

ADOPTED



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 765

AMENDMENT NO. A11
(to be filled in by
Principal Clerk)

H765-ARI-27 [v.2]

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Amends Title [NO]
Third Edition

Date _____, 2015

Senator Wells

1 moves to amend the bill on page 22, line 35, through page 25, line 32,
2 by rewriting those lines to read:

3
4 **"AMEND RISK-BASED REMEDIATION PROVISIONS**

5 **SECTION 4.7.** Part 8 of Article 9 of Chapter 130A of the General Statutes reads as
6 rewritten:

7 "Part 8. Risk-Based Environmental Remediation of ~~Industrial~~ Sites.

8 **§ 130A-310.65. Definitions.**

9 As used in this Part:

- 10 (1) "Background standard" means the naturally occurring concentration of a
11 substance in the absence of the release of a contaminant.
- 12 (2) Repealed by Session Laws 2014-122, s. 11(i), effective September 20, 2014.
- 13 (3) "Contaminant" means any substance regulated under any program listed in
14 G.S. 130A-310.67(a).
- 15 (3a) "Contaminated off-site property" means property under separate ownership
16 from the contaminated site that is contaminated as a result of a release or
17 migration of contaminants at the contaminated site.
- 18 (4) "Contaminated ~~industrial-site~~" or "site" means any real property that ~~meets~~
19 ~~all of the following criteria:~~
 - 20 a. ~~The property is contaminated and may be subject to remediation~~
21 ~~under any of the programs or requirements set out in~~
22 ~~G.S. 130A-310.67(a).~~
 - 23 b. ~~The property is or has been used primarily for manufacturing or other~~
24 ~~industrial activities for the production of a commercial product. This~~
25 ~~includes a property used primarily for the generation of electricity.~~
 - 26 e. ~~No contaminant associated with activities at the property is located~~
27 ~~off of the property at the time the remedial action plan is submitted.~~
 - 28 d. ~~No contaminant associated with activities at the property will migrate~~
29 ~~to any adjacent properties above unrestricted use standards for the~~
30 ~~contaminant.~~
- 31 (5) "Contamination" means a contaminant released into an environmental
32 medium that has resulted in or has the potential to result in an increase in the



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- 1 concentration of the contaminant in the environmental medium in excess of
- 2 unrestricted use standards.
- 3 (6) "Fund" means the ~~Inactive Hazardous Sites Cleanup~~ Risk-Based
- 4 Remediation Fund established pursuant to
- 5 ~~G.S. 130A-310.11~~ G.S. 130A-310.76.
- 6 (7) "Institutional controls" means nonengineered measures used to prevent
- 7 unsafe exposure to contamination, such as land-use restrictions.
- 8 (8) "Registered environmental consultant" means an environmental consulting
- 9 or engineering firm approved to implement and oversee voluntary remedial
- 10 actions pursuant to Part 3 of Article 9 of Chapter 130A of the General
- 11 Statutes and rules adopted to implement the Part.
- 12 (9) "Remedial action plan" means a plan for eliminating or reducing
- 13 contamination or exposure to contamination.
- 14 (10) "Remediation" means all actions that are necessary or appropriate to clean
- 15 up, mitigate, correct, abate, minimize, eliminate, control, or prevent the
- 16 spreading, migration, leaking, leaching, volatilization, spilling, transport, or
- 17 further release of a contaminant into the environment in order to protect
- 18 public health, safety, or welfare or the environment.
- 19 (11) "Systemic toxicant" means any substance that may enter the body and have a
- 20 harmful effect other than causing cancer.
- 21 (12) "Unrestricted use standards" means contaminant concentrations for each
- 22 environmental medium that are acceptable for all uses; that are protective of
- 23 public health, safety, and welfare and the environment; and that comply with
- 24 generally applicable standards, guidance, or methods established by statute
- 25 or adopted, published, or implemented by the Commission or the
- 26 Department.

27 **§ 130A-310.66. Purpose.**

28 It is the purpose of this Part to authorize the Department to approve the remediation of
29 contaminated ~~industrial~~ sites based on site-specific remediation standards in circumstances
30 where site-specific remediation standards are adequate to protect public health, safety, and
31 welfare and the environment and are consistent with protection of current and anticipated future
32 use of groundwater and surface water affected or potentially affected by the contamination.

