

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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HOUSE BILL 1602*

Short Title: Third-Party Env. Permit Notice & Appeal.

(Public)

Sponsors: Representatives Dawkins, Gottovi, Privette; and Ethridge.

Referred to: Judiciary II.

June 5, 1992

A BILL TO BE ENTITLED

AN ACT TO REQUIRE NOTIFICATION TO THE PUBLIC OF CERTAIN MINING,
WATER, AND AIR PERMIT DECISIONS, TO ALLOW THIRD PARTIES TO
APPEAL THESE DECISIONS IN CONTESTED CASE PROCEEDINGS, AND
TO MAKE CERTAIN NEW PERMIT CONDITIONS EFFECTIVE DURING A
CONTESTED CASE PROCEEDING.

The General Assembly of North Carolina enacts:

Section 1. G.S. 74-49 is amended by adding the following two subdivisions
to read:

"(11a) 'Person affected' means a person aggrieved, as defined in G.S. 150B-2,
who either:

a. Submits to the Department in a timely manner, either
individually or jointly with other persons, written comment
containing specific recommendations on a permit application.

b. Presents oral comment at a public hearing if a public hearing is
conducted by the Department on a permit application and, if
there is an opportunity to submit written comment following the
public hearing, submits to the Department in a timely manner,
written comment containing specific recommendations on the
permit application.

c. Makes a good cause showing that comment was not submitted
or presented because there was no reason to have anticipated
being adversely affected by the qualifying permit decision.

(11b) 'Qualifying permit decision' means any of the following:

- 1 a. The approval or denial of an application for a new permit.
- 2 b. The approval of an application to renew a permit to the extent
3 the renewed permit differs from the former permit.
- 4 c. The denial of an application to renew a permit.
- 5 d. The approval or denial of an application for a major
6 modification of a permit, as determined by rule of the
7 Commission, to the extent the modified permit differs from the
8 former permit."

9 Sec. 2. G.S. 74-50 reads as rewritten:

10 **"§ 74-50. Permits – General.**

11 (a) ~~After July 1, 1972, no operator~~No person shall engage in mining without
12 having first obtained from the Department an operating permit which covers the
13 affected land and which has not terminated, been revoked, been suspended for the
14 period in question, or otherwise become invalid. An operating permit may be modified
15 from time to time to include land neighboring the affected land, in accordance with
16 procedures set forth in G.S. 74-52. A separate permit shall be required for each mining
17 operation that is not on land neighboring a mining operation for which the operator has
18 a valid permit.

19 ~~No permit shall be issued except in accordance with the procedures set forth in G.S.~~
20 ~~74-51, nor modified or renewed except in accordance with the procedures set forth in~~
21 ~~G.S. 74-52.~~

22 ~~An appeal from the Department's denial of a permit may be taken to the Mining~~
23 ~~Commission, as provided by G.S. 74-61.~~

24 (b) ~~Prior to the issuance of a new mining permit, the operator~~an applicant shall ~~make a~~
25 ~~reasonable effort, satisfactory to the Department, to notify~~notify by certified or registered
26 mail all owners of record of land adjoining the proposed site, ~~and to notify site and the~~
27 ~~chief administrative officer of the county or municipality in which the site is located that~~
28 ~~he intends to conduct a mining operation on the site in question.~~located. The notice shall
29 conform to the requirements of G.S. 74-51(d).

30 (c) No permit shall become effective until the operator has deposited with the
31 Department an acceptable performance bond or other security pursuant to G.S. 74-54. If
32 at any time said bond or other security, or any part thereof, shall lapse for any reason
33 other than a release by the Department, and said lapsed bond or security is not replaced
34 by the operator within 30 days after notice of the lapse, the permit to which it pertains
35 shall automatically become void and of no further effect.

36 (d) An operating permit shall be granted for a period not exceeding 10 years. If
37 the mining operation terminates and the reclamation required under the approved
38 reclamation plan is completed prior to the end of said period, the permit shall terminate.
39 Termination of a permit shall not have the effect of relieving the operator of any
40 obligations which he has incurred under his approved reclamation plan or otherwise.
41 Where the mining operation itself has terminated, no permit shall be required in order to
42 carry out reclamation measures under the reclamation plan.

