

GENERAL ASSEMBLY OF NORTH CAROLINA
1989 SESSION

CHAPTER 742
SENATE BILL 130

AN ACT TO PROHIBIT THE DUMPING OF MEDICAL WASTE INTO THE OPEN WATERS OF THE ATLANTIC OCEAN AND INTO THE WATERS OF THE STATE AND TO STRENGTHEN THE SOLID WASTE MANAGEMENT PROGRAM.

The General Assembly of North Carolina enacts:

Section 1. G.S. 75A-10 is amended by adding a new subsection to read:

"(d) No person shall place, throw, deposit, or discharge or cause to be placed, thrown, deposited, or discharged on the waters of this State or into the inland lake waters of this State any medical waste as defined by G.S. 130A-290 which renders the waters unsightly, noxious, or otherwise unwholesome so as to be detrimental to the public health or welfare or to the enjoyment and safety of the water for recreational purposes."

Sec. 2. G.S. 75A-18 is amended by adding a new subsection to read:

"(d) A person who:

- (1) Willfully violates G.S. 75A-10(d) is guilty of a misdemeanor punishable by imprisonment not to exceed one year, a fine not to exceed ten thousand dollars (\$10,000) per day of violation, or both in the discretion of the court.
- (2) Willfully violates G.S. 75A-10(d) and in so doing releases medical waste that creates a substantial risk of physical injury to any person who is not a participant in the offense is guilty of a Class I felony punishable by imprisonment, a fine not to exceed fifty thousand dollars (\$50,000) per day of violation, or both in the discretion of the court."

Sec. 3. G.S. 76-40 reads as rewritten:

"§ 76-40. Navigable waters; certain practices regulated.

(a) It shall be unlawful for any person, firm or corporation to place, deposit, leave or cause to be placed, deposited or left, either temporarily or permanently, any trash, refuse, rubbish, garbage, debris, rubble, scrapped vehicle or equipment or other similar waste material in or upon any body of navigable water in this State; 'waste material' shall not include spoil materials lawfully dug or dredged from navigable waters and deposited in spoil areas designated by the Department of Natural Resources and Community Development; violation of this section shall constitute a misdemeanor, punishable by a fine of up to five hundred dollars (\$500.00) or imprisonment for up to six months, or both, in the discretion of the court.

(a1) It shall be unlawful for any person, firm or corporation to place, deposit, leave or cause to be placed, deposited, or left, either temporarily or permanently, any medical waste as defined in G.S. 130A-290 in the open waters of the Atlantic Ocean over which the State has jurisdiction or the navigable waters of this State.

(1) A person who willfully violates this subsection is guilty of a misdemeanor punishable by imprisonment not to exceed one year, a fine not to exceed ten thousand dollars (\$10,000) per day of violation, or both in the discretion of the court.

(2) A person who willfully violates this subsection and in so doing releases medical waste that creates a substantial risk of physical injury to any person who is not a participant in the offense is guilty of a Class I felony punishable by imprisonment, a fine not to exceed fifty thousand dollars (\$50,000) per day of violation, or both in the discretion of the court.

(b) No person, firm or corporation shall erect upon the floor of, or in or upon, any body of navigable water in this State, any sign or other structure, without having first secured a permit to do so from the appropriate federal agencies (which would include a permit from the State of North Carolina) or from the Department of Administration, or from the agency designated by the Department to issue such permit. Provided, however, this subsection shall not apply to commercial fishing nets, fish offal, ramps, boathouses, piers or duck blinds placed in navigable waters. Any person, firm or corporation erecting such sign or other structure without a proper permit or not in accordance with the specification of such permit shall be guilty of a misdemeanor and upon conviction shall be fined up to five hundred dollars (\$500.00) or imprisoned for up to six months, or both, in the discretion of the court. The State may immediately proceed to remove or cause to be removed such unlawful sign or structure after five days' notice to the owner or erector thereof and the cost of such removal by the State shall be payable by the person, firm or corporation who erected or owns the unlawful sign or other structure and the State may bring suit to recover the costs of the removal thereof.

