

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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SENATE BILL 130

Marine Resources and Wildlife Committee Substitute Adopted 3/2/89

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Finance Committee Substitute Adopted 4/20/89

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Short Title: Ocean Dumping Prohibited.

(Public)

Sponsors:

Referred to:

February 7, 1989

A BILL TO BE ENTITLED

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.

1 (2) Willfully violates G.S. 75A-10(d) and in so doing releases medical
2 waste that creates a substantial risk of physical injury to any person
3 who is not a participant in the offense is guilty of a Class I felony
4 punishable by imprisonment, a fine not to exceed fifty thousand dollars
5 (\$50,000) per day of violation, or both in the discretion of the court."

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

7 **"§ 76-40. Navigable waters; certain practices regulated.**

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

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

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

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

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

1 person, firm or corporation who erected or owns the unlawful sign or other structure and
2 the State may bring suit to recover the costs of the removal thereof.

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

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

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

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

24 "(a) The Secretary may impose an administrative penalty on a person who violates
25 Article 9 of this Chapter, rules adopted by the Commission pursuant to Article 9, or any
26 order issued under Article 9. Each day of a continuing violation shall constitute a
27 separate violation. The penalty shall not exceed five ~~hundred-thousand~~ ~~dollars (\$500.00)~~
28 (\$5,000) per day in the case of a violation involving nonhazardous waste. The penalty
29 shall not exceed ten thousand dollars (\$10,000) per day in the case of a violation involving
30 hazardous waste. The penalty shall not exceed twenty-five thousand dollars (\$25,000)
31 per day in case of a first violation involving hazardous waste as defined in G.S. 130A-
32 290 or involving the disposal of medical waste as defined in G.S. 130A-290 in or upon
33 water in a manner that results in medical waste entering waters or lands of the State; and
34 shall not exceed fifty thousand dollars (\$50,000) per day for a second or further
35 violation involving the disposal of medical waste as defined in G.S. 130A-290 in or
36 upon water in a manner that results in medical waste entering waters or lands of the
37 State."

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

40 "**§ 130A-290. Definitions.**

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

- 43 (1) 'CERCLA/SARA' means the Comprehensive Environmental
44 Response, Compensation, and Liability Act of 1980, Pub. L. No. 96-

- 1 510, 94 Stat. 2767, 42 U.S.C. § 9601 **et seq.**, as amended, and the
2 Superfund Amendments and Reauthorization Act of 1986, Pub. L. No.
3 99-499, 100 Stat. 1613, as amended.
- 4 (2) 'Commercial' when applied to a hazardous waste facility, means a
5 hazardous waste facility that accepts hazardous waste from the general
6 public or from another person for a fee.
- 7 (3) 'Disposal' means the discharge, deposit, injection, dumping, spilling,
8 leaking or placing of any solid waste into or on any land or water so
9 that the solid waste or any constituent part of the solid waste may enter
10 the environment or be emitted into the air or discharged into any
11 waters, including groundwaters.
- 12 (4) 'Garbage' means all putrescible wastes, including animal offal and
13 carcasses, and recognizable industrial by-products, but excluding
14 sewage and human waste.
- 15 (5) 'Hazardous waste' means a solid waste, or combination of solid
16 wastes, which because of its quantity, concentration or physical,
17 chemical or infectious characteristics may:
- 18 a. Cause or significantly contribute to an increase in mortality or
19 an increase in serious irreversible or incapacitating reversible
20 illness; or
- 21 b. Pose a substantial present or potential hazard to human health
22 or the environment when improperly treated, stored,
23 transported, disposed of or otherwise managed.
- 24 (6) 'Hazardous waste facility' means a facility for the collection, storage,
25 processing, treatment, recycling, recovery, or disposal of hazardous
26 waste.
- 27 (7) 'Hazardous waste generation' means the act or process of producing
28 hazardous waste.
- 29 (8) 'Hazardous waste disposal facility' means any facility or any portion of
30 a facility for disposal of hazardous waste on or in land in accordance
31 with rules adopted under this Article.
- 32 (9) 'Hazardous waste management' means the systematic control of the
33 collection, source separation, storage, transportation, processing,
34 treatment, recovery and disposal of hazardous wastes.
- 35 (10) 'Hazardous waste management program' means the program and
36 activities within the Department pursuant to Part 2 of this Article, for
37 hazardous waste management.
- 38 (11) 'Landfill' means a disposal facility or part of a disposal facility where
39 waste is placed in or on land and which is not a land treatment facility,
40 a surface impoundment, an injection well, a hazardous waste long-term
41 storage facility or a surface storage facility.
- 42 (12) 'Manifest' means the form used for identifying the quantity,
43 composition and the origin, routing and destination of hazardous waste

