

NORTH CAROLINA GENERAL ASSEMBLY
1973 SESSION

CHAPTER 534
HOUSE BILL 297

AN ACT TO PROVIDE FOR THE PROTECTION AND CONSERVATION OF THE
NATURAL RESOURCES OF THE STATE OF NORTH CAROLINA THROUGH
REGULATION AND CONTROL OF SOURCES OF OIL POLLUTION.

The General Assembly of North Carolina enacts:

Section 1. G.S. Chapter 143 is hereby amended by adding thereto a new Article, to be numbered Article 53, and to read as follows:

"Article 53.

"Oil Pollution Control.

"Part 1.

"General Provisions.

"§ 143-471. **Title.** — This Article shall be known and may be cited as the 'Oil Pollution Control Act of 1973.'

"§ 143-472. **Purpose.** — It is the purpose of this Article to promote the health, safety, and welfare of the citizens of this State by protecting the land and the waters over which this State has jurisdiction from pollution by oil, oil products and oil by-products. It is not the intention of this Article to exercise jurisdiction over any matter as to which the United States Government has exclusive jurisdiction, nor in any wise contrary to any governing provision of federal law, and no provision of this Article shall be so construed. The General Assembly further declares that it is the intent of this Article to support and complement applicable provisions of the Federal Water Pollution Control Act, as amended, 33 U.S.C. Sections 1251, et seq., as amended, and the National Contingency Plan for removal of oil adopted pursuant thereto.

"§ 143-473. **Definitions.** — As used in this Article, unless the context otherwise requires:

- (1) 'Barrel' shall mean 42 U.S. gallons at 60 degrees Fahrenheit.
- (2) 'Board' shall mean the North Carolina Board of Water and Air Resources.
- (3) 'Office' shall mean the North Carolina Office of Water and Air Resources.
- (4) 'Director' shall mean the North Carolina Director of Water and Air Resources.
- (5) 'Discharge' shall mean, but shall not be limited to, any emission, spillage, leakage, pumping, pouring, emptying, or dumping of oil into waters, or upon land in such proximity to waters that oil is reasonably likely to reach the waters, but shall not include discharges in amounts determined by the board to be not harmful to the public health or welfare (including but not limited to fish, shellfish, wildlife and public and private property, shorelines, and beaches); provided, however, that this act shall not be construed to prohibit the oiling of driveways, roads or streets for reduction of dust or routine maintenance; provided further, that the use of oil, oil based products, or chemicals on the land or waters by any State, county, or municipal government agency in any program of mosquito or other pest control, or their use by any person on agricultural, horticultural, or forestry crops, or in connection with aquatic weed control or structural pest and rodent control, in

