

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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HOUSE BILL 893

Short Title: Revise Environmental Permit Appeals.

(Public)

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Sponsors: Representatives Reynolds; McMahan, K. Miller, and Watson.

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Referred to: Health & Environment.

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April 12, 1995

A BILL TO BE ENTITLED

AN ACT TO REVISE THE ENVIRONMENTAL PERMIT APPEALS PROCESS BY  
CLARIFYING WHO IS ELIGIBLE TO INITIATE A CONTESTED CASE  
CONCERNING SUCH PERMITS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-215.1 reads as rewritten:

**"§ 143-215.1. Control of sources of water pollution; permits required.**

(a) Activities for Which Permits Required. – No person shall do any of the following things or carry out any of the following activities 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) Make any outlets into the waters of the State;
- (2) Construct or operate any sewer system, treatment works, or disposal system within the State;
- (3) Alter, extend, or change the construction or method of operation of any sewer system, treatment works, or disposal system within the State;
- (4) Increase the quantity of waste discharged through any outlet or processed in any treatment works or disposal system to any extent which would result in any violation of the effluent standards or limitations established for any point source or which would adversely

1 affect the condition of the receiving waters to the extent of violating any  
2 of the standards applicable to such water;

3 (5) Change the nature of the waste discharged through any disposal system  
4 in any way which would exceed the effluent standards or limitations  
5 established for any point source or which would adversely affect the  
6 condition of the receiving waters in relation to any of the standards  
7 applicable to such waters;

8 (6) Cause or permit any waste, directly or indirectly, to be discharged to or  
9 in any manner intermixed with the waters of the State in violation of the  
10 water quality standards applicable to the assigned classifications or in  
11 violation of any effluent standards or limitations established for any  
12 point source, unless allowed as a condition of any permit, special order  
13 or other appropriate instrument issued or entered into by the  
14 Commission under the provisions of this Article;

15 (7) Cause or permit any wastes for which pretreatment is required by  
16 pretreatment standards to be discharged, directly or indirectly, from a  
17 pretreatment facility to any disposal system or to alter, extend or change  
18 the construction or method of operation or increase the quantity or  
19 change the nature of the waste discharged from or processed in such  
20 facility;

21 (8) Enter into a contract for the construction and installation of any outlet,  
22 sewer system, treatment works, pretreatment facility or disposal system  
23 or for the alteration or extension of any such facilities;

24 (9) Dispose of sludge resulting from the operation of a treatment works,  
25 including the removal of in-place sewage sludge from one location and  
26 its deposit at another location, consistent with the requirement of the  
27 Resource Conservation and Recovery Act and regulations promulgated  
28 pursuant thereto;

29 (10) Cause or permit any pollutant to enter into a defined managed area of  
30 the State's waters for the maintenance or production of harvestable  
31 freshwater, estuarine, or marine plants or animals;

32 (11) Cause or permit discharges regulated under G.S. 143-214.7 which result  
33 in water pollution.

34 (a1) In the event that both effluent standards or limitations and classifications and  
35 water quality standards are applicable to any point source or sources and to the waters to  
36 which they discharge, the more stringent among the standards established by the  
37 Commission shall be applicable and controlling.

38 (a2) In connection with the above, no such permit shall be granted for the disposal  
39 of waste in waters classified as sources of public water supply where the head of the  
40 agency which administers the public water supply program pursuant to Article 10 of  
41 Chapter 130A of the General Statutes, after review of the plans and specifications for the  
42 proposed disposal facility, determines and advises the Commission that such disposal is

1 sufficiently close to the intake works or proposed intake works of a public water supply  
2 as to have an adverse effect on the public health.

3 (a3) In any case where the Commission denies a permit, it shall state in writing the  
4 reason for ~~such denial and shall also state the Commission's estimate the denial, including a~~  
5 description of the changes in the applicant's proposed activities or plans which will  
6 application, plans, or proposed activities that would be required in order that the applicant  
7 may obtain a permit. permit, if a permit could be issued for the proposed activity under  
8 the provisions of all applicable federal, regional, and State laws and all applicable  
9 regulations and rules.

10 ~~(a1)~~ (a4) The Department shall regulate wastewater systems under rules adopted by  
11 the Commission for Health Services pursuant to Article 11 of Chapter 130A of the  
12 General Statutes except as otherwise provided in this subsection. No permit shall be  
13 required under this section for a wastewater system regulated under Article 11 of Chapter  
14 130A of the General Statutes. The following wastewater systems shall be regulated by the  
15 Department under rules adopted by the Commission:

- 16 (1) Wastewater systems designed to discharge effluent to the land surface  
17 or surface waters.
- 18 (2) Wastewater systems designed for groundwater remediation,  
19 groundwater injection, or landfill leachate collection and disposal.
- 20 (3) Wastewater systems designed for the complete recycle or reuse of  
21 industrial process wastewater.

22 (b) Commission's Power as to Permits. –

- 23 (1) The Commission shall act on all permits so as to prevent, so far as  
24 reasonably possible, considering relevant standards under State and  
25 federal laws, any significant increase in pollution of the waters of the  
26 State from any new or enlarged sources. No permit shall be denied and  
27 no condition shall be attached to the permit, except when the  
28 Commission finds such denial or such conditions necessary to effectuate  
29 the purposes of this Article.
- 30 (2) The Commission shall also act on all permits so as to prevent violation  
31 of water quality standards due to the cumulative effects of permit  
32 decisions. Cumulative effects are impacts attributable to the collective  
33 effects of a number of projects and include the effects of additional  
34 projects similar to the requested permit in areas available for  
35 development in the vicinity. All permit decisions shall require that the  
36 practicable waste treatment and disposal alternative with the least  
37 adverse impact on the environment be utilized.
- 38 (3) General permits may be issued under rules adopted pursuant to Chapter  
39 150B of the General Statutes. Such rules may provide that minor  
40 activities may occur under a general permit issued in accordance with  
41 conditions set out in such rules. All persons covered under general  
42 permits shall be subject to all enforcement procedures and remedies  
43 applicable under this Article.

- 1           (4) The Commission shall have the power:
- 2           a. To grant a permit with such conditions attached as the
- 3           Commission believes necessary to achieve the purposes of this
- 4           Article.
- 5           b. To require that an applicant satisfy the Department that the
- 6           applicant, or any parent, subsidiary, or other affiliate of the
- 7           applicant or parent:
- 8           1. Is financially qualified to carry out the activity for which
- 9           the permit is required under subsection (a) of this section;
- 10           and
- 11           2. Has substantially complied with the effluent standards and
- 12           limitations and waste management treatment practices
- 13           applicable to any activity in which the applicant has
- 14           previously engaged, and has been in substantial
- 15           compliance with other federal and state laws, regulations,
- 16           and rules for the protection of the environment.

17           As used in this subdivision, the words 'affiliate,' 'parent,' and

18           'subsidiary' have the same meaning as in 17 Code of Federal

19           Regulations § 240.12b-2 (1 April 1990 Edition).

- 20           c. To modify or revoke any permit upon not less than 60 days'
- 21           written notice to any person affected.
- 22           d. To designate certain classes of minor activities for which a
- 23           general permit may be issued, after considering:
- 24           1. The environmental impact of the activities;
- 25           2. How often the activities are carried out;
- 26           3. The need for individual permit oversight; and
- 27           4. The need for public review and comment on individual
- 28           permits.
- 29           e. To designate certain classes of minor activities for which:
- 30           1. Performance conditions may be established by rule; and
- 31           2. Individual or general permits are not required.

32           (b1) Repealed by Session Laws 1991, c. 156, s. 1, effective October 1, 1991.

