

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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HOUSE BILL 681\*

Short Title: Clean Air Act Implementation.

(Public)

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Sponsors: Representatives DeVane, Hackney; and Gottovi.

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Referred to: Environment.

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March 30, 1993

A BILL TO BE ENTITLED

1 AN ACT TO IMPLEMENT THE REQUIREMENTS OF THE 1990 AMENDMENTS  
2 TO THE FEDERAL CLEAN AIR ACT, TO REPEAL THE EXPIRATION OF A  
3 PORTION OF THE PER GALLON FUEL TAX, AND TO DEDICATE A  
4 PORTION OF THE PROCEEDS OF THE TAX TO IMPLEMENT THE 1990  
5 AMENDMENTS TO THE FEDERAL CLEAN AIR ACT.  
6

7 The General Assembly of North Carolina enacts:

8 Section 1. G.S. 143-213 is amended by adding a new subdivision to read:

9 "(29c) 'Title III' means Title III of the 1990 amendments to the federal Clean  
10 Air Act (Pub. L. 101-549, 104 Stat. 2531, 42 U.S.C. § 7412 et seq.)."

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

12 "(2) To direct that such investigation be conducted as it may reasonably  
13 deem necessary to carry out its duties as prescribed by this Article or  
14 Article 21B of this Chapter, and for this purpose to enter at reasonable  
15 times upon any property, public or private, for the purpose of  
16 investigating the condition of any waters and the discharge therein of  
17 any sewage, industrial waste or other waste or for the purpose of  
18 investigating the condition of the air, air pollution, air contaminant  
19 sources, emissions or the installation and operation of any air-cleaning  
20 devices, and to require written statements or the filing of reports under  
21 oath, with respect to pertinent questions relating to the operation of  
22 any air-cleaning device, sewer system, disposal system or treatment  
23 works: Provided that any records, reports or information obtained  
24 under Articles 21, 21A and 21B (i) shall, in the case of effluent or

1 emission data, be related to any applicable effluent or emission  
2 limitations, toxic, pretreatment or new source performance standards,  
3 and (ii) shall be available to the public except that upon a showing  
4 satisfactory to the Commission by any person that records, reports or  
5 information or particular part thereof (other than effluent or emission  
6 ~~data), data or information necessary to determine compliance with~~  
7 standards adopted pursuant to Article 21B of this Chapter), to which  
8 the Commission has access under these Articles, if made public would  
9 divulge methods or processes entitled to protection as trade secrets of  
10 ~~such person, pursuant to G.S. 132-1.2,~~ the Commission shall consider  
11 such record, report or information, or particular portion thereof  
12 confidential, except that such record or information may be disclosed  
13 to ~~employees of the department concerned with carrying out the provisions~~  
14 ~~of these Articles~~ any officer, employee, or authorized representative of  
15 any federal or state agency if disclosure is necessary to carry out a  
16 proper function of the Department or other agency, or when relevant in  
17 any proceeding under these Articles ~~this Article or Article 21A or~~  
18 Article 21B of this Chapter. The Commission shall provide for  
19 adequate notice to the party submitting the information of any decision  
20 that such information is not entitled to confidential treatment and of  
21 any decision to release information which the submitting party  
22 contends is entitled to confidential treatment. No person shall refuse  
23 entry or access to any authorized representative of the Commission or  
24 Department who requests entry for purposes of inspection, and who  
25 presents appropriate credentials, nor shall any person obstruct, hamper  
26 or interfere with any such representative while in the process of  
27 carrying out his official duties."

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

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

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

33 "(b) Procedures for Public Input. – The Commission may, on its own motion or  
34 when required by federal law, request public comments on or hold public hearings on  
35 matters within the scope of its authority under this Article or Articles 21A or 21B of this  
36 Chapter. To request public comments on a matter, the Commission shall notify  
37 appropriate agencies of the opportunity to submit written comments to the Commission  
38 on the matter and shall publish a notice in a newspaper having general circulation in the  
39 affected area, stating the matter under consideration by the Commission and informing  
40 the public of its opportunity to submit written comments to the Commission on the  
41 matter. A public comment period shall extend for at least 30 days after the notice is  
42 published.

