

Annual Report to the North Carolina General Assembly

Risk-Based Remediation Fund

(July 1, 2017 to June 30, 2018)

Division of Waste Management



**NORTH CAROLINA
DEPARTMENT OF ENVIRONMENTAL QUALITY**

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Executive Summary

This report to the Joint Legislative Oversight Committee on Agriculture and Natural and Economic Resources, the Environmental Review Commission, and the Fiscal Research Division is required on or before Oct. 1 of each year under G.S. 130A-310.76(c). It includes the following information:

1. The amounts and sources of funds collected by year to be paid into the Risk-Based Remediation Fund (Fund) established under G.S. 130A-310.76A. Receipts are of two types:
 - a. An application fee, to be used to pay for administrative and operating expenses necessary to implement the statutes governing risk-based environmental remediation of sites; and
 - b. An oversight fee, to be used to establish, administer, and maintain a system for the tracking of land-use restrictions recorded at sites that are remediated pursuant to the statute.
2. The number of acres of contamination for which funds have been received pursuant to the statute.
3. An accounting of how the funds collected have been used by the N.C. Department of Environmental Quality (DEQ) to advance the purposes of the statute.

Fees received in fiscal year 2017-18 from applicants for risk-based remedies totaled \$29,500 (of this amount, received \$6,500 on Dec. 6, 2017, and a correction was made and applied on Aug. 21, 2018 as shown Table 1 and 2). Of these receipts, \$20,500 were application fees and \$9,000 were oversight fees. Fees collected during the fiscal year were associated with six sites totaling nine acres of contamination.

During fiscal year 2017-18, Risk-Based Remediation funds supported salaries for key technical staff and risk assessment tool enhancement and training, totaling \$130,052.33, leaving the Fund with an end-of-fiscal-year balance of \$234,619.31. Now that risk evaluation guidance documents and the website are complete, DEQ has reduced the Fund's support of key technical staff salaries. This will reduce projected total expenses, while allowing continued funding for ongoing outreach and training. This also provides for support of the GIS mapping and database tools needed to efficiently track institutional controls on deeds, and to enhance public access to information about sites where risk-based remedies are applied. Fund receipts and expenditures will be monitored closely to ensure the continued solvency of the Risk-Based Remediation Fund.

Amounts and Sources of Funds Collected

The department's Risk-Based Remediation Fund, administered by DEQ's Division of Waste Management, was created in 2011 and its uses further modified in 2015 by the General Assembly. North Carolina General Statute § 130A-310.76 requires that a person who undertakes remediation of environmental contamination with site-specific remediation levels, as provided in G.S. 130A-310.68, pay two fees to the Fund: application fee and oversight fee.

The application fee is required to pay for administrative and operating expenses to implement the statute, including the full cost of the department's activities associated with

any human health or ecological risk assessments, groundwater modeling, financial assurance matters or community outreach. The application fee is not to exceed \$5,000 for each acre or portion of an acre of contamination, and it is not to exceed \$100,000 for a given site. The department shall take the following factors into account when calculating a reduced application fee:

- The size of the site subject to a proposed remedial action plan;
- Whether groundwater contamination from the site has migrated, or is likely to migrate, to off-site properties;
- The complexity of the work to be conducted at a site;
- The resources that the department will need to evaluate and oversee the work at a site, particularly in those cases where the work is to be performed by a registered environmental consultant in accordance with the provisions of G.S. 130A-310.75; or
- The resources the department will need to monitor a site after completion of remediation.

The oversight fee is required under the October 2015 modified statute. It is used to establish, administer and maintain a system for tracking land-use restrictions recorded at sites that are remediated pursuant to the statute. This fee, set at \$500 per contaminated acre, is not subject to modification and not to exceed \$25,000 for a given site.

The number of sites, acreage addressed and fees collected since the Fund's inception in 2012 are summarized in Table 1. The Fund has been non-interest-bearing since 2015.

Fiscal Year 2017-18 Expenditures

The summary of receipts and expenditures of the Fund for fiscal year 2017-18 are shown in Table 2. Expenditures of \$38,402.34 were used for contractor development of the department's online risk assessment calculator, semiannual periodic updates to the calculator, and training staff and the public in the calculator's use. The risk calculator is designed to (1) facilitate remediators' risk assessment calculations and submittal of required documentation, and (2) reduce departmental staff review time.