33           (c) Applications for Permits and Renewals for Facilities Discharging to the

34           Surface Waters. — Waters and Certain Facilities Applying Waste to the Land Surface. —

- 35           (1) All applications for ~~permits~~ a permit, other than a general permit or a
- 36           temporary permit, for:

- 37           a. An outlet, point source, treatment works, or disposal system
- 38           discharging to the surface waters of the State other than an
- 39           individual permit for a stormwater discharge issued pursuant to
- 40           33 U.S.C. § 1342 (p)(2).
- 41           b. Recurring land application involving:
- 42           1. Petroleum-contaminated soil;

- 1                   2.     Residuals management involving a total application area  
2                   of more than 1,000 acres; or  
3                   3.     An expansion of residuals management involving an  
4                   increase in the application area of 500 acres or more.

5     and for renewal of ~~an existing permits~~ permit for outlets and point  
6     sources and for treatment works and disposal systems discharging to the  
7     surface waters of the State and for recurring land application under sub-  
8     subdivision b. of this subdivision shall be in writing, and the  
9     Commission may prescribe the form of such applications. ~~application.~~  
10    All applications shall be filed with the Commission at least 180 days in  
11    advance of the date on which it is desired to commence the discharge or  
12    land application of wastes or the date on which an existing permit  
13    expires, as the case may be. Not more than 30 days before the date that  
14    an application is filed but prior to the date on which the application is  
15    filed, the applicant shall:

- 16    a1.   Publish notice of application at least once in a newspaper having  
17           general circulation within the county where the discharge,  
18           source, treatment works, disposal system, or land application is  
19           located;  
20    b1.   File the notice of application with the office of the manager of  
21           each incorporated city and county having jurisdiction over the  
22           location of the discharge, source, treatment works, disposal  
23           system, or land application; and  
24    c1.   Prominently post the notice of application at the public entrance  
25           to the facility for which the qualifying permit is sought.

26    The notice of application shall be continuously posted until the  
27    qualifying permit is issued or denied. The notice of application shall  
28    state, at a minimum, the name of the applicant; the activity for which the  
29    qualifying permit is sought; the receiving body of water, if any; the  
30    location of the discharge, source, treatment works, disposal system, or  
31    land application; the name and telephone number of a contact person for  
32    the applicant; and the name and location of the office within the  
33    Department to which application will be made. The Commission shall  
34    act on a permit application as quickly as possible. The Commission may  
35    conduct any inquiry or investigation it considers necessary before acting  
36    on an application and may require an applicant to submit plans,  
37    specifications, and other information the Commission considers  
38    necessary to evaluate the application.

- 39           (2)   a.   The Department shall refer each application for permit, or renewal of  
40           an existing permit, for outlets and point sources and treatment works  
41           and disposal systems discharging to the surface waters of the State to its  
42           staff for written evaluation and proposed determination with regard to  
43           issuance or denial of the permit. If the Commission concurs in the

1 proposed determination, it shall give notice of intent to issue or deny the  
2 permit, along with any other data that the Commission may determine  
3 appropriate, to be given to the appropriate State, interstate and federal  
4 agencies, to interested persons, and to the public. The Commission shall  
5 prescribe the form and content of the notice.

6 The notice required herein shall be given at least 45 days  
7 prior to any proposed final action granting or denying the permit.

8 Public notice shall be given by publication of the notice one time  
9 in a newspaper having general circulation within the county.

10 b. Repealed by Session Laws 1987, c. 734.

11 (3) a. If any person desires a ~~public meeting-hearing~~ on any application for  
12 a permit or renewal of an existing ~~permit-permit~~, provided for in this  
13 subsection, he shall so request in writing to the Commission within 30  
14 days following date of the notice of intent. The Commission shall  
15 consider all such requests for ~~meeting-hearings~~, and if the Commission  
16 determines that there is a significant public interest in holding such  
17 ~~meeting-hearings~~, at least 30 days' notice of each such meeting-hearing  
18 shall be given to all persons to whom notice of intent was sent and to  
19 any other person requesting notice. At least 30 days prior to the date of  
20 ~~meeting-a hearing~~, the Commission shall also cause a copy of the notice  
21 ~~thereof-of the hearing~~ to be published at least one time in a newspaper  
22 having general circulation in such county. In any county in which there  
23 is more than one newspaper having general circulation in that county,  
24 the Commission shall cause a copy of ~~such notice-the notice of the~~  
25 hearing to be published in as many newspapers having general  
26 circulation in the county as the Commission in its discretion determines  
27 may be necessary to assure that such notice is generally available  
28 throughout the county. The Commission shall prescribe the form and  
29 content of the ~~notices-notice of the hearing~~.

30 b. The Commission shall prescribe the procedures to be followed in  
31 such ~~meetings~~. ~~If the meeting-hearings is not conducted by the~~  
32 ~~Commission, detailed-Detailed~~ minutes of the ~~meeting-each hearing~~  
33 shall be kept ~~and shall be submitted, and,~~ along with any other  
34 written comments, ~~exhibits-exhibits~~, or documents presented at  
35 the ~~meeting, to the Commission for its consideration prior to final~~  
36 ~~action granting or denying the permit-hearing~~, shall be made a part  
37 of the record of decision on the application.

38 (4) ~~Not later than 60 days following notice of intent or, if a public hearing is~~  
39 ~~held, within 90 days following consideration of the matters and things~~  
40 ~~presented at such hearing, the Commission shall grant or deny any~~  
41 ~~application for issuance of a new permit or for renewal of an existing~~  
42 ~~permit. All permits or renewals issued by the Commission and all~~  
43 ~~decisions denying application for permit or renewal shall be in writing.~~

1           Any person, including the applicant, who believes that any aspect of a  
2           proposed permit decision is incorrect must raise all reasonably  
3           ascertainable issues and submit all supporting arguments and data not  
4           later than the close of the public comment period on the permit. The  
5           Department is not required to consider written or oral comment unless  
6           the comment is accompanied by the name and current mailing address  
7           of the person making the comment. Other than federal or State laws,  
8           regulations, or rules, any supporting materials that are submitted shall  
9           be included in the hearing record in full and shall not be incorporated by  
10           reference, unless the supporting materials are a part of the  
11           administrative record in the same proceeding. All permit decisions shall  
12           be in writing and shall include a concise written statement explaining, in  
13           light of timely comments received, the reasons the Commission issued  
14           or denied the permit.

15           (5) No permit issued pursuant to this subsection (c) shall be issued or  
16           renewed for a term exceeding five years.

17           (6) The Commission shall not act upon an application for a new  
18           nonmunicipal domestic wastewater discharge facility until it has  
19           received a written statement from each city and county government  
20           having jurisdiction over any part of the lands on which the proposed  
21           facility and its appurtenances are to be located which states whether the  
22           city or county has in effect a zoning or subdivision ordinance and, if  
23           such an ordinance is in effect, whether the proposed facility is consistent  
24           with the ordinance. The Commission shall not approve a permit  
25           application for any facility which a city or county has determined to be  
26           inconsistent with its zoning or subdivision ordinance unless it  
27           determines that the approval of such application has statewide  
28           significance and is in the best interest of the State. An applicant for a  
29           permit shall request that each city and county government having  
30           jurisdiction issue the statement required by this subdivision by mailing  
31           by certified mail, return receipt requested, a written request for such  
32           statement and a copy of the draft permit application to the clerk of the  
33           city or county. If a local government fails to mail the statement required  
34           by this subdivision, as evidenced by a postmark, within 15 days after  
35           receiving and signing for the certified mail, the Commission may  
36           proceed to consider the permit application notwithstanding this  
37           subdivision.