43 ~~An operating permit may be renewed from time to time, pursuant to procedures set~~
44 ~~forth in G.S. 74-52.~~

1 ~~An operating permit may be suspended or revoked for cause, pursuant to procedures~~
2 ~~set forth in G.S. 74-58."~~

3 Sec. 3. G.S. 74-51 reads as rewritten:

4 **"§ 74-51. Permits – Application, granting, conditions.**

5 (a) Any ~~operator~~ person desiring to engage in mining shall make written
6 application to the Department for a permit. Such application shall be upon a form
7 furnished by the Department and shall fully state the information called for; in addition,
8 the applicant may be required to furnish such other information as may be deemed
9 necessary by the Department in order adequately to enforce this Article.

10 (b) The application shall be accompanied by a reclamation plan which meets the
11 requirements of G.S. 74-53. No permit shall be issued until such plan has been
12 approved by the Department.

13 (c) The application shall be accompanied by a signed agreement, in a form
14 specified by the Department, that in the event a bond forfeiture is ordered pursuant to
15 G.S. 74-59, the Department and its representatives and its contractors shall have the
16 right to make whatever entries on the land and to take whatever actions may be
17 necessary in order to carry out reclamation which the operator has failed to complete.

18 (d) When an applicant submits an application for which a qualifying permit
19 decision must be made, the Department shall set a period of not less than 30 days for
20 accepting written comment on the application. Within 10 days after receipt of the
21 application, the Department shall send the applicant written notice of this period.
22 Within 10 days after receiving notice of the comment period, the applicant shall publish
23 a notice of the application in a newspaper having general circulation in each county in
24 which any part of the mining operation is proposed to be located. For an application to
25 be deemed complete, the applicant shall submit an affidavit of publication from the
26 publisher of each newspaper in which the notice is published. At a minimum, the notice
27 shall:

28 (1) Name the applicant.

29 (2) Clearly identify the area to be mined and the nature of the proposed
30 mining operation.

31 (3) State the name and address of the agency to which public comment on
32 the application may be directed and the time allowed for submitting
33 comment.

34 (e) Before deciding whether to grant a new permit, the Department shall circulate
35 copies of a notice of application for review and comment as it deems advisable. The
36 Department shall consider all relevant oral comment presented at any public hearing
37 conducted by the Department and all relevant written comment submitted in a timely
38 manner. Written comment is submitted in a timely manner if it is received by the
39 Department during the comment period stated in the newspaper notice or during any
40 period that the Department holds the application open for receipt of additional
41 information from the applicant. The Department shall grant or deny the permit
42 requested as expeditiously as possible, but in no event later than 60 days after the
43 application form and any relevant and material supplemental information reasonably
44 required shall have been filed with the Department, or if a public hearing is held, within

1 30 days following the hearing and the filing of any relevant and material supplemental
2 information reasonably required by the Department. Priority consideration shall be
3 given to applicants who submit evidence that the mining proposed will be for the
4 purpose of supplying materials to the Board of Transportation.

5 (f) Upon its determination that significant public interest exists, the Department
6 shall conduct a public hearing on any application for a new mining permit. ~~Such~~ If the
7 Department conducts a public hearing, the hearing shall be held before the Department
8 reaches a final decision on the application, and in making its determination, the
9 Department shall give full consideration to all comments submitted at the public
10 hearing. ~~Such public~~ If the Department conducts a public hearing, the hearing shall be
11 held within 60 days of the filing of the application, after the application and any relevant
12 and material supplemental information reasonably required by the Department is filed
13 with the Department.

