

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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HOUSE BILL 644

Committee Substitute Favorable 5/5/89

Environment & Natural Resources Senate Committee Substitute Adopted 5/31/89

Short Title: Inactive Haz. Sites Amends.

(Public)

Sponsors:

Referred to:

March 16, 1989

A BILL TO BE ENTITLED

AN ACT TO CLARIFY VARIOUS STATUTES RELATING TO HAZARDOUS WASTE EMERGENCY RESPONSE AND TO THE INACTIVE HAZARDOUS SITES PROGRAM AND TO CLARIFY STATE AGENCY AUTHORITY WITH RESPECT TO THE FEDERAL SUPERFUND PROGRAM.

The General Assembly of North Carolina enacts:

Section 1. G.S. 130A-306 reads as rewritten:

"§ 130A-306. ~~Hazardous Waste Site Remedial~~ Emergency Response Fund.

There is established under the control and direction of the Department, an ~~Emergency Hazardous Site Remedial Response~~ Fund which shall be a nonreverting fund consisting of any money appropriated for such purpose by the General Assembly or available to it from grants, fees, charges, and other money paid to or recovered by or on behalf of the Department pursuant to this Article, except fees specifically designated by this Article for some other use or purpose. The Emergency Response Fund shall be treated as a special trust fund and shall be credited with interest by the State Treasurer pursuant to G.S. 147-69.2 and G.S. 147-69.3. The Fund shall be used to defray expenses incurred by the Department in developing and implementing an emergency hazardous waste remedial ~~program-plan~~ and to reimburse any federal, State or local agency and any agent or contractor for expenses incurred in developing and implementing such a ~~program-plan~~ that has been approved by the Department. These funds shall be used upon a determination that ~~no~~ sufficient funds or corrective action ~~can~~ cannot be obtained from other sources without incurring a delay that would significantly

1 increase the threat to life or risk of ~~irreparable~~ damage to the environment. ~~In no event~~  
2 ~~shall this Fund~~ This Fund may not exceed two hundred thousand dollars (\$200,000). five  
3 hundred thousand dollars (\$500,000); money in excess of five hundred thousand dollars  
4 (\$500,000) shall be deposited in the Inactive Hazardous Sites Cleanup Fund. The  
5 Secretary is authorized to take the necessary action to recover ~~the abatement~~ all costs  
6 incurred by the State for site investigation and the development and implementation of  
7 an emergency hazardous waste remedial plan, including attorney's fees and other  
8 expenses of bringing the cost recovery action from the responsible party or parties. The  
9 provisions of G.S. 130A-310.7 shall apply to actions to recover costs under this section  
10 except that: (i) reimbursement shall be to the Emergency Response Fund and (ii) the  
11 State need not show that it has complied with the provisions of Part 3 of this Article."

12 Sec. 2. G.S. 130A-310(3) reads as rewritten:

13 "(3) 'Inactive hazardous substance or waste disposal site' or 'site' means  
14 any facility, structure, or area where disposal of any hazardous  
15 substance or waste has occurred. Such sites do not include hazardous  
16 waste facilities permitted or in interim status under this ~~Article~~, ~~or sites~~  
17 ~~currently undergoing remedial action under CERCLA/SARA, or sites~~  
18 ~~undergoing voluntary remedial action with the approval of the Department.~~  
19 Article."

20 Sec. 3. G.S. 130A-310.1(e) reads as rewritten:

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

29 Sec. 4. G.S. 130A-310.5(c) reads as rewritten:

30 "(c) The cost of any action by the Secretary pursuant to this section may be paid  
31 from the ~~Carolina Clean Drinking Water~~ Inactive Hazardous Sites Cleanup Fund, or the  
32 Emergency Hazardous Waste Site Remedial Fund established pursuant to G.S. 130A-  
33 306, subject to a later action for reimbursement pursuant to G.S. 130A-310.7."

