

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
House Committee Substitute Favorable 7/31/02
House Committee Substitute #2 Favorable 8/8/02

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), as amended by Section 2 of S.L. 2002-4, reads as rewritten:

"(a) 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 standards established pursuant to G.S. 143-215.107 or set out in G.S. 143-215.107D unless that person has obtained from the Commission a permit therefor from the Commission and has complied with any conditions of this the 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 contaminantscontaminant 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."

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

1 **§ 143-215.108A. Control of sources of air pollution; construction of new facilities**
2 **and the expansion of existing facilities.**

3 (a) New Facilities. – A person may not, without obtaining a permit under G.S.
4 143-215.108, construct or operate an air contaminant source, equipment, or associated
5 air-cleaning device at a site or facility where, at the time of the construction, there is no
6 other air contaminant source, equipment, or device for which a permit is required under
7 G.S. 143-215.108. A person may, however, construct any component of the facility that
8 is peripheral to the operation of the air contaminant source, equipment, or associated
9 air-cleaning device if the person complies with the requirements of this section.
10 Peripheral construction includes grading, foundations, and structures not associated with
11 an air contaminant source, equipment, or air-cleaning device. At least 30 days prior to
12 commencing construction under this subsection, the person who owns the facility shall
13 give notice by publication, and shall submit to the Commission a notice, of the person's
14 intent to construct a facility for which a permit will be required under G.S. 143-215.108.
15 Notice by publication shall be in a newspaper having general circulation in the county
16 or counties where the facility is to be located; shall be at the person's own expense; shall
17 include a statement that written comment may be submitted to the Commission, that the
18 Commission will consider any comment that it receives during its review of the
19 application for a permit, and the Commission's address for submission of written
20 comment; and shall include all the information required by subdivisions (1) through (5)
21 of this subsection. The person shall submit a proof of publication of the notice to the
22 Commission within 15 days of the date of publication. The notice to the Commission
23 shall include all of the following:

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

1 and ability, executed by the person or, if the person is a corporation, by
2 the appropriate officers of the corporation.

3 (b) Permitted Facilities. – A person who holds a permit under G.S. 143-215.108
4 may apply to the Commission for a modification of the permit to allow the person to
5 alter or expand the physical arrangement or operation of an air contaminant source,
6 equipment, or the associated air-cleaning device in a manner that alters the emission of
7 air contaminants. The permittee may not operate the altered, expanded, or additional air
8 contaminant source, equipment, or associated air-cleaning devices in a manner that
9 alters the emission of any air contaminant without obtaining a permit modification
10 under G.S. 143-215.108. A permittee may, however, construct or modify any
11 component of the facility that is peripheral to the operation of the air contaminant
12 source, equipment, or associated air-cleaning device if the person complies with the
13 requirements of this section. Peripheral construction includes grading, foundations, and
14 structures not associated with an air contaminant source, equipment, or air-cleaning
15 device. At least 30 days prior to commencing construction or modification under this
16 subsection, the permittee shall give notice by publication, and shall submit to the
17 Commission a notice, of the person's intent to construct a facility for which a permit
18 modification will be required under G.S. 143-215.108. Notice by publication shall be in
19 a newspaper having general circulation in the county or counties where the facility is
20 located; shall be at the person's own expense; shall include a statement that written
21 comment may be submitted to the Commission, that the Commission will consider any
22 comment that it receives during its review of the application for a permit modification,
23 and the Commission's address for submission of written comment; and shall include all
24 the information required by subdivisions (1) through (6) of this subsection. The
25 permittee shall submit a proof of publication of the notice to the Commission within 15
26 days of the date of publication. The notice to the Commission shall include all of the
27 following:

- 28 (1) The name and location of the facility and the name and address of the
29 permittee.
- 30 (2) The permit number of each permit issued under G.S. 143-215.108 for
31 the facility.
- 32 (3) The nature of the air contaminant sources and equipment associated
33 with the proposed modification of the permit.
- 34 (4) An estimate of total regulated air contaminant emissions associated
35 with the proposed modification of the permit.
- 36 (5) The air-cleaning devices that are to be employed to address each of the
37 air contaminant sources associated with the modification of the permit.
- 38 (6) The construction schedule associated with the proposed modification
39 of the permit.
- 40 (7) An acknowledgment by the permittee that the air contaminant sources,
41 equipment, and associated air-cleaning devices may not be operated in
42 a manner that alters the emission of any air contaminant until the
43 permittee has obtained a modified permit under G.S. 143-215.108.

1 (8) An acknowledgment by the permittee that any construction prior to the
2 modification of a permit under G.S. 143-215.108 is undertaken at the
3 permittee's own risk and with the knowledge that the permittee may be
4 denied a modification of the permit under G.S. 143-215.108 without
5 regard to the permittee's financial investment or construction activities.

