

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2011

Legislative Fiscal Note

BILL NUMBER: House Bill 45 (Second Edition)

SHORT TITLE: Accelerate Cleanup of Industrial Properties.

SPONSOR(S): Representatives Gillespie, Cook, and Gibson

FISCAL IMPACT					
	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 2011-12</u>	<u>FY 2012-13</u>	<u>FY 2013-14</u>	<u>FY 2014-15</u>	<u>FY 2015-16</u>
REVENUES	\$420,000	\$420,000	\$420,000	\$420,000	\$420,000
EXPENDITURES	\$321,131	\$310,562	\$331,734	\$346,842	\$359,555
POSITIONS (cumulative):	3	3	3	3	3
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Environment and Natural Resources					
EFFECTIVE DATE: This bill is effective when it becomes law.					

BILL SUMMARY:

House Bill 45 would authorize risk-based cleanup of contaminated industrial 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 bill would require payment of a fee by a person undertaking a risk-based cleanup, the amount of which would be based on the size of the site to be remediated. The fee would be used by the Department of Environment and Natural Resources for expenses necessary to implement a risk-based cleanup program, and to establish and maintain a system for the tracking of land-use restrictions recorded at sites that are remediated under such a program (Source: Committee Counsel, Research Division)

ASSUMPTIONS AND METHODOLOGY:

In conjunction with the federal government, DENR's Division of Waste Management has several programs that address remediation or cleanup of environmental contamination. 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, protect public health, safety, and welfare and the environment, and comply with applicable standards established by statute or rule adopted by the Environmental Management Commission, the Commission for Public Health, or DENR. Some State programs for cleanup of environmental contamination,

however, allow cleanup based on site-specific risk factors, which are generally not as stringent as the applicable unrestricted use standards. These programs include the Petroleum Underground Storage Tank Cleanup Program, the Dry-Cleaning Solvent Cleanup Program, and the State's Brownfields Property Reuse Act.

House Bill 45 would authorize risk-based cleanup of contaminated industrial 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. Risk-based cleanup would be available for contaminated industrial sites that are governed by cleanup programs for hazardous and solid waste management, groundwater protection, and oil pollution control and where the release of contamination was reported to the Department of Environment and Natural Resources (DENR) prior to March 1, 2011. Risk-based cleanup would not be available for contaminated industrial sites that are governed by cleanup programs for leaking underground storage tanks, dry-cleaning facilities, and certain landfills.

Site-specific remediation or cleanup standards would be developed for contaminated industrial sites to eliminate or reduce any substantial or probable future risk to human health and the environment based on the present or anticipated future use of the site.

A person who proposes a risk-based cleanup must prepare and submit: a remedial investigation report and a remedial action plan to DENR; a notice of intent to conduct the risk-based cleanup to all local governments having jurisdiction over the site and to all adjoining landowners; and certification to DENR that the notice of intent was properly distributed and responses processed.

When DENR determines that an approved remedial action plan has been implemented and applicable cleanup standards have been attained, it will issue a determination that no further cleanup is required. Once a determination has been issued, DENR may only require additional cleanup under specific circumstances, such as a finding that subsequent monitoring indicates that cleanup standards were not achieved; an undocumented contaminant release is discovered; or one or more of the restrictions imposed on the site as part of the cleanup have been violated.

The fee for participation in a risk-based cleanup is \$3,500 for each acre or portion of an acre of contamination, with a cap of \$125,000. The fees may be used by DENR only to pay for administrative and operating expenses necessary to implement the risk-based cleanup program and to establish and maintain a system for the tracking of land use restrictions recorded at sites that are remediated under the program.

DENR expects that approximately 12 industrial sites per year would qualify for risk-based cleanup as defined in this legislation. This estimate is based on the assumption that current levels of voluntary cleanup participation would remain constant, and that approximately half of those sites would meet the legislation's criteria. DENR noted that participation in the first few years is expected to be much greater than subsequent years, as current remedial action projects would likely petition to change their statuses to the risk-based remedial option as defined in this legislation.

Expenditures

According to DENR, there would be no increase in voluntary cleanup participation, and therefore existing project managers and the Registered Environmental Consultant Program (which provides oversight under the Inactive Hazardous Sites Program) would be sufficient to oversee the remediation projects affected by this legislation.

