

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011**

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**HOUSE BILL 45\*  
Committee Substitute Favorable 3/3/11  
Committee Substitute #2 Favorable 3/10/11**

Short Title: Accelerate Cleanup of Industrial Properties.

(Public)

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Sponsors:

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Referred to:

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February 8, 2011

A BILL TO BE ENTITLED

1 AN ACT TO ALLOW THE USE OF RISK-BASED REMEDIATION TO ACCELERATE  
2 THE CLEANUP OF CONTAMINATED INDUSTRIAL SITES FOR THE PURPOSE OF  
3 LIMITING HUMAN AND ENVIRONMENTAL EXPOSURE TO SAFE LEVELS, TO  
4 PROTECT CURRENT AND LIKELY FUTURE USES OF GROUNDWATER, AND TO  
5 ENSURE THE COST-EFFECTIVE APPLICATION OF LIMITED PUBLIC AND  
6 PRIVATE RESOURCES.  
7

8       Whereas, the General Assembly finds that public health, safety, and welfare and the  
9 environment can be protected by implementing a remediation process that requires that  
10 contaminated industrial sites be cleaned up to a level that is sufficient to ensure protection of  
11 public health, safety, and welfare and the environment without excessive expenditure of public  
12 or private resources; and

13       Whereas, the General Assembly finds that there are contaminated industrial sites in  
14 North Carolina, including land and other property, surface water, and groundwater, that are  
15 adversely affected by environmental contamination due to the presence of drilling waste;  
16 hazardous and toxic materials, substances, and wastes; solid waste; oil; and other wastes,  
17 contaminants, and regulated substances; and

18       Whereas, the General Assembly finds that the presence of environmental  
19 contamination on industrial sites creates both potential and actual harm to public health, safety,  
20 and welfare and to the environment; and

21       Whereas, the General Assembly finds that this potential and actual harm results in  
22 substantial economic losses, including reduced property values and tax revenues, decreased  
23 ability to develop and expand the beneficial use of these sites, and other opportunity costs  
24 because of the uncertainties and concerns that result from the environmental contamination of  
25 these sites; and

26       Whereas, the General Assembly finds that it is in the public interest that  
27 contaminated industrial sites are cleaned up or managed in a manner that protects public health,  
28 safety, and welfare and the environment and protects groundwater that is a current or probable  
29 future water supply; and

30       Whereas, the General Assembly finds that North Carolina has numerous and varied  
31 State-managed remediation programs to address environmental contamination, including the  
32 Inactive Hazardous Sites Response Act of 1987; the hazardous waste management program  
33 administered by the State pursuant to the federal Resource Conservation and Recovery Act of  
34 1976; the Leaking Petroleum Underground Storage Tank Cleanup Act of 1988; the Brownfields  
35 Property Reuse Act of 1997; the Dry-Cleaning Solvent Cleanup Act of 1997; the federal  
36 Superfund program administered in part by the State pursuant to the Comprehensive



1 Environmental Response, Compensation, and Liability Act of 1980 and the Superfund  
2 Amendments and Reauthorization Act of 1986; and the groundwater protection rules adopted  
3 by the Environmental Management Commission; and

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

9 Whereas, the General Assembly finds that North Carolina's groundwater is a  
10 valuable public and private resource, serving as the drinking water source for one-half of the  
11 State's population and also as a water supply for industrial and commercial uses; and

12 Whereas, the General Assembly finds that maintenance of North Carolina's surface  
13 water and groundwater resources will become increasingly important to the continued  
14 economic vitality of the State in the future; and

15 Whereas, the General Assembly finds that use of site-specific remediation standards  
16 based on an objective, scientific, and uniform approach to the evaluation of the risk posed by  
17 each contaminated site can be protective of public health, safety, and welfare and the  
18 environment; and

19 Whereas, the General Assembly finds that use of site-specific remediation standards  
20 in appropriate circumstances may encourage accelerated cleanup of contaminated industrial  
21 sites; and

22 Whereas, the General Assembly intends that the levels of remediation that are  
23 established for each contaminated site are to be applicable or relevant under federal remediation  
24 programs; and

25 Whereas, the General Assembly intends that the protections afforded to public  
26 health, safety, and welfare and to the environment by existing environmental, health, and safety  
27 standards that apply to ongoing activities not be diminished in any way, in order that those  
28 standards will continue to protect against the discharge or release of contaminants to the  
29 environment that would result in additional contaminated sites; Now, therefore,  
30 The General Assembly of North Carolina enacts:

31 **SECTION 1.** G.S. 130A-310.62 through G.S. 130A-310.64 are reserved for future  
32 codification purposes.

