

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001**

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**HOUSE BILL 1009*
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Short Title: Consistent Risk-Based Remedial Actions. (Public)

Sponsors: Representatives Gibson, Baker, Allen (Primary Sponsors); Arnold, Cole, Cox, Creech, Culp, Daughtry, Fox, Harrington, Hill, Holmes, McMahan, Morris, Owens, Smith, Underhill, Warwick, Weatherly, and Wright.

Referred to: Environment and Natural Resources.

April 9, 2001

A BILL TO BE ENTITLED

1
2 AN ACT TO EXPAND AND MAKE CONSISTENT THE CIRCUMSTANCES
3 UNDER WHICH THE DEPARTMENT OF ENVIRONMENT AND NATURAL
4 RESOURCES SHALL ALLOW FOR RISK-BASED REMEDIAL ACTIONS.

5 Whereas, the General Assembly finds that there are contaminated areas in
6 North Carolina, including land and other property, surface water, and groundwater, that
7 are adversely affected by environmental contamination due to the presence of drilling
8 waste; hazardous and toxic materials, substances, and wastes; solid waste; oil; and other
9 wastes, contaminants, and regulated substances; and

10 Whereas, the General Assembly finds that the presence of environmental
11 contamination on these areas creates both potential and actual harm to public health,
12 safety, and welfare, and to the environment; and

13 Whereas, the General Assembly finds that this potential and actual harm
14 results in substantial economic losses, including reduced property values and tax
15 revenues; decreased ability to develop and expand the beneficial use of these areas; and
16 other opportunity costs because of the uncertainties and concerns that result from the
17 environmental contamination of these areas; and

18 Whereas, the General Assembly finds that it is in the public interest that
19 contaminated areas are cleaned up or managed in a manner that protects public health,
20 safety, and welfare and the environment using procedures that are based in sound
21 science and that can be voluntarily and independently implemented in a timely and
22 practical fashion without overburdening State resources; and

23 Whereas, the General Assembly finds that North Carolina has numerous and
24 varied State-managed remediation programs to address environmental contamination,
25 including the Inactive Hazardous Sites Response Act of 1987, the hazardous waste
26 management program administered by the State pursuant to the federal Resource

1 Conservation and Recovery Act of 1976, the Leaking Petroleum Underground Storage
2 Tank Cleanup Act of 1988, the Brownfields Property Reuse Act of 1997, the
3 Dry-Cleaning Solvent Cleanup Act of 1997, the federal Superfund program
4 administered in part by the State pursuant to the Comprehensive Environmental
5 Response, Compensation, and Liability Act of 1980 and the Superfund Amendments
6 and Reauthorization Act of 1986, and the groundwater protection rules adopted by the
7 Environmental Management Commission; and

8 Whereas, the General Assembly finds that these remediation programs utilize
9 varying standards, levels, protocols, means, methods, techniques, interpretations, and
10 other requirements and apply various federal regulations and State rules applicable to
11 testing, monitoring, assessing, prioritizing, characterizing, and cleanup or remediation
12 of contaminated areas; and

13 Whereas, the General Assembly finds that these varying standards cause
14 confusion and delay and create the potential for inappropriate levels of remediation,
15 including both the possibility that inadequate remediation at some sites may result in
16 potential or actual harm to public health, safety, or welfare or the environment, and the
17 possibility that unnecessary remediation at other sites may result in excessive and
18 wasteful expenditure of public and private resources; and

19 Whereas, the General Assembly finds that the expenditure of public and
20 private resources on unnecessary remediation could better be channeled to other
21 purposes, including new development, renovation and repair, research and development,
22 training and education, and other activities that maintain and enhance North Carolina's
23 competitive position in the world and the excellent quality of life enjoyed by the citizens
24 of North Carolina; and

25 Whereas, the General Assembly finds that public health, safety, and welfare
26 and the environment can best be protected by implementing a uniform remediation
27 process that requires that contaminated areas be cleaned up to a level that is sufficient to
28 ensure protection of public health, safety, and welfare and the environment without
29 excessive expenditure of public or private resources; and

30 Whereas, the General Assembly finds that this remediation process should be
31 based on an objective, scientific, and uniform approach to the evaluation of the risk
32 posed by each contaminated area and to the determination of the appropriate level of
33 remediation to address contamination in a manner that is protective of public health,
34 safety, and welfare and the environment; and

35 Whereas, the General Assembly finds that this approach should be applied to
36 each contaminated area on a site-specific basis using knowledge of the area, the
37 contaminants present, the effects of those contaminants on public health, safety, and
38 welfare, and the actions of those contaminants in, and their effect on, the environment;
39 and

40 Whereas, the General Assembly intends that the levels of remediation that are
41 established for each contaminated area are to be applicable or relevant and appropriate
42 standards under federal remediation programs; and

43 Whereas, the General Assembly intends that the protections afforded to
44 public health, safety, and welfare and to the environment by existing environmental,

1 health, and safety standards that apply to ongoing activities not be diminished in any
2 way, in order that those standards will continue to protect against the discharge or
3 release of contaminants to the environment that would result in additional contaminated
4 areas; Now, therefore,

5 The General Assembly of North Carolina enacts:

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

8 **"§ 143B-279.11. Adoption of rules for risk-based remediation.**

9 (a) As used in this section:

10 (1) 'Contaminant' has the same meaning as in G.S. 130A-310.31.

