

§ 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 Inactive Hazardous Sites Cleanup 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.

(c) The Secretary shall use funds allocated to the Department under G.S. 130A-295.9 to assess pre-1983 landfills, to determine the priority for remediation of pre-1983 landfills, and to develop and implement a remedial action plan for each pre-1983 landfill that requires remediation. Environmental and human health risks posed by a pre-1983 landfill may be mitigated using a risk-based approach for assessment and remediation. The Secretary shall develop a program to permit owners of property containing a pre-1983 landfill to suspend the further application of requirements of the program authorized by this subsection for as long as the owner continues to own the property if the owner complies with all of the following requirements:

- (1) The property owner signs an assumption of liability agreement agreeing to accept all liability for potential on-site and off-site impacts caused by the pre-1983 landfill.
- (2) The property owner provides financial assurance for any future impacts. The Department shall set the financial assurance requirement in a reasonable manner based on the information on current site conditions and historical disposal records or other information provided by the property owner. The requirement for financial assurance of this subdivision shall not apply where (i) the pre-1983 landfill served as the municipal landfill for a unit of local government and (ii) the unit of local government provided no financial compensation for the waste disposal to the owner of the landfill site.

(d) The Secretary shall not seek cost recovery from a unit of local government for assessment and remedial action performed under subsection (c) of this section at a pre-1983 landfill. The Secretary shall not seek cost recovery for assessment and remedial action performed under subsection (c) of this section at a pre-1983 landfill from any other potentially responsible party if the Secretary develops and implements a remedial action plan for that pre-1983 landfill. If any potentially responsible party fails to cooperate with assessment of a site and implementation of control and mitigation measures at any site which the potentially responsible party owns or over which the potentially responsible party exercises control through a lease or other property interest, the Secretary may seek cost recovery for assessment and remedial action. Cooperation with assessment of a site and implementation of control and mitigation measures includes, but is not limited to, granting access to the site, allowing installation of monitoring wells, allowing installation and maintenance of improvements to the landfill cap, allowing installation of security measures, agreeing to record and implement land-use restrictions, and providing access to any records regarding the pre-1983 landfill. Nothing in this section shall alter any right, duty, obligation, or liability between a unit of local government and a third party. Nothing in this section shall alter any right, duty, obligation, or liability between any other potentially responsible party and a unit of local government, a third party, or, except as provided in this subsection, to the State.

(e) The Secretary shall develop and implement remedial action plans for pre-1983 landfills in the order of their priority determined as provided in subsection (c) of this section. The Secretary shall not develop or implement a remedial action plan for a pre-1983 landfill unless the Secretary determines that sufficient funds will be available from the Inactive Hazardous Sites Cleanup Fund to pay the costs of development and implementation of a remedial action plan for that pre-1983 landfill.

(f) A unit of local government that voluntarily undertakes assessment or remediation of a pre-1983 landfill may request that the Department reimburse the costs of assessment of the pre-1983 landfill and implementation of measures necessary to remediate the site to eliminate an imminent hazard. The Department shall provide reimbursement under this subsection if the Department finds all of the following:

- (1) The unit of local government undertakes assessment and remediation under a plan approved by the Department.
- (2) The unit of local government provides a certified accounting of costs incurred for assessment and remediation.
- (3) Each contract for assessment and remediation complies with the requirements of Articles 3D and 8 of Chapter 143 of the General Statutes.
- (4) Remedial action is limited to measures necessary to abate the imminent hazard.

(g) The Department may undertake any additional action necessary to remediate a pre-1983 landfill based on the priority ranking of the site under subsection (c) of this section. (1987, c. 574, s. 2; 1989, c. 286, s. 5; 2007-550, s. 14(c); 2017-57, s. 13.4(a).)