34 Sec. 5. G.S. 130A-310.6(a) reads as rewritten:

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

42 (1) The Department is authorized and empowered to use any staff,  
43 equipment or materials under its control or provided by other  
44 cooperating federal, State or local agencies and to contract with any

1 agent or contractor it deems appropriate to develop and implement the  
 2 remedial action program. State agencies shall provide to the maximum  
 3 extent feasible such staff, equipment, and materials as may be  
 4 available for developing and implementing a remedial action program.

5 (2) Upon completion of any inactive hazardous substance or waste  
 6 disposal remedial action program, any State or local agency that has  
 7 provided personnel, equipment, or material shall deliver to the  
 8 Department a record of expenses incurred by the agency. The amount  
 9 of the incurred expenses shall be disbursed by the Secretary to each  
 10 such agency. The Secretary shall keep a record of all expenses  
 11 incurred for the services of State personnel and for the use of the  
 12 State's equipment and material.

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

23 Sec. 6. G.S. 130A-310.7(a) reads as rewritten:

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

- 26 (1) Discharges or deposits; or  
 27 (2) Contracts or arranges for any discharge or deposit; or  
 28 (3) Accepts for discharge or ~~deposit~~ deposit; or  
 29 (4) Transports or arranges for transport for the purpose of discharge or  
 30 deposit

31 any hazardous substance; the result of which discharge or deposit is the existence of an  
 32 inactive hazardous substance or waste disposal site, shall be considered a responsible  
 33 ~~party; except that the following shall not be considered a responsible party: an party.~~ Neither  
 34 an innocent landowner who is a bona fide purchaser of the inactive hazardous substance  
 35 or waste disposal site without knowledge or without a reasonable basis for knowing that  
 36 hazardous substance or waste disposal had occurred or, nor a person whose interest or  
 37 ownership in the inactive hazardous substance or waste disposal site is based on or  
 38 derived from a security interest in the property. ~~property~~ shall be considered a  
 39 responsible party. A responsible party shall be directly liable to the State for any or all  
 40 of the reasonably necessary expenses of developing and implementing a remedial action  
 41 program for such site. The Secretary shall bring an action for reimbursement of the  
 42 ~~Carolina Clean Drinking Water Inactive Hazardous Sites Cleanup~~ Fund in the name of the  
 43 State in the superior court of the county in which the site is located to recover such sum  
 44 and the cost of bringing the action. The State must show that a danger to the public

1 health or the environment existed and that the State complied with the provisions of this  
2 Part."

3 Sec. 7. G.S. 130A-310.9 reads as rewritten:

4 "**§ 130A-310.9. Maximum financial ~~responsibility~~. responsibility; voluntary**  
5 **remedial actions.**

6 (a) No one owner, operator, or other responsible party who voluntarily  
7 participates in the implementation of a remedial action program under G.S. 130A-310.3  
8 or G.S. 130A-310.5 may be required to pay in excess of three million dollars  
9 (\$3,000,000) for the cost of implementing such remedial action program at a single  
10 inactive hazardous substance or waste disposal site. The limitation of liability contained  
11 in this section applies only to the cost of implementation of the program and does not  
12 apply to the cost of the development of the remedial action plan.

13 (b) The Secretary may enter into an agreement with an owner, operator, or other  
14 responsible party which provides for implementation of a voluntary remedial action  
15 program in accordance with a remedial action plan approved by the Department.  
16 Investigations, evaluations, and voluntary remedial actions are subject to the provisions  
17 of G.S. 130A-310.1(c), 130A-310.1(d), 130A-310.3(d), 130A-310.5, 130A-310.8, and  
18 any other requirement imposed by the Department. At least 30 days prior to entering  
19 into any agreement providing for the implementation of a voluntary remedial action  
20 program, the Secretary shall mail notice of such proposed agreement as provided in G.S.  
21 130A-310.4(c)(2). Sites undergoing voluntary remedial actions shall be so identified as  
22 a separate category in the inventory of sites maintained pursuant to G.S. 130A-310.1 but  
23 shall not be included on the Inactive Hazardous Waste Sites Priority List required by  
24 G.S. 130A-310.2."

