

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

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SENATE BILL 1037
Agriculture/Environment/Natural Resources Committee Substitute Adopted
9/19/01
Finance Committee Substitute Adopted 9/26/01

Short Title: No Air Pmt. Req. Until Facility Operational.

(Public)

Sponsors:

Referred to:

April 5, 2001

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT ANY PROSPECTIVE APPLICANT FOR AN AIR QUALITY PERMIT FOR A NEW FACILITY MAY COMMENCE CONSTRUCTION PRIOR TO OBTAINING THE AIR QUALITY PERMIT TO OPERATE THAT FACILITY IF THE PROSPECTIVE APPLICANT SUBMITS A NOTICE OF THE CONSTRUCTION AND THAT ANY CURRENT HOLDER OF AN AIR QUALITY PERMIT MAY COMPLETE NEW CONSTRUCTION AT AN EXISTING PERMITTED FACILITY PRIOR TO OBTAINING THE AIR QUALITY PERMIT TO OPERATE THAT FACILITY IF THE PROSPECTIVE APPLICANT SUBMITS A NOTICE OF THE CONSTRUCTION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-215.108(a) reads as rewritten:

"(a) After the effective date applicable to any air quality or emission control standards established pursuant to G.S. 143-215.107 and except as provided in subsections (a1) and (a2) of this section, no person shall do any of the following things or carry out any of the following activities ~~which that~~ contravene or will be likely to contravene ~~such these standards until or unless such that~~ person ~~shall have applied for and shall have received~~ has obtained from the Commission a permit therefor and ~~shall have~~ has complied with ~~such conditions, if any, as are prescribed by such any conditions of this permit:~~

- (1) Establish or operate any air contaminant ~~source;~~source, except as provided in G.S. 143-215.108A.
- (2) Build, erect, use or operate any equipment ~~which that~~ may result in the emission of an air contaminant ~~contaminant~~ or ~~which that~~ is likely to cause air ~~pollution;~~pollution, except as provided in G.S. 143-215.108A.

1 (3) Alter or change the construction or method of operation of any
2 equipment or process from which air contaminants are or may be
3 ~~emitted;~~emitted.

4 (4) ~~Enter into an irrevocable contract for the construction and installation~~
5 ~~of any air cleaning device, or allow or cause such device to be~~
6 ~~constructed, installed, or operated."~~

7 **SECTION 2.** G.S. 143-215.108(f) reads as rewritten:

8 "(f) An applicant for a permit under this section for a new facility or for the
9 expansion of a facility permitted under this section shall request each local government
10 having jurisdiction over any part of the land on which the facility and its appurtenances
11 are to be located to issue a determination as to whether the local government has in
12 effect a zoning or subdivision ordinance applicable to the facility and whether the
13 proposed facility or expansion would be consistent with the ordinance. The request to
14 the local government shall be accompanied by a copy of the draft permit application and
15 shall be delivered to the clerk of the local government personally or by certified mail.
16 The determination shall be verified or supported by affidavit signed by the official
17 designated by the local government to make the determination and, if the local
18 government states that the facility is inconsistent with a zoning or subdivision
19 ordinance, shall include a copy of the ordinance and the specific reasons for the
20 determination of inconsistency. A copy of any such determination shall be provided to
21 the applicant when it is submitted to the Commission. The Commission shall not act
22 upon an application for a permit under this section until it has received a determination
23 from each local government requested to make a determination by the applicant. If a
24 local government determines that the new facility or the expansion of an existing
25 facility is inconsistent with a zoning or subdivision ordinance, and unless ~~Unless~~ the
26 local government makes a subsequent determination of consistency with all ordinances
27 cited in the determination or the proposed facility is determined by a court of competent
28 jurisdiction to be consistent with the cited ordinances, the Commission shall attach as a
29 condition of the permit a requirement that the applicant, prior to ~~construction or~~
30 operation of the facility under the permit, comply with all lawfully adopted local
31 ordinances, including those cited in the determination, that apply to the facility at the
32 time of ~~construction or~~ operation of the facility. If a local government fails to submit a
33 determination to the Commission as provided by this subsection within 15 days after
34 receipt of the request, the Commission may proceed to consider the permit application
35 without regard to local zoning and subdivision ordinances. This subsection shall not be
36 construed to affect the validity of any lawfully adopted franchise, local zoning,
37 subdivision, or land-use planning ordinance or to affect the responsibility of any person
38 to comply with any lawfully adopted franchise, local zoning, subdivision, or land-use
39 planning ordinance. This subsection shall not be construed to limit any opportunity a
40 local government may have to comment on a permit application under any other law or
41 rule. This subsection shall not apply to any facility with respect to which local
42 ordinances are subject to review under either G.S. 104E-6.2 or G.S. 130A-293."

