



1 Tank Cleanup Act of 1988, the Brownfields Property Reuse Act of 1997, the  
2 Dry-Cleaning Solvent Cleanup Act of 1997, the federal Superfund program  
3 administered in part by the State pursuant to the Comprehensive Environmental  
4 Response, Compensation, and Liability Act of 1980 and the Superfund Amendments  
5 and Reauthorization Act of 1986, and the groundwater protection rules adopted by the  
6 Environmental Management Commission; and

7       Whereas, the General Assembly finds that these remediation programs utilize  
8 varying standards, levels, protocols, means, methods, techniques, interpretations, and  
9 other requirements and apply various federal regulations and State rules applicable to  
10 testing, monitoring, assessing, prioritizing, characterizing, and cleanup or remediation  
11 of contaminated areas; and

12       Whereas, the General Assembly finds that these varying standards cause  
13 confusion and delay and create the potential for inappropriate levels of remediation,  
14 including both the possibility that inadequate remediation at some sites may result in  
15 potential or actual harm to public health, safety, or welfare or the environment, and the  
16 possibility that unnecessary remediation at other sites may result in excessive and  
17 wasteful expenditure of public and private resources; and

18       Whereas, the General Assembly finds that the expenditure of public and  
19 private resources on unnecessary remediation could better be channeled to other  
20 purposes, including new development, renovation and repair, research and development,  
21 training and education, and other activities that maintain and enhance North Carolina's  
22 competitive position in the world and the excellent quality of life enjoyed by the citizens  
23 of North Carolina; and

24       Whereas, the General Assembly finds that public health, safety, and welfare  
25 and the environment can best be protected by implementing a uniform remediation  
26 process that requires that contaminated areas be cleaned up to a level that is sufficient to  
27 ensure protection of public health, safety, and welfare and the environment without  
28 excessive expenditure of public or private resources; and

29       Whereas, the General Assembly finds that this remediation process should be  
30 based on an objective, scientific, and uniform approach to the evaluation of the risk  
31 posed by each contaminated area and to the determination of the appropriate level of  
32 remediation to address contamination in a manner that is protective of public health,  
33 safety, and welfare and the environment; and

34       Whereas, the General Assembly finds that this approach should be applied to  
35 each contaminated area on a site-specific basis using knowledge of the area, the  
36 contaminants present, the effects of those contaminants on public health, safety, and  
37 welfare, and the actions of those contaminants in, and their effect on, the environment;  
38 and

39       Whereas, the General Assembly intends that the levels of remediation that are  
40 established for each contaminated area are to be applicable or relevant and appropriate  
41 standards under federal remediation programs; and

42       Whereas, the General Assembly intends that the protections afforded to  
43 public health, safety, and welfare and to the environment by existing environmental,  
44 health, and safety standards that apply to ongoing activities not be diminished in any

1 way, in order that those standards will continue to protect against the discharge or  
2 release of contaminants to the environment that would result in additional contaminated  
3 areas; Now, therefore,

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** Part 1 of Article 7 of Chapter 143B of the General Statutes is  
6 amended by adding a new section to read:

7 **"§ 143B-279.11. Adoption of rules for risk-based remediation.**

8 (a) As used in this section:

9 (1) 'Contaminant' has the same meaning as in G.S. 130A-310.31.

10 (2) 'Department' means the Department of Environment and Natural  
11 Resources.

12 (3) 'Environmental contamination' has the same meaning as in G.S. 130A-  
13 310.31.

14 (4) 'Regulated substance' has the same meaning as in G.S. 130A-310.31.

15 (5) 'Remediation' means all actions that are necessary or appropriate to  
16 address the presence and effects of environmental contamination,  
17 including, without limitation, all testing, monitoring, studying,  
18 assessing, prioritizing, characterizing, preparing, restoration, cleanup,  
19 treatment, and other actions necessary or appropriate to remove,  
20 reduce, isolate, immobilize, encapsulate, mitigate, or otherwise address  
21 environmental contamination, including, without limitation, all actions  
22 that would qualify as remediation as defined in G.S. 130A-310.31.

23 (6) 'Secretary' means the Secretary of Environment and Natural  
24 Resources.

25 (b) The Secretary shall adopt rules to establish a consistent and uniform risk-  
26 based approach to the assessment, prioritization, and remediation of environmental  
27 contamination. The rules shall provide for:

28 (1) The assessment of the contaminated area, including types and levels of  
29 contamination and the risk to public health, safety, and welfare and the  
30 environment posed by the contamination.

31 (2) The anticipated future uses of the property comprising the  
32 contaminated area.

