

**GENERAL ASSEMBLY OF NORTH CAROLINA**

**SESSION 1995**

**H**

**3**

HOUSE BILL 836  
Committee Substitute Favorable 5/31/95  
Committee Substitute #2 Favorable 6/26/95

Short Title: Expedite Environmental Permitting.

(Public)

---

Sponsors:

---

Referred to:

---

April 11, 1995

A BILL TO BE ENTITLED

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

11 The General Assembly of North Carolina enacts:

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

1 and timely technical review within the Department of Environment, Health, and Natural  
2 Resources.

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

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

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

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

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

- 34 a. If the application is not complete, the Department shall promptly  
35 notify the applicant in writing of all deficiencies of the  
36 application, specifying the items that need to be included,  
37 modified, or supplemented in order to make the application  
38 complete, and the 10-day time period is suspended after this  
39 request for further information. If the applicant submits the  
40 requested information within the time specified, the 10-day time  
41 period shall begin again on the day the additional information  
42 was submitted. If the additional information is not submitted  
43 within the time periods specified, the Department shall return the

- 1                   application to the applicant, and the applicant may treat the return  
2                   of the application as a denial of the application or may resubmit  
3                   the application at a later time.
- 4                   b.    If the Department fails to notify the applicant that an application  
5                   is not complete within the time period set forth in this subsection,  
6                   the application shall be deemed to be complete.
- 7                   (3)   Time for Permit Decision. For any application found to be complete  
8                   under subdivision (2) of this subsection, the Department shall issue a  
9                   permit decision within 60 days of the last day of any public hearing on  
10                  the application, or if there is no hearing, within 60 days of the close of  
11                  the notice period.
- 12                  (4)   Rights if Permit Decision Not Made in Timely Fashion. If the  
13                  Department fails to issue a permit decision within the time periods  
14                  specified in subdivision (3) of this subsection, the applicant may take  
15                  any of the following actions:
- 16                  a.    Take no action, thereby consenting to the continued review of the  
17                  application; or
- 18                  b.    Treat the action as a denial of the application and appeal the  
19                  denial under Article 3 of Chapter 150B of the General Statutes.
- 20                  (5)   Power to Halt Review. At any time after the permit application certified  
21                  by a professional engineer has been determined to be complete under  
22                  subdivision (2) of this subsection, the Department may immediately  
23                  terminate review of that application, including technical review and any  
24                  hearings or meetings scheduled on the application, upon a determination  
25                  of one of the following:
- 26                  a.    The permit application is not in substantial compliance with the  
27                  applicable rules; or
- 28                  b.    The applicant failed to pay all permit application fees.
- 29                  (6)   Rights if Review Halted. If the Department terminates review of an  
30                  application under subdivision (5) of this subsection, the applicant may  
31                  take any of the following actions:
- 32                  a.    Revise and resubmit the application; or
- 33                  b.    Treat the action as a denial of the application and appeal the  
34                  denial under Article 3 of Chapter 150B of the General Statutes.
- 35                  (7)   Option; No Additional Fee. The submittal of a permit application  
36                  certified by a professional engineer to be considered under this  
37                  subsection shall be an option and shall not be required of any applicant.  
38                  The Department shall not impose any additional fees for the receipt or  
39                  processing of a permit application certified by a professional engineer.
- 40                  (i)   Rules for Review of Applications Other Than Those Certified by a  
41                  Professional Engineer. – The Commission shall adopt rules governing the times of  
42                  review for all permit applications submitted pursuant to this section other than those  
43                  certified by a professional engineer pursuant to subsection (h) of this section. Those rules

1 shall specify maximum times for, among other things, the following actions in reviewing  
2 the permit applications covered by this subsection:

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

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

15 "(h) The Commission shall adopt rules in accordance with G.S. 143-215.1(h) to  
16 provide for expedited review of permit applications under this section.

17 "(i) The Commission shall adopt rules establishing a timetable for review of permit  
18 applications under this section in accordance with the requirements of G.S. 143-215.1(i)."