14 (g) The Department may deny such permit upon finding:

- 15 (1) That any requirement of this Article or any rule promulgated
16 hereunder will be violated by the proposed operation;
- 17 (2) That the operation will have unduly adverse effects on wildlife or fresh
18 water, estuarine, or marine fisheries;
- 19 (3) That the operation will violate standards of air quality, surface water
20 quality, or groundwater quality which have been promulgated by the
21 Department;
- 22 (4) That the operation will constitute a substantial physical hazard to a
23 neighboring dwelling house, school, church, hospital, commercial or
24 industrial building, public road or other public property;
- 25 (5) That the operation will have a significantly adverse effect on the
26 purposes of a publicly owned park, forest or recreation area;
- 27 (6) That previous experience with similar operations indicates a
28 substantial possibility that the operation will result in substantial
29 deposits of sediment in stream beds or lakes, landslides, or acid water
30 pollution; or
- 31 (7) That the operator has not corrected all violations which he may have
32 committed under any prior permit and which resulted in,
 - 33 a. Revocation of his permit,
 - 34 b. Forfeiture of part or all of his bond or other security,
 - 35 c. Conviction of a misdemeanor under G.S. 74-64, or
 - 36 d. Any other court order issued under G.S. 74-64.

37 (h) In the absence of any such findings, a permit shall be granted. Any permit
38 issued shall be expressly conditioned upon compliance with all requirements of the
39 approved reclamation plan for the operation and with such further reasonable and
40 appropriate requirements and safeguards as may be deemed necessary by the
41 Department to assure that the operation will comply fully with the requirements and
42 objectives of this Article. Such conditions may, among others, include a requirement of
43 visual screening, vegetative or otherwise, so as to screen the view of the operation from
44 public highways, public parks, or residential areas, where the Department finds such

1 screening to be feasible and desirable. Violation of any such conditions shall be treated
 2 as a violation of this Article and shall constitute a basis for suspension or revocation of
 3 the permit.

4 (i) Any operator wishing any modification of the terms and conditions of his
 5 permit or of the approved reclamation plan shall submit a request for modification in
 6 accordance with the provisions of G.S. 74-52.

7 (j) If the Department denies an application for a permit, it shall notify the
 8 ~~operator-applicant~~ in writing, stating the reasons for its denial and any modifications in
 9 the application ~~which~~ that would make it acceptable. The ~~operator-applicant~~ may
 10 ~~thereupon~~ modify his the application or file an appeal, as provided in G.S. ~~74-61.~~ 74-61,
 11 ~~but no such appeal shall be taken more than 60 days after notice of disapproval has been mailed~~
 12 ~~to him at the address shown on his application.~~

13 (k) Upon approval of an application, the Department shall set the amount of the
 14 performance bond or other security which is to be required pursuant to G.S. 74-54. The
 15 operator shall have 60 days following the mailing of such notification in which to
 16 deposit the required bond or security with the Department. The operating permit shall
 17 not be issued until receipt of this deposit.

18 (l) When one operator succeeds to the interest of another in any uncompleted
 19 mining operation, by virtue of a sale, lease, assignment, or otherwise, the Department
 20 may release the first operator from the duties imposed upon him by this Article with
 21 reference to such operation and transfer the permit to the successor operator; provided,
 22 that both operators have complied with the requirements of this Article and that the
 23 successor operator assumes the duties of the first operator with reference to reclamation
 24 of the land and posts a suitable bond or other security."

25 Sec. 4. G.S. 74-60 reads as rewritten:

26 "**§ 74-60. Notice. Public notice of certain permit decisions; form of notice to**
 27 **applicants and permit holders.**

28 (a) Public Notice. – The Department shall publish notice of a qualifying permit
 29 decision in the North Carolina Register. If the Department has not submitted the notice
 30 for publication within 20 days after it makes the decision, the permit holder may submit
 31 the required notice to the North Carolina Register for publication. At a minimum, the
 32 notice shall:

33 (1) Identify the application, including the name of the applicant and the
 34 date the application was submitted.

35 (2) Clearly identify the area to be mined including each county in which
 36 the area is located.

37 (3) State the decision on the application.

38 (4) State the last date on which a contested case petition may be filed in
 39 the Office of Administrative Hearings.

40 (5) State the name and address of the agency that made the decision.