38           (d) Applications and Permits for Sewer Systems, Sewer System Extensions and  
39           Pretreatment Facilities, Nonrecurring Land Application of Waste, and for—Wastewater  
40           Treatment Facilities Not Discharging to the Surface Waters of the State.—State, and other  
41           Permits not Governed by subsection (c) of this section. —

42           (1) All applications for new permits and for renewals of existing permits  
43           other than permits governed by subsection (c) of this section for sewer

1 systems, sewer system extensions and for disposal systems, and for land  
2 application of waste, or treatment works which do not discharge to the surface  
3 waters of the State, and all permits or renewals and decisions denying any  
4 application for permit or renewal shall be in writing. The Commission  
5 shall act on a permit application as quickly as possible. The  
6 Commission may conduct any inquiry or investigation it considers  
7 necessary before acting on an application and may require an applicant  
8 to submit plans, specifications, and other information the Commission  
9 considers necessary to evaluate the application. If the Commission fails  
10 to act on an application for a permit, including a renewal of a permit,  
11 within 90 days after the applicant submits all information required by  
12 the Commission, the application is considered to be approved. Permits  
13 and renewals issued in approving such facilities pursuant to this  
14 subsection shall be effective until the date specified therein or until  
15 rescinded unless modified or revoked by the Commission. Local  
16 governmental units to whom pretreatment program authority has been  
17 delegated shall establish, maintain, and provide to the public, upon  
18 written request, a list of pretreatment applications received.

19 (2) An applicant for a permit under subsection (c) of this section or under  
20 this subsection to dispose of petroleum contaminated soil by land  
21 application shall give written notice that he intends to apply for such a  
22 permit to each city and county government having jurisdiction over any  
23 part of the land on which disposal is proposed to occur. The  
24 Commission shall not accept such a permit application unless it is  
25 accompanied by a copy of the notice and evidence that the notice was  
26 sent to each such government by certified mail, return receipt requested.  
27 The Commission may consider, in determining whether to issue the  
28 permit, the comments submitted by local governments.

29 ~~(d1)~~ (3) Each applicant under ~~subsections (e) or (d)~~ subsection (c) of this  
30 section or this subsection for a permit ~~(or the renewal thereof)~~ or renewal  
31 of an existing permit for the operation of a treatment works for a private  
32 multi-family or single family residential development, in which the  
33 owners of individual residential units are required to organize as a  
34 lawfully constituted and incorporated homeowners' association of a  
35 subdivision, condominium, planned unit development, or townhouse  
36 complex, shall be required to enter into an operational agreement with  
37 the Commission as a condition of any such permit granted. The  
38 agreement shall address, as necessary, construction, operation,  
39 maintenance, assurance of financial solvency, transfers of ownership  
40 and abandonment of the plant, systems, or works, and shall be modified  
41 as necessary to reflect any changed condition at the treatment plant or in  
42 the development. Where the Commission finds appropriate, it may  
43 require any other private residential subdivision, condominium, planned



1 unit development or townhouse complex which is served by a private  
2 treatment works and does not have a lawfully constituted and  
3 incorporated homeowners' association, and for which an applicant  
4 applies for a permit or the renewal thereof under subsections (c) or (d),  
5 to incorporate as a lawfully constituted homeowners' association, and  
6 after such incorporation, to enter into an operational agreement with the  
7 Commission and the applicant as a condition of any permit granted  
8 under subsections (c) or (d). The local government unit or units having  
9 jurisdiction over the development shall receive notice of the application  
10 within an established comment period and prior to final decision.

11 (e) ~~Administrative Notice and Review. — A permit applicant or permittee who is~~  
12 ~~dissatisfied with a decision of the Commission may commence a contested case by filing~~  
13 ~~a petition under G.S. 150B-23 within 30 days after the Commission notifies the applicant~~  
14 ~~or permittee of its decision. If the permit applicant or permittee does not file a petition~~  
15 ~~within the required time, the Commission's decision is final and is not subject to review.~~  
16 The provisions and requirements set forth in G.S. 143-215.5A also apply to public notice  
17 of a permit decision and administrative and judicial review of a permit decision under this  
18 section.

19 (f) Local Permit Programs for Sewer Extension. — Municipalities, counties, local  
20 boards or commissions, water and sewer authorities, or groups of municipalities and  
21 counties may establish and administer within their utility service areas their own general  
22 permit programs in lieu of State permit required in G.S. 143-215.1(a)(2), (3), and (8)  
23 above, for construction, operation, alteration, extension, change of proposed or existing  
24 sewer system, subject to the prior certification of the Commission. For purposes of this  
25 subsection, the service area of a municipality shall include only that area within the  
26 corporate limits of the municipality and that area outside a municipality in its  
27 extraterritorial jurisdiction where sewer service is already being provided by the  
28 municipality to the permit applicant or connection to the municipal sewer system is  
29 immediately available to the applicant; the service areas of counties and the other entities  
30 or groups shall include only those areas where sewer service is already being provided to  
31 the applicant by the permitting authority or connection to the permitting authority's  
32 system is immediately available. No later than the 180th day after the receipt of a  
33 program and statement submitted by any local government, commission, authority, or  
34 board the Commission shall certify any local program that:

- 35 (1) Provides by ordinance or local law for requirements compatible with  
36 those imposed by this Part and the rules implementing this Part;
- 37 (2) Provides that the Department receives notice and a copy of each  
38 application for a permit and that it receives copies of approved permits  
39 and plans upon request by the Commission;
- 40 (3) Provides that plans and specifications for all construction, extensions,  
41 alterations, and changes be prepared by or under the direct supervision  
42 of an engineer licensed to practice in this State;

- 1 (4) Provides for the adequate enforcement of the program requirements by  
2 appropriate administrative and judicial process;
- 3 (5) Provides for the adequate administrative organization, engineering staff,  
4 financial and other resources necessary to effectively carry out its plan  
5 review program;
- 6 (6) Provides that the system is capable of interconnection at an appropriate  
7 time with an expanding municipal, county, or regional system;
- 8 (7) Provides for the adequate arrangement for the continued operation,  
9 service, and maintenance of the sewer system; and
- 10 (8) Is approved by the Commission as adequate to meet the requirements of  
11 this Part and the rules implementing this Part.

12 The Commission may deny, suspend, or revoke certification of a local program upon  
13 a finding that a violation of the provisions in subsection (f) of this section has  
14 occurred. A denial, suspension, or revocation of a certification of a local program shall be  
15 made only after notice and a public hearing. If the failure of a local program to carry out  
16 this subsection creates an imminent hazard, the Commission may summarily revoke the  
17 certification of the local program. Chapter 150B of the General Statutes does not apply to  
18 proceedings under this subsection.

19 Notwithstanding any other provision of this subsection, if the Commission determines  
20 that a sewer system, treatment works, or disposal system is operating in violation of the  
21 provisions of this Article and that the appropriate local authorities have not acted to  
22 enforce those provisions, the Commission may, after written notice to the appropriate  
23 local government, take enforcement action in accordance with the provisions of this  
24 Article.

25 (g) Any person who is required to hold a permit under this section shall submit to  
26 the Department a written description of his current and projected plans to reduce the  
27 discharge of waste and pollutants under such permit by source reduction or recycling.  
28 The written description shall accompany the payment of the annual permit fee. The  
29 written description shall also accompany any application for a new permit, or for  
30 modification of an existing permit, under this section. The written description required by  
31 this subsection shall not be considered part of a permit application and shall not serve as  
32 the basis for the denial of a permit or permit modification."

