

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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HOUSE BILL 681*

Committee Substitute Favorable 4/15/93

Committee Substitute #2 Favorable 6/9/93

Senate Environment & Natural Resources Committee Substitute Adopted 6/24/93

Short Title: Clean Air Act Implementation.

(Public)

Sponsors:

Referred to:

March 30, 1993

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT THE REQUIREMENTS OF THE 1990 AMENDMENTS TO THE FEDERAL CLEAN AIR ACT, TO REPEAL THE EXPIRATION OF A PORTION OF THE PER GALLON FUEL TAX, TO DEDICATE A PORTION OF THE PROCEEDS OF THE TAX TO THE ADMINISTRATION OF THE AIR QUALITY PROGRAM, TO DEDICATE A PORTION OF THE PROCEEDS OF THE TAX TO THE CLEANUP OF LEAKING PETROLEUM UNDERGROUND STORAGE TANKS, AND TO REPEAL THE EXPIRATION OF THE LEAKING PETROLEUM UNDERGROUND STORAGE TANK CLEANUP ACT OF 1988.

The General Assembly of North Carolina enacts:

Section 1. (a) G.S. 143-213(27) reads as rewritten:

"(27) The term '~~Federal~~ Clean Air Act' refers to the federal Clean Air Act, as amended, codified generally at 42 U.S.C. § 7401 et seq."

(b) G.S. 143-213 is amended by adding a new subdivision to read:

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

(c) G.S. 143-213(29) and G.S. 143-215.3(e)(2) are amended by deleting the word "Federal" each time it appears before the words "Clean Air Act".

(d) G.S. 143B-318(g) reads as rewritten:

"(g) The Secretary of Environment, Health, and Natural Resources shall designate an office within the Department of Environment, Health, and Natural Resources to serve

1 as ombudsman for the Small Business Stationary Source Technical and Environmental
2 Compliance Assistance Program established by the Department pursuant to section 507
3 of Title V of the 1990 amendments to the ~~Federal~~-federal Clean Air Act (Pub. L. 101-
4 549, 104 Stat. ~~2635 et seq.~~-2645, 42 U.S.C. § 7661f(a)(3)). The Small Business
5 Stationary Source Technical and Environmental Compliance Assistance Program shall
6 serve as the secretariat for the development and dissemination of reports and advisory
7 opinions issued by the Panel. The Panel and the ombudsman shall exercise their powers
8 consistent with G.S. 143B-14(b)."

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

10 "(2) To direct that such investigation be conducted as it may reasonably
11 deem necessary to carry out its duties as prescribed by this Article or
12 Article 21B of this Chapter, and for this purpose to enter at reasonable
13 times upon any property, public or private, for the purpose of
14 investigating the condition of any waters and the discharge therein of
15 any sewage, industrial waste or other waste or for the purpose of
16 investigating the condition of the air, air pollution, air contaminant
17 sources, emissions or the installation and operation of any air-cleaning
18 devices, and to require written statements or the filing of reports under
19 oath, with respect to pertinent questions relating to the operation of
20 any air-cleaning device, sewer system, disposal system or treatment
21 works: Provided that any records, reports or information obtained
22 under Articles 21, 21A and 21B (i) shall, in the case of effluent or
23 emission data, be related to any applicable effluent or emission
24 limitations, toxic, pretreatment or new source performance standards,
25 and (ii) shall be available to the public except that upon a showing
26 satisfactory to the Commission by any person that records, reports or
27 information or particular part thereof (other than effluent or emission
28 ~~data~~), data or information necessary to determine compliance with
29 standards adopted pursuant to Article 21B of this Chapter, to which
30 the Commission has access under these Articles, if made public would
31 divulge methods or processes entitled to protection as trade secrets ~~of~~
32 ~~such person~~, pursuant to G.S. 132-1.2, the Commission shall consider
33 such record, report or information, or particular portion thereof
34 confidential, except that such record or information may be disclosed
35 to ~~employees of the department concerned with carrying out the provisions~~
36 ~~of these Articles~~ any officer, employee, or authorized representative of
37 any federal or state agency if disclosure is necessary to carry out a
38 proper function of the Department or other agency, or when relevant in
39 any proceeding under these Articles. this Article or Article 21A or
40 Article 21B of this Chapter. The Commission shall provide for
41 adequate notice to the party submitting the information of any decision
42 that such information is not entitled to confidential treatment and of
43 any decision to release information which the submitting party
44 contends is entitled to confidential treatment. No person shall refuse

1 entry or access to any authorized representative of the Commission or
 2 Department who requests entry for purposes of inspection, and who
 3 presents appropriate credentials, nor shall any person obstruct, hamper
 4 or interfere with any such representative while in the process of
 5 carrying out his official duties."

