

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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SENATE BILL 125*

Agriculture/Environment/Natural Resources Committee Substitute Adopted 4/22/97

House Committee Substitute Favorable 6/30/97

Short Title: Brownfields/Property Use Restrict.

(Public)

Sponsors:

Referred to:

February 17, 1997

A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

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

"(f) In order to reduce or eliminate the danger to public health or the environment posed by an inactive hazardous substance or waste disposal site, an owner, operator, or other responsible party may impose restrictions on the current or future use of the real property comprising any part of the site if the restrictions meet the requirements of this subsection. The restrictions must be agreed to by the owner of the real property, included in a remedial action plan for the site that has been approved by the Secretary, and implemented as a part of the remedial action program for the site. The Secretary may approve restrictions included in a remedial action plan in accordance with standards determined as provided in subsection (d) of this section or pursuant to rules adopted under Chapter 150B of the General Statutes. Restrictions may apply to activities on, over, or under the land, including, but not limited to, use of groundwater, building, filling, grading, excavating, and mining. Any approved restriction shall be enforced by any owner, operator, or other party responsible for the inactive hazardous

1 substance or waste disposal site. Any land-use restriction may also be enforced by the
2 Department through the remedies provided in Part 2 of Article 1 of this Chapter or by
3 means of a civil action. The Department may enforce any land-use restriction without
4 first having exhausted any available administrative remedies. A land-use restriction
5 may also be enforced by any unit of local government having jurisdiction over any part
6 of the site. A land-use restriction shall not be declared unenforceable due to lack of
7 privity of estate or contract, due to lack of benefit to particular land, or due to lack of
8 any property interest in particular land. Any person who owns or leases a property
9 subject to a land-use restriction under this Part shall abide by the land-use restriction."

10 Section 2. G.S. 130A-310.8 reads as rewritten:

11 **"§ 130A-310.8. Recordation of inactive hazardous substance or waste disposal**
12 **sites.**

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

24 (1) The location and dimensions of the disposal areas and areas of
25 potential environmental concern with respect to permanently surveyed
26 benchmarks; and benchmarks.

27 (2) The type, location, and quantity of hazardous substances disposed of
28 known by the owner of the site to exist on the site, to the best of the
29 owner's knowledge. site.

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

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

35 (b) After the Department approves and certifies the Notice, the owner of the site
36 shall file the certified copy of the Notice in the register of deeds' office in the county or
37 counties in which the land is ~~located~~ located within 15 days of the date on which the
38 owner receives approval of the Notice from the Department.

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

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

1 files the Notice required by this section, he may recover the reasonable costs thereof
2 from any responsible party.

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

8 ~~(f) A Notice of Inactive Hazardous Substance or Waste Disposal Site shall be
9 cancelled by the Secretary after the hazards have been eliminated. The Secretary shall
10 send to the register of deeds of the county where the Notice is recorded a statement that
11 the hazards have been eliminated and request that the Notice be cancelled of record.
12 The Secretary's statement shall contain the names of the landowners as shown in the
13 Notice and reference the plat book and page where the Notice is recorded. The register
14 of deeds shall record the Secretary's statement in the deed books and index it on the
15 grantor index in the name of the landowner as shown in the Notice and on the grantee
16 index in the name 'Secretary of Environment, Health, and Natural Resources'. The
17 register of deeds shall make a marginal entry on the Notice showing the date of
18 cancellation and the book and page where the Secretary's statement is recorded, and the
19 register shall sign the entry. If a marginal entry is impracticable because of the method
20 used to record maps and plats, the register of deeds shall not be required to make a
21 marginal entry. A Notice of Inactive Hazardous Substance or Waste Disposal Site filed
22 pursuant to this section may, at the request of the owner of the land, be cancelled by the
23 Secretary after the hazards have been eliminated. If requested in writing by the owner
24 of the land and if the Secretary concurs with the request, the Secretary shall send to the
25 register of deeds of each county where the Notice is recorded a statement that the
26 hazards have been eliminated and request that the Notice be cancelled of record. The
27 Secretary's statement shall contain the names of the owners of the land as shown in the
28 Notice and reference the plat book and page where the Notice is recorded. The register
29 of deeds shall record the Secretary's statement in the deed books and index it on the
30 grantor index in the names of the owners of the land as shown in the Notice and on the
31 grantee index in the name 'Secretary of Environment, Health, and Natural Resources'.
32 The register of deeds shall make a marginal entry on the Notice showing the date of
33 cancellation and the book and page where the Secretary's statement is recorded, and the
34 register of deeds shall sign the entry. If a marginal entry is impracticable because of the
35 method used to record maps and plats, the register of deeds shall not be required to
36 make a marginal entry.~~