1 **SECTION 3.** Article 21B of Chapter 143 of the General Statutes is amended
2 by adding a new section to read:

3 **"§ 143-215.108A. Control of sources of air pollution; construction of new facilities**
4 **and the expansion of existing facilities.**

5 (a) New Facilities. – A person may construct components of a facility that may
6 result in the emission of an air contaminant, at a site or facility where at the time of the
7 construction there is no other air contaminant source or equipment for which a permit is
8 required under G.S. 143-215.108, as provided in this section, unless the construction
9 would be inconsistent with any federal program delegation. The person may construct
10 all components of the facility that are not intended solely for the operation of the air
11 contaminant source or equipment, including those portions of the facility that relate to
12 or support both the air contaminant source or equipment and other functions, such as the
13 foundation, walls, roof, electrical wiring, and vents, without obtaining a permit under
14 G.S. 143-215.108. A person may not, however, construct or operate the actual air
15 contaminant source, equipment, or associated air-cleaning devices without obtaining a
16 permit under G.S. 143-215.108. At least 15 days prior to commencing construction
17 under this subsection, the person who owns the facility shall submit a notice of
18 construction to the Commission. The notice shall include all of the following:

- 19 (1) The nature of the air contaminant sources and equipment associated
20 with the facility when constructed.
- 21 (2) An estimate of total regulated air contaminant emissions associated
22 with the facility when constructed.
- 23 (3) The air-cleaning devices that are to be employed to address each of the
24 air contaminant sources.
- 25 (4) The construction schedule for the proposed construction.
- 26 (5) An acknowledgment by the person that the actual air contaminant
27 sources, equipment, and associated air-cleaning devices may not be
28 constructed until the person has obtained a permit under G.S.
29 143-215.108.
- 30 (6) An acknowledgment by the person that any construction prior to the
31 issuance of a permit under G.S. 143-215.108 is undertaken at the
32 person's own risk and with the knowledge that the person may be
33 denied a permit under G.S. 143-215.108 without regard to the person's
34 financial investment or construction activities.
- 35 (7) A certification under oath that all of the information contained in the
36 notice is complete and accurate to the best of the person's knowledge
37 and ability, executed by the person or, if the person is a corporation, by
38 the appropriate officers of the corporation.

39 (b) Permitted Facilities. – A person who holds a permit under G.S. 143-215.108
40 may apply to the Commission for a modification of the permit to allow the person to
41 alter or expand the physical arrangement or operation of an air contaminant source,
42 equipment, or the associated air-cleaning device in a manner that alters the emission of

1 air contaminants. A permittee may construct or modify an air contaminant source,
2 equipment, or the associated air-cleaning device, at a facility permitted under G.S.
3 143-215.108, as provided in this section, unless the construction or modification would
4 be inconsistent with any federal program delegation. The permittee may not, however,
5 operate the air contaminant source, equipment, or associated air-cleaning devices in a
6 manner that alters the emission of any air contaminant without obtaining a permit
7 modification under G.S. 143-215.108. At least 15 days prior to commencing
8 construction or modification under this subsection, the permittee shall submit a notice of
9 construction to the Commission. The notice shall include all of the following:

