

GENERAL ASSEMBLY OF NORTH CAROLINA
1987 SESSION

CHAPTER 574
HOUSE BILL 134

AN ACT TO PROVIDE FOR PROTECTION OF THE PUBLIC FROM INACTIVE
HAZARDOUS SUBSTANCE OR WASTE DISPOSAL SITES AND TO
ESTABLISH THE CAROLINA CLEAN DRINKING WATER FUND.

Whereas, each generation of North Carolina citizens are mere custodians of the State's natural resources; and

Whereas, at least seven hundred inactive hazardous substance or waste disposal sites are in existence across the State of North Carolina; and

Whereas, the State of North Carolina has no active program for locating, monitoring, and rendering such sites nonhazardous to the public health and the environment; and

Whereas, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Pub. L. 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. 99-499, 100 Stat. 1613, as amended, are intended to address and clean up only those few sites with high scores on the national Priority List; and

Whereas, such federal acts contemplate that the states will take an active and central role in the cleanup of those sites not placed on such National Priority List; and

Whereas, the Constitution of the State of North Carolina provides that it shall be the policy of this State "to conserve and protect its lands and waters for the benefit of all its citizenry" and to "control and limit the pollution of our air and water"; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. Article 9 of Chapter 130A of the General Statutes is amended by designating G.S. 130A-290 as "Part 1. Definitions" and by designating G.S. 130A-291 through G.S. 130A-309 as "Part 2. Solid and Hazardous Waste Management".

Sec. 2. Article 9 of Chapter 130A of the General Statutes is amended by adding a new Part to read:

"Part. 3. Inactive Hazardous Sites

"§ 130A-310. **Definitions.**—Unless a different meaning is required by the context, the following definitions shall apply throughout this Part:

(1) 'CERCLA/SARA' means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Pub. L. 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. 99-499, 100 Stat. 1613, as amended.

(2) 'Hazardous substance' means hazardous substance as defined in CERCLA/SARA.

(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.

(4) 'Operator' means the person responsible for the overall operation of an inactive hazardous substance or waste disposal site.

(5) 'Owner' means any person who owns an inactive hazardous substance or waste disposal site, or any part thereof.

(6) 'Release' means release as defined in the CERCLA/SARA.

(7) 'Remedy' or 'Remedial Action' means remedy or remedial action as defined in CERCLA/SARA.

(8) 'Remove' or 'Removal' means remove or removal as defined in CERCLA/SARA.

(9) 'Responsible party' means any person who is liable pursuant to G.S. 130A-310.7."

"§ 130A-310.1. Identification, inventory, and monitoring of inactive hazardous substance or waste disposal sites.—(a) Within six months of the effective date of this section the Department shall develop and implement a program for locating, cataloguing, and monitoring all inactive hazardous substance or waste disposal sites in North Carolina. The Secretary shall compile and maintain an inventory of all such sites based on information submitted by owners, operators, and responsible parties, and on data obtained directly by the Secretary. The inventory shall include any evidence of contamination to the air, surface water, groundwater, surface or subsurface soils, or waste streams. The inventory shall indicate the extent of any actual damage or potential danger to public health or to the environment resulting from such contamination.

(b) Within six months of the date this section becomes effective, the Commission shall develop and make available a format and checklist for submission of data relevant to inactive hazardous substance or waste disposal sites. Within 90 days thereafter, each owner, operator, or responsible party shall submit to the Secretary all such site data as is known or readily available to him. The owner, operator, or responsible party shall certify under oath that, to the best of his knowledge and belief, such data is complete and accurate.

(c) Whenever the Secretary determines that there is a release, or substantial threat of a release, into the environment of a hazardous substance from an inactive hazardous substance or waste disposal site, the Secretary may, in addition to any other powers he may have, order any responsible party to conduct such monitoring, testing, analysis, and reporting as the Secretary deems reasonable and necessary to ascertain the nature and extent of any hazard posed by the site. Written notice of any order issued pursuant to this section shall be given to all persons subject to the order as set out in G.S. 130A-

310.3(c). The Secretary, prior to the entry of any such order, shall solicit the cooperation of the responsible party.

