

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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HOUSE BILL 1223\*  
Committee Substitute Favorable 5/4/89

Short Title: Inactive Sites Amendments.

(Public)

Sponsors:

Referred to:

April 12, 1989

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

The General Assembly of North Carolina enacts:

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

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

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

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

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

1       "(c) The cost of any action by the Secretary pursuant to this section may be paid  
2 from the ~~Carolina Clean Drinking Water Inactive Hazardous Sites Cleanup~~ Fund, or the  
3 Emergency Hazardous Waste Site Remedial Fund established pursuant to G.S. 130A-  
4 306, subject to a later action for reimbursement pursuant to G.S. 130A-310.7."

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

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

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

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

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

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

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

41           (1) Discharges or deposits; or

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

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

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

18 "**§ 130A-310.9. Maximum financial ~~responsibility.~~ responsibility; voluntary**  
19 **remedial actions.**

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

27       (b) The Secretary may enter into an agreement with an owner, operator, or other  
28 responsible party which provides for implementation of a voluntary remedial action  
29 program in accordance with a remedial action plan approved by the Department.  
30 Investigations, evaluations, and voluntary remedial actions are subject to the provisions  
31 of G.S. 130A-310.1(c), 130A-310.1(d), 130A-310.3(d), 130A-310.5, 130A-310.8, and  
32 any other requirement imposed by the Department. At least 30 days prior to entering  
33 into any agreement providing for the implementation of a voluntary remedial action  
34 program, the Secretary shall mail notice of such proposed agreement as provided in G.S.  
35 130A-310.4(c)(2). Sites undergoing voluntary remedial actions shall be so identified as  
36 a separate category in the inventory of sites maintained pursuant to G.S. 130A-310.1 but  
37 shall not be included on the Inactive Hazardous Waste Sites Priority List required by  
38 G.S. 130A-310.2."

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

40 "**§ 130A-310.10. Annual reports.**

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

43           (1) The Inactive Hazardous Waste Sites Priority List;

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

26 (b) The annual reports required by this section shall be made by the Secretary on  
27 January 1 of each year beginning with the next legislative session following July 1, 1987.  
28 January 1, 1990."

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

30 "**§ 130A-310.11. ~~Carolina Clean Drinking Water Inactive Hazardous Sites Cleanup~~**  
31 **Fund created.**

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

39 Sec. 9. This act shall not be construed to repeal the requirement that a report  
40 be made in 1988 pursuant to G.S. 130A-310.10.

41 Sec. 10. The Governor's Waste Management Board shall study funding  
42 mechanisms for the Inactive Hazardous Sites program. As a part of its study, the Board  
43 shall consider funding mechanisms used for similar programs in other states. The Board  
44 shall report its findings and recommendations to the General Assembly and the

1 Environmental Review Commission on or before March 1, 1990. Notwithstanding any  
2 rule or resolution to the contrary, proposed legislation to implement any  
3 recommendation of the Board or of the Environmental Review Commission regarding  
4 the Inactive Hazardous Sites Program may be introduced and considered during the  
5 1990 Regular Session of the General Assembly.

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