However, House Bill 45 also introduces new demands for special reviews from toxicologists, financial analysts, and hydrogeologists to examine the transportation of groundwater contamination as well as to oversee land use restriction compliance and tracking. DENR estimated that a total of five new positions would be needed in order to meet the demands of this bill: a Hydrogeologist, an Engineer, an Industrial Hygiene Consultant (Toxicologist), a Financial Analyst, and an Environmental Program Supervisor II. Fiscal Research concurs that there will be sufficient increased workload to require three of these five positions, as follows:

- A Hydrogeologist to perform fate and transport modeling of contaminant migration, which are special reviews beyond that which the Division currently conducts.
- An Environmental Engineer position to develop and maintain a Geographic Information System, to track recorded land use restrictions, and to inspect compliance with those restrictions.
- A Toxicologist to conduct site-specific risk assessments at much higher levels of toxicological review than are currently conducted by existing staff.

Position Title	Annual Salary	Soc Sec	Ret	Health	Total Salary & Benefits FY 2011-12
Hydrogeologist-J	\$ 61,956	\$ 4,740	\$ 6,512	\$ 4,930	\$ 78,137
Engineer-J	\$ 62,523	\$ 4,783	\$ 6,571	\$ 4,930	\$ 78,807
Industrial Hygiene Consultant (Toxicologist)	\$ 67,816	\$ 5,188	\$ 7,127	\$ 4,930	\$ 85,061
				Total	\$ 242,006

Although DENR estimated that an additional Financial Analyst and Environmental Program Supervisor II would also be needed to fulfill the requirements of House Bill 45, Fiscal Research estimates that DENR's existing staff can absorb the remainder of the work required by this bill. At this time, 19 staff are working on the 290 sites addressed by the Inactive Hazardous Sites Program. Based on the Department's estimate that only 12 sites would be affected by this legislation, Fiscal Research concludes that the additional supervisory and financial work required by this bill could be absorbed by existing staff.

The total salaries and benefits of positions required by this legislation are calculated to include inflationary increases for each year. Additional operating costs, including travel, supplies, maintenance agreements and communications, would be \$79,125 in FY 2011-12 and \$54,500 in subsequent years. The initial costs in FY 2011-12 are due to the contractual services, computer hardware and software costs related to establishing the GIS system required by the legislation;

additionally, travel for the three new positions will be extensive due to required training and multiple visits to projects statewide. The total amount required by DENR for FY 2011-12, including salaries, benefits, and operating costs, is estimated to be \$321,131.

	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16
Salaries and Fringes	\$ 242,006	\$ 256,062	\$ 277,234	\$ 292,342	\$ 305,055
Operating Costs	\$ 79,125	\$ 54,500	\$ 54,500	\$ 54,500	\$ 54,500
Total	\$ 321,131	\$ 310,562	\$ 331,734	\$ 346,842	\$ 359,555

Revenues

The revenues gained by fees included in this legislation may be used by DENR only to pay for administrative and operating expenses necessary to implement the risk-based cleanup program and to establish and maintain a system for the tracking of land use restrictions. The fee for participation in a risk-based cleanup is \$3,500 for each acre or portion of an acre of contamination, with a cap of \$125,000 regardless of the size of the site.

Based on DENR’s data on existing groundwater contaminant plume sites, the average site size is 10 acres. Twelve sites per year multiplied by 10 acres per site totals 120 acres that would be affected by this legislation. The average amount per site that could be realized as revenue from fees would be \$35,000 (10 acres * \$3,500 per acre). The total amount of annual revenue that could be realized from fees would be \$420,000 (12 sites * \$35,000 per site). The revenues realized from this fee would be deposited in the existing Inactive Hazardous Sites Cleanup Fund, within which an account specifically designated for tracking these funds would need to be established.

SOURCES OF DATA: Department of Environment and Natural Resources

TECHNICAL CONSIDERATIONS:

House Bill 45 provides that the fees may be used by DENR only to pay for administrative and operating expenses necessary to implement the risk-based cleanup program and to establish and maintain a system for the tracking of land use restrictions recorded at sites that are remediated under the program. Based on DENR’s estimate of 12 sites per year at an average of 10 acres each, the \$3,500 fee in House Bill 45 would generate more revenue than needed to support the staff and operating costs estimated to be required by the legislation.

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