

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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SENATE BILL 1159

Short Title: Land-Use Restrictions/Contaminated Sites.

(Public)

Sponsors: Senators Plyler; Hartsell, Odom, and Purcell.

Referred to: Agriculture/Environment/Natural Resources.

April 15, 1999

A BILL TO BE ENTITLED

1 AN ACT TO EXPAND THE CIRCUMSTANCES UNDER WHICH THE
2 DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES MAY
3 ALLOW THE USE OF LAND-USE RESTRICTIONS TO PROTECT PUBLIC
4 HEALTH AT CONTAMINATED SITES.
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6 The General Assembly of North Carolina enacts:

7 Section 1. Part 1 of Article 7 of Chapter 143B of the General Statutes is
8 amended by adding two new sections to read:

9 "**§ 143B-279.9. Land-use restrictions may be imposed to reduce danger to public**
10 **health at contaminated sites.**

11 In order to reduce or eliminate the danger to public health or the environment posed
12 by the presence of contamination at a site, an owner, operator, or other responsible party
13 may impose restrictions on the current or future use of the real property comprising any
14 part of the site where the contamination is located if the restrictions meet the
15 requirements of this section. The restrictions must be agreed to by the owner of the real
16 property, included in a remedial action plan for the site that has been approved by the
17 Secretary, and implemented as a part of the remedial action program for the site. The
18 Secretary may approve restrictions included in a remedial action plan in accordance with
19 standards that the Secretary determines to be applicable to the site. Restrictions may
20 apply to activities on, over, or under the land, including, but not limited to, use of

1 groundwater, building, filling, grading, excavating, and mining. Any approved restriction
2 shall be enforced by any owner, operator, or other party responsible for the contaminated
3 site. Any land-use restriction may also be enforced by the Department through the
4 remedies provided by any provision of law that is implemented or enforced by the
5 Department or by means of a civil action. The Department may enforce any land-use
6 restriction without first having exhausted any available administrative remedies. A land-
7 use restriction may also be enforced by any unit of local government having jurisdiction
8 over any part of the site. A land-use restriction shall not be declared unenforceable due
9 to lack of privity of estate or contract, due to lack of benefit to particular land, or due to
10 lack of any property interest in particular land. Any person who owns or leases a
11 property subject to a land-use restriction under this Part shall abide by the land-use
12 restriction.

13 **"§ 143B-279.10. Recordation of contaminated sites.**

14 (a) The owner of the real property on which a site is located that is subject to
15 current or future use restrictions approved as provided in G.S. 143B-279.9 shall submit to
16 the Department a survey plat as required by this section within 180 days after the owner
17 is notified to do so. The survey plat shall identify areas designated by the Department,
18 shall be prepared and certified by a professional land surveyor, and shall be entitled
19 'NOTICE OF CONTAMINATED SITE'. Where a contaminated site is located on more
20 than one parcel or tract of land, a composite map or plat showing all parcels or tracts may
21 be recorded. The Notice shall include a legal description of the site that would be
22 sufficient as a description in an instrument of conveyance, shall meet the requirements of
23 G.S. 47-30 for maps and plats, and shall identify:

24 (1) The location and dimensions of any disposal areas and areas of potential
25 environmental concern with respect to permanently surveyed
26 benchmarks.

27 (2) The type, location, and quantity of contamination known to the owner of
28 the site to exist on the site.

29 (3) Any restriction approved by the Department on the current or future use
30 of the site.

31 (b) After the Department approves and certifies the Notice, the owner of the site
32 shall file the certified copy of the Notice in the register of deeds office in the county or
33 counties in which the land is located within 15 days of the date on which the owner
34 receives approval of the Notice from the Department.

35 (c) The register of deeds shall record the certified copy of the Notice and index it
36 in the grantor index under the names of the owners of the land.

37 (d) In the event that the owner of the site fails to submit and file the Notice
38 required by this section within the time specified, the Secretary may prepare and file the
39 Notice. The costs thereof may be recovered by the Secretary from any responsible party.
40 In the event that an owner of a site who is not a responsible party submits and files the
41 Notice required by this section, the owner may recover the reasonable costs thereof from
42 any responsible party.

1 (e) When a contaminated site that is subject to current or future land-use
2 restrictions is sold, leased, conveyed, or transferred, the deed or other instrument of
3 transfer shall contain in the description section, in no smaller type than that used in the
4 body of the deed or instrument, a statement that the property is a contaminated site and a
5 reference by book and page to the recordation of the Notice.

6 (f) A Notice of Contaminated Site filed pursuant to this section may, at the request
7 of the owner of the land, be cancelled by the Secretary after the contamination has been
8 eliminated. If requested in writing by the owner of the land and if the Secretary concurs
9 with the request, the Secretary shall send to the register of deeds of each county where
10 the Notice is recorded a statement that the contamination has been eliminated and request
11 that the Notice be cancelled of record. The Secretary's statement shall contain the names
12 of the owners of the land as shown in the Notice and reference the plat book and page
13 where the Notice is recorded. The register of deeds shall record the Secretary's statement
14 in the deed books and index it on the grantor index in the names of the owners of the land
15 as shown in the Notice and on the grantee index in the name 'Secretary of Environment
16 and Natural Resources'. The register of deeds shall make a marginal entry on the Notice
17 showing the date of cancellation and the book and page where the Secretary's statement is
18 recorded, and the register of deeds shall sign the entry. If a marginal entry is
19 impracticable because of the method used to record maps and plats, the register of deeds
20 shall not be required to make a marginal entry."

21 Section 2. This act is effective when it becomes law.