

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2001**

**SESSION LAW 2002-4  
SENATE BILL 1078**

AN ACT TO IMPROVE AIR QUALITY IN THE STATE BY IMPOSING LIMITS ON THE EMISSION OF CERTAIN POLLUTANTS FROM CERTAIN FACILITIES THAT BURN COAL TO GENERATE ELECTRICITY AND TO PROVIDE FOR RECOVERY BY ELECTRIC UTILITIES OF THE COSTS OF ACHIEVING COMPLIANCE WITH THOSE LIMITS.

The General Assembly of North Carolina enacts:

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

**"§ 143-215.107D. Emissions of oxides of nitrogen (NOx) and sulfur dioxide (SO2) from certain coal-fired generating units.**

(a) As used in this section:

- (1) 'Coal-fired generating unit' means a coal-fired generating unit, as defined by 40 Code of Federal Regulations § 96.2 (1 July 2001 Edition), that is located in this State and has the capacity to generate 25 or more megawatts of electricity.
- (2) 'Investor-owned public utility' means an investor-owned public utility, as defined in G.S. 62-3.

(b) An investor-owned public utility that owns or operates coal-fired generating units that collectively emitted more than 75,000 tons of oxides of nitrogen (NOx) in calendar year 2000:

- (1) Shall not collectively emit from the coal-fired generating units that it owns or operates more than 35,000 tons of oxides of nitrogen (NOx) in any calendar year beginning 1 January 2007.
- (2) Shall not collectively emit from the coal-fired generating units that it owns or operates more than 31,000 tons of oxides of nitrogen (NOx) in any calendar year beginning 1 January 2009.

(c) An investor-owned public utility that owns or operates coal-fired generating units that collectively emitted 75,000 tons or less of oxides of nitrogen (NOx) in calendar year 2000 shall not collectively emit from the coal-fired generating units that it owns or operates more than 25,000 tons of oxides of nitrogen (NOx) in any calendar year beginning 1 January 2007.

(d) An investor-owned public utility that owns or operates coal-fired generating units that collectively emitted more than 225,000 tons of sulfur dioxide (SO2) in calendar year 2000:

- (1) Shall not collectively emit from the coal-fired generating units that it owns or operates more than 150,000 tons of sulfur dioxide (SO2) in any calendar year beginning 1 January 2009.
- (2) Shall not collectively emit from the coal-fired generating units that it owns or operates more than 80,000 tons of sulfur dioxide (SO2) in any calendar year beginning 1 January 2013.

(e) An investor-owned public utility that owns or operates coal-fired generating units that collectively emitted 225,000 tons or less of sulfur dioxide (SO2) in calendar year 2000:

- (1) Shall not collectively emit from the coal-fired generating units that it owns or operates more than 100,000 tons of sulfur dioxide (SO2) in any calendar year beginning 1 January 2009.
- (2) Shall not collectively emit from the coal-fired generating units that it owns or operates more than 50,000 tons of sulfur dioxide (SO2) in any calendar year beginning 1 January 2013.

(f) Each investor-owned public utility to which this section applies may determine how it will achieve the collective emissions limitations imposed by this section. Compliance with the emissions limitations set out in this section does not alter the obligation of any person to comply with any other federal or State law, regulation, or rule related to air quality or visibility. This subsection shall not be construed to limit the authority of the Commission to impose specific limitations on the emission of oxides of nitrogen (NOx) and sulfur dioxide (SO2) from an individual coal-fired generating unit owned or operated by an investor-owned public utility.

(g) A coal-fired generating unit that is subject to the collective emissions limitations set out in this section on 1 July 2002 shall remain subject to the collective emissions limitations whether or not it thereafter continues to be owned or operated by an investor-owned public utility.

(h) The Commission shall require that any permit or modified permit issued for a coal-fired generating unit that is subject to this section include conditions that provide for testing, monitoring, record keeping, and reporting adequate to assure compliance with the requirements of this section.

