

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

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HOUSE BILL 1300

Short Title: Clarify Petroleum Cleanup Requirements.

(Public)

Sponsors: Representative Gibson.

Referred to: Environment and Natural Resources.

April 12, 2001

A BILL TO BE ENTITLED

1
2 AN ACT TO CLARIFY THE CIRCUMSTANCES IN WHICH LAND-USE
3 RESTRICTIONS AND RECORDATION OF THOSE RESTRICTIONS IN THE
4 OFFICE OF THE REGISTER OF DEEDS ARE REQUIRED IN CONNECTION
5 WITH THE CLEANUP OF A RELEASE FROM A PETROLEUM
6 UNDERGROUND STORAGE TANK IN ORDER TO PROTECT THE
7 ENVIRONMENT AND PUBLIC HEALTH, TO ENSURE ENFORCEABILITY
8 OF RESTRICTIONS, AND TO PROVIDE NOTICE TO SUBSEQUENT
9 OWNERS OF THE PROPERTY.

10 The General Assembly of North Carolina enacts:

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

12 "**§ 143B-279.9. Land-use restrictions may be imposed to reduce danger to public**
13 **health at contaminated sites.**

14 (a) In order to reduce or eliminate the danger to public health or the environment
15 posed by the presence of contamination at a site, an owner, operator, or other
16 responsible party may impose restrictions on the current or future use of the real
17 property comprising any part of the site where the contamination is located if the
18 restrictions meet the requirements of this section. The restrictions must be agreed to by
19 the owner of the real property, included in a remedial action plan for the site that has
20 been approved by the Secretary, and implemented as a part of the remedial action
21 program for the site. The Secretary may approve restrictions included in a remedial
22 action plan in accordance with standards that the Secretary determines to be applicable
23 to the site. Except as provided in subsection (b) of this section, if the remedial action is
24 risk-based or will not require that the site meet current standards, ~~as defined in G.S.~~
25 ~~130A-310.31,~~ the remedial action plan must include an agreement by the owner,
26 operator, or other responsible party to record approved land-use restrictions that meet
27 the requirements of this section as provided in G.S. 143B-279.10. Restrictions may
28 apply to activities on, over, or under the land, including, but not limited to, use of

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

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

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

34 (d) As used in this section:

35 (1) 'Current standards' means generally applicable standards, guidance, or
36 established methods governing the contaminants that are established
37 by statute or adopted, published, or implemented by the Environmental
38 Management Commission, the Commission for Health Services, or the
39 Department. Cleanup or remediation of real property to current
40 standards means that the property is restored to a condition such that
41 the property and any use that is made of the property does not pose a
42 danger or risk to public health, the environment, or users of the
43 property that is significantly greater than that posed by use of the
44 property prior to its having been contaminated.

1 (2) 'Risk-based', when used in connection with cleanup, remediation, or
2 similar terms, means cleanup or remediation of contamination of real
3 property to a level that, although not in compliance with current
4 standards, does not pose a significant danger or risk to public health,
5 the environment, or users of the real property so long as the property
6 remains in the condition and is used in a manner that is consistent with
7 the assumptions as to the condition and use of the property on which
8 the determination that the level of risk is acceptable are based."

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

10 **"§ 143B-279.10. Recordation of contaminated sites.**

11 (a) The owner of the real property on which a site is located that is subject to
12 current or future use restrictions approved as provided in G.S. 143B-279.9 shall submit
13 to the Department a survey plat as required by this section within 180 days after the
14 owner is notified to do so. The survey plat shall identify areas designated by the
15 Department, shall be prepared and certified by a professional land surveyor, and shall be
16 entitled "NOTICE OF CONTAMINATED SITE". Where a contaminated site is located
17 on more than one parcel or tract of land, a composite map or plat showing all parcels or
18 tracts may be recorded. The Notice shall include a legal description of the site that
19 would be sufficient as a description in an instrument of conveyance, shall meet the
20 requirements of G.S. 47-30 for maps and plats, and shall identify:

- 21 (1) The location and dimensions of any disposal areas and areas of
22 potential environmental concern with respect to permanently surveyed
23 benchmarks.
24 (2) The type, location, and quantity of contamination known to the owner
25 of the site to exist on the site.
26 (3) Any restriction approved by the Department on the current or future
27 use of the site.

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

32 (c) The register of deeds shall record the certified copy of the Notice and index it
33 in the grantor index under the names of the owners of the land.

34 (d) In the event that the owner of the site fails to submit and file the Notice
35 required by this section within the time specified, the Secretary may prepare and file the
36 Notice. The costs thereof may be recovered by the Secretary from any responsible party.
37 In the event that an owner of a site who is not a responsible party submits and files the
38 Notice required by this section, the owner may recover the reasonable costs thereof
39 from any responsible party.

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

1 (f) A Notice of Contaminated Site filed pursuant to this section shall, at the
2 request of the owner of the land, be cancelled by the Secretary after the contamination
3 has been eliminated or remediated to current standards, as defined in ~~G.S. 130A-~~
4 ~~310.31~~G.S. 143B-279.9. If requested in writing by the owner of the land and if the
5 Secretary concurs with the request, the Secretary shall send to the register of deeds of
6 each county where the Notice is recorded a statement that the contamination has been
7 eliminated, or that the contamination has been remediated to current standards, and
8 request that the Notice be cancelled of record. The Secretary's statement shall contain
9 the names of the owners of the land as shown in the Notice and reference the plat book
10 and page where the Notice is recorded. The register of deeds shall record the Secretary's
11 statement in the deed books and index it on the grantor index in the names of the owners
12 of the land as shown in the Notice and on the grantee index in the name "Secretary of
13 Environment and Natural Resources". The register of deeds shall make a marginal entry
14 on the Notice showing the date of cancellation and the book and page where the
15 Secretary's statement is recorded, and the register of deeds shall sign the entry. If a
16 marginal entry is impracticable because of the method used to record maps and plats,
17 the register of deeds shall not be required to make a marginal entry.