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

40 Section 3. G.S. 130A-310.9(b) reads as rewritten:

41 "(b) The Secretary may enter into an agreement with an owner, operator, or other
42 responsible party ~~which~~ that provides for implementation of a voluntary remedial action
43 program in accordance with a remedial action plan approved by the Department.
44 Investigations, evaluations, and voluntary remedial actions are subject to the provisions

1 of G.S. 130A-310.1(c), 130A-310.1(d), 130A-310.3(d), 130A-310.3(f), 130A-310.5,
2 130A-310.8, and any other requirement imposed by the Department. A voluntary
3 remedial action and all documents that relate to the voluntary remedial action shall be
4 fully subject to inspection and audit by the Department. At least 30 days prior to
5 entering into any agreement providing for the implementation of a voluntary remedial
6 action program, the Secretary shall mail notice of the proposed agreement as provided
7 in G.S. 130A-310.4(c)(2). Sites undergoing voluntary remedial actions shall be so
8 identified as a separate category in the inventory of sites maintained pursuant to G.S.
9 130A-310.1 but shall not be included on the Inactive Hazardous Waste Sites Priority
10 List required by G.S. 130A-310.2."

11 Section 4. G.S. 143-215.84 is amended by adding a new subsection to read:

12 "(e) In order to reduce or eliminate the danger to public health or the environment
13 posed by a discharge or release of oil or a hazardous substance, an owner, operator, or
14 other responsible party may impose restrictions on the current or future use of the real
15 property comprising any part of the site if the restrictions meet the requirements of this
16 subsection. The restrictions must be agreed to by the owner of the real property,
17 included in a remedial action plan for the site that has been approved by the Secretary,
18 and implemented as a part of the remedial action program for the site. The Secretary
19 may approve restrictions included in a remedial action plan in accordance with
20 standards determined: (i) pursuant to rules for remediation of soil or groundwater
21 contamination adopted by the Commission; (ii) with respect to the cleanup of a
22 discharge or release from a petroleum underground storage tank, pursuant to rules
23 adopted by the Commission pursuant to G.S. 143-215.94V; or (iii) as provided in G.S.
24 130A-310.3(d). Restrictions may apply to activities on, over, or under the land,
25 including, but not limited to, use of groundwater, building, filling, grading, excavating,
26 and mining. Any approved restriction shall be enforced by any owner, operator, or
27 other party responsible for the oil or hazardous substance discharge site. Any land-use
28 restriction may also be enforced by the Department through the remedies provided in
29 this Article, Part 2 of Article 1 of Chapter 130A of the General Statutes, or by means of
30 a civil action. The Department may enforce any land-use restriction without first having
31 exhausted any available administrative remedies. A land-use restriction may also be
32 enforced by any unit of local government having jurisdiction over any part of the site.
33 A land-use restriction shall not be declared unenforceable due to lack of privity of estate
34 or contract, due to lack of benefit to particular land, or due to lack of any property
35 interest in particular land. Any person who owns or leases a property subject to a land-
36 use restriction under this Part shall abide by the land-use restriction."