41 (b) Applicants and Permit Holders. – Whenever ~~in~~ this Article requires the
 42 Department to give written notice is required to be given by the Department, such to an
 43 applicant for a permit or a holder of a permit, the Department shall mail the notice shall
 44 be mailed by registered or certified mail to the permanent address of the applicant or

1 ~~operator permit holder set forth in his~~ the applicant's or permit holder's most recent
2 application for ~~an operating a~~ permit or for a modification or renewal of ~~such a~~ permit.
3 ~~No other notice shall be required.~~

4 (c) Effect. – Notice of a qualifying permit decision given in accordance with
5 subsection (a) of this section satisfies G.S. 150B-23(f).

6 (d) Notice by Mail. – The Department shall, to the extent practicable, mail a copy
7 of the notice described in subsection (a) of this section to persons who provide the
8 Department with a self-addressed envelope with sufficient postage affixed."

9 Sec. 5. G.S. 74-61 reads as rewritten:

10 "**§ 74-61. Administrative and judicial review of decisions.**

11 (a) Applicants and Permit Holders. – An applicant for a permit or a permit holder
12 may contest a qualifying permit decision by filing a petition for a contested case under
13 G.S. 150B-23 within 60 days after notice of the decision is published in the North
14 Carolina Register. A permit holder ~~Any affected person~~ may contest a decision of the
15 Department to deny, suspend, modify, or revoke a permit or a reclamation plan, to refuse any
16 other permit decision, a refusal to release part or all of a ~~the holder's~~ bond or other
17 security, or ~~to assess the assessment of~~ a civil penalty against a holder by filing a petition
18 for a contested case under G.S. 150B-23 within 60 days after ~~the Department makes the~~
19 ~~decision~~ receiving written notice of the decision.

20 (b) Persons Affected. – A person affected may contest a qualifying permit
21 decision, but may not contest any other permit decision, by filing a petition for a
22 contested case under G.S. 150B-23 within 60 days after notice of the decision is
23 published in the North Carolina Register. When a person affected contests a qualifying
24 permit decision, the assigned Administrative Law Judge shall by order make the permit
25 holder a party to the contested case proceeding. In the contested case, the person
26 affected may not contest an issue that was not raised, either by the person affected or
27 another person, with the Department when the contested decision was pending before
28 the Department unless the Administrative Law Judge assigned to the contested case
29 makes an exception for good cause shown. The assigned Administrative Law Judge
30 may allow a person affected to be heard on a new issue only if the Administrative Law
31 Judge finds that the issue could not reasonably have been raised while the contested
32 decision was pending before the Department. If the contested case concerns the
33 approval of an application to renew a permit, the person affected may contest only a
34 difference between the renewed permit and the former permit.

35 (c) Other Persons. – A person who is not a permit holder who is assessed a civil
36 penalty may contest the penalty by filing a petition for a contested case under G.S.
37 150B-23 within 60 days after receiving written notice of the assessment. A person
38 aggrieved by a permit decision who is not a permit applicant, a permit holder, or a
39 person affected may not contest the decision by filing a petition for a contested case but
40 may petition to intervene in any contested case on the decision. A person aggrieved
41 who fails to petition to intervene in a contested case has not exhausted all available
42 administrative remedies.

43 (d) Stay. – If a permit holder or a person affected files a petition for a contested
44 case proceeding to challenge a qualifying permit decision, any provision of a renewed

1 permit that is specifically challenged in the petition and that differs from the former
2 permit is stayed until the final decision is issued. If a provision of the renewed permit is
3 stayed under this section, the permit holder shall comply with the provision of the
4 former permit that corresponds to the stayed provision, unless compliance with the
5 former provision would be technologically incompatible with compliance of other
6 provisions of the new permit that have not been stayed.

7 (e) Final Decision. – The Commission shall make the final decision in a
8 contested case under this section. If a permit applicant, permit holder, person affected,
9 or other person assessed a civil penalty does not file a petition for a contested case
10 within the required time, the decision by the Department is final and is not subject to
11 administrative or judicial review.