6 (9) A certification under oath that all of the information contained in the
7 notice is complete and accurate to the best of the permittee's
8 knowledge and ability, executed by the permittee or, if the permittee is
9 a corporation, by the appropriate officers of the corporation.

10 (c) Review and Determination by the Commission. – Upon receipt of the notice
11 to the Commission required under subsection (a) or (b) of this section, the Commission
12 may review the information contained in the notice, investigate the site or facility, and
13 comment on the proposed facility or permit modification. If at any time during
14 construction the Commission determines that there is a significant likelihood that a
15 person or permittee will not qualify for a permit or permit modification under G.S.
16 143-215.108, the Commission may request in writing that the person or permittee
17 submit, within 15 days of receipt of the request, specific additional information related
18 to the reasons that give rise to the determination. If, after reviewing any additional
19 information submitted by the person or permittee, the Commission again determines
20 that there is a significant likelihood that a person or permittee will not qualify for a
21 permit or permit modification under G.S. 143-215.108, the Commission may request
22 that the plans for the construction be altered in order to address the anticipated inability
23 of the person or permittee to qualify for a permit or permit modification or the
24 Commission may order that construction or modification cease. If the Commission
25 orders that construction or modification cease, then construction may resume only if the
26 Commission either makes a subsequent determination that the circumstances that
27 resulted in the determination that resulted in the order to cease construction or
28 modification have been adequately addressed or the Commission issues a permit or
29 permit modification under G.S. 143-215.108 that authorizes construction to resume.
30 Any order by the Commission that construction cease shall be in writing and shall set
31 forth specific reasons for the determination that the person or permittee will not qualify
32 for a permit.

33 (d) Evaluation of Permit Applications; Administrative and Judicial Review of
34 Permit Decisions. – The Commission shall evaluate an application for a permit or
35 permit modification under G.S. 143-215.108 and make its decision on the same basis as
36 if the construction allowed under this section had not occurred. The Commission shall
37 consider any written comment that it receives in response to a notice by publication
38 given pursuant to subsection (a) or (b) of this section. No evidence regarding any
39 financial investment made, construction activity undertaken, or economic loss incurred
40 by any person or permittee who proceeds under this section without first obtaining a
41 permit under G.S. 143-215.108 is admissible in any contested case or judicial
42 proceeding involving any permit required under G.S. 143-215.108.

43 (e) State, Commission, and Employees Not Liable. – Every person, permittee,
44 and owner of a facility who proceeds under this section shall hold the State, the

1 Commission, and the officials, agents, and employees of the State and the Commission
2 harmless and not liable for any loss resulting from any construction or modification
3 undertaken by any person, permittee, or owner of any facility pursuant to this section.

4 (f) Local Zoning Ordinances Not Affected. – This section shall not be construed
5 to affect the validity of any lawfully adopted franchise, local zoning, subdivision, or
6 land-use planning ordinance or to affect the responsibility of any person to comply with
7 any lawfully adopted franchise, local zoning, subdivision, or land-use planning
8 ordinance.

9 (g) Federal Air Quality Programs Not Affected. – This section does not relieve
10 any person from any preconstruction or construction prohibition imposed by any federal
11 requirement, federal delegation, federally approved requirement in any State
12 Implementation Plan, or federally approved requirement under the Title V permitting
13 program, as determined solely by the Commission or by a local air pollution control
14 program certified by the Commission as provided in G.S. 143-215.112. This section
15 does not apply to any construction or modification that is subject to requirements for
16 prevention of significant deterioration or federal nonattainment new source review, as
17 determined solely by the Commission or by a local air pollution control program
18 certified by the Commission as provided in G.S. 143-215.112. This section does not
19 apply if it is inconsistent with any federal requirement, federal delegation, federally
20 approved requirement in any State Implementation Plan, or federally approved
21 requirement under the Title V permitting program, as determined solely by the
22 Commission or by a local air pollution control program certified by the Commission as
23 provided in G.S. 143-215.112.

24 (h) Not Applicable to Asphalt Plants. – This section shall not apply to any facility
25 for the manufacture, sale, or distribution of asphalt. No person may construct, modify,
26 or operate any component of any facility for the manufacture, sale, or distribution of
27 asphalt until the person has obtained all permits that will be required for any air
28 contaminant source, equipment, or associated air-cleaning device at the facility.

29 (i) Fee. – A person or permittee who submits a notice of construction under
30 subsection (a) or subsection (b) of this section shall pay a fee of two hundred dollars
31 (\$200.00) for each notice submitted to cover a portion of the administrative costs of
32 implementing this section."

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