

# Report to the North Carolina General Assembly

Submitted to the Joint Legislative Oversight Committee on Agriculture and Natural and Economic Resources, the Fiscal Research Division, and the Environmental Review Commission



## *Risk-Based Remediation Fund Report*

October 1, 2022

**Division of Waste Management  
NORTH CAROLINA DEPARTMENT OF  
ENVIRONMENTAL QUALITY**

Pursuant to G.S. 130A-310.76(c)

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## Executive Summary

This report to the Joint Legislative Oversight Committee on Agriculture and Natural and Economic Resources, the Environmental Review Commission and the Fiscal Research Division, is required on or before Oct. 1 of each year and includes the following required information:

1. **The amounts and sources of funds collected by year to be paid into the Risk-Based Remediation Fund (Fund) established under G.S. 130A-310.76A.**

Fees received in fiscal year (FY) 2021-22 from applicants for risk-based remedies totaled \$59,500. There are two types of receipts:

- a. An application fee used to pay for administrative and operating expenses necessary to implement the statutes governing risk-based environmental remediation of sites, which totaled \$46,500; and
- b. An oversight fee used to establish, administer, and maintain a system for the tracking of land-use restrictions recorded at sites that are remediated pursuant to the statute. Oversight fees totaled \$13,000.

2. **The number of acres of contamination for which funds have been received pursuant to the statute.**

In FY 2021-22, six sites, totaling 18 acres of contamination, contributed to the funding pursuant to the statute.

3. **An accounting of how the funds collected have been used by the N.C. Department of Environmental Quality (DEQ) to advance the purposes of the statute.**

Expenditures totaled \$55,314.68, leaving the Fund with an end-of-fiscal-year balance of \$230,899.15. DEQ will continue to evaluate the need to support key technical staff to reduce projected total expenses, while allowing continued funding for ongoing outreach and training. Fund receipts and expenditures will be monitored closely to ensure the continued solvency of the Risk-Based Remediation Fund.

During FY 2021-22, the Risk-Based Remediation Fund supported the update and improvement of the risk evaluation resources available to internal staff and the public. The DEQ Risk Calculator is routinely updated by a DEQ contractor whenever the EPA releases its new toxicological information and screening levels, typically twice per year. This year, the *Technical Guidance for Risk-Based Environmental Remediation of Sites* document and the *DEQ Risk Calculator User Guide*, developed by DEQ, were revised based on comments received since their public release four years ago.

The Fund also partially supported the salaries for two technical staff members who contribute to the GIS mapping and database tools needed to efficiently track institutional controls on deeds as well as enhance public access to information about sites where risk-based remedies are applied.

## **Amounts and Sources of Funds Collected**

The department's Risk-Based Remediation Fund, administered by DEQ's Division of Waste Management, was created in 2011 and its uses further modified in 2015 by the General Assembly. North Carolina General Statute 130A-310.76 requires that a person who intends to remediate a qualifying site with site-specific remediation levels, as provided in G.S. 130A-310.68, pay two fees to the Fund: application fee and oversight fee.

The application fee is required to pay for administrative and operating expenses to implement the statute, including the full cost of the department's activities associated with any human health or ecological risk assessments, groundwater modeling, financial assurance matters or community outreach. The application fee is not to exceed \$5,000 for each acre or portion of an acre of contamination, and it is not to exceed \$100,000 for a given site. The department takes the following factors into account when calculating a reduced application fee:

- The size of the site subject to a proposed remedial action plan;
- Whether groundwater contamination from the site has migrated, or is likely to migrate, to off-site properties;
- The complexity of the work to be conducted at a site;
- The resources that the department will need to evaluate and oversee the work at a site, particularly in those cases where the work is to be performed by a registered environmental consultant in accordance with the provisions of G.S. 130A-310.75; and
- The resources the department will need to monitor a site after completion of remediation.

The oversight fee is required by N.C.G.S. 130A-310.76. The fee is used to establish, administer, and maintain a system for tracking land-use restrictions recorded at sites that are remediated pursuant to the statute. This fee, set at \$500 per contaminated acre, is not subject to modification nor can it exceed \$25,000 for a given site.