33 **§ 130A-310.67. Applicability.**

34 (a) This Part applies to contaminated ~~industrial~~ sites subject to remediation pursuant to
35 any of the following programs or requirements:

- 36 (1) The Inactive Hazardous Sites Response Act of 1987 under Part 3 of Article 9
- 37 of Chapter 130A of the General Statutes, including voluntary actions under
- 38 G.S. 130A-310.9 of that act, and rules promulgated pursuant to those
- 39 statutes.
- 40 (2) The hazardous waste management program administered by the State
- 41 pursuant to the federal Resource Conservation and Recovery Act of 1976,
- 42 Public Law 94-580, 90 Stat. 2795, 42 U.S.C. § 6901, et seq., as amended,
- 43 and Article 9 of Chapter 130A of the General Statutes.

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- 1 (3) The solid waste management program administered pursuant to Article 9 of
2 Chapter 130A of the General Statutes.
3 (4) The federal Superfund program administered in part by the State pursuant to
4 the Comprehensive Environmental Response, Compensation, and Liability
5 Act of 1980, Public Law 96-510, 94 Stat. 2767, 42 U.S.C. § 9601, et seq., as
6 amended, the Superfund Amendments and Reauthorization Act of 1986,
7 Public Law 99-499, 100 Stat. 1613, as amended, and under Part 4 of Article
8 9 of Chapter 130A of the General Statutes.
9 (5) The groundwater protection corrective action requirements adopted by the
10 Commission pursuant to Article 21 of Chapter 143 of the General Statutes.
11 (6) Oil Pollution and Hazardous Substances Control Act of 1978, Parts 1 and 2
12 of Article 21A of Chapter 143 of the General ~~Statutes~~. Statutes, except with
13 respect to those sites identified in subdivision (1a) of subsection (b) of this
14 section.

15 (b) This Part shall not apply to contaminated ~~industrial~~ sites subject to remediation
16 pursuant to any of the following programs or requirements:

- 17 (1) The Leaking Petroleum Underground Storage Tank Cleanup program under
18 Part 2A of Article 21A of Chapter 143 of the General Statutes and rules
19 promulgated pursuant to that statute.
20 (2) The Dry-Cleaning Solvent Cleanup program under Part 6 of Article 21A of
21 Chapter 143 of the General Statutes and rules promulgated pursuant to that
22 statute.
23 (3) The pre-1983 landfill assessment and remediation program established under
24 G.S. 130A-310.6(c) through (g).
25 (4) The Coal Ash Management Act of 2014 under Part 2I of Article 9 of Chapter
26 130A of the General Statutes and rules promulgated pursuant to that Part.

27 ~~(e) This Part shall apply only to sites where a discharge, spill, or release of~~
28 ~~contamination has been reported to the Department prior to March 1, 2011.~~

29 ...

30 **§ 130A-310.71. Review and approval of proposed remedial action plans.**

31 (a) The Department shall review and approve a proposed remedial action plan
32 consistent with the remediation standards set out in G.S. 130A-310.68 and the procedures set
33 out in this section. In its review of a proposed remedial action plan, the Department shall do all
34 of the following:

- 35 (1) Determine whether site-specific remediation standards are appropriate for a
36 particular contaminated site. In making this determination, the Department
37 shall consider proximity of the contamination to water supply wells or other
38 receptors; current and probable future reliance on the groundwater as a water
39 supply; current and anticipated future land use; environmental impacts; and
40 the feasibility of remediation to unrestricted use standards.
41 (2) Determine whether the party conducting the remediation has adequately
42 demonstrated through modeling or other scientific means acceptable to the
43 Department that no contamination will migrate to ~~adjacent~~ off-site property