11 (2) 'Department' means the Department of Environment and Natural
12 Resources.

13 (3) 'Environmental contamination' has the same meaning as in G.S. 130A-
14 310.31.

15 (4) 'Regulated substance' has the same meaning as in G.S. 130A-310.31.

16 (5) 'Remediation' means all actions that are necessary or appropriate to
17 address the presence and effects of environmental contamination,
18 including, without limitation, all testing, monitoring, studying,
19 assessing, prioritizing, characterizing, preparing, restoration, cleanup,
20 treatment, and other actions necessary or appropriate to remove,
21 reduce, isolate, immobilize, encapsulate, mitigate, or otherwise address
22 environmental contamination, including, without limitation, all actions
23 that would qualify as remediation as defined in G.S. 130A-310.31.

24 (6) 'Secretary' means the Secretary of Environment and Natural
25 Resources.

26 (b) The Secretary shall adopt rules to establish a consistent and uniform risk-
27 based approach to the assessment, prioritization, and remediation of environmental
28 contamination. The rules shall provide for:

29 (1) The assessment of the contaminated area, including types and levels of
30 contamination and the risk to public health, safety, and welfare and the
31 environment posed by the contamination.

32 (2) The anticipated future uses of the property comprising the
33 contaminated area.

34 (3) The acceptable level or range of levels of risk to public health, safety,
35 and welfare and environment

36 (4) The process for determining an appropriate method of remediation to
37 achieve an acceptable level or range of levels of risk.

38 (5) The process for determining whether a risk-based approach to
39 remediation under the rules is appropriate for a particular contaminated
40 area.

41 (6) The process for establishing, for each contaminant, the maximum
42 allowable quantity, concentration, range, or other measure of
43 contamination that will remain at the contaminated area at the
44 conclusion of active remediation.

1 (7) The level of oversight of the remediation that will be exercised by the
2 Department.

3 (8) The determination or certification that the quantity, concentration,
4 range, or other measure of each contaminant remaining at the
5 contaminated area at the conclusion of active remediation does not
6 exceed the maximum allowable maximum.

7 (9) The determination or certification that an acceptable level or range of
8 levels of risk has been achieved and that no further remediation is
9 required.

10 (10) Any other matter that the Secretary determines to be necessary to carry
11 out the intent of this section.

12 (c) The Department may require any person who is responsible for the
13 environmental contamination and any person who voluntarily undertakes remediation of
14 the environmental contamination to provide information necessary to determine the
15 degree of risk to public health, safety, and welfare and to the environment that is posed
16 by any environmental contamination, either before or after remediation is completed.

17 (d) If the Department concludes that the environmental contamination poses a
18 degree of risk to public health, safety, or welfare or the environment that is no greater
19 than the acceptable level of risk established by the Department, the Department shall
20 notify the person who provides the information required pursuant to subsection (c) of
21 this section that no further remediation or action will be required unless the Department
22 later determines, on the basis of additional information or as a result of a change in
23 conditions in the contaminated area, that the remaining environmental contamination
24 poses an unacceptable level of risk to public health, safety, or welfare or the
25 environment.

26 (e) This section and rules adopted pursuant to this section shall not be construed
27 to limit the authority of the Department to require investigation, initial response, or
28 remediation of environmental contamination under any other provision of law pending a
29 determination by the Department, under rules adopted pursuant to this section, that a
30 risk-based approach to remediation of a contaminated area is appropriate, or if the
31 Department determines that a risk-based approach to remediation of the contaminated
32 area is not appropriate. This section and rules adopted pursuant to this section shall not
33 be construed or implemented in any manner that reduces the requirements of programs
34 that are intended to avoid or mitigate the release or discharge of contaminants to the
35 environment that would result in additional environmental contamination.

36 (f) Rules adopted pursuant to this section shall apply uniformly to the
37 remediation of environmental contamination under:

38 (1) The Inactive Hazardous Sites Response Act of 1987, G.S. 130A-310,
39 et seq.

40 (2) The hazardous waste management program administered by the State
41 pursuant to the federal Resource Conservation and Recovery Act of
42 1976 Pub. L. 94-580, 90 Stat. 2795, 42 U.S.C. § 6901, et seq., as
43 amended.