43 To hold a public hearing on a matter, the Commission shall notify, by personal  
44 service or certified mail, persons directly affected by the matter under consideration and

1 shall publish a notice in a newspaper having general circulation in the affected area,  
2 stating the matter under consideration by the Commission and the time, date, and place  
3 of a public hearing to be held on the matter. A public hearing shall be held no sooner  
4 than 20 days after the notice is published. The proceedings at a public hearing held  
5 under this subsection shall be recorded. Upon payment of a fee established by the  
6 Commission, any person may obtain a copy of the record of the public hearing. After a  
7 public hearing, the Commission shall accept written comments for the time period  
8 prescribed by the Commission.

9 This subsection ~~applies only to proceedings that are not~~ does not apply to rule-making  
10 proceedings or contested case hearings. This subsection does not apply to the issuance  
11 of permits required under Title V. The Commission shall establish procedures for  
12 public hearings, public notice, and public comment respecting permits required by Title  
13 V as provided by G.S. 143-215.111(4)."

14 Sec. 5. G.S. 143-215.69 reads as rewritten:

15 "**§ 143-215.69. Enforcement procedures.**

16 (a) Criminal Penalties. – Any ~~person~~ person, ~~except those persons subject to the~~  
17 requirements of Title V, who violates any provisions of this Part or any rules adopted by  
18 the Commission for its implementation shall be guilty of a misdemeanor and shall be  
19 liable to a penalty of not less than one hundred dollars (\$100.00), nor more than one  
20 thousand dollars (\$1,000) for each violation and each day such person shall fail to  
21 comply after having been officially notified by the Commission shall constitute a  
22 separate offense subject to the foregoing penalty. Any person subject to the  
23 requirements of Title V who violates any provision of this Part or any rule adopted by  
24 the Commission to implement this Part shall be subject to punishment under the  
25 provisions of G.S. 143-215.114B.

26 (b) Civil Penalties. – The Commission may assess a civil penalty against a person  
27 who violates this Part or a rule of the Commission implementing this Part. ~~The For~~  
28 persons subject to the provisions of G.S. 143-215.1, the amount of the penalty shall not  
29 exceed the maximum imposed in G.S. 143-215.6A and shall be assessed in accordance  
30 with the procedure set out in G.S. 143-215.6A for assessing a civil penalty. For persons  
31 subject to the provisions of Title V, G.S. 143-215.108 or G.S. 143-215.109, the amount  
32 of penalty shall not exceed the maximum imposed in G.S. 143-215.114A and shall be  
33 assessed in accordance with the procedure set out in G.S. 143-215.114A for assessing a  
34 civil penalty.

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

1           Sec. 6. G.S. 143-215.107(a) reads as rewritten:

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

- 5           (1)       To prepare and develop, after proper study, a comprehensive plan or  
6 plans for the prevention, abatement and control of air pollution in the  
7 State or in any designated area of the State.
- 8           (2)       To determine by means of field sampling and other studies, including  
9 the examination of available data collected by any local, State or  
10 federal agency or any person, the degree of air contamination and air  
11 pollution in the State and the several areas of the State.
- 12           (3)       To develop and adopt, after proper study, air quality standards  
13 applicable to the State as a whole or to any designated area of the State  
14 as the Commission deems proper in order to promote the policies and  
15 purposes of this Article and Article 21 most effectively.
- 16           (4)       To collect information or to require reporting from classes of sources  
17 which, in the judgment of the Environmental Management  
18 Commission, may cause or contribute to air pollution. Any person  
19 operating or responsible for the operation of air contaminant sources of  
20 any class for which the Commission requires reporting shall make  
21 reports containing such information as may be required by the  
22 Commission concerning location, size, and height of contaminant  
23 outlets, processes employed, fuels used, and the nature and time  
24 periods or duration of emissions, and such other information as is  
25 relevant to air pollution and available or reasonably capable of being  
26 assembled.
- 27           (5)       To develop and adopt such emission control standards as in the  
28 judgment of the Commission may be necessary to prohibit, abate or  
29 control air pollution commensurate with established air quality  
30 standards. Such standards may be applied uniformly to the State as a  
31 whole or to any area of the State designated by the Commission.
- 32           (6)       To adopt, when necessary and practicable, a program for testing  
33 emissions from motor vehicles and to adopt motor vehicle emission  
34 standards in compliance with applicable federal regulations.
- 35           (7)       To develop and adopt standards and plans necessary to implement  
36 programs for the prevention of significant deterioration and for the  
37 attainment of air quality standards in nonattainment areas.
- 38           (8)       To develop and adopt standards and plans necessary to implement  
39 programs to control acid deposition and to regulate the use of sulfur  
40 dioxide allowances in accordance with Title IV and implementing  
41 regulations ~~promulgated~~ adopted by the United States Environmental  
42 Protection Agency.
- 43           (9)       To regulate the oxygen content of gasoline, to require use of  
44 reformulated gasoline as the Commission deems necessary, to