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- 1 at levels above unrestricted use ~~standards~~standards, except as may remain
2 pursuant to a cleanup conducted pursuant to G.S. 130A-310.73A(a)(2).
- 3 (3) Determine whether the proposed remedial action plan meets the
4 requirements of G.S. 130A-310.69.
- 5 (4) Determine whether the proposed remedial action plan meets the
6 requirements of any other applicable remediation program except those
7 pertaining to remediation standards.
- 8 (5) Establish the acceptable level or range of levels of risk to public health,
9 safety, and welfare and to the environment.
- 10 (6) Establish, for each contaminant, the maximum allowable quantity,
11 concentration, range, or other measures of contamination that will remain at
12 the contaminated site at the conclusion of the contaminant-reduction phase
13 of the remediation.
- 14 (7) Consider the technical performance, effectiveness, and reliability of the
15 proposed remedial action plan in attaining and maintaining compliance with
16 applicable remediation standards.
- 17 (8) Consider the ability of the person who proposes to remediate the site to
18 implement the proposed remedial action plan within a reasonable time and
19 without jeopardizing public health, safety, or welfare or the environment.
- 20 (9) Determine whether the proposed remedial action plan adequately provides
21 for the imposition and maintenance of engineering and institutional controls
22 and for sampling, monitoring, and reporting requirements necessary to
23 protect public health, safety, and welfare and the environment. In making
24 this determination, the Department may consider, in lieu of land-use
25 restrictions authorized under G.S. 130A-310.69, reliance on other State or
26 local land-use controls. Any land-use controls implemented shall adequately
27 protect public health, safety, and welfare and the environment, and provide
28 adequate notice to current and future property owners of any residual
29 contamination and the land-use controls in place.
- 30 (10) Approve the circumstances under which no further remediation is required.
- 31 (b) The person who proposes a remedial action plan has the burden of demonstrating
32 with reasonable assurance that contamination from the site will not migrate to ~~adjacent~~off-site
33 property above unrestricted use levels~~levels~~, except as may remain pursuant to a cleanup
34 conducted pursuant to G.S. 130A-310.73A(a)(2), and that the remedial action plan is protective
35 of public health, safety, and welfare and the environment by virtue of its compliance with this
36 Part. The demonstration shall (i) take into account actions proposed in the remedial action plan
37 that will prevent contamination from migrating off the site; and (ii) use scientifically valid
38 site-specific data.
- 39 (c) The Department may require a person who proposes a remedial action plan to
40 supply any additional information necessary for the Department to approve or disapprove the
41 plan.
- 42 (d) In making a determination on a proposed remedial action plan, the Department shall
43 consider the information provided by the person who proposes the remedial action plan as well

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1 as information provided by local governments and adjoining landowners pursuant to
2 G.S. 130A-310.70. The Department shall disapprove a proposed remedial action plan unless the
3 Department finds that the plan is protective of public health, safety, and welfare and the
4 environment and complies with the requirements of this Part. If the Department disapproves a
5 proposed remedial action plan, the person who submitted the plan may seek review as provided
6 in Article 3 of Chapter 150B of the General Statutes. If the Department fails to approve or
7 disapprove a proposed remedial action plan within 120 days after a complete plan has been
8 submitted, the person who submitted the plan may treat the plan as having been disapproved at
9 the end of that time period.

10 (e) If, pursuant to subdivision (9) of subsection (a) of this section, reliance on other
11 State or local land-use controls is approved by the Department in lieu of land-use restrictions, a
12 "Notice of Residual Contamination" shall be prepared and filed in the chain of title of each
13 contaminated site or contaminated off-site property where any contamination has or will in the
14 future exceed unrestricted use standards. The Notice shall identify the type of contamination
15 on the site or property and the land-use controls that address the contamination, and may be
16 filed by the person who proposes to remediate the site. Provided, however, the Department may
17 only approve imposition of land-use controls on contaminated off-site property with the written
18 consent of the owner of the property in conformance with G.S. 130A-310.73A(a)(2).

19 ...

20 **§ 130A-310.73. Attainment of the remediation standards.**

21 (a) Compliance with the approved remediation standards is attained for a site or portion
22 of a site when a remedial action plan approved by the Department has been implemented and
23 applicable soil, groundwater, surface water, and air emission standards have been attained. The
24 remediation standards may be attained through a combination of remediation activities that can
25 include treatment, removal, engineering, or institutional controls, except that the person
26 conducting the remediation may not demonstrate attainment of ~~an unrestricted use a remediation~~
27 ~~standard or a background standard~~ through the use of institutional controls ~~alone that result in~~
28 an incompatible use of the property relative to surrounding land uses. When the remedial action
29 plan has been fully implemented, the person conducting the remediation shall submit a final
30 report to the Department, with notice to all local governments with taxing and land-use
31 jurisdiction over the site, that demonstrates that the remedial action plan has been fully
32 implemented, that any land-use restrictions have been certified on an annual basis, and that the
33 remediation standards have been attained. The final report shall be accompanied by a request
34 that the Department issue a determination that no further remediation beyond that specified in
35 the approved remedial action plan is required.

36 (b) The person conducting the remediation has the burden of demonstrating that the
37 remedial action plan has been fully implemented and that the remediation standards have been
38 attained in compliance with the requirements of this Part. The Department may require a person
39 who implements the remedial action plan to supply any additional information necessary for
40 the Department to determine whether the remediation standards have been attained.