25 Sec. 8. G.S. 130A-310.10 reads as rewritten:

26 "**§ 130A-310.10. Annual reports.**

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

- 29 (1) The Inactive Hazardous Waste Sites Priority List;
- 30 (2) A list of remedial action plans requiring State funding through the  
31 ~~Carolina Clean Drinking Water Inactive Hazardous Sites Cleanup~~ Fund;
- 32 (3) A comprehensive budget to implement these remedial action plans and  
33 the adequacy of the ~~Carolina Clean Drinking Water Inactive Hazardous~~  
34 ~~Sites Cleanup~~ Fund to fund the cost of said plans;
- 35 (4) A prioritized list of sites that are eligible for remedial action under  
36 CERCLA/SARA together with recommended remedial action plans  
37 and a comprehensive budget to implement such plans. The budget for  
38 implementing a remedial action plan under CERCLA/SARA shall  
39 include a statement as to any appropriation that may be necessary to  
40 pay the State's share of such plan;
- 41 (5) A list of sites and remedial action plans undergoing voluntary cleanup  
42 with Departmental approval;
- 43 (6) A list of sites and remedial action plans that may require State funding,  
44 a comprehensive budget if implementation of these possible remedial

1 action plans is required, and the adequacy of the ~~Carolina Clean~~  
 2 ~~Drinking Water Inactive Hazardous Sites Cleanup~~ Fund to fund the  
 3 possible costs of said plans;

4 (7) A list of sites which pose an imminent hazard; ~~and~~

5 (8) A comprehensive budget to develop and implement remedial action  
 6 plans for sites that pose imminent hazards and that may require State  
 7 funding, and the adequacy of the ~~Carolina Clean Drinking Water Fund~~.  
 8 ~~Inactive Hazardous Sites Cleanup Fund~~; and

9 (9) Any other information requested by the General Assembly or the  
 10 Environmental Review Commission.

11 (b) The annual reports required by this section shall be made by the Secretary on  
 12 15 February of each year beginning with the next legislative session following July 1, 1987-  
 13 15 February 1990."

14 Sec. 9. G.S. 130A-310.11 reads as rewritten:

15 "**§ 130A-310.11. Carolina Clean Drinking Water Inactive Hazardous Sites Cleanup**  
 16 **Fund created.**

17 There is established under the control and direction of the Department the ~~Carolina~~  
 18 ~~Clean Drinking Water Inactive Hazardous Sites Cleanup~~ Fund. This fund shall be a  
 19 revolving fund consisting of any monies appropriated for such purpose by the General  
 20 Assembly or available to it from grants, fees, and other monies paid to it or recovered  
 21 by or on behalf of the Department. The Inactive Hazardous Sites Cleanup Fund shall be  
 22 treated as a nonreverting special trust fund and shall be credited with interest by the  
 23 State Treasurer pursuant to G.S. 147-69.2 and G.S. 147-69.3."

24 Sec. 10. Article 9 of Chapter 130A of the General Statutes is amended by  
 25 adding a new Part to read:

26 **"PART 4. SUPERFUND PROGRAM.**

27 **"§ 130A-310.20. Definitions.**

28 Unless a different meaning is required by the context, the following definitions shall  
 29 apply throughout this Part:

30 (1) 'CERCLA/SARA' or 'Superfund' means the Comprehensive  
 31 Environmental Response, Compensation, and Liability Act of 1980,  
 32 Pub. L. No. 96-510, 94 Stat. 2767, 42 U.S.C. § 9601 et seq., as  
 33 amended, and the Superfund Amendments and Reauthorization Act of  
 34 1986, Pub. L. No. 99-499, 100 Stat. 1613, as amended.