(i) The Governor may enter into an agreement with an investor-owned public utility under which the investor-owned public utility voluntarily agrees to transfer to the State any emissions allowances acquired or that may be acquired by the investor-owned public utility pursuant to 42 U.S.C. §§ 7651-7651o, as implemented by 40 Code of Federal Regulations §§ 73.1 through 73.90 (1 July 2001 Edition); 42 U.S.C. 7410(a)(2)(D)(i)(I), as implemented by 40 Code of Federal Regulations § 51.121 (1 July 2001 Edition), related federal regulations, and the associated State Implementation Plan; 42 U.S.C. § 7426, as implemented by 40 Code of Federal Regulations § 52.34 (1 July 2001 Edition) and related federal regulations; or any similar program established under federal law that result from compliance with the emissions limitations set out in this section. An agreement entered into pursuant to this subsection shall be binding and shall be enforceable by specific performance. If the Governor enters into an agreement that provides for the transfer of emissions allowances to the State, the Governor shall file verified copies of the agreement with the Attorney General, the Secretary of State, the State Treasurer, the Secretary of Environment and Natural Resources, and the Utilities Commission. The State Treasurer shall hold all emissions allowances that are transferred to the State as provided in this subsection in trust for the people of this State and shall sell, trade, transfer, or otherwise dispose of the emissions allowances only as the General Assembly shall provide by law.

(j) An investor-owned public utility that is subject to the emissions limitations set out in this section shall submit to the Utilities Commission and to the Department on or before 1 April of each year a verified statement pursuant to subsection (i) of G.S. 62-133.6."

**SECTION 2.** G.S. 143-215.108 reads as rewritten:

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

~~(a) After the effective date applicable to any air quality or emission control standards established pursuant to G.S. 143-215.107 and except~~ 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 contravene or will be likely to contravene ~~such~~ standards established pursuant to G.S. 143-215.107 or set out in G.S. 143-215.107D ~~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;
- (2) Build, erect, use or operate any equipment which may result in the emission of air contaminants or which is likely to cause air pollution;
- (3) Alter or change the construction or method of operation of any equipment or process from which air contaminants are or may be emitted;
- (4) Enter into an irrevocable contract for the construction and installation of any air-cleaning device, or allow or cause such device to be constructed, installed, or operated.

(a1) The Commission may by rule establish procedures that meet the requirements of section 502(b)(10) of Title V (42 U.S.C. § 7661a(b)(10)) and 40 Code of Federal Regulations § 70.4(b)(12) (1 July 1993 Edition) to allow a permittee to make changes within a permitted facility without requiring a revision of the permit.

(a2) The Commission may adopt rules that provide for a minor modification of a permit. At a minimum, rules that provide for a minor modification of a permit shall meet the requirements of 40 Code of Federal Regulations § 70.7(e)(2) (1 July 1993 Edition). If the Commission adopts rules that provide for a minor modification of a permit, a permittee shall not make a change in the permitted facility while the application for the minor modification is under review unless the change is authorized under the rules adopted by the Commission.

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

(c) The Commission shall have the power:

- (1) To grant and renew a permit with ~~such any conditions~~ attached as ~~that~~ the Commission believes necessary to achieve the purposes of this ~~section~~ Article or the requirements of the Clean Air Act and implementing regulations adopted by the United States Environmental Protection Agency;

....  
**SECTION 3.** G.S. 143-215.107(a)(8) reads as rewritten:

"(8) To develop and adopt standards and plans necessary to implement programs to control acid deposition and to regulate the use of sulfur dioxide (SO<sub>2</sub>) allowances and ~~nitrogen~~ oxides of nitrogen (NO<sub>x</sub>) emissions in accordance with Title IV and implementing regulations adopted by the United States Environmental Protection Agency."

**SECTION 4.** G.S. 143-215.114A(a) reads as rewritten:

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

- (1) Violates any classification, standard or limitation established pursuant to ~~G.S. 143-215.107;G.S. 143-215.107.~~
- (2) Is required but fails to apply for or to secure a permit required by G.S. 143-215.108 or who violates or fails to act in accordance with the terms, conditions, or requirements of such ~~permit;permit.~~
- (3) Violates or fails to act in accordance with the terms, conditions, or requirements of any special order or other appropriate document issued pursuant to ~~G.S. 143-215.110;G.S. 143-215.110.~~
- (4) Fails to file, submit, or make available, as the case may be, any documents, data or reports required by this Article or Parts 1 or 7 of Article 21 of this ~~Chapter;Chapter.~~
- (5) Violates a rule of the Commission or a local governing body implementing this Article or Parts 1 or 7 of ~~Article 21;Article 21.~~

- (6) Violates the offenses set out in G.S. 143-215.114B.
- (7) Violates the emissions limitations set out in G.S. 143-215.107D."

