

GENERAL ASSEMBLY OF NORTH CAROLINA
1995 SESSION

CHAPTER 484
HOUSE BILL 836

AN ACT TO EXPEDITE THE ENVIRONMENTAL PERMITTING PROCESS BY ALLOWING THE OPTION OF SUBMITTING PERMIT APPLICATIONS CERTIFIED BY A PROFESSIONAL ENGINEER AND ALLOWING THESE APPLICATIONS TO BE EXPEDITIOUSLY PROCESSED BY PROVIDING EARLY PUBLIC NOTICE, PUBLIC HEARING, AND TECHNICAL REVIEW, AND TO INCREASE THE MAXIMUM AMOUNT OF THE FEE THAT THE ENVIRONMENTAL MANAGEMENT COMMISSION MAY ASSESS FOR PROCESSING AN APPLICATION FOR A PERMIT UNDER THE WATER AND AIR QUALITY PROGRAMS.

The General Assembly of North Carolina enacts:

Section 1. The General Assembly finds that the increasing complexity of environmental laws and rules have made the environmental permitting process increasingly lengthy and that there are instances where it would be appropriate and beneficial to allow an applicant for an environmental permit the option of submitting an application that meets certain additional standards and to ensure that these applications will be expeditiously processed by providing early public notice, public hearing, and technical review within the Department of Environment, Health, and Natural Resources.

Sec. 2. G.S. 143-215.108 is amended by adding two new subsections to read:

"(h) Expedited Review of Applications Certified by a Professional Engineer. – The Commission shall adopt rules governing the submittal of permit applications certified by a professional engineer, including draft permits, that can be sent to public notice and hearing upon receipt and subjected to technical review by personnel within the Department. These rules shall specify, at a minimum, any forms to be used; a checklist for applicants that lists all items of information required to prepare a complete permit application; the form of the certification required on the application by a professional engineer; and the information that must be included in the draft permit. The Department shall process an application that is certified by a professional engineer as provided in subdivisions (1) through (7) of this subsection.

(1) Initiation of Review. Upon receipt of an application certified by a professional engineer in accordance with this subsection and the rules adopted pursuant to this subsection, the Department shall determine whether the application is complete as provided in subdivision (2) of this subsection. Within 30 days after the date on which an application is determined to be complete, the Department shall:

- a. Publish any required notices, using the draft permit included with the application;
 - b. Schedule any required public meetings or hearings on the application and permit; and
 - c. Initiate any and all technical review of the application in a manner to ensure substantial completion of the technical review by the time of any public hearing on the application, or if there is no hearing, by the close of the notice period.
- (2) Completeness Review. Within 10 working days of receipt of the permit application certified by a professional engineer under this subsection, the Department shall determine whether the application is complete for purposes of this subsection. The Department shall determine whether the permit application certified by a professional engineer is complete by comparing the information provided in the application with the checklist contained in the rules adopted by the Commission pursuant to this subsection.
 - a. If the application is not complete, the Department shall promptly notify the applicant in writing of all deficiencies of the application, specifying the items that need to be included, modified, or supplemented in order to make the application complete, and the 10-day time period is suspended after this request for further information. If the applicant submits the requested information within the time specified, the 10-day time period shall begin again on the day the additional information was submitted. If the additional information is not submitted within the time periods specified, the Department shall return the application to the applicant, and the applicant may treat the return of the application as a denial of the application or may resubmit the application at a later time.
 - b. If the Department fails to notify the applicant that an application is not complete within the time period set forth in this subsection, the application shall be deemed to be complete.
- (3) Time for Permit Decision. For any application found to be complete under subdivision (2) of this subsection, the Department shall issue a permit decision within 30 days of the last day of any public hearing on the application, or if there is no hearing, within 30 days of the close of the notice period.
- (4) Rights if Permit Decision Not Made in Timely Fashion. If the Department fails to issue a permit decision within the time periods specified in subdivision (3) of this subsection, the applicant may take any of the following actions:
 - a. Take no action, thereby consenting to the continued review of the application; or

