

GENERAL ASSEMBLY OF NORTH CAROLINA  
1989 SESSION

CHAPTER 286  
HOUSE BILL 644

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

Sec. 2. 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. 3. 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. 4. G.S. 130A-310.5(c) reads as rewritten:

"(c) 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, or the Emergency Hazardous Waste Site Remedial Fund established pursuant to G.S. 130A-306, subject to a later action for reimbursement pursuant to G.S. 130A-310.7."

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

"(a) Whenever a person ordered to develop and implement an inactive hazardous substance or waste disposal site remedial action program is unable or fails to do so within the time specified in the order, the Secretary may develop and implement or cause to be developed and implemented such a program. The cost of developing and implementing a remedial action program 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.

- (1) The Department is authorized and empowered to use any staff, equipment or materials under its control or provided by other cooperating federal, State or local agencies and to contract with any agent or contractor it deems appropriate to develop and implement the remedial action program. State agencies shall provide to the maximum extent feasible such staff, equipment, and materials as may be available for developing and implementing a remedial action program.
- (2) Upon completion of any inactive hazardous substance or waste disposal remedial action program, any State or local agency that has provided personnel, equipment, or material shall deliver to the Department a record of expenses incurred by the agency. The amount of the incurred expenses shall be disbursed by the Secretary to each such agency. The Secretary shall keep a record of all expenses incurred for the services of State personnel and for the use of the State's equipment and material.

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

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

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

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

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

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

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

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

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

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

**"§ 130A-310.10. Annual reports.**

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

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

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

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

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

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

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

"Part 4. Superfund Program.

**"§ 130A-310.20. Definitions.**

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

- (1) 'CERCLA/SARA' or 'Superfund' 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.

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

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

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

(a) The Department is authorized to enter into contracts and cooperative agreements with the United States and to engage in any activity otherwise authorized by law to identify, investigate, evaluate, and clean up any site or facility covered by CERCLA/SARA including but not limited to performing preliminary assessments, site investigations, remedial investigations, and feasibility studies; preparation of records of decision; conducting emergency response, remedial, and removal actions; and engaging in enforcement activities in accordance with the provisions of CERCLA/SARA.

(b) The Department may make all assurances required by federal law or regulation including but not limited to assuring that the State will assume responsibility for the operation and maintenance of any remedial action for the anticipated duration of the remedial action; assuring that the State will provide its share of the cost of any remedial action at a site or facility which was privately owned or operated; assuring that the State will provide its share of the cost of any removal, remedial planning, and remedial action at a site or facility owned or operated by the State or a political subdivision of the State; assuring the availability of off-site treatment, storage, or

disposal capacity needed to effectuate a remedial action; assuring that the State will take title to, acquire an interest in, or accept transfer of any interest in real property needed to effectuate a remedial action; assuring that the State has adequate capacity to meet the assurances required by CERCLA/SARA (42 U.S.C. § 9604(b)(9)); assuring access to the facility and any adjacent property including the securing of any right-of-way or easement needed to effectuate a remedial action; and assuring that the State will satisfy all federal, State, and local requirements for permits and approvals necessary to effectuate a remedial action.

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

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

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

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

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

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

In the General Assembly read three times and ratified this the 12th day of June, 1989.