**SECTION 5.** G.S. 143-215-114A is amended by adding a new subsection to read:

"(b1) The Secretary may assess a civil penalty of not more than ten thousand dollars (\$10,000) per day for a violation of the emissions limitations set out in G.S. 143-215.107D as provided in this subsection. If at the end of any calendar year, an investor-owned public utility has violated an emissions limitation set out in G.S. 143-215.107D, the violation shall be considered to be continuous from the day that the collective emissions first exceeded the emissions limitation set out in G.S. 143-215.107D through the end of the calendar year and the Secretary may assess a separate civil penalty for each day."

**SECTION 6.** G.S. 143-215.114B(f) reads as rewritten:

"(f) Any person who negligently violates any classification, standard or limitation established pursuant to ~~G.S. 143-215.107~~; G.S. 143-215.107 or by G.S. 143-215.107D any term, condition, or requirement of a permit issued pursuant to G.S. 143-215.108 or of a special order or other appropriate document issued pursuant to G.S. 143-215.110 or any rule of the Commission implementing any of the said section, shall be guilty of a Class 2 misdemeanor which may include a fine not to exceed fifteen thousand dollars (\$15,000) per day of violation, provided that such fine shall not exceed a cumulative total of two hundred thousand dollars (\$200,000) for each period of 30 days during which a violation continues."

**SECTION 7.** G.S. 143-215.114B(g) reads as rewritten:

"(g) Any person who knowingly and willfully violates any classification, standard, or limitation established in the rules of the Commission pursuant to ~~G.S. 143-215.107~~ or G.S. 143-215.107; the emissions limitations set out in G.S. 143-215.107D; any term, condition, or requirement of a permit issued pursuant to ~~G.S. 143-215.108~~ G.S. 143-215.108; or of a special order or other appropriate document issued pursuant to G.S. 143-215.110, shall be guilty of a Class H felony, which may include a fine not to exceed one hundred thousand dollars (\$100,000) per day of violation, provided that this fine shall not exceed a cumulative total of five hundred thousand dollars (\$500,000) for each period of 30 days during which a violation continues. For the purposes of this subsection, the phrase "knowingly and willfully" shall mean intentionally and consciously as the courts of this State, according to the principles of common law, interpret the phrase in the light of reason and experience."

**SECTION 8.** G.S. 143-215.114B(h)(1) reads as rewritten:

"(1) Any person who knowingly violates any classification, standard, or limitation established in the rules of the Commission pursuant to ~~G.S. 143-215.107~~ or G.S. 143-215.107; the emissions limitations set out in G.S. 143-215.107D; any term, condition, or requirement of a permit issued pursuant to ~~G.S. 143-215.108~~ G.S. 143-215.108; or of a special order or other appropriate document issued pursuant to G.S. 143-215.110 and who knows at that time that he thereby places another person in imminent danger of death or serious bodily injury shall be guilty of a Class C felony, which may include a fine not to exceed two hundred fifty thousand dollars (\$250,000) per day of violation, provided that this fine shall not exceed a cumulative total of one million dollars (\$1,000,000) for each period of 30 days during which a violation continues."

**SECTION 9.** Article 7 of Chapter 62 of the General Statutes is amended by adding a new section to read:

**"§ 62-133.6. Environmental compliance costs recovery.**

(a) As used in this section:

(1) 'Coal-fired generating unit' means a coal-fired generating unit, as defined by 40 Code of Federal Regulations § 96.2 (1 July 2001

Edition), that is located in this State and has the capacity to generate 25 or more megawatts of electricity.

(2) 'Environmental compliance costs' means only those capital costs incurred by an investor-owned public utility to comply with the emissions limitations set out in G.S. 143-215.107D that exceed the costs required to comply with 42 U.S.C. § 7410(a)(2)(D)(i)(I), as implemented by 40 Code of Federal Regulations § 51.121 (1 July 2001 Edition), related federal regulations, and the associated State or Federal Implementation Plan, or with 42 U.S.C. § 7426, as implemented by 40 Code of Federal Regulations § 52.34 (1 July 2001 Edition) and related federal regulations. The term 'environmental compliance costs' does not include:

a. Costs required to comply with a final order or judgment rendered by a state or federal court under which an investor-owned public utility is found liable for a failure to comply with any federal or state law, rule, or regulation for the protection of the environment or public health.