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

7 "(3) To conduct public hearings and to delegate the power to conduct
 8 public hearings in accordance with the procedures prescribed by this
 9 ~~Article.~~ Article or by Article 21B of this Chapter."

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

11 "(b) (1) Procedures for Public Input. – The Commission may, on its
 12 own motion or when required by federal law, request public
 13 comments on or hold public hearings on matters within the scope of
 14 its authority under this Article or Articles 21A or 21B of this
 15 Chapter. To request public comments on a matter, the Commission
 16 shall notify appropriate agencies of the opportunity to submit written
 17 comments to the Commission on the matter and shall publish a
 18 notice in a newspaper having general circulation in the affected area,
 19 stating the matter under consideration by the Commission and
 20 informing the public of its opportunity to submit written comments
 21 to the Commission on the matter. A public comment period shall
 22 extend for at least 30 days after the notice is published.

23 (2) To hold a public hearing on a matter, the Commission shall notify, by
 24 personal service or certified mail, persons directly affected by the
 25 matter under consideration and shall publish a notice in a newspaper
 26 having general circulation in the affected area, stating the matter under
 27 consideration by the Commission and the time, date, and place of a
 28 public hearing to be held on the matter. A public hearing shall be held
 29 no sooner than 20 days after the notice is published. The proceedings
 30 at a public hearing held under this subsection shall be recorded. Upon
 31 payment of a fee established by the Commission, any person may
 32 obtain a copy of the record of the public hearing. After a public
 33 hearing, the Commission shall accept written comments for the time
 34 period prescribed by the Commission.

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

41 Sec. 5. G.S. 143-215.5 reads as rewritten:

42 "§ 143-215.5. **Judicial review.**

43 (a) Article 4 of Chapter 150B of the General Statutes governs judicial review of a
 44 final agency decision or order of the Secretary or ~~of an order~~ of the Commission under

1 this Article and Articles 21A and 21B of this Chapter. If a case that concerns an action
2 of the Secretary or of the Commission under this Article or Article 21A or 21B of this
3 Chapter is appealed from the superior court to the Court of Appeals, Appellate Division
4 of the General Court of Justice, no bond shall be required of the Secretary or of the
5 Commission.

6 (b) A person aggrieved, as defined in G.S. 150B-2, other than the applicant or
7 permittee, who seeks judicial review of a final agency decision on an application for a
8 permit required under Title V shall file a petition for judicial review under G.S. 150B-
9 45 within 30 days after public notice of the final agency decision is given as provided in
10 rules adopted by the Commission pursuant to G.S. 143-215.4(b)(3). A permit applicant,
11 permittee, or other person aggrieved who seeks judicial review of a failure of the
12 Commission to act within the time specified in rules adopted pursuant to G.S. 143-
13 215.108(d)(2) on an application for a permit required by Title V or G.S. 143-215.108
14 shall file a petition for judicial review under G.S. 150B-45 within 30 days after the
15 expiration of the time specified for action on the application."

16 Sec. 6. G.S. 143-215.69 reads as rewritten:

17 **"§ 143-215.69. Enforcement procedures.**

18 (a) Criminal Penalties. –

19 (1) Except as provided in subdivision (2) of this subsection, any ~~Any~~
20 person who violates any provisions of this Part or any rules adopted by
21 the Commission for its implementation shall be guilty of a
22 misdemeanor and shall be liable to a penalty of not less than one
23 hundred dollars (\$100.00), nor more than one thousand dollars
24 (\$1,000) for each violation and each day such person shall fail to
25 comply after having been officially notified by the Commission shall
26 constitute a separate offense subject to the foregoing penalty.

27 (2) Any person who violates any provision of this Part or any rule adopted
28 by the Commission to implement this Part that imposes a requirement
29 that is also a requirement under Title V or any rule adopted by the
30 Commission to implement Title V shall be subject to punishment as
31 provided by G.S. 143-215.114B.

