

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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HOUSE BILL 224  
Committee Substitute Favorable 4/23/97

Short Title: Brownfields/Property Use Restrict.

(Public)

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Sponsors:

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Referred to:

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February 17, 1997

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE SECRETARY OF ENVIRONMENT, HEALTH, AND  
NATURAL RESOURCES TO ENCOURAGE THE REDEVELOPMENT OF  
BROWNFIELDS BY APPROVING THE IMPOSITION OF RESTRICTIONS ON  
INACTIVE HAZARDOUS SUBSTANCE OR WASTE DISPOSAL SITES AND ON  
OIL OR HAZARDOUS SUBSTANCE DISCHARGES OR RELEASES, AS  
RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 130A-310.3 is amended by adding a new subsection to read:

"(f) In order to reduce or eliminate the danger to public health or the environment posed by an inactive hazardous substance or waste disposal site, an owner, operator, or other responsible party may impose restrictions on the current or future use of the real property comprising any part of the site if the restrictions meet the requirements of this subsection. The restrictions must be agreed to by the owner of the real property included in a remedial action plan for the site that has been approved by the Secretary and implemented as a part of the remedial action program for the site. The Secretary may approve restrictions included in a remedial action plan in accordance with standards determined as provided in subsection (d) of this section or pursuant to rules adopted under Chapter 150B of the General Statutes. Restrictions may apply to activities on,

1 over, or under the land, including, but not limited to, building, filling, grading,  
2 excavating, and mining. Any approved restriction shall be enforced by any owner,  
3 operator, or other party responsible for the inactive hazardous substance or waste disposal  
4 site. Restrictions may also be enforced by the Department or by any unit of local  
5 government having jurisdiction over any part of the site. A restriction shall not be  
6 declared unenforceable on account of lack of privity of estate or contract or lack of  
7 benefit to particular land."

8 Section 2. G.S. 130A-310.8(a) reads as rewritten:

9 "(a) After determination by the Department of the existence and location of an  
10 inactive hazardous substance or waste disposal site, the owner of the real property on  
11 which the site is located, within 180 days after official notice to ~~him~~the owner to do so,  
12 shall submit to the Department a survey plat of areas designated by the Department ~~which~~  
13 that has been prepared and certified by a professional land surveyor, and entitled  
14 'NOTICE OF INACTIVE HAZARDOUS SUBSTANCE OR WASTE DISPOSAL SITE'.  
15 Where an inactive hazardous substance or waste disposal site is located on more than one  
16 parcel or tract of land, a composite map or plat showing all parcels or tracts may be  
17 recorded. The Notice shall include a legal description of the site that would be sufficient  
18 as a description in an instrument of conveyance, shall meet the requirements of G.S. 47-  
19 30 for maps and plats, and shall identify:

- 20 (1) The location and dimensions of the disposal areas with respect to  
21 permanently surveyed ~~benchmarks; and~~benchmarks.  
22 (2) The type, location, and quantity of hazardous substances disposed of on  
23 the site, to the best of the owner's knowledge.  
24 (3) Any restrictions approved by the Department on the current or future  
25 use of the site.

26 ~~Where an Inactive Hazardous Substance or Waste Disposal Site is located on more than~~  
27 ~~one parcel or tract of land, a composite map or plat showing all such sites may be~~  
28 ~~recorded."~~

29 Section 3. G.S. 130A-310.8(b) reads as rewritten:

30 "(b) After the Department approves and certifies the Notice, the owner of the site  
31 shall file the certified copy of the Notice in the register of deeds' office in the county or  
32 counties in which the land is ~~located.~~located within 30 days of date on which the owner  
33 receives approval of the Notice from the Department."

34 Section 4. G.S. 130A-310.9(b) reads as rewritten:

35 "(b) The Secretary may enter into an agreement with an owner, operator, or other  
36 responsible party ~~which~~that provides for implementation of a voluntary remedial action  
37 program in accordance with a remedial action plan approved by the Department.  
38 Investigations, evaluations, and voluntary remedial actions are subject to the provisions  
39 of G.S. 130A-310.1(c), 130A-310.1(d), 130A-310.3(d), 130A-310.3(f), 130A-310.5,  
40 130A-310.8, and any other requirement imposed by the Department. A voluntary  
41 remedial action and all documents that relate to the voluntary remedial action shall be  
42 fully subject to inspection and audit by the Department. At least 30 days prior to entering  
43 into any agreement providing for the implementation of a voluntary remedial action

1 program, the Secretary shall mail notice of the proposed agreement as provided in G.S.  
2 130A-310.4(c)(2). Sites undergoing voluntary remedial actions shall be so identified as a  
3 separate category in the inventory of sites maintained pursuant to G.S. 130A-310.1 but  
4 shall not be included on the Inactive Hazardous Waste Sites Priority List required by G.S.  
5 130A-310.2."