1 during its transportation from the point of generation to the point of
2 disposal, treatment or storage.

3 (12a) 'Medical waste' means any solid waste which is generated in the
4 diagnosis, treatment, or immunization of human beings or animals,
5 in research pertaining thereto, or in the production or testing of
6 biologicals, but does not include hazardous waste, radioactive
7 waste, household waste as defined in 40 Code of Federal
8 Regulations § 261.4(b)(1) in effect on 1 July 1989, or those
9 substances excluded from the definition of 'solid waste' in this
10 section.

11 (13) 'Natural resources' means all materials which have useful physical or
12 chemical properties which exist, unused, in nature.

13 (14) 'Open dump' means a solid waste disposal site which is not a sanitary
14 landfill.

15 (15) 'Person' means an individual, corporation, company, association,
16 partnership, unit of local government, State agency, federal agency or
17 other legal entity.

18 (16) 'RCRA' means the Resource Conservation and Recovery Act of 1976,
19 Pub. L. 94-580, 90 Stat. 2795, 42 U.S.C. § 6901 **et seq.**, as amended.

20 (17) 'Recycling' means the process by which recovered resources
21 are transformed into new products so that the original products lose
22 their identity.

23 (18) 'Refuse' means all nonputrescible waste.

24 (19) 'Resource recovery' means the process of obtaining material or energy
25 resources from discarded solid waste which no longer has any useful
26 life in its present form and preparing the solid waste for recycling.

27 (20) 'Reuse' means a process by which resources are reused or rendered
28 usable.

29 (21) 'Sanitary landfill' means a facility for disposal of solid waste on land
30 in a sanitary manner in accordance with the rules concerning sanitary
31 landfills adopted under this Article.

32 (22) 'Septage' means solid waste that is a fluid mixture of untreated and
33 partially treated sewage solids, liquids and sludge of human or
34 domestic origin which is removed from a septic tank system.

35 (23) 'Septage management firm' means a person engaged in the business of
36 pumping, transporting, storing, treating or disposing septage. The term
37 does not include public or community sanitary sewage systems that
38 treat or dispose septage.

39 (24) 'Sludge' means any solid, semisolid or liquid waste generated from a
40 municipal, commercial, institutional or industrial wastewater treatment
41 plant, water supply treatment plant or air pollution control facility, or
42 any other waste having similar characteristics and effects.

43 (25) 'Solid waste' means any hazardous or nonhazardous garbage, refuse or
44 sludge from a waste treatment plant, water supply treatment plant or

1 air pollution control facility, domestic sewage and sludges generated
2 by the treatment thereof in sanitary sewage collection, treatment and
3 disposal systems, and other material that is either discarded or is being
4 accumulated, stored or treated prior to being discarded, or has served
5 its original intended use and is generally discarded, including solid,
6 liquid, semisolid or contained gaseous material resulting from
7 industrial, institutional, commercial and agricultural operations, and
8 from community activities. The term does not include:

