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HOUSE BILL 551*

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Senate Environment & Natural Resources Committee Substitute Adopted 6/19/91

Short Title: Clean Air Act Implementations.

(Public)

Sponsors:

Referred to:

April 1, 1991

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT THE REQUIREMENTS OF THE 1990 AMENDMENTS
TO THE FEDERAL CLEAN AIR ACT.

Whereas, in 1990 the Congress of the United States enacted extensive amendments to the federal Clean Air Act; and

Whereas, these amendments dramatically increase the responsibilities of State regulatory agencies and place a great and imminent burden on the State to finance, develop, and implement new State air quality programs for air emission source permitting, nonattainment area permitting, automobile inspection and maintenance, regulation of toxic air pollutants, acid rain control, and compliance enforcement, among others; and

Whereas, these amendments require the State to make comprehensive changes in existing State air quality programs; and

Whereas, failure to implement these amendments will subject the State to federal sanctions; and

Whereas, the Environmental Management Commission must have all of the statutory authority in place to begin the administrative rule-making process for adoption and implementation of those elements no later than 15 November 1992; and

Whereas, it is the policy of the State to afford the public a full and complete opportunity for public hearing and comment as a part of the administrative rule-making process; Now, therefore,

1 The General Assembly of North Carolina enacts:

2 Section 1. G.S. 143-213 is amended by adding a new subdivision to read:

3 "(29a) 'Title V' means Title V of the 1990 amendments to the Federal Clean
4 Air Act (Pub. L. 101-549, 104 Stat. 2635 et seq.)."

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

6 "(a) Additional Powers. – In addition to the specific powers prescribed elsewhere
7 in this Article, and for the purpose of carrying out its duties, the Commission shall have
8 the power:

9 (1) To make rules implementing Articles 21, 21A, 21B, or 38 of this
10 Chapter.

11 (1a) To charge fees for the following:

12 a. Processing of applications for permits or registrations issued
13 under Articles 21, 21A, 21B, and 38 of this Chapter;

14 b. Administering permits or registrations issued under Articles 21,
15 21A, 21B, or 38 of this Chapter including monitoring
16 compliance with the terms of those permits; and

17 c. Reviewing, processing, and publicizing applications for
18 construction grant awards under the Federal Water Pollution
19 Control Act.

20 No fee may be charged under this provision, however, to a farmer who
21 submits an application that pertains to his farming operations.

22 (1b) The fee to be charged pursuant to G.S. 143-215.3(a)(1a) for processing
23 of an application for a permit under G.S. 143-215.1 of Article 21 and
24 G.S. 143-215.108 and G.S. 143-215.109 of Article 21B of this Chapter
25 may not exceed four hundred dollars (\$400.00). The fee to be charged
26 pursuant to G.S. 143-215.3(a)(1a) for processing an application for a
27 registration under Article 38 of this Chapter may not exceed fifty
28 dollars (\$50.00) for any single application, except that a penalty of as
29 much as twenty percent (20%) of the fee may be assessed for late
30 registration. The fee for administering and compliance monitoring
31 under G.S. 143-215.1 of Article 21 and G.S. 143-215.108 and G.S.
32 143-215.109 of Article 21B shall be charged on an annual basis for
33 each year of the permit term and may not exceed one thousand five
34 hundred dollars (\$1,500) per year. Fees for processing all permits
35 under Article 21A and all other Sections of Articles 21 and 21B shall
36 not exceed one hundred dollars (\$100.00) for any single permit.
37 Notwithstanding any other provision of this subdivision, the total
38 payment for fees required for all permits under this subsection for any
39 single facility shall not exceed seven thousand five hundred dollars
40 (\$7,500) per year, which amount shall include all application fees and
41 fees for administration and compliance monitoring. A single facility is
42 defined to be any contiguous area under one ownership and in which
43 permitted activities occur. For all permits issued under these Articles
44 where a fee schedule is not specified in the statutes, the Commission,

1 or other commission specified by statute shall adopt a fee schedule in a
2 rule following the procedures established by the Administrative
3 Procedure Act. Such fee schedules shall be established to reflect the
4 size of the emission or discharge, the potential impact on the
5 environment, the staff costs involved, relative costs of the issuance of
6 new permits and the reissuance of existing permits, and shall include
7 adequate safeguards to prevent unusual fee assessments which would
8 result in serious economic burden on an individual applicant. A
9 system shall be considered to allow consolidated annual payments for
10 persons with multiple permits. In its rulemaking to establish fee
11 schedules, the Commission is also directed to consider a method of
12 rewarding facilities which achieve full compliance with administrative
13 and self-monitoring reporting requirements, and to consider, in those
14 cases where the cost of renewal or amendment of a permit is less than
15 for the original permit, a lower fee for such renewal or amendment.