33 Sec. 2. G.S. 143-215.2(b) reads as rewritten:

34 ~~"(b) Procedure to Contest Certain Orders. — A special order that is issued without~~  
35 ~~the consent of the person affected may be contested by that person by filing a petition for~~  
36 ~~a contested case under G.S. 150B-23 within 30 days after the order is issued. If the~~  
37 ~~person affected does not file a petition within the required time, the order is final and is~~  
38 ~~not subject to review. Review. — The provisions and requirements set forth in G.S. 143-~~  
39 ~~215.5A also apply to administrative and judicial review of an order issued under this~~  
40 ~~section."~~

41 Sec. 3. G.S. 143-215.5 is repealed.

42 Sec. 4. Article 21 of Chapter 143 of the General Statutes is amended by  
43 adding a new section to read:

1 "§ 143-215.5A. Public notice of water quality permits; administrative and judicial  
2 review of permit decisions.

3 (a) Public Notice of Permit Decision. – The Department shall publish notice of a  
4 permit decision for permits issued pursuant to G.S. 143-215.1(c) by publishing the notice  
5 in a newspaper having general circulation in the area potentially affected by the decision  
6 and by either publishing the notice in the North Carolina Register or by mailing a copy of  
7 the notice to each person who submitted comment on the application in a timely manner.

8 (1) At a minimum, the notice shall comply with all of the following  
9 requirements:

10 a. Identify the application, including the name of the applicant and  
11 the date the application was submitted.

12 b. Clearly identify the location of the activity, including each  
13 county in which the activity is located.

14 c. State the decision on the application.

15 d. State the last date on which a contested case petition may be filed  
16 in the Office of Administrative Hearings.

17 e. State the name and address of the agency that made the decision.

18 (2) The Department shall, to the extent practicable, mail a copy of the  
19 notice described in subdivision (1) of this subsection to persons who  
20 provide the Department with a self-addressed envelope with sufficient  
21 postage affixed.

22 (3) If the Department has not given notice in accordance with this section  
23 within 20 days after it makes the decision, the applicant may give the  
24 required notice by publishing the notice in a newspaper having general  
25 circulation in the area that includes the facility that is the subject of the  
26 permit, and also by submitting the notice for publication in the North  
27 Carolina Register for publication.

28 (4) Notice of a permit decision given in accordance with this subsection  
29 satisfies G.S. 150B-23(f) and initiates the times for seeking  
30 administrative and judicial review under this section.

31 (b) Initiating a Contested Case. – Any person aggrieved who is entitled to initiate a  
32 contested case or judicial review under subsection (c) of this section may contest a permit  
33 decision by filing a petition for a contested case under G.S. 150B-23 within 30 days after  
34 notice of the decision is published in the North Carolina Register. Any person who is  
35 entitled to initiate a contested case or judicial review under subsection (c) of this section  
36 is precluded from contesting a permit decision by filing a petition for a contested case  
37 under Article 3 of Chapter 150B of the General Statutes, and is also precluded from  
38 contesting a permit decision by filing a petition for judicial review under Article 4 of  
39 Chapter 150B of the General Statutes.

40 (c) Persons Entitled to Initiate a Contested Case or Judicial Review. – Only a  
41 person aggrieved who meets at least one of the following requirements may appeal a  
42 permit decision under subsection (b) of this section:

- 1           (1) Submits to the Commission in a timely manner, either individually or  
2 jointly with other persons, written comment containing a specific  
3 recommendation on a permit application or a draft permit.  
4           (2) Presents oral comment at a public hearing on a permit application that  
5 makes a specific recommendation on the permit application or draft  
6 permit, if a public hearing is conducted by the Commission.  
7           (3) Makes a good cause showing in any petition for a contested case to  
8 challenge a permit under G.S. 150B-23 and subsection (e) of this section  
9 that the comment was not submitted or presented because there was no  
10 reason to have anticipated being adversely affected by the permit  
11 decision. A person who attempts to make this showing of good cause  
12 shall, at a minimum, show why he or she did not become aware, and had  
13 no reasonable way of becoming aware, of the filing of the application  
14 through the publication of the notice of the permit.

15           (d) Intervention in Contested Case. – When a person is entitled to initiate a  
16 contested case or judicial review pursuant to subsection (c) of this section, the assigned  
17 administrative law judge shall by order make the permit holder or applicant a party to the  
18 contested case proceeding. Any person who is entitled to initiate a contested case or  
19 judicial review, but who does not initiate a proceeding for a contested case, may petition  
20 to intervene in any contested case on the decision.

21           (e) Scope of Issues to be Considered on Appeal. – In a contested case, the  
22 appellant may not contest an issue that was not raised before the Commission, unless the  
23 administrative law judge assigned to the contested case makes an exception for good  
24 cause shown. The assigned administrative law judge may allow a party to be heard on a  
25 new issue only if the administrative law judge finds that the issue could not reasonably  
26 have been raised while the contested decision was pending before the Commission. If the  
27 contested case concerns the approval of an application to renew a permit, the person  
28 entitled to initiate a contested case or judicial review pursuant to subsection (c) of this  
29 section may contest only a difference between the renewed permit and the former permit.

30           (f) Stay During Appeal. – If a permit holder or a person entitled to initiate a  
31 contested case or judicial review pursuant to subsection (b) of this section files a petition  
32 for a contested case proceeding to challenge a permit decision, a stay under G.S. 1A-1,  
33 Rule 65, may be sought if the party seeking the stay can establish that all of the  
34 requirements of Rule 65 are met.

35           (g) Procedure in Contested Case. – Any contested case proceeding involving  
36 permits issued under this Article shall be governed by the following procedures.

- 37           (1) In any contested case proceeding regarding a permit decision, the  
38 provisions of Article 3 of Chapter 150B of the General Statutes shall  
39 apply, except to the extent otherwise provided herein, and except that no  
40 formal evidentiary hearing shall be held and the recommended decision  
41 shall be made on the basis of the Department's record, along with any  
42 exceptions to such record and arguments concerning such record raised  
43 by parties to the contested case, unless:

- 1           a.     A party in its initial filing with the Office of Administrative  
2                 Hearings, requests a formal evidentiary hearing; and  
3           b.     The administrative law judge assigned to the case determines, in  
4                 a timely manner, that the contested case presents genuine issues  
5                 of material fact.
- 6       (2)   In any contested case proceeding regarding a permit decision, unless  
7                 altered by agreement of all the parties:  
8           a.     A petition for contested case shall be filed with the Office of  
9                 Administrative Hearings within 30 days after notice of a permit  
10                decision is given.  
11           b.     Any responsive pleading or motion for intervention shall be filed  
12                 with the Office of Administrative Hearings within 30 days after  
13                 the petition for contested case is filed.  
14           c.     A determination that a formal evidentiary hearing will be held  
15                 shall be made within 75 days after the petition for contested case  
16                 is filed.  
17           d.     If a formal evidentiary hearing is determined to be necessary and  
18                 properly requested, such hearing shall be concluded and a  
19                 recommended decision proposed and served within 180 days  
20                 after the petition for contested case is filed.  
21           e.     If no formal evidentiary hearing is determined to be necessary or  
22                 properly requested, a recommendation shall be prepared and  
23                 served within 120 days after the petition for contested case is  
24                 filed.
- 25       (3)   Pursuant to Article 3 of Chapter 150B of the General Statutes, the  
26                 assigned administrative law judge may:  
27           a.     Approve, reverse, or modify the decision of the Commission to  
28                 grant or deny the permit.  
29           b.     Issue an interlocutory order requiring the Department or  
30                 Commission to act pursuant to any of the time limits set forth in  
31                 G.S. 143-215.1(c).
- 32       (4)   If a recommended decision is not prepared and served in the time  
33                 provided in this subsection, the petitioner may elect to treat the petition  
34                 as denied and may request a final agency decision based solely on the  
35                 original permit decision and any additional materials filed with the  
36                 Office of Administrative Hearings concerning such decision.
- 37       (h)   Final Decision. – Notwithstanding the provisions of G.S. 150B-44, if the  
38                 Commission fails to make a final decision within 45 days of its receipt of the  
39                 recommended decision and record from the Office of Administrative Hearings, any party  
40                 to the proceedings before the Office of Administrative Hearings may seek a judicial  
41                 review as provided in subsection (i) of this section. If a permit applicant, permit holder,  
42                 or person who is entitled to initiate a contested case or judicial review pursuant to  
43                 subsection (c) of this section does not file a petition for a contested case within the

1 required time, the decision by the Commission is final and is not subject to administrative  
2 or judicial review.