33 **SECTION 2.** Article 9 of Chapter 130A of the General Statutes is amended by  
34 adding a new Part to read:

35 "Part 8. Risk-Based Environmental Remediation of Industrial Sites.

36 **"§ 130A-310.65. Definitions.**

37 As used in this Part:

- 38 (1) "Background standard" means the naturally occurring concentration of a  
39 substance in the absence of the release of a contaminant.  
40 (2) "Commission" means the Environmental Management Commission created  
41 pursuant to G.S. 143B-282.  
42 (3) "Contaminant" means any substance regulated under any program listed in  
43 G.S. 130A-310.67(a).  
44 (4) "Contaminated industrial site" or "site" means any real property that meets  
45 all of the following criteria:  
46 a. The property is contaminated and may be subject to remediation  
47 under any of the programs or requirements set out in  
48 G.S. 130A-310.67(a).  
49 b. The property is or has been used primarily for manufacturing or other  
50 industrial activities for the production of a commercial product. This  
51 includes a property used primarily for the generation of electricity.

- 1                    This does not include a property used primarily for service industry  
2                    activities.
- 3                    c.    No contaminant associated with activities at the property has  
4                    migrated or will migrate to any adjacent properties above  
5                    unrestricted use standards for the contaminant.
- 6                    (5)   "Contamination" means a contaminant released into an environmental  
7                    medium that has resulted in or has the potential to result in an increase in the  
8                    concentration of the contaminant in the environmental medium in excess of  
9                    unrestricted use standards.
- 10                   (6)   "Fund" means the Inactive Hazardous Sites Cleanup Fund established  
11                   pursuant to G.S. 130A-310.11.
- 12                   (7)   "Institutional controls" means nonengineered measures used to prevent  
13                   unsafe exposure to contamination, such as land-use restrictions.
- 14                   (8)   "Registered environmental consultant" means an environmental consulting  
15                   or engineering firm approved to implement and oversee voluntary remedial  
16                   actions pursuant to Part 3 of Article 9 of Chapter 130A of the General  
17                   Statutes and rules adopted to implement the Part.
- 18                   (9)   "Remedial action plan" means a plan for eliminating or reducing  
19                   contamination or exposure to contamination.
- 20                   (10)   "Remediation" means all actions that are necessary or appropriate to clean  
21                   up, mitigate, correct, abate, minimize, eliminate, control, or prevent the  
22                   spreading, migration, leaking, leaching, volatilization, spilling, transport, or  
23                   further release of a contaminant into the environment in order to protect  
24                   public health, safety, or welfare or the environment.
- 25                   (11)   "Systemic toxicant" means any substance that may enter the body and have a  
26                   harmful effect other than causing cancer.
- 27                   (12)   "Unrestricted use standards" means contaminant concentrations for each  
28                   environmental medium that are acceptable for all uses; that are protective of  
29                   public health, safety, and welfare and the environment; and that comply with  
30                   generally applicable standards, guidance, or methods established by statute  
31                   or adopted, published, or implemented by the Commission, the Commission  
32                   for Public Health, or the Department.

33    **§ 130A-310.66. Purpose.**

34                   It is the purpose of this Part to authorize the Department to approve the remediation of  
35                   contaminated industrial sites based on site-specific remediation standards in circumstances  
36                   where site-specific remediation standards are adequate to protect public health, safety, and  
37                   welfare and the environment and are consistent with protection of current and anticipated future  
38                   use of groundwater and surface water affected or potentially affected by the contamination.

39    **§ 130A-310.67. Applicability.**

40                   (a)   This Part applies to contaminated industrial sites subject to remediation pursuant to  
41                   any of the following programs or requirements:

- 42                   (1)   The Inactive Hazardous Sites Response Act of 1987 under Part 3 of Article 9  
43                   of Chapter 130A of the General Statutes, including voluntary actions under  
44                   G.S. 130A-310.9 of that act, and rules promulgated pursuant to those  
45                   statutes.
- 46                   (2)   The hazardous waste management program administered by the State  
47                   pursuant to the federal Resource Conservation and Recovery Act of 1976,  
48                   Public Law 94-580, 90 Stat. 2795, 42 U.S.C. § 6901, et seq., as amended,  
49                   and Article 9 of Chapter 130A of the General Statutes.
- 50                   (3)   The solid waste management program administered pursuant to Article 9 of  
51                   Chapter 130A of the General Statutes.