- 1 (3) The Leaking Petroleum Underground Storage Tank Cleanup Act of
2 1988, G.S. 143-215.94A, et seq.
- 3 (4) The Brownfields Property Reuse Act of 1997, G.S. 130A-310.30, et
4 seq.
- 5 (5) The Dry-Cleaning Solvent Cleanup Act of 1997, G.S. 143-215, et seq.
- 6 (6) The federal Superfund program administered in part by the State
7 pursuant to the Comprehensive Environmental Response,
8 Compensation, and Liability Act of 1980, Pub. L. 96-510, 94 Stat.
9 2767, 42 U.S.C. § 9601, et seq., as amended, the Superfund
10 Amendments and Reauthorization Act of 1986, Pub. L. 99-499, 100
11 Stat. 1613, as amended, and G.S. 130A-310.20, et seq.
- 12 (7) The groundwater protection program adopted by the Environmental
13 Management Commission pursuant to Article 21 of Chapter 143 of the
14 General Statutes.

15 (g) A person who undertakes remediation of environmental contamination may
16 elect to proceed under either the applicable provisions of law set out in subsection (f) of
17 this section and rules adopted pursuant to those provisions or under the rules adopted
18 pursuant to this section. If a person elects to proceed under rules adopted pursuant to
19 this section, the rules adopted pursuant to this section shall supersede rules adopted
20 pursuant to the provisions of law set out in subsection (f) of this section. If a person
21 elects to proceed under rules adopted pursuant to this section, any maximum allowable
22 quantity, concentration, limit, or other measure of contamination that is allowed to
23 remain at the contaminated area at the conclusion of active remediation that is
24 established under the rules will supersede rules adopted under other provisions of law

25 (h) Rules adopted pursuant to this section shall be based on an evaluation of all
26 reasonably foreseeable risks presented to public health, safety, and welfare and the
27 environment by environmental contamination, and shall be based on all relevant and
28 reasonably available scientific information pertaining to those risks. The rules shall be
29 written so that they can be interpreted and implemented with a reasonable degree of
30 effort and expense. The rules may provide for reasonable distinctions among
31 contaminated areas based on any relevant factor, including the nature and extent of the
32 environmental contamination, the risk of harm posed by the contamination to public
33 health, safety, and welfare and the environment, the size and complexity of the
34 contaminated area, and the current and anticipated future uses of the contaminated area
35 and adjacent lands. Rules to establish a risk-based approach to remediation shall be in
36 addition to the health-based groundwater classifications and standards adopted by the
37 Environmental Management Commission.

38 (i) Rules adopted pursuant to this section shall require that any assumption about
39 the future use of the contaminated area on which a level or range of levels of risk is
40 based be reflected in appropriate restrictions on the future use of the property as
41 provided in G.S. 143B-279.9 and that the restrictions be recorded in accordance with
42 G.S. 143B-279.10.

43 (j) Rules adopted pursuant to this section shall provide for the use of licensed
44 professionals, including Professional Engineers, Professional Geologists, and Registered

1 Environmental Consultants, in the assessment, prioritization, and remediation of
2 environmental contamination. The rules shall specify the circumstances under which
3 work performed by a licensed professional is presumed to comply with the rules."

4 **SECTION 2.** The Secretary of Environment and Natural Resources shall
5 adopt rules to implement G.S. 143B-279.11, as enacted by Section 1 of this act, on or
6 before 1 October 2002.

7 **SECTION 3.** The Secretary of Environment and Natural Resources shall use
8 all reasonable efforts to obtain a written agreement from the United States
9 Environmental Protection Agency that G.S. 143B-279.11, as enacted by Section 1 of
10 this act, and the rules adopted by the Secretary pursuant to G.S. 143B-279.11 are
11 consistent with the Comprehensive Environmental Response, Compensation, and
12 Liability Act of 1980, Pub. L. 96-510, 94 Stat. 2767, 42 U.S.C. § 9601, et seq., as
13 amended, and the Superfund Amendments and Reauthorization Act of 1986, Pub. L.
14 99-499, 100 Stat. 1613, as amended.

15 **SECTION 4.** This act shall not be construed to obligate the General
16 Assembly to appropriate any funds to implement the provisions of this act. Every State
17 agency to which this act applies shall implement the provisions of this act from funds
18 otherwise appropriated or available to that agency.

19 **SECTION 5.** On or before 1 October 2004, the Department of Environment
20 and Natural Resources shall report to the Environmental Review Commission as to the
21 steps the Secretary of Environment and Natural Resources and the Department have
22 taken to implement this act. The report shall include information on the adoption of
23 rules to implement G.S. 143B-279.11, as enacted by Section 1 of this act, the number of
24 contaminated areas that have been proposed for remediation under the rules, the number
25 of contaminated areas that are undergoing active remediation under the rules, the
26 number of contaminated areas at which remediation under the rules has been completed,
27 the number of contaminated areas that are known or believed to be appropriate for
28 remediation under the rules, the number of contaminated areas for which the
29 Department has determined that a risk-based approach to remediation under the rules is
30 not appropriate and the reasons for each determination, and information regarding
31 licensed professionals who are involved in the implementation of remediation under the
32 rules.

33 **SECTION 6.** This act is effective when it becomes law and expires on 1
34 April 2005.