

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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HOUSE BILL 551*

Short Title: Clean Air Act Implementations.

(Public)

Sponsors: Representatives DeVane; Bowman, N.J. Crawford, H. Hunter, and Privette.

Referred to: Environment.

April 1, 1991

1 A BILL TO BE ENTITLED
2 AN ACT TO IMPLEMENT THE REQUIREMENTS OF THE 1990 AMENDMENTS
3 TO THE FEDERAL CLEAN AIR ACT.

4 The General Assembly of North Carolina enacts:

5 Section 1. G.S. 143-215.111 reads as rewritten:

6 "**§ 143-215.111. General powers of Commission; auxiliary powers.**

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

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

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

23 (3) To encourage local units of government to handle air pollution
24 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 (b) Notwithstanding the provisions of G.S. 143-215.3(a)(1b), the Commission is
4 authorized to adopt and implement a graduated fee schedule sufficient to cover all
5 reasonable direct and indirect costs required for the State to develop and administer a
6 permit program which meets the requirements of Title V of the 1990 amendments to the
7 Clean Air Act (Pub. L. 101-549, 104 Stat. 2635 et seq.), as amended (hereinafter 'Title
8 V'). In adopting and implementing a fee schedule, the Commission shall require that
9 the owner or operator of all air contaminant sources subject to the requirement to obtain
10 a permit under Title V pay an annual fee, or the equivalent over some other period,
11 sufficient to cover costs as provided in Section 502(b)(3)(A) of Title V. The fee
12 schedule shall be adopted according to the procedures set out in Chapter 150B of the
13 General Statutes.

14 (c) The total amount of fees collected under the fee schedule adopted pursuant to
15 subsection (b) of this section shall conform to the requirements of Section 502(b)(3)(B)
16 of Title V. Notwithstanding the provisions of G.S. 143-215.3(a)(1c), the fees so
17 collected shall be used solely to cover all reasonable direct and indirect costs required to
18 develop and administer the State's permit program.

19 (d) The Commission may reduce any permit fee required under this section to
20 take into account the financial resources of small business stationary sources as defined
21 under Title V and regulations promulgated by the United States Environmental
22 Protection Agency."

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

24 **"§ 143-215.3A. Use of application and permit fees.**

25 There is established a separate nonreverting account within the Department of
26 Environment, Health, and Natural Resources. The account may be used, to the extent
27 appropriated by the General Assembly, to (a) defray the expenses of any project or
28 program supporting the permitting and compliance activities needed to protect the
29 State's surface water, groundwater, and air quality, and (b) establish additional
30 permanent positions, under the Personnel Act, for water, groundwater, and air quality
31 permitting and compliance activities. All application fees and permit administration
32 fees collected by the State for permits issued under Articles 21, 21A, 21B, and 38,
33 except those collected under Part 2 of Article 21A and deposited in the Oil or Other
34 Hazardous Substances Pollution Protection Fund, and except as provided in G.S. 143-
35 215.28A and G.S. 143-215.3B shall be credited to the account. The total monies
36 collected per year from fees for permits under G.S. 143-215.3(a)(1a), after deducting
37 those monies collected under G.S. 143-215.111(b), shall not exceed thirty percent
38 (30%) of the total budgets from all sources of environmental permitting and compliance
39 programs within the Department of Environment, Health, and Natural Resources. The
40 Department shall make an annual report to the General Assembly and its Fiscal
41 Research Division on the cost of the State's environmental permitting programs
42 contained within such Department. The report shall include, but is not limited to, fees
43 set and established under this Article, fees collected under this Article, revenues
44 received from other sources for environmental permitting and compliance programs,

1 changes made in the fee schedule since the last report, anticipated revenues from all
2 other sources, interest earned and any other information requested by the General
3 Assembly."

4 Sec. 3. G.S. 143-215.114A reads as rewritten:

5 "(a) A civil penalty of not more than ~~five~~ten thousand dollars ~~(\$5,000)~~(\$10,000)
6 may be assessed by the Secretary against any person who:

7 (1) Violates any classification, standard or limitation established pursuant
8 to G.S. 143-215.107;

9 (2) Is required but fails to apply for or to secure a permit required by G.S.
10 143-215.108 or who violates or fails to act in accordance with the
11 terms, conditions, or requirements of such permit;

12 (3) Violates or fails to act in accordance with the terms, conditions, or
13 requirements of any special order or other appropriate document issued
14 pursuant to G.S. 143-215.110;

15 (4) Fails to file, submit, or make available, as the case may be, any
16 documents, data or reports required by this Article or Article 21 of this
17 Chapter;

18 (5) Violates a rule of the Commission or a local governing body
19 implementing this ~~Article~~Article or Article 21;

20 (6) Violates the offenses set out in G.S. 143-215.114B."

21 Sec. 4. G.S. 143-215.108 reads as rewritten:

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

28 (1) Establish or operate any air contaminant source;

29 (2) Build, erect, use or operate any equipment which may result in the
30 emission of air contaminants or which is likely to cause air pollution;

31 (3) Alter or change the construction or method of operation of any
32 equipment or process from which air contaminants are or may be
33 emitted;

34 (4) Enter into a ~~an~~an irrevocable contract for the construction and
35 installation of any air-cleaning device, or allow or cause such device to
36 be constructed, installed, or operated.

