

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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HOUSE BILL 924

Committee Substitute Favorable 5/8/91

Senate Environment and Natural Resources Committee Substitute Adopted 7/2/91

Short Title: Air Permits/Local Land-Use Plans.

(Public)

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Sponsors:

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Referred to:

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April 19, 1991

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THE ENVIRONMENTAL MANAGEMENT COMMISSION  
TO DETERMINE WHETHER A PROPOSED AIR QUALITY PERMIT IS  
CONSISTENT WITH LOCAL ZONING AND SUBDIVISION ORDINANCES.

The General Assembly of North Carolina enacts:

Section 1. 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, 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 until or unless such person shall have applied for and shall have received from the Commission a permit therefor and shall have complied with such conditions, if any, as are prescribed by such 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 a [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.

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

5 (c) The Commission shall have the power:

- 6 (1) To grant and renew a permit with such conditions attached as the  
7 Commission believes necessary to achieve the purposes of this section;
- 8 (2) To grant and renew any temporary permit for such period of time as  
9 the Commission shall specify even though the action allowed by such  
10 permit may result in pollution or increase pollution where conditions  
11 make such temporary permit essential;
- 12 (3) To modify or revoke any permit upon not less than 60 days' written  
13 notice to any person affected;
- 14 (4) To require all applications for permits and renewals to be in writing  
15 and to prescribe the form of such applications;
- 16 (5) To request such information from an applicant and to conduct such  
17 inquiry or investigation as it may deem necessary and to require the  
18 submission of plans and specifications prior to acting on any  
19 application for a permit;
- 20 (5a) To require that an applicant satisfy the Department that the applicant,  
21 or any parent, subsidiary, or other affiliate of the applicant or parent:
  - 22 a. Is financially qualified to carry out the activity for which a  
23 permit is required under subsection (a); and
  - 24 b. Has substantially complied with the air quality and emission  
25 control standards applicable to any activity in which the  
26 applicant has previously engaged, and has been in substantial  
27 compliance with federal and state laws, regulations, and rules  
28 for the protection of the environment.

29 As used in this subdivision, the words 'affiliate,' 'parent,' and  
30 'subsidiary' have the same meaning as in 17 Code of Federal  
31 Regulations § 240.12b-2 (1 April 1990 Edition);

- 32 (6) To adopt rules, as it deems necessary, establishing the form of  
33 applications and permits and procedures for the granting or denial of  
34 permits and renewals pursuant to this section; and all permits, renewals  
35 and denials shall be in writing;
- 36 (7) To prohibit any stationary source within the State from emitting any  
37 air pollutant in amounts which will prevent attainment or maintenance  
38 by any other state of any national ambient air quality standard, or  
39 interference with measures required to be included in the applicable  
40 implementation plan for any other state to prevent deterioration of air  
41 quality or protect visibility.

42 (d) 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 A permit application may not be deemed complete unless it is accompanied by a copy  
3 of the request for determination as provided in subsection (f) of this section that bears a  
4 date of receipt entered by the clerk of the local government and until the 15-day period  
5 for issuance of a determination has elapsed. If the Commission fails to act on an  
6 application for a permit deemed complete within 90 days after the applicant submits all  
7 information required by the Commission, the application is considered to be approved.

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

13 (f) An applicant for a permit under this section for a new facility or for the  
14 expansion of a facility permitted under this section shall request each local government  
15 having jurisdiction over any part of the land on which the facility and its appurtenances  
16 are to be located to issue a determination as to whether the local government has in  
17 effect a zoning or subdivision ordinance applicable to the facility and whether the  
18 proposed facility would be consistent with the ordinance. The request to the local  
19 government shall be accompanied by a copy of the draft permit application and shall be  
20 delivered to the clerk of the local government personally or by certified mail. The  
21 determination shall be verified or supported by affidavit signed by the official  
22 designated by the local government to make the determination and, if the local  
23 government states that the facility is inconsistent with a zoning or subdivision  
24 ordinance, shall include a copy of the ordinance and the specific reasons for the  
25 determination of inconsistency. A copy of any such determination shall be provided to  
26 the applicant when it is submitted to the Commission. The Commission shall not act  
27 upon an application for a permit under this section until it has received a determination  
28 from each local government requested to make a determination by the applicant. Unless  
29 the local government makes a subsequent determination of consistency or unless the  
30 Commission finds that the proposed facility would have statewide significance or would  
31 be in the best interest of the State, the Commission may disapprove a permit application  
32 for the facility if the Commission finds the facility to be inconsistent with the local  
33 zoning or subdivision ordinance cited by the local government in its determination. If a  
34 local government fails to submit a determination to the Commission as provided by this  
35 subsection within 15 days after receipt of the request, the Commission may proceed to  
36 consider the permit application without regard to local zoning and subdivision  
37 ordinances.

38 (e) (g) Any person who is required to hold a permit under this section shall  
39 submit to the Department a written description of his current and projected plans to  
40 reduce the emission of air contaminants under such permit by source reduction or  
41 recycling. The written description shall accompany the payment of the annual permit  
42 fee. The written description shall also accompany any application for a new permit, or  
43 for modification of an existing permit, under this section. The written description

1 required by this subsection shall not be considered part of a permit application and shall  
2 not serve as the basis for the denial of a permit or permit modification."

3           Sec. 2. This act becomes effective 1 October 1991 and applies to applications  
4 for permits received on or after that date.