- 16 (1c) Monies collected pursuant to G.S. 143-215.3(a)(1a) shall be used to:
- 17 a. Eliminate, insofar as possible, backlogs of permit applications
18 awaiting agency action;
 - 19 b. Improve the quality of permits issued;
 - 20 c. Improve the rate of compliance of permitted activities with
21 environmental standards; and
 - 22 d. Decrease the length of the processing period for permit
23 applications.

24 (1d) The Commission may adopt and implement a graduated fee schedule
25 sufficient to cover all reasonable direct and indirect costs required for
26 the State to develop and administer a permit program which meets the
27 requirements of Title V. The provisions of subdivision (1b) of this
28 subsection do not apply to the adoption of a fee schedule under this
29 subdivision. In adopting and implementing a fee schedule, the
30 Commission shall require that the owner or operator of all air
31 contaminant sources subject to the requirement to obtain a permit
32 under Title V to pay an annual fee, or the equivalent over some other
33 period, sufficient to cover costs as provided in section 502(b)(3)(A) of
34 Title V. The fee schedule shall be adopted according to the procedures
35 set out in Chapter 150B of the General Statutes.

- 36 a. The total amount of fees collected under the fee schedule
37 adopted pursuant to this subdivision shall conform to the
38 requirements of section 502(b)(3)(B) of Title V. No fee shall be
39 collected for more than 4,000 tons per year of any individual
40 regulated pollutant, as defined in section 502(b)(3)(B)(ii) of
41 Title V, emitted by any source. Fees collected pursuant to this
42 subdivision shall be used solely to cover all reasonable direct
43 and indirect costs required to develop and administer the Title
44 V permit program.

1 b. The Commission may reduce any permit fee required under this
2 section to take into account the financial resources of small
3 business stationary sources as defined under Title V and
4 regulations promulgated by the United States Environmental
5 Protection Agency.

6 c. When funds in the Title V nonreverting account established in
7 G.S. 143-215.3A exceed the total amount necessary to cover the
8 cost of the Title V program for the next fiscal year, the
9 Secretary shall reduce the amount billed for the next fiscal year
10 so that the excess funds are used to supplement the cost of
11 administering the Title V permit program in that fiscal year.

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

- 1 nor shall any person obstruct, hamper or interfere with any such
2 representative while in the process of carrying out his official duties.
- 3 (3) To conduct public hearings and to delegate the power to conduct
4 public hearings in accordance with the procedures prescribed by this
5 Article.
- 6 (4) To delegate such of the powers of the Commission as the Commission
7 deems necessary to one or more of its members, to the Secretary or
8 any other qualified employee of the Department; provided, that the
9 provisions of any such delegation of power shall be set forth in the
10 rules of the Commission; and provided further that the Commission
11 shall not delegate to persons other than its own members and the
12 designated employees of the Department the power to conduct
13 hearings with respect to the classification of waters, the assignment of
14 classifications, air quality standards, air contaminant source
15 classifications, emission control standards, or the issuance of any
16 special order except in the case of an emergency under ~~subsection~~
17 ~~(a)(12)-subdivision (12) of this subsection~~ for the abatement of existing
18 water or air pollution. Any employee of the Department to whom a
19 delegation of power is made to conduct a hearing shall report the
20 hearing with its evidence and record to the Commission.
- 21 (5) To institute such actions in the superior court of any county in which a
22 violation of this ~~Article~~-Article, Article 21B of this Chapter, or the
23 rules of the Commission has occurred, or, in the discretion of the
24 Commission, in the superior court of the county in which any
25 defendant resides, or has his or its principal place of business, as the
26 Commission may deem necessary for the enforcement of any of the
27 provisions of this ~~Article~~-Article, Article 21B of this Chapter, or of any
28 official action of the Commission, including proceedings to enforce
29 subpoenas or for the punishment of contempt of the Commission.
- 30 (6) To agree upon or enter into any settlements or compromises of any
31 actions and to prosecute any appeals or other proceedings.
- 32 (7) To direct the investigation of any killing of fish and wildlife which, in
33 the opinion of the Commission, is of sufficient magnitude to justify
34 investigation and is known or believed to have resulted from the
35 pollution of the waters or air as defined in this Article, and whenever
36 any person, whether or not he shall have been issued a certificate of
37 approval, permit or other document of approval authorized by this or
38 any other State law, has negligently, or carelessly or unlawfully, or
39 willfully and unlawfully, caused pollution of the waters or air as
40 defined in this Article, in such quantity, concentration or manner that
41 fish or wildlife are killed as the result thereof, the Commission, may
42 recover, in the name of the State, damages from such person. The
43 measure of damages shall be the amount determined by the
44 Department and the North Carolina Wildlife Resources Commission,

