

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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SENATE BILL 856*

Short Title: Inactive Sites Amendments

(Public)

Sponsors: Senators Tally; Marvin, Sherron, Taft, Ward, and Winner.

Referred to: Environment and Natural Resources.

April 12, 1989

1 A BILL TO BE ENTITLED
2 AN ACT TO CLARIFY VARIOUS STATUTES RELATING TO THE INACTIVE
3 HAZARDOUS SITES PROGRAM.

4 The General Assembly of North Carolina enacts:

5 Section 1. G.S. 130A-310(3) reads as rewritten:

6 "(3) 'Inactive hazardous substance or waste disposal site' or 'site' means
7 any facility, structure, or area where disposal of any hazardous
8 substance or waste has occurred. Such sites do not include hazardous
9 waste facilities permitted or in interim status under this Article, or sites
10 currently undergoing remedial action under CERCLA/SARA, or sites
11 undergoing voluntary remedial action with the approval of the Department
12 CERCLA/SARA."

13 Sec. 2. G.S. 130A-310.1(e) reads as rewritten:

14 "(e) Whenever a person ordered to take any action pursuant to this section is
15 unable or fails to do so, or if the Secretary, after making a reasonable attempt, is unable
16 to locate any responsible party, the Secretary may take such action. The cost of any
17 action by the Secretary pursuant to this section may be paid from the ~~Carolina Clean~~
18 ~~Drinking Water~~ Inactive Hazardous Sites Cleanup Fund, subject to a later action for
19 reimbursement pursuant to G.S. 130A-310.7. The provisions of subdivisions (a)(1) to
20 (a)(3) of G.S.130A-310.6 shall apply to any action taken by the Secretary pursuant to
21 this section."

22 Sec. 3. G.S. 130A-310.5(c) reads as rewritten:

23 "(c) The cost of any action by the Secretary pursuant to this section may be paid
24 from the ~~Carolina Clean Drinking Water~~ Inactive Hazardous Sites Cleanup Fund, or the

1 Emergency Hazardous Waste Site Remedial Fund established pursuant to G.S. 130A-
2 306, subject to a later action for reimbursement pursuant to G.S. 130A-310.7."

3 Sec. 4. G.S. 130A-310.6(a) reads as rewritten:

4 "(a) Whenever a person ordered to develop and implement an inactive hazardous
5 substance or waste disposal site remedial action program is unable or fails to do so
6 within the time specified in the order, the Secretary may develop and implement or
7 cause to be developed and implemented such a program. The cost of developing and
8 implementing a remedial action program pursuant to this section may be paid from the
9 ~~Carolina Clean Drinking Water~~ Inactive Hazardous Sites Cleanup Fund, subject to a later
10 action for reimbursement pursuant to G.S. 130A-310.7.

11 (1) The Department is authorized and empowered to use any staff,
12 equipment or materials under its control or provided by other
13 cooperating federal, State or local agencies and to contract with any
14 agent or contractor it deems appropriate to develop and implement the
15 remedial action program. State agencies shall provide to the maximum
16 extent feasible such staff, equipment, and materials as may be
17 available for developing and implementing a remedial action program.

18 (2) Upon completion of any inactive hazardous substance or waste
19 disposal remedial action program, any State or local agency that has
20 provided personnel, equipment, or material shall deliver to the
21 Department a record of expenses incurred by the agency. The amount
22 of the incurred expenses shall be disbursed by the Secretary to each
23 such agency. The Secretary shall keep a record of all expenses
24 incurred for the services of State personnel and for the use of the
25 State's equipment and material.

26 (3) As soon as feasible or after completion of any inactive hazardous
27 substance or waste disposal site remedial action program, the Secretary
28 shall prepare a statement of all expenses and costs of the program
29 expended by the State and issue an order demanding payment from
30 responsible parties. Written notice of such an order shall be provided
31 to all persons subject to the order personally or by certified mail. If
32 given by certified mail, notice shall be deemed to have been given on
33 the date appearing on the return of the receipt. If giving of notice
34 cannot be accomplished either personally or by certified mail, notice
35 shall then be given as provided in G.S. 1A-1, Rule 4(j)."

36 Sec. 5. G.S. 130A-310.7(a) reads as rewritten:

37 "(a) Notwithstanding any other provision or rule of law, and subject only to the
38 defenses set forth in this subsection, any person who:

39 (1) Discharges or deposits; or

40 (2) Contracts or arranges for any discharge or deposit; or

41 (3) Accepts for discharge or deposit any hazardous substance; the result of
42 which discharge or deposit is the existence of an inactive hazardous
43 substance or waste disposal site,

1 shall be considered a responsible party; except that the following shall not be considered
2 a responsible party: an innocent landowner who is a bona fide purchaser of the inactive
3 hazardous substance or waste disposal site without knowledge or without a reasonable
4 basis for knowing that hazardous substance or waste disposal had occurred or, a person
5 whose interest or ownership in the inactive hazardous substance or waste disposal site is
6 based on or derived from a security interest in the property. A responsible party shall be
7 directly liable to the State for any or all of the reasonably necessary expenses of
8 developing and implementing a remedial action program for such site. The Secretary
9 shall bring an action for reimbursement of the ~~Carolina Clean Drinking Water Inactive~~
10 Hazardous Sites Cleanup Fund in the name of the State in the superior court of the
11 county in which the site is located to recover such sum and the cost of bringing the
12 action. The State must show that a danger to the public health or the environment
13 existed and that the State complied with the provisions of this Part."