1 implement the requirements of Title II and implementing regulations  
2 adopted by the United States Environmental Protection Agency, and to  
3 adopt standards and plans to implement this subdivision. Rules  
4 adopted under this subdivision may specify standards for a particular  
5 area of the State that differ from other areas as may be necessary to  
6 improve ambient air quality within a particular area, achieve  
7 attainment or preclude violations of the National Ambient Air Quality  
8 Standards, or to meet other federal requirements. Rules may authorize  
9 the use of marketable oxygen credits for gasoline as provided in  
10 federal requirements.

11 (10) To develop and adopt standards and plans necessary to implement  
12 requirements of the federal Clean Air Act, as amended, and  
13 implementing regulations adopted the United States Environmental  
14 Protection Agency."

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

16 **"§ 143-215.108. Control of sources of air pollution; permits required.**

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

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

33 (a1) The Commission may by rule establish procedures to allow a permittee who  
34 has submitted a complete application to modify the permit to make minor modifications  
35 to a permitted facility. At a minimum, minor modifications shall comply with the  
36 requirements of 40 Code of Federal Regulations § 70.7(e)(2) (1 July 1993) while the  
37 application is under review.

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

42 (c) The Commission shall have the power:

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

- 1 (2) To grant and renew any temporary permit for such period of time as  
2 the Commission shall specify even though the action allowed by such  
3 permit may result in pollution or increase pollution where conditions  
4 make such temporary permit essential;
- 5 (3) ~~To modify or revoke~~ To terminate, modify, or revoke and reissue any  
6 permit upon not less than 60 days' written notice to any person affected;  
7 affected and to suspend any permit pursuant to the provisions of G.S.  
8 150B-3(c);
- 9 (4) To require all applications for permits and renewals to be in writing  
10 and to prescribe the form of such applications;
- 11 (5) To request such information from an applicant and to conduct such  
12 inquiry or investigation as it may deem necessary and to require the  
13 submission of plans and specifications prior to acting on any  
14 application for a permit;
- 15 (5a) To require that an applicant satisfy the Department that the applicant,  
16 or any parent, subsidiary, or other affiliate of the applicant or parent:
- 17 a. Is financially qualified to carry out the activity for which a  
18 permit is required under subsection (a); and
- 19 b. Has substantially complied with the air quality and emission  
20 control standards applicable to any activity in which the  
21 applicant has previously engaged, and has been in substantial  
22 compliance with federal and state laws, regulations, and rules  
23 for the protection of the environment.
- 24 As used in this subdivision, the words 'affiliate,' 'parent,' and  
25 'subsidiary' have the same meaning as in 17 Code of Federal  
26 Regulations § 240.12b-2 (1 April 1990 Edition);
- 27 (6) To adopt rules, as it deems necessary, establishing the form of  
28 applications and permits and procedures for the granting or denial of  
29 permits and renewals pursuant to this section; and all permits, renewals  
30 and denials shall be in writing;
- 31 (7) To prohibit any stationary source within the State from emitting any  
32 air pollutant in amounts ~~which~~ that will prevent attainment or  
33 maintenance by any other state of any national ambient air quality  
34 ~~standard, or interference~~ standard or that will interfere with measures  
35 required to be included in the applicable implementation plan for any  
36 other state to prevent deterioration of air quality or protect visibility;  
37 and
- 38 (8) To designate certain classes of activities for which a general permit  
39 may be issued, after considering the environmental impact of an  
40 activity, the frequency of the activity, the need for individual permit  
41 oversight, and the need for public review and comment on individual  
42 permits.
- 43 (d) (1) The Commission shall act on a permit application as quickly  
44 as possible. The Commission may conduct any inquiry or