- 9 a. Fecal waste from fowls and animals other than humans;
10 b. Solid or dissolved material in:
11 1. Domestic sewage and sludges generated by treatment
12 thereof in sanitary sewage collection, treatment and
13 disposal systems which are designed to discharge
14 effluents to the surface waters;
15 2. Irrigation return flows; and
16 3. Wastewater discharges and the sludges incidental to and
17 generated by treatment which are point sources subject
18 to permits granted under Section 402 of the Water
19 Pollution Control Act, as amended (P.L. 92-500), and
20 permits granted under G.S. 143-215.1 by the
21 Environmental Management Commission. However, any
22 sludges that meet the criteria for hazardous waste under
23 RCRA shall also be a solid waste for the purposes of this
24 Article;
25 c. Oils and other liquid hydrocarbons controlled under Article
26 21A of Chapter 143 of the General Statutes. However, any oils
27 or other liquid hydrocarbons that meet the criteria for hazardous
28 waste under RCRA shall also be a solid waste for the purposes
29 of this Article;
30 d. Any source, special nuclear or byproduct material as defined by
31 the Atomic Energy Act of 1954, as amended (42 U.S.C. §
32 2011).
33 e. Mining refuse covered by the North Carolina Mining Act, G.S.
34 74-46 through 74-68 and regulated by the North Carolina
35 Mining Commission (as defined under G.S. 143B-290).
36 However, any specific mining waste that meets the criteria for
37 hazardous waste under RCRA shall also be a solid waste for the
38 purposes of this Article.

39 (26) 'Solid waste disposal site' means any place at which solid wastes are
40 disposed of by incineration, sanitary landfill or any other method.

41 (27) 'Solid waste generation' means the act or process of producing solid
42 waste.

- 1 (28) 'Solid waste management' means purposeful, systematic control of the
2 generation, storage, collection, transport, separation, treatment,
3 processing, recycling, recovery and disposal of solid waste.
4 (29) 'Solid waste management facility' means land, personnel and
5 equipment used in the management of solid waste.
6 (30) 'Storage' means the containment of solid waste, either on a temporary
7 basis or for a period of years, in a manner which does not constitute
8 disposal.
9 (31) 'Treatment' means any method, technique or process, including
10 neutralization, designed to change the physical, chemical or biological
11 character or composition of any hazardous waste so as to neutralize
12 such waste or so as to render such waste nonhazardous, safer for
13 transport, amenable for recovery, amenable for storage or reduced in
14 volume. 'Treatment' includes any activity or processing designed to
15 change the physical form or chemical composition of hazardous waste
16 so as to render it nonhazardous.
17 (32) 'Unit of local government' means a county, city, town or incorporated
18 village."

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

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

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

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

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

32 "**§ 143-214.2A. Prohibited disposal of medical waste.**

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

37 (b) Civil Penalty.

38 (1) A civil penalty of not more than twenty-five thousand dollars
39 (\$25,000) may be assessed by the Commission against any person for
40 a first violation of this section and an additional penalty of twenty-five
41 thousand dollars (\$25,000) may be assessed for each day during which
42 the violation continues. A civil penalty of not more than fifty thousand
43 dollars (\$50,000) may be assessed by the Commission for a second or
44 further violation and an additional penalty of fifty thousand dollars

- 1 (\$50,000) may be assessed for each day during which the violation
2 continues.
- 3 (2) The Commission, or its delegate, shall determine the amount of the
4 civil penalty proposed to be assessed under this section and shall notify
5 the person to be assessed of the proposed assessment by registered or
6 certified mail. The notice shall make written demand for payment
7 upon the person responsible for the violation, and shall set forth in
8 detail the violation for which the penalty has been invoked. The notice
9 shall further set forth the opportunity for a contested case proceeding
10 under Chapter 150B. The proposed penalty set forth in the notice
11 issued by the Commission, or its delegate, shall become the final civil
12 penalty unless it is increased or decreased by the Commission in the
13 final agency decision of a contested case proceeding requested
14 pursuant to Chapter 150B. If payment is not received or equitable
15 settlement reached within 30 days after demand for payment is made,
16 the Secretary shall refer the matter to the Attorney General for the
17 institution of a civil action in the name of the State in the superior
18 court of the county in which the discharge of waste or the damages to
19 resources occurred or in Wake County if the discharge or resource
20 damage occurs in the open waters of the Atlantic Ocean.
- 21 (3) In determining the amount of the penalty, the Commission, or its
22 delegate, shall consider the degree and extent of harm caused by the
23 violation, the cost of rectifying the damage, the amount of money the
24 violinor saved by his noncompliance, whether the violation was
25 committed willfully, and the prior record of the violator in complying
26 or failing to comply with this Article.
- 27 (c) Criminal Penalties.
- 28 (1) A person who willfully violates this section is guilty of a misdemeanor
29 punishable by imprisonment not to exceed one year, a fine not to
30 exceed ten thousand dollars (\$10,000) per day of violation, or both in
31 the discretion of the court.
- 32 (2) A person who willfully violates this section and in so doing releases
33 medical waste that creates a substantial risk of physical injury to any
34 person who is not a participant in the offense is guilty of a Class I
35 felony punishable by imprisonment, a fine not to exceed fifty thousand
36 dollars (\$50,000) per day of violation, or both in the discretion of the
37 court.
- 38 (d) Restoration.
- 39 (1) Any person having control over medical waste discharged in violation
40 of this section shall immediately undertake to collect, remove, and
41 dispose of the medical waste discharged and to restore the area
42 affected by the discharge as nearly as may be to the condition existing
43 prior to the discharge. If it is not feasible to collect and remove the
44 medical waste, the person responsible shall take all practicable actions