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

20 "(d) The Commission shall adopt rules in accordance with G.S. 143-215.1(h) to  
21 provide for expedited review of permit applications under this section.

22 "(e) The Commission shall adopt rules establishing a timetable for review of permit  
23 applications under this section in accordance with the requirements of G.S. 143-215.1(i)."

24 Sec. 5. The rule-making proceedings for the rules to be adopted pursuant to  
25 G.S. 143-215.1(h) and G.S. 143-215.1(i), as enacted in Section 2 of this act, the rules to  
26 be adopted pursuant to G.S. 143-215.108(h) and G.S. 143-215.108(i), as enacted in  
27 Section 3 of this act, and the rules to be adopted pursuant to G.S. 130A-295(d) and G.S.  
28 130A-295(e), as enacted in Section 4 of this act, shall be initiated as soon as possible  
29 after the effective date of this act with the goal of making the permanent rules effective  
30 no later than 18 months after the ratification of this act.

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

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

37 "(1b) The fee to be charged pursuant to G.S. 143-215.3(a)(1a) for processing  
38 ~~of an~~ application for a permit under G.S. 143-215.1 of Article 21 and  
39 G.S. 143-215.108 and G.S. 143-215.109 of Article 21B of this Chapter  
40 may not exceed ~~four hundred dollars (\$400.00).~~ one thousand dollars  
41 (\$1,000). The fee to be charged pursuant to G.S. 143-215.3(a)(1a) for  
42 processing a registration under Part 2A of this Article or Article 38 of  
43 this Chapter may not exceed fifty dollars (\$50.00) for any single

1 registration. An additional fee of twenty percent (20%) of the  
2 registration processing fee may be assessed for a late registration under  
3 Article 38 of this Chapter. The fee for administering and compliance  
4 monitoring under G.S. 143-215.1 of Article 21 and G.S. 143-215.108  
5 and G.S. 143-215.109 of Article 21B shall be charged on an annual  
6 basis for each year of the permit term and may not exceed one thousand  
7 five hundred dollars (\$1,500) per year. Fees for processing all permits  
8 under Article 21A and all other sections of Articles 21 and 21B shall not  
9 exceed one hundred dollars (\$100.00) for any single permit.  
10 Notwithstanding any other provision of this subdivision, the total  
11 payment for fees required for all permits under this subsection for any  
12 single facility shall not exceed seven thousand five hundred dollars  
13 (\$7,500) per year, which amount shall include all application fees and  
14 fees for administration and compliance monitoring. A single facility is  
15 defined to be any contiguous area under one ownership and in which  
16 permitted activities occur. For all permits issued under these Articles  
17 where a fee schedule is not specified in the statutes, the Commission, or  
18 other commission specified by statute shall adopt a fee schedule in a  
19 rule following the procedures established by the Administrative  
20 Procedure Act. ~~Such fee-~~Fee schedules shall be established to reflect the  
21 size of the emission or discharge, the potential impact on the  
22 environment, the staff costs involved, relative costs of the issuance of  
23 new permits and the reissuance of existing permits, and shall include  
24 adequate safeguards to prevent unusual fee assessments which would  
25 result in serious economic burden on an individual applicant. A system  
26 shall be considered to allow consolidated annual payments for persons  
27 with multiple permits. In its rulemaking to establish fee schedules, the  
28 Commission is also directed to consider a method of rewarding facilities  
29 which achieve full compliance with administrative and self-monitoring  
30 reporting requirements, and to consider, in those cases where the cost of  
31 renewal or amendment of a permit is less than for the original permit, a  
32 lower fee for ~~such the~~ renewal or amendment."

33 Sec. 8. Section 5 of this act and this section are effective upon ratification.  
34 The remainder of this act becomes effective 1 January 1996 and applies to an application  
35 for a new permit, a modification of an existing permit, or a reissuance or renewal of an  
36 existing permit filed on or after that date.