1 whichever has jurisdiction over the fish and wildlife destroyed to be
2 the replacement cost thereof plus the cost of all reasonable and
3 necessary investigations made or caused to be made by the State in
4 connection therewith. Upon receipt of the estimate of damages caused,
5 the Department shall notify the persons responsible for the destruction
6 of the fish or wildlife in question and may effect such settlement as the
7 Commission may deem proper and reasonable, and if no settlement is
8 reached within a reasonable time, the Commission shall bring a civil
9 action to recover such damages in the superior court in the county in
10 which the discharge took place. Upon such action being brought the
11 superior court shall have jurisdiction to hear and determine all issues
12 or questions of law or fact, arising on the pleadings, including issues of
13 liability and the amount of damages. On such hearing, the estimate of
14 the replacement costs of the fish or wildlife destroyed shall be **prima**
15 **facie** evidence of the actual replacement costs of such fish or wildlife.
16 In arriving at such estimate, any reasonably accurate method may be
17 used and it shall not be necessary for any agent of the Wildlife
18 Resources Commission or the Department to collect, handle or weigh
19 numerous specimens of dead fish or wildlife.

20 The State of North Carolina shall be deemed the owner of the fish
21 or wildlife killed and all actions for recovery shall be brought by the
22 Commission on behalf of the State as the owner of the fish or wildlife.
23 The fact that the person or persons alleged to be responsible for the
24 pollution which killed the fish or wildlife holds or has held a certificate
25 of approval, permit or other document of approval authorized by this
26 Article or any other law of the State shall not bar any such action. The
27 proceeds of any recovery, less the cost of investigation, shall be used
28 to replace, insofar as and as promptly as possible, the fish and wildlife
29 killed, or in cases where replacement is not practicable, the proceeds
30 shall be used in whatever manner the responsible agency deems proper
31 for improving the fish and wildlife habitat in question. Any such funds
32 received are hereby appropriated for these designated purposes.
33 Nothing in this paragraph shall be construed in any way to limit or
34 prevent any other action which is now authorized by this Article.

- 35 (8) After issuance of an appropriate order, to withhold the granting of any
36 permit or permits pursuant to G.S. 143-215.1 or 143-215.108 for the
37 construction or operation of any new or additional disposal system or
38 systems or air-cleaning device or devices in any area of the State. Such
39 order may be issued only upon determination by the Commission, after
40 public hearing, that the permitting of any new or additional source or
41 sources of water or air pollution will result in a generalized condition
42 of water or air pollution within the area contrary to the public interest,
43 detrimental to the public health, safety, and welfare, and contrary to
44 the policy and intent declared in this ~~Article~~ Article or Article 21B of

1 this Chapter. The Commission may make reasonable distinctions
2 among the various sources of water and air pollution and may direct
3 that its order shall apply only to those sources which it determines will
4 result in a generalized condition of water or air pollution.

5 The determination of the Commission shall be supported by
6 detailed findings of fact and conclusions set forth in the order and
7 based upon competent evidence of record. The order shall describe the
8 geographical area of the State affected thereby with particularity and
9 shall prohibit the issuance of permits pending a determination by the
10 Commission that the generalized condition of water or air pollution
11 has ceased.

12 Notice of hearing shall be given in accordance with the provisions
13 of G.S. 150B-12.

14 A person aggrieved by an order of the Commission under this
15 subdivision may seek judicial review of the order under Article 4 of
16 Chapter 150B of the General Statutes without first commencing a
17 contested case. An order may not be stayed while it is being reviewed.

