



SENATE BILL 508:
2023 Budget Technical/Other Corrections, Sec.
4.13:
Pre-Permitting Activities Amendment

2023-2024 General Assembly

Committee:		Date:	August 27, 2024
Introduced by:		Prepared by:	Jennifer McGinnis
Analysis of:	Sec. 4.13 of S.L. 2024-1		Staff Attorney

OVERVIEW: Section 4.13 of S.L. 2024-1 amends Section 12.11 of S.L. 2023-134, which made several changes to statutes governing air quality permitting, to: (i) require the Department of Environmental Quality (DEQ), no later than July 1, 2025, to prepare and submit to the United States Environmental Protection Agency (USEPA) for approval by that agency a proposed North Carolina State Implementation Plan amendment based on the changes to the air permitting program set forth in Section 12.11 of S.L. 2023-134; and (ii) provide that the changes set forth in Section 12.11 of S.L. 2023-134 become effective on the first day of a month that is 60 days after the Secretary of Environmental Quality certifies to the Revisor of Statutes that the USEPA has approved the amendment to the North Carolina State Implementation Plan submitted by DEQ. The Secretary must provide this notice along with the effective date of the provision on DEQ's website and by written or electronic notice to current holders of air permits issued by DEQ. Once effective, the section applies to applications for new air permits and for modifications of existing permits received on or after the effective date.

This section became effective retroactively to July 1, 2023.

BACKGROUND:

Section 12.11 of S.L. 2023-134 includes several changes to the statutes governing air quality permitting as follows:

- Modifies statutes governing review and issuance timelines for Title V¹ and other air quality permits as follows:
- Requires the Environmental Management Commission (Commission) to amend applicable rules to provide that DEQ must issue, deny, or publish a permit for public notice and comment within 90 calendar days of receipt of an administratively complete application² for a minor modification, or within 270 calendar days of receipt of an administratively complete application for a major modification.
- Provides that if the Commission fails to act on a permit within the required timeframes, a permit applicant, permittee, or other person aggrieved can commence a contested case in accordance with

¹ Title V of the federal Clean Air Act (CAA), administered by DEQ's Division of Air Quality (DAQ), requires major industrial sources of air pollution to obtain an Operating Permit and comply with permit conditions designed to ensure that operations meet State and federal air quality standards.

² The term "administratively complete" means that all information required by statute, regulation, or application form has been submitted to DEQ for the purpose of processing a permit application.

Kara McCraw
 Director



Legislative Analysis
 Division
 919-733-2578

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the Administrative Procedure Act (and repeals language that provided that the Commission's failure to act on a permit within previously prescribed timeframes constituted a final agency decision to deny the permit, at which point a permit applicant, permittee, or other person aggrieved was authorized to seek judicial review of the decision).

- Requires the Commission to begin rulemaking to create a Title V permit exemption for non-major research and development activities consistent with USEPA's position regarding exemption for such activities as set forth in the July 10, 1995, "White Paper for Streamlined Development of Part 70 Permit Applications." The rules must include, at a minimum, allowance levels and minor permit modification thresholds to promote greater flexibility in research and development activities and to allow facilities subject to Title V permit requirements flexibility to work with DEQ and notify them of research activities with a minor permit modification to maintain compliance. The Commission must complete draft rulemaking activities and submit a Title V program amendment request to the USEPA no later than July 1, 2025.
- Expands the activities that can be undertaken prior to obtaining a permit for a new air contaminant source, equipment, or associated air cleaning device at a site or facility, to authorize the construction, but not operation, of the source, equipment, or devices prior to permit issuance upon determination that an application for a permit or permit modification is administratively complete. This exception only applies, however, to an application for the addition or modification of an emissions source that is not subject to: (i) permit limits set pursuant to programs for the prevention of significant deterioration and for the attainment of air quality standards in nonattainment areas, (ii) a residual risk-based hazardous air pollutant standard, or (iii) a case-by-case maximum achievable control technology (MACT) permit requirement issued by DEQ. The section provides that the undertaking of these pre-permitting activities does not entitle an applicant to operate any air contaminant source, equipment, or associated air cleaning or emissions control devices prior to permit issuance.