

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1999

SESSION LAW 2000-51
SENATE BILL 1279

AN ACT TO PROVIDE THAT CERTAIN REQUIREMENTS RELATED TO LAND-USE RESTRICTIONS THAT APPLY GENERALLY TO RISK-BASED ENVIRONMENTAL CLEANUPS DO NOT APPLY TO CLEANUPS OF PETROLEUM FROM LEAKING UNDERGROUND STORAGE TANKS AND TO DIRECT THE ENVIRONMENTAL REVIEW COMMISSION TO CONTINUE TO STUDY THE APPLICATION OF LAND-USE RESTRICTIONS TO THE CLEANUP OF ENVIRONMENTAL DAMAGE FROM THESE TANKS THROUGH A STAKEHOLDER NEGOTIATION PROCESS, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143B-279.9 reads as rewritten:

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

(a) In order to reduce or eliminate the danger to public health or the environment posed by the presence of contamination at a site, an owner, operator, or other responsible party may impose restrictions on the current or future use of the real property comprising any part of the site where the contamination is located if the restrictions meet the requirements of this section. The restrictions must be agreed to by the owner of the real property, included in a remedial action plan for the site that has been approved by the Secretary, and implemented as a part of the remedial action program for the site. The Secretary may approve restrictions included in a remedial action plan in accordance with standards that the Secretary determines to be applicable to the site.

~~If~~ Except as provided in subsection (b) of this section, if the remedial action is risk-based or will not require that the site meet current standards, as defined in G.S. 130A-310.31, the remedial action plan must include an agreement by the owner, operator, or other responsible party to record approved land-use restrictions that meet the requirements of this section as provided in G.S. 143B-279.10. Restrictions may apply to activities on, over, or under the land, including, but not limited to, use of groundwater, building, filling, grading, excavating, and mining. Any approved restriction shall be enforced by any owner, operator, or other party responsible for the contaminated site. Any land-use restriction may also be enforced by the Department through the remedies provided by any provision of law that is implemented or enforced by the Department or by means of a civil action. The Department may enforce any land-use restriction without first having exhausted any available administrative remedies. A land-use restriction may also be enforced by any unit of local government having

jurisdiction over any part of the site. A land-use restriction shall not be declared unenforceable due to lack of privity of estate or contract, due to lack of benefit to particular land, or due to lack of any property interest in particular land. Any person who owns or leases a property subject to a land-use restriction under this Part shall abide by the land-use restriction.

(b) Subsection (a) of this section shall not apply to a risk-based remedial action plan for the cleanup of environmental damage resulting from a discharge or release of petroleum from an underground storage tank pursuant to Part 2A of Article 21A of Chapter 143 of the General Statutes.

Section 2. G.S. 143B-279.10(f) reads as rewritten:

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

Section 3. The Environmental Review Commission shall continue to study the application of land-use restrictions to the cleanup of environmental damage resulting from discharges and releases of petroleum from underground storage tanks through a stakeholder negotiation process. As a part of this study, the Commission shall consider issues related to notice to current and future users of real property of any restrictions on the current and future use of the property, mechanisms to ensure compliance with those restrictions, notice to current and future users of real property of the existence of contamination in excess of current standards, and issues related to recordation in the register of deeds office of this information. The Commission shall report its findings and recommendations, including any legislative proposals, to the 2001 General Assembly.

Section 4. Sections 1 and 2 of this act are effective retroactively to 1 October 1999. Sections 3 and 4 of this act are effective when this act becomes law. Section 1 of this act expires 1 September 2001.

In the General Assembly read three times and ratified
this the 26th day of June, 2000.

s/ Dennis A. Wicker
President of the Senate

s/ James B. Black
Speaker of the House of Representatives

s/ James B. Hunt, Jr.
Governor

Approved 1:22 p.m. this 30th day of June, 2000