(d) If a person fails to submit data as required in subsection (b) of this section or violates the requirements or schedules in an order issued pursuant to subsection (c) of this section, the Secretary may institute an action for injunctive relief, irrespective of all other remedies at law, in the superior court of the county where the violation occurred or where a defendant resides.

(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 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.

"§ 130A-310.2. Inactive Hazardous Waste Sites Priority List.—No later than six months after the date on which this section becomes effective, the Commission shall develop a system for the prioritization of inactive hazardous substance or waste disposal sites based on the extent to which such sites endanger the public health and the environment. The Secretary shall apply the prioritization system to the inventory of sites to create and maintain an Inactive Hazardous Waste Site Priority List, which shall rank all inactive hazardous substance or waste disposal sites in decreasing order of danger. This list shall identify the location of each site and the type and amount of hazardous substances or waste known or believed to be located on the site. The first such list shall be published within two years after the date that this section becomes effective, with subsequent lists to be published at intervals of not more than two years thereafter. The Secretary shall notify owners, operators, and responsible parties of sites listed on the Inactive Hazardous Waste Sites Priority List of their ranking on the list. The Inactive Hazardous Sites Priority List shall be used by the Department in determining budget requests and in allocating any State appropriation which may be made for remedial action, but shall not be used so as to impede any other action by the Department, or any remedial or other action for which funds are available.

"§ 130A-310.3. Remedial action programs for inactive hazardous substance or waste disposal sites.—(a) The Secretary may issue a written declaration, based upon findings of fact, that an inactive hazardous substance or waste disposal site endangers the public health or the environment. After issuing such a declaration, and at any time during which the declaration is in effect, the Secretary shall be responsible for:

- (1) monitoring the inactive hazardous substance or waste disposal site;
- (2) developing a plan for public notice and for community and local government participation in any inactive hazardous substance or waste disposal site remedial action program to be undertaken;
- (3) approving an inactive hazardous substance or waste disposal site remedial action program for the site;
- (4) coordinating the inactive hazardous substance or waste disposal site remedial action program for the site; and

- (5) ensuring that the hazardous substance or waste disposal site remedial action program is completed.

(b) Where possible, the Secretary shall work cooperatively with any owner, operator, responsible party, or any appropriate agency of the State or federal government to develop and implement the inactive hazardous substance or waste disposal site remedial action program. The Secretary shall not take action under this section to the extent that the Secretary of Natural Resources and Community Development, or the Environmental Management Commission, or the Commissioner of Agriculture, or the Pesticide Board has assumed jurisdiction pursuant to Articles 21 or 21A of Chapter 143 of the General Statutes.

(c) Whenever the Secretary has issued such a declaration, and at any time during which the declaration is in effect, the Secretary may, in addition to any other powers he may have, order any responsible party:

- (1) to develop an inactive hazardous substance or waste disposal site remedial action program for the site subject to approval by the Department, and
- (2) to implement the program within reasonable time limits specified in the order.

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 in the return of the receipt. If giving of notice cannot be accomplished either personally or by certified mail, notice shall be given as provided in G.S. 1A-1, Rule 4(j).

(d) In any inactive hazardous substance or waste disposal site remedial action program implemented hereunder, the Secretary shall ascertain the most nearly applicable cleanup standard as would be applied under CERCLA/SARA, and shall seek federal approval of any such program to insure concurrent compliance with federal standards. State standards may exceed and be more comprehensive than such federal standards. The Secretary shall consult with the Secretary of Natural Resources and Community Development to assure concurrent compliance with applicable standards set by the Environmental Management Commission.

"§ 130A-310.4. Public participation in the development of the remedial action plan.—(a) Within 10 days after the Secretary issues a declaration pursuant to G.S. 130A-310.3, he shall notify in writing the local board of health and the local health director having jurisdiction in the county or counties in which an inactive hazardous substance or waste disposal site is located that the site may endanger the public health or environment and that a remedial action plan is being developed. The Secretary shall involve the local health director in the development of the remedial action plan.

(b) Before approving any remedial action plan, the Secretary shall make copies of the proposed plan available for inspection as follows:

- (1) A copy of the plan shall be provided to the local health director.
- (2) A copy of the proposed plan shall be filed with the register of deeds in the county or counties in which the site is located.