- 1           (4)    The federal Superfund program administered in part by the State pursuant to  
2           the Comprehensive Environmental Response, Compensation, and Liability  
3           Act of 1980, Public Law 96-510, 94 Stat. 2767, 42 U.S.C. § 9601, et seq., as  
4           amended, the Superfund Amendments and Reauthorization Act of 1986,  
5           Public Law 99-499, 100 Stat. 1613, as amended, and under Part 4 of Article  
6           9 of Chapter 130A of the General Statutes.
- 7           (5)    The groundwater protection corrective action requirements adopted by the  
8           Commission pursuant to Article 21 of Chapter 143 of the General Statutes.
- 9           (6)    Oil Pollution and Hazardous Substances Control Act of 1978, Parts 1 and 2  
10          of Article 21A of Chapter 143 of the General Statutes.
- 11         (b)    This Part shall not apply to contaminated industrial sites subject to remediation  
12         pursuant to any of the following programs or requirements:
- 13           (1)    The Leaking Petroleum Underground Storage Tank Cleanup program under  
14           Part 2A of Article 21A of Chapter 143 of the General Statutes and rules  
15           promulgated pursuant to that statute.
- 16           (2)    The Dry-Cleaning Solvent Cleanup program under Part 6 of Article 21A of  
17           Chapter 143 of the General Statutes and rules promulgated pursuant to that  
18           statute.
- 19           (3)    The pre-1983 landfill assessment and remediation program established under  
20           G.S. 130A-310.6(c) through (g).
- 21         (c)    This Part shall apply only to sites where a discharge, spill, or release of  
22         contamination has been reported to the Department prior to March 1, 2011.
- 23         **§ 130A-310.68. Remediation standards.**
- 24           (a)    When conducting remediation activities pursuant to this Part, a person who proposes  
25           to or is required to respond to the release of a contaminant at a contaminated industrial site  
26           shall comply with one of the following standards:
- 27           (1)    The unrestricted use standards applicable to each affected medium.
- 28           (2)    The background standard, if the background standard exceeds the  
29           unrestricted use standards.
- 30           (3)    A site-specific remediation standard developed in accordance with  
31           subsection (b) of this section that is approved by the Department.
- 32           (4)    Any combination of remediation standards described in this subsection that  
33           is approved by the Department.
- 34         (b)    Site-specific remediation standards shall be developed for each medium as provided  
35         in this subsection to achieve remediation that eliminates or reduces to protective levels any  
36         substantial present or probable future risk to human health, including sensitive subgroups, and  
37         the environment based upon the present or currently planned future use of the property  
38         comprising the site. Site-specific remediation standards shall be developed in accordance with  
39         all of the following:
- 40           (1)    Remediation methods and technologies that result in emissions of air  
41           pollutants shall comply with applicable air quality standards adopted by the  
42           Commission.
- 43           (2)    The site-specific remediation standard for surface waters shall be the water  
44           quality standards adopted by the Commission.
- 45           (3)    The current and probable future use of groundwater shall be identified and  
46           protected. Site-specific sources of contaminants and potential receptors shall  
47           be identified. Potential receptors must be protected, controlled, or eliminated  
48           whether the receptors are located on or off the site where the source of  
49           contamination is located. Natural environmental conditions affecting the fate  
50           and transport of contaminants, such as natural attenuation, shall be  
51           determined by appropriate scientific methods.