32 (b) Civil Penalties. – The Commission may assess a civil penalty against a person
33 who violates this Part or a rule of the Commission implementing this Part. ~~The~~ For
34 persons subject to the provisions of G.S. 143-215.1, the amount of the penalty shall not
35 exceed the maximum imposed in G.S. 143-215.6A and shall be assessed in accordance
36 with the procedure set out in G.S. 143-215.6A for assessing a civil penalty. For persons
37 subject to the provisions of Title V, G.S. 143-215.108, or G.S. 143-215.109, the amount
38 of penalty shall not exceed the maximum imposed in G.S. 143-215.114A and shall be
39 assessed in accordance with the procedure set out in G.S. 143-215.114A for assessing a
40 civil penalty. Civil penalties assessed under this subsection shall be credited to the
41 General Fund as nontax revenue.

42 (c) Injunctive Relief. – Upon violation of any of the provisions of this Part, a rule
43 implementing this Part, or an order issued under this Part, the Secretary may, either
44 before or after the institution of proceedings for the collection of the penalty imposed by

1 this Part for such violations, request the Attorney General to institute a civil action in
2 the superior court of the county or counties where the violation occurred in the name of
3 the State upon the relation of the Department for injunctive relief to restrain the
4 violation or require corrective action, and for such other or further relief in the premises
5 as said court shall deem proper. Neither the institution of the action nor any of the
6 proceedings thereon shall relieve any party to such proceedings from the penalty
7 prescribed by this Part for any violation of same."

8 Sec. 7. G.S. 143-215.107(a) reads as rewritten:

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

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

- 1 (8) To develop and adopt standards and plans necessary to implement
2 programs to control acid deposition and to regulate the use of sulfur
3 dioxide allowances and nitrogen oxides emissions in accordance with
4 Title IV and implementing regulations promulgated-adopted by the
5 United States Environmental Protection Agency.
- 6 (9) To regulate the oxygen content of gasoline, to require use of
7 reformulated gasoline as the Commission deems necessary, to
8 implement the requirements of Title II and implementing regulations
9 adopted by the United States Environmental Protection Agency, and to
10 adopt standards and plans to implement this subdivision. Rules
11 adopted under this subdivision may specify standards for a particular
12 area of the State that differ from other areas as may be necessary to
13 improve ambient air quality within a particular area, achieve
14 attainment or preclude violations of the National Ambient Air Quality
15 Standards, or to meet other federal requirements. Rules may authorize
16 the use of marketable oxygen credits for gasoline as provided in
17 federal requirements.
- 18 (10) To develop and adopt standards and plans necessary to implement
19 requirements of the federal Clean Air Act and implementing
20 regulations adopted by the United States Environmental Protection
21 Agency."

22 Sec. 8. G.S. 143-215.108 reads as rewritten:

23 **"§ 143-215.108. Control of sources of air pollution; permits required.**

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

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

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

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

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

12 (c) The Commission shall have the power:

13 (1) To grant and renew a permit with such conditions attached as the
14 Commission believes necessary to achieve the purposes of this ~~section;~~
15 section or the requirements of the Clean Air Act and implementing
16 regulations adopted by the United States Environmental Protection
17 Agency;

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

22 (3) ~~To modify or revoke~~ To terminate, modify, or revoke and reissue any
23 permit upon not less than 60 days' written notice to any person
24 affected;

25 (3a) To suspend any permit pursuant to the provisions of G.S. 150B-3(c);

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

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

32 (5a) To require that an applicant satisfy the Department that the applicant,
33 or any parent, subsidiary, or other affiliate of the applicant or parent:

34 a. Is financially qualified to carry out the activity for which a
35 permit is required under subsection (a); and

36 b. Has substantially complied with the air quality and emission
37 control standards applicable to any activity in which the
38 applicant has previously engaged, and has been in substantial
39 compliance with federal and state laws, regulations, and rules
40 for the protection of the environment.