3 (i) Judicial Review. – Except as provided in this subsection, Article 4 of Chapter  
4 150B of the General Statutes applies to judicial review of a final decision in a contested  
5 case and of a final decision for which the administrative remedy of a contested case is not  
6 available. Any person who seeks judicial review of a final decision in a contested case  
7 must file a petition for review within 30 days after the parties to the case are served with  
8 a written copy of the decision. Any person aggrieved by a final decision for which the  
9 administrative remedy of a contested case is not available may obtain judicial review of  
10 the decision by filing a petition for review within 30 days after the final decision is  
11 issued. A person aggrieved by a final decision for which the administrative remedy of a  
12 contested case is not available may obtain judicial review of the decision by filing a  
13 petition in accordance with Article 4 of Chapter 150B of the General Statutes. A petition  
14 for judicial review of a permit decision shall be dismissed unless the petitioner is either:

15 (1) A person entitled to initiate a contested case or judicial review pursuant  
16 to subsection (c) of this section who either filed a contested case petition  
17 on the decision or was a party to a contested case on the decision.

18 (2) A person aggrieved only as a result of the final decision in a contested  
19 case on the decision.

20 (j) Bond on Appeal. – If a case that concerns a decision of the Commission is  
21 appealed from the superior court to the North Carolina Court of Appeals, no bond shall  
22 be required of the Commission."

23 Sec. 5. G.S. 143-215.108(e) reads as rewritten:

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

29 (e) A permit applicant, a permittee, or a person who meets the requirements of  
30 G.S. 143-215.108A may commence a contested case by filing a petition under G.S.  
31 150B-23 within 30 days after the Commission notifies the applicant or permittee of its  
32 decision. If the permit applicant, permittee, or a person who meets the requirements of  
33 G.S. 143-215.108A does not file a petition within the required time, the Commission's  
34 decision on the application is final and is not subject to review."

35 Sec. 6. Article 21B of Chapter 143 of the General Statutes is amended by  
36 adding a new section to read:

37 "**§ 143-215.108A. Public notice of air quality permits; administrative and judicial**  
38 **review of permit decisions.**

39 (a) Public Notice of Permit Decision. – The Department shall publish notice of a  
40 permit decision for permits issued pursuant to G.S. 143-215.108 by publishing the notice  
41 in a newspaper having general circulation in the area potentially affected by the decision  
42 and by either publishing the notice in the North Carolina Register or by mailing a copy of  
43 the notice to each person who submitted comment on the application in a timely manner.

- 1           (1) At a minimum, the notice shall comply with all of the following  
2 requirements:
- 3           a. Identify the application, including the name of the applicant and  
4 the date the application was submitted.
- 5           b. Clearly identify the location of the activity, including each  
6 county in which the activity is located.
- 7           c. State the decision on the application.
- 8           d. State the last date on which a contested case petition may be filed  
9 in the Office of Administrative Hearings.
- 10          e. State the name and address of the agency that made the decision.
- 11          (2) The Department shall, to the extent practicable, mail a copy of the  
12 notice described in subdivision (1) of this subsection to persons who  
13 provide the Department with a self-addressed envelope with sufficient  
14 postage affixed.
- 15          (3) If the Department has not given notice in accordance with this section  
16 within 20 days after it makes the decision, the applicant may give the  
17 required notice by publishing the notice in a newspaper having general  
18 circulation in the area that includes the facility that is the subject of  
19 permit, and also by submitting the notice for publication in the North  
20 Carolina Register for publication.
- 21          (4) Notice of a permit decision given in accordance with this subsection  
22 satisfies G.S. 150B-23(f) and initiates the times for seeking  
23 administrative and judicial review under this section.
- 24          (b) Initiating a Contested Case. – Any person aggrieved who is entitled to initiate a  
25 contested case or judicial review under subsection (c) of this section may contest a permit  
26 decision by filing a petition for a contested case under G.S. 150B-23 within 30 days after  
27 notice of the decision is published in the North Carolina Register. Any person who is  
28 entitled to initiate a contested case or judicial review under subsection (c) of this section  
29 is precluded from contesting a permit decision by filing a petition for a contested case  
30 under Article 3 of Chapter 150B of the General Statutes, and is also precluded from  
31 contesting a permit decision by filing a petition for judicial review under Article 4 of  
32 Chapter 150B of the General Statutes.
- 33          (c) Persons Entitled to Initiate a Contested Case or Judicial Review. – Only a  
34 person aggrieved who meets at least one of the following requirements may appeal a  
35 permit decision under subsection (b) of this section:
- 36           (1) Submits to the Commission in a timely manner, either individually or  
37 jointly with other persons, written comment containing a specific  
38 recommendation on a permit application or a draft permit.
- 39           (2) Presents oral comment at a public hearing on a permit application that  
40 makes a specific recommendation on the permit application or draft  
41 permit, if a public hearing is conducted by the Commission.
- 42           (3) Makes a good cause showing in any petition for a contested case to  
43 challenge a permit under G.S. 150B-23 and subsection (e) of this section

1           that the comment was not submitted or presented because there was no  
2           reason to have anticipated being adversely affected by the permit  
3           decision. A person who attempts to make this showing of good cause  
4           shall, at a minimum, show why he or she did not become aware, and had  
5           no reasonable way of becoming aware, of the filing of the application  
6           through the publication of the notice of the permit.

7           (d) Intervention in Contested Case. – When a person is entitled to initiate a  
8           contested case or judicial review pursuant to subsection (c) of this section, the assigned  
9           administrative law judge shall by order make the permit holder or applicant a party to the  
10           contested case proceeding. Any person who is entitled to initiate a contested case or  
11           judicial review, but who does not initiate a proceeding for a contested case, may petition  
12           to intervene in any contested case on the decision.

13           (e) Scope of Issues to Be Considered on Appeal. – In a contested case, the  
14           appellant may not contest an issue that was not raised before the Commission, unless the  
15           administrative law judge assigned to the contested case makes an exception for good  
16           cause shown. The assigned administrative law judge may allow a party to be heard on a  
17           new issue only if the administrative law judge finds that the issue could not reasonably  
18           have been raised while the contested decision was pending before the Commission. If the  
19           contested case concerns the approval of an application to renew a permit, the person  
20           entitled to initiate a contested case or judicial review pursuant to subsection (c) of this  
21           section may contest only a difference between the renewed permit and the former permit.

22           (f) Stay During Appeal. – If a permit holder or a person entitled to initiate a  
23           contested case or judicial review pursuant to subsection (b) of this section files a petition  
24           for a contested case proceeding to challenge a permit decision, a stay under G.S. 1A-1,  
25           Rule 65, may be sought if the party seeking the stay can establish that all of the  
26           requirements of Rule 65 are met.

27           (g) Procedure in Contested Case. – Any contested case proceeding involving  
28           permits issued under this Article shall be governed by the following procedures.

