

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

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

(Public)

Sponsors:

Referred to:

April 5, 2001

A BILL TO BE ENTITLED

1 AN ACT TO PROVIDE THAT ANY PROSPECTIVE APPLICANT FOR AN AIR
2 QUALITY PERMIT FOR A NEW FACILITY MAY COMMENCE
3 CONSTRUCTION PRIOR TO OBTAINING THE AIR QUALITY PERMIT TO
4 OPERATE THAT FACILITY IF THE PROSPECTIVE APPLICANT SUBMITS A
5 NOTICE OF THE CONSTRUCTION AND THAT ANY CURRENT HOLDER OF
6 AN AIR QUALITY PERMIT MAY COMPLETE NEW CONSTRUCTION AT AN
7 EXISTING PERMITTED FACILITY PRIOR TO OBTAINING THE AIR
8 QUALITY PERMIT TO OPERATE THAT FACILITY IF THE PROSPECTIVE
9 APPLICANT SUBMITS A NOTICE OF THE CONSTRUCTION.
10

11 The General Assembly of North Carolina enacts:

12 **SECTION 1.** G.S. 143-215.108(a), as amended by Section 2 of S.L. 2002-4,
13 reads as rewritten:

14 "(a) Except as provided in subsections (a1) and (a2) of this section, no person
15 shall do any of the following things or carry out any of the following activities ~~which~~
16 that contravene or will be likely to contravene standards established pursuant to G.S.
17 143-215.107 or set out in G.S. 143-215.107D unless that person has obtained ~~from the~~
18 ~~Commission~~ a permit ~~therefor~~ from the Commission and has complied with any
19 conditions of ~~this~~ the permit:

- 20 (1) Establish or operate any air contaminant ~~source;~~ source, except as
21 provided in G.S. 143-215.108A.
22 (2) Build, erect, use or operate any equipment ~~which~~ that may result in the
23 emission of an air contaminant ~~contaminant~~ or ~~which~~ that is likely to
24 cause air ~~pollution;~~ pollution, except as provided in G.S.
25 143-215.108A.

- 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 not integral to the operation of the air contaminant source, equipment, or associated
9 air-cleaning device, including any portion of the facility that relates to or supports both
10 the air contaminant source, equipment, or device and other functions, such as the
11 foundation, walls, roof, electrical wiring, and vents, if the person complies with the
12 requirements of this section. At least 30 days prior to commencing construction under
13 this subsection, the person who owns the facility shall give notice by publication, and
14 shall submit to the Commission a notice, of the person's intent to construct a facility for
15 which a permit will be required under G.S. 143-215.108. Notice by publication shall be
16 in a newspaper having general circulation in the county or counties where the facility is
17 to be located; shall be at the person's own expense; shall include a statement that written
18 comment may be submitted to the Commission, that the Commission will consider any
19 comment that it receives during its review of the application for a permit, and the
20 Commission's address for submission of written comment; and shall include all the
21 information required by subdivisions (1) through (5) of this subsection. The person shall
22 submit a proof of publication of the notice to the Commission within 15 days of the date
23 of publication. The notice to the Commission 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 an air
11 contaminant source, equipment, or the associated air-cleaning device at a facility
12 permitted under G.S. 143-215.108 if the permittee complies with the requirements of
13 this section. At least 30 days prior to commencing construction or modification under
14 this subsection, the permittee shall give notice by publication, and shall submit to the
15 Commission a notice, of the person's intent to construct a facility for which a permit
16 modification will be required under G.S. 143-215.108. Notice by publication shall be in
17 a newspaper having general circulation in the county or counties where the facility is
18 located; shall be at the person's own expense; shall include a statement that written
19 comment may be submitted to the Commission, that the Commission will consider any
20 comment that it receives during its review of the application for a permit modification,
21 and the Commission's address for submission of written comment; and shall include all
22 the information required by subdivisions (1) through (6) of this subsection. The
23 permittee shall submit a proof of publication of the notice to the Commission within 15
24 days of the date of publication. The notice to the Commission shall include all of the
25 following:

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

1 denied a modification of the permit under G.S. 143-215.108 without
2 regard to the permittee's financial investment or construction activities.

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

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

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

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

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

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

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

26 (i) Fee. – A person or permittee who submits a notice of construction under
27 subsection (a) or subsection (b) of this section shall pay a fee of two hundred dollars
28 (\$200.00) for each notice submitted to cover a portion of the administrative costs of
29 implementing this section.

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