- b. Treat the action as a denial of the application and appeal the denial under Article 3 of Chapter 150B of the General Statutes.
- (5) Power to Halt Review. At any time after the permit application certified by a professional engineer has been determined to be complete under subdivision (2) of this subsection, the Department may immediately terminate review of that application, including technical review and any hearings or meetings scheduled on the application, upon a determination of one of the following:
 - a. The permit application is not in substantial compliance with the applicable rules; or
 - b. The applicant failed to pay all permit application fees.
- (6) Rights if Review Halted. If the Department terminates review of an application under subdivision (5) of this subsection, the applicant may take any of the following actions:
 - a. Revise and resubmit the application; or
 - b. Treat the action as a denial of the application and appeal the denial under Article 3 of Chapter 150B of the General Statutes.
- (7) Option; No Additional Fee. The submittal of a permit application certified by a professional engineer to be considered under this subsection shall be an option and shall not be required of any applicant. The Department shall not impose any additional fees for the receipt or processing of a permit application certified by a professional engineer.

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

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

Sec. 3. The rule-making proceedings for the rules to be adopted pursuant to G.S. 143-215.108(h) and G.S. 143-215.108(i), as enacted by Section 2 of this act, shall be initiated as soon as possible after the effective date of this act with the goal of

making the permanent rules effective no later than 18 months after the ratification of this act.

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

Sec. 5. G.S. 143-215.3(a)(1b) reads as rewritten:

"(1b) The fee to be charged pursuant to G.S. 143-215.3(a)(1a) for processing ~~of an application for a permit under G.S. 143-215.1 of Article 21 and G.S. 143-215.108 and G.S. 143-215.109 of Article 21B of this Chapter~~ may not exceed four hundred dollars (\$400.00). The fee to be charged pursuant to G.S. 143-215.3(a)(1a) for processing an application for a permit under G.S. 143-215.108 and G.S. 143-215.109 of Article 21B of this Chapter may not exceed five hundred dollars (\$500.00). The fee to be charged pursuant to G.S. 143-215.3(a)(1a) for processing a registration under Part 2A of this Article or Article 38 of this Chapter may not exceed fifty dollars (\$50.00) for any single registration. An additional fee of twenty percent (20%) of the registration processing fee may be assessed for a late registration under Article 38 of this Chapter. The fee for administering and compliance monitoring under G.S. 143-215.1 of Article 21 and G.S. 143-215.108 and G.S. 143-215.109 of Article 21B shall be charged on an annual basis for each year of the permit term and may not exceed one thousand five hundred dollars (\$1,500) per year. Fees for processing all permits under Article 21A and all other sections of Articles 21 and 21B shall not exceed one hundred dollars (\$100.00) for any single permit. Notwithstanding any other provision of this subdivision, the total payment for fees required for all permits under this subsection for any single facility shall not exceed seven thousand five hundred dollars (\$7,500) per year, which amount shall include all application fees and fees for administration and compliance monitoring. A single facility is defined to be any contiguous area under one ownership and in which permitted activities occur. For all permits issued under these Articles where a fee schedule is not specified in the statutes, the Commission, or other commission specified by statute shall adopt a fee schedule in a rule following the procedures established by the Administrative Procedure Act. ~~Such fee~~ Fee schedules shall be established to reflect the size of the emission or discharge, the potential impact on the environment, the staff costs involved, relative costs of the issuance of new permits and the reissuance of existing permits, and shall include adequate safeguards to prevent unusual fee assessments which would result in serious economic burden on an individual applicant. A system shall be considered to allow consolidated annual payments for persons with

multiple permits. In its rulemaking to establish fee schedules, the Commission is also directed to consider a method of rewarding facilities which achieve full compliance with administrative and self-monitoring reporting requirements, and to consider, in those cases where the cost of renewal or amendment of a permit is less than for the original permit, a lower fee for ~~such~~ the renewal or amendment."

Sec. 6. Section 3 of this act and this section are effective upon ratification. The remainder of this act becomes effective 1 January 1996 and applies to an application for a new permit, a modification of an existing permit, or a reissuance or renewal of an existing permit filed on or after that date.

In the General Assembly read three times and ratified this the 26th day of July, 1995.

Dennis A. Wicker
President of the Senate

Harold J. Brubaker
Speaker of the House of Representatives