

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

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HOUSE BILL 1301
Senate Agriculture/Environment/Natural Resources Committee Substitute
Adopted 8/8/01

Short Title: Clarify Petroleum LUST Cleanup Requirements.

(Public)

Sponsors:

Referred to:

April 12, 2001

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE CIRCUMSTANCES IN WHICH LAND-USE RESTRICTIONS AND RECORDATION OF THOSE RESTRICTIONS IN THE OFFICE OF THE REGISTER OF DEEDS ARE REQUIRED IN CONNECTION WITH THE CLEANUP OF A RELEASE FROM A PETROLEUM UNDERGROUND STORAGE TANK IN ORDER TO PROTECT THE ENVIRONMENT AND PUBLIC HEALTH, TO ENSURE ENFORCEABILITY OF RESTRICTIONS, AND TO PROVIDE NOTICE TO SUBSEQUENT OWNERS OF THE PROPERTY; AND TO MAKE CONFORMING CHANGES TO RELATED STATUTES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143B-279.9 reads as rewritten:

"§ 143B-279.9. Land-use restrictions may be imposed to reduce danger to public health at contaminated sites.

(a) In order to reduce or eliminate the danger to public health or the environment posed by the presence of contamination at a 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 where the contamination is located if the restrictions meet the requirements of this section. 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 that the Secretary determines to be applicable to the site. Except as provided in subsection (b) of this section, if the remedial action is risk-based or will not require that the site meet ~~current-unrestricted use~~ standards, as defined in ~~G.S. 130A-310.31~~, the remedial action plan must include an agreement by the owner, operator, or other responsible party to record approved land-use restrictions that meet the requirements of this section as provided in G.S. ~~143B-279.10~~.143B-279.10

1 or G.S. 143B-279.11, whichever applies. Restrictions may apply to activities on, over,
2 or under the land, including, but not limited to, use of groundwater, building, filling,
3 grading, excavating, and mining. Any approved restriction shall be enforced by any
4 ~~owner, operator, owner of the land, operator of the facility,~~ or other party responsible
5 for the contaminated site. Any land-use restriction may also be enforced by the
6 Department through the remedies provided by any provision of law that is implemented
7 or enforced by the Department or by means of a civil action. The Department may
8 enforce any land-use restriction without first having exhausted any available
9 administrative remedies. A land-use restriction may also be enforced by any unit of
10 local government having jurisdiction over any part of the site. A land-use restriction
11 shall not be declared unenforceable due to lack of privity of estate or contract, due to
12 lack of benefit to particular land, or due to lack of any property interest in particular
13 land. Any person who owns or leases a property subject to a land-use restriction under
14 this Part shall abide by the land-use restriction.

15 (b) The definitions set out in G.S. 143-215.94A apply to this subsection.
16 ~~Subsection (a) of this section shall not apply to a~~ A risk-based remedial action plan for
17 the cleanup of environmental damage resulting from a discharge or release of petroleum
18 from an underground storage tank pursuant to Part 2A of Article 21A of Chapter 143 of
19 the General Statutes. Statutes that will not require that the site meet unrestricted use
20 standards must include an agreement by the owner, operator, or other party responsible
21 for the discharge or release of petroleum to record approved land-use restrictions that
22 meet the requirements of this section as provided in G.S. 143B-279.11. All of the
23 provisions of this section shall apply except as specifically modified by this subsection.
24 Any restriction on the current or future use of real property shall be enforceable only
25 with respect to: (i) real property on which the source of contamination is located and (ii)
26 any real property on which contamination is located at the time the remedial action plan
27 is approved and that was owned or controlled by any owner or operator of the
28 underground storage tank or other responsible party at the time the discharge or release
29 of petroleum is discovered or reported or at any time thereafter. No restriction on the
30 current or future use of real property shall apply to any portion of any parcel or tract of
31 land on which contamination is not located. This subsection shall not be construed to
32 require any person to record any restriction on the current or future use of real property
33 other than the real property described in this subsection. For purposes of this subsection
34 and G.S. 143B-279.11, the current or future use of real property may be restricted only
35 as set out in any one or more of the following subdivisions:

36 (1) Where soil contamination will remain in excess of unrestricted use
37 standards, the property may be used for a primary or secondary
38 residence, school, daycare center, nursing home, playground, park,
39 recreation area, or other similar use only with the approval of the
40 Department.