- 10 (1) The permit number of each permit issued under G.S. 143-215.108 for
11 the facility.
- 12 (2) The nature of the air contaminant sources and equipment associated
13 with the proposed modification of the permit.
- 14 (3) An estimate of total regulated air contaminant emissions associated
15 with the proposed modification of the permit.
- 16 (4) The air-cleaning devices that are to be employed to address each of the
17 air contaminant sources associated with the modification of the permit.
- 18 (5) The construction schedule associated with the proposed modification
19 of the permit.
- 20 (6) An acknowledgment by the permittee that the air contaminant sources,
21 equipment, and associated air-cleaning devices may not be operated in
22 a manner that alters the emission of any air contaminant until the
23 permittee has obtained a modified permit under G.S. 143-215.108.
- 24 (7) An acknowledgment by the permittee that any construction prior to the
25 modification of a permit under G.S. 143-215.108 is undertaken at the
26 permittee's own risk and with the knowledge that the permittee may be
27 denied a modification of the permit under G.S. 143-215.108 without
28 regard to the permittee's financial investment or construction activities.
- 29 (8) A certification under oath that all of the information contained in the
30 notice is complete and accurate to the best of the permittee's
31 knowledge and ability, executed by the permittee or, if the permittee is
32 a corporation, by the appropriate officers of the corporation.

33 (c) Review and Determination by the Commission. – Upon receipt of a notice of
34 construction required under subsection (a) or (b) of this section, the Commission may
35 review the information contained in the notice, investigate the site or facility, and
36 comment on the proposed facility or permit modification. If at any time during
37 construction the Commission determines that there is a significant likelihood that a
38 person or permittee will not qualify for a permit or permit modification under G.S.
39 143-215.108, the Commission may request in writing that the person or permittee
40 submit, within 15 days of receipt of the request, specific additional information related
41 to the reasons that give rise to the determination. If, after reviewing any additional
42 information submitted by the person or permittee, the Commission again determines

1 that there is a significant likelihood that a person or permittee will not qualify for a
2 permit or permit modification under G.S. 143-215.108, the Commission may request
3 that the plans for the construction be altered in order to address the anticipated inability
4 of the person or permittee to qualify for a permit or permit modification or the
5 Commission may order that construction or modification cease. If the Commission
6 orders that construction or modification cease, then construction may resume only if the
7 Commission either makes a subsequent determination that the circumstances that
8 resulted in the determination that resulted in the order to cease construction or
9 modification have been adequately addressed or the Commission issues a permit or
10 permit modification under G.S. 143-215.108 that authorizes construction to resume.
11 Any order by the Commission that construction cease shall be in writing and shall set
12 forth specific reasons for the determination that the person or permittee will not qualify
13 for a permit.

14 (d) Evaluation of Permit Applications; Administrative and Judicial Review of
15 Permit Decisions. – The Commission shall evaluate an application for a permit or
16 permit modification under G.S. 143-215.108 and make its decision on the same basis as
17 if the construction allowed under this section had not occurred. No evidence regarding
18 any financial investment made, construction activity undertaken, or economic loss
19 incurred by any person or permittee who proceeds under this section without first
20 obtaining a permit under G.S. 143-215.108 is admissible in any contested case or
21 judicial proceeding involving any permit required under G.S. 143-215.108.

22 (e) State, Commission, and Employees Not Liable. – Every person, permittee,
23 and owner of a facility who proceeds under this section shall hold the State, the
24 Commission, and the officials, agents, and employees of the State and the Commission
25 harmless and not liable for any loss resulting from any construction or modification
26 undertaken by any person, permittee, or owner of any facility pursuant to this section.

27 (f) Local Zoning Ordinances Not Affected. – This section shall not be construed
28 to affect the validity of any lawfully adopted franchise, local zoning, subdivision, or
29 land-use planning ordinance or to affect the responsibility of any person to comply with
30 any lawfully adopted franchise, local zoning, subdivision, or land-use planning
31 ordinance.

32 (g) Fee. – A person or permittee who submits a notice of construction under
33 subsection (a) or subsection (b) of this section shall pay a fee of two hundred dollars
34 (\$200.00) for each notice submitted to cover a portion of the administrative costs of
35 implementing this section."

36 **SECTION 4.** This act is effective when it becomes law and applies to
37 construction of any new facility and construction associated with the modification of a
38 permit for an existing facility that commences on or after the date on which this act
39 becomes law. This act does not apply to any application for a permit or permit
40 modification under G.S. 143-215.108 that is submitted to the Environmental
41 Management Commission prior to the date on which this act becomes law.