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

41 The Commission shall have the power:

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

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

36 (c) The Commission shall act on a permit application as quickly as possible. The
37 Commission may conduct any inquiry or investigation it considers necessary before
38 acting on an application and may require an applicant to submit plans, specifications,
39 and other information the Commission considers necessary to evaluate the application.
40 If the Commission fails to act on an application for a permit within 90 days after the
41 applicant submits all information required by the Commission, the application is
42 considered to be ~~approved~~-approved, unless the 1990 amendments to the Clean Air Act
43 (Pub. L. 101-549, 104 Stat. 2399 et seq.), as amended, or regulations promulgated by
44 the United States Environmental Protection Agency provide for a longer period for

1 review of the application, in which case the permit shall not be considered to be
 2 approved by failure of the Commission to act until such period has expired. No permit
 3 required by Title V of the 1990 amendments to the Clean Air Act (Pub. L. 101-549, 104
 4 Stat. 2635 et seq.), as amended, (hereinafter 'Title V') shall issue prior to any review
 5 required by the Administrator of the United States Environmental Protection Agency or
 6 if the Administrator objects to its issuance in a timely manner under Title V.

7 (d) No permit issued pursuant to this section shall be issued or renewed for a
 8 term exceeding five years.

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

16 (f) Notwithstanding subsection (e) of this section, any person who participated in
 17 the public comment process is entitled to judicial review of the final permit action in
 18 accordance with Article 4 of Chapter 150B of the General Statutes. The record on
 19 review shall consist of the agency record which was before the decision maker at the
 20 time of the final permit action and shall include the permit application, any written
 21 public comments, a transcript of any oral public comments received during the permit
 22 application review process, and the official record of the final agency decision if a
 23 contested case was commenced. A person who participated in the public comment
 24 process, but did not intervene in a contested case commenced by a permit applicant or
 25 permittee is not entitled to judicial review under this subsection.

26 (g) Any person who is required to hold a permit under this section shall
 27 submit to the Department a written description of his current and projected plans to
 28 reduce the emission of air contaminants under such permit by source reduction or
 29 recycling. The written description shall accompany the payment of the annual permit
 30 fee. The written description shall also accompany any application for a new permit, or
 31 for modification of an existing permit, under this section. The written description
 32 required by this subsection shall not be considered part of a permit application and shall
 33 not serve as the basis for the denial of a permit or permit modification."

34 Sec. 5. G.S. 143B-317 reads as rewritten:

35 "**§ 143B-317. Air Quality ~~Council~~ Compliance Advisory Panel – creation; powers**
 36 **and duties.**

37 There is hereby created the Air Quality ~~Council~~ Compliance Advisory Panel of the
 38 Department of Environment, Health, and Natural Resources. The Air Quality ~~Council~~
 39 Compliance Advisory Panel shall have the following functions and duties:

- 40 (1) To advise the Environmental Management Commission in the
- 41 development of rules, regulations and quality standards for air; and
- 42 (2) To consider and to advise the Commission upon any matter the
- 43 Commission may refer to ~~it~~ it;

- 1 (3) To render advisory opinions concerning the effectiveness of the small
 2 business stationary source technical and environmental compliance
 3 assistance program, difficulties encountered, and degree and severity
 4 of enforcement;
- 5 (4) To make periodic reports to the Administrator of the United States
 6 Environmental Protection Agency concerning the compliance of the
 7 State Small Business Stationary Source Technical and Environmental
 8 Compliance Assistance Program with the requirements of the
 9 Paperwork Reduction Act, 44 U.S.C. § 3501 et seq.; the Regulatory
 10 Flexibility Act, 5 U.S.C. § 601 et seq.; and the Equal Access to Justice
 11 Act, 5 U.S.C. § 504 et seq.; and
- 12 (5) To review information for small business stationary sources to assure
 13 such information is understandable by the layperson."

14 Sec. 6. G.S. 143B-318 reads as rewritten:

15 **"§ 143B-318. Air Quality ~~Council~~Compliance Advisory Panel – members;**
 16 **chairman; selection; removal; compensation; quorum; services.**

17 (a) The Air Quality ~~Council~~Compliance Advisory Panel of the Department of
 18 Environment, Health, and Natural Resources shall consist of ~~nine members appointed by~~
 19 the Governor. The composition of the Council shall be as follows: ~~one registered professional~~
 20 engineer knowledgeable in matters of air pollution; ~~one representative from municipal~~
 21 government; ~~one representative from county government; one representative of public health;~~
 22 ~~two representatives from industry providing they are from different industries; one~~
 23 ~~representative of agriculture; one licensed physician knowledgeable in the health aspects of air~~
 24 ~~pollution; and one practicing biologist knowledgeable in the principles of air quality~~
 25 ~~management.~~ two members who are not owners or representatives of owners of small
 26 business stationary sources, appointed by the Governor to represent the general public;
 27 two members appointed by the General Assembly upon the recommendation of the
 28 Speaker of the House of Representatives, and who are owners, or who represent owners,
 29 of small business stationary sources; two members appointed by the General Assembly
 30 upon the recommendation of the President Pro Tempore of the Senate, who are owners,
 31 or who represent owners, of small business stationary sources; and one member
 32 appointed by the Secretary of the Department of Environment, Health, and Natural
 33 Resources.