- (3) A copy of the plan shall be provided to each public library located in the county or counties in which the site is located.
- (4) The Secretary may place copies of the plan in other locations so as to assure the availability thereof to the public.

In addition, copies of the plan shall be available for inspection and copying at cost by the public during regular business hours in the offices of the agency within the Department with responsibility for the administration of the remedial action program.

(c) Before approving any remedial action plan, the Secretary shall give notice of the proposed plan as follows:

- (1) A notice and summary of the proposed plan shall be published weekly for a period of three consecutive weeks in a newspaper having general circulation in the county or counties where the site is located.
- (2) Notice that a proposed remedial action plan has been developed shall be given by first class mail to persons who have requested such notice. Such notice shall state the locations where a copy of the remedial action plan is available for inspection. The Department shall maintain a mailing list of persons who request notice pursuant to this section.

(d) The Secretary may conduct a public meeting to explain the proposed plan and alternatives to the public.

(e) At least 45 days from the latest date on which notice is provided pursuant to subsection (c) of this section shall be allowed for the receipt of written comment on the proposed remedial action plan prior to its approval. If a public hearing is held pursuant to subsection (f) of this section, at least 20 days will be allowed for receipt of written comment following the hearing prior to the approval of the remedial action plan.

(f) If the Secretary determines that significant public interest exists, he shall conduct a public hearing on the proposed plan and alternatives. The Department shall give notice of the hearing at least 30 days prior to the date thereof by:

- (1) Publication as provided in subdivision (c)(1) of this section, with first publication to occur not less than 30 days prior to the scheduled date of the hearing; and
- (2) First class mail to persons who have requested notice as provided in subdivision (c)(2) of this section.

(g) The Commission on Health Services shall adopt rules prescribing the form and content of the notices required by this section. The proposed remedial action plan shall include a summary of all alternatives considered in the development of the plan. A record shall be maintained of all comment received by the Department regarding the remedial action plan.

"§ 130A-310.5. Authority of the Secretary with respect to sites which pose an imminent hazard.—(a) An imminent hazard exists whenever the Secretary determines, that there exists a condition caused by an inactive hazardous substance or waste disposal site, including a release or a substantial threat of a release into the environment of a hazardous substance from the site, which is causing serious harm to the public health or environment, or which is likely to cause such harm before a remedial action plan can be developed. Whenever the Secretary determines that an imminent hazard exists he may,

in addition to any other powers he may have, without notice or hearing, order any known responsible party to take immediately any action necessary to eliminate or correct the condition, or the Secretary, in his discretion, may take such action without issuing an order. Written notice of any order issued pursuant to this section shall be provided to all persons subject to the order as set out in G.S. 130A-310.3(c). Unless the time required to do so would increase the harm to the public health or the environment, the Secretary shall solicit the cooperation of responsible parties prior to the entry of any such order. The provisions of subdivisions (1) to (3) of G.S. 130A-310.6(a) shall apply to any action taken by the Secretary pursuant to this section, and any such action shall be considered part of a remedial action program, the cost of which may be recovered from any responsible party.

(b) If a person violates the requirements or schedules in an order issued pursuant to this section, the Secretary may institute an action for injunctive relief, irrespective of all other remedies at law, in the superior court of the county where the violation occurred or where a defendant resides.

(c) The cost of any action by the Secretary pursuant this section may be paid from the Carolina Clean Drinking Water 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.

"§ 130A-310.6. State action upon default of responsible parties or when no responsible party can be located.—(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 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).

(b) If the Secretary, after declaring that an inactive hazardous substance or waste disposal site may endanger the public health or the environment, is unable, after making a reasonable attempt, to locate any responsible party, the Department may develop and implement a remedial action program for the site as provided in subsection (a)(1) and (2) of this section. If responsible parties are subsequently located, the Secretary may issue an order demanding payment from such persons in the manner set forth in subdivision (a)(3) of this section for the necessary expenses incurred by the Department for developing and implementing the remedial action program. If the persons subject to such an order refuse to pay the sum expended, or fail to pay such sum within the time specified in the order, the Secretary shall bring an action in the manner set forth in G.S. 130A-310.7.

