 21B shall not exceed one hundred
5 dollars (\$100.00) for any single permit. Notwithstanding any other
6 provision of this subdivision, the total payment for fees required for
7 all permits under this subsection for any single facility shall not
8 exceed seven thousand five hundred dollars (\$7,500) per year, which
9 amount shall include all application fees and fees for administration
10 and compliance monitoring. A single facility is defined to be any
11 contiguous area under one ownership and in which permitted
12 activities occur. For all permits issued under these Articles where a
13 fee schedule is not specified in the statutes, the Commission, or other
14 commission specified by statute shall adopt a fee schedule in a rule
15 following the procedures established by the Administrative
16 Procedure Act. ~~Such fee~~ Fee schedules shall be established to reflect
17 the size of the emission or discharge, the potential impact on the
18 environment, the staff costs involved, relative costs of the issuance
19 of new permits and the reissuance of existing permits, and shall
20 include adequate safeguards to prevent unusual fee assessments
21 which would result in serious economic burden on an individual
22 applicant. A system shall be considered to allow consolidated
23 annual payments for persons with multiple permits. In its
24 rulemaking to establish fee schedules, the Commission is also
25 directed to consider a method of rewarding facilities which achieve
26 full compliance with administrative and self-monitoring reporting
27 requirements, and to consider, in those cases where the cost of
28 renewal or amendment of a permit is less than for the original
29 permit, a lower fee for ~~such~~ the renewal or amendment."

30 Sec. 8. This act becomes effective 1 January 1996 and applies to an
31 application for a new permit, a modification of an existing permit, or a reissuance or
32 renewal of an existing permit filed on or after that date.