41 (2) Where soil contamination will remain in excess of unrestricted use
42 standards and the property is used for a primary or secondary residence

1 that was constructed before the release of petroleum that resulted in the
2 contamination is discovered or reported, the Secretary may approve
3 alternative restrictions that are sufficient to reduce the risk of exposure
4 to contaminated soils to an acceptable level while allowing the real
5 property to continue to be used for a residence.

6 (3) Where groundwater contamination will remain in excess of
7 unrestricted use standards, installation or operation of any well usable
8 as a source of water shall be prohibited.

9 (4) Any restriction on the current or future use of the real property that is
10 agreed upon by both the owner of the real property and the
11 Department.

12 (c) This section does not alter any right, duty, obligation, or liability of any
13 owner, operator, or other responsible party under any other provision of law.

14 (d) As used in this section:

15 (1) 'Unrestricted use standards' means generally applicable standards,
16 guidance, or established methods governing contaminants that are
17 established by statute or adopted, published, or implemented by the
18 Environmental Management Commission, the Commission for Health
19 Services, or the Department. Cleanup or remediation of real property
20 to unrestricted use standards means that the property is restored to a
21 condition such that the property and any use that is made of the
22 property does not pose a danger or risk to public health, the
23 environment, or users of the property that is significantly greater than
24 that posed by use of the property prior to its having been contaminated.

25 (2) 'Risk-based', when used in connection with cleanup, remediation, or
26 similar terms, means cleanup or remediation of contamination of real
27 property to a level that, although not in compliance with unrestricted
28 use standards, does not pose a significant danger or risk to public
29 health, the environment, or users of the real property so long as the
30 property remains in the condition and is used in a manner that is
31 consistent with the assumptions as to the condition and use of the
32 property on which the determination that the level of risk is acceptable
33 is based."

34 **SECTION 2.** G.S. 143B-279.10 reads as rewritten:

35 **"§ 143B-279.10. Recordation of contaminated sites.**

36 (a) The owner of the real property on which a site is located that is subject to
37 current or future use restrictions approved as provided in G.S. 143B-279.9(a) shall
38 submit to the Department a survey plat as required by this section within 180 days after
39 the owner is notified to do so. The survey plat shall identify areas designated by the
40 Department, shall be prepared and certified by a professional land surveyor, and shall be
41 entitled 'NOTICE OF CONTAMINATED SITE'. Where a contaminated site is located
42 on more than one parcel or tract of land, a composite map or plat showing all parcels or

1 tracts may be recorded. The Notice shall include a legal description of the site that
2 would be sufficient as a description in an instrument of conveyance, shall meet the
3 requirements of G.S. 47-30 for maps and plats, and shall identify:

- 4 (1) The location and dimensions of any disposal areas and areas of
5 potential environmental concern with respect to permanently surveyed
6 benchmarks.
- 7 (2) The type, location, and quantity of contamination known to the owner
8 of the site to exist on the site.
- 9 (3) Any restriction approved by the Department on the current or future
10 use of the site.

11 (b) The Department shall review the proposed Notice to determine whether the
12 Notice meets the requirements of this section and rules adopted to implement this
13 section, and shall provide the owner of the site with a notarized copy of the approved
14 Notice. After the Department approves ~~and certifies~~ the Notice, the owner of the site
15 shall file ~~the certified~~ a notarized copy of the approved Notice in the register of deeds
16 office in the county or counties in which the land is located within 15 days of the date
17 on which the owner receives approval of the Notice from the Department.

18 (c) The register of deeds shall record the ~~certified~~ notarized copy of the approved
19 Notice and index it in the grantor index under the names of the owners of the land.