29           (1) In any contested case proceeding regarding a permit decision, the  
30           provisions of Article 3 of Chapter 150B of the General Statutes shall  
31           apply, except to the extent otherwise provided herein, and except that no  
32           formal evidentiary hearing shall be held and the recommended decision  
33           shall be made on the basis of the Department's record, along with any  
34           exceptions to such record and arguments concerning such record raised  
35           by parties to the contested case, unless:

36           a. A party in its initial filing with the Office of Administrative  
37           Hearings, requests a formal evidentiary hearing; and

38           b. The administrative law judge assigned to the case determines, in  
39           a timely manner, that the contested case presents genuine issues  
40           of material fact.

41           (2) In any contested case proceeding regarding a permit decision, unless  
42           altered by agreement of all the parties:



- 1           a.     A petition for contested case shall be filed with the Office of  
2           Administrative Hearings within 30 days after notice of a permit  
3           decision is given.
- 4           b.     Any responsive pleading or motion for intervention shall be filed  
5           with the Office of Administrative Hearings within 30 days after  
6           the petition for contested case is filed.
- 7           c.     A determination that a formal evidentiary hearing will be held  
8           shall be made within 75 days after the petition for contested case  
9           is filed.
- 10          d.     If a formal evidentiary hearing is determined to be necessary and  
11          properly requested, such hearing shall be concluded and a  
12          recommended decision proposed and served within 180 days  
13          after the petition for contested case is filed.
- 14          e.     If no formal evidentiary hearing is determined to be necessary or  
15          properly requested, a recommendation shall be prepared and  
16          served within 120 days after the petition for contested case is  
17          filed.

18       (3)   Pursuant to Article 3 of Chapter 150B of the General Statutes, the  
19       assigned administrative law judge may:

- 20           a.     Approve, reverse, or modify the decision of the Commission to  
21           grant or deny the permit.
- 22           b.     Issue an interlocutory order requiring the Department or  
23           Commission to act pursuant to any of the same time limits as  
24           those set forth in G.S. 143-215.1(c) for permits for facilities  
25           discharging to surface waters and facilities applying waste to the  
26           land surface.

27       (4)   If a recommended decision is not prepared and served in the time  
28       provided in this subsection, the petitioner may elect to treat the petition  
29       as denied and may request a final agency decision based solely on the  
30       original permit decision and any additional materials filed with the  
31       Office of Administrative Hearings concerning such decision.

32       (h)   Final Decision. – Notwithstanding the provisions of G.S. 150B-44, if the  
33       Commission fails to make a final decision within 45 days of its receipt of the  
34       recommended decision and record from the Office of Administrative Hearings, any party  
35       to the proceedings before the Office of Administrative Hearings may seek a judicial  
36       review as provided in subsection (i) of this section. If a permit applicant, permit holder,  
37       or person who is entitled to initiate a contested case or judicial review pursuant to  
38       subsection (c) of this section does not file a petition for a contested case within the  
39       required time, the decision by the Commission is final and is not subject to administrative  
40       or judicial review.

41       (i)   Judicial Review. – Except as provided in this subsection, Article 4 of Chapter  
42       150B of the General Statutes applies to judicial review of a final decision in a contested  
43       case and of a final decision for which the administrative remedy of a contested case is not

1 available. Any person who seeks judicial review of a final decision in a contested case  
2 must file a petition for review within 30 days after the parties to the case are served with  
3 a written copy of the decision. Any person aggrieved by a final decision for which the  
4 administrative remedy of a contested case is not available may obtain judicial review of  
5 the decision by filing a petition for review within 30 days after the final decision is  
6 issued. A person aggrieved by a final decision for which the administrative remedy of a  
7 contested case is not available may obtain judicial review of the decision by filing a  
8 petition in accordance with Article 4 of Chapter 150B of the General Statutes. A petition  
9 for judicial review of a permit decision shall be dismissed unless the petitioner is either:

10 (1) A person entitled to initiate a contested case or judicial review pursuant  
11 to subsection (c) of this section who either filed a contested case petition  
12 on the decision or was a party to a contested case on the decision.

13 (2) A person aggrieved only as a result of the final decision in a contested  
14 case on the decision.

15 (j) Bond on Appeal. – If a case that concerns a decision of the Commission is  
16 appealed from the superior court to the North Carolina Court of Appeals, no bond shall  
17 be required of the Commission."

18 Sec. 7. Article 9 of Chapter 130A of the General Statutes is amended by  
19 adding a new section to read:

20 **"§ 130A-295A. Public notice of hazardous waste facility permits; administrative**  
21 **and judicial review of permit decisions.**

22 (a) Public Notice of Permit Decision. – The Department shall publish notice of a  
23 permit decision for permits issued pursuant to G.S. 130A-294(c) by publishing the notice  
24 in a newspaper having general circulation in the area potentially affected by the decision  
25 and by either publishing the notice in the North Carolina Register or by mailing a copy of  
26 the notice to each person who submitted comment on the application in a timely manner.

27 (1) At a minimum, the notice shall comply with all of the following  
28 requirements:

29 a. Identify the application, including the name of the applicant and  
30 the date the application was submitted.

31 b. Clearly identify the location of the activity, including each  
32 county in which the activity is located.

33 c. State the decision on the application.

34 d. State the last date on which a contested case petition may be filed  
35 in the Office of Administrative Hearings.

36 e. State the name and address of the agency that made the decision.

37 (2) The Department shall, to the extent practicable, mail a copy of the  
38 notice described in subdivision (1) of this subsection to persons who  
39 provide the Department with a self-addressed envelope with sufficient  
40 postage affixed.

41 (3) If the Department has not given notice in accordance with this section  
42 within 20 days after it makes the decision, the applicant may give the  
43 required notice by publishing the notice in a newspaper having general

1           circulation in the area that includes the facility that is the subject of  
2           permit, and also by submitting the notice for publication in the North  
3           Carolina Register for publication.

4           (4) Notice of a permit decision given in accordance with this subsection  
5           satisfies G.S. 150B-23(f) and initiates the times for seeking  
6           administrative and judicial review under this section.

7           (b) Initiating a Contested Case. – Any person aggrieved who is entitled to initiate a  
8           contested case or judicial review under subsection (c) of this section may contest a permit  
9           decision by filing a petition for a contested case under G.S. 150B-23 within 30 days after  
10           notice of the decision is published in the North Carolina Register. Any person who is  
11           entitled to initiate a contested case or judicial review under subsection (c) of this section  
12           is precluded from contesting a permit decision by filing a petition for a contested case  
13           under Article 3 of Chapter 150B of the General Statutes, and is also precluded from  
14           contesting a permit decision by filing a petition for judicial review under Article 4 of  
15           Chapter 150B of the General Statutes.

16           (c) Persons Entitled to Initiate a Contested Case or Judicial Review. – Only a  
17           person aggrieved who meets at least one of the following requirements may appeal a  
18           permit decision under subsection (b) of this section:

19           (1) Submits to the Commission in a timely manner, either individually or  
20           jointly with other persons, written comment containing a specific  
21           recommendation on a permit application or a draft permit.

22           (2) Presents oral comment at a public hearing on a permit application that  
23           makes a specific recommendation on the permit application or draft  
24           permit, if a public hearing is conducted by the Commission.

25           (3) Makes a good cause showing in any petition for a contested case to  
26           challenge a permit under G.S. 150B-23 and subsection (e) of this section  
27           that the comment was not submitted or presented because there was no  
28           reason to have anticipated being adversely affected by the permit  
29           decision. A person who attempts to make this showing of good cause  
30           shall, at a minimum, show why he or she did not become aware, and had  
31           no reasonable way of becoming aware, of the filing of the application  
32           through the publication of the notice of the permit.

