

Implementation Guidance for Optional Property Owner Suspension of Site Remedial Action and Assumption of Risk

The North Carolina Department of Environmental Quality's (DEQ) Pre-Regulatory Landfill Program (PRLF Program) is charged with conducting contaminant assessment and remediation of old landfills that existed prior to environmental regulations. These pre-1983 landfills have no controls such as land use restrictions, liners, leachate control, vapor barriers or monitoring of groundwater. The pre-1983 landfills received local area wastes including chemical industry wastes, asbestos-bearing materials, and other hazardous general wastes. If the site property owner cooperates with the PRLF Program by granting access to their property and signing land use restrictions, the PRLF Program will conduct and pay for all contaminant assessment and remediation expenses. The Program is funded through a statewide disposal tax.

Legislation in 2017 (Session Law 2017-257) added a provision allowing the site property owner to suspend the requirements of the PRLF Program's remediation provisions if the site property owner assumes all risk and liability for on-property and off-property impacts. The purpose of this document is to provide guidance for site property owners on the process of suspending remediation by the PRLF Program and assuming responsibility and liability for all potential on-property and off-property environmental and human health impacts caused by the pre-1983 landfill.

Assumption of liability by the site property owner for on-property and off-property impacts requires the site property owner to sign an assumption of liability agreement and provide financial assurance for any future impacts. All owners of impacted off-property areas must agree with the site property owner's decision to assume liability as well as that all potentially impacted off-property areas will no longer be eligible for PRLF Program funding and implementation of a remedial action plan. The site property owner will place land use restrictions in their chain of title (recordation on property deed) to ensure users of the waste disposal area do not conduct actions to expose subsurface material and take hazardous materials off the waste disposal area for use as uncontrolled fill.

The statute states the assumption of liability would be "for as long as the owner continues to own the property." This means permanent suspension and permanent obligation by the site property owner regarding contamination as the PRLF Program may not exist or have funds to complete contaminate assessment and remediation of the site in the future.

Upon compliance with the procedures provided in this document, DEQ will enter into an Assumption of Liability Agreement with the site property owner who will accept all liability for both on-property and off-property impacts caused by the waste disposal area.

This document contains the following sections:

- I. Definitions**
- II. Eligibility**
- III. Remedial Investigation**
- IV. Financial Assurance Requirements**
- V. Assumption of Liability Agreement**
- VI. Penalties**

I. Definitions

- A. Impacted Off-Property Areas – any property not containing the pre-1983 landfill waste disposal area which has been or could become contaminated by the pre-1983 landfill.
- B. Off-property Impacts – any contamination which has migrated or could migrate off the property or properties containing the pre-1983 landfill waste disposal area.
- C. On-property Impacts –any contamination that has occurred or could occur on the property or properties containing the pre-1983 landfill waste disposal area.
- D. Application Requirements of the Pre-1983 Landfill Program – the requirements for conducting risk-based remediation in accordance with G.S. 130A-310.6(c) – (g).
- E. Assumption of Liability Agreement – a form provided by the Department which sets out the site property owners’ assumption of responsibility and liability for all environmental and human health risks for any on-property and off-property impacts from a pre-1983 landfill.
- F. Established Environmental Consultant or Engineering Firm or Environmental Consultant –a firm of which the primary function is to provide environmental investigation and remediation services using staff having the applicable educational background and professional experience necessary to conduct contaminant assessment and remediation work at a pre-1983 landfill.
- G. Imminent Hazard – imminent hazard as defined in § G.S. 130A-310.5 and includes, but is not limited to, contaminated or threatened water supply wells, vapors containing hazardous substances or methane entering structures, and uncontrolled exposure to contaminated soils, wastes, or asbestos-containing materials.
- H. Pre-1983 landfill – any land area, whether publicly or privately owned, on which municipal solid waste disposal occurred prior to 1 January 1983 but not thereafter, but does not include any landfill used primarily for the disposal of industrial solid waste. (G.S. 130A-290 (a)(22a)).
- I. Site Property Owner – the current owner of property that contains a pre-1983 landfill.

- J. Suspension of the Application Requirements of the Pre-1983 Landfill Program or Suspension – the site property owner meets the requirements provided in this guidance and is responsible and liable for all on-property and off-property environmental and human health effects emanating from a pre-1983 landfill and that all property containing the pre-1983 landfill and properties contaminated by, or which could become contaminated by the pre-1983 landfill, are no longer eligible the Inactive Hazardous Sites Cleanup Fund to pay the cost of development and implementation of a remedial action plan for that pre-1983 landfill.
- K. Waste Disposal Area – any area where wastes or contaminated media has been deposited, disposed of, placed, or otherwise come to be located associated with operation and activities of a pre-1983 landfill.