1 and measures to otherwise contain, treat, and disperse the medical
2 waste; but no chemical or other dispersants or treatment materials shall
3 be used for such purposes unless they shall have been previously
4 approved by the Department.

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

17 (3) Every person owning or having control over medical waste discharged
18 in violation of, or in circumstances likely to constitute a violation of
19 this section, upon discovery that the discharge of medical waste has
20 occurred, shall immediately notify the Department, or any of its agents
21 or employees, of the nature, location and time of the discharge and of
22 the measures which are being taken or are proposed to be taken to
23 contain, remove, treat and dispose of the medical waste. The agent or
24 employee of the department receiving the notification shall
25 immediately notify the Secretary or such member of the permanent
26 staff of the Department as the Secretary may designate.

27 (4) Any person who discharges medical waste in violation of this section
28 or violates any order or rule of the Commission regarding the
29 prohibitions concerning medical waste, or fails to perform any duty
30 imposed regarding medical waste, and in the course thereof causes the
31 death of, or injury to fish, animals, vegetation or other resources of the
32 State, or otherwise causes a reduction in the quality of the waters of
33 the State below the standards set by the Commission, or causes the
34 incurring of costs by the State for the containment, removal, treatment,
35 or dispersal, or disposal of such medical waste, shall be liable to pay
36 the State damages. Such damages shall be an amount equal to the cost
37 of all reasonable and necessary investigations made or caused to be
38 made by the State in connection with such violation and the sum of
39 money necessary to restock such waters, replenish such resources,
40 contain, remove, treat, or disperse, or dispose of such medical waste,
41 or otherwise restore such waters and adjacent lands prior to the injury
42 as such condition is determined by the Commission in conference with
43 the Wildlife Resources Commission, the Marine Fisheries
44 Commission, and any other State agencies having an interest affected

- 1 by such violation (or by the designees of any such boards,
2 commissions, and agencies).
- 3 (5) Upon receipt of the estimate of damages caused, the Department shall
4 give written notice by registered or certified mail to the person
5 responsible for the death, killing, or injury to fish, animals, vegetation,
6 or other resources of the State, or any reduction in quality of the waters
7 of the State, or the costs of the removal, treatment or disposal of such
8 discharge, describing the damages and their causes with reasonable
9 specificity, and shall request payment from such person. Damages
10 shall become due and payable upon receipt of such notice. The
11 Environmental Management Commission, if collection or other
12 settlement of the damages is not obtained within a reasonable time,
13 shall bring a civil action to recover such damages in the superior court
14 in the county in which the discharge of waste or the damages to
15 resources occurred, or in Wake County if the discharge or resource
16 damage occurs in the open waters of the Atlantic Ocean. The
17 assessment of damages is not a contested case under G.S. 150B-23.
- 18 (6) 'Person having control over medical waste' shall mean, but shall not be
19 limited to, any person using, storing, or transporting medical waste
20 immediately prior to a discharge of such waste into the waters of the
21 State, and specifically shall include carriers and bailees of such
22 medical waste."

23 Sec. 9. Neither the definition of "medical waste" nor any other provision of
24 this act shall be construed to require that rules or standards adopted by the Commission
25 for Health Services for the management of infectious and noninfectious medical waste
26 be identical or similar.

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