33 (3) The acceptable level or range of levels of risk to public health, safety,  
34 and welfare and environment

35 (4) The process for determining an appropriate method of remediation to  
36 achieve an acceptable level or range of levels of risk.

37 (5) The process for determining whether a risk-based approach to  
38 remediation under the rules is appropriate for a particular contaminated  
39 area.

40 (6) The process for establishing, for each contaminant, the maximum  
41 allowable quantity, concentration, range, or other measure of  
42 contamination that will remain at the contaminated area at the  
43 conclusion of active remediation.

1           (7) The level of oversight of the remediation that will be exercised by the  
2           Department.

3           (8) The determination or certification that the quantity, concentration,  
4           range, or other measure of each contaminant remaining at the  
5           contaminated area at the conclusion of active remediation does not  
6           exceed the maximum allowable maximum.

7           (9) The determination or certification that an acceptable level or range of  
8           levels of risk has been achieved and that no further remediation is  
9           required.

10          (10) Any other matter that the Secretary determines to be necessary to carry  
11          out the intent of this section.

12          (c) The Department may require any person who is responsible for the  
13          environmental contamination and any person who voluntarily undertakes remediation of  
14          the environmental contamination to provide information necessary to determine the  
15          degree of risk to public health, safety, and welfare and to the environment that is posed  
16          by any environmental contamination, either before or after remediation is completed.

17          (d) If the Department concludes that the environmental contamination poses a  
18          degree of risk to public health, safety, or welfare or the environment that is no greater  
19          than the acceptable level of risk established by the Department, the Department shall  
20          notify the person who provides the information required pursuant to subsection (c) of  
21          this section that no further remediation or action will be required unless the Department  
22          later determines, on the basis of additional information or as a result of a change in  
23          conditions in the contaminated area, that the remaining environmental contamination  
24          poses an unacceptable level of risk to public health, safety, or welfare or the  
25          environment.

26          (e) This section and rules adopted pursuant to this section shall not be construed  
27          to limit the authority of the Department to require investigation, initial response, or  
28          remediation of environmental contamination under any other provision of law pending a  
29          determination by the Department, under rules adopted pursuant to this section, that a  
30          risk-based approach to remediation of a contaminated area is appropriate, or if the  
31          Department determines that a risk-based approach to remediation of the contaminated  
32          area is not appropriate. This section and rules adopted pursuant to this section shall not  
33          be construed or implemented in any manner that reduces the requirements of programs  
34          that are intended to avoid or mitigate the release or discharge of contaminants to the  
35          environment that would result in additional environmental contamination.

36          (f) Rules adopted pursuant to this section shall apply uniformly to the  
37          remediation of environmental contamination under:

38               (1) The Inactive Hazardous Sites Response Act of 1987, G.S. 130A-310,  
39               et seq.

40               (2) The hazardous waste management program administered by the State  
41               pursuant to the federal Resource Conservation and Recovery Act of  
42               1976 Pub. L. 94-580, 90 Stat. 2795, 42 U.S.C. § 6901, et seq., as  
43               amended.

- 1           (3)    The Leaking Petroleum Underground Storage Tank Cleanup Act of  
2                1988, G.S. 143-215.94A, et seq.  
3           (4)    The Brownfields Property Reuse Act of 1997, G.S. 130A-310.30, et  
4                seq.  
5           (5)    The Dry-Cleaning Solvent Cleanup Act of 1997, G.S. 143-215, et seq.  
6           (6)    The federal Superfund program administered in part by the State  
7                pursuant to the Comprehensive Environmental Response,  
8                Compensation, and Liability Act of 1980, Pub. L. 96-510, 94 Stat.  
9                2767, 42 U.S.C. § 9601, et seq., as amended, the Superfund  
10              Amendments and Reauthorization Act of 1986, Pub. L. 99-499, 100  
11              Stat. 1613, as amended, and G.S. 130A-310.20, et seq.  
12           (7)    The groundwater protection program adopted by the Environmental  
13                Management Commission pursuant to Article 21 of Chapter 143 of the  
14                General Statutes.