1 investigation it considers necessary before acting on an application  
2 and may require an applicant to submit plans, specifications, and  
3 other information the Commission considers necessary to evaluate  
4 the application. A permit application may not be deemed complete  
5 unless it is accompanied by a copy of the request for determination  
6 as provided in subsection (f) of this section that bears a date of  
7 receipt entered by the clerk of the local government and until the 15-  
8 day period for issuance of a determination has elapsed. ~~If the~~  
9 ~~Commission fails to act on an application for a permit deemed complete~~  
10 ~~within 90 days after the applicant submits all information required by the~~  
11 ~~Commission, the application is considered to be approved.~~

12 (2) The Commission shall adopt rules specifying the times within which it  
13 must act upon applications for permits required by Title V and this  
14 section. If the Commission fails to act on an application for a permit  
15 required by Title V and this section within the time period specified,  
16 the failure to act on the application constitutes a final agency decision  
17 to deny the permit. A permit applicant, permittee, or any person  
18 entitled to judicial review under G.S. 143-215.5 may seek judicial  
19 review of a failure to act on the application under Article 4 of Chapter  
20 150B of the General Statutes. Notwithstanding the provisions of G.S.  
21 150B-51, upon review of a failure to act on an application for a permit  
22 required by Title V and this section, a court may either: (i) affirm the  
23 failure of the Commission to act on the permit application and the  
24 resulting denial of the permit or (ii) remand the application to the  
25 Commission for action upon the application within a specified time.

26 (3) If the Administrator of the United States Environmental Protection  
27 Agency validly objects to the issuance of a permit required by Title V  
28 within 45 days after the Administrator receives the proposed permit  
29 and the required portions of the permit application, the Commission  
30 shall not issue the permit until the Commission revises the proposed  
31 permit to meet all objections noted by the Administrator or otherwise  
32 satisfies all objections consistent with Title V and implementing  
33 regulations adopted by the United States Environmental Protection  
34 Agency.

35 (4) If the Administrator of the United States Environmental Protection  
36 Agency validly objects to the issuance of a permit required by Title V  
37 after the expiration of the 45-day review period specified in  
38 subdivision (3) of this subsection as a result of a petition filed pursuant  
39 to section 505(b)(2) of Title V (42 U.S.C. § 7661d(b)(2)) and prior to  
40 the issuance of the permit by the Commission, the Commission shall  
41 not issue the permit until the Commission revises the proposed permit  
42 to meet all objections noted by the Administrator or otherwise satisfies  
43 all objections consistent with Title V and implementing regulations  
44 adopted by the United States Environmental Protection Agency.

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

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

8 (f) An applicant for a permit under this section for a new facility or for the  
9 expansion of a facility permitted under this section shall request each local government  
10 having jurisdiction over any part of the land on which the facility and its appurtenances  
11 are to be located to issue a determination as to whether the local government has in  
12 effect a zoning or subdivision ordinance applicable to the facility and whether the  
13 proposed facility would be consistent with the ordinance. The request to the local  
14 government shall be accompanied by a copy of the draft permit application and shall be  
15 delivered to the clerk of the local government personally or by certified mail. The  
16 determination shall be verified or supported by affidavit signed by the official  
17 designated by the local government to make the determination and, if the local  
18 government states that the facility is inconsistent with a zoning or subdivision  
19 ordinance, shall include a copy of the ordinance and the specific reasons for the  
20 determination of inconsistency. A copy of any such determination shall be provided to  
21 the applicant when it is submitted to the Commission. The Commission shall not act  
22 upon an application for a permit under this section until it has received a determination  
23 from each local government requested to make a determination by the applicant. Unless  
24 the local government makes a subsequent determination of consistency with all  
25 ordinances cited in the determination or the proposed facility is determined by a court of  
26 competent jurisdiction to be consistent with the cited ordinances, the Commission shall  
27 attach as a condition of the permit a requirement that the applicant, prior to construction  
28 or operation of the facility under the permit, comply with all lawfully adopted local  
29 ordinances, including those cited in the determination, that apply to the facility at the  
30 time of construction or operation of the facility. If a local government fails to submit a  
31 determination to the Commission as provided by this subsection within 15 days after  
32 receipt of the request, the Commission may proceed to consider the permit application  
33 without regard to local zoning and subdivision ordinances. This subsection shall not be  
34 construed to limit any opportunity a local government may have to comment on a  
35 permit application under any other law or rule. This subsection shall not apply to any  
36 facility with respect to which local ordinances are subject to review under either G.S.  
37 104E-6.2 or G.S. 130A-293.

