

GENERAL ASSEMBLY OF NORTH CAROLINA

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HOUSE BILL 924

Committee Substitute Favorable 5/8/91

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Short Title: Air Permits/Local Land-Use Plans.

(Public)

Sponsors:

Referred to:

April 19, 1991

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THE ENVIRONMENTAL MANAGEMENT COMMISSION TO DETERMINE WHETHER A PROPOSED AIR QUALITY PERMIT IS CONSISTENT WITH LOCAL ZONING AND SUBDIVISION ORDINANCES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-215.108 reads as rewritten:

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

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

- (1) Establish or operate any air contaminant source;
- (2) Build, erect, use or operate any equipment which may result in the emission of air contaminants or which is likely to cause air pollution;
- (3) Alter or change the construction or method of operation of any equipment or process from which air contaminants are or may be emitted;

- 1 (4) Enter into a [an] irrevocable contract for the construction and
2 installation of any air-cleaning device, or allow or cause such device to
3 be constructed, installed, or operated.
- 4 (b) The Commission shall act upon all applications for permits so as to effectuate
5 the purpose of this section, by reducing existing air pollution and preventing, so far as
6 reasonably possible, any increased pollution of the air from any additional or enlarged
7 sources.
- 8 (c) The Commission shall have the power:
- 9 (1) To grant and renew a permit with such conditions attached as the
10 Commission believes necessary to achieve the purposes of this section;
- 11 (2) To grant and renew any temporary permit for such period of time as
12 the Commission shall specify even though the action allowed by such
13 permit may result in pollution or increase pollution where conditions
14 make such temporary permit essential;
- 15 (3) To modify or revoke any permit upon not less than 60 days' written
16 notice to any person affected;
- 17 (4) To require all applications for permits and renewals to be in writing
18 and to prescribe the form of such applications;
- 19 (5) To request such information from an applicant and to conduct such
20 inquiry or investigation as it may deem necessary and to require the
21 submission of plans and specifications prior to acting on any
22 application for a permit;
- 23 (5a) To require that an applicant satisfy the Department that the applicant,
24 or any parent, subsidiary, or other affiliate of the applicant or parent:
- 25 a. Is financially qualified to carry out the activity for which a
26 permit is required under subsection (a); and
- 27 b. Has substantially complied with the air quality and emission
28 control standards applicable to any activity in which the
29 applicant has previously engaged, and has been in substantial
30 compliance with federal and state laws, regulations, and rules
31 for the protection of the environment.
- 32 As used in this subdivision, the words 'affiliate,' 'parent,' and
33 'subsidiary' have the same meaning as in 17 Code of Federal
34 Regulations § 240.12b-2 (1 April 1990 Edition);
- 35 (6) To adopt rules, as it deems necessary, establishing the form of
36 applications and permits and procedures for the granting or denial of
37 permits and renewals pursuant to this section; and all permits, renewals
38 and denials shall be in writing;
- 39 (7) To prohibit any stationary source within the State from emitting any
40 air pollutant in amounts which will prevent attainment or maintenance
41 by any other state of any national ambient air quality standard, or
42 interference with measures required to be included in the applicable
43 implementation plan for any other state to prevent deterioration of air
44 quality or protect visibility.

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

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

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

1 facility with respect to which local ordinances are subject to review under either G.S.
2 104E-6.2 or G.S. 130A-293.

3 (ⓔ) (g) Any person who is required to hold a permit under this section shall
4 submit to the Department a written description of his current and projected plans to
5 reduce the emission of air contaminants under such permit by source reduction or
6 recycling. The written description shall accompany the payment of the annual permit
7 fee. The written description shall also accompany any application for a new permit, or
8 for modification of an existing permit, under this section. The written description
9 required by this subsection shall not be considered part of a permit application and shall
10 not serve as the basis for the denial of a permit or permit modification."

11 Sec. 2. This act becomes effective 1 October 1991 and applies to applications
12 for permits received on or after that date.