33           (d) Intervention in Contested Case. – When a person is entitled to initiate a  
34           contested case or judicial review pursuant to subsection (c) of this section, the assigned  
35           administrative law judge shall by order make the permit holder or applicant a party to the  
36           contested case proceeding. Any person who is entitled to initiate a contested case or  
37           judicial review, but who does not initiate a proceeding for a contested case, may petition  
38           to intervene in any contested case on the decision.

39           (e) Scope of Issues to Be Considered on Appeal. – In a contested case, the  
40           appellant may not contest an issue that was not raised before the Commission, unless the  
41           administrative law judge assigned to the contested case makes an exception for good  
42           cause shown. The assigned administrative law judge may allow a party to be heard on a  
43           new issue only if the administrative law judge finds that the issue could not reasonably

1 have been raised while the contested decision was pending before the Commission. If the  
2 contested case concerns the approval of an application to renew a permit, the person  
3 entitled to initiate a contested case or judicial review pursuant to subsection (c) of this  
4 section may contest only a difference between the renewed permit and the former permit.

5 (f) Stay During Appeal. – If a permit holder or a person entitled to initiate a  
6 contested case or judicial review pursuant to subsection (b) of this section files a petition  
7 for a contested case proceeding to challenge a permit decision, a stay under G.S. 1A-1,  
8 Rule 65, may be sought if the party seeking the stay can establish that all of the  
9 requirements of Rule 65 are met.

10 (g) Procedure in Contested Case. – Any contested case proceeding involving  
11 permits issued under G.S. 130A-294(c) shall be governed by the following procedures:

12 (1) In any contested case proceeding regarding a permit decision, the  
13 provisions of Article 3 of Chapter 150B of the General Statutes shall  
14 apply, except to the extent otherwise provided herein, and except that no  
15 formal evidentiary hearing shall be held and the recommended decision  
16 shall be made on the basis of the Department's record, along with any  
17 exceptions to such record and arguments concerning such record raised  
18 by parties to the contested case, unless:

19 a. A party in its initial filing with the Office of Administrative  
20 Hearings requests a formal evidentiary hearing; and

21 b. The administrative law judge assigned to the case determines, in  
22 a timely manner, that the contested case presents genuine issues  
23 of material fact.

24 (2) In any contested case proceeding regarding a permit decision, unless  
25 altered by agreement of all the parties:

26 a. A petition for contested case shall be filed with the Office of  
27 Administrative Hearings within 30 days after notice of a permit  
28 decision is given.

29 b. Any responsive pleading or motion for intervention shall be filed  
30 with the Office of Administrative Hearings within 30 days after  
31 the petition for contested case is filed.

32 c. A determination that a formal evidentiary hearing will be held  
33 shall be made within 75 days after the petition for contested case  
34 is filed.

35 d. If a formal evidentiary hearing is determined to be necessary and  
36 properly requested, such hearing shall be concluded and a  
37 recommended decision proposed and served within 180 days  
38 after the petition for contested case is filed.

39 e. If no formal evidentiary hearing is determined to be necessary or  
40 properly requested, a recommendation shall be prepared and  
41 served within 120 days after the petition for contested case is  
42 filed.

1           (3) Pursuant to Article 3 of Chapter 150B of the General Statutes, the  
2 assigned administrative law judge may:

3           a. Approve, reverse, or modify the decision of the Commission to  
4 grant or deny the permit.

5           b. Issue an interlocutory order requiring the Department or  
6 Commission to act pursuant to any of the same time limits as  
7 those set forth in G.S. 143-215.1(c) for permits for facilities  
8 discharging to surface waters and facilities applying waste to the  
9 land surface.

10          (4) If a recommended decision is not prepared and served in the time  
11 provided in this subsection, the petitioner may elect to treat the petition  
12 as denied and may request a final agency decision based solely on the  
13 original permit decision and any additional materials filed with the  
14 Office of Administrative Hearings concerning such decision.

15          (h) Final Decision. – Notwithstanding the provisions of G.S. 150B-44, if the  
16 Commission fails to make a final decision within 45 days of its receipt of the  
17 recommended decision and record from the Office of Administrative Hearings, any party  
18 to the proceedings before the Office of Administrative Hearings may seek a judicial  
19 review as provided in subsection (i) of this section. If a permit applicant, permit holder,  
20 or person who is entitled to initiate a contested case or judicial review pursuant to  
21 subsection (c) of this section does not file a petition for a contested case within the  
22 required time, the decision by the Commission is final and is not subject to administrative  
23 or judicial review.

24          (i) Judicial Review. – Except as provided in this subsection, Article 4 of Chapter  
25 150B of the General Statutes applies to judicial review of a final decision in a contested  
26 case and of a final decision for which the administrative remedy of a contested case is not  
27 available. Any person who seeks judicial review of a final decision in a contested case  
28 must file a petition for review within 30 days after the parties to the case are served with  
29 a written copy of the decision. Any person aggrieved by a final decision for which the  
30 administrative remedy of a contested case is not available may obtain judicial review of  
31 the decision by filing a petition for review within 30 days after the final decision is  
32 issued. A person aggrieved by a final decision for which the administrative remedy of a  
33 contested case is not available may obtain judicial review of the decision by filing a  
34 petition in accordance with Article 4 of Chapter 150B of the General Statutes. A petition  
35 for judicial review of a permit decision shall be dismissed unless the petitioner is either:

36           (1) A person entitled to initiate a contested case or judicial review pursuant  
37 to subsection (c) of this section who either filed a contested case petition  
38 on the decision or was a party to a contested case on the decision.

39           (2) A person aggrieved only as a result of the final decision in a contested  
40 case on the decision.

41          (j) Bond on Appeal. – If a case that concerns a decision of the Commission is  
42 appealed from the superior court to the North Carolina Court of Appeals, no bond shall  
43 be required of the Commission."

1           Sec. 8. Article 7 of Chapter 74 of the General Statutes is amended by adding a  
2 new section to read:

3 **"§ 74-52A. Public notice of mining permits; administrative and judicial review of**  
4 **permit decisions.**

5       (a) Public Notice of Permit Decision. – The Department shall publish notice of a  
6 permit decision for permits issued pursuant to G.S. 74-51 or G.S. 74-52 by publishing the  
7 notice in a newspaper having general circulation in the area potentially affected by the  
8 decision and by either publishing the notice in the North Carolina Register or by mailing  
9 a copy of the notice to each person who submitted comment on the application in a timely  
10 manner.

11           (1) At a minimum, the notice shall comply with all of the following  
12 requirements:

13           a. Identify the application, including the name of the applicant and  
14 the date the application was submitted.

15           b. Clearly identify the location of the activity, including each  
16 county in which the activity is located.

17           c. State the decision on the application.

18           d. State the last date on which a contested case petition may be filed  
19 in the Office of Administrative Hearings.

20           e. State the name and address of the agency that made the decision.

21           (2) The Department shall, to the extent practicable, mail a copy of the  
22 notice described in subdivision (1) of this subsection to persons who  
23 provide the Department with a self-addressed envelope with sufficient  
24 postage affixed.

25           (3) If the Department has not given notice in accordance with this section  
26 within 20 days after it makes the decision, the applicant may give the  
27 required notice by publishing the notice in a newspaper having general  
28 circulation in the area that includes the facility that is the subject of  
29 permit, and also by submitting the notice for publication in the North  
30 Carolina Register for publication.

31           (4) Notice of a permit decision given in accordance with this subsection  
32 satisfies G.S. 150B-23(f) and initiates the times for seeking  
33 administrative and judicial review under this section.