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

- 1 (6) To adopt rules, as it deems necessary, establishing the form of
2 applications and permits and procedures for the granting or denial of
3 permits and renewals pursuant to this section; and all permits, renewals
4 and denials shall be in writing;
- 5 (7) To prohibit any stationary source within the State from emitting any
6 air pollutant in amounts ~~which~~that will prevent attainment or
7 maintenance by any other state of any national ambient air quality
8 ~~standard, or interference~~standard or that will interfere with measures
9 required to be included in the applicable implementation plan for any
10 other state to prevent deterioration of air quality or protect visibility;
11 and
- 12 (8) To designate certain classes of activities for which a general permit
13 may be issued, after considering the environmental impact of an
14 activity, the frequency of the activity, the need for individual permit
15 oversight, and the need for public review and comment on individual
16 permits.
- 17 (d) (1) ~~The Commission shall act on a permit application as quickly as~~
18 ~~possible.~~ The Commission may conduct any inquiry or investigation
19 it considers necessary before acting on an application and may
20 require an applicant to submit plans, specifications, and other
21 information the Commission considers necessary to evaluate the
22 application. A permit application may not be deemed complete
23 unless it is accompanied by a copy of the request for determination
24 as provided in subsection (f) of this section that bears a date of
25 receipt entered by the clerk of the local government and until the 15-
26 day period for issuance of a determination has elapsed. ~~If the~~
27 ~~Commission fails to act on an application for a permit deemed complete~~
28 ~~within 90 days after the applicant submits all information required by the~~
29 ~~Commission, the application is considered to be approved.~~
- 30 (2) The Commission shall adopt rules specifying the times within which it
31 must act upon applications for permits required by Title V and other
32 permits required by this section. The times specified shall be extended
33 for the period during which the Commission is prohibited from issuing
34 a permit under subdivisions (3) and (4) of this subsection. The
35 Commission shall inform a permit applicant as to whether or not the
36 application is complete within the time specified in the rules for action
37 on the application. If the Commission fails to act on an application for
38 a permit required by Title V or this section within the time period
39 specified, the failure to act on the application constitutes a final agency
40 decision to deny the permit. A permit applicant, permittee, or other
41 person aggrieved, as defined in G.S. 150B-2, may seek judicial review
42 of a failure to act on the application as provided in G.S. 143-215.5 and
43 Article 4 of Chapter 150B of the General Statutes. Notwithstanding
44 the provisions of G.S. 150B-51, upon review of a failure to act on an

1 application for a permit required by Title V or this section, a court may
2 either: (i) affirm the denial of the permit or (ii) remand the application
3 to the Commission for action upon the application within a specified
4 time.

5 (3) If the Administrator of the United States Environmental Protection
6 Agency validly objects to the issuance of a permit required by Title V
7 within 45 days after the Administrator receives the proposed permit
8 and the required portions of the permit application, the Commission
9 shall not issue the permit until the Commission revises the proposed
10 permit to meet all objections noted by the Administrator or otherwise
11 satisfies all objections consistent with Title V and implementing
12 regulations adopted by the United States Environmental Protection
13 Agency.

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

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

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

31 (f) An applicant for a permit under this section for a new facility or for the
32 expansion of a facility permitted under this section shall request each local government
33 having jurisdiction over any part of the land on which the facility and its appurtenances
34 are to be located to issue a determination as to whether the local government has in
35 effect a zoning or subdivision ordinance applicable to the facility and whether the
36 proposed facility would be consistent with the ordinance. The request to the local
37 government shall be accompanied by a copy of the draft permit application and shall be
38 delivered to the clerk of the local government personally or by certified mail. The
39 determination shall be verified or supported by affidavit signed by the official
40 designated by the local government to make the determination and, if the local
41 government states that the facility is inconsistent with a zoning or subdivision
42 ordinance, shall include a copy of the ordinance and the specific reasons for the
43 determination of inconsistency. A copy of any such determination shall be provided to
44 the applicant when it is submitted to the Commission. The Commission shall not act

1 upon an application for a permit under this section until it has received a determination
2 from each local government requested to make a determination by the applicant. Unless
3 the local government makes a subsequent determination of consistency with all
4 ordinances cited in the determination or the proposed facility is determined by a court of
5 competent jurisdiction to be consistent with the cited ordinances, the Commission shall
6 attach as a condition of the permit a requirement that the applicant, prior to construction
7 or operation of the facility under the permit, comply with all lawfully adopted local
8 ordinances, including those cited in the determination, that apply to the facility at the
9 time of construction or operation of the facility. If a local government fails to submit a
10 determination to the Commission as provided by this subsection within 15 days after
11 receipt of the request, the Commission may proceed to consider the permit application
12 without regard to local zoning and subdivision ordinances. This subsection shall not be
13 construed to limit any opportunity a local government may have to comment on a
14 permit application under any other law or rule. This subsection shall not apply to any
15 facility with respect to which local ordinances are subject to review under either G.S.
16 104E-6.2 or G.S. 130A-293.

