



HOUSE BILL 765: Regulatory Reform Act of 2015, Secs. 4.7 and 4.8: Amend Risk-Based Remediation Provisions

2015-2016 General Assembly

Committee:

Introduced by:

Analysis of: Secs. 4.7 and 4.8 of S.L. 2015-286

Date:

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SUMMARY: *Secs. 4.7 and 4.8 of S.L. 2015-286 address the laws governing risk-based cleanup of contaminated sites by: (i) generally eliminating several criteria that limited eligibility of sites to enter the program; and (ii) requiring the Department of Environmental Quality (DEQ) (formerly the Department of Environment and Natural Resources) to develop coordinated processes to govern remediation of contaminated industrial sites using risk-based remediation that are consistent across all programs and requirements, and expand the use of registered environmental consultants for implementation and oversight of sites using risk-based remediation.*

These sections became effective October 22, 2015.

BILL ANALYSIS:

Section 4.7 amends the law governing risk-based cleanup of contaminated sites, originally enacted in 2011, that authorized use of risk-based cleanup¹ for certain contaminated sites using site-specific cleanup standards designed to protect public health, safety, and welfare and the environment based on the current and anticipated future use of a site. The 2011 legislation included a number of limitations on a site's eligibility for risk-based cleanup, including:

- Only "industrial sites" were made eligible. "Industrial sites" as defined under the legislation include those where the property is or has been used primarily for manufacturing or other industrial activities for the production of a commercial product. This includes a property used primarily for the generation of electricity.
- Only sites where the release of contamination was reported to the Department of Environmental Quality (DEQ) prior to March 1, 2011, were made eligible.
- Only sites where there was no migration of contaminants off the industrial site were made eligible.

Section 4.7 eliminates these limitations.

With respect to the cleanup of sites where contaminants have migrated off the contaminated (source) site, the section allows the person who proposes to conduct risk-based remediation on the contaminated

¹ Generally, cleanup of environmental contamination must be performed to meet unrestricted use standards, meaning contaminant concentrations present at a location are acceptable for all uses; are protective of public health, safety, and welfare and the environment; and comply with an applicable program's standards established by statute or rule adopted by the Environmental Management Commission, the Commission for Public Health, or DEQ. Risk-based cleanup, however, allows cleanup based on site-specific risk factors, which are generally not as stringent as the applicable unrestricted use standards.

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site to use risk-based remediation for the off-site properties only if the person who proposes to conduct the remediation on the contaminated site: (i) provides the owner of the contaminated off-site property with a copy of the governing law and a publication produced by DEQ, pursuant to requirements of the bill as described below, that informs owners of contaminated off-site property of the issues and liabilities associated with the contamination on their property; and (ii) obtains written consent from the owner of the contaminated off-site property for the person to remediate the contaminated off-site property using site-specific remediation standards. Notwithstanding an off-site owner's consent, the legislation provides that any site-specific remediation conducted must not allow concentrations of contaminants on the off-site property to increase above the levels present on the date the written consent is obtained.

Section 4.7 requires DEQ, in consultation with the Consumer Protection Division of the North Carolina Department of Justice and the North Carolina Real Estate Commission, to develop and make available a publication entitled "Contaminated Property: Issues and Liabilities" to inform owners of contaminated off-site property of the issues and liabilities associated with the contamination on their property. In particular, the publication must 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.

In addition, with respect to such sites, this section provides that, if, after issuance of a no further action determination, DEQ determines that additional remedial action is required for a contaminated off-site property, the responsible party (owner of the contaminated site) would be liable for the additional remediation deemed necessary.

Section 4.7 also: (i) amends the legislation enacted in 2011 to enact additional exemptions from the use of risk-based remediation for the facilities subject to the Coal Ash Management Act of 2014 and animal waste management systems; and (ii) authorizes DEQ to consider, in lieu of imposition of land-use restrictions already permissible under current law, reliance on other State or local land-use controls.

Section 4.8 directs DEQ, no later than March 1, 2016, to develop all of the following:

- Internal processes to govern remediation of contaminated industrial sites using risk-based remediation that are consistent across all programs or requirements.
- A coordinated program and processes for remediation of contaminated industrial sites using risk-based remediation that are subject to more than one program or requirement.
- Reforms to expand the role, and otherwise enhance the use of, registered environmental consultants approved to implement and oversee sites using risk-based remediation.

DEQ must report to the Environmental Review Commission no later than April 1, 2016, on its activities conducted pursuant to Section 4.8, together with any pertinent findings or recommendations, including any legislative proposals that it deems advisable.