b. The net increase in costs, above those proposed by the investor-owned public utility as part of its plan to achieve compliance with the emissions limitations set out in G.S. 143-215.107D, that are necessary to comply with a settlement agreement, consent decree, or similar resolution of litigation arising from any alleged failure to comply with any federal or state law, rule, or regulation for the protection of the environment or public health.

c. Any criminal or civil fine or penalty, including court costs imposed or assessed for a violation by an investor-owned public utility of any federal or state law, rule, or regulation for the protection of the environment or public health.

d. The net increase in costs, above those proposed by the investor-owned public utility as part of its plan to achieve the emissions limitations set out in G.S. 143-215.107D, that are necessary to comply with any limitation on emissions of oxides of nitrogen (NOx) or sulfur dioxide (SO<sub>2</sub>) that are imposed on an individual coal-fired generating unit by the Environmental Management Commission or the Department of Environment and Natural Resources to address any nonattainment of an air quality standard in any area of the State.

(3) 'Investor-owned public utility' means an investor-owned public utility, as defined in G.S. 62-3.

(b) The investor-owned public utilities shall be allowed to accelerate the cost recovery of their estimated environmental compliance costs over a seven-year period, beginning 1 January 2003 and ending 31 December 2009. For purposes of this subsection, an investor-owned public utility subject to the provisions of subsections (b) and (d) of G.S. 143-215.107D shall amortize environmental compliance costs in the amount of one billion five hundred million dollars (\$1,500,000,000) and an investor-owned public utility subject to the provisions of subsections (c) and (e) of G.S. 143-215.107D shall amortize environmental compliance costs in the amount of eight hundred thirteen million dollars (\$813,000,000). During the rate freeze period established in subsection (e) of this section, the investor-owned public utilities shall, at a minimum, recover through amortization seventy percent (70%) of the environmental compliance costs set out in this subsection. The maximum amount for each investor-owned public utility's annual accelerated cost recovery during the rate freeze period shall not exceed one hundred fifty percent (150%) of the annual levelized environmental compliance costs set out in this subsection. The amounts to be amortized pursuant to

this subsection are estimates of the environmental compliance costs that may be adjusted as provided in this section. The General Assembly makes no judgment as to whether the actual environmental compliance costs will be greater than, less than, or equal to these estimated amounts. These estimated amounts do not define or limit the scope of the expenditures that may be necessary to comply with the emissions limitations set out in G.S. 143-215.107D.

(c) The investor-owned public utilities shall file their compliance plans, including initial cost estimates, with the Commission and the Department of Environment and Natural Resources not later than 10 days after the date on which this section becomes effective. The Commission shall consult with the Secretary of Environment and Natural Resources and shall consider the advice of the Secretary as to whether an investor-owned public utility's proposed compliance plan is adequate to achieve the emissions limitations set out in G.S. 143-215.107D.

(d) Subject to the provisions of subsection (f) of this section, the Commission shall hold a hearing to review the environmental compliance costs set out in subsection (b) of this section. The Commission may modify and revise those costs as necessary to ensure that they are just, reasonable, and prudent based on the most recent cost information available and determine the annual cost recovery amounts that each investor-owned public utility shall be required to record and recover during calendar years 2008 and 2009. In making its decisions pursuant to this subsection, the Commission shall consult with the Secretary of Environment and Natural Resources to receive advice as to whether the investor-owned public utility's actual and proposed modifications and permitting and construction schedule are adequate to achieve the emissions limitations set out in G.S. 143-215.107D. The Commission shall issue an order pursuant to this subsection no later than 31 December 2007.

(e) Notwithstanding G.S. 62-130(d) and G.S. 62-136(a), the base rates of the investor-owned public utilities shall remain unchanged from the date on which this section becomes effective through 31 December 2007. The Commission may, however, consistent with the public interest:

- (1) Allow adjustments to base rates, or deferral of costs or revenues, due to one or more of the following conditions occurring during the rate freeze period:
  - a. Governmental action resulting in significant cost reductions or requiring major expenditures including, but not limited to, the cost of compliance with any law, regulation, or rule for the protection of the environment or public health, other than environmental compliance costs.
  - b. Major expenditures to restore or replace property damaged or destroyed by force majeure.
  - c. A severe threat to the financial stability of the investor-owned public utility resulting from other extraordinary causes beyond the reasonable control of the investor-owned public utility.
  - d. The investor-owned public utility persistently earns a return substantially in excess of the rate of return established and found reasonable by the Commission in the investor-owned public utility's last general rate case.
- (2) Approve any reduction in a rate or rates applicable to a customer or class of customers during the rate freeze period, if requested to do so by an investor-owned public utility that is subject to the emissions limitations set out in G.S. 143-215.107D.