Expenditures of \$77,155.67 paid for staff salaries. The Fund paid the full salary of one lead technical staff member and one quarter of a second staff member to review risk-based remedial action plans, develop guidance documents, and train the DEQ's technical staff who review risk-based remedy submittals. An additional \$308.72 was used for expenses related to training the regulated community statewide.

Expenditures of \$14,185.6 were for partial salary of one technical (temporary) staff member implementing GIS software that tracks restricted properties, annual certifications of owners' compliance with land-use restrictions, and continuing operation and maintenance of engineering controls. In the future, fees will also support periodic inspections of properties with approved cleanup remedies to ensure the adherence of those agreement's conditions.

Anticipated Future Uses of the Application and Oversight Fee Receipts

Departmental review requirements, particularly for risk-based remedies addressing contamination spanning multiple properties, often in residential or commercial areas not owned by the remediating party, can entail potential risks that are not easily predictable. Applicants' risk assessments and groundwater models will need to firmly demonstrate that

contaminants left on the property will not migrate in the future to places where they will adversely impact human health or the environment. The department has increased the responsibility, technical training and compensation of a number of its lead technical staff in preparation for broader use of risk-based remedies. A portion of the application fee receipts will be used for the ongoing training of the lead technical staff in each program reviewing risk-based remedy submittals.

The department needs to be prepared for situations where it will have to employ outside contractor support to facilitate the timely and comprehensive risk evaluation of large, complex sites. The need for such outside contractors is expected to be rare, but one large risk evaluation may significantly deplete the current Fund's total balance. An adequate, ongoing balance must be maintained in the Fund to meet this future need.

Upon approval of risk-based remedies, the department assumes the long-term oversight of permanent engineering and institutional controls needed to ensure that those remedies remain protective. Under its risk-based programs, the department requires annual certification by landowners that engineered barriers are being maintained, site-specific land use restrictions are being adhered to, and deed instruments remain in effect through the property's sale or subdivision. The department will continue to apply some of its available resources, including part of the oversight fee receipts going forward, to conduct periodic inspections of properties with approved cleanup remedies and completed brownfields agreements to ensure that imposed conditions are met.

Tracking adherence to the restrictions in a comprehensive department-wide database provides a crucial supplement to land-use restriction documents held in local government tax records. The department is developing an easy-to-use online GIS mapping tool for the public to view properties with institutional controls and associated file records as a necessary and cost-effective way to help protect communities from inadvertent exposure to contaminants and advise future prospective purchasers. The Risk-Based Remediation Fund receipts will continue to support the information technology infrastructure needed to administer and maintain this GIS system and its supporting databases.

TABLES

Table 1. Risk-Based Remediation - Summary of Sites, Acreage, and Fees Collected.

Fiscal Year	# Sites	Contaminated Acres	Application Fee	Oversight Fee¹	Total Fees
2012-2013	3	15	\$67,500.00	NA	\$67,500.00
2013-2014	1	1	\$4,500.00	NA	\$4,500.00
2014-2015	0	0	\$0.00	NA	\$0.00
2015-2016	4	18	\$70,500.00	\$500.00	\$71,000.00
2016-2017	5	170	\$235,000.00	\$55,500.00	\$290,500.00
2017-2018	6	9	\$20,500.00	\$9,000.00	\$29,500.00*
Pre-2015 Interest ²					\$543.87
Totals	19	213	\$398,000.00	\$65,000.00	\$463,543.87

¹ Oversight fees were not applicable (NA) until 2015.

² Interest on the Risk-Based Remediation fund accrued during FY 2012-2015 but reverted to the General Fund beginning FY 2015-16.

* Received \$6,500 on Dec. 6, 2017. Correction made and applied on Aug. 21, 2018.

Table 2. Risk-Based Remediation Fund - Summary of Receipts and Expenditures.

Fiscal Year	Receipts (from Table 1)	Expenses	Balance
2012-2013	\$67,500.00	\$0.00	\$67,500.00
2013-2014	\$4,500.00	\$0.00	\$72,000.00
2014-2015 ¹	\$543.87	\$0.00	\$72,543.87
2015-2016	\$71,000.00	\$29,718.00	\$113,825.87
2016-2017	\$290,500.00	\$62,654.23	\$341,671.64
2017-2018	\$29,500.00*	\$130,052.33	\$241,119.31
Totals	\$463,543.87	\$222,424.56	\$241,119.31

¹ Interest on the Risk-Based Remediation fund of \$543.87 accrued during FY 2012-2015 but reverted to the General Fund beginning FY 2015-16.

* Received \$6,500 on Dec. 6, 2017. Correction made and applied on Aug. 21, 2018.