

RESOURCES

2015 North Carolina Environmental Legislation

NC House Bill 765, or the Regulatory Reform Act, was enacted On October 22, 2015. The bill includes changes to risk-based remediation of contaminated sites and the definition of prospective developers for brownfields purposes, among other things. This year also saw the elimination of the non-commercial leaking underground storage tank fund.

Risk Based Remediation

The General Assembly provided this summary of the risk based remediation provisions:

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 DENR. Risk-based cleanup, however, allows cleanup based on site-specific risk factors, which are generally not as stringent as the applicable unrestricted use standards.

Risk-based remediation is therefore site-specific, and it provides a means to site closure that is easier to reach. Prior to H765, the following limitations were placed on which sites could qualify for risk-based cleanup:

- Industrial sites were the only sites which qualified for risk-based remediation;
- Sites where the release of contamination was reported to DENR (now DEQ) prior to March 1, 2011, were the only eligible sites;
- Sites where there was no migration of contaminants off the industrial site property were the only eligible sites.

H765 removes these restrictions, and it includes petroleum above ground storage tanks in the risk-based remediation program.

“Prospective Developer” for Brownfields

The definition of “prospective developer” for brownfields is also changed by H765. A **Brownfields site** is real property where environmental contamination, or perceived environmental contamination, hinders redevelopment. The summary of H765 provides “Under current law ‘prospective developer’ means any person with a bona fide, demonstrable desire to either buy or sell a Brownfields property for the purpose of developing or redeveloping that Brownfields property and who did not cause or contribute to the contamination at the brownfields property. The bill would eliminate the requirement that a prospective developer have a demonstrable intent to “buy or sell” a property.”

As a result, a prospective developed can be the primary party associated with redevelopment without also being required to initiate a real estate transaction.

Non-Commercial Leaking Underground Storage Tank Fund (the “Non-Commercial Fund”)

The General Assembly also eliminated the Noncommercial Fund this year. Highlights of the legislation include the following:

-Appropriation of a one-time sum to the Noncommercial Fund to catch up the backlog of claims;

-The remaining balance of the Noncommercial Fund is to be used to pay the cleanup costs of releases reported to DEQ prior to October 1, 2015 and determined to pose unacceptable risk (with a \$2,000 deductible);

-Elimination of the Noncommercial Fund moving forward;

-Temporary rules that change the requirements for remediation when a leak from a noncommercial tank is discovered.

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