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

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

24 **"§ 143B-279.10. Recordation of residual petroleum from an underground storage**
25 **tank.**

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

31 (b) The owner, operator, or other person responsible for a discharge or release of
32 petroleum from an underground storage tank shall submit to the Department a survey
33 plat as required by this section within 180 days after the owner is notified to do so. The
34 survey plat shall identify areas designated by the Department, shall be prepared and
35 certified by a professional land surveyor, and shall be entitled 'NOTICE OF
36 RESIDUAL PETROLEUM'. The Notice shall include a legal description of (i) the real
37 property on which the source of contamination is located and (ii) any real property on
38 which contamination is located at the time the remedial action plan is approved and
39 that was owned or controlled by any owner or operator of an underground storage tank
40 or other responsible party at the time the discharge or release of petroleum is
41 discovered or reported or at any time thereafter. The Notice shall be sufficient as a
42 description in an instrument of conveyance, shall meet the requirements of G.S. 47-30
43 for maps and plats. The Notice shall identify the location of any residual petroleum
44 known to exist on the property at the time the Notice is prepared and any restrictions

1 on the current or future use of the property approved by the Department. If the real
2 property to which this section applies is located on more than one parcel or tract of
3 land, a composite map or plat showing all parcels or tracts may be recorded.

4 (c) After the Department approves and certifies the Notice, the owner, operator,
5 or other person responsible for a discharge or release of petroleum from an underground
6 storage tank shall file the certified copy of the Notice in the register of deeds office in
7 the county or counties in which the real property is located before the property is
8 conveyed, within 15 days after the Department notifies the owner, operator, or other
9 responsible party that no further action is required under the remedial action plan, or
10 within one year after the Department approves the notice, whichever first occurs.

11 (d) The register of deeds shall record the certified copy of the Notice and index it
12 in the grantor index under the names of the owners of the real property.

13 (e) In the event that the owner, operator, or other person responsible for the
14 discharge or release fails to submit and file the Notice required by this section within
15 the time specified, the Secretary may prepare and file the Notice. The costs thereof may
16 be recovered by the Secretary from any responsible party. In the event that an owner of
17 the real property who is not a responsible party submits and files the Notice required by
18 this section, the owner may recover the reasonable costs thereof from any responsible
19 party.

20 (f) When real property to which this section is applicable is sold, leased,
21 conveyed, or transferred, the deed or other instrument of transfer shall contain in the
22 description section, in no smaller type than that used in the body of the deed or
23 instrument, a statement that residual petroleum exists on the property and a reference by
24 book and page to the recordation of the Notice.

25 (g) A Notice filed pursuant to this section shall, at the request of the owner of the
26 real property, be cancelled by the Secretary after the residual petroleum has been
27 eliminated or remediated to current standards, as defined in G.S. 143B-279.9. If
28 requested in writing by the owner of the land and if the Secretary concurs with the
29 request, the Secretary shall send to the register of deeds of each county where the Notice
30 is recorded a statement that the residual petroleum has been eliminated, or that the
31 residual petroleum has been remediated to current standards, and request that the Notice
32 be cancelled of record. The Secretary's statement shall contain the names of the owners
33 of the land as shown in the Notice and reference the plat book and page where the
34 Notice is recorded. The register of deeds shall record the Secretary's statement in the
35 deed books and index it on the grantor index in the names of the owners of the real
36 property as shown in the Notice and on the grantee index in the name "Secretary of
37 Environment and Natural Resources". The register of deeds shall make a marginal entry
38 on the Notice showing the date of cancellation and the book and page where the
39 Secretary's statement is recorded, and the register of deeds shall sign the entry. If a
40 marginal entry is impracticable because of the method used to record maps and plats,
41 the register of deeds shall not be required to make a marginal entry."

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

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

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

6 "(7) Costs incurred as a result of the cleanup of environmental damage to
7 more stringent standards than those required by the Department."

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

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

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

15 "(7) Costs incurred as a result of the cleanup of environmental damage to
16 more stringent standards than those required by the Department."

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

19 "(b4) The Commercial Fund shall not pay any claim made after 1 October 2001 for
20 compensation to third parties pursuant to subdivision (5) of subsection (b) of this
21 section unless the owner, operator, or other party responsible for the discharge or
22 release has complied with the requirements of G.S. 143B-279.9 and G.S. 143B-279.11."

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

25 "(b4) The Commercial Fund shall not pay any claim made after 1 October 2001 for
26 compensation to third parties pursuant to subdivision (5) of subsection (b) of this
27 section unless the owner, operator, or other party responsible for the discharge or
28 release has complied with the requirements of G.S. 143B-279.9 and G.S. 143B-279.11."

29 **SECTION 10.** This act becomes effective 1 October 2001 and applies to any
30 cleanup of a discharge or release of petroleum from an underground storage tank
31 pursuant to Part 2A of Article 21A of Chapter 143 of the General Statutes unless the
32 Department of Environment and Natural Resources has issued a notice that no further
33 action is required prior to 1 October 2001.