17 (g) Any person who is required to hold a permit under this section shall submit to
18 the Department a written description of his current and projected plans to reduce the
19 emission of air contaminants under such permit by source reduction or recycling. The
20 written description shall accompany the payment of the annual permit fee. The written
21 description shall also accompany any application for a new permit, or for modification
22 of an existing permit, under this section. The written description required by this
23 subsection shall not be considered part of a permit application and shall not serve as the
24 basis for the denial of a permit or permit modification."

25 Sec. 9. G.S. 143-215.111 reads as rewritten:

26 **"§ 143-215.111. General powers of Commission; auxiliary powers.**

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

- 30 (1) To make a continuing study of the effects of the emission of air
31 contaminants from motor vehicles on the quality of the outdoor
32 atmosphere of the State and the several areas thereof, and make
33 recommendations to the General Assembly and other appropriate
34 public and private bodies for the control of such air contaminants.
- 35 (2) To consult, upon request, with any person proposing to construct,
36 install, or otherwise acquire an air pollution source or air-cleaning
37 device for the control of air contaminants concerning the efficacy of
38 such device, or the air problem which may be related to such source, or
39 device; provided, however, that nothing in any such consultation shall
40 be construed to relieve any person from compliance with this Article
41 and Article 21, rules adopted pursuant thereto, or any other provision
42 of law.
- 43 (3) To encourage local units of government to handle air pollution
44 problems within their respective jurisdictions and on a cooperative

1 basis, and to provide such local units technical and consultative
2 assistance to the maximum extent possible.

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

7 (5) To establish procedures providing for notice to the Administrator of
8 the United States Environmental Protection Agency and affected states
9 of proposals to issue permits required by Title V and allowing affected
10 states the opportunity to submit written comment as required by
11 section 505(a) of Title V (42 U.S.C. § 7661d) and implementing
12 regulations adopted by the United States Environmental Protection
13 Agency."

14 Sec. 10. G.S. 143-215.112 reads as rewritten:

15 **"§ 143-215.112. Local air pollution control programs.**

16 (a) The Commission is authorized and directed to review and have general
17 oversight and supervision over all local air pollution control programs and to this end
18 shall review and certify such programs as being adequate to meet the requirements of
19 this Article and Article 21 of this Chapter and any applicable standards and rules
20 adopted pursuant thereto. The Commission shall certify any local program which:

21 (1) Provides by ordinance or local law for requirements compatible with
22 those imposed by the provisions of this Article and Article 21 of this
23 Chapter, and the standards and rules issued pursuant thereto; provided,
24 however, the Commission upon request of a municipality or other local
25 unit may grant special permission for the governing body of such unit
26 to adopt a particular class of air contaminant regulations which would
27 result in more effective air pollution control than applicable standards
28 or rules promulgated by the Commission;

29 (2) Provides for the adequate enforcement of such requirements by
30 appropriate administrative and judicial process;

31 (3) Provides for an adequate administrative organization, staff, financial
32 and other resources necessary to effectively and efficiently carry out
33 its programs; and

34 (4) Is approved by the Commission as adequate to meet the requirements
35 of this Article and any applicable rules pursuant thereto.

36 (b) No municipality, county, local board or commission or group of
37 municipalities and counties may establish and administer an air pollution control
38 program unless such program meets the requirements of this section and is so certified
39 by the Commission.

40 (c) (1) The governing body of any county, municipality, or group
41 of counties and municipalities within a designated area of the State,
42 as defined in this Article and Article 21, subject to the approval of
43 the Commission, is hereby authorized to establish, administer, and
44 enforce a local air pollution control program for the county,

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

1 the local health department or other department of county or
2 municipal government as the administrative agent for the air
3 pollution control ~~board; and board.~~

4 d. Designating, by appropriate written agreement, the local board
5 of health and the local health department as the air pollution
6 control board and agency.

7 (2a) Any board or body which approves permits or enforcement orders
8 shall have at least a majority of members who represent the public
9 interest and do not derive any significant portion of their income from
10 persons subject to permits or enforcement orders under the Federal
11 Clean Air Act and any potential conflicts of interest by members of
12 such board or body or the head of an executive agency with similar
13 powers shall be adequately disclosed.

