

May 12, 2005

H 1778. RISK-BASED ENVIRONMENTAL REMEDIATION/FUND. TO EXPAND AND MAKE CONSISTENT THE CIRCUMSTANCES UNDER WHICH THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES SHALL ALLOW FOR RISK-BASED REMEDIAL ACTIONS. Adds new GS 143B-279.13 to provide generally for the use of risk-based uniform standards applicable to a series of environmental programs with the choice of which of several standards to be attained left to the responsible person.

Rules to be adopted. Directs Secretary of Department of Environment and Natural Resources (DENR) to adopt rules establishing uniform risk-based approach to the assessment, prioritization, and remediation of environmental contamination. Directs that rules provide, among other things, for (1) the assessment of the contaminated area; (2) the accepted levels of risk to public health, safety, and welfare; (3) a definition of when no further remediation is required; (4) the process for determining an appropriate method of remediation to achieve acceptable level of risk; (5) the process for determining whether a risk-based approach is appropriate for a particular contaminated area; (6) the process for various measures of contaminants that may remain at the conclusion of remediation; (7) the certification that contaminants that remain after remediation meet acceptable standards requiring no further remediation; and (8) public participation.

Remediation standards and review procedures. Allows person who proposes or is required to respond to the release of a regulated substance to elect which one of three environmental standards will govern remediation activities. These three standards include (1) a background standard (a standard representing the concentration of a contaminant, determined statistically, that is present at a site but not released); (2) a statewide health standard achieving a uniform statewide health-based level so that any substantial present or probable future risk to the public is eliminated; and (3) a site-specific standard that achieves remediation levels based on a site-specific risk assessment to eliminate or reduce risks to protective levels based upon the present or currently planned future use of the property. Allows party responsible for remediation to meet any one of the three or a combination of the remediation standards.

Background standard. Requires background standard for each regulated substance to be met. Allows demonstration of compliance through statistical samples. Requires final report documenting attainment submitted to DENR to include, among other things, descriptions of procedures, conclusions of site investigations, removal or decontamination procedures, summaries of sampling methodologies, and demonstration that remediation is attained. Provides that institutional controls (such as fencing and land-use restrictions on the site) may not be used to attain the background standard. Provides that DENR must review final report demonstrating attainment within 60 days of its receipt or notify of report's deficiencies. If DENR fails to respond with deficiencies within 60 days, the report is deemed approved.

Statewide health standard. Directs Secretary to adopt statewide health standards for regulated substances for each environmental medium. Requires standards for groundwater to be numerical standards adopted by the Environmental Management Comm'n. Directs Secretary to adopt rules for "medium-specific" standards for soils and to include, along with all standards, the methods used to calculate the standards. Establishes directions for establishing medium-specific concentrations, including detailed standards for residential properties with respect to soils and groundwater. Requires concentrations, exposure pathway assumptions, and exposure factors that are no more stringent than the standard default exposure factors established by the US Environmental Protection Agency (EPA). If a statewide health standard is numerically less than the background standard, then the background standard applies. Details the contents of the final report documenting attainment. Prohibits the use of institutional controls to attain the statewide health standard. Provides that DENR must review final report demonstrating attainment within 60 days of its receipt or notify of report's deficiencies. If DENR fails to respond with deficiencies within 60 days, the report is deemed approved.

Site-specific standard. Establishes limits on excess upper-bound lifetime risk standards and standards for cumulative excess risk to exposed populations. Sets hazard index limits for systemic toxicants. Sets other specific standards for groundwater, soils, air, and surface waters. In setting soil and groundwater cleanup standards, allows appropriate standard exposure factors to take into account current and planned future land use of the site. If a site-specific standard is numerically less than the background standard, then the background standard applies. Allows