- a manner approved by the State, county, or local agency charged with authority over such uses, shall not constitute a discharge.
- (6) 'Having control over oil' shall mean, but shall not be limited to, any person using, transferring, storing, or transporting oil immediately prior to a discharge of such oil onto the land or into the waters of the State, and specifically shall include carriers and bailees of such oil.
 - (7) 'Land' shall mean only land from which it is reasonably likely that oil will flow into the waters of this State.
 - (8) 'Oil' shall mean oil of any kind and in any form, including, but specifically not limited to, petroleum, crude oil, diesel oil, fuel oil, gasoline, lubrication oil, oil refuse, oil mixed with other waste, oil sludge, petroleum related products or by-products, and all other liquid hydrocarbons, regardless of specific gravity, whether singly or in combination with other substances.
 - (9) 'Oil bailee' shall mean any person who accepts oil to hold in trust for another for a special purpose and for a limited period of time.
 - (10) 'Oil carrier' shall mean any person who engages in the transportation of oil for compensation.
 - (11) 'Oil terminal facility' shall mean any facility of any kind and related appurtenances located in, on or under the surface of any land, or water, including submerged lands, which is used or capable of being used for the purpose of transferring, transporting, storing, processing, or refining oil; but shall not include any facility having a storage capacity of less than 500 barrels, nor any retail gasoline dispensing operation serving the motoring public. A vessel shall be considered an oil terminal facility only in the event that it is utilized to transfer oil from another vessel to an oil terminal facility; or to transfer oil between one oil terminal facility and another oil terminal facility; or is used to store oil.
 - (12) 'Operator' shall mean any person owning or operating an oil terminal facility or pipeline, whether by lease, contract, or any other form of agreement.
 - (13) 'Person' shall mean any and all natural persons, firms, partnerships, associations, public or private institutions, municipalities or political subdivisions, governmental agencies, or private or public corporations organized or existing under the laws of this State or any other state or country.
 - (14) 'Pipeline' shall mean any conduit, pipe or system of pipes, and any appurtenances related thereto and used in conjunction therewith, used, or capable of being used, for transporting or transferring oil to, from, or between oil terminal facilities.
 - (15) 'Restoration' or 'restore' shall mean any activity or project undertaken in the public interest or to protect public interest or to protect public property or to promote the public health, safety or welfare for the purpose of restoring any lands or waters affected by an oil discharge as nearly as is possible or desirable to the condition which existed prior to the discharge.
 - (16) 'Transfer' shall mean the transportation, on-loading or off-loading of oil between or among two or more oil terminal facilities; between or among oil terminal facilities and vessels; and between or among two or more vessels.
 - (17) 'Vessel' shall include every description of watercraft or other contrivance used, or capable of being used, as a means of transportation on water, whether self-propelled or otherwise, and shall include, but shall not be limited to, barges and tugs; provided that the term 'vessel' as used herein shall not apply to any pleasure, sport or commercial fishing vessel which has

a fuel capacity of less than 500 gallons and is not used to transport petroleum, petroleum products, or general cargo.

- (18) 'Waters' shall mean any stream, river, creek, brook, run, canal, swamp, lake, sound, tidal estuary, bay, reservoir, waterway or any other body or accumulation of water, surface or underground, public or private, natural or artificial, which is contained within, flows through, or borders upon this State, or any portion thereof, including those portions of the Atlantic Ocean over which this State has jurisdiction.

"§ 143-474. Oil Pollution Control Program. — The board shall establish within the office an Oil Pollution Control Program for the administration of this Article. The board may employ and prescribe the duties of employees assigned to this activity.

"§ 143-475. Inspections and investigations; entry upon property; records. — The board, through its authorized representatives, is empowered to conduct such inspections and investigations as shall be reasonably necessary to determine compliance with the provisions of this Article; to determine the person or persons responsible for violation of this Article; to determine the nature and location of any oil discharged to the land or waters of this State; and to enforce the provisions of this Article. The authorized representatives of the board are empowered upon presentation of their credentials to enter upon any private or public property, including boarding any vessel, for the purpose of inspection or investigation or in order to conduct any project or activity to contain, collect, disperse or remove oil discharges or to perform any restoration necessitated by an oil discharge. Neither the State nor its agencies, employees or agents shall be liable in trespass or damages arising out of the conduct of any inspection, investigation, or oil removal or restoration project or activity other than liability for damage to property or injury to persons arising out of the negligent or willful conduct of an employee or agent of the State during the course of an inspection, investigation, project or activity.

"§ 143-476. Confidential information. — Any information relating to a secret process, device or method of manufacturing or production discovered or obtained in the course of an inspection, investigation, project or activity conducted pursuant to this Article shall not be revealed except as may be required by law or lawful order or process.

"§ 143-477. Authority supplemental. — The authority and powers granted under this Article shall be in addition to, and not in derogation of, any authority or powers vested in the board under any other provision of law, except to the extent that such other powers or authority may conflict directly with the powers and authority granted under this Article; and the board is empowered to adopt such rules and regulations as are necessary to administer and carry out the purposes of this Article.

"§ 143-478. Local ordinances. — Nothing in the Article shall be construed to deny any county, municipality, sanitary district, metropolitan sewerage district or other authorized local governmental entity, by ordinance, regulation or law, from exercising police powers with reference to the prevention and control of oil discharges to sewers or disposal systems.

"Part 2.

"Oil Discharge Controls.