14 Sec. 6. G.S. 130A-310.9 reads as rewritten:

15 "**§ 130A-310.9. Maximum financial ~~responsibility.~~ responsibility; voluntary**
16 **remedial actions.**

17 (a) No one owner, operator, or other responsible party who voluntarily
18 participates in the implementation of a remedial action program under G.S. 130A-310.3
19 or G.S. 130A-310.5 may be required to pay in excess of three million dollars
20 (\$3,000,000) for the cost of implementing such remedial action program at a single
21 inactive hazardous substance or waste disposal site. The limitation of liability contained
22 in this section applies only to the cost of implementation of the program and does not
23 apply to the cost of the development of the remedial action plan.

24 (b) The Department may enter into an agreement with an owner, operator, or
25 other responsible party which provides for implementation of a voluntary remedial
26 action program in accordance with a remedial action plan approved by the Department.
27 Voluntary remedial action programs are subject to the provisions of G.S. 130A-
28 310.3(d), 130A-310.4, 130A-310.5, and any other requirement imposed by the
29 Department. Sites undergoing voluntary remedial actions shall be so identified in the
30 inventory of sites maintained pursuant to G.S. 130A-310.1 but shall not be included on
31 the Inactive Hazardous Waste Sites Priority List required by G.S. 130A-310.2. Upon
32 completion of an approved remedial action plan, a site which has undergone a voluntary
33 remedial action shall be removed from the inventory of sites."

34 Sec. 7. G.S. 130A-310.10 reads as rewritten:

35 "**§ 130A-310.10. Annual reports.**

36 (a) The Secretary shall present an annual report to the General Assembly and the
37 Environmental Review Commission which shall include at least the following:

- 38 (1) The Inactive Hazardous Waste Sites Priority List;
- 39 (2) A list of remedial action plans requiring State funding through the
40 ~~Carolina Clean Drinking Water Inactive Hazardous Sites Cleanup~~ Fund;
- 41 (3) A comprehensive budget to implement these remedial action plans and
42 the adequacy of the ~~Carolina Clean Drinking Water Inactive Hazardous~~
43 Sites Cleanup Fund to fund the cost of said plans;

- 1 (4) A prioritized list of sites that are eligible for remedial action under
2 CERCLA/SARA together with recommended remedial action plans
3 and a comprehensive budget to implement such plans. The budget for
4 implementing a remedial action plan under CERCLA/SARA shall
5 include a statement as to any appropriation that may be necessary to
6 pay the State's share of such plan;
- 7 (5) A list of sites and remedial action plans undergoing voluntary cleanup
8 with Departmental approval;
- 9 (6) A list of sites and remedial action plans that may require State funding,
10 a comprehensive budget if implementation of these possible remedial
11 action plans is required, and the adequacy of the ~~Carolina Clean~~
12 ~~Drinking Water Inactive Hazardous Sites Cleanup~~ Fund to fund the
13 possible costs of said plans;
- 14 (7) A list of sites which pose an imminent hazard; and
- 15 (8) A comprehensive budget to develop and implement remedial action
16 plans for sites that pose imminent hazards and that may require State
17 funding, and the adequacy of the ~~Carolina Clean Drinking Water Fund~~
18 ~~Inactive Hazardous Sites Cleanup Fund~~; and
- 19 (9) Any other information requested by the General Assembly or the
20 Environmental Review Commission.

21 (b) ~~The annual reports required by this section shall be made by the Secretary~~
22 ~~beginning with the next legislative session following July 1, 1987."~~

23 Sec. 8. G.S. 130A-310.11 reads as rewritten:

24 "**§ 130A-310.11. ~~Carolina Clean Drinking Water Inactive Hazardous Sites Cleanup~~**
25 **Fund created.**

26 There is established under the control and direction of the Department the ~~Carolina~~
27 ~~Clean Drinking Water Inactive Hazardous Sites Cleanup~~ Fund. This fund shall be a
28 revolving fund consisting of any monies appropriated for such purpose by the General
29 Assembly or available to it from grants, fees, and other monies paid to it or recovered
30 by or on behalf of the Department."

31 Sec. 9. The annual report required by G.S. 130A-310.10 shall be made on 1
32 January of each year beginning 1 January 1990. This act shall not be construed to
33 repeal the requirement that a report be made in 1988.

34 Sec. 10. The Governor's Waste Management Board shall study funding
35 mechanisms for the Inactive Hazardous Sites program. As a part of its study, the Board
36 shall consider funding mechanisms used for similar programs in other states. The Board
37 shall report its findings and recommendations to the General Assembly and the
38 Environmental Review Commission on or before 1 March 1990. Notwithstanding any
39 rule or resolution to the contrary, proposed legislation to implement any
40 recommendation of the Board or of the Environmental Review Commission regarding
41 the Inactive Hazardous Sites Program may be introduced and considered during the
42 1990 Regular Session of the General Assembly.

43 Sec. 11. This act is effective upon ratification.