"§ 130A-310.7. Action for reimbursement; liability of responsible parties.—(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 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 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, 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. 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 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.

(b) There shall be no liability under this section for a person who can establish by a preponderance of the evidence that the danger to the public health or the environment caused by the site was caused solely by:

- (1) an act of God; or

- (2) an act of war; or
- (3) an intentional act or omission of a third party (but this defense shall not be available if the act or omission is that of an employee or agent of the defendant, or if the act or omission occurs in connection with a contractual relationship with the defendant); or
- (4) any combination of the above causes.

"§ 130A-310.8. Recordation of inactive hazardous substance or waste disposal sites.—(a) After determination by the Department of the existence and location of an inactive hazardous substance or waste disposal site, the owner of the real property on which the site is located, within 180 days after official notice to him to do so, shall submit to the Department a survey plat of areas designated by the Department which has been prepared and certified by a professional land surveyor, and entitled 'NOTICE OF INACTIVE HAZARDOUS SUBSTANCE OR WASTE DISPOSAL SITE'. The Notice shall include a legal description of the site that would be sufficient as a description in an instrument of conveyance, shall meet the requirements of G.S. 47-30 for maps and plats, and shall identify:

- (1) the location and dimensions of the disposal areas with respect to permanently surveyed benchmarks; and
- (2) the type, location, and quantity of hazardous substances disposed of on the site, to the best of the owner's knowledge.

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

(b) After the Department approves and certifies the Notice, the owner of the site shall file the certified copy of the Notice in the register of deeds' office in the county or counties in which the land is located.

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

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

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

(f) A Notice of Inactive Hazardous Substance or Waste Disposal Site shall be cancelled by the Secretary after the hazards have been eliminated. The Secretary shall send to the register of deeds of the county where the Notice is recorded a statement that the hazards have been eliminated and request that the Notice be cancelled of record. The Secretary's statement shall contain the names of the landowners as shown in the

Notice and reference the plat book and page where the Notice is recorded. The register of deeds shall record the Secretary's statement in the deed books and index it on the grantor index in the name of the landowner as shown in the Notice and on the grantee index in the name 'Secretary of the North Carolina Department of Human Resources'. The register of deeds shall make a marginal entry on the Notice showing the date of cancellation and the book and page where the Secretary's statement is recorded, and the register shall sign the entry. If a marginal entry is impracticable because of the method used to record maps and plats, the register of deeds shall not be required to make a marginal entry.

(g) This section shall apply with respect to any facility, structure, or area where disposal of any hazardous substance or waste has occurred which is undergoing voluntary remedial action pursuant to this Part.

"§ 130A-310.9. Maximum financial responsibility.—(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.

"§ 130A-310.10. Annual reports.—(a) The Secretary shall present an annual report to the General Assembly 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 Fund;
- (3) a comprehensive budget to implement these remedial action plans and the adequacy of the Carolina Clean Drinking Water 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 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.

(b) The annual reports required by this section shall be made by the Secretary beginning with the next legislative session following the effective date of this section.

"§ 130A-310.11. Carolina Clean Drinking Water Fund created.—There is established under the control and direction of the Department the Carolina Clean Drinking Water 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.

"§ 130A-310.12. Administrative procedure.—Except as may be otherwise specifically provided the provisions of Chapter 150B apply to this Part."

Sec. 3. G.S. 130A-303(b) is amended by adding at the end the following:

"Where the imminent hazard is caused by an inactive hazardous substance or waste disposal site, the Secretary shall follow the procedures set forth in G.S. 130A-310.5."

Sec. 4. This act shall not be construed to obligate the General Assembly to make any appropriation to implement the provisions of this act; nor shall it be construed to obligate the Secretary to implement any monitoring program, testing program, or inactive hazardous substance or waste disposal site remedial action program for which no funding is available, from appropriations or otherwise.

Sec. 5. The Commission shall adopt, pursuant to Chapter 150B of the General Statutes, administrative rules for the implementation of this act not later than six months after enactment. Such rules may be the same as or similar to the federal rules for implementation of CERCLA/SARA.

Sec. 6. This act shall become effective July 1, 1987.

In the General Assembly read three times and ratified this the 8th day of July, 1987.