12 (f) Judicial Review. – Except as provided in this subsection, Article 4 of Chapter
13 150B of the General Statutes governs judicial review of a ~~decision~~ final decision ~~of the~~
14 Commission. ~~in a contested case and of a final decision for which the administrative~~
15 remedy of a contested case is not available. Any person who seeks judicial review of a
16 final decision in a contested case must file a petition for review within 30 days after the
17 parties to the case are served with a written copy of the decision. Any person aggrieved
18 by a final decision for which the administrative remedy of a contested case is not
19 available may obtain judicial review of the decision by filing a petition for review
20 within 30 days after the final decision is issued. A petition for judicial review of a
21 qualifying permit decision shall be dismissed unless the petitioner is either:

- 22 (1) A person affected who either filed a contested case petition on the
23 decision or was a party to a contested case on the decision.
24 (2) A person aggrieved only as a result of the final decision in a contested
25 case on the decision."

26 Sec. 6. G.S. 143-213(29a) reads as rewritten:

27 "(29a) (29e) 'Title V' means Title V of the 1990 amendments to the
28 Federal ~~federal~~ Clean Air Act (Pub. L. 101-549, 104
29 Stat. ~~2635-2635~~, 42 U.S.C. § 7661 **et seq.**)."

30 Sec. 7. G.S. 143-213 is amended by adding the following six new
31 subdivisions to read:

32 "(13a) 'Person affected' means a person aggrieved, as defined in G.S. 150B-2,
33 except that, if newspaper notice and opportunity for comment are
34 provided by the Commission, 'person affected' means a person
35 aggrieved, as defined in G.S. 150B-2 who either:

- 36 a. Submits to the Commission in a timely manner, either
37 individually or jointly with other persons, written comment
38 containing specific recommendations on a permit application.
39 b. Presents oral comment at a public hearing if a public hearing is
40 conducted by the Commission on a permit application and, if
41 there is an opportunity to submit written comment following the
42 public hearing, submits to the Commission in a timely manner,
43 written comment containing specific recommendations on the
44 permit application.

- 1 c. Makes a good cause showing that comment was not submitted
2 or presented because there was no reason to have anticipated
3 being adversely affected by the qualifying permit decision.
- 4 (13b) 'Qualifying permit decision' means any of the following actions by the
5 Commission:
- 6 a. The approval or denial of an application for a new permit, other
7 than a general permit or a temporary permit.
- 8 b. The approval of an application to reissue a permit, other than a
9 general permit or a temporary permit, to the extent the reissued
10 permit differs from the former permit.
- 11 c. The denial of an application to reissue a permit, other than a
12 general permit or a temporary permit.
- 13 d. The approval or denial of an application for a major
14 modification of a permit as determined by rule of the
15 Commission.
- 16 e. The issuance of a special order pursuant to G.S 143-215.2 or
17 G.S. 143-215.110.
- 18 (13c) 'Qualifying air permit decision' means a qualifying permit decision
19 made pursuant to Article 21B of this Chapter for an activity that is:
- 20 a. Subject to regulation under Title IV or Title V.
- 21 b. Required to be submitted to a local government for review
22 pursuant to G.S. 143-215.108(f).
- 23 c. Designated for public notice by rule of the Commission.
- 24 (13d) 'Qualifying water discharge permit decision' means a qualifying permit
25 decision made pursuant to this Article for:
- 26 a. An outlet into the waters of the State.
- 27 b. A treatment works.
- 28 c. A pretreatment facility.
- 29 d. Any other activity that is designated for public notice by rule of
30 the Commission.
- 31 (13e) 'Qualifying water nondischarge permit decision' means a qualifying
32 permit decision made pursuant to this Article for:
- 33 a. Land application of waste including petroleum contaminated
34 soil and sludge.
- 35 b. Any other activity that is designated for public notice by rule of
36 the Commission.
- 37 (29d) 'Title IV' means Title IV of the 1990 amendments to the federal Clean
38 Air Act (Pub. L. 101-549, 104 Stat. 2584, 42 U.S.C. § 7651 et seq.)."
- 39 Sec. 8. G.S. 143-215.1(e) reads as rewritten:
- 40 ~~"(e) Administrative Notice and Review. —A permit applicant or permittee who is~~
41 ~~dissatisfied with a decision of the Commission may commence a contested case by~~
42 ~~filing a petition under G.S. 150B-23 within 30 days after the Commission notifies the~~
43 ~~applicant or permittee of its decision. If the permit applicant or permittee does not file a~~
44 ~~petition within the required time, the Commission's decision is final and is not subject to~~

1 ~~review.~~ G.S. 143-215.5 governs public notice of a permit decision and administrative
2 and judicial review of a permit decision."