(f) In any general rate case initiated to adjust base rates effective on or after 1 January 2008, the investor-owned public utility shall be allowed to recover its actual environmental compliance costs in accordance with Article 7 of this Chapter less the cumulative amount of accelerated cost recovery recorded pursuant to subsection (b) of this section.

(g) Consistent with the public interest, the Commission is authorized to approve proposals submitted by an investor-owned public utility to implement optional, market-based rates and services, provided the proposal does not increase base rates during the period of time referred to in subsection (e) of this section.

(h) Nothing in this section shall prohibit the Commission from taking any actions otherwise appropriate to enforce investor-owned public utility compliance with applicable statutes or Commission rules or to order any appropriate remedy for such noncompliance allowed by law.

(i) An investor-owned public utility that is subject to the emissions limitations set out in G.S. 143-215.107D shall submit to the Commission and to the Department of Environment and Natural Resources on or before 1 April of each year a verified statement that contains all of the following:

- (1) A detailed report on the investor-owned public utility's plans for meeting the emissions limitations set out in G.S. 143-215.107D.
- (2) The actual environmental compliance costs incurred by the investor-owned public utility in the previous calendar year, including a description of the construction undertaken and completed during that year.
- (3) The amount of the investor-owned public utility's environmental compliance costs amortized in the previous calendar year.
- (4) An estimate of the investor-owned public utility's environmental compliance costs and the basis for any revisions of those estimates when compared to the estimates submitted during the previous year.
- (5) A description of all permits required in order to comply with the provisions of G.S. 143-215.107D for which the investor-owned public utility has applied and the status of those permits or permit applications.
- (6) A description of the construction related to compliance with the provisions of G.S. 143-215.107D that is anticipated during the following year.
- (7) A description of the applications for permits required in order to comply with the provisions of G.S. 143-215.107D that are anticipated during the following year.
- (8) The results of equipment testing related to compliance with G.S. 143-215.107D.
- (9) The number of tons of oxides of nitrogen (NOx) and sulfur dioxide (SO<sub>2</sub>) emitted during the previous calendar year from the coal-fired generating units that are subject to the emissions limitations set out in G.S. 143-215.107D.
- (10) The emissions allowances described in G.S. 143-215.107D(i) that are acquired by the investor-owned public utility that result from compliance with the emissions limitations set out in G.S. 143-215.107D.
- (11) Any other information requested by the Commission or the Department of Environment and Natural Resources.

(j) The Secretary shall review the information submitted pursuant to subsection (i) of this section and determine whether the investor-owned public utility's actual and proposed modifications and permitting and construction schedule are adequate to achieve the emissions limitations set out in G.S. 143-215.107D and shall advise the Commission as to the Secretary's findings and recommendations.

(k) Any information, advice, findings, recommendations, or determinations provided by the Secretary pursuant to this section shall not constitute a final agency decision within the meaning of Chapter 150B of the General Statutes and shall not be subject to review under that Chapter."

**SECTION 10.** It is the intent of the General Assembly that the State use all available resources and means, including negotiation, participation in interstate compacts and multistate and interagency agreements, petitions pursuant to 42 U.S.C. § 7426, and litigation to induce other states and entities, including the Tennessee Valley Authority, to achieve reductions in emissions of oxides of nitrogen (NO<sub>x</sub>) and sulfur dioxide (SO<sub>2</sub>) comparable to those required by G.S. 143-215.107D, as enacted by Section 1 of this act, on a comparable schedule. The State shall give particular attention to those states and other entities whose emissions negatively impact air quality in North Carolina or whose failure to achieve comparable reductions would place the economy of North Carolina at a competitive disadvantage.