18 (9) If an investigation conducted pursuant to this Article or Article 21B of
19 this Chapter reveals a violation of any rules, standards, or limitations
20 adopted by the Commission pursuant to this ~~Article~~, Article or Article
21 21B of this Chapter, or a violation of any terms or conditions of any
22 permit issued pursuant to G.S. 143-215.1 or 143-215.108, or special
23 order or other document issued pursuant to G.S. 143-215.2 or ~~143-~~
24 ~~215.109~~, G.S. 143-215.110, the Commission may assess the reasonable
25 costs of any investigation, inspection or monitoring survey which
26 revealed the violation against the person responsible therefor. If the
27 violation resulted in an unauthorized discharge to the waters or
28 atmosphere of the State, the Commission may also assess the person
29 responsible for the violation for any actual and necessary costs
30 incurred by the State in removing, correcting or abating any adverse
31 effects upon the water or air resulting from the unauthorized discharge.
32 If the person responsible for the violation refuses or fails within a
33 reasonable time to pay any sums assessed, the Commission may
34 institute a civil action in the superior court of the county in which the
35 violation occurred or, in the Commission's discretion, in the superior
36 court of the county in which such person resides or has his or its
37 principal place of business, to recover such sums.

38 (10) To require a laboratory facility to be certified by the Department
39 before performing any tests, analyses, measurements, or monitoring
40 required under this Article or Article 21B of this Chapter and to
41 establish fees therefor. These fees collected by the Department shall
42 remain available to the Department to be used to offset the cost of
43 certifying commercial, industrial, and municipal laboratory facilities.

44 (11) Repealed by Session Laws 1983, c. 296, s. 6, effective May 11, 1983.

1 (12) To declare an emergency when it finds that a generalized condition of
2 water or air pollution which is causing imminent danger to the health
3 or safety of the public. Regardless of any other provisions of law, if the
4 Department finds that such a condition of water or air pollution exists
5 and that it creates an emergency requiring immediate action to protect
6 the public health and safety or to protect fish and wildlife, the
7 Secretary of the Department with the concurrence of the Governor,
8 shall order persons causing or contributing to the water or air pollution
9 in question to reduce or discontinue immediately the emission of air
10 contaminants or the discharge of wastes. Immediately after the
11 issuance of such order, the chairman of the Commission shall fix a
12 place and time for a hearing before the Commission to be held within
13 24 hours after issuance of such order, and within 24 hours after the
14 commencement of such hearing, and without adjournment thereof, the
15 Commission shall either affirm, modify or set aside the order.

16 In the absence of a generalized condition of air or water pollution
17 of the type referred to above, if the Secretary finds that the emissions
18 from one or more air contaminant sources or the discharge of wastes
19 from one or more sources of water pollution is causing imminent
20 danger to human health and safety or to fish and wildlife, he may with
21 the concurrence of the Governor order the person or persons
22 responsible for the operation or operations in question to immediately
23 reduce or discontinue the emissions of air contaminants or the
24 discharge of wastes or to take such other measures as are, in his
25 judgment, necessary, without regard to any other provisions of this
26 ~~Article.~~ Article of Article 21B of this Chapter. In such event, the
27 requirements for hearing and affirmance, modification or setting aside
28 of such orders set forth in the preceding paragraph of this subdivision
29 shall apply.

30 (13) Repealed by Session Laws 1983, c. 296, s. 6, effective May 11, 1983.

31 (14) To certify and approve, by appropriate delegations and conditions in
32 permits required by G.S. 143-215.1, requests by publicly owned
33 treatment works to implement, administer and enforce a pretreatment
34 program for the control of pollutants which pass through or interfere
35 with treatment processes in such treatment works; and to require such
36 programs to be developed where necessary to comply with the Federal
37 Water Pollution Control Act and the Resource Conservation and
38 Recovery Act, including the addition of conditions and compliance
39 schedules in permits required by G.S. 143-215.1. Pretreatment
40 programs submitted by publicly owned treatment works shall include,
41 at a minimum, the adoption of pretreatment standards, a permit or
42 equally effective system for the control of pollutants contributed to the
43 treatment works, and the ability to effectively enforce compliance with
44 the program.

1 (15) To adopt rules for the prevention of pollution from underground tanks
2 containing petroleum, petroleum products, or hazardous substances.
3 Rules adopted under this section may incorporate standards and
4 restrictions which exceed and are more comprehensive than
5 comparable federal regulations.

