

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

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HOUSE BILL 1575
Committee Substitute Favorable 7/23/02

Short Title: Clarify LUST Land-Use Restrict./Deed Record.

(Public)

Sponsors:

Referred to:

June 6, 2002

A BILL TO BE ENTITLED

AN ACT TO CLARIFY CERTAIN STATUTES RELATED TO LAND-USE RESTRICTIONS AND RECORDATION OF THOSE RESTRICTIONS IN CONNECTION WITH THE CLEANUP OF RELEASES FROM PETROLEUM UNDERGROUND STORAGE TANKS, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

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

"(b) The definitions set out in G.S. 143-215.94A apply to this subsection. 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 ~~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~~ notice of any applicable land-use restrictions that meet the requirements of this ~~section~~ subsection as provided in G.S. 143B-279.11. All of the provisions of this section shall apply except as specifically modified by this ~~subsection~~ subsection and G.S. 143B-279.11. Any restriction on the current or future use of real property pursuant to this subsection 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 notice of 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.

1 143B-279.11, the Secretary may restrict current or future use of real property ~~may be~~
2 ~~restricted~~ only as set out in any one or more of the following subdivisions:

- 3 (1) Where soil contamination will remain in excess of unrestricted use
4 standards, the property may be used for a primary or secondary
5 residence, school, daycare center, nursing home, playground, park,
6 recreation area, or other similar use only with the approval of the
7 Department.
- 8 (2) Where soil contamination will remain in excess of unrestricted use
9 standards and the property is used for a primary or secondary residence
10 that was constructed before the release of petroleum that resulted in the
11 contamination is discovered or reported, the Secretary may approve
12 alternative restrictions that are sufficient to reduce the risk of exposure
13 to contaminated soils to an acceptable level while allowing the real
14 property to continue to be used for a residence.
- 15 (3) Where groundwater contamination will remain in excess of
16 unrestricted use standards, installation or operation of any well usable
17 as a source of water shall be prohibited.
- 18 (4) Any restriction on the current or future use of the real property that is
19 agreed upon by both the owner of the real property and the
20 Department."

21 **SECTION 2.** G.S. 143B-279.10(g) reads as rewritten:

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

26 **SECTION 3.** G.S. 143B-279.11(a) reads as rewritten:

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

32 **SECTION 4.** G.S. 143B-279.11(b) reads as rewritten:

33 "(b) The owner, operator, or other person responsible for a discharge or release of
34 petroleum from an underground storage tank shall prepare and submit to the Department
35 a proposed Notice that meets the requirements of this section. The proposed Notice shall
36 be submitted to the Department (i) before the property is conveyed, or (ii) when the
37 owner, operator, or other person responsible for the discharge or release requests that
38 the Department issue a determination that no further action is required under the
39 remedial action plan, whichever first occurs. The Notice shall be entitled "NOTICE OF
40 RESIDUAL PETROLEUM". The Notice shall include a description that would be
41 sufficient as a description in an instrument of conveyance of the (i) real property on
42 which the source of contamination is located and (ii) any real property on which
43 contamination is located at the time the remedial action plan is approved and that was
44 owned or controlled by any owner or operator of the underground storage tank or other

1 responsible party at the time the discharge or release of petroleum is discovered or
2 reported or at any time thereafter. The Notice shall identify the location of any residual
3 petroleum known to exist on the real property at the time the Notice is prepared. The
4 Notice shall also identify the location of any residual petroleum known, at the time the
5 Notice is prepared, to exist on other real property that is a result of the discharge or
6 release. The Notice shall set out any restrictions on the current or future use of the real
7 property that are imposed by the Secretary pursuant to G.S. 143B-279.9(b) to protect
8 public health, the environment, or users of the property."

9 **SECTION 5.** G.S. 143B-279.11(d) reads as rewritten:

10 "(d) The Department shall review the proposed Notice to determine whether the
11 Notice meets the requirements of this section and rules adopted to implement this
12 section and shall provide the owner, operator, or other person responsible for the
13 discharge or release of petroleum from an underground storage tank with a notarized
14 copy of the approved Notice. After the Department approves the Notice, the owner,
15 operator, or other person responsible for the discharge or release of petroleum from an
16 underground storage tank shall file a notarized copy of the approved Notice in the
17 register of deeds office in the county or counties in which the real property is located (i)
18 before the property is conveyed or (ii) within 30 days after the owner, operator, or other
19 person responsible for the discharge or release receives notice from the Department that
20 no further action is required under the remedial action plan, whichever first occurs. If
21 the owner, operator, or other person responsible for the discharge or release fails to file
22 the Notice as required by this section, any determination by the Department that no
23 further action is required is void. The owner, operator, or other person responsible for
24 the discharge or release, may record the Notice required by this section without the
25 agreement of the owner of the real property. The owner, operator, or other person
26 responsible for the discharge or release shall submit a certified copy of the Notice as
27 filed in the register of deeds office to the Department."

28 **SECTION 6.** G.S. 143-215.94W(a)(5) reads as rewritten:

29 "(5) Violates or fails to act in accordance with the terms, conditions, or
30 requirements of any special order or other appropriate document issued
31 pursuant to ~~G.S. 143-215.2~~ G.S. 143-215.2 or fails to comply with the
32 requirements of G.S. 143B-279.9 through G.S. 143B-279.11."

33 **SECTION 7.** G.S. 143-215.94Y reads as rewritten:

34 **"§ 143-215.94Y. Enforcement procedures; injunctive relief.**

35 Whenever the Department has reasonable cause to believe that any person has
36 violated or is threatening to violate any of the provisions of this Part, any of the terms of
37 any permit issued pursuant to this Part, or a rule implementing this ~~Part~~ Part or has
38 failed to comply with the requirements of G.S. 143B-279.9 through G.S. 143B-279.11,
39 the Department may, either before or after the institution of any other action or
40 proceeding authorized by this Part, request the Attorney General to institute a civil
41 action in the name of the State upon the relation of the Department for injunctive relief
42 to restrain the violation or threatened violation and for such other and further relief in
43 the premises as the court shall deem proper. The Attorney General may institute such
44 action in the superior court of the county in which the violation occurred or may occur

1 or, in his discretion, in the superior court of the county in which the person responsible
2 for the violation or threatened violation resides or has his or its principal place of
3 business. Upon a determination by the court that the alleged violation of the provisions
4 of this ~~Part or Part~~, the ~~regulations~~ rules of the ~~Commission~~ Commission, or the failure
5 to comply with the requirements of G.S. 143B-279.9 through G.S. 143B-279.11 has
6 occurred or is threatened, the court shall grant the relief necessary to prevent or abate
7 the violation or threatened violation. Neither the institution of the action nor any of the
8 proceedings thereon shall relieve any party to such proceedings from any penalty
9 prescribed for violation of this ~~Part~~ Part or for failure to comply with the requirements
10 of G.S. 143B-279.9 through G.S. 143B-279.11."

11 **SECTION 8.** This act is effective retroactively to 1 September 2001. This
12 act applies retroactively to any cleanup of a discharge or release of petroleum from an
13 underground storage tank pursuant to Part 2A of Article 21A of Chapter 143 of the
14 General Statutes except that land-use restrictions and recordation of residual
15 contamination are not required with respect to a discharge or release of petroleum for
16 which the Department of Environment and Natural Resources issued a determination
17 that no further action is required prior to 1 September 2001.