3 Sec. 9. G.S. 143-215.2(b) reads as rewritten:

4 "(b) ~~Procedure to Contest Certain Orders.—A special order that is issued without~~
5 ~~the consent of the person affected may be contested by that person by filing a petition~~
6 ~~for a contested case under G.S. 150B-23 within 30 days after the order is issued. If the~~
7 ~~person affected does not file a petition within the required time, the order is final and is~~
8 ~~not subject to review.~~ Review. — G.S. 143-215.5 governs administrative and judicial
9 review of an order issued under this section."

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

11 "(b) Procedures for Public Input. —

12 (1) The Commission may, on its own motion or when required by federal
13 law, request public comments on or hold public hearings on matters
14 within the scope of its authority under this Article or Articles 21A or
15 21B of this Chapter. Before making a qualifying permit decision, the
16 Department shall consider all relevant oral comment presented at any
17 public hearing conducted by the Department and all relevant written
18 comment submitted in a timely manner. Written comment is
19 submitted in a timely manner if it is received by the Department during
20 the comment period stated in the newspaper notice or during any
21 period that the Department holds the application or special order open
22 for receipt of additional information from the applicant.

23 (2) To request public comments on a matter, the Commission shall notify
24 appropriate agencies of the opportunity to submit written comments to
25 the Commission on the matter and shall publish a notice in a
26 newspaper having general circulation in the affected area, stating the
27 matter under consideration by the Commission and informing the
28 public of its opportunity to submit written comments to the
29 Commission on the matter. A public comment period shall extend for
30 at least 30 days after the notice is published.

31 (3) To hold a public hearing on a matter, the Commission shall ~~notify, by~~
32 ~~personal service or certified mail, persons directly affected by the matter~~
33 ~~under consideration~~ notify the applicant or permit holder by certified
34 mail and shall publish a notice in a newspaper having general
35 circulation in the affected area, stating the matter under consideration
36 by the Commission and the time, date, and place of a public hearing to
37 be held on the matter. A public hearing shall be held no sooner than
38 20 days after the notice is published. The proceedings at a public
39 hearing held under this subsection shall be recorded. Upon payment of
40 a fee established by the Commission, any person may obtain a copy of
41 the record of the public hearing. After a public hearing, the
42 Commission shall accept written comments for the time period
43 prescribed by the Commission.

1 (4) This subsection applies only to proceedings that are not rule-making
2 proceedings or contested case hearings."

3 Sec. 11. G.S. 143-215.5 reads as rewritten:

4 "**§ 143-215.5. Judicial review of actions under Article. Public notice of qualifying**
5 **permit decisions; administrative and judicial review of decisions.**

6 (a) Public Notice. – The Department shall publish notice of a qualifying air
7 permit decision, a qualifying water discharge permit decision, and a qualifying water
8 nondischarge permit decision in the North Carolina Register. If the Department has not
9 submitted the notice for publication within 20 days after it makes the decision, the
10 permit holder may submit the required notice to the North Carolina Register for
11 publication. At a minimum, the notice shall:

12 (1) Identify the application, including the name of the applicant and the
13 date the application was submitted.

14 (2) Clearly identify the location of the activity including each county in
15 which the activity is located.

16 (3) State the decision on the application.

17 (4) State the last date on which a contested case petition may be filed in
18 the Office of Administrative Hearings.

19 (5) State the name and address of the agency that made the decision.

20 (b) Effect. – Notice of a qualifying air permit decision, a qualifying water
21 discharge permit decision, and a qualifying water nondischarge permit decision given in
22 accordance with subsection (a) of this section satisfies G.S. 150B-23(f).

