

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001**

**SESSION LAW 2001-384
HOUSE BILL 1301**

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

(b) The definitions set out in G.S. 143-215.94A apply to this subsection. ~~Subsection (a) of this section shall not apply to a~~ risk-based remedial action plan for the cleanup of environmental damage resulting from a discharge or release of petroleum

from an underground storage tank pursuant to Part 2A of Article 21A of Chapter 143 of the General Statutes. Statutes that will not require that the site meet unrestricted use standards must include an agreement by the owner, operator, or other party responsible for the discharge or release of petroleum to record approved land-use restrictions that meet the requirements of this section as provided in G.S. 143B-279.11. All of the provisions of this section shall apply except as specifically modified by this subsection. Any restriction on the current or future use of real property shall be enforceable only with respect to: (i) real property on which the source of contamination is located and (ii) any real property on which contamination is located at the time the remedial action plan is approved and that was owned or controlled by any owner or operator of the underground storage tank or other responsible party at the time the discharge or release of petroleum is discovered or reported or at any time thereafter. No restriction on the current or future use of real property shall apply to any portion of any parcel or tract of land on which contamination is not located. This subsection shall not be construed to require any person to record any restriction on the current or future use of real property other than the real property described in this subsection. For purposes of this subsection and G.S. 143B-279.11, the current or future use of real property may be restricted only as set out in any one or more of the following subdivisions:

- (1) Where soil contamination will remain in excess of unrestricted use standards, the property may be used for a primary or secondary residence, school, daycare center, nursing home, playground, park, recreation area, or other similar use only with the approval of the Department.
 - (2) Where soil contamination will remain in excess of unrestricted use standards and the property is used for a primary or secondary residence that was constructed before the release of petroleum that resulted in the contamination is discovered or reported, the Secretary may approve alternative restrictions that are sufficient to reduce the risk of exposure to contaminated soils to an acceptable level while allowing the real property to continue to be used for a residence.
 - (3) Where groundwater contamination will remain in excess of unrestricted use standards, installation or operation of any well usable as a source of water shall be prohibited.
 - (4) Any restriction on the current or future use of the real property that is agreed upon by both the owner of the real property and the Department.
- (c) This section does not alter any right, duty, obligation, or liability of any owner, operator, or other responsible party under any other provision of law.
- (d) As used in this section:
- (1) 'Unrestricted use standards' means generally applicable standards, guidance, or established methods governing contaminants that are established by statute or adopted, published, or implemented by the Environmental Management Commission, the Commission for Health Services, or the Department. Cleanup or remediation of real property to unrestricted use standards means that the property is restored to a condition such that the property and any use that is made of the property does not pose a danger or risk to public health, the environment, or users of the property that is significantly greater than that posed by use of the property prior to its having been contaminated.
 - (2) 'Risk-based', when used in connection with cleanup, remediation, or similar terms, means cleanup or remediation of contamination of real property to a level that, although not in compliance with unrestricted use standards, does not pose a significant danger or risk to public health, the environment, or users of the real property so long as the property remains in the condition and is used in a manner that is

consistent with the assumptions as to the condition and use of the property on which the determination that the level of risk is acceptable is based."

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

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

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

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

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

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

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

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

(f) A Notice of Contaminated Site filed pursuant to this section shall, at the request of the owner of the land, be cancelled by the Secretary after the contamination has been eliminated or remediated to ~~current standards, as defined in G.S. 130A-310.31.~~ unrestricted use standards. If requested in writing by the owner of the land and if the Secretary concurs with the request, the Secretary shall send to the register of deeds of each county where the Notice is recorded a statement that the contamination has been eliminated, or that the contamination has been remediated to ~~current~~ unrestricted use standards, and request that the Notice be cancelled of record. The Secretary's statement shall contain the names of the owners of the land as shown in the Notice and reference the plat book and page where the Notice is recorded. The register of deeds shall record the Secretary's statement in the deed books and index it on the grantor index in the names of the owners of the land as shown in the Notice and on the grantee index in the name 'Secretary of Environment and Natural Resources'. The register of deeds shall

make a marginal entry on the Notice showing the date of cancellation and the book and page where the Secretary's statement is recorded, and the register of deeds shall sign the entry. If a marginal entry is impracticable because of the method used to record maps and plats, the register of deeds shall not be required to make a marginal entry.

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

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

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

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

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

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

(c) If the contamination is located on more than one parcel or tract of land, the Department may require that the owner, operator, or other person responsible for the discharge or release prepare a composite map or plat that shows all parcels or tracts. If the contamination is located on one parcel or tract of land, the owner, operator, or other person responsible for the discharge or release may prepare a map or plat that shows the parcel but is not required to do so. A map or plat shall be prepared and certified by a professional land surveyor, shall meet the requirements of G.S. 47-30, and shall be submitted to the Department for approval. When the Department has approved a map or plat, it shall be recorded in the office of the register of deeds and shall be incorporated into the Notice by reference.

(d) The Department shall review the proposed Notice to determine whether the Notice meets the requirements of this section and rules adopted to implement this section and shall provide the owner, operator, or other person responsible for the discharge or release of petroleum from an underground storage tank with a notarized copy of the approved Notice. After the Department approves the Notice, the owner, operator, or other person responsible for the discharge or release of petroleum from an underground storage tank shall file a notarized copy of the approved Notice in the

register of deeds office in the county or counties in which the real property is located (i) before the property is conveyed or (ii) within 30 days after the owner, operator, or other person responsible for the discharge or release receives notice from the Department that no further action is required under the remedial action plan, whichever first occurs. If the owner, operator, or other person responsible for the discharge or release fails to file the Notice as required by this section, any determination by the Department that no further action is required is void. The owner, operator, or other person responsible for the discharge or release shall submit a certified copy of the Notice as filed in the register of deeds office to the Department.

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

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

(g) A Notice filed pursuant to this section shall, at the request of the owner of the real property, be cancelled by the Secretary after the residual petroleum has been eliminated or remediated to unrestricted use standards. If requested in writing by the owner of the land, the Secretary shall send to the register of deeds of each county where the Notice is recorded a statement that the residual petroleum has been eliminated, or that the residual petroleum has been remediated to unrestricted use standards, and request that the Notice be cancelled of record. The Secretary's statement shall contain the names of the owners of the land as shown in the Notice and reference the plat book and page where the Notice is recorded. The register of deeds shall record the Secretary's statement in the deed books and index it on the grantor index in the names of the owners of the real property as shown in the Notice and on the grantee index in the name 'Secretary of Environment and Natural Resources'. The register of deeds shall make a marginal entry on the Notice showing the date of cancellation and the book and page where the Secretary's statement is recorded, and the register of deeds shall sign the entry. If a marginal entry is impracticable because of the method used to record, the register of deeds shall not be required to make a marginal entry."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

In the General Assembly read three times and ratified this the 16th day of August, 2001.

s/ Beverly E. Perdue
President of the Senate

s/ James B. Black
Speaker of the House of Representatives

s/ Michael F. Easley
Governor

Approved 5:36 p.m. this 26th day of August, 2001