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

26 (e) When a contaminated site that is subject to current or future land-use
27 restrictions is sold, leased, conveyed, or transferred, the deed or other instrument of
28 transfer shall contain in the description section, in no smaller type than that used in the
29 body of the deed or instrument, a statement that the property is a contaminated site and
30 a reference by book and page to the recordation of the Notice.

31 (f) A Notice of Contaminated Site filed pursuant to this section shall, at the
32 request of the owner of the land, be cancelled by the Secretary after the contamination
33 has been eliminated or remediated to ~~current standards, as defined in G.S. 130A-310.31.~~
34 unrestricted use standards. If requested in writing by the owner of the land and if the
35 Secretary concurs with the request, the Secretary shall send to the register of deeds of
36 each county where the Notice is recorded a statement that the contamination has been
37 eliminated, or that the contamination has been remediated to ~~current~~ unrestricted use
38 standards, 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

1 name 'Secretary of Environment and Natural Resources'. The register of deeds shall
2 make a marginal entry on the Notice showing the date of cancellation and the book and
3 page where the Secretary's statement is recorded, and the register of deeds shall sign the
4 entry. If a marginal entry is impracticable because of the method used to record maps
5 and plats, the register of deeds shall not be required to make a marginal entry.

6 (g) This section does not apply to the cleanup pursuant to a risk-based remedial
7 action plan that addresses environmental damage resulting from a discharge or release
8 of petroleum from an underground storage tank pursuant to Part 2A of Article 21A of
9 Chapter 143 of the General Statutes.

10 (h) The definitions set out in G.S. 143B-279.9 apply to this section."

11 **SECTION 3.** Part 1 of Article 7 of Chapter 143B of the General Statutes is
12 amended by adding a new section to read:

13 **"§ 143B-279.11. Recordation of residual petroleum from an underground storage**
14 **tank.**

15 (a) The definitions set out in G.S. 143-215.94A and G.S. 143B-279.9 apply to
16 this section. This section applies only to a cleanup pursuant to a risk-based remedial
17 action plan that addresses environmental damage resulting from a discharge or release
18 of petroleum from an underground storage tank pursuant to Part 2A of Article 21A of
19 Chapter 143 of the General Statutes.

20 (b) The owner, operator, or other person responsible for a discharge or release of
21 petroleum from an underground storage tank shall prepare and submit to the Department
22 a proposed Notice that meets the requirements of this section. The proposed Notice shall
23 be submitted to the Department (i) before the property is conveyed, or (ii) when the
24 owner, operator, or other person responsible for the discharge or release requests that
25 the Department issue a determination that no further action is required under the
26 remedial action plan, whichever first occurs. The Notice shall be entitled 'NOTICE OF
27 RESIDUAL PETROLEUM'. The Notice shall include a description that would be
28 sufficient as a description in an instrument of conveyance of the (i) real property on
29 which the source of contamination is located and (ii) any real property on which
30 contamination is located at the time the remedial action plan is approved and that was
31 owned or controlled by any owner or operator of the underground storage tank or other
32 responsible party at the time the discharge or release of petroleum is discovered or
33 reported or at any time thereafter. The Notice shall identify the location of any residual
34 petroleum known to exist on the real property at the time the Notice is prepared. The
35 Notice shall also identify the location of any residual petroleum known, at the time the
36 Notice is prepared, to exist on other real property that is a result of the discharge or
37 release. The Notice shall set out any restrictions on the current or future use of the real
38 property that are imposed by the Secretary to protect public health, the environment, or
39 users of the property.

40 (c) If the contamination is located on more than one parcel or tract of land, the
41 Department may require that the owner, operator, or other person responsible for the
42 discharge or release prepare a composite map or plat that shows all parcels or tracts. If

1 the contamination is located on one parcel or tract of land, the owner, operator, or other
2 person responsible for the discharge or release may prepare a map or plat that shows the
3 parcel but is not required to do so. A map or plat shall be prepared and certified by a
4 professional land surveyor, shall meet the requirements of G.S. 47-30, and shall be
5 submitted to the Department for approval. When the Department has approved a map or
6 plat, it shall be recorded in the office of the register of deeds and shall be incorporated
7 into the Notice by reference.

