

Use of Contaminated Property

Summary Report to NCDOT GEO³T² Conference
April 10, 2015
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Division of Waste Management



SL 2014-120 Section 56(a) Regulatory Reform

Study ways to improve timeliness of actions to address contaminated properties:

- Expansion of risk-based remediation of groundwater to all remediation programs under DENR.
- Resources needed within DENR to oversee remediation, including the potential to expand privatization.
- Groundwater quality standards be no more stringent than the federal/state maximum contaminant levels for drinking water.
- Liability protection for innocent landowners of nonresidential property who take actions consistent with the federal CERCLA for due diligence and due care.
- Other matters the DENR deems appropriate to further the goals of this study.



Current Risk-based Remediation Programs

- Petroleum Underground Storage Tanks (UST)
(20,392 closed ; 7905 remain)

- Dry-cleaning Solvent Cleanup Act (DSCA)
(42 closed ; 304 remain)

- Pre-regulatory landfills
(2 closed ; 675 remain)



Current Risk-based Remediation Programs

- Manufacturing and industrial sites with only onsite contamination

	IHSB	RCRA
Eligibility	7	5
Remedial Action Approved	2	2
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Meetings with others	7	3

IHSB – Superfund Inactive Sites Branch
RCRA – Hazardous Waste Section



Stakeholder - Policy Options

Expand use of risk-based remedies to:

- non-industrial properties
- properties with offsite contamination
- properties with non-UST petroleum releases
- Require demonstration that contamination will be stabilized.
- Allow all DENR cleanup programs to approve risk-based remedies



Stakeholder - Policy Options

Alternate Types of Land Use Controls

- Grant authority to rely on existing state/local govt. laws on groundwater use in lieu of site-specific controls
- Use state/local govt. controls only where future drinking water supply needs protection
- Use of state/local govt. controls allowed for source properties.



Stakeholder - Policy Options Permitted Facilities

- Should facilities with permitted units, require that new or on-going permitted activity is conducted so that unrestricted use standards are met at permit compliance boundaries.
- Should risk-based remediation be allowed to address releases from permitted units that have migrated beyond established compliance boundaries.



Stakeholder - Policy Options Financial Assurance

- Eliminate financial assurance as a condition for risk-based remedies.
- Continue to allow DENR discretion to reduce financial assurance as a condition for implementing a risk-based remedy if these remedies are broadened to other DENR programs.



Stakeholder - Policy Options Eligibility Cut Off Date

- Eliminate the March 1, 2011 cutoff date.
- Move the cutoff date to five years in the future, with review.
- Leave the cutoff date.



Resources – Policy Options

- Two-phased fee
(eligibility and long- term monitoring)
- Adjust current \$4,500/acre fee
- Allow privatized oversight
Closure requirements certified
Training/guidance/auditing
- Recognizing PE and PG certification;
keeping certification process; or
enhancing certification process



Policy Options for 2L Standards

Direct the EMC to adopt the MCL as the 2L standard for parameters where an MCL has been established.

Maintain the current framework for the groundwater standards.



Liability Protection for Innocent Landowners

Federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) gives protection to:

- Innocent landowners (CERCLA §101(35)(A));
- Contiguous property owners (CERCLA §107(q)); and
- Bona fide prospective purchasers (CERCLA §§101(40) and 107(r)).

Required to follow CERCAL requirements.



Policy Options – Liability Protection

- Add provisions to the Inactive Hazardous Sites Act that afford liability protection from enforcement by the State to innocent purchasers of nonresidential property who take actions consistent with the federal CERCLA for due diligence and due care regarding investigations and contaminants found at those properties.
- Make the above self-implementing
- Require the individual supervising or overseeing project meet federal “Environmental Professional” qualification.
- Require “Environmental Professional” to also be a Professional Geologist or Professional Engineer and licensed to practice in NC.
- Require “Environmental Professional” to be a Registered Environmental Consultant certified by DENR.



The link to the Study Report :

[http://www.ncleg.net/documentsites/committees/ERC/NC DENR Study Use of Contaminated Property, Risk Based Report.pdf](http://www.ncleg.net/documentsites/committees/ERC/NCDENR%20Study%20Use%20of%20Contaminated%20Property,%20Risk%20Based%20Report.pdf).

The link to the REC Survey results:

[http://REC Program Survey Results](http://REC%20Program%20Survey%20Results)



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