23 (c) Notice by Mail. – The Department shall, to the extent practicable, mail a copy
24 of the notice described in subsection (a) of this section to persons who provide the
25 Department with a self-addressed envelope with sufficient postage affixed.

26 (d) Applicants and Permit Holders. – A permit applicant or permit holder may
27 contest a qualifying air permit decision, a qualifying water discharge permit decision, or
28 a qualifying water nondischarge permit decision of the Commission by filing a petition
29 for a contested case under G.S. 150B-23 within 30 days after notice of the decision is
30 published in the North Carolina Register. A permit applicant or permit holder may
31 contest any other permit decision by filing a petition for a contested case under G.S.
32 150B-23 within 30 days after receiving written notice of the decision.

33 (e) Persons Affected. – A person affected may contest a qualifying air permit
34 decision, a qualifying water discharge permit decision, or a qualifying water
35 nondischarge permit decision, but may not contest any other permit decision, by filing a
36 petition for a contested case under G.S. 150B-23 within 30 days after notice of the
37 decision is published in the North Carolina Register. When a person affected contests a
38 qualifying air permit decision, a qualifying water discharge permit decision, or a
39 qualifying water nondischarge permit decision, the assigned Administrative Law Judge
40 shall by order make the permit holder a party to the contested case proceeding. In the
41 contested case, the person affected may not contest an issue that was not raised, either
42 by the person affected or another person, with the Commission when the contested
43 decision was pending before the Commission unless the Administrative Law Judge
44 assigned to the contested case makes an exception for good cause shown. The assigned

1 Administrative Law Judge may allow a person affected to be heard on a new issue only
2 if the Administrative Law Judge finds that the issue could not reasonably have been
3 raised while the contested decision was pending before the Commission. If the
4 contested case concerns the approval of an application to renew a permit, the person
5 affected may contest only a difference between the renewed permit and the former
6 permit.

7 (f) Other Persons. – A person aggrieved by a permit decision who is not a permit
8 applicant, a permit holder, or a person affected may not contest the decision by filing a
9 petition for a contested case but may petition to intervene in any contested case on the
10 decision. A person aggrieved who fails to petition to intervene in a contested case has
11 not exhausted all available administrative remedies.

12 (g) Stay. – If a permit holder or a person affected files a petition for a contested
13 case proceeding to challenge a qualifying permit decision, any provision of a reissued
14 permit that is specifically challenged in the petition and that differs from the former
15 permit is stayed until the final decision is issued. If a provision of the reissued permit is
16 stayed under this section, the permit holder shall comply with the provision of the
17 former permit that corresponds to the stayed provision, unless compliance with the
18 former provision would be technologically incompatible with compliance of other
19 provisions of the new permit that have not been stayed.

20 (h) Final Decision. – The Commission shall make the final decision in a
21 contested case under this section. If a permit applicant, permit holder, or person
22 affected does not file a petition for a contested case within the required time, the
23 decision by the Commission is final and is not subject to administrative or judicial
24 review.

25 (i) Judicial Review. – Except as provided in this subsection, Article 4 of Chapter
26 150B of the General Statutes governs judicial review of a final decision of the Secretary
27 or of an order of the Commission under this Article. in a contested case and of a final
28 decision for which the administrative remedy of a contested case is not available. Any
29 person who seeks judicial review of a final decision in a contested case must file a
30 petition for review within 30 days after the parties to the case are served with a written
31 copy of the decision. Any person aggrieved by a final decision for which the
32 administrative remedy of a contested case is not available may obtain judicial review of
33 the decision by filing a petition for review within 30 days after the final decision is
34 issued. A person aggrieved by a final decision for which the administrative remedy of a
35 contested case is not available may obtain judicial review of the decision by filing a
36 petition in accordance with Article 4 of Chapter 150B of the General Statutes. A
37 petition for judicial review of a qualifying permit decision shall be dismissed unless the
38 petitioner is either:

39 (1) A person affected who either filed a contested case petition on the
40 decision or was a party to a contested case on the decision.