8 (d) The Department shall review the proposed Notice to determine whether the
9 Notice meets the requirements of this section and rules adopted to implement this
10 section and shall provide the owner, operator, or other person responsible for the
11 discharge or release of petroleum from an underground storage tank with a notarized
12 copy of the approved Notice. After the Department approves the Notice, the owner,
13 operator, or other person responsible for the discharge or release of petroleum from an
14 underground storage tank shall file a notarized copy of the approved Notice in the
15 register of deeds office in the county or counties in which the real property is located (i)
16 before the property is conveyed or (ii) within 30 days after the owner, operator, or other
17 person responsible for the discharge or release receives notice from the Department that
18 no further action is required under the remedial action plan, whichever first occurs. If
19 the owner, operator, or other person responsible for the discharge or release fails to file
20 the Notice as required by this section, any determination by the Department that no
21 further action is required is void. The owner, operator, or other person responsible for
22 the discharge or release shall submit a certified copy of the Notice as filed in the register
23 of deeds office to the Department.

24 (e) The register of deeds shall record the notarized copy of the approved Notice
25 and index it in the grantor index under the names of the owners of the real property.

26 (f) In the event that the owner, operator, or other person responsible for the
27 discharge or release fails to submit and file the Notice required by this section within
28 the time specified, the Secretary may prepare and file the Notice. The costs thereof may
29 be recovered by the Secretary from any responsible party. In the event that an owner of
30 the real property who is not a responsible party submits and files the Notice required by
31 this section, the owner may recover the reasonable costs thereof from any responsible
32 party.

33 (g) A Notice filed pursuant to this section shall, at the request of the owner of the
34 real property, be cancelled by the Secretary after the residual petroleum has been
35 eliminated or remediated to unrestricted use standards. If requested in writing by the
36 owner of the land, the Secretary shall send to the register of deeds of each county where
37 the Notice is recorded a statement that the residual petroleum has been eliminated, or
38 that the residual petroleum has been remediated to unrestricted use standards, and
39 request that the Notice be cancelled of record. The Secretary's statement shall contain
40 the names of the owners of the land as shown in the Notice and reference the plat book
41 and page where the Notice is recorded. The register of deeds shall record the Secretary's
42 statement in the deed books and index it on the grantor index in the names of the owners

1 of the real property as shown in the Notice and on the grantee index in the name
2 'Secretary of Environment and Natural Resources'. The register of deeds shall make a
3 marginal entry on the Notice showing the date of cancellation and the book and page
4 where the Secretary's statement is recorded, and the register of deeds shall sign the
5 entry. If a marginal entry is impracticable because of the method used to record, the
6 register of deeds shall not be required to make a marginal entry."

7 **SECTION 4.** G.S. 143-215.94B(b) is amended by adding a new subdivision
8 to read:

9 "(7) Recordation of residual petroleum as required by G.S. 143B-279.11 if
10 the Commercial Fund is responsible for the payment of costs under
11 subdivisions (1) through (4) of this subsection."

12 **SECTION 5.** G.S. 143-215.94B(d) is amended by adding a new subdivision
13 to read:

14 "(7) Costs incurred as a result of the cleanup of environmental damage to
15 groundwater to a more protective standard than the risk-based standard
16 required by the Department unless the cleanup of environmental
17 damage to groundwater to a more protective standard is necessary to
18 resolve a claim for compensation by a third party for property
19 damage."

20 **SECTION 6.** G.S. 143-215.94D(b1) is amended by adding a new
21 subdivision to read:

22 "(4) Recordation of residual petroleum as required by G.S. 143B-279.11 if
23 the Noncommercial Fund is responsible for the payment of costs under
24 subdivisions (1) through (3) of this subsection and subsection (b) of
25 this section."