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



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

3 Sec. 8. G.S. 143-215.111 reads as rewritten:

4 **"§ 143-215.111. General powers of Commission; auxiliary powers.**

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

8 (1) To make a continuing study of the effects of the emission of air  
9 contaminants from motor vehicles on the quality of the outdoor  
10 atmosphere of the State and the several areas thereof, and make  
11 recommendations to the General Assembly and other appropriate  
12 public and private bodies for the control of such air contaminants.

13 (2) To consult, upon request, with any person proposing to construct,  
14 install, or otherwise acquire an air pollution source or air-cleaning  
15 device for the control of air contaminants concerning the efficacy of  
16 such device, or the air problem which may be related to such source, or  
17 device; provided, however, that nothing in any such consultation shall  
18 be construed to relieve any person from compliance with this Article  
19 and Article 21, rules adopted pursuant thereto, or any other provision  
20 of law.

21 (3) To encourage local units of government to handle air pollution  
22 problems within their respective jurisdictions and on a cooperative  
23 basis, and to provide such local units technical and consultative  
24 assistance to the maximum extent possible.

25 (4) To establish procedures providing for public notice, public comment,  
26 and public hearings on applications for permits required by Title V to  
27 meet the requirements of Title V and implementing regulations  
28 adopted by the United States Environmental Protection Agency.

29 (5) To establish procedures providing for notice to the Administrator of  
30 the United States Environmental Protection Agency and affected states  
31 of proposals to issue permits required by Title V and allowing affected  
32 states the opportunity to submit written comment as required by  
33 section 505(a) of Title V (42 U.S.C. § 7661d) and implementing  
34 regulations adopted by the United States Environmental Protection  
35 Agency."

36 Sec. 9. G.S. 143-215.112(c) reads as rewritten:

- 37 (c) (1) The governing body of any county, municipality, or group  
38 of counties and municipalities within a designated area of the State,  
39 as defined in this Article and Article 21, subject to the approval of  
40 the Commission, is hereby authorized to establish, administer, and  
41 enforce a local air pollution control program for the county,  
42 municipality, or designated area of the State which includes but is  
43 not limited to:

- 1 a. Development of a comprehensive plan for the control and  
2 abatement of new and existing sources of air pollution;
  - 3 b. Air quality monitoring to determine existing air quality and to  
4 define problem areas, as well as to provide background data to  
5 show the effectiveness of a pollution abatement program;
  - 6 c. An emissions inventory to identify specific sources of air  
7 contamination and the contaminants emitted, together with the  
8 quantity of material discharged into the outdoor atmosphere;
  - 9 d. Adoption, after notice and public hearing, of air quality and  
10 emission control standards, or adoption by reference, without  
11 public hearing, of any applicable rules and standards duly  
12 adopted by the Commission; and administration of such rules  
13 and standards in accordance with provisions of this section.
  - 14 e. Provisions for the establishment or approval of time schedules  
15 for the control or abatement of existing sources of air pollution  
16 and for the review of plans and specifications and issuance of  
17 approval documents covering the construction and operation of  
18 pollution abatement facilities at existing or new sources;
  - 19 f. Provision for adequate administrative staff, including an air  
20 pollution control officer and technical personnel, and provision  
21 for laboratory and other necessary facilities.
- 22 (2) Subject to the approval of the Commission as provided in this Article  
23 and Article 21, the governing body of any county or municipality may  
24 establish, administer, and enforce an air pollution control program by  
25 ~~either~~ any of the following methods:
- 26 a. Establishing a program under the administration of the duly  
27 elected governing body of the county or municipality;
  - 28 b. Appointing an air pollution control board consisting of not less  
29 than five nor more than seven members who shall serve for  
30 terms of six years each and until their successors are appointed  
31 and qualified. Two members shall be appointed for two-year  
32 terms, two shall be appointed for four-year terms, and the  
33 remaining member or members shall be appointed for six-year  
34 terms. Where the term 'governing body' is referred to in this  
35 section, it shall include the air pollution control board. Such  
36 board shall have all the powers and authorities granted to any  
37 local air pollution control program. The board shall elect a  
38 chairman and shall meet at least quarterly or upon the call of the  
39 chairman or any two members of the board;
  - 40 c. Appointing an air pollution control board as provided in this  
41 subdivision, and by appropriate written agreement designating  
42 the local health department or other department of county or  
43 municipal government as the administrative agent for the air  
44 pollution control board; and

1 d. Designating, by appropriate written agreement, the local board  
2 of health and the local health department as the air pollution  
3 control board and agency.

4 Any board or body which approves permits or enforcement orders  
5 shall have at least a majority of members who represent the public  
6 interest and do not derive any significant portion of their income from  
7 persons subject to permits or enforcement orders under the Federal  
8 Clean Air Act and any potential conflicts of interest by members of  
9 such board or body or the head of an executive agency with similar  
10 powers shall be adequately disclosed.

11 (3) If the Commission finds that the location, character or extent of  
12 particular concentrations of population, air contaminant sources, the  
13 geographic, topographic or meteorological considerations, or any  
14 combinations thereof, are such as to make impracticable the  
15 maintenance of appropriate levels of air quality without an area-wide  
16 air pollution control program, the Commission may determine the  
17 boundaries within which such program is necessary and require such  
18 area-wide program as the only acceptable alternative to direct State  
19 administration. Subject to the provisions of this section, each  
20 governing body of a county or municipality is hereby authorized and  
21 empowered to establish by contract, joint resolution, or other  
22 agreement with any other governing body of a county or municipality,  
23 upon approval by the Commission, an air pollution control region  
24 containing any part or all of the geographical area within the  
25 jurisdiction of those boards or governing bodies which are parties to  
26 such agreement, provided the counties involved in the region are  
27 contiguous or lie in a continuous boundary and comprise the total area  
28 contained in any region designated by the Commission for an area-  
29 wide program. The participating parties are authorized to appoint a  
30 regional air pollution control board which shall consist of at least five  
31 members who shall serve for terms of six years and until their  
32 successors are appointed and qualified. Two members shall be  
33 appointed for two-year terms, two shall be appointed for four-year  
34 terms and the remaining member or members shall be appointed for  
35 six-year terms. A participant's representation on the board shall be in  
36 relation to its population to the total population of the region based on  
37 the latest official United States census with each participant in the  
38 region having at least one representative; provided, that where the  
39 region is comprised of less than five counties, each participant will be  
40 entitled to appoint members in relation to its population to that of the  
41 region so as to provide a board of at least five members. Where the  
42 term 'governing body' is used, it shall include the governing board of a  
43 region. The regional board is hereby authorized to exercise any and all  
44 of the powers provided in this section. The regional air pollution

1 control board shall elect a chairman and shall meet at least quarterly or  
2 upon the call of the chairman or any two members of the board. In lieu  
3 of employing its own staff, the regional air pollution control board is  
4 authorized, through appropriate written agreement, to designate a local  
5 health department as its administrative agent.

