

May 4, 2009

H 1575. ACCELERATE REMEDIATION OF MANUFACTURING SITES. Filed 5/4/09. *TO EXPAND THE CIRCUMSTANCES UNDER WHICH THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES SHALL ALLOW FOR RISK-BASED REMEDIAL ACTIONS AT CONTAMINATED MANUFACTURING SITES.*

To be summarized in tomorrow's *Daily Bulletin*.

Intro. by Gibson.

GS 143B

May 5, 2009

H 1575. ACCELERATE REMEDIATION OF MANUFACTURING SITES. Filed 5/4/09. *TO EXPAND THE CIRCUMSTANCES UNDER WHICH THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES SHALL ALLOW FOR RISK-BASED REMEDIAL ACTIONS AT CONTAMINATED MANUFACTURING SITES.*

Enacts a new Part 1A in Article 7 of GS Chapter 143B to allow the Department of Environment and Natural Resources (DENR) to approve remediation of contaminated property based on site-specific remediation standards in circumstances where those standards are adequate to protect public health, safety, and welfare and the environment and are consistent with the protection of current and anticipated future use of groundwater and surface water affected or potentially affected by the contamination. Provides that Part 1A applies to remediation under the following programs to the extent that the programs address contaminants and the contaminated environmental media and that Part 1A does not conflict with federal authority: (1) the Inactive Hazardous Sites Response Act of 1987; (2) the state hazardous waste management program administered pursuant to the federal Resource Conservation and Recovery Act of 1976; (3) solid waste management facilities regulated under Article 9 of GS Chapter 130A; (4) the federal Superfund program administered in part by the State pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) and the Superfund Amendments and Reauthorization Act of 1986 and related state law; (5) the groundwater protection corrective action requirements adopted by the Environmental Management Commission pursuant to Article 21 of GS Chapter 143; and (6) the Oil Pollution and Hazardous Substances Control Act of 1978, Parts 1 and 2 of Article 21A of GS Chapter 143.

Requires that any person who proposes or is required to respond to the release of a contaminant at a site must attain compliance with one of the following standards: (1) the unrestricted use standard applicable to each affected media, (2) the background standard for any media in which naturally occurring concentrations of a substance exceeds the unrestricted use standards, (3) a site-specific remediation standard developed in accordance with proposed GS 143B-279.18(b) that is approved by DENR, or (4) any combination of remediation standards that are approved by DENR. Provides that a site-specific remediation standard developed for each medium must achieve remediation that eliminates or reduces to protective levels any substantial present or probable future risk to human health, including sensitive subgroups, and the environment based upon the present or currently planned future use of the property. Provides for site-specific standards requirements for (1) ambient air; (2) surface waters; (3) groundwater in relation to current and probable future use; (4) soil in relation to continuing groundwater contamination; (5) soil in relation to residential property, with exceptions for mixed-use developments and property with preexisting structures; (6) potential human inhalation of contaminants; (7) potential human ingestion of contaminants; (8) known or suspected carcinogens; and (9) systemic toxicants. Requires the site-specific remediation standards for each medium to be adequate to prevent adverse affects to the environment. (GS 143B-279.18)

Requires a person who proposes to conduct remediation to develop and submit a proposed remedial action plan to DENR, which provides for the protection of public health, safety, and welfare and the environment. Sets forth specific criteria and information to be included in the plan, including an analysis of long-term risks and effectiveness of the proposed remediation, toxicity, mobility or volume of contaminants, short-term risks and effectiveness of remediation, and the ease or difficulty of implementing the remedial action plan. (GS 143B-279.19)

Requires a person who submits a remedial action plan to DENR to also send a notice of intent to remediate to all local governments having taxing or land-use jurisdiction over the site and

publish the notice in a newspaper of general circulation at least once in the county or counties the site is located. The notice must provide for a public comment period of at least 30 days during which the municipality or county or any citizen may submit comments to the applicant and to DENR. Also allows DENR to conduct a public hearing if there is significant public interest. (GS 143B-279.20)

Requires DENR to approve or disapprove a remedial action plan within 90 days after a complete plan has been submitted for review. Provides for issues to be considered by DENR when reviewing a plan. Allows for review of a disapproved plan as provided in Article 3 of GS Chapter 150B. If DENR fails to approve or disapprove a proposed remedial action plan within 90 days after a complete plan has been submitted, then the person who submitted the plan may treat the plan as disapproved. (GS 143B-279.21)

Provides for the attainment of approved remediation standards for a site or portion of a site, requiring the submission of a final report and request to DENR, with notice to the local government with taxing and land-use jurisdiction. Requires that DENR issue a release from further remediation at a site if the responsible person has completed remediation to the approved remediation standard, with certain exceptions. Requires DENR to issue a final decision regarding a request for release within 90 days after receipt of a complete final report. Failure by DENR to issue a decision within this time period may be treated as a denial. Also provides for review of DENR's decision as provided in Article 3 of GS Chapter 150B. (GS 143B-279.22)

Establishes the Risk-Based Remediation Fund (Fund) as a nonreverting fund under the control and direction of DENR consisting of fee payments, appropriated monies, investment interest, and other monies paid to or recovered on behalf of the Fund. Requires a person who undertakes remediation of environmental contamination under site-specific standards to pay a fee to the Fund in an amount equal to \$3,000 for each acre or portion of an acre of contamination, with a maximum fee of \$75,000, payable on submittal of the remedial action plan to DENR. Prohibits DENR from allowing risk-based remediation for environmental contamination that occurs after July 1, 2006, unless the petitioner pays a \$5,000 fee to the Fund. Provides for specific uses of money from the Fund.

Provides for compliance with other laws, adoption of rules, and construction of Part 1A.

Requires that the Secretary of Environment and Natural Resources (Secretary) use all reasonable efforts to obtain a written agreement from the US Environmental Protection Agency that Part 1A, as enacted by this act, and rules adopted pursuant to the Part, are consistent with CERCLA and the Superfund Amendments and Reauthorization Act of 1986, as amended.

Requires a report by DENR to the Environmental Review Commission, by October 1, 2010, as to the steps taken by the Secretary to implement this act. Specifies information to be included in the report.

Intro. by Gibson.

GS 143B