41 (2) A person aggrieved only as a result of the final decision in a contested
42 case on the decision.

1 (j) Bond on Appeal. – If a case that concerns ~~an action~~ a decision of the
2 Commission ~~under this Article~~ is appealed from the superior court to the Court of
3 Appeals, no bond shall be required of the Commission."

4 Sec. 12. G.S. 143-215.108(e) reads as rewritten:

5 "(e) ~~A permit applicant or permittee who is dissatisfied with a decision of the~~
6 ~~Commission may commence a contested case by filing a petition under G.S. 150B-23~~
7 ~~within 30 days after the Commission notifies the applicant or permittee of its decision.~~
8 ~~If the permit applicant or permittee does not file a petition within the required time, the~~
9 ~~Commission's decision on the application is final and is not subject to review.~~ Notice
10 and Review. – G.S. 143-215.5 governs public notice of a permit decision and
11 administrative and judicial review of a permit decision."

12 Sec. 13. G.S. 143-215.110(b) reads as rewritten:

13 "(b) ~~Procedure to Contest Certain Orders.~~—A special order that is issued without
14 the consent of the person affected may be contested by that person by filing a petition
15 for a contested case under G.S. 150B-23 within 30 days after the order is issued. If the
16 person affected does not file a petition within the required time, the order is final and is
17 not subject to review. Review. – G.S. 143-215.5 governs administrative and judicial
18 review of an order issued under this section."

19 Sec. 14. G.S. 143-215.1(b)(4)c. reads as rewritten:

20 "c. To modify or revoke any permit upon not less than 60 days'
21 written notice to ~~any person affected;~~ the permit holder."

22 Sec. 15. G.S. 143-215.15(c) reads as rewritten:

23 "(c) In all cases in which sufficient evidence of a nonconsumptive use is not
24 presented the Department shall notify each person required by this Part to secure a
25 permit of the Commission's proposed action concerning such permit, and shall transmit
26 with such notice a copy of any permit it proposes to issue to such persons, which permit
27 will become final unless a request for a hearing is made within 15 days from the date of
28 service of such notice. If sufficient evidence of a nonconsumptive use is not presented,
29 the Commission may: (i) grant such permit with conditions as the Commission deems
30 necessary to implement the rules adopted pursuant to G.S. 143-215.14; (ii) grant any
31 temporary permit for such period of time as the Commission shall specify where
32 conditions make such temporary permit essential, even though the action allowed by
33 such permit may not be consistent with the Commission's rules applicable to such
34 capacity use area; (iii) modify or revoke any permit upon not less than 60 days' written
35 notice to ~~any person affected;~~ the permit holder; and (iv) deny such permit if the
36 application therefor or the effect of the water use proposed or described therein upon the
37 water resources of the area is found to be contrary to public interest. Before issuing a
38 permit under this subsection, the Commission shall notify the permit applicant of its
39 proposed action by sending the permit applicant a copy of the permit the Commission
40 proposes to issue. Unless the permit applicant contests the proposed permit, the
41 proposed permit shall become effective on the date set in the proposed permit. A water
42 user who is dissatisfied with a decision of the Commission concerning that user's or
43 another user's permit application or permit may commence a contested case under G.S.
44 150B-23." Sec. 16. G.S. 143-215.32(a) reads as rewritten:

1 "(a) The Department is hereby authorized at any time to inspect any dam upon
2 receipt of a written request of any ~~affected~~ person or agency, or upon a motion of the
3 Environmental Management Commission. Within the limits of available funds the
4 Department shall endeavor to provide for inspection of all dams at intervals of
5 approximately five years."

6 Sec. 17. G.S. 143-215.108(c)(3) reads as rewritten:

7 "(3) To modify or revoke any permit upon not less than 60 days' written
8 notice to ~~any person affected;~~ the permit holder."

9 Sec. 18. This act becomes effective 1 October 1992, and applies to
10 applications for a new permit, a modification of an existing permit, or a reissuance or
11 renewal of an existing permit filed on or after that date.