

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

H

1

HOUSE BILL 1303

Short Title: LUST/Clarify Cleanup Req./Increase Tank Fees. (Public)

Sponsors: Representative Gibson.

Referred to: Environment and Natural Resources, if favorable, Finance.

April 12, 2001

A BILL TO BE ENTITLED

1
2 AN ACT TO CLARIFY THE CIRCUMSTANCES IN WHICH LAND-USE
3 RESTRICTIONS AND RECORDATION OF THOSE RESTRICTIONS IN THE
4 OFFICE OF THE REGISTER OF DEEDS ARE REQUIRED IN CONNECTION
5 WITH THE CLEANUP OF A RELEASE FROM A PETROLEUM
6 UNDERGROUND STORAGE TANK IN ORDER TO PROTECT THE
7 ENVIRONMENT AND PUBLIC HEALTH, TO ENSURE ENFORCEABILITY
8 OF RESTRICTIONS, AND TO PROVIDE NOTICE TO SUBSEQUENT
9 OWNERS OF THE PROPERTY AND TO INCREASE THE ANNUAL
10 OPERATING FEES APPLICABLE TO COMMERCIAL PETROLEUM
11 UNDERGROUND STORAGE TANKS.

12 The General Assembly of North Carolina enacts:

13 **SECTION 1.** G.S. 143B-279.9 reads as rewritten:

14 **"§ 143B-279.9. Land-use restrictions may be imposed to reduce danger to public**
15 **health at contaminated sites.**

16 (a) In order to reduce or eliminate the danger to public health or the environment
17 posed by the presence of contamination at a site, an owner, operator, or other
18 responsible party may impose restrictions on the current or future use of the real
19 property comprising any part of the site where the contamination is located if the
20 restrictions meet the requirements of this section. The restrictions must be agreed to by
21 the owner of the real property, included in a remedial action plan for the site that has
22 been approved by the Secretary, and implemented as a part of the remedial action
23 program for the site. The Secretary may approve restrictions included in a remedial
24 action plan in accordance with standards that the Secretary determines to be applicable
25 to the site. Except as provided in subsection (b) of this section, if the remedial action is
26 risk-based or will not require that the site meet current standards, ~~as defined in G.S.~~
27 ~~130A-310.31,~~ the remedial action plan must include an agreement by the owner,
28 operator, or other responsible party to record approved land-use restrictions that meet

1 the requirements of this section as provided in G.S. 143B-279.10. Restrictions may
2 apply to activities on, over, or under the land, including, but not limited to, use of
3 groundwater, building, filling, grading, excavating, and mining. Any approved
4 restriction shall be enforced by any owner, operator, or other party responsible for the
5 contaminated site. Any land-use restriction may also be enforced by the Department
6 through the remedies provided by any provision of law that is implemented or enforced
7 by the Department or by means of a civil action. The Department may enforce any
8 land-use restriction without first having exhausted any available administrative
9 remedies. A land-use restriction may also be enforced by any unit of local government
10 having jurisdiction over any part of the site. A land-use restriction shall not be declared
11 unenforceable due to lack of privity of estate or contract, due to lack of benefit to
12 particular land, or due to lack of any property interest in particular land. Any person
13 who owns or leases a property subject to a land-use restriction under this Part shall
14 abide by the land-use restriction.

15 (b) ~~Subsection (a) of this section shall not apply to a~~ A risk-based remedial action
16 plan for the cleanup of environmental damage resulting from a discharge or release of
17 petroleum from an underground storage tank pursuant to Part 2A of Article 21A of
18 Chapter 143 of the General Statutes. Statutes that will not require that the site meet
19 current standards plan must include an agreement by the owner, operator, or other party
20 responsible for the discharge or release of petroleum to record approved land-use
21 restrictions that meet the requirements of this section as provided in G.S. 143B-279.11.
22 All of the provisions of this section shall apply except that any restriction on the current
23 or future use of real property shall be enforceable only with respect to: (i) real property
24 on which the source of contamination is located and (ii) any real property on which
25 contamination is located at the time the remedial action plan is approved and that was
26 owned or controlled by any owner or operator of an underground storage tank or other
27 responsible party at the time the discharge or release of petroleum is discovered or
28 reported or at any time thereafter. No restriction on the current or future use of real
29 property shall apply to any portion of any parcel or tract of land on which contamination
30 is not located. This section shall not be construed to require any person to record any
31 restriction on the current or future use of real property other than the real property
32 described in this subsection. The definitions set out in G.S. 143-215.94A apply to this
33 subsection.