35 **"§ 130A-310.21. Administration of the Superfund program.**

36 The Department shall maintain an appropriate administrative subunit within the solid  
 37 waste management unit authorized by G.S. 130A-291 to carry out those activities in  
 38 which the State is authorized to engage under CERCLA/SARA.

39 **"§ 130A-310.22. Contracts authorized.**

40 (a) The Department is authorized to enter into contracts and cooperative  
 41 agreements with the United States and to engage in any activity otherwise authorized by  
 42 law to identify, investigate, evaluate, and clean up any site or facility covered by  
 43 CERCLA/SARA including but not limited to performing preliminary assessments, site  
 44 investigations, remedial investigations, and feasibility studies; preparation of records of

1 decision; conducting emergency response, remedial, and removal actions; and engaging  
2 in enforcement activities in accordance with the provisions of CERCLA/SARA.

3 (b) The Department may make all assurances required by federal law or  
4 regulation including but not limited to assuring that the State will assume responsibility  
5 for the operation and maintenance of any remedial action for the anticipated duration of  
6 the remedial action; assuring that the State will provide its share of the cost of any  
7 remedial action at a site or facility which was privately owned or operated; assuring that  
8 the State will provide its share of the cost of any removal, remedial planning, and  
9 remedial action at a site or facility owned or operated by the State or a political  
10 subdivision of the State; assuring the availability of off-site treatment, storage, or  
11 disposal capacity needed to effectuate a remedial action; assuring that the State will take  
12 title to, acquire an interest in, or accept transfer of any interest in real property needed to  
13 effectuate a remedial action; assuring that the State has adequate capacity to meet the  
14 assurances required by CERCLA/SARA (42 U.S.C. § 9604(b)(9)); assuring access to  
15 the facility and any adjacent property including the securing of any right-of-way or  
16 easement needed to effectuate a remedial action; and assuring that the State will satisfy  
17 all federal, State, and local requirements for permits and approvals necessary to  
18 effectuate a remedial action.

19 (c) Each contract entered into by the Department under this section shall stipulate  
20 that all obligations of the State are subject to the availability of funds. Neither this  
21 section nor any contract entered into under authority of this section shall be construed to  
22 obligate the General Assembly to make any appropriation to implement this Part or any  
23 contract entered into under this section. The Department shall implement this Part and  
24 any contract entered into under this section from funds otherwise available or  
25 appropriated to the Department for such purpose."

26 Sec. 11. G.S. 146-22.1(14) reads as rewritten:

27 "(14) Lands necessary for the construction of hazardous waste facilities as  
28 defined in G.S. ~~130-166.16(5)~~—130A-290, inactive hazardous  
29 substance or waste disposal sites as defined in G.S. 130A-310,  
30 Superfund sites as described in G.S. 130A-310.22, and lands  
31 necessary for the construction of low-level radioactive waste  
32 facilities as defined in G.S. ~~104E-5(9b)~~—104E-5."

33 Sec. 12. The Governor's Waste Management Board shall study funding  
34 mechanisms for the Inactive Hazardous Sites Program. As a part of its study, the Board  
35 shall consider funding mechanisms used for similar programs in other states. The Board  
36 shall report its findings and recommendations to the General Assembly and the  
37 Environmental Review Commission on or before 1 March 1990. Notwithstanding any  
38 rule or resolution to the contrary, proposed legislation to implement any  
39 recommendation of the Board or of the Environmental Review Commission regarding  
40 the Inactive Hazardous Sites Program may be introduced and considered during the  
41 1990 Regular Session of the General Assembly.

42 Sec. 13. This act shall not be construed to invalidate any action taken by the  
43 State with regard to the administration of the Superfund program prior to the effective  
44 date of this act.

1                   Sec. 14. Section 1 of this act shall become effective 30 June 1989. Sections  
2 2 through 14 of this act are effective upon ratification.