41 (c) The Department shall review the final report, and, upon determining that the person
42 conducting the remediation has completed remediation to the approved remediation standard
43 and met all the requirements of the approved remedial action plan, the Department shall issue a

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1 determination that no further remediation beyond that specified in the approved remedial action
2 plan is required at the site. Once the Department has issued a no further action determination,
3 the Department may require additional remedial action by the responsible party only upon
4 finding any of the following:

- 5 (1) Monitoring, testing, or analysis of the site subsequent to the issuance of the
6 no further action determination indicates that the remediation standards and
7 objectives were not achieved or are not being maintained.
- 8 (2) One or more of the conditions, restrictions, or limitations imposed on the site
9 as part of the remediation have been violated.
- 10 (3) Site monitoring or operation and maintenance activities that are required as
11 part of the remedial action plan or no further action determination for the site
12 are not adequately funded or are not adequately implemented.
- 13 (4) A contaminant or hazardous substance release is discovered at the site that
14 was not the subject of the remedial investigation report or the remedial
15 action plan.
- 16 (5) A material change in the facts known to the Department at the time the
17 written no further action determination was issued, or new facts, cause the
18 Department to find that further assessment or remediation is necessary to
19 prevent a significant risk to human health and safety or to the environment.
- 20 (6) The no further action determination was based on fraud, misrepresentation,
21 or intentional nondisclosure of information by the person conducting the
22 ~~remediation~~ remediation, or that person's agents, contractors, or affiliates.
- 23 (7) Installation or use of wells would induce the flow of contaminated
24 groundwater off the ~~site~~ contaminated site, as defined in the remedial action
25 plan.

26 (d) The Department shall issue a final decision on a request for a determination that
27 remediation has been completed to approved standards and that no further remediation beyond
28 that specified in the approved remedial action plan is required within 180 days after receipt of a
29 complete final report. Failure of the Department to issue a final decision on a no further
30 remediation determination within 180 days after receipt of a complete final report and request
31 for a determination of no further remediation may be treated as a denial of the request for a no
32 further remediation determination. The responsible person may seek review of a denial of a
33 request for a release from further remediation as provided in Article 3 of Chapter 150B of the
34 General Statutes.

35 **"§ 130A-310.73A. Remediation of sites with off-site migration of contaminants.**

36 (a) Contaminated sites at which contamination has migrated to off-site properties may
37 be remediated pursuant to this Part, if either of the following occur:

- 38 (1) The person who proposes to conduct the remediation pursuant to this Part
39 remediates the contaminated off-site property to unrestricted use standards.
- 40 (2) The person who proposes to conduct the remediation pursuant to this Part (i)
41 provides the owner of the contaminated off-site property with a copy of this
42 Part and the publication produced by the Department pursuant to subsection
43 (b) of this section and (ii) obtains written consent from the owner of the

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contaminated off-site property for the person to remediate the contaminated off-site property using site-specific remediation standards pursuant to this Part. Provided that the site-specific remediation standards shall not allow concentrations of contaminants on the off-site property to increase above the levels present on the date the written consent is obtained. Written consent from the owner of the off-site property shall be on a form prescribed by the Department and include an affirmation that the owner has received and read the publication and authorizes the person to remediate the owner's property using site-specific remediation standards pursuant to this Part.

(b) In order to inform owners of contaminated off-site property of the issues and liabilities associated with the contamination on their property, the Department, in consultation with the Consumer Protection Division of the North Carolina Department of Justice and the North Carolina Real Estate Commission, shall develop and make available a publication entitled "Contaminated Property: Issues and Liabilities" to provide information on the nature of risk-based remediation and how it differs from remediation to unrestricted use standards, potential health impacts that may arise from residual contamination, as well as identification of liabilities that arise from contaminated property and associated issues, including potential impacts to real estate transactions and real estate financing. The Department shall update the publication as necessary.

(c) If, after issuance of a no further action determination, the Department determines that additional remedial action is required for a contaminated off-site property pursuant to G.S. 130A-310.73(c), the responsible party shall be liable for the additional remediation deemed necessary.

(d) Nothing in this section shall be construed to preclude or impair any person from obtaining any and all other remedies allowed by law.

... "".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

The official copy of this document, with signatures and vote information, is available in the Senate Principal Clerk's Office