(c) Whenever any structure lawfully erected upon the floor of, or in or upon, any body of navigable water in this State, is abandoned, such structure shall be removed by the owner thereof and the area cleaned up within 30 days of such abandonment; failure to comply with this section shall constitute a misdemeanor and upon conviction the owner of the abandoned structure shall be fined up to five hundred dollars (\$500.00) or imprisoned for not over six months, or both, in the discretion of the court. The State may, after 10 days' notice to the owner or erector thereof, remove the abandoned structure and have the area cleaned up and the cost of such removal and cleaning up by the State shall be payable by the owner or erector of the abandoned structure and the State may bring suit to recover the costs thereof.

(d) For purposes of this section, the term 'navigable waters' shall not include any waters within the boundaries of any reservoir, pond or impoundment used in connection with the generation of electricity, or of any reservoir project owned or operated by the United States.

(e) The provisions of this section, in the coastal waters of this State, shall be enforced by the Department of Natural Resources and Community Development. In the inland waters of the State, the provisions of this section shall be enforced by the Wildlife Resources Commission. The Department of Natural Resources and Community Development and the Wildlife Resources Commission shall cooperate ~~with the Department of Water and Air Resources~~ in the enforcement of this section."

Sec. 4. G.S. 130A-22(a) reads as rewritten:

"(a) The Secretary may impose an administrative penalty on a person who violates Article 9 of this Chapter, rules adopted by the Commission pursuant to Article 9, or any order issued under Article 9. Each day of a continuing violation shall constitute a separate violation. The penalty shall not exceed five ~~hundred thousand~~ dollars (\$500.00) (\$5,000) per day in the case of a violation involving nonhazardous waste. ~~The penalty shall not exceed ten thousand dollars (\$10,000) per day in the case of a violation involving hazardous waste.~~ The penalty shall not exceed twenty-five thousand dollars (\$25,000) per day in case of a first violation involving hazardous waste as defined in G.S. 130A-290 or involving the disposal of medical waste as defined in G.S. 130A-290 in or upon water in a manner that results in medical waste entering waters or lands of the State; and shall not exceed fifty thousand dollars (\$50,000) per day for a second or further violation involving the disposal of medical waste as defined in G.S. 130A-290 in or upon water in a manner that results in medical waste entering waters or lands of the State."

Sec. 5. G.S. 130A-290 as amended by Section 11 of Chapter 168 of the 1989 Session Laws reads as rewritten:

"§ 130A-290. Definitions.

Unless a different meaning is required by the context, the ~~The~~ following definitions shall apply throughout this Article:

- (1) 'CERCLA/SARA' means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Pub. L. No. 96-510, 94 Stat. 2767, 42 U.S.C. § 9601 **et seq.**, as amended, and the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499, 100 Stat. 1613, as amended.
- (2) 'Commercial' when applied to a hazardous waste facility, means a hazardous waste facility that accepts hazardous waste from the general public or from another person for a fee.
- (3) 'Disposal' means the discharge, deposit, injection, dumping, spilling, leaking or placing of any solid waste into or on any land or water so that the solid waste or any constituent part of the solid waste may enter the environment or be emitted into the air or discharged into any waters, including groundwaters.
- (4) 'Garbage' means all putrescible wastes, including animal offal and carcasses, and recognizable industrial by-products, but excluding sewage and human waste.

- (5) 'Hazardous waste' means a solid waste, or combination of solid wastes, which because of its quantity, concentration or physical, chemical or infectious characteristics may:
 - a. Cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or
 - b. Pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of or otherwise managed.
- (6) 'Hazardous waste facility' means a facility for the collection, storage, processing, treatment, recycling, recovery, or disposal of hazardous waste.
- (7) 'Hazardous waste generation' means the act or process of producing hazardous waste.
- (8) 'Hazardous waste disposal facility' means any facility or any portion of a facility for disposal of hazardous waste on or in land in accordance with rules adopted under this Article.
- (9) 'Hazardous waste management' means the systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery and disposal of hazardous wastes.
- (10) 'Hazardous waste management program' means the program and activities within the Department pursuant to Part 2 of this Article, for hazardous waste management.
- (11) 'Landfill' means a disposal facility or part of a disposal facility where waste is placed in or on land and which is not a land treatment facility, a surface impoundment, an injection well, a hazardous waste long-term storage facility or a surface storage facility.
- (12) 'Manifest' means the form used for identifying the quantity, composition and the origin, routing and destination of hazardous waste during its transportation from the point of generation to the point of disposal, treatment or storage.
- (12a) 'Medical waste' means any solid waste which is generated in the diagnosis, treatment, or immunization of human beings or animals, in research pertaining thereto, or in the production or testing of biologicals, but does not include any hazardous waste identified or listed pursuant to this Article, radioactive waste, household waste as defined in 40 Code of Federal Regulations § 261.4(b)(1) in effect on 1 July 1989, or those substances excluded from the definition of 'solid waste' in this section.
- (13) 'Natural resources' means all materials which have useful physical or chemical properties which exist, unused, in nature.
- (14) 'Open dump' means a solid waste disposal site which is not a sanitary landfill.