34 (c) This section does not alter any right, duty, obligation, or liability of any
35 owner, operator, or other responsible party under any other provision of law.

36 (d) As used in this section:

37 (1) 'Current standards' means generally applicable standards, guidance, or
38 established methods governing the contaminants that are established
39 by statute or adopted, published, or implemented by the Environmental
40 Management Commission, the Commission for Health Services, or the
41 Department. Cleanup or remediation of real property to current
42 standards means that the property is restored to a condition such that
43 the property and any use that is made of the property does not pose a
44 danger or risk to public health, the environment, or users of the

1 property that is significantly greater than that posed by use of the
2 property prior to its having been contaminated.

- 3 (2) 'Risk-based', when used in connection with cleanup, remediation, or
4 similar terms, means cleanup or remediation of contamination of real
5 property to a level that, although not in compliance with current
6 standards, does not pose a significant danger or risk to public health,
7 the environment, or users of the real property so long as the property
8 remains in the condition and is used in a manner that is consistent with
9 the assumptions as to the condition and use of the property on which
10 the determination that the level of risk is acceptable are based."

11 **SECTION 2.** G.S. 143B-279.10 reads as rewritten:

12 **"§ 143B-279.10. Recordation of contaminated sites.**

13 (a) The owner of the real property on which a site is located that is subject to
14 current or future use restrictions approved as provided in G.S. 143B-279.9 shall submit
15 to the Department a survey plat as required by this section within 180 days after the
16 owner is notified to do so. The survey plat shall identify areas designated by the
17 Department, shall be prepared and certified by a professional land surveyor, and shall be
18 entitled "NOTICE OF CONTAMINATED SITE". Where a contaminated site is located
19 on more than one parcel or tract of land, a composite map or plat showing all parcels or
20 tracts may be recorded. The Notice shall include a legal description of the site that
21 would be sufficient as a description in an instrument of conveyance, shall meet the
22 requirements of G.S. 47-30 for maps and plats, and shall identify:

- 23 (1) The location and dimensions of any disposal areas and areas of
24 potential environmental concern with respect to permanently surveyed
25 benchmarks.
26 (2) The type, location, and quantity of contamination known to the owner
27 of the site to exist on the site.
28 (3) Any restriction approved by the Department on the current or future
29 use of the site.

30 (b) After the Department approves and certifies the Notice, the owner of the site
31 shall file the certified copy of the Notice in the register of deeds office in the county or
32 counties in which the land is located within 15 days of the date on which the owner
33 receives approval of the Notice from the Department.

34 (c) The register of deeds shall record the certified copy of the Notice and index it
35 in the grantor index under the names of the owners of the land.

36 (d) In the event that the owner of the site fails to submit and file the Notice
37 required by this section within the time specified, the Secretary may prepare and file the
38 Notice. The costs thereof may be recovered by the Secretary from any responsible party.
39 In the event that an owner of a site who is not a responsible party submits and files the
40 Notice required by this section, the owner may recover the reasonable costs thereof
41 from any responsible party.

42 (e) When a contaminated site that is subject to current or future land-use
43 restrictions is sold, leased, conveyed, or transferred, the deed or other instrument of
44 transfer shall contain in the description section, in no smaller type than that used in the

1 body of the deed or instrument, a statement that the property is a contaminated site and
2 a reference by book and page to the recordation of the Notice.