- 1           (4)   Permits for facilities located at sites covered by any of the programs or  
2           requirements set out in G.S. 130A-310.67(a) shall contain conditions to  
3           avoid exceedances of applicable groundwater standards adopted by the  
4           Commission pursuant to Article 21 of Chapter 143 of the General Statutes  
5           due to operation of the facility.
- 6           (5)   Soil shall be remediated to levels that no longer constitute a continuing  
7           source of groundwater contamination in excess of the site-specific  
8           groundwater remediation standards approved under this Part.
- 9           (6)   Soil shall be remediated to unrestricted use standards on residential property  
10          with the following exceptions:
- 11          a.     For mixed-use developments where the ground level uses are  
12          nonresidential and where all potential exposure to contaminated soil  
13          has been eliminated, the Department may allow soil to remain on the  
14          site in excess of unrestricted use standards.
- 15          b.     If soil remediation is impracticable because of the presence of  
16          preexisting structures or impracticability of removal, all areas of the  
17          real property at which a person may come into contact with soil shall  
18          be remediated to unrestricted use standards, and, on all other areas of  
19          the real property, engineering and institutional controls that are  
20          sufficient to protect public health, safety, and welfare and the  
21          environment shall be implemented and maintained.
- 22          (7)   The potential for human inhalation of contaminants from the outdoor air and  
23          other site-specific indoor air exposure pathways shall be considered, if  
24          applicable.
- 25          (8)   The site-specific remediation standard shall protect against human exposure  
26          to contamination through the consumption of contaminated fish or wildlife  
27          and through the ingestion of contaminants in surface water or groundwater  
28          supplies.
- 29          (9)   For known or suspected carcinogens, site-specific remediation standards  
30          shall be established at exposures that represent an excess lifetime cancer risk  
31          of one in 1,000,000. The site-specific remediation standard may depart from  
32          the one-in-1,000,000 risk level based on the criteria set out in 40 Code of  
33          Federal Regulations § 300.430(e)(9) (July 1, 2003 Edition). The cumulative  
34          excess lifetime cancer risk to an exposed individual shall not be greater than  
35          one in 10,000 based on the sum of carcinogenic risk posed by each  
36          contaminant present.
- 37          (10) For systemic toxicants, site-specific remediation standards shall represent  
38          levels to which the human population, including sensitive subgroups, may be  
39          exposed without any adverse health effect during a lifetime or part of a  
40          lifetime. Site-specific remediation standards for systemic toxicants shall  
41          incorporate an adequate margin of safety and shall take into account cases  
42          where two or more systemic toxicants affect the same organ or organ  
43          system.
- 44          (11) The site-specific remediation standards for each medium shall be adequate to  
45          avoid foreseeable adverse effects to other media or the environment that are  
46          inconsistent with the risk-based approach under this Part.

47    **"§ 130A-310.69. Remedial investigation report; remedial action plans.**

48          (a)   A person who proposes to conduct remediation pursuant to this Part shall submit a  
49          remedial investigation report to the Department prior to submitting a remedial action plan. The  
50          remedial investigation report shall include, but is not limited to, a legal description of the  
51          location of the site; a map showing the location of the site; a description of the contaminants

1 involved and their concentration in the media of the site; a narrative description of the  
2 methodology used in the investigation; a description of all on-site releases of contamination; a  
3 site map, drawn to scale, showing benchmarks, directional arrow, location of property  
4 boundaries, buildings, structures, all perennial and nonperennial surface water features,  
5 drainage ditches, dense vegetation, contaminant spill or disposal areas, underground utilities,  
6 storage vessels, and existing on-site wells; identification of adjacent property owners and  
7 adjacent land uses; description of local geologic and hydrologic conditions; an evaluation of the  
8 site and adjacent properties for the existence of environmentally sensitive areas; a description  
9 of groundwater monitoring well design and installation procedures; a map, drawn to scale, that  
10 shows all groundwater sample locations; a description of field and laboratory quality control  
11 and quality assurance procedures followed during the remedial investigation; a description of  
12 methods used to manage investigation-derived wastes; tabulation of analytical results for all  
13 sampling; copies of all laboratory reports; a description of procedures and the results of any  
14 special assessments; and any other information required by the Department or considered  
15 relevant by the investigator. The remedial investigation shall assess all contaminated areas of  
16 the site, including types and levels of contamination, and the risk that the contamination poses  
17 to public health, safety, and welfare and to the environment.

18 (b) A person who proposes to conduct remediation pursuant to this Part shall develop  
19 and submit a proposed remedial action plan to the Department. A remedial action plan shall  
20 provide for the protection of public health, safety, and welfare and the environment. A remedial  
21 action plan shall do all of the following:

- 22 (1) Identify actions required to remove, treat, or otherwise appropriately  
23 mitigate or isolate the