- (15) 'Person' means an individual, corporation, company, association, partnership, unit of local government, State agency, federal agency or other legal entity.
- (16) 'RCRA' means the Resource Conservation and Recovery Act of 1976, Pub. L. 94-580, 90 Stat. 2795, 42 U.S.C. § 6901 **et seq.**, as amended.
- (17) 'Recycling' means the process by which recovered resources are transformed into new products so that the original products lose their identity.
- (18) 'Refuse' means all nonputrescible waste.
- (19) 'Resource recovery' means the process of obtaining material or energy resources from discarded solid waste which no longer has any useful life in its present form and preparing the solid waste for recycling.
- (20) 'Reuse' means a process by which resources are reused or rendered usable.
- (21) 'Sanitary landfill' means a facility for disposal of solid waste on land in a sanitary manner in accordance with the rules concerning sanitary landfills adopted under this Article.
- (22) 'Septage' means solid waste that is a fluid mixture of untreated and partially treated sewage solids, liquids and sludge of human or domestic origin which is removed from a septic tank system.
- (23) 'Septage management firm' means a person engaged in the business of pumping, transporting, storing, treating or disposing septage. The term does not include public or community sanitary sewage systems that treat or dispose septage.
- (24) 'Sludge' means any solid, semisolid or liquid waste generated from a municipal, commercial, institutional or industrial wastewater treatment plant, water supply treatment plant or air pollution control facility, or any other waste having similar characteristics and effects.
- (25) 'Solid waste' means any hazardous or nonhazardous garbage, refuse or sludge from a waste treatment plant, water supply treatment plant or air pollution control facility, domestic sewage and sludges generated by the treatment thereof in sanitary sewage collection, treatment and disposal systems, and other material that is either discarded or is being accumulated, stored or treated prior to being discarded, or has served its original intended use and is generally discarded, including solid, liquid, semisolid or contained gaseous material resulting from industrial, institutional, commercial and agricultural operations, and from community activities. The term does not include:
 - a. Fecal waste from fowls and animals other than humans;
 - b. Solid or dissolved material in:
 - 1. Domestic sewage and sludges generated by treatment thereof in sanitary sewage collection, treatment and disposal systems which are designed to discharge effluents to the surface waters;

2. Irrigation return flows; and
 3. Wastewater discharges and the sludges incidental to and generated by treatment which are point sources subject to permits granted under Section 402 of the Water Pollution Control Act, as amended (P.L. 92-500), and permits granted under G.S. 143-215.1 by the Environmental Management Commission. However, any sludges that meet the criteria for hazardous waste under RCRA shall also be a solid waste for the purposes of this Article;
- c. Oils and other liquid hydrocarbons controlled under Article 21A of Chapter 143 of the General Statutes. However, any oils or other liquid hydrocarbons that meet the criteria for hazardous waste under RCRA shall also be a solid waste for the purposes of this Article;
 - d. Any source, special nuclear or byproduct material as defined by the Atomic Energy Act of 1954, as amended (42 U.S.C. § 2011).
 - e. Mining refuse covered by the North Carolina Mining Act, G.S. 74-46 through 74-68 and regulated by the North Carolina Mining Commission (as defined under G.S. 143B-290). However, any specific mining waste that meets the criteria for hazardous waste under RCRA shall also be a solid waste for the purposes of this Article.
- (26) 'Solid waste disposal site' means any place at which solid wastes are disposed of by incineration, sanitary landfill or any other method.
 - (27) 'Solid waste generation' means the act or process of producing solid waste.
 - (28) 'Solid waste management' means purposeful, systematic control of the generation, storage, collection, transport, separation, treatment, processing, recycling, recovery and disposal of solid waste.
 - (29) 'Solid waste management facility' means land, personnel and equipment used in the management of solid waste.
 - (30) 'Storage' means the containment of solid waste, either on a temporary basis or for a period of years, in a manner which does not constitute disposal.
 - (31) 'Treatment' means any method, technique or process, including neutralization, designed to change the physical, chemical or biological character or composition of any hazardous waste so as to neutralize such waste or so as to render such waste nonhazardous, safer for transport, amenable for recovery, amenable for storage or reduced in volume. 'Treatment' includes any activity or processing designed to change the physical form or chemical composition of hazardous waste so as to render it nonhazardous.