"§ 143-479. Discharges. — (a) Unlawful discharges. It shall be unlawful, except as otherwise provided in this Part, for any person to discharge, or cause to be discharged, oil into or upon any waters, tidal flats, beaches, or lands within this State, or into any sewer, surface water drain or other waters that drain into the waters of this State, regardless of the fault of the person having control over the oil, or regardless of whether the discharge was the result of intentional or negligent conduct, accident or other cause.

(b) Excepted discharges. This section shall not apply to discharges of oil in the following circumstances:

- (1) When the discharge was authorized by an existing regulation of the board.

- (2) When any person subject to liability under this Article proves that a discharge was caused by any of the following:
- a. An act of God.
 - b. An act of war or sabotage.
 - c. Negligence on the part of the United States Government or the State of North Carolina or its political subdivisions.
 - d. An act or omission of a third party, whether any such act or omission was or was not negligent.
 - e. Any act or omission by or at the direction of a law enforcement officer or fireman.

(c) Permits. Any person who desires or proposes to discharge oil onto the land or into the waters of this State shall first make application for and secure the permit required by G.S. 143-215.1. Application shall be made pursuant to the rules and regulations adopted by the board. Any permit granted pursuant to this subsection may contain such terms and conditions as the board shall deem necessary and appropriate to conserve and protect the land or waters of this State and the public interest therein.

"§ 143-480. Removal of prohibited discharges. — (a) Person discharging. Any person having control over oil discharged in violation of this Article shall immediately undertake to collect and remove the discharge 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 discharge, the person responsible shall take all practicable actions to contain, treat and disperse the discharge; but no chemicals or other dispersants or treatment materials which will be detrimental to the environment or natural resources shall be used for such purposes unless they shall have been previously approved by the board.

(b) Removal by board. Notwithstanding the requirements of subsection (a) of this section, the board 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 oil discharged onto the land or into the waters of the State and to perform any necessary restoration. The director 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. The authority granted by this subsection shall be limited to projects and activities that are designed to protect the public interest or public property, and shall be compatible with the National Contingency Plan established pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. Sections 1251 et seq.

"§ 143-481. Required notice. — Every person owning or having control over oil discharged in violation of the provisions of this Article, upon notice that such discharge has occurred, shall immediately notify the office, 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 and remove the discharge. The agent or employee of the office receiving the notification shall immediately notify the director or assistant director of the board or such member or members of the permanent staff of the office as the director may designate.

"§ 143-482. Other State agencies. — (a) Cooperative effort. The North Carolina State Highway Commission, the North Carolina Department of Conservation and Development, the North Carolina Wildlife Resources Commission, and any other agency of this State shall cooperate with and lend assistance to the board by assigning to the board upon its request personnel, equipment and material to be utilized in any project or activity related to the containment, collection, dispersal or removal of oil discharged upon the land or into the waters of this State.

(b) Planning. Subsequent to ratification of this Article and prior to its effective date, designated representatives of the board, the State Highway Commission, the Department of Conservation and Development and the Wildlife Resources Commission and any other agency or agencies of the State which the board shall deem necessary and appropriate, shall confer and establish plans and procedures for the assignment and utilization of personnel, equipment and material to be used in carrying out the purposes of this Part. Every State agency involved is authorized to adopt such rules and regulations as shall be necessary to effectuate the purposes of this section.

(c) Accounts. Every State agency participating in the containment, collection, dispersal or removal of an oil discharge or in restoration necessitated by such discharge, shall keep a record of all expenses incurred in carrying out any such project or activity including the actual services performed by the agency's personnel and the use of the agency's equipment and material. A copy of all records shall be delivered to the board upon completion of the project or activity.