standards to be attained through various remediation activities including treatment, removal, engineering, or institutional controls and innovative or other demonstrated measures. Authorizes DENR to disapprove a site-specific remediation plan consisting solely of fences, warning signs, or land-use restrictions unless the site-specific standard is developed on the basis of exposure factors that are no less stringent than those that would apply to the site at the time the contamination is discovered. Requires the final remediation plan to include remediation alternatives and a final remedy. Lists reports and evaluations that must be submitted to DENR for review and approval. Provides for the publication of a notice of intent to remediate the site in a newspaper serving the area in which the site is located and offers a 30-day public comment period. Requires clean-up plan to include responses to public comments. Provides that DENR must review clean-up plan within 60 days of its receipt or notify of plan deficiencies. If DENR fails to respond with deficiencies within 60 days, the plan is deemed approved. Provides that final report must be submitted upon completion of the cleanup. Provides that DENR must review final report within 90 days of its receipt or notify of report's deficiencies. If DENR fails to respond with deficiencies within 90 days, the report is deemed approved. Provides that rules adopted under this authority apply to a series of federal and state environmental statutes including those affecting inactive hazardous sites, the hazardous waste management program, solid waste management, the Superfund Program as administered by the State, the groundwater protection corrective action program, and the oil and pollution and hazardous substances control program. Requires anyone undertaking remediation of environmental contamination under a site-specific cleanup standard to pay a fee to the Risk-Based Remediation Fund equal to \$3,000 for each acre of contamination, but not to exceed \$75,000. Provides that any assumption about the future use of the contaminated area on which levels of risk are assessed must be reflected in appropriate restrictions on the future use of the property and must be recorded.

Other. Provides that the Secretary may not allow risk-based remediation for contamination that occurs after the effective date of the act unless certain findings are made, and the petitioner pays a fee of \$5,000 to the Groundwater Remediation Fund. Directs DENR to adopt temporary rules on or before October 1, 2006. Directs the Secretary to use all reasonable efforts to obtain a written agreement from EPA that this legislation and related rules are consistent with federal environmental response and Superfund legislation.

Groundwater Remediation Fund. Enacts new GS 143B-279.14 to establish fund in DENR as a nonreverting fund consisting of fees paid under remediation legislation, appropriations, investment interest, and other monies. Allows funds to be used for environmental remediation, for establishing alternative drinking water supplies for third parties affected by contamination, and for establishing a geographic information system that maps the land and water resources that are remedied under risk-based remediation.

Reports. Directs DENR to report to the Environmental Review Comm'n about the implementation of the act by October 1, 2008. Directs DENR to undertake an examination of the risk-based cleanup procedures currently in place for cleanup programs not included in program described above and report to the Environmental Review Comm'n on what actions needs to be taken to make cleanup under those programs consistent with the rules under this program. These prior programs include the Leaking Petroleum Underground Storage Tank Cleanup Act, the Brownfields Property Reuse Act, and the Dry-Cleaning Solvent Cleanup Act.

Intro. by Gibson, LaRoque.

Ref. to Environment

GS 143B

July 13, 2006

H 1778. RISK-BASED ENVIRONMENTAL REMEDIATION/FUND. Filed 5/11/05. House committee substitute makes the following changes to 1st edition. Substantially revises the proposed new Part 1A to GS Chapter 143B, Article 7, so that it now establishes a program under which the Department of Environment and Natural Resources (DENR) may approve remediation of contaminated property through site-specific plans. The new program applies to remediation under the following existing programs: (1) the Inactive Hazardous Sites Response Act of 1987 (GS 130A-310 et seq.); (2) the hazardous waste management program administered by State pursuant to the federal Resource Conservation and Recovery Act of 1976; (3) solid waste

management facilities regulated under GS Chapter 130A, Article 9; (4) the federal Superfund program as administered by State; (5) groundwater protection corrective action requirements adopted by Environmental Management Commission pursuant to GS Chapter 143, Article 21; and (6) the Oil Pollution and Hazardous Substances Control Act of 1978 (GS Chapter 143, Article 21A, Parts 1 and 2).

Permits a person who proposes to conduct remediation to submit a plan for doing so to DENR and sets out required content of plan. Requires notice of the plan to local governments with regulatory or planning jurisdiction over site, and gives local governments and citizens opportunity to comment upon the plan. Sets out standards that plan must meet to be approved. If DENR approves the plan, requires the person undertaking remediation to report to DENR when project complete; if DENR finds that the remediation meets the applicable standard, it must release the site from further remediation.

Establishes a fee that must be paid by the person submitting the report of \$3000 per acre, with a maximum of \$75,000. Establishes an additional fee of \$5000 if contamination being remediated occurs after July 1, 2006. Provides that fees collected under the program are to be placed in the newly-established Risk-Based Remediation Fund and provides for the use of moneys in the Fund.

Directs the Secretary of DENR to use all reasonable efforts to obtain a written agreement from the U.S. EPA that the program is consistent with federal law. Requires DENR to make reports on success of program.