37 Section 5. Article 21A of Chapter 143 of the General Statutes is amended by
38 adding a new section to read:

39 "**§ 143-215.85A. Recordation of oil or hazardous substance discharge sites.**

40 (a) The owner of the real property on which a site is located that is subject to
41 current or future use restrictions approved as provided in G.S. 143-215.84(e) shall
42 submit to the Department a survey plat as required by this section within 180 days after
43 the owner is notified to do so. The survey plat shall identify areas designated by the
44 Department, shall be prepared and certified by a professional land surveyor, and shall be

1 entitled 'NOTICE OF OIL OR HAZARDOUS SUBSTANCE DISCHARGE SITE'.
2 Where an oil or hazardous substance discharge site is located on more than one parcel
3 or tract of land, a composite map or plat showing all parcels or tracts may be recorded.
4 The Notice shall include a legal description of the site that would be sufficient as a
5 description in an instrument of conveyance, shall meet the requirements of G.S. 47-30
6 for maps and plats, and shall identify:

7 (1) The location and dimensions of the disposal areas and areas of
8 potential environmental concern with respect to permanently surveyed
9 benchmarks.

10 (2) The type, location, and quantity of hazardous substances disposed of
11 known by the owner of the site to exist on the site, to the best of the
12 owner's knowledge site.

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

15 (b) After the Department approves and certifies the Notice, the owner of the site
16 shall file the certified copy of the Notice in the register of deeds office in the county or
17 counties in which the land is located within 15 days of the date on which the owner
18 receives approval of the Notice from the Department.

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

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

27 (e) When an oil or hazardous substance discharge site that is subject to current or
28 future land-use restrictions under this section is sold, leased, conveyed, or transferred,
29 the deed or other instrument of transfer shall contain in the description section, in no
30 smaller type than that used in the body of the deed or instrument, a statement that the
31 property has been used as an oil or hazardous substance discharge site and a reference
32 by book and page to the recordation of the Notice.

33 (f) A Notice of Oil or Hazardous Substance Discharge Site filed pursuant to this
34 section may, at the request of the owner of the land, be cancelled by the Secretary after
35 the hazards have been eliminated. If requested in writing by the owner of the land and
36 if the Secretary concurs with the request, the Secretary shall send to the register of deeds
37 of each county where the Notice is recorded a statement that the hazards have been
38 eliminated and request that the Notice be cancelled of record. The Secretary's statement
39 shall contain the names of the owners of the land as shown in the Notice and reference
40 the plat book and page where the Notice is recorded. The register of deeds shall record
41 the Secretary's statement in the deed books and index it on the grantor index in the
42 names of the owners of the land as shown in the Notice and on the grantee index in the
43 name 'Secretary of Environment, Health, and Natural Resources'. The register of deeds
44 shall make a marginal entry on the Notice showing the date of cancellation and the book

1 and page where the Secretary's statement is recorded, and the register of deeds shall sign
2 the entry. If a marginal entry is impracticable because of the method used to record
3 maps and plats, the register of deeds shall not be required to make a marginal entry."

4 Section 6. G.S. 143-215.88B is amended by adding a new subsection to read:

5 "(h) Any person who knowingly and willfully makes any false statement,
6 representation, or certification in any application, record, report, plan, or other
7 document filed or required to be maintained under this Article or rules adopted under
8 this Article; or who knowingly and willfully makes a false statement of a material fact
9 in a rule-making proceeding or contested case under this Article; or who falsifies,
10 tampers with, or knowingly and willfully renders inaccurate any recording or
11 monitoring device or method required to be operated or maintained under this Article or
12 rules adopted under this Article is guilty of a Class I felony, which may include a fine
13 not to exceed one hundred thousand dollars (\$100,000) per day of violation, provided
14 that the fine shall not exceed a cumulative total of five hundred thousand dollars
15 (\$500,000) for each period of 30 days during which a violation continues."

16 Section 7. This act becomes effective 1 October 1997.