



North Carolina Department of Environment and Natural Resources

Pat McCrory
Governor

John E. Skvarla, III
Secretary

April 1, 2014

MEMORANDUM

TO: Environmental Review Commission
The Honorable Brent Jackson, Chair
The Honorable Ruth Samuelson, Co-Chair

FROM: Neal Robbins, Director of Legislative Affairs

SUBJECT: Report on Impact of S.L. 2013-108 on the Brownfields Program

DATE: April 1, 2014

Pursuant to S.L. 2013-108, the Department of Environment and Natural Resources shall report to the Environmental Review Commission no later than April 1, 2014, regarding the impact of this act on the Brownfields Property Reuse program and the Leaking Petroleum Underground Storage Tank Cleanup program. Please consider the attached as the formal submission of this report. If you have any questions or need additional information, please contact me by phone at (919) 707-8618 or via e-mail at neal.robbins@ncdenr.gov.

cc: Mitch Gillespie, Assistant Secretary for Environment, NCDENR
Dexter Matthews, Director, DWM, NCDENR
Linda Culpepper Deputy Director, DWM, NCDENR
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Report on Impact of Session Law 2013-108 On the Brownfields Program April 1, 2014

Background

Session Law 2013-108 requires this report to the Environmental Review Commission of the General Assembly regarding the impact of Session Law 2013-108 (AN ACT TO CLARIFY THAT THE PRESENCE OF A SUBSTANCE RELEASED FROM AN UNDERGROUND STORAGE TANK DOES NOT DISQUALIFY A PROPERTY FROM PARTICIPATION IN THE NORTH CAROLINA BROWNFIELDS PROGRAM.)

Brownfields Program Impacts

The impacts of the statute on the Division of Waste Management's Brownfields Program can be addressed in three main areas:

- Impact on the number of sites entering the program through Brownfields Program applications
- Impact on resources expended for Brownfields Agreement Negotiation
- Impact on program choice available to prospective developers.

The impacts in all three areas are described below, but to date all impacts have been minimal.

Impact on the Number of Sites Entering the Program through Brownfields Program Applications

Since the Act took effect in June 12, 2013, the Division of Waste Management's (DWM's) Brownfields Program has received 37 applications for brownfields agreements. Just two of these 37 applications were for properties that exclusively had underground storage tank (UST) issues that would have previously made them ineligible for a brownfields agreement prior to the passage of Session Law 2013-108. It appears that, to date, the impact of this Act on the Brownfields Program has been minimal. This could change in the future as prospective developers learn more about this statutory change through outreach by the program and through other brownfields redevelopment stakeholders such as environmental consultants and attorneys.

Impact on Resources Expended for Brownfields Agreement Negotiation

Since the inception of the Brownfields Program, many eligible brownfields properties have had both UST and non-UST contamination issues. Prior to passage of Session Law 2013-108, brownfields properties that had both UST and non-UST issues on a brownfields property could address only the non-UST issues within a brownfields agreement. These properties were referred to the UST Program to deal with UST issues under UST rules. Now, under Session Law 2013-108, this referral of UST remediation by prospective developers to the UST program is no longer necessary. Prospective developers who are negotiating brownfields agreements can now work with the Brownfields Program to address UST issues on their properties, unless they choose to seek reimbursement under the UST Trust fund. If a prospective developer desires to retain Trust Fund eligibility, they need to work with the UST Section to remain eligible for Trust Fund reimbursement. The effect of this on the Brownfields Program is, again, minimal and is limited to the resources put into negotiation for these UST issues within the brownfields agreement on those sites where UST issues arise. However, this typically does not involve significantly more resources because UST issues have generally not added any further technical or risk complexity during brownfields agreement negotiations.

Impact on Program Choice Available to Prospective Developers

Although the passage of Session Law 2013-108 allows prospective developers to address UST contamination under a brownfields process in the context of a brownfields agreement, it does not bar them from choosing to conduct remediation under UST program oversight under UST rules if they desire to do that. Should they chose to do so and pay any back tank fees owed to DENR, considering applicable deductibles, they may conduct their remediation under UST rules and have access to the UST Trust Fund for reimbursement. However, since the implementation of Session Law 2013-108, no prospective developer has yet chosen to do this, and thus, no impact to the UST Program has been observed.

Further Information

For additional information on the Brownfields Program and how it works, please visit our Website at www.ncbrownfields.org.