6 Section 5. G.S. 143-215.84 is amended by adding a new subsection to read:

7 "(e) In order to reduce or eliminate the danger to public health or the environment  
8 posed by a discharge or release of oil or a hazardous substance, an owner, operator, or  
9 other responsible party may impose restrictions on the current or future use of the real  
10 property comprising any part of the site if the restrictions meet the requirements of this  
11 subsection. The restrictions must be agreed to by the owner of the real property, included  
12 in a remedial action plan for the site that has been approved by the Secretary, and  
13 implemented as a part of the remedial action program for the site. The Secretary may  
14 approve restrictions included in a remedial action plan in accordance with standards  
15 determined: (i) pursuant to rules for remediation of soil or groundwater contamination  
16 adopted by the Commission; (ii) with respect to the cleanup of a discharge or release  
17 from a petroleum underground storage tank, pursuant to rules adopted by the  
18 Commission pursuant to G.S. 143-215.94V; or (iii) as provided in G.S. 130A-310.3(d).  
19 Restrictions may apply to activities on, over, or under the land, including, but not limited  
20 to, building, filling, grading, excavating, and mining. Any approved restriction shall be  
21 enforced by any owner, operator, or other party responsible for the oil or hazardous  
22 substance discharge site. Restrictions may also be enforced by the Department or by any  
23 unit of local government having jurisdiction over any part of the site. A restriction shall  
24 not be declared unenforceable on account of lack of privity of estate or contract or lack of  
25 benefit to particular land."

26 Section 6. Article 21A of Chapter 143 of the General Statutes is amended by  
27 adding a new section to read:

28 **"§ 143-215.85A. Recordation of oil or hazardous substance discharge sites.**

29 (a) The owner of the real property on which a site is located that is subject to  
30 current or future use restrictions approved as provided in G.S. 143-215.84(e) shall submit  
31 to the Department a survey plat as required by this section within 180 days after the  
32 owner is notified to do so. The survey plat shall identify areas designated by the  
33 Department, shall be prepared and certified by a professional land surveyor, and shall be  
34 entitled 'NOTICE OF OIL OR HAZARDOUS SUBSTANCE DISCHARGE SITE'.  
35 Where an oil or hazardous substance discharge site is located on more than one parcel or  
36 tract of land, a composite map or plat showing all parcels or tracts may be recorded. The  
37 Notice shall include a legal description of the site that would be sufficient as a description  
38 in an instrument of conveyance, shall meet the requirements of G.S. 47-30 for maps and  
39 plats, and shall identify:

40 (1) The location and dimensions of the disposal areas with respect to  
41 permanently surveyed benchmarks.

42 (2) The type, location, and quantity of hazardous substances disposed of on  
43 the site, to the best of the owner's knowledge.

1           (3) Any restrictions approved by the Department on the current or future  
2           use of the site.

3           (b) After the Department approves and certifies the Notice, the owner of the site  
4 shall file the certified copy of the Notice in the register of deeds office in the county or  
5 counties in which the land is located within 30 days of date on which the owner receives  
6 approval of the Notice from the Department.

7           (c) The register of deeds shall record the certified copy of the Notice and index it  
8 in the grantor index under the names of the owners of the lands.

9           (d) In the event that the owner of the site fails to submit and file the Notice  
10 required by this section within the time specified, the Secretary may prepare and file the  
11 Notice. The costs thereof may be recovered by the Secretary from any responsible party.  
12 In the event that an owner of a site who is not a responsible party submits and files the  
13 Notice required by this section, he may recover the reasonable costs thereof from any  
14 responsible party.

15           (e) When an oil or hazardous substance discharge site is sold, leased, conveyed, or  
16 transferred, the deed or other instrument of transfer shall contain in the description  
17 section, in no smaller type than that used in the body of the deed or instrument, a  
18 statement that the property has been used as an oil or hazardous substance discharge site  
19 and a reference by book and page to the recordation of the Notice.

20           (f) A Notice of oil or hazardous substance discharge site shall be cancelled by the  
21 Secretary after the hazards have been eliminated. The Secretary shall send to the register  
22 of deeds of the county where the Notice is recorded a statement that the hazards have  
23 been eliminated and request that the Notice be cancelled of record. The Secretary's  
24 statement shall contain the names of the landowners as shown in the Notice and reference  
25 the plat book and page where the Notice is recorded. The register of deeds shall record  
26 the Secretary's statement in the deed books and index it on the grantor index in the name  
27 of the landowner as shown in the Notice and on the grantee index in the name 'Secretary  
28 of Environment, Health, and Natural Resources'. The register of deeds shall make a  
29 marginal entry on the Notice showing the date of cancellation and the book and page  
30 where the Secretary's statement is recorded, and the register of deeds shall sign the entry.  
31 If a marginal entry is impracticable because of the method used to record maps and plats,  
32 the register of deeds shall not be required to make a marginal entry."

33           Section 7. G.S. 143-215.88B is amended by adding a new subsection to read:

34           "(h) Any person who knowingly makes any false statement, representation, or  
35 certification in any application, record, report, plan, or other document filed or required  
36 to be maintained under this Article or rules adopted under this Article; or who knowingly  
37 makes a false statement of a material fact in a rule-making proceeding or contested case  
38 under this Article; or who falsifies, tampers with, or knowingly renders inaccurate any  
39 recording or monitoring device or method required to be operated or maintained under  
40 this Article or rules adopted under this Article is guilty of a Class 2 misdemeanor. The  
41 maximum fine that may be imposed for an offense under this section is ten thousand  
42 dollars (\$10,000)."

43           Section 8. This act is effective when it becomes law.