3 (f) A Notice of Contaminated Site filed pursuant to this section shall, at the
4 request of the owner of the land, be cancelled by the Secretary after the contamination
5 has been eliminated or remediated to current standards, as defined in ~~G.S. 130A-310.31-~~
6 G.S. 143B-279.9. If requested in writing by the owner of the land and if the Secretary
7 concurs with the request, the Secretary shall send to the register of deeds of each county
8 where the Notice is recorded a statement that the contamination has been eliminated, or
9 that the contamination has been remediated to current standards, and request that the
10 Notice be cancelled of record. The Secretary's statement shall contain the names of the
11 owners of the land as shown in the Notice and reference the plat book and page where
12 the Notice is recorded. The register of deeds shall record the Secretary's statement in the
13 deed books and index it on the grantor index in the names of the owners of the land as
14 shown in the Notice and on the grantee index in the name "Secretary of Environment
15 and Natural Resources". The register of deeds shall make a marginal entry on the Notice
16 showing the date of cancellation and the book and page where the Secretary's statement
17 is recorded, and the register of deeds shall sign the entry. If a marginal entry is
18 impracticable because of the method used to record maps and plats, the register of deeds
19 shall not be required to make a marginal entry.

20 (g) This section does not apply to the cleanup pursuant to a risk-based remedial
21 action plan that addresses environmental damage resulting from a discharge or release
22 of petroleum from an underground storage tank pursuant to Part 2A of Article 21A of
23 Chapter 143 of the General Statutes."

24 **SECTION 3.** Part 1 of Article 7 of Chapter 143B of the General Statutes is
25 amended by adding a new section to read:

26 **§ 143B-279.10. Recordation of residual petroleum from an underground storage**
27 **tank.**

28 (a) The definitions set out in G.S. 143-215.94A apply to this section. This section
29 applies only to the cleanup pursuant to a risk-based remedial action plan that addresses
30 environmental damage resulting from a discharge or release of petroleum from an
31 underground storage tank pursuant to Part 2A of Article 21A of Chapter 143 of the
32 General Statutes.

33 (b) The owner, operator, or other person responsible for a discharge or release of
34 petroleum from an underground storage tank shall submit to the Department a survey
35 plat as required by this section within 180 days after the owner is notified to do so. The
36 survey plat shall identify areas designated by the Department, shall be prepared and
37 certified by a professional land surveyor, and shall be entitled 'NOTICE OF
38 RESIDUAL PETROLEUM'. The Notice shall include a legal description of (i) the real
39 property on which the source of contamination is located and (ii) any real property on
40 which contamination is located at the time the remedial action plan is approved and
41 that was owned or controlled by any owner or operator of an underground storage tank
42 or other responsible party at the time the discharge or release of petroleum is
43 discovered or reported or at any time thereafter. The Notice shall be sufficient as a
44 description in an instrument of conveyance and shall meet the requirements of G.S.

1 47-30 for maps and plats. The Notice shall identify the location of any residual
2 petroleum known to exist on the property at the time the Notice is prepared and any
3 restrictions on the current or future use of the property approved by the Department. If
4 the real property to which this section applies is located on more than one parcel or
5 tract of land, a composite map or plat showing all parcels or tracts may be recorded.

6 (c) After the Department approves and certifies the Notice, the owner, operator,
7 or other person responsible for a discharge or release of petroleum from an underground
8 storage tank shall file the certified copy of the Notice in the register of deeds office in
9 the county or counties in which the real property is located before the property is
10 conveyed, within 15 days after the Department notifies the owner, operator, or other
11 responsible party that no further action is required under the remedial action plan, or
12 within one year after the Department approves the notice, whichever first occurs.

13 (d) The register of deeds shall record the certified copy of the Notice and index it
14 in the grantor index under the names of the owners of the real property.

15 (e) In the event that the owner, operator, or other person responsible for the
16 discharge or release fails to submit and file the Notice required by this section within
17 the time specified, the Secretary may prepare and file the Notice. The costs thereof may
18 be recovered by the Secretary from any responsible party. In the event that an owner of
19 the real property who is not a responsible party submits and files the Notice required by
20 this section, the owner may recover the reasonable costs thereof from any responsible
21 party.

22 (f) When real property to which this section is applicable is sold, leased,
23 conveyed, or transferred, the deed or other instrument of transfer shall contain in the
24 description section, in no smaller type than that used in the body of the deed or
25 instrument, a statement that residual petroleum exists on the property and a reference by
26 book and page to the recordation of the Notice.