34       (b) Initiating a Contested Case. – Any person aggrieved who is entitled to initiate a  
35 contested case or judicial review under subsection (c) of this section may contest a permit  
36 decision by filing a petition for a contested case under G.S. 150B-23 within 30 days after  
37 notice of the decision is published in the North Carolina Register. Any person who is  
38 entitled to initiate a contested case or judicial review under subsection (c) of this section  
39 is precluded from contesting a permit decision by filing a petition for a contested case  
40 under Article 3 of Chapter 150B of the General Statutes, and is also precluded from  
41 contesting a permit decision by filing a petition for judicial review under Article 4 of  
42 Chapter 150B of the General Statutes.

1       (c) Persons Entitled to Initiate a Contested Case or Judicial Review. – Only a  
2 person aggrieved who meets at least one of the following requirements may appeal a  
3 permit decision under subsection (b) of this section:

4           (1) Submits to the Commission in a timely manner, either individually or  
5 jointly with other persons, written comment containing a specific  
6 recommendation on a permit application or a draft permit.

7           (2) Presents oral comment at a public hearing on a permit application that  
8 makes a specific recommendation on the permit application or draft  
9 permit, if a public hearing is conducted by the Commission.

10          (3) Makes a good cause showing in any petition for a contested case to  
11 challenge a permit under G.S. 150B-23 and subsection (e) of this section  
12 that the comment was not submitted or presented because there was no  
13 reason to have anticipated being adversely affected by the permit  
14 decision. A person who attempts to make this showing of good cause  
15 shall, at a minimum, show why he or she did not become aware, and had  
16 no reasonable way of becoming aware, of the filing of the application  
17 through the publication of the notice of the permit.

18       (d) Intervention in Contested Case. – When a person is entitled to initiate a  
19 contested case or judicial review pursuant to subsection (c) of this section, the assigned  
20 administrative law judge shall by order make the permit holder or applicant a party to the  
21 contested case proceeding. Any person who is entitled to initiate a contested case or  
22 judicial review, but who does not initiate a proceeding for a contested case, may petition  
23 to intervene in any contested case on the decision.

24       (e) Scope of Issues to Be Considered on Appeal. – In a contested case, the  
25 appellant may not contest an issue that was not raised before the Commission, unless the  
26 administrative law judge assigned to the contested case makes an exception for good  
27 cause shown. The assigned administrative law judge may allow a party to be heard on a  
28 new issue only if the administrative law judge finds that the issue could not reasonably  
29 have been raised while the contested decision was pending before the Commission. If the  
30 contested case concerns the approval of an application to renew a permit, the person  
31 entitled to initiate a contested case or judicial review pursuant to subsection (c) of this  
32 section may contest only a difference between the renewed permit and the former permit.

33       (f) Stay During Appeal. – If a permit holder or a person entitled to initiate a  
34 contested case or judicial review pursuant to subsection (b) of this section files a petition  
35 for a contested case proceeding to challenge a permit decision, a stay under G.S. 1A-1,  
36 Rule 65, may be sought if the party seeking the stay can establish that all of the  
37 requirements of Rule 65 are met.

38       (g) Procedure in Contested Case. – Any contested case proceeding involving  
39 permits issued under this Article shall be governed by the following procedures.

40           (1) In any contested case proceeding regarding a permit decision, the  
41 provisions of Article 3 of Chapter 150B of the General Statutes shall  
42 apply, except to the extent otherwise provided herein, and except that no  
43 formal evidentiary hearing shall be held and the recommended decision

1 shall be made on the basis of the Department's record, along with any  
2 exceptions to such record and arguments concerning such record raised  
3 by parties to the contested case, unless:

4 a. A party in its initial filing with the Office of Administrative  
5 Hearings requests a formal evidentiary hearing; and

6 b. The administrative law judge assigned to the case determines, in  
7 a timely manner, that the contested case presents genuine issues  
8 of material fact.

9 (2) In any contested case proceeding regarding a permit decision, unless  
10 altered by agreement of all the parties:

11 a. A petition for contested case shall be filed with the Office of  
12 Administrative Hearings within 30 days after notice of a permit  
13 decision is given.

14 b. Any responsive pleading or motion for intervention shall be filed  
15 with the Office of Administrative Hearings within 30 days after  
16 the petition for contested case is filed.

17 c. A determination that a formal evidentiary hearing will be held  
18 shall be made within 75 days after the petition for contested case  
19 is filed.

20 d. If a formal evidentiary hearing is determined to be necessary and  
21 properly requested, such hearing shall be concluded and a  
22 recommended decision proposed and served within 180 days  
23 after the petition for contested case is filed.

24 e. If no formal evidentiary hearing is determined to be necessary or  
25 properly requested, a recommendation shall be prepared and  
26 served within 120 days after the petition for contested case is  
27 filed.

28 (3) Pursuant to Article 3 of Chapter 150B of the General Statutes, the  
29 assigned administrative law judge may:

30 a. Approve, reverse, or modify the decision of the Commission to  
31 grant or deny the permit.

32 b. Issue an interlocutory order requiring the Department or  
33 Commission to act pursuant to any of the same time limits as  
34 those set forth in G.S. 143-215.1(c) for permits for facilities  
35 discharging to surface waters and facilities applying waste to the  
36 land surface.

37 (4) If a recommended decision is not prepared and served in the time  
38 provided in this subsection, the petitioner may elect to treat the petition  
39 as denied and may request a final agency decision based solely on the  
40 original permit decision and any additional materials filed with the  
41 Office of Administrative Hearings concerning such decision.

42 (h) Final Decision. – Notwithstanding the provisions of G.S. 150B-44, if the  
43 Commission fails to make a final decision within 45 days of its receipt of the



1 recommended decision and record from the Office of Administrative Hearings, any party  
2 to the proceedings before the Office of Administrative Hearings may seek a judicial  
3 review as provided in subsection (i) of this section. If a permit applicant, permit holder,  
4 or person who is entitled to initiate a contested case or judicial review pursuant to  
5 subsection (c) of this section does not file a petition for a contested case within the  
6 required time, the decision by the Commission is final and is not subject to administrative  
7 or judicial review.

8 (i) Judicial Review. – Except as provided in this subsection, Article 4 of Chapter  
9 150B of the General Statutes applies to judicial review of a final decision in a contested  
10 case and of a final decision for which the administrative remedy of a contested case is not  
11 available. Any person who seeks judicial review of a final decision in a contested case  
12 must file a petition for review within 30 days after the parties to the case are served with  
13 a written copy of the decision. Any person aggrieved by a final decision for which the  
14 administrative remedy of a contested case is not available may obtain judicial review of  
15 the decision by filing a petition for review within 30 days after the final decision is  
16 issued. A person aggrieved by a final decision for which the administrative remedy of a  
17 contested case is not available may obtain judicial review of the decision by filing a  
18 petition in accordance with Article 4 of Chapter 150B of the General Statutes. A petition  
19 for judicial review of a permit decision shall be dismissed unless the petitioner is either:

20 (1) A person entitled to initiate a contested case or judicial review pursuant  
21 to subsection (c) of this section who either filed a contested case petition  
22 on the decision or was a party to a contested case on the decision.

23 (2) A person aggrieved only as a result of the final decision in a contested  
24 case on the decision.

25 (j) Bond on Appeal. – If a case that concerns a decision of the Commission is  
26 appealed from the superior court to the North Carolina Court of Appeals, no bond shall  
27 be required of the Commission."

28 Sec. 9. This act becomes effective one year after its ratification and applies to  
29 an application for a new permit, a modification of an existing permit, or a reissuance or  
30 renewal of an existing permit under G.S. 143-215.1, 143-215.108, 130A-295(c), 74-51,  
31 or 74-52, filed on or after that date.