6 (16) To adopt rules limiting the manufacture, storage, sale, distribution or
7 use of cleaning agents containing phosphorus pursuant to G.S. 143-
8 214.4(e), and to adopt rules limiting the manufacture, storage, sale,
9 distribution or use of cleaning agents containing nitrilotriacetic acid.

10 (17) (Expires December 31, 1998) To adopt rules to implement Part 2A of
11 Article 21A of Chapter 143."

12 Sec. 3. G.S. 143-215.3A reads as rewritten:

13 **"§ 143-215.3A. Use of application and permit fees.**

14 (a) There is established a separate nonreverting account within the Department of
15 Environment, Health, and Natural Resources. The account may be used, to the extent
16 appropriated by the General Assembly, to ~~(a)-(i)~~ defray the expenses of any project or
17 program supporting the permitting and compliance activities needed to protect the
18 State's surface water, groundwater, and air quality, and ~~(b)-(ii)~~ establish additional
19 permanent positions, under the Personnel Act, for water, groundwater, and air quality
20 permitting and compliance activities. All application fees and permit administration
21 fees collected by the State for permits issued under Articles 21, 21A, 21B, and 38,
22 except those collected under Part 2 of Article 21A and deposited in the Oil or Other
23 Hazardous Substances Pollution Protection Fund, Fund and those collected pursuant to
24 G.S. 143-215.3(a)(1d) and deposited in the Title V nonreverting account, and except as
25 provided in G.S. 143-215.28A and G.S. 143-215.3B shall be credited to the account.
26 The total monies collected per year from fees for permits under G.S. 143-215.3(a)(1a),
27 after deducting those monies collected under G.S. 143-215.3(a)(1d), shall not exceed
28 thirty percent (30%) of the total budgets from all sources of environmental permitting
29 and compliance programs within the Department of Environment, Health, and Natural
30 Resources.

31 (b) There is also established a separate nonreverting account within the
32 Department of Environment, Health, and Natural Resources to be used exclusively to
33 develop and implement a permit program that meets the requirements of Title V. The
34 Title V nonreverting account shall consist of fees collected pursuant to G.S. 143-
35 215.3(a)(1d) and G.S. 143-215.106A. Expenses of the Air Quality Compliance
36 Advisory Panel, the ombudsman for the Small Business Stationary Source Technical
37 and Environmental Compliance Assistance Program, support staff, equipment, legal
38 services provided by the Attorney General, and contracts with consultants and program
39 expenses listed in section 502(b)(3)(A) of Title V shall be included among Title V
40 program expenses.

41 (c) The Department shall make an annual report to the General Assembly and its
42 Fiscal Research Division on the cost of the State's environmental permitting programs
43 contained within such Department. In addition, the Department shall make an annual
44 report to the General Assembly and its Fiscal Research Division on the cost of the Title

1 V program. The ~~report~~ reports shall include, but ~~is~~ are not limited to, fees set and
2 established under this Article, fees collected under this Article, revenues received from
3 other sources for environmental permitting and compliance programs, changes made in
4 the fee schedule since the last report, anticipated revenues from all other sources,
5 interest earned and any other information requested by the General Assembly."

6 Sec. 4. G.S. 143-215.114A(a) reads as rewritten:

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

- 9 (1) Violates any classification, standard or limitation established pursuant
10 to G.S. 143-215.107;
- 11 (2) Is required but fails to apply for or to secure a permit required by G.S.
12 143-215.108 or who violates or fails to act in accordance with the
13 terms, conditions, or requirements of such permit;
- 14 (3) Violates or fails to act in accordance with the terms, conditions, or
15 requirements of any special order or other appropriate document issued
16 pursuant to G.S. 143-215.110;
- 17 (4) Fails to file, submit, or make available, as the case may be, any
18 documents, data or reports required by this Article or Parts 1 or 7 of
19 Article 21 of this Chapter;
- 20 (5) Violates a rule of the Commission or a local governing body
21 implementing this ~~Article~~ Article or Parts 1 or 7 of Article 21;
- 22 (6) Violates the offenses set out in G.S. 143-215.114B."