II. Eligibility

Any site property owner may request DEQ approval of Suspension of the Remedial Action Requirements of the PRLF Program if the site property owner seeking Suspension does all of the following:

- A. Completes a remedial investigation and provides to the DEQ a report defining the nature and extent of contamination from the pre-1983 landfill.
- B. Provides written documentation that they are the sole owner of the property or properties encompassing the extent of the waste disposed at a pre-1983 landfill.
- C. Certifies under oath on an Assumption of Liability Form provided by the DEQ that all existing and potential imminent hazards have been eliminated, including but not limited to, contaminated or threatened water supply wells, vapors containing hazardous substance or methane entering structures, potential for dermal contact with contaminated soils or wastes, and uncontrolled exposure of asbestos-containing materials. The Assumption of Liability Form must be signed, dated and notarized.
- D. Provides a written demonstration, through modeling or other scientific means acceptable to the DEQ, that no contaminant has or will migrate off the site property, except where:
 - the only off-property areas that are contaminated, or at risk of future contamination, are solely owned by the party seeking suspension; or
 - all owners of impacted off-property areas have been provided a copy of the report of the completed remedial investigation, and each owner of impacted off-property areas has provided written consent of Suspension by providing their notarized signature on a form provided by the DEQ.
- E. Records land use restrictions approved by the DEQ on the property or properties of the site property owner seeking Suspension, which at a minimum:
 - prevent exposure to any on-property and off-property contamination;
 - prevent the disturbance of the land surface or exposure of subsurface materials;
 - prevent the relocation of wastes and contaminated media to any off-property locations;
 - set out the maintenance requirements for engineering controls to prevent exposure; and

- set out that the liability and responsibility for environmental and public health risks posed by the pre-1983 landfill, both on property and off property, and the maintenance of financial assurance are the duty of any owner of the property and run with the land.
- F. Records land use restrictions approved by the DEQ, with consent of all owners of all impacted off-property areas for each property that has or will become contaminated by the pre-1983 landfill which at a minimum prevent exposure to any media that has or may become contaminated by a pre-1983 landfill.
- G. Provides financial assurance as outlined in Section IV of this document.
- H. At least 30-days prior to entering into the Assumption of Liability Agreement with the DEQ, the site property owner who proposes to assume liability for existing and potential on-property and off-property impacts caused by the pre-1983 landfill shall send notice of intent of the Assumption of Liability Agreement, on a form provided by the DEQ, to the local health director, all adjoining property owners, and local planning departments for units of local governments having taxing or land-use jurisdiction over the property, of the site property owners' decision to suspend pre-1983 remedial action and accept all liability and responsibility of both on-property and off-property impacts from a pre-1983 landfill. The site property owner shall provide proof to the DEQ of such notice prior to DEQ approval of the Assumption of Liability Agreement.

III. Remedial Investigation

A remedial investigation report, documenting the completion of the determination and delineation of the nature and extent of contamination from a pre-1983 landfill shall be completed on behalf of the site property owner seeking Suspension by an established environmental consultant or engineering firm and shall comply with the following:

- A. The remedial investigation shall assess all contaminated areas of the site, including types and levels of contamination, and the risk that the contamination poses to public health, safety, and welfare and to the environment. The remedial investigation report shall include, but is not limited to:
- a legal description of the location of the site;
 - a map showing the location of the site;
 - written documentation of inquiries with those having knowledge of waste disposed at the pre-1983 landfill, including at a minimum, former operators, representatives of the local government having taxing or other jurisdiction over all impacted property, and any property occupants possessing relevant information;
 - all available historic disposal records or other records related to the pre-1983 landfill;
 - a description of the contaminants present and the range and distribution of their concentrations in each contaminated media;
 - a narrative description of the methodology used in the investigation;
 - a description of all releases of contamination from the pre-1983 landfill;
 - a site map, drawn to scale, showing benchmarks, directional arrow, location of property boundaries, buildings, structures, all perennial and nonperennial surface water features,

- drainage ditches, dense vegetation, waste and contaminant spill and disposal areas, leachate discharge points, underground utilities, storage vessels, and existing on-site wells;
- identification of adjacent property owners and adjacent land uses;
 - description of local geologic and hydrologic conditions;
 - the location of all water supply wells within 1,500 feet of the property boundary;
 - any areas where groundwater contaminants from the pre-1983 landfill exceed natural background concentrations;
 - an evaluation of the site and adjacent properties for the existence of environmentally sensitive areas;
 - a description of groundwater monitoring well design and installation procedures;
 - a map drawn to scale, that shows all sample locations;
 - a description of field and laboratory quality control and quality assurance procedures followed during the remedial investigation;
 - a description of methods used to manage investigation-derived wastes;
 - tabulation of analytical results for all sampling; copies of all laboratory reports;
 - a description of procedures and the results of any special assessments; and
 - a copy of the current site property owner(s) deed to the property.
- B. Other information required by the DEQ or considered relevant by the site property owner or its environmental consultant.
- C. Each report shall contain the following certifications:
- a signed and notarized certification by the site property owner seeking Suspension stating, “I certify that, to the best of my knowledge, after thorough investigation, the information contained in or accompanying this certification is true, accurate, and complete; and
 - a signed and notarized certification by the environmental consultant stating, “I certify that, to the best of my knowledge, after thorough investigation, the information contained in or accompanying this certification is true, accurate, and complete.
- D. The site property owner seeking Suspension and their environmental consultant may review and incorporate data previously collected by the DEQ for use in the remedial investigation report.