"§ 143-483. Oil Pollution Protection Fund. — There is hereby established under the control and direction of the board an Oil Pollution Protection Fund which shall be a non-lapsing, revolving fund consisting of any monies appropriated for such purpose by the General Assembly or that shall be available to it from any other source. The monies shall be used to defray the expenses of any project or program for the containment, collection, dispersal or removal of oil discharged to the land or waters of this State or for restoration necessitated by the discharge. In addition to any monies that shall be appropriated or otherwise made available to it, the fund shall be maintained by fees, charges, penalties or other monies paid to or recovered by or on behalf of the board under the provisions of this Part. Any monies paid to or recovered by or on behalf of the board as fees, charges, penalties or other payments as damages authorized by this Part shall be paid to the Oil Pollution Protection Fund in an amount equal to the sums expended from the fund for the project or activity. Within the meaning of this section, the word 'penalties' means civil penalties and does not include criminal fines or penalties.

"§ 143-484. Payments to State agencies. — Upon completion of any oil removal or restoration project or activity conducted pursuant to the provisions of this Part, each agency of the State that has participated by furnishing personnel, equipment or material shall deliver to the board a record of the expenses incurred by the agency. The amount of incurred expenses shall be disbursed by the director to each such agency from the Oil Pollution Protection Fund. Upon completion of any oil removal or restoration project or activity, the director shall prepare a statement of all expenses and costs of the project or activity expended by the State and shall make demand for payment upon the person having control over the oil discharged to the land or waters of the State, unless the board shall determine that the discharge occurred due to any of the reasons stated in G.S. 143-480(b). Any person having control of oil discharged to the land or waters of the State in violation of the provisions of this Part and any other person causing or contributing to the discharge of oil shall be directly liable to the State for the necessary expenses of oil cleanup projects and activities arising from such discharge and the State shall have a cause of action to recover from any or all such persons. If the person having control over the oil discharged shall fail or refuse to pay the sum expended by the State, the director shall refer the matter to the Attorney General of North Carolina, who shall institute an action in the name of the State in the Superior Court of Wake County, or in his discretion, in the superior court of the county in which the discharge occurred, to recover such cost and expenses.

"§ 143-485. Multiple liability for necessary expenses. — Any person liable for costs of cleanup of oil under this Part shall have a cause of action to recover such costs in part or in whole from any other person causing or contributing to the discharge of oil into the waters of the State, including any amount recoverable by the State as necessary expenses. The total recovery by the State for damage to public resources pursuant to G.S. 143-487 and for the cost

of oil cleanup, arising from any discharge, shall not exceed the applicable limits prescribed by federal law with respect to the United States Government on account of any such discharge.

"§ 143-486. Liability for damage to public resources. — Any person who violates any of the provisions of this Article, or any order, rule or regulation of the board adopted pursuant to this Article, or fails to perform any duty imposed by this Article, or violates an order or other determination of the board made pursuant to the provisions of this Article, including the provisions of a discharge permit issued pursuant to G.S. 143-215.1, 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 Board of Water and Air Resources, shall be liable to pay the State damages in an amount equal to the sum of money necessary to restock such waters, replenish such resources, or otherwise restore the rivers, streams, bays, tidal flats, beaches, estuaries or coastal waters and public lands adjoining the seacoast to their condition prior to the injury, as such condition is determined by the Board of Water and Air Resources in conference with the Board of Conservation and Development, the Wildlife Resources Commission, and any other State agencies having an interest affected by such violation (or by the designees of any or all of such boards, commissions and agencies). Such damages shall be recoverable in an action brought by the Attorney General in the name of the State in the Superior Court of the county in which the damage occurred or in which the violator resides or has his or its principal place of business, as he shall elect; provided, that if damages occurred in more than one county, the Attorney General may bring an action in any of the counties where the damages occurred. Any money so recovered by the Attorney General shall be transferred by the board to appropriate funds administered by the State agencies affected by the violation for use in such activities as food fish or shellfish management programs, wildlife and waterfowl management programs, water quality improvement programs and such other uses as may best mitigate the damage incurred as a result of the violation. No action shall be authorized under the provisions of this section against any person operating in compliance with the conditions of a waste discharge permit issued pursuant to G.S. 143-215.1 and the provisions of this Part.