23 Sec. 5. G.S. 143-215.108 reads as rewritten:

24 "**§ 143-215.108. Control of sources of air pollution; permits required.**

25 (a) After the effective date applicable to any air quality or emission control
26 standards established pursuant to G.S. 143-215.107, 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 a ~~[an]~~ an irrevocable contract for the construction and
38 installation of any air-cleaning device, or allow or cause such device to
39 be constructed, installed, or operated.

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

44 The Commission shall have the power:

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

42 (c) The Commission shall act on a permit application as quickly as possible. The
 43 Commission may conduct any inquiry or investigation it considers necessary before
 44 acting on an application and may require an applicant to submit plans, specifications,

1 and other information the Commission considers necessary to evaluate the application.
 2 If the Commission fails to act on an application for a permit within 90 days after the
 3 applicant submits all information required by the Commission, the application is
 4 considered to be approved.

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

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

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

20 Sec. 6. G.S. 143B-317 reads as rewritten:

21 **"§ 143B-317. Air Quality ~~Council~~Compliance Advisory Panel – creation; powers**
 22 **and duties.**

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

- 26 (1) ~~To advise the Environmental Management Commission in the~~
 27 ~~development of rules, regulations and quality standards for air; and To~~
 28 render advisory opinions concerning the effectiveness of the small
 29 business stationary source technical and environmental compliance
 30 assistance program, difficulties encountered, and degree and severity
 31 of enforcement.
- 32 (2) ~~To consider and to advise the Commission upon any matter the Commission~~
 33 ~~may refer to it. To make periodic reports to the Administrator of the~~
 34 United States Environmental Protection Agency concerning the
 35 compliance of the State Small Business Stationary Source Technical
 36 and Environmental Compliance Assistance Program with the
 37 requirements of the Paperwork Reduction Act, 44 U.S.C. § 3501 et
 38 seq.; the Regulatory Flexibility Act, 5 U.S.C. § 601 et seq.; and the
 39 Equal Access to Justice Act, 5 U.S.C. § 504 et seq.
- 40 (3) To review information for small business stationary sources to assure
 41 such information is understandable by the layperson."

42 Sec. 7. G.S. 143B-318 reads as rewritten:

43 **"§ 143B-318. Air Quality ~~Council~~Compliance Advisory Panel – members;**
 44 **chairman; selection; removal; compensation; quorum; services.**

1 (a) The Air Quality ~~Council~~ Compliance Advisory Panel of the Department of
2 Environment, Health, and Natural Resources shall consist of ~~nine members appointed by~~
3 ~~the Governor. The composition of the Council shall be as follows: one registered professional~~
4 ~~engineer knowledgeable in matters of air pollution; one representative from municipal~~
5 ~~government; one representative from county government; one representative of public health;~~
6 ~~two representatives from industry providing they are from different industries; one~~
7 ~~representative of agriculture; one licensed physician knowledgeable in the health aspects of air~~
8 ~~pollution; and one practicing biologist knowledgeable in the principles of air quality~~
9 ~~management. two members who are not owners or representatives of owners of small~~
10 business stationary sources, appointed by the Governor to represent the general public;
11 two members appointed one each by the Speaker and the minority leader of the House
12 of Representatives, and who are owners, or who represent owners, of small business
13 stationary sources; two members appointed one each by the President Pro Tempore and
14 the minority leader of the Senate, who are owners, or who represent owners, of small
15 business stationary sources; and one member appointed by the Secretary of the
16 Department of Environment, Health, and Natural Resources.

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

19 (c) Members shall serve staggered terms of four years. In order to achieve
20 staggered terms, ~~the Governor~~ the Speaker and the minority leader of the House of
21 Representatives shall initially appoint ~~three~~ members for terms of two years, the
22 President Pro Tempore and the minority leader of the Senate shall initially appoint ~~three~~
23 members for terms of ~~four~~ three years, and ~~three~~ members for terms of ~~six~~ years. At the
24 end of the respective terms of office of the initial members, their successors shall be
25 appointed for terms of ~~six~~ four years and until their successors are appointed and
26 qualify. Any appointment to fill a vacancy on the ~~Council~~ Panel created by the
27 resignation, dismissal, death or disability of a member shall be for the balance of the
28 unexpired term.

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

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

34 (f) A majority of the ~~Council~~ Panel shall constitute a quorum for the transaction
35 of their business.