## **Fiscal Year 2021-22 Expenditures**

In FY 2021-22, expenditures of \$7,325.50 were used for a contractor to update and enhance the department's online Risk Calculator, and for updates to the associated risk evaluation resources available to the public. The DEQ Risk Calculator is designed to (1) facilitate remediators' risk assessment calculations and documentation, and (2) reduce departmental staff review time. Since its release four years ago, the calculator has been used widely by DEQ staff and the public to assess site-wide risk – not only at the sites listed in this report but at other sites managed by DEQ's cleanup, Brownfields and permitting programs.

Expenditures of \$47,989.18 were used for the salary of one technical staff member who helps track the sites closed by risk-based remediation, notifies the GIS database manager of the restricted properties as well as reviews and files annual certifications of owners' compliance with land-use restrictions and maintenance of engineering controls. Fees also supported DEQ's periodic inspections of properties with approved cleanup remedies to ensure their adherence of the risk-mitigation measures.

## Fund History

The number of sites and fees collected since the Fund's inception in 2011 are summarized in **Table 1** below. The Fund has been non-interest-bearing since 2015.

**Table 1. Risk-Based Remediation - Summary of Sites, Acreage and Fees Collected**

Fiscal Year	# Sites	Contaminated Acres	Application Fee	Oversight Fee <sup>1</sup>	Total Fees (Receipts)
2012-2013	3	15	\$67,500.00	NA	\$67,500.00
2013-2014	1	1	\$4,500.00	NA	\$4,500.00
2014-2015	0	0	\$0.00	NA	\$0.00
2015-2016	4	18	\$70,500.00	\$500.00	\$71,000.00
2016-2017	5	170	\$235,000.00	\$55,500.00	\$290,500.00
2017-2018	6	9	\$20,500.00	\$9,000.00	\$29,500.00 <sup>2</sup>
2018-2019	6	7	\$19,500.00	\$3,500.00	\$23,000.00 <sup>2</sup>
2019-2020	6	9	\$21,500.00	\$4,000.00	\$25,500.00
2020-2021	9	34	\$101,875.00	\$13,000.00	\$114,875.00
2021-2022	6	18	\$44,000.00	\$13,000.00	\$57,000.00
Pre-2015 Int. <sup>3</sup>					\$543.87
<b>Totals</b>	<b>40</b>	<b>263</b>	<b>\$540,875.00</b>	<b>\$85,500.00</b>	<b>\$626,918.87</b>

<sup>1</sup> Oversight fees were not applicable (NA) until 2015.

<sup>2</sup> Received \$6,500 on Dec. 6, 2017. Correction made and applied on Aug. 21, 2018.

<sup>3</sup> Interest accrued during FY 2012-2015 but reverted to the General Fund beginning FY 2015-16.

The receipts, expenses, and balance of the fund over time are shown in **Table 2** below. **Figure 1** graphically represents the history of receipts and expenses, and their relation to the number sites that have been addressed through risk-based remediation.

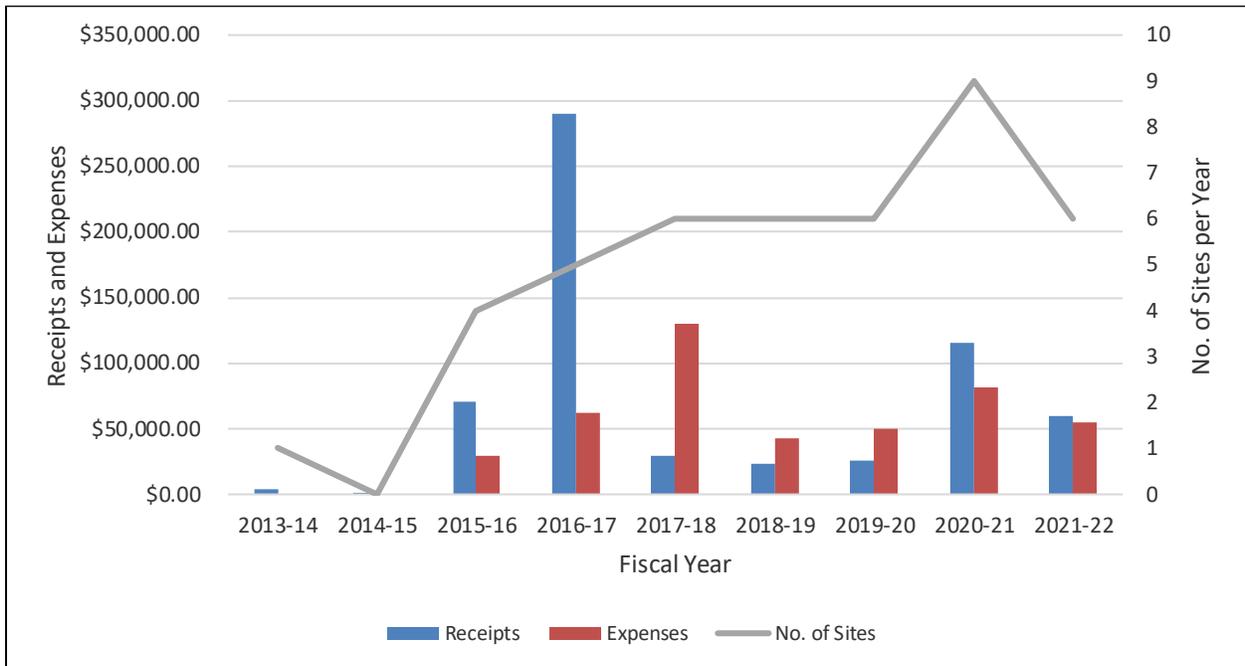
**Table 2. Risk-Based Remediation Fund - Summary of Receipts and Expenditures**

