

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

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HOUSE BILL 402

Short Title: Limit Env. Liability for Certain Recyclers. (Public)

Sponsors: Representatives McElraft and Yarborough (Primary Sponsors).
For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Environment

March 20, 2017

1 A BILL TO BE ENTITLED
2 AN ACT TO GENERALLY EXEMPT PERSONS WHO ARRANGE FOR RECYCLING OF
3 RECYCLABLE MATERIALS FROM LIABILITY FOR HAZARDOUS SUBSTANCES
4 RELEASED OR THREATENED TO BE RELEASED AT A FACILITY OWNED OR
5 OPERATED BY ANOTHER PERSON.

6 The General Assembly of North Carolina enacts:

7 **SECTION 1.** G.S. 130A-310.7 reads as rewritten:

8 "**§ 130A-310.7. Action for reimbursement; liability of responsible parties; notification of**
9 **completed remedial action.**

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

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

16 any hazardous substance, the result of which discharge or deposit is the existence of an inactive
17 hazardous substance or waste disposal site, shall be considered a responsible party. Neither an
18 innocent landowner who is a bona fide purchaser of the inactive hazardous substance or waste
19 disposal site without knowledge or without a reasonable basis for knowing that hazardous
20 substance or waste disposal had occurred nor a person whose interest or ownership in the
21 inactive hazardous substance or waste disposal site is based on or derived from a security
22 interest in the property shall be considered a responsible party. A responsible party shall be
23 directly liable to the State for any or all of the reasonably necessary expenses of developing and
24 implementing a remedial action program for such site. The Secretary shall bring an action for
25 reimbursement of the Inactive Hazardous Sites Cleanup Fund in the name of the State in the
26 superior court of the county in which the site is located to recover such sum and the cost of
27 bringing the action. The State must show that a danger to the public health or the environment
28 existed and that the State complied with the provisions of this Part.

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

- 32 (1) An act of God; or
33 (2) An act of war; or
34 (3) An intentional act or omission of a third party (but this defense shall not be
35 available if the act or omission is that of an employee or agent of the



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1 defendant, or if the act or omission occurs in connection with a contractual
2 relationship with the defendant); or

3 (4) Any combination of the above causes.

4 (b1) Notwithstanding subsection (a) of this section, there shall be no liability under this
5 section for a person who arranges for recycling of recyclable materials with respect to such
6 materials if that person has complied with all standards, requirements, and criteria set forth in
7 the Superfund Recycling Equity Act of 1999, 42 U.S.C. § 9627, as amended.

8 (c) The definitions set out in G.S. 130A-310.31(b) apply to this subsection. Any person
9 may submit a written request to the Department for a determination that a site that is subject to
10 this Part has been remediated to unrestricted use standards as provided in Part 5 of Article 9 of
11 Chapter 130A of the General Statutes. A request for a determination that a site has been
12 remediated to unrestricted use standards shall be accompanied by the fee required by
13 G.S. 130A-310.39(a)(2). If the Department determines that the site has been remediated to
14 unrestricted use standards, the Department shall issue a written notification that no further
15 remediation will be required at the site. The notification shall state that no further remediation
16 will be required at the site unless the Department later determines, based on new information or
17 information not previously provided to the Department, that the site has not been remediated to
18 unrestricted use standards or that the Department was provided with false or incomplete
19 information. Under any of those circumstances, the Department may withdraw the notification
20 and require responsible parties to remediate the site to unrestricted use standards."

21 **SECTION 2.** This act is effective when it becomes law.