36 (g) The Secretary of Environment, Health, and Natural Resources shall designate
37 an office within the Department of Environment, Health, and Natural Resources to serve
38 as ombudsman for the Small Business Stationary Source Technical and Environmental
39 Compliance Assistance Program established by the Department pursuant to section 507
40 of Title V of the 1990 amendments to the Federal Clean Air Act (Pub. L. 101-549, 104
41 Stat. 2635 et seq.). The Small Business Stationary Source Technical and
42 Environmental Compliance Assistance Program shall serve as the secretariat for the
43 development and dissemination of reports and advisory opinions issued by the Panel.
44 The Panel and the ombudsman shall exercise their powers consistent with G.S. 143B-
45 14(b).

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

3 Sec. 8. G.S. 143B-319 reads as rewritten:

4 **"§ 143B-319. Air Quality ~~Council~~Compliance Advisory Panel – meetings.**

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

8 Sec. 9. G.S. 143-215.107(a) reads as rewritten:

9 "(a) Duty to Adopt Plans, Standards, etc. – The Commission is hereby directed
10 and empowered, as rapidly as possible within the limits of funds and facilities available
11 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; provided,

1 that the Commission shall adopt no standard which is not made
2 mandatory upon approved State programs by rules, regulations or
3 published guidelines of the United States Environmental Protection
4 Agency or the Federal Clean Air Act.

5 (8) To regulate the use of sulfur dioxide allowances in accordance with
6 Title IV of the 1990 amendments to the Federal Clean Air Act (Pub. L.
7 101-549, 104 Stat. 2584 et seq.), as amended, and regulations
8 promulgated by the United States Environmental Protection Agency."

9 Sec. 10. Article 21B of Chapter 143 is amended by adding a new section to
10 read:

11 **"§ 143-215.106A. Assessments to establish Title V program.**

12 (a) The holders of permits issued by the Commission for the control of sources of
13 air pollution are assessed Title V program implementation fees on an annual basis in
14 accordance with the schedule established in this section. The assessments are in
15 addition to any other fees required to be paid by the permit holders in conjunction with
16 the permits. The assessments shall be deposited in the separate nonreverting account
17 established by G.S. 143-215.3A(b) for the Title V program, and shall be used only to
18 defray the eligible expenses of the Title V program. The Secretary shall issue annual
19 notices of the assessments to permit holders on or before 1 July of each fiscal year.
20 Each notice of assessment shall include a summary of the data on which the assessment
21 is based. Assessments shall be payable 30 days after receipt of notice. Failure to make
22 timely payment within 90 days shall be grounds to revoke the permit and to institute a
23 collection action against the permit holder by the Attorney General.

24 (b) Assessments are made in accordance with the following schedule:

- 25 (1) Sources emitting at least 100 tons and less than 500 tons per year, two
26 thousand dollars (\$2,000) for fiscal year 1991-92 and two thousand
27 five hundred dollars (\$2,500) for each year thereafter;
28 (2) Sources emitting at least 500 tons and less than 1,000 tons per year,
29 four thousand dollars (\$4,000) for fiscal year 1991-92 and twelve
30 thousand five hundred dollars (\$12,500) for each year thereafter;
31 (3) Sources emitting at least 1,000 tons and less than 5,000 tons per year,
32 six thousand dollars (\$6,000) for fiscal year 1991-92, and twenty-five
33 thousand dollars (\$25,000) for each year thereafter; and
34 (4) Sources emitting at least 5,000 tons per year, six thousand dollars
35 (\$6,000) for fiscal year 1991-92, and one hundred thousand dollars
36 (\$100,000) for each year thereafter.

37 (c) Notices of assessment shall not be issued for any fiscal year in which the
38 permit fees for the Title V program adopted by the Commission pursuant to G.S. 143-
39 215.3(a)(1d) are in effect. Should a Title V program permit fee become due and
40 payable during a fiscal year when the permit holder has paid an assessment, the Title V
41 program permit fee shall be reduced in an amount equal to the pro rata share of the
42 assessment for the months remaining in the fiscal year. The pro rata share is determined
43 by dividing the assessment into 12 equal parts and multiplying that sum by the number
44 of months remaining in the fiscal year."

