

# House Bill 765, the Regulatory Reform Act of 2015

Groundwater Professionals of North Carolina

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# Amends Risk-Based Remediation Provisions

Amends Part 8 of Article 9 of NCGS Chapter 130A, on risk-based remediations

- Removes the requirement that the site had been an “industrial” site
- Removes the prohibition on the use of risk-based remediations at sites with current or future off-site impacts
- Addresses AST petroleum releases and other petroleum releases separately under a new Part 7, Article 21A of NCGS Chapter 143, and carves out coal ash sites and animal waste management systems

- Removes the requirement that the discharge, spill or release have been reported to DEQ before March 1, 2011
- Can include the imposition of land-use controls for off-site contaminated properties only with the owners' written consent
- Does not preclude damage actions by the off-site owner

For off-site contaminated properties, must be done to unrestricted use standards unless the person proposing to conduct the remediation

- Provides the owner with a copy of Part 8 and a brochure to be developed by DEQ in consultation with the Consumer Protection Division of NC DOJ and the NC Real Estate Commission, and
- Secures the owner's written consent, on a DEQ form, to use risk-based measures, except that the levels of contamination are not to be allowed to increase over those levels present at the time of consent

# Fees

- Application fee of up to \$5,000/acre of contamination, up to a total of \$100,000, based on DEQ's weighing of 4 factors
- Oversight fee of up to \$500/acre, up to a total of \$25,000, based on DEQ's weighing of the 4 factors, within 30 days of application approval
- Paid into a Risk-Based Remediation Fund used to cover DEQ's costs

For petroleum releases from ASTs and other sources

- Adds Part 7 to Article 21A of NCGS Chapter 143, directing the Commission to adopt risk-based rules
- Rules to apply to sites reported after adoption of the rules, and to existing sites at DEQ's discretion
- Rules are to address the circumstances when site-specific information should be included, the criteria for determining acceptable cleanup levels, the acceptable level or range of levels of risk to health and the environment, the remediation standards and processes, requirements for financial assurance where deemed necessary, and fees

- If the risk falls below acceptable levels, issuance of a NFA; if above, the Commission notifies of the approved cleanup method, but other methods can be used with Commission approval
- Mirrors the statutory requirements for the use of risk-based remediations for off-site contaminated properties
- Nothing in the new Part limits the Commission from requiring investigation, initial response, or abatement while making its risk-based determination

- Responsible parties still required to perform initial abatement actions to (i) measure the release and confirm its source, (ii) determine if free product is present and begin its removal immediately, (iii) monitor and mitigate hazards associated with vapors or free product, (iv) submit an initial abatement report within 20 days
- Responsible parties still required to remove, or in situ remediate, contaminated soil or free product contributing to groundwater contamination; actions must be approved by DEQ

New Part doesn't apply to UST releases

# Environmental Self-Audit Privilege and Limited Immunity

Amends NCGS Chapter 8 (on evidence) to add an environmental audit privilege

Does not apply to criminal investigators or prosecutions

Applies only to the environmental audit, not the facts relating to the violation itself

Does not apply to Phase Is, etc.

The audit must have a set beginning and end date, and can include the auditor's report, with conclusions and recommendations, the underlying data, and an implementation plan for corrections

Available to all activities regulated under State environmental laws, except coal ash

Environmental audits are privileged, and immune from discovery, but the privilege does not extend to

- Information observed by law enforcement
- Information obtained from an independent source
- Information required to be maintained by law, such as by permits or a consent order
- Documents prepared before or after the audit, or prepared independently of the audit
- Documents prepared as a result of multiple or continuous audits done in an effort to avoid liability
- Information knowingly misrepresented or withheld, even if corrected in a later report
- Information demonstrating the existence of a violation, where prompt corrective action was not taken

The privilege extends to protecting those who performed the audit from having to testify, with limited exceptions

The privilege doesn't extend to worker's comp or other matters involving employee protection

The privilege can be waived, in writing, but is not waived by the audit's being shared with

- Parent companies or their representatives
- Contractors hired to conduct the audit or correct violations
- Potential purchasers bound by confidentiality agreements
- Government officials, customers, lenders, or insurance companies bound by confidentiality agreements

Notification of the audit must be given at the time of, or within 10 days of the completion of, an agency inspection

Immunity from civil or administrative penalties if the violations are disclosed and corrective action is taken within a reasonable period of time. No immunity from criminal penalties

# The immunity is not available if the

- Disclosure was not made within 14 days of the completion of a reasonable investigation into the violations
- Disclosure was required by a permit, consent order, etc.
- Violation was intentional, willful, or criminally negligent
- Violation posed a significant threat to health, the environment or natural resources
- Violation occurred within one year of a similar violation, at the same facility, for which immunity was granted

- Violation resulted in a substantial economic benefit

The privilege or immunity can only be invoked once in a two-year period, twice in a five-year period, and three times in a 10-year period

The privilege and immunity can't be taken away by local laws

The privilege and immunity law must be reviewed and approved by EPA before going into effect

# Change in the Definition of “Prospective Developer” for Brownfields Sites

Deletes the requirement that the Prospective Developer be involved in the purchase or sale of the site

Maintains the requirement that the Prospective Developer not have caused or contributed to the contamination

Applies to Notices of Intent to Redevelop a Brownfields Property filed on or after December 1, 2015

# Revisions to Wastewater System Inspections / Approvals

New wastewater systems or systems to be repaired may be evaluated for soil conditions and site features by a licensed soil scientist or licensed geologist

Creates an engineered option permit for new or repaired wastewater systems

Rules for the engineered option permit must be at least as stringent as the existing rules

Statute provides for complaints to the relevant professional boards in the event of violations

The engineered option permit involves the use of a licensed professional engineer to prepare signed and sealed drawings, specifications, plans and reports for the design, construction, operation and maintenance of the wastewater system

Notice of Intent to Construct to be submitted to the local health department before construction, siting or relocation, on a form to be developed by the Department. The Department is to be copied if the Notice involves over 3,000 gallons per day or industrial process water

The local health department has 15 business days to review the Notice of Intent for completeness

No public liability for systems constructed under an engineered option permit

Provides for a post-construction conference and the preparation of a supporting documentation

Local health department to issue a certificate to operate within 15 business days of receipt of the supporting documentation

# Life-of-Site Permitting for Sanitary Landfills and Transfer Stations

Provides for life-of-site permitting for sanitary landfills and for transfer stations

Applies to new applications filed on or after July 1, 2016.

Existing permits can opt to apply for life-of-site permit holders when their permits came up for renewal after July 1, 2016

The requirement for a “new” permit can be triggered by (i) a 10% change in the population to be served, quantity of waste to be handled or geographic area to be served, (ii) the expansion of a waste disposal boundary, (iii) a change in the categories of waste handled, or (iv) issuance of a shorter than life-of-site permit based on the permits previously issued

Makes corresponding fee changes

# Other Notable Changes

- Shifts the burden of proof to the State in civil fine/penalty cases and requires “clear and convincing evidence”
- Provides for a study of the computer equipment, television and electronics recycling program requirements
- Prohibits DEQ’s adoption or enforcement of new federal standards for wood heaters
- Changes the definition of isolated wetlands
- Prohibits the requirement of mitigation for impacts to intermittent streams

# Questions?

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