Fiscal Year	Receipts (from Table 1)	Expenses	Balance
2012-2013	\$67,500.00	\$0.00	\$67,500.00
2013-2014	\$4,500.00	\$0.00	\$72,000.00
2014-2015 <sup>1</sup>	\$543.87	\$0.00	\$72,543.87
2015-2016	\$71,000.00	\$29,718.00	\$113,825.87
2016-2017	\$290,500.00	\$62,654.23	\$341,671.64
2017-2018	\$29,500.00 <sup>2</sup>	\$130,052.33	\$241,119.31
2018-2019	\$23,000.00 <sup>2</sup>	\$42,993.90	\$221,125.41
2019-2020	\$25,500.00	\$50,360.50	\$196,264.91
2020-2021	\$114,875.00	\$81,926.08	\$229,213.83
2021-2022	\$57,000.00	\$55,314.68	<b>\$230,899.15</b>

<sup>1</sup> Interest of \$543.87 accrued during FY 2012-2015 but reverted to the General Fund beg. FY 2015-16.

<sup>2</sup> Received \$6,500 on Dec. 6, 2017. Correction made and applied on Aug. 21, 2018.

**Figure 1. Risk-Based Remediation Fund over Time**



**Anticipated Future Uses of the Application and Oversight Fee Receipts**

Although the department does not anticipate significant further enhancements to the Risk Calculator, biannual updates using an outside contractor paid by the Fund will continue to be necessary. Departmental review requirements, particularly for risk-based remedies addressing contamination spanning multiple properties, often in residential or commercial areas not owned by the remediating party, can entail potential risks that are not easily predictable. Applicants’ risk assessments and groundwater models will need to firmly demonstrate that contaminants left on the property will not migrate in the future to places where they will adversely impact human health or the environment. The department has increased the responsibility, technical training, and compensation of several lead technical staff in preparation for broader use of risk-based remedies. Therefore, a portion of the application fee receipts will be used for the ongoing training of lead technical staff in each program reviewing risk-based remedy submittals.

The department needs to be prepared for situations where it will have to employ outside contractor support to facilitate the timely and comprehensive risk evaluation of large, complex sites. The need for such outside contractors is expected to be rare, but one large risk evaluation may significantly deplete the current Fund’s total balance. An adequate, ongoing balance must be maintained in the Fund to meet this future need.

Upon approval of risk-based remedies, the department assumes the long-term oversight of permanent engineering and institutional controls needed to ensure that those remedies remain protective. Under its risk-based programs, DEQ requires annual certification by landowners that engineered barriers are being maintained, site-specific land-use restrictions are being adhered to, and deed instruments remain in effect through the property’s sale or subdivision. The department will continue to apply some of its available resources, including part of the oversight fee receipts, to conduct periodic inspections of properties with

approved cleanup remedies and completed brownfields agreements to ensure that imposed conditions are met.

Tracking adherence to the restrictions in a comprehensive, department-wide database provides a crucial supplement to land-use restriction documents held in local government tax records. The department has developed an easy-to-use online mapping tool for the public to view properties with institutional controls and their associated records. This tool serves as a cost-effective way to notify communities and prospective purchasers of the environmental conditions, so they are protected from inadvertent exposure to contaminants. The Risk-Based Remediation Fund receipts will continue to support the information technology infrastructure needed to administer and maintain this tool and its supporting databases.