"§ 143-487. Penalties. — (a) Civil penalties. Any person who intentionally or negligently discharges oil, or knowingly causes or permits the discharge of oil in violation of this part or fails to report a discharge as required by G.S. 143-481, shall incur, in addition to any other penalty provided by law, a penalty in an amount not to exceed five thousand dollars (\$5,000) for every such violation, the amount to be determined by the board after taking into consideration the gravity of the violation, the previous record of the violator in complying or failing to comply with the provisions of this Part as well as G.S. 143-215.1, and such other considerations as the board deems appropriate. Every act or omission which causes, aids or abets a violation of this section shall be considered a violation under the provisions of this section and subject to the penalty herein provided. The penalty herein provided for shall become due and payable when the person incurring the penalty receives a notice in writing from the board describing the violation with reasonable particularity and advising such person that the penalty is due. The board may, upon written application therefor, received within 15 days, and when deemed in the best interest of the State in carrying out the purposes of this Article, remit or mitigate any penalty provided for in this section or discontinue any action to recover the penalty upon such terms as it, in its discretion, shall deem proper, and shall have the authority to ascertain facts upon all such applications in such manner and under such regulations as the board may adopt. If the amount of such penalty is not paid to the department within 15 days after receipt of notice, or if an application for remission or mitigation has not been made within 15 days as herein provided, and the amount provided in the order issued by the board subsequent to such application is not paid within 15 days of receipt thereof, the Attorney General, upon request of the board, shall bring an action in the name of the State in the Superior Court of Wake County or of any other county wherein such violator does business,

to recover the amount specified in the final order of the board. In any such action, the amount of the penalty shall be subject to review by the court. In all such actions the procedures and rules of evidence shall be the same as in an ordinary civil action except as otherwise in this Article provided. Notification received pursuant to this subsection or information obtained by the exploitation of such notification shall not be used against any person in any criminal case, except as prosecution for perjury or for giving a false statement.

(b) Criminal penalties. Any person who intentionally or knowingly or willfully discharges or causes or permits the discharge of oil in violation of this Part shall be guilty of a misdemeanor punishable by imprisonment not to exceed six months or by fine to be not more than ten thousand dollars (\$10,000), or by both, in the discretion of the court. No proceeding shall be brought or continued under this subsection for or on account of a violation by any person who has previously been convicted of a federal violation or a local ordinance violation based upon the same set of facts.

"§ 143-488. **Lien on vessel.** — Any vessel (other than one owned or operated by the State of North Carolina or its political subdivisions or the United States Government) from which oil is discharged in violation of this Part or any regulation prescribed pursuant thereto, shall be liable for the pecuniary penalty and costs of oil removal specified in this Part and such penalty and costs shall constitute a lien on such vessel; provided, however, that said lien shall not attach if a surety bond is posted with the board in an amount and with sureties acceptable to the board, or a cash deposit is made with the board in an amount acceptable to the board. Provided further, that such lien shall not have priority over any existing perfected lien or security interest. The board may adopt regulations providing for such conditions, limitations, and requirements concerning the bond or deposit prescribed by this section as the board deems necessary.

"§ 143-489. **Liability for damage caused.** — Any person having control over oil which enters the waters of the State in violation of this Part shall be strictly liable, without regard to fault, for damages to persons or property, public or private, caused by such entry, subject to the exceptions enumerated in G.S. 143-479(b).

"§ 143-490. **Joint and several liability.** — In order to provide maximum protection for the public interest, any actions brought pursuant to G.S. 143-485 through 143-488(a), 143-490 or any other section of this Article, for recovery of cleanup costs or for civil penalties or for damages, may be brought against any one or more of the persons having control over the oil or causing or contributing to the discharge of oil. All said persons shall be jointly and severally liable, but ultimate liability as between the parties may be determined by common law principles.

"Part 3.

"Oil Terminal Facilities.

"§ 143-491. **Duties of Secretary of Natural and Economic Resources.** — The Secretary of Natural and Economic Resources shall administer the provisions for registration of oil terminal facilities contained in this Part. In addition, he shall engage in such study and research concerning oil terminal facilities and their regulation in this State and elsewhere as may be required to furnish the General Assembly with a thorough factual basis for his recommendations for further legislation pursuant to this Part.