IV. Financial Assurance Requirements

- A. The site property owner shall establish financial assurance that will ensure sufficient funds are available to implement and maintain all actions and controls necessary to prevent exposure to wastes and contaminated media resulting from a pre-1983 landfill including, but not limited to, exposure due to activities conducted on the waste disposal area, catastrophic events and acts of nature.
- B. The site property owner shall submit a written detailed cost estimate in current dollars for:
- maintenance of any engineering controls established to prevent exposure to wastes and contaminated media;

- repair costs for earth moving and any activities planned for the property in the waste disposal area; and
 - repair costs for catastrophic events and acts of nature.
- C. The site property owner may establish financial assurance through the following mechanisms, or any combination of the following mechanisms, in a form specified or approved by the DEQ: insurance products issued from entities having no corporate or ownership association with the site property owner; funded trusts; surety bonds; certificates of deposit; letters of credit; corporate financial tests; local government financial tests; corporate guarantees; capital reserve funds; or any other financial mechanism authorized for the demonstration of financial assurance under (i) 40 Code of Federal Regulations Part 264, Subpart H (July 1, 2010 Edition) and (ii) Section .1600 of Subchapter B of Chapter 13 of Title 15A of the North Carolina Administrative Code.
- D. Proof of financial assurance shall be provided with the remedial investigation report. Certification of maintenance of financial assurance in the approved amount plus inflation thereafter shall be provided by the owner of the property containing the pre-1983 landfill on the anniversary date of the execution of the Assumption of Liability Agreement by the DEQ.
- E. Any future modification of financial assurance will require owner submission of a detailed cost estimate, and justification followed by DEQ written approval.

V. Assumption of Liability Agreement

The DEQ shall provide a form whereby a site property owner seeking Suspension shall certify under oath:

- A. The site property owner has completed a remedial investigation documenting the completion of the determination and delineation of the nature and extent of contamination from a pre-1983 landfill.
- B. The site property owner is the sole owner of the property or properties encompassing the extent of the waste disposed at a pre-1983 landfill.
- C. All existing and potential imminent hazards have been eliminated, including but not limited to, contaminated or threatened water supply wells, vapors containing hazardous substances or methane entering structures, and uncontrolled exposure to contaminated soils, wastes or asbestos-containing materials.
- D. The site property owner shall maintain the financial assurance approved by the DEQ for abatement of environmental and human health risks posed by the pre-1983 landfill.
- E. No contaminant has or will migrate off the property of the site property owner seeking Suspension, except where:
- all owners of impacted off-property areas have been provided a copy of the report of the completed remedial investigation; and

- each owner of impacted off-property areas has provided their notarized signature of written consent of Suspension on a form provided by the DEQ.
- F. Agrees to recordation of land use restrictions approved by the DEQ concurrently with this Agreement on the property or properties of the site property owner seeking Suspension which at a minimum:
- prevent exposure to any on-property and off-property contamination;
 - prevent the disturbance of the land surface or exposure of subsurface materials;
 - prevent the relocation of wastes and contaminated media to any off-property locations;
 - set out the maintenance requirements for engineering controls to prevent exposure; and
 - set out that the liability and responsibility for environmental and public health risks posed by the pre-1983 landfill both on-property and off-property and the maintenance of financial assurance are the duty of any owner of the property and run with the land.
- G. Has obtained the written consent of all owners of all impacted off-property areas for each property that has or may become contaminated by the pre-1983 landfill which at a minimum prevent exposure to any media that has or could become contaminated by a pre-1983 landfill.

VI. Penalties and Revocation of the Assumption of Liability Agreement

Administrative penalties may be imposed on the site property owner seeking or granted Suspension and/or the Assumption of Liability Agreement may be revoked where the site property owner or its agents:

- violate the Assumption of Liability Agreement;
- misrepresent site conditions, falsify or omit relevant available information;
- fail to maintain financial assurance; or
- fail to address a contaminant or hazardous substance release discovered at the site that was not the subject of the remedial investigation report.