27 (g) A Notice filed pursuant to this section shall, at the request of the owner of the
28 real property, be cancelled by the Secretary after the residual petroleum has been
29 eliminated or remediated to current standards, as defined in G.S. 143B-279.9. If
30 requested in writing by the owner of the land and if the Secretary concurs with the
31 request, the Secretary shall send to the register of deeds of each county where the Notice
32 is recorded a statement that the residual petroleum has been eliminated, or that the
33 residual petroleum has been remediated to current standards, and request that the Notice
34 be cancelled of record. The Secretary's statement shall contain the names of the owners
35 of the land as shown in the Notice and reference the plat book and page where the
36 Notice is recorded. The register of deeds shall record the Secretary's statement in the
37 deed books and index it on the grantor index in the names of the owners of the real
38 property as shown in the Notice and on the grantee index in the name 'Secretary of
39 Environment and Natural Resources'. The register of deeds shall make a marginal entry
40 on the Notice showing the date of cancellation and the book and page where the
41 Secretary's statement is recorded, and the register of deeds shall sign the entry. If a
42 marginal entry is impracticable because of the method used to record maps and plats,
43 the register of deeds shall not be required to make a marginal entry."

1 **SECTION 4.** G.S. 143-215.94B(b) is amended by adding a new subdivision
2 to read:

3 "(7) Recordation of residual petroleum as required by G.S. 143B-279.11 if
4 the Commercial Fund is responsible for the payment of costs under
5 subdivisions (1) through (4) of this subsection."

6 **SECTION 5.** G.S. 143-215.94B(d) is amended by adding a new subdivision
7 to read:

8 "(7) Costs incurred as a result of the cleanup of environmental damage to
9 more stringent standards than those required by the Department."

10 **SECTION 6.** G.S. 143-215.94D(b1) is amended by adding a new
11 subdivision to read:

12 "(4) Recordation of residual petroleum as required by G.S. 143B-279.11 if
13 the Noncommercial Fund is responsible for the payment of costs under
14 subdivisions (1) through (4) of this subsection."

15 **SECTION 7.** G.S. 143-215.94D(d) is amended by adding a new subdivision
16 to read:

17 "(7) Costs incurred as a result of the cleanup of environmental damage to
18 more stringent standards than those required by the Department."

19 **SECTION 8.** G.S. 143-215.94B is amended by adding a new subsection to
20 read:

21 "(b4) The Commercial Fund shall not pay any claim made after 1 October 2001 for
22 compensation to third parties pursuant to subdivision (5) of subsection (b) of this
23 section unless the owner, operator, or other party responsible for the discharge or
24 release has complied with the requirements of G.S. 143B-279.9 and G.S. 143B-279.11."

25 **SECTION 9.** G.S. 143-215.94D is amended by adding a new subsection to
26 read:

27 "(b4) The Commercial Fund shall not pay any claim made after 1 October 2001 for
28 compensation to third parties pursuant to subdivision (5) of subsection (b) of this
29 section unless the owner, operator, or other party responsible for the discharge or
30 release has complied with the requirements of G.S. 143B-279.9 and G.S. 143B-279.11."

31 **SECTION 10.** G.S. 143-215.94C(a) reads as rewritten:

32 "(a) For purposes of this subsection, each compartment of a commercial
33 underground storage tank that is designed to independently contain a petroleum product
34 is a separate petroleum commercial underground storage tank. The owner or operator of
35 a commercial petroleum underground storage tank shall pay to the Secretary for deposit
36 into the Commercial Fund an annual operating fee according to the following schedule:

37 (1) For each petroleum commercial underground storage tank of 3,500
38 gallons or less capacity – ~~two hundred dollars (\$200.00).~~ two hundred
39 fifteen dollars (\$215.00).

40 (2) For each petroleum commercial underground storage tank of more
41 than 3,500 gallon capacity – ~~three hundred dollars (\$300.00).~~ three
42 hundred fifteen dollars (\$315.00)."

43 **SECTION 11.** Sections 1 through 9 of this act become effective 1 October
44 2001 and apply to any cleanup of a discharge or release of petroleum from an

1 underground storage tank pursuant to Part 2A of Article 21A of Chapter 143 of the
2 General Statutes unless the Department of Environment and Natural Resources has
3 issued a notice that no further action is required prior to 1 October 2001. Section 10 of
4 this act becomes effective 1 January 2002. Section 11 of this act becomes effective
5 when it becomes law.