"§ 143-492. **Oil Terminal Facility Registration.** — Prior to November 10, 1973, the owner or operator of every oil terminal facility in the State shall secure a registration certificate from the Secretary of Natural and Economic Resources. Such a certificate shall be issued only where the applicant shall have furnished the following information concerning the oil terminal facility:

(a) Complete name of owner and operator of the oil terminal facility together with addresses and telephone numbers;

(b) Number of employees of the oil terminal facility and the principal officers;

(c) Maps or sketches, based on criteria developed by the Secretary of Natural and Economic Resources to show property lines of the oil terminal facility and location of nearby watercourses or bodies of water as specified by the Secretary; and

(d) Summary of present and proposed procedures, if any, for prevention of oil spills.

The owner or operator of any oil terminal facility which begins operation subsequent to the initial registration date specified in this section shall secure a registration certificate no later than 30 days after beginning operations.

"§ 143-493. Recommendations; Regulations; Definitions. — (a) The Secretary of Natural and Economic Resources shall present recommended further legislation concerning oil pollution to the General Assembly by February 1, 1974. Such recommended legislation may include provisions (1) designating or creating a State agency to regulate oil terminal facilities; (2) specifying the legal responsibility of oil terminal facilities for prevention of oil spills, and for related measures to protect the public interest; (3) creating a system of licensing of oil terminal facilities, or such alternative measures as the Secretary deems needful to protect the public interest; and (4) such other provisions as the Secretary shall deem necessary and appropriate.

(b) The Secretary of Natural and Economic Resources may adopt and modify from time to time rules and regulations consistent with this Part to implement the provisions of this Part. All such rules and regulations and modifications thereof, shall be filed with the Secretary of State as required by Article 18 of Chapter 143 of the General Statutes.

"§ 143-494. Violations. — Any person who shall be adjudged to have violated any provision of this Part or any rule or regulation of the Secretary of Natural and Economic Resources adopted hereunder shall be guilty of a misdemeanor, punishable upon conviction by a fine of not exceeding fifty dollars (\$50.00) or by imprisonment for not exceeding 30 days or by both such fine and imprisonment.

"§ 143-495. Oil refinery permits. — No facility which is used or capable of being used for the purpose of refining oil shall be initiated or constructed prior to July 1, 1974, without a permit from the board. The board shall deny such permit upon finding: (1) that the installation will have substantial adverse effects on wildlife or on fresh water, estuarine or marine fisheries; (2) that the operation of the installation will violate standards of air or water quality promulgated or administered by the board; (3) that the installation will have a substantial adverse effect on a publicly owned park, forest or recreation area; or (4) that the installation will have substantial adverse effects on the public health, safety or welfare that are not outweighed by the benefits of the installation. In the absence of such findings, a permit shall be granted. The board may adopt rules and regulations prescribing procedures to be followed in connection with such permits.

"§ 143-496. Severability. — (a) General severability clause. If any provision of this Article or the application thereof to any person or circumstance is held invalid, whether by federal or State constitutions or laws, such invalidity shall not affect other provisions or applications of the Article which can be given effect without the invalid provision or application, and to this end the provisions of this Article are declared to be severable.

(b) Special severability clause. Without limiting the effect of subsection (a) of this section, the following provisions of this Article are hereby specifically declared to be severable:

- (i) This Article in its entirety is intended to be severable from the general water pollution control laws of North Carolina (G.S. Chapter 143, Article 21, Part 1 and related statutes).
- (ii) The provisions of this Article, in their application to inland waters and related lands, are intended to be severable from those provisions in their application to coastal and marine waters and related lands.
- (iii) The various liability and penalty provisions of this Article (including G.S. 143-484, G.S. 143-485, G.S. 143-486, G.S. 143-487(a) and G.S. 143-487(b),

as well as the several components of each of said sections and subsections) are intended to be severable from one another.

(iv) Part 3 of this Article is intended to be severable from Part 2."

Sec. 2. This act shall be effective from and after September 1, 1973.

In the General Assembly read three times and ratified, this the 16th day of May,

1973.