

Fiscal Impacts of Proposed Rules

- Rule Topic:** Expansion of Underground Storage Tank (UST) Risk-based Cleanup Standard to all Petroleum Releases
- Rule Citation:** 15A NCAC 02L .0501 – Purpose and Scope
 15A NCAC 02L .0502 – Definitions
 15A NCAC 02L .0503 – Rule Application
 15A NCAC 02L .0504 – Required Initial Response and Abatement
 Actions by Responsible Party
 15A NCAC 02L .0505 – Requirements for Limited Site Assessment
 15A NCAC 02L .0506 – Discharge or Release Classifications
 15A NCAC 02L .0507 – Reclassification of Risk Levels
 15A NCAC 02L .0508 – Assessment and Remediation Procedures
 15A NCAC 02L .0509 – Notification Requirements
 15A NCAC 02L .0510 – Departmental Listing of Discharges or Releases
 15A NCAC 02L .0511 – Establishing Maximum Soil Contamination
 Concentrations
 15A NCAC 02L .0512 – Analytical Procedures for Soil Samples
 15A NCAC 02L .0513 – Analytical Procedures for Groundwater Samples
 15A NCAC 02L .0514 – Required Laboratory Certification
 15A NCAC 02L .0515 – Discharges or Releases from Other Sources
- Agency:** Environmental Management Commission
- Agency Contact:** Linda L. Smith, (919) 707-8150
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- Impact Summary:** State government: Minimal
 Local government: Minimal
 Substantial impact: No
- Authority:** § 143-215. Effluent standards or limitations.
- Necessity:** The Division of Waste Management has taken comments from stakeholders stating that use of risk-based remediation for releases from petroleum USTs is inconsistent and should include all petroleum releases. This change can be protective of human health and the environment and will reduce costs to some stakeholders.

I. Summary

The Division of Waste Management has taken comments from stakeholders who have stated it is inconsistent to use risk-based remediation for petroleum UST contamination, but not for petroleum non-UST contamination. This change can be protective of human health and the environment and will reduce costs to some stakeholders.

These rule additions are contained in 15A NCAC 02L .0501 through 15A NCAC 02L .0515 – see Appendix.

The rule changes will affect non-UST petroleum releases. The cost saving of the rule changes is estimated to be \$825,000/yr.

The proposed effective date is January 2, 2016.

II. Introduction and Purpose of Rule Change(s)

The Division of Waste Management has taken comments from stakeholders who have stated it is inconsistent to use risk-based remediation for petroleum UST contamination, but not for petroleum non-UST contamination. This change can be protective of human health and the environment and will reduce costs to some stakeholders.

These rule additions are contained in 15A NCAC 02L .0501 through 15A NCAC 02L .0515.

Under the authority of §143B-282, the Environmental Management Commission is directed to adopt rules for the protection of the land and the waters over which this State has jurisdiction from pollution by oil, oil products and oil by-products.

The cleanup of petroleum releases is considered the prevention and abatement of pollution and is required to progress to completion, through 15A NCAC 02L .0103 POLICY and the rest of the 02L rules (“other appropriate instrument”), to protect groundwater quality, human health and the environment.

III. Costs

Risk-based cleanup will allow some non-UST petroleum contamination incidents to be closed earlier in the remediation process.

Based on 2013 tracking information available to the agency, it is estimated that there are 271 non-UST petroleum releases/incidents per year (5 high risk), with 139 of those incidents closed/cleaned up per year under current requirements (leaving 132 of those incidents needing further action).

In analyzing the costs of the proposed rule change, that agency made the following assumptions:

- The change would result in a reduction in remediation requirements, providing benefit to responsible party.

- Cost estimates made using the trust fund 2010 reasonable rates, which are still currently in effect.
- Future incidents would involve normal gasoline and/or diesel contaminated soils.
- Thirty-three incidents, or 25% of the 132 incidents per year that currently require further action, would be closed under the proposed risk-based standards per year based on best professional judgment.
- Incidents that could close under risk-based standards would likely not proceed to the Comprehensive Site Assessment and would require none to minimal remediation as part of the Corrective Action Plan due to lack of significant contamination, thus saving the responsible parties the related costs.

The remediation for a non-UST petroleum contamination incident under the current and future requirements includes the following actions; the difference will be the cleanup end points:

1. Report and Initial Response Actions
 - a. Stop release, mitigate hazards, and remove/capture liquids
2. Initial Abatement Actions
 - a. If necessary, determine source of release, excavate contaminated soils, analyze contaminated soils, and analyze excavation to determine cleanup status
3. No Further Action or Limited Site Assessment
 - a. If the cleanup status of the soil is complete, then no further action is necessary,
 - b. If the soil is still contaminated, then a Limited Site Assessment is required and it is estimated to cost \$2,576 to \$6,599 (equivalent to initial assessment currently required) – as stated above, the agency assumes approximately 25% of incidents needing further action (or 33) could be closed under the proposed risk-based standards based on information evaluated during the Limited Site Assessment
4. Comprehensive Site Assessment/Soil Assessment Report, estimated to cost about \$25,000
5. Corrective Action Plan/Soil Cleanup Plan (highly variable, incidents not closed by this point will likely require continuing to and past this level of remediation action, causing no appreciable change in requirements)
6. Soil Cleanup Report
7. No Further Action

Cost Savings to Responsible Parties:

Assuming that 33 more incidents would be closed after the third step shown above as a result of the proposed rules, then the responsible parties would save \$25,000 per incident in costs related to performing a Comprehensive Site Assessment. Therefore, the total annual cost avoided by the responsible parties as a result of the rules is estimated to be around \$825,000.

IV. Benefits

Regulated Parties –They cleanup their contamination incidents to achieve unrestricted use levels (currently soil to groundwater MSCCs), or risk-based incident closure levels (proposed UST MSCC levels). The change will reduce the time necessary for petroleum contaminated incidents to achieve final closure (decreased compliance cost for RP).

Local Funds – There is no known affect on local funds.

Implementing Agency – The UST Section of the Division of Waste Management of the Department of Environment and Natural Resources -- There is no known affect on the implementing agency.

The cost benefit of the rules changes is estimated to be \$825,000/yr for responsible parties.

V. Alternative Policies: *Not Applicable*