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

1 term 'governing body' is used, it shall include the governing board of a
2 region. The regional board is hereby authorized to exercise any and all
3 of the powers provided in this section. The regional air pollution
4 control board shall elect a chairman and shall meet at least quarterly or
5 upon the call of the chairman or any two members of the board. In lieu
6 of employing its own staff, the regional air pollution control board is
7 authorized, through appropriate written agreement, to designate a local
8 health department as its administrative agent.

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

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

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

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

1 days as the governing body or its authorized agent may specify, the
 2 governing body may institute a civil action in the superior court of the
 3 county in which the violation occurred, to recover the amount of the
 4 assessment. Each day of continuing violation after written notification
 5 from the governing body or its authorized agent shall be considered a
 6 separate offense. In determining the amount of the penalty, the
 7 governing body or its authorized agent shall consider the degree and
 8 extent of harm caused by the violation, the cost of rectifying the
 9 damage, and the amount of money the violator saved by not having
 10 made the necessary expenditures to comply with the appropriate
 11 pollution control requirements.

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

20 (d1) (1) The governing body responsible for each local air pollution
 21 control program shall require that the owner or operator of all air
 22 contaminant sources subject to the requirement to obtain a permit
 23 under Title V pay an annual fee, or the equivalent over some other
 24 period, sufficient to cover costs as provided in section 502(b)(3)(A)
 25 of Title V (42 U.S.C. § 7661a(b)(3)(A)) and G.S. 143-215.3(a)(1d).
 26 Fees collected pursuant to this subdivision shall be used solely to
 27 cover all reasonable direct and indirect costs required to develop and
 28 administer the Title V permit program.

29 (2) ~~(3) In addition, each~~ Each governing body is authorized to expend tax
 30 funds, nontax funds, or any other funds available to it to finance an air
 31 pollution control program and such expenditures are hereby declared
 32 to be for a public purpose and a necessary expense.

33 (d2) (1) ~~(4)~~ Any final administrative decision rendered in an air
 34 pollution control program of such governing body shall be subject to
 35 judicial review as provided by Article 4 of Chapter 150B of the
 36 General Statutes, and 'administrative agency' or 'agency' as used
 37 therein shall mean and include for this purpose the governing body
 38 of any county or municipality, regional air pollution control
 39 governing board, and any agency created by them in connection with
 40 an air pollution control program.

41 (2) A local air pollution control program shall inform a permit applicant as
 42 to whether or not the application is complete within the time specified
 43 in the rules for action on the application. If a local air pollution
 44 program fails to act on an application for a permit required by Title V

1 or this Article within the time periods specified by the Commission
2 under G.S. 143-215.108(d)(2), the failure to act on the application
3 constitutes a final agency decision to deny the permit. A permit
4 applicant, permittee, or other person aggrieved, as defined in G.S.
5 150B-2, may seek judicial review of a failure to act on the application
6 as provided in G.S. 143-215.5 and Article 4 of Chapter 150B of the
7 General Statutes. Notwithstanding the provisions of G.S. 150B-51,
8 upon review of a failure to act on an application for a permit required
9 by Title V or this Article, a court may either: (i) affirm the denial of
10 the permit or (ii) remand the application to the local air pollution
11 control program for action upon the application within a specified
12 time.

- 13 (e) (1) If the Commission has reason to believe that a local air
14 pollution control program certified and in force pursuant to the
15 provisions of this section is inadequate to abate or control air
16 pollution in the jurisdiction to which such program relates, or that
17 such program is being administered in a manner inconsistent with
18 the requirement of this Article, the Commission shall, upon due
19 notice, conduct a hearing on the matter.
- 20 (2) If, after such hearing, the Commission determines that an existing
21 local air pollution control program or one which has been certified by
22 the Commission is inadequate to abate or control air pollution in the
23 municipality, county, or municipalities or counties to which such
24 program relates, or that such program is not accomplishing the
25 purposes of this Article, it shall set forth in its findings the corrective
26 measures necessary for continued certification and shall specify a
27 reasonable period of time, not to exceed one year, in which such
28 measures must be taken if certification is not to be rescinded.
- 29 (3) If the municipality, county, local board or commission or
30 municipalities or counties fail to take such necessary corrective action
31 within the time specified, the Commission shall rescind any
32 certification as may have been issued for such program and shall
33 administer within such municipality, county, or municipalities or
34 counties all of the regulatory provisions of this Article and Article 21.
35 Such air pollution control program shall supersede all municipal,
36 county or local laws, regulations, ordinances and requirements in the
37 affected jurisdiction.
- 38 (4) If the Commission finds that the control of a particular class of air
39 contaminant source because of its complexity or magnitude is beyond
40 the reasonable capability of the local air pollution control authorities or
41 may be more efficiently and economically performed at the State level,
42 it may assume and retain jurisdiction over that class of air contaminant
43 source. Classification pursuant to this subdivision may be either on the