1 Sec. 11. G.S. 143-215.3(b) reads as rewritten:

2 "(b) Research Functions. – The Department shall have the power to conduct
3 scientific experiments, research, and investigations to discover economical and practical
4 corrective methods for air pollution and waste disposal problems. To this end, the
5 Department may cooperate with any public or private agency or agencies in the conduct
6 of such experiments, research, and investigations, and may, when funds permit,
7 establish research studies in any North Carolina educational institution, with the consent
8 of such institution. In addition, the Department shall have the power to cooperate and
9 enter into contracts with technical divisions of State agencies, institutions and with
10 municipalities, industries, and other persons in the execution of such surveys, studies,
11 and research as it may deem necessary in fulfilling its functions under this ~~Article~~
12 Article or Article 21B of this Chapter. All State departments shall advise with and
13 cooperate with the Department on matters of mutual interest."

14 Sec. 12. (a) There is created the Clean Air Act Advisory Council. The
15 Council shall consist of 11 members as follows:

- 16 (1) The Secretary of Environment, Health, and Natural Resources or his
17 designee.
- 18 (2) The Commissioner of Agriculture or his designee.
- 19 (3) The Chair of the Air Quality Committee of the Environmental
20 Management Commission.
- 21 (4) Two representatives of local government.
- 22 (5) Three representatives of the environmental and conservation
23 community.
- 24 (6) Three representatives of industry.

25 (b) The Secretary of Environment, Health, and Natural Resources shall
26 appoint the members of the Council specified in subdivisions (4) through (6) of
27 subsection (a) of this section, and shall make appointments to fill vacancies in those
28 positions. At least one of the members appointed by the Secretary shall be a
29 professional engineer registered pursuant to Chapter 89C of the General Statutes and
30 who is knowledgeable in matters relating to air pollution. The Secretary shall designate
31 one member of the Council to serve as Chair.

32 (c) The Council shall assist the Secretary and the Environmental Management
33 Commission in an advisory capacity on the development of:

- 34 (1) All programs necessary to implement the 1990 amendments to the
35 Federal Clean Air Act, including but not limited to changes in existing
36 State air quality statutes, rules, and programs; permitting and
37 implementation procedures; fee programs; regulatory flexibility; and
38 regulation of air toxics.
- 39 (2) A permit fee program to finance increased State regulatory activity
40 required under the Federal Clean Air Act.

41 (d) The Secretary may remove any member of the Council for misfeasance,
42 malfeasance, or nonfeasance. A member who fails to attend three consecutive meetings
43 of the Council shall cease to be a member of the Council.

1 (e) The Council shall meet upon the call of the Chair. A majority of the
2 Council shall constitute a quorum for the transaction of business.

3 (f) Any person who is a member of the Council may hold such membership
4 concurrently with and in addition to any other elective or appointive office or offices
5 such person is permitted to hold under G.S. 128-1.1.

6 (g) Members of the Council who are not State employees shall receive per
7 diem and necessary travel and subsistence expenses in accordance with the provisions
8 of G.S. 138-5.

9 (h) All clerical and other services required by the Council shall be supplied
10 by the Department of Environment, Health, and Natural Resources. The Attorney
11 General shall provide legal services required by the Council. All expenses of the
12 Council shall be paid from the nonreverting account established by G.S. 143-215.3A(b).

13 (i) The Council shall submit written reports as to its findings and
14 recommendations to the Environmental Management Commission and the
15 Environmental Review Commission. The Council may prepare separate reports on
16 issues it selects. The Council shall complete its study and make its final written report
17 on or before 1 May 1992. Upon making its final written report, the Council shall
18 terminate.

19 (j) Unless deadlines established by the United States Environmental
20 Protection Agency require that rule making be initiated earlier, the Environmental
21 Management Commission may not initiate rule making to implement programs and fees
22 required by Title V of the 1990 amendments to the Federal Clean Air Act (Pub. L. 101-
23 549, 104 Stat. 2635 **et seq.**) until the earlier of 1 May 1992 or the date on which the
24 Environmental Management Commission receives the final written report of the
25 Council.

26 Sec. 13. The Environmental Review Commission shall study issues relating
27 to reduction of the emission of ozone-depleting chlorofluorocarbons (CFCs) into the
28 atmosphere. The Environmental Review Commission shall report its findings and
29 recommended legislation to the 1992 Regular Session of the 1991 General Assembly.

30 Sec. 14. For the 1991-92 fiscal year, notices of assessments pursuant to G.S.
31 143-215.106A(a), as enacted by Section 10 of this act, shall be issued 30 days after the
32 date this act becomes effective.

33 Sec. 15. This act is effective upon ratification.