15           (g)    A person who undertakes remediation of environmental contamination may  
16                elect to proceed under either the applicable provisions of law set out in subsection (f) of  
17                this section and rules adopted pursuant to those provisions or under the rules adopted  
18                pursuant to this section. If a person elects to proceed under rules adopted pursuant to  
19                this section, the rules adopted pursuant to this section shall supersede rules adopted  
20                pursuant to the provisions of law set out in subsection (f) of this section. If a person  
21                elects to proceed under rules adopted pursuant to this section, any maximum allowable  
22                quantity, concentration, limit, or other measure of contamination that is allowed to  
23                remain at the contaminated area at the conclusion of active remediation that is  
24                established under the rules will supersede rules adopted under other provisions of law

25           (h)    Rules adopted pursuant to this section shall be based on an evaluation of all  
26                reasonably foreseeable risks presented to public health, safety, and welfare and the  
27                environment by environmental contamination, and shall be based on all relevant and  
28                reasonably available scientific information pertaining to those risks. The rules shall be  
29                written so that they can be interpreted and implemented with a reasonable degree of  
30                effort and expense. The rules may provide for reasonable distinctions among  
31                contaminated areas based on any relevant factor, including the nature and extent of the  
32                environmental contamination, the risk of harm posed by the contamination to public  
33                health, safety, and welfare and the environment, the size and complexity of the  
34                contaminated area, and the current and anticipated future uses of the contaminated area  
35                and adjacent lands.

36           (i)    Rules adopted pursuant to this section shall require that any assumption about  
37                the future use of the contaminated area on which a level or range of levels of risk is  
38                based be reflected in appropriate restrictions on the future use of the property as  
39                provided in G.S. 143B-279.9 and that the restrictions be recorded in accordance with  
40                G.S. 143B-279.10.

41           (j)    Rules adopted pursuant to this section shall provide for the use of licensed  
42                professionals, including Professional Engineers, Professional Geologists, and Registered  
43                Environmental Consultants, in the assessment, prioritization, and remediation of

1 environmental contamination. The rules shall specify the circumstances under which  
2 work performed by a licensed professional is presumed to comply with the rules."

3       **SECTION 2.** The Secretary of Environment and Natural Resources shall  
4 adopt rules to implement G.S. 143B-279.11, as enacted by Section 1 of this act, on or  
5 before 1 October 2002. This act constitutes a recent act of the General Assembly within  
6 the meaning of G.S. 150B-21.1. Notwithstanding G.S. 150B-21.1(a)(2) and 26 NCAC  
7 2C.0102(11), the Secretary may adopt temporary rules to implement G.S. 143B-279.11,  
8 as enacted by Section 1 of this act until 1 October 2002. Prior to the adoption of a  
9 temporary rule under this section, the Secretary shall publish a notice of intent to adopt  
10 a temporary rule in the North Carolina Register. The notice shall set out the text of the  
11 proposed temporary rule and include the name of the person to whom questions and  
12 written comment on the proposed temporary rule may be submitted. The Secretary shall  
13 accept written comment on the proposed temporary rule for at least 30 days after the  
14 notice of intent to adopt a temporary rule is published in the North Carolina Register.

15       **SECTION 3.** The Secretary of Environment and Natural Resources shall use  
16 all reasonable efforts to obtain a written agreement from the United States  
17 Environmental Protection Agency that G.S. 143B-279.11, as enacted by Section 1 of  
18 this act, and the rules adopted by the Secretary pursuant to G.S. 143B-279.11 are  
19 consistent with the Comprehensive Environmental Response, Compensation, and  
20 Liability Act of 1980, Pub. L. 96-510, 94 Stat. 2767, 42 U.S.C. § 9601, et seq., as  
21 amended, and the Superfund Amendments and Reauthorization Act of 1986, Pub. L.  
22 99-499, 100 Stat. 1613, as amended.

23       **SECTION 4.** This act shall not be construed to obligate the General  
24 Assembly to appropriate any funds to implement the provisions of this act. Every State  
25 agency to which this act applies shall implement the provisions of this act from funds  
26 otherwise appropriated or available to that agency.

27       **SECTION 5.** On or before 1 October 2004, the Department of Environment  
28 and Natural Resources shall report to the Environmental Review Commission as to the  
29 steps the Secretary of Environment and Natural Resources and the Department have  
30 taken to implement this act. The report shall include information on the adoption of  
31 rules to implement G.S. 143B-279.11, as enacted by Section 1 of this act, the number of  
32 contaminated areas that have been proposed for remediation under the rules, the number  
33 of contaminated areas that are undergoing active remediation under the rules, the  
34 number of contaminated areas at which remediation under the rules has been completed,  
35 the number of contaminated areas that are known or believed to be appropriate for  
36 remediation under the rules, the number of contaminated areas for which the  
37 Department has determined that a risk-based approach to remediation under the rules is  
38 not appropriate and the reasons for each determination, and information regarding  
39 licensed professionals who are involved in the implementation of remediation under the  
40 rules.

41       **SECTION 6.** This act is effective when it becomes law.