26 **SECTION 7.** G.S. 143-215.94D(d) is amended by adding a new subdivision
27 to read:

28 "(7) Costs incurred as a result of the cleanup of environmental damage to
29 groundwater to a more protective standard than the risk-based standard
30 required by the Department unless the cleanup of environmental
31 damage to groundwater to a more protective standard is necessary to
32 resolve a claim for compensation by a third party for property
33 damage."

34 **SECTION 8.** G.S. 143-215.94B is amended by adding a new subsection to
35 read:

36 "(b4) The Commercial Fund shall pay any claim made after 1 September 2001 for
37 compensation to third parties pursuant to subdivision (5) of subsection (b) of this
38 section only if the owner, operator, or other party responsible for the discharge or
39 release has complied with the requirements of G.S. 143B-279.9 and G.S. 143B-279.11,
40 unless compliance is prohibited by another provision of law."

41 **SECTION 9.** G.S. 143-215.94D is amended by adding a new subsection to
42 read:

1 "(b4) The Noncommercial Fund shall pay any claim made after 1 September 2001
2 for compensation to third parties pursuant to subdivision (2) of subsection (b1) of this
3 section only if the owner, operator, or other party responsible for the discharge or
4 release has complied with the requirements of G.S. 143B-279.9 and G.S. 143B-279.11,
5 unless compliance is prohibited by another provision of law."

6 **SECTION 10.** G.S. 47-29.1 reads as rewritten:

7 "**§ 47-29.1. Recordation of ~~waste disposal on land~~ environmental notices.**

8 (a) A permit for the disposal of waste on land shall be recorded as provided in
9 G.S. 130A-301.

10 (a1) The disposal of land clearing and inert debris in a landfill with a disposal area
11 of 1/2 acre or less pursuant to G.S. 130A-301.1 shall be recorded as provided in G.S.
12 130A-301.1(c).

13 (a2) A Notice of Open Dump shall be recorded as provided in G.S. 130A-301(f).

14 (a3) The disposal of demolition debris in an on-site landfill having a disposal area
15 of one acre or less shall be recorded as provided in G.S. 130A-301.2.

16 (b) An inactive hazardous substance or waste disposal site shall be recorded as
17 provided in G.S. 130A-310.8.

18 (c) A Notice of Brownfields Property shall be recorded as provided in G.S.
19 130A-310.35.

20 (d) A Notice of Oil or Hazardous Substance Discharge Site shall be recorded as
21 provided in G.S. 143-215.85A.

22 (e) A Notice of Dry-Cleaning Solvent Remediation shall be recorded as provided
23 in G.S. 143-215.104M.

24 (f) A Notice of Contaminated Site shall be recorded as provided in G.S.
25 143B-279.10.

26 (g) A Notice of Residual Petroleum shall be recorded as provided in G.S.
27 143B -279.11."

28 **SECTION 11.** G.S. 130A-308, 130A-310.7, 130A-310.31, 130A-310.32,
29 130A-310.33, 143-215.84, 143-215.104B, and 143-215.104K are amended by deleting
30 the term "current standards" and substituting the term "unrestricted use standards"
31 wherever the term "current standards" appears in those sections of the General Statutes.

32 **SECTION 12.** Section 4 of S.L. 2000-51 reads as rewritten:

33 "Section 4. Sections 1 and 2 of this act are effective retroactively to 1 October 1999.
34 Sections 3 and 4 of this act are effective when this act becomes law. ~~Section 1 of this act~~
35 ~~expires 1 September 2001."~~

36 **SECTION 13.** This act becomes effective 1 September 2001. This act
37 applies to any cleanup of a discharge or release of petroleum from an underground
38 storage tank pursuant to Part 2A of Article 21A of Chapter 143 of the General Statutes
39 except that land-use restrictions and recordation of residual contamination are not
40 required with respect to a discharge or release of petroleum for which the Department of
41 Environment and Natural Resources issued a determination that no further action is
42 required prior to 1 September 2001.