- 1 basis of the nature of the sources involved or on the basis of their
2 relationship to the size of the communities in which they are located.
- 3 (5) Any municipality or county in which the Commission administers its
4 air pollution control program pursuant to subdivision (3) of this
5 subsection may, with the approval of the Commission, establish or
6 resume a municipal, county, or local air pollution control program
7 which meets the requirements for certification by the Commission.
- 8 (6) ~~Nothing in this Article and Article 21 shall be construed to supersede
9 or oust the jurisdiction of any local air pollution control program in
10 operation on June 22, 1967; provided that within two years from such
11 date any such program shall meet all requirements of this Article and
12 Article 21 for certification by the Commission as an approved local air
13 pollution control program. Any certification required from the
14 Commission shall be deemed granted unless the Commission takes
15 specific action to the contrary.~~
- 16 (7) Any municipality, county, local board or commission or municipalities
17 or counties or designated area of this State for which a local air
18 pollution control program is established or proposed for establishment
19 may make application for, receive, administer and expend federal grant
20 funds for the control of air pollution or the development and
21 administration of programs related to air pollution control; provided
22 that any such application is first submitted to and approved by the
23 Commission. The Commission shall approve any such application if it
24 is consistent with this Article, Article 21 and other applicable
25 requirements of law.
- 26 (8) Notwithstanding any other provision of this section, if the Commission
27 determines that an air pollution source or combination of sources is
28 operating in violation of the provisions of this Article and that the
29 appropriate local authorities have not acted to abate such violation, the
30 Commission, upon written notice to the appropriate local governing
31 body, may act on behalf of the State to require any person causing or
32 contributing to the pollution to cease immediately the emission of air
33 pollutants causing or contributing to the violation or may require such
34 other action as it shall deem necessary."

35 Sec. 11. Section 25 of Chapter 538 of the 1991 Session Laws reads as
36 rewritten:

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

43 Sec. 12. Sections 17, 18, 19, and 20 of Chapter 538 of the 1991 Session
44 Laws are repealed.

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

2 **"§ 105-445. Application of proceeds of gasoline tax.**

3 The amount of revenue collected under this Article attributable to a per gallon excise
4 tax of one-half cent (1/2¢) a gallon shall be credited ~~in equal amounts as follows:~~ (i)
5 nineteen thirty-seconds (19/32) to the Commercial Leaking Petroleum Underground
6 Storage Tank Fund and the Groundwater Protection Loan Fund-Cleanup Fund; (ii) three
7 thirty-seconds (3/32) to the Noncommercial Leaking Petroleum Underground Storage
8 Tank Cleanup Fund; and (iii) five sixteenths (5/16) to the Water and Air Quality
9 Account. Of the remaining tax revenue collected under this Article, seventy-five
10 percent (75%) shall be credited to the Highway Fund and the remaining twenty-five
11 percent (25%) shall be credited to the Highway Trust Fund. A proportionate share of a
12 refund allowed under this Article shall be charged to ~~the Commercial Leaking Petroleum~~
13 ~~Underground Storage Tank Fund, the Groundwater Protection Loan Fund, the Highway Fund,~~
14 ~~and the Highway Trust Fund.~~ each fund or account to which revenue collected under this
15 Article is credited. The Secretary shall credit revenue or charge refunds to the
16 appropriate Funds on a monthly basis."

17 Sec. 14. G.S. 143-215.3A reads as rewritten:

18 **"§ 143-215.3A. Use Water and Air Quality Account; use of application and permit**
19 **fees--fees; Title V Account; I & M Air Pollution Control Account;**
20 **reports.**

21 (a) The Water and Air Quality Account is established as a nonreverting account
22 within the Department. Revenue in the Account shall be applied to the costs of
23 administering the programs for which the fees were collected. Revenue credited to the
24 Account pursuant to G.S. 105-445 shall be used to administer the air quality program.
25 Except for the following fees, all application fees and permit administration fees
26 collected by the State for permits issued under Articles 21, 21A, 21B, and 38 of this
27 Chapter shall be credited to the Account:

- 28 (1) Fees collected under Part 2 of Article 21A and credited to the Oil or
29 Other Hazardous Substances Pollution Protection Fund.
- 30 (2) Fees credited to the Title V Account.
- 31 (3) Fees credited to the Wastewater Treatment Works Emergency
32 Maintenance, Operation and Repair Fund under G.S. 143-215.3B.
- 33 (4) Fees collected under G.S. 143-215.28A.