34 (b) The Governor shall designate one member of the ~~Council~~Panel to serve as
 35 chairman at his pleasure.

36 (c) In order to achieve staggered terms, ~~the Governor~~ the General Assembly shall
 37 initially appoint ~~three~~ two members for terms of two years, one each upon
 38 recommendation of the Speaker of the House of Representatives and the President Pro
 39 Tempore of the Senate, and shall initially appoint ~~three~~ two members for terms of ~~four~~
 40 three years, and ~~three~~ members for terms of six years. one each upon recommendation of
 41 the Speaker of the House of Representatives and the President Pro Tempore of the
 42 Senate. At the end of the respective terms of office of the initial members, their
 43 successors shall be appointed for terms of ~~six~~ four years and until their successors are
 44 appointed and qualify. Any appointment to fill a vacancy on the ~~Council~~Panel created

1 by the resignation, dismissal, death or disability of a member shall be for the balance of
2 the unexpired term.

3 (d) The Governor shall have the power to remove any member of the ~~Council~~
4 Panel from office for misfeasance, malfeasance or nonfeasance in accordance with the
5 provisions of G.S. ~~143B-16 of the Executive Organization Act of 1973-~~143B-16.

6 (e) The members of the ~~Council-Panel~~ shall receive per diem and necessary travel
7 and subsistence expenses in accordance with the provisions of G.S. 138-5.

8 (f) A majority of the ~~Council-Panel~~ shall constitute a quorum for the transaction
9 of their business.

10 (g) The Secretary of Environment, Health, and Natural Resources shall designate
11 an agency within the Department of Environment, Health, and Natural Resources to
12 serve as ombudsman for the Small Business Stationary Source Technical and
13 Environmental Compliance Assistance Program established by the Department pursuant
14 to section 507 of the Federal Clean Air Act, as amended. The Small Business
15 Stationary Source Technical and Environmental Compliance Assistance Program shall
16 serve as the secretariat for the development and dissemination of reports and advisory
17 opinions issued by the Panel.

18 (h) All clerical and other services required by the ~~Council-Panel~~ shall be supplied
19 by the Secretary of Environment, Health, and Natural Resources."

20 Sec. 7. G.S. 143B-319 reads as rewritten:

21 "**§ 143B-319. Air Quality ~~Council~~Compliance Advisory Panel – meetings.**

22 The ~~Council-Panel~~ shall meet at least semiannually and may hold special meetings at
23 any time and place at the call of the chairman or upon the written request of at least ~~five~~
24 three members."

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

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

- 29 (1) To prepare and develop, after proper study, a comprehensive plan or
30 plans for the prevention, abatement and control of air pollution in the
31 State or in any designated area of the State.
- 32 (2) To determine by means of field sampling and other studies, including
33 the examination of available data collected by any local, State or
34 federal agency or any person, the degree of air contamination and air
35 pollution in the State and the several areas of the State.
- 36 (3) To develop and adopt, after proper study, air quality standards
37 applicable to the State as a whole or to any designated area of the State
38 as the Commission deems proper in order to promote the policies and
39 purposes of this Article and Article 21 most effectively.
- 40 (4) To collect information or to require reporting from classes of sources
41 which, in the judgment of the Environmental Management
42 Commission, may cause or contribute to air pollution. Any person
43 operating or responsible for the operation of air contaminant sources of
44 any class for which the Commission requires reporting shall make

1 reports containing such information as may be required by the
2 Commission concerning location, size, and height of contaminant
3 outlets, processes employed, fuels used, and the nature and time
4 periods or duration of emissions, and such other information as is
5 relevant to air pollution and available or reasonably capable of being
6 assembled.

7 (5) To develop and adopt such emission control standards as in the
8 judgment of the Commission may be necessary to prohibit, abate or
9 control air pollution commensurate with established air quality
10 standards. Such standards may be applied uniformly to the State as a
11 whole or to any area of the State designated by the Commission.

12 (6) To adopt, when necessary and practicable, a program for testing
13 emissions from motor vehicles and to adopt motor vehicle emission
14 standards in compliance with applicable federal regulations.

15 (7) To develop and adopt standards and plans necessary to implement
16 programs for the prevention of significant deterioration and for the
17 attainment of air quality standards in nonattainment areas; provided,
18 that the Commission shall adopt no standard which is not made
19 mandatory upon approved State programs by rules, regulations or
20 published guidelines of the United States Environmental Protection
21 Agency or the Federal Clean Air Act.

22 (8) To regulate the use of sulfur dioxide allowances in accordance with
23 Title IV of the 1990 amendments to the Clean Air Act (Pub. L. 101-
24 549, 104 Stat. 2584 et seq.), as amended, and regulations promulgated
25 by the United States Environmental Protection Agency."

26 Sec. 9. This act is effective upon ratification.