**SECTION 11.** The Environmental Management Commission shall study the desirability of requiring and the feasibility of obtaining reductions in emissions of oxides of nitrogen (NO<sub>x</sub>) and sulfur dioxide (SO<sub>2</sub>) beyond those required by G.S. 143-215.107D, as enacted by Section 1 of this act. The Environmental Management Commission shall consider the availability of emissions reduction technologies, increased cost to consumers of electric power, reliability of electric power supply, actions to reduce emissions of oxides of nitrogen (NO<sub>x</sub>) and sulfur dioxide (SO<sub>2</sub>) taken by states and other entities whose emissions negatively impact air quality in North Carolina or whose failure to achieve comparable reductions would place the economy of North Carolina at a competitive disadvantage, and the effects that these reductions would have on public health, the environment, and natural resources, including visibility. In its conduct of this study, the Environmental Management Commission may consult with the Utilities Commission and the Public Staff. The Environmental Management Commission shall report its findings and recommendations to the General Assembly and the Environmental Review Commission annually beginning 1 September 2005.

**SECTION 12.** The General Assembly anticipates that measures implemented to achieve the reductions in emissions of oxides of nitrogen (NO<sub>x</sub>) and sulfur dioxide (SO<sub>2</sub>) required by G.S. 143-215.107D, as enacted by Section 1 of this act, will also result in significant reductions in the emissions of mercury from coal-fired generating units. The Division of Air Quality of the Department of Environment and Natural Resources shall study issues related to monitoring emissions of mercury and the development and implementation of standards and plans to implement programs to control emissions of mercury from coal-fired generating units. The Division shall evaluate available control technologies and shall estimate the benefits and costs of alternative strategies to reduce emissions of mercury. The Division shall annually report its interim findings and recommendations to the Environmental Management Commission and the Environmental Review Commission beginning 1 September 2003. The Division shall report its final findings and recommendations to the Environmental Management Commission and the Environmental Review Commission no later than 1 September 2005. The costs of implementing any air quality standards and plans to reduce the emission of mercury from coal-fired generating units below the standards in effect on the date this act becomes effective, except to the extent that the emission of mercury is reduced as a result of the reductions in the emissions of oxides of nitrogen (NO<sub>x</sub>) and sulfur dioxide (SO<sub>2</sub>) required to achieve the emissions limitations set out in G.S. 143-215.107D, as enacted by Section 1 of this act, shall not be recoverable pursuant to G.S. 62-133.6, as enacted by Section 9 of this act.

**SECTION 13.** The Division of Air Quality of the Department of Environment and Natural Resources shall study issues related to the development and implementation of standards and plans to implement programs to control emissions of carbon dioxide (CO<sub>2</sub>) from coal-fired generating units and other stationary sources of air pollution. The Division shall evaluate available control technologies and shall estimate the benefits and costs of alternative strategies to reduce emissions of carbon dioxide (CO<sub>2</sub>). The Division shall annually report its interim findings and recommendations to the Environmental Management Commission and the

Environmental Review Commission beginning 1 September 2003. The Division shall report its final findings and recommendations to the Environmental Management Commission and the Environmental Review Commission no later than 1 September 2005. The costs of implementing any air quality standards and plans to reduce the emission of carbon dioxide (CO<sub>2</sub>) from coal-fired generating units below the standards in effect on the date this act becomes effective, except to the extent that the emission of carbon dioxide (CO<sub>2</sub>) is reduced as a result of the reductions in the emissions of oxides of nitrogen (NO<sub>x</sub>) and sulfur dioxide (SO<sub>2</sub>) required to achieve the emissions limitations set out in G.S. 143-215.107D, as enacted by Section 1 of this act, shall not be recoverable pursuant to G.S. 62-133.6, as enacted by Section 9 of this act.

**SECTION 14.** On or before 1 June of each year, the Department of Environment and Natural Resources and the Utilities Commission shall report on the implementation of this act to the Environmental Review Commission and the Joint Legislative Utility Review Committee. The first report required by this section shall be submitted no later than 1 June 2003.

**SECTION 15.** If any section or provision of this act is declared unconstitutional or invalid by the courts, the unconstitutional or invalid section or provision does not affect the validity of this act as a whole or any part of this act other than the part declared to be unconstitutional or invalid.

**SECTION 16.** This act is effective when it becomes law except that G.S. 143-215.107D(i), as enacted by Section 1 of this act, is effective retroactively to 1 June 2002.

In the General Assembly read three times and ratified this the 19<sup>th</sup> day of June, 2002.

s/ Marc Basnight  
President Pro Tempore of the Senate

s/ James B. Black  
Speaker of the House of Representatives

s/ Michael F. Easley  
Governor

Approved 11:30 a.m. this 20<sup>th</sup> day of June, 2002