34 (a1) The total monies collected per year from fees for permits under G.S. 143-
35 215.3(a)(1a), after deducting those monies collected under G.S. 143-215.3(a)(1d), shall
36 not exceed thirty percent (30%) of the total budgets from all sources of environmental
37 permitting and compliance programs within the Department.

38 (b) The Title V Account is established as a nonreverting account within the
39 Department. Revenue in the Account shall be used for developing and implementing a
40 permit program that meets the requirements of Title V. The Title V Account shall
41 consist of fees collected pursuant to G.S. 143-215.3(a)(1d) and G.S. 143-215.106A.
42 Fees collected under G.S. 143-215.3(a)(1d) shall be used only to cover the direct and
43 indirect costs required to develop and administer the Title V permit program, and fees
44 collected under G.S. 143-215.106A shall be used only for the eligible expenses of the

1 Title V program. Expenses of the Air Quality Compliance Advisory Panel, the
2 ombudsman for the Small Business Stationary Source Technical and Environmental
3 Compliance Assistance Program, support staff, equipment, legal services provided by
4 the Attorney General, and contracts with consultants and program expenses listed in
5 section 502(b)(3)(A) of Title V shall be included among Title V program expenses.

6 (b1) The I & M Air Pollution Control Account is established as a nonreverting
7 account within the Department. Fees transferred to the Division of Environmental
8 Management of the Department pursuant to G.S. 20-183.7(c)(2) shall be credited to the
9 I & M Air Pollution Control Account and shall be applied to the costs of developing and
10 implementing an air pollution control program for mobile sources.

11 (c) The Department shall make an annual report to the General Assembly and its
12 Fiscal Research Division on the cost of the State's environmental permitting programs
13 contained within such Department. In addition, the Department shall make an annual
14 report to the General Assembly and its Fiscal Research Division on the cost of the Title
15 V program. The reports shall include, but are not limited to, fees set and established
16 under this Article, fees collected under this Article, revenues received from other
17 sources for environmental permitting and compliance programs, changes made in the
18 fee schedule since the last report, anticipated revenues from all other sources, interest
19 earned and any other information requested by the General Assembly."

20 Sec. 15. Section 5 of Chapter 1035 of the 1987 Session Laws (1988 Regular
21 Session), as amended by Section 16 of Chapter 652 of the 1989 Session Laws, is
22 repealed.

23 Sec. 16. The Department of Environment, Health, and Natural Resources
24 shall study options, including alternative fuels and transportation programs, for reducing
25 air pollution from mobile sources through the use of revenues generated under G.S.
26 105-434 and G.S. 105-445. In conducting this study, the Department shall consider the
27 appropriate role of local air pollution control programs certified under G.S. 143-215.112
28 in the reduction of air pollution from mobile sources, including which functions can
29 most appropriately be performed by the Department and by certified local programs,
30 and what portion of the revenues generated under G.S. 105-434 and G.S. 105-445
31 should be appropriated or allocated to certified local programs to support functions
32 performed by certified local programs. The Department shall conduct this study in
33 consultation with representatives of certified local air pollution control programs, local
34 governments, regulated industries, and the environmental and conservation community.
35 The Department shall report its findings and recommendations to the Environmental
36 Review Commission on or before 1 November 1993.

37 Sec. 17. Sections 1 through 12 and Sections 15 through 17 of this act are
38 effective upon ratification. Section 13 of this act becomes effective 1 January 1995.
39 Section 14 of this act becomes effective upon ratification except that the amendment to
40 G.S. 143-215.3A(a) made by Section 14 of this act becomes effective 1 January 1995.
41 The Commission shall adopt rules to implement G.S. 143-215.108(d)(2), as enacted by
42 Section 8 of this act, within one year of the date on which the Administrator of the
43 United States Environmental Protection Agency notifies the Governor that the

- 1 Administrator has approved the State's Title V permit program as provided in 42 U.S.C.
- 2 §7661a(d), and not later than 1 January 1995.