(32) 'Unit of local government' means a county, city, town or incorporated village."

Sec. 6. G.S. 130A-294 as amended by Chapters 168 and 317 of the 1989 Session Laws is amended by adding a new subsection to read:

"(1) Disposal of solid waste in or upon water in a manner that results in solid waste entering waters or lands of the State is unlawful. Nothing herein shall be interpreted to affect disposal of solid waste in a permitted landfill."

Sec. 7. G.S. 143-213(9) reads as rewritten:

"(9) Whenever reference is made in this Article to the 'discharge of waste,' it shall be interpreted to include discharge, spillage, leakage, pumping, placement, emptying, or dumping into waters of the State, or the discharge of waste into any unified sewerage sewer system or arrangement for sewage disposal, which system or arrangement in turn discharges the waste into the waters of the State."

Sec. 8. Article 21 of Chapter 143 is amended by adding a new section to read:

"§ 143-214.2A. Prohibited disposal of medical waste.

(a) Violation. It is unlawful for any person to engage in conduct which causes or results in the dumping, discharging, or disposal directly or indirectly, of any medical waste as defined in G.S. 130A-290 to the open waters of the Atlantic Ocean over which the State has jurisdiction or to any waters of the State.

(b) Civil Penalty.

(1) A civil penalty of not more than twenty-five thousand dollars (\$25,000) may be assessed by the Commission against any person for a first violation of this section and an additional penalty of twenty-five thousand dollars (\$25,000) may be assessed for each day during which the violation continues. A civil penalty of not more than fifty thousand dollars (\$50,000) may be assessed by the Commission for a second or further violation and an additional penalty of fifty thousand dollars (\$50,000) may be assessed for each day during which the violation continues.

(2) The Commission, or its delegate, shall determine the amount of the civil penalty proposed to be assessed under this section and shall notify the person to be assessed of the proposed assessment by registered or certified mail. The notice shall make written demand for payment upon the person responsible for the violation, and shall set forth in detail the violation for which the penalty has been invoked. The notice shall further set forth the opportunity for a contested case proceeding under Chapter 150B. The proposed penalty set forth in the notice issued by the Commission, or its delegate, shall become the final civil penalty unless it is increased or decreased by the Commission in the final agency decision of a contested case proceeding requested pursuant to Chapter 150B. If payment is not received or equitable settlement reached within 30 days after demand for payment is made, the Secretary shall refer the matter to the Attorney General for the

institution of a civil action in the name of the State in the superior court of the county in which the discharge of waste or the damages to resources occurred or in Wake County if the discharge or resource damage occurs in the open waters of the Atlantic Ocean.

(3) In determining the amount of the penalty, the Commission, or its delegate, shall consider the degree and extent of harm caused by the violation, the cost of rectifying the damage, the amount of money the violator saved by his noncompliance, whether the violation was committed willfully, and the prior record of the violator in complying or failing to comply with this Article.

(c) Criminal Penalties.

(1) A person who willfully violates this section is guilty of a misdemeanor punishable by imprisonment not to exceed one year, a fine not to exceed ten thousand dollars (\$10,000) per day of violation, or both in the discretion of the court.

(2) A person who willfully violates this section and in so doing releases medical waste that creates a substantial risk of physical injury to any person who is not a participant in the offense is guilty of a Class I felony punishable by imprisonment, a fine not to exceed fifty thousand dollars (\$50,000) per day of violation, or both in the discretion of the court.