6 (4) Each governing body is authorized to adopt any ordinances,  
7 resolutions, rules or regulations which are necessary to establish and  
8 maintain an air pollution control program and to prescribe and enforce  
9 air quality and emission control standards, a copy of which must be  
10 filed with the Commission and with the clerk of court of any county  
11 affected. Provisions may be made therein for the registration of air  
12 contaminant sources; for the requirement of a permit to do or carry out  
13 specified activities relating to the control of air pollution, including  
14 procedures for application, issuance, denial and revocation; for  
15 notification of violators or potential violators about requirements or  
16 conditions for compliance; for procedures to grant temporary permits  
17 or variances from requirements or standards; for the declaration of an  
18 emergency when it is found that a generalized condition of air  
19 pollution is causing imminent danger to the health or safety of the  
20 public and the issuance of an order to the responsible person or  
21 persons to reduce or discontinue immediately the emission of air  
22 contaminants; for notice and hearing procedures for persons aggrieved  
23 by any action or order of any authorized agent; for the establishment of  
24 an advisory council and for other administrative arrangements; and for  
25 other matters necessary to establish and maintain an air pollution  
26 control program.

27 (5) No permit required by section 305(e) of Title III (42 U.S.C. § 7429(e))  
28 for a solid waste incineration unit combusting municipal waste shall be  
29 issued by a local air pollution control program that is administered by  
30 the governing body of a unit of local government that is responsible, in  
31 whole or in part, for the design, construction, or operation of the unit.

32 (d) (1) Violation of any ordinances, resolutions, rules or regulations  
33 duly adopted by a governing body shall constitute a misdemeanor,  
34 punishable as provided in ~~G.S. 143-215.114(b)~~. G.S. 143-215.114B.

35 (1a) Each governing body, or its authorized agent, shall have the power to  
36 assess civil penalties under ~~G.S. 143-215.114(a)~~. G.S. 143-215.114A.  
37 Any person assessed shall be notified of the assessment by registered  
38 or certified mail, and the notice shall specify the reasons for the  
39 assessment. If the person assessed fails to pay the amount of the  
40 assessment to the governing body or its authorized agent within 30  
41 days after receipt of notice, or such longer period not to exceed 180  
42 days as the governing body or its authorized agent may specify, the  
43 governing body may institute a civil action in the superior court of the  
44 county in which the violation occurred, to recover the amount of the

1 assessment. Each day of continuing violation after written notification  
2 from the governing body or its authorized agent shall be considered a  
3 separate offense. In determining the amount of the penalty, the  
4 governing body or its authorized agent shall consider the degree and  
5 extent of harm caused by the violation, the cost of rectifying the  
6 damage, and the amount of money the violator saved by not having  
7 made the necessary expenditures to comply with the appropriate  
8 pollution control requirements.

9 (2) Each governing body, or its duly authorized agent, may institute a civil  
10 action in the superior court, brought in the name of the agency having  
11 jurisdiction, for injunctive relief to restrain any violation or  
12 immediately threatened violation of such ordinances, orders, rules, or  
13 regulations and for such other relief as the court shall deem proper.  
14 Neither the institution of the action nor any of the proceedings thereon  
15 shall relieve any party to such proceedings from the penalty prescribed  
16 by this Article and Article 21 for any violation of same.

17 (3) In addition, each governing body is authorized to expend tax funds,  
18 nontax funds, or any other funds available to it to finance an air  
19 pollution control program and such expenditures are hereby declared  
20 to be for a public purpose and a necessary expense. The governing  
21 body responsible for each local air pollution control program shall  
22 require that the owner or operator of all air contaminant sources  
23 subject to the requirement to obtain a permit under Title V pay an  
24 annual fee, or the equivalent over some other period, sufficient to  
25 cover costs as provided in section 502(b)(3)(A) of Title V (42 U.S.C. §  
26 7661a(b)(3)(A) and G.S. 143-215.3(a)(1d). Fees collected pursuant to  
27 this subdivision shall be used solely to cover all reasonable direct and  
28 indirect costs required to develop and administer the Title V permit  
29 program.

30 (4) Any final administrative decision rendered in an air pollution control  
31 program of such governing body shall be subject to judicial review as  
32 provided by Article 4 of Chapter 150B of the General Statutes, and  
33 'administrative agency' or 'agency' as used therein shall mean and  
34 include for this purpose the governing body of any county or  
35 municipality, regional air pollution control governing board, and any  
36 agency created by them in connection with an air pollution control  
37 program.

38 (5) If a local air pollution program fails to act on an application for a  
39 permit required by Title V and this Article within the time period  
40 specified by the Commission under G.S 143-215.108(d)(2), the failure  
41 to act on the application constitutes a final agency decision to deny the  
42 permit. A permit applicant, permittee, or any person entitled to  
43 judicial review under G.S. 143-215.5 may seek judicial review of a  
44 failure to act on the application under Article 4 of Chapter 150B of the

1                    General Statutes. Notwithstanding the provisions of G.S. 150B-51,  
2                    upon review of a failure to act on an application for a permit required  
3                    by Title V and this section, a court may either: (i) affirm the failure of  
4                    the local air pollution control program to act on the permit application  
5                    and the resulting denial of the permit or (ii) remand the application to  
6                    the local air pollution control program for action upon the application  
7                    within a specified time."

8                    Sec. 10. Section 25 of Chapter 538 of the 1991 Session Laws reads as  
9 rewritten:

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

16                    Sec. 11. Sections 18, 19, and 20 of Chapter 538 of the 1991 Session Laws are  
17 repealed.

18                    Sec. 12. G.S. 105-445 reads as rewritten:

19                    "**§ 105-445. (Effective until January 1, 1995) 1 January 1999 Application of**  
20                    **proceeds of gasoline tax.**

21                    The amount of revenue collected under this Article attributable to a per gallon excise  
22 tax of one-half cent (1/2¢) a gallon shall be credited in equal amounts to the  
23 Commercial Leaking Petroleum Underground Storage Tank Fund and the ~~Groundwater~~  
24 ~~Protection Loan Fund~~. Division of Environmental Management of the Department of  
25 Environment, Health, and Natural Resources for implementation of the 1990  
26 amendments to the federal Clean Air Act (Pub. L. 101-549, 104 Stat. 2399). Of the  
27 remaining tax revenue collected under this Article, seventy-five percent (75%) shall be  
28 credited to the Highway Fund and the remaining twenty-five percent (25%) shall be  
29 credited to the Highway Trust Fund. A proportionate share of a refund allowed under  
30 this Article shall be charged to the Commercial Leaking Petroleum Underground  
31 Storage Tank Fund, the ~~Groundwater Protection Loan Fund~~, Division of Environmental  
32 Management, the Highway Fund, and the Highway Trust Fund. The Secretary shall  
33 credit revenue or charge refunds to the appropriate Funds on a monthly basis."

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

35                    "**§ 105-445. (Effective until ~~1 January 1999~~) Application of proceeds of gasoline tax.**

36                    The amount of revenue collected under this Article attributable to a per gallon excise  
37 tax of ~~one half cent (1/2¢)~~ one quarter cent (1/4¢) a gallon shall be credited ~~in equal~~  
38 ~~amounts to the Commercial Leaking Petroleum Underground Storage Tank Fund and to the~~  
39 ~~Division of Environmental Management of the Department of Environment, Health, and~~  
40 ~~Natural Resources for implementation of the 1990 amendments to the federal Clean Air~~  
41 ~~Act (Pub. L. 101-549, 104 Stat. 2399).~~ Of the remaining tax revenue collected under  
42 this Article, seventy-five percent (75%) shall be credited to the Highway Fund and the  
43 remaining twenty-five percent (25%) shall be credited to the Highway Trust Fund. A  
44 proportionate share of a refund allowed under this Article shall be charged to ~~the~~

1 ~~Commercial Leaking Petroleum Underground Storage Tank Fund,~~ the Division of  
2 Environmental Management, the Highway Fund, and the Highway Trust Fund. The  
3 Secretary shall credit revenue or charge refunds to the appropriate Funds on a monthly  
4 basis."

5           Sec. 14. Sections 1 through 11 and Section 14 of this act are effective upon  
6 ratification. Section 12 of this act becomes effective 1 January 1995. Section 13 of this  
7 act becomes effective 1 January 1999.