(d) Restoration.

(1) Any person having control over medical waste discharged in violation of this section shall immediately undertake to collect, remove, and dispose of the medical waste discharged and to restore the area affected by the discharge as nearly as may be to the condition existing prior to the discharge. If it is not feasible to collect and remove the medical waste, the person responsible shall take all practicable actions and measures to otherwise contain, treat, and disperse the medical waste; but no chemical or other dispersants or treatment materials shall be used for such purposes unless they shall have been previously approved by the Department.

(2) Notwithstanding the requirements of subdivision (1), the Department is authorized and empowered to utilize any staff, equipment and materials under its control or supplied by other cooperating State or local agencies, and to contract with any agent or contractor that it deems appropriate to take such actions as are necessary, to collect, investigate, perform surveillance over, remove, contain, treat or disperse or dispose of medical waste discharged into the waters of the State in violation of this section, and to perform any necessary restoration. The Secretary shall keep a record of all expenses incurred in carrying out any project or activity authorized under this section, including actual expenses incurred for services performed by the State's personnel and for use of the State's equipment and material.

- (3) Every person owning or having control over medical waste discharged in violation of, or in circumstances likely to constitute a violation of this section, upon discovery that the discharge of medical waste has occurred, shall immediately notify the Department, or any of its agents or employees, of the nature, location and time of the discharge and of the measures which are being taken or are proposed to be taken to contain, remove, treat and dispose of the medical waste. The agent or employee of the department receiving the notification shall immediately notify the Secretary or such member of the permanent staff of the Department as the Secretary may designate.
- (4) Any person who discharges medical waste in violation of this section or violates any order or rule of the Commission regarding the prohibitions concerning medical waste, or fails to perform any duty imposed regarding medical waste, and in the course thereof causes the death of, or injury to fish, animals, vegetation or other resources of the State, or otherwise causes a reduction in the quality of the waters of the State below the standards set by the Commission, or causes the incurring of costs by the State for the containment, removal, treatment, or dispersal, or disposal of such medical waste, shall be liable to pay the State damages. Such damages shall be an amount equal to the cost of all reasonable and necessary investigations made or caused to be made by the State in connection with such violation and the sum of money necessary to restock such waters, replenish such resources, contain, remove, treat, or disperse, or dispose of such medical waste, or otherwise restore such waters and adjacent lands prior to the injury as such condition is determined by the Commission in conference with the Wildlife Resources Commission, the Marine Fisheries Commission, and any other State agencies having an interest affected by such violation (or by the designees of any such boards, commissions, and agencies).
- (5) Upon receipt of the estimate of damages caused, the Department shall give written notice by registered or certified mail to the person responsible for the death, killing, or injury to fish, animals, vegetation, or other resources of the State, or any reduction in quality of the waters of the State, or the costs of the removal, treatment or disposal of such discharge, describing the damages and their causes with reasonable specificity, and shall request payment from such person. Damages shall become due and payable upon receipt of such notice. The Environmental Management Commission, if collection or other settlement of the damages is not obtained within a reasonable time, shall bring a civil action to recover such damages in the superior court in the county in which the discharge of waste or the damages to resources occurred, or in Wake County if the discharge or resource

damage occurs in the open waters of the Atlantic Ocean. The assessment of damages is not a contested case under G.S. 150B-23.

- (6) 'Person having control over medical waste' shall mean, but shall not be limited to, any person using, storing, or transporting medical waste immediately prior to a discharge of such waste into the waters of the State, and specifically shall include carriers and bailees of such medical waste.'

Sec. 9. Neither the definition of "medical waste" nor any other provision of this act shall be construed to require that rules or standards adopted by the Commission for Health Services for the management of infectious and noninfectious medical waste be identical or similar. Neither the definition of "medical waste" nor any other provision of this act shall be construed to prohibit any discharge of waste into a sanitary sewer or sewer system which is otherwise allowed under any provision of the General Statutes or under any rule adopted by the Commission for Health Services or the Environmental Management Commission.

Sec. 10. This act shall become effective 1 October 1989 and shall apply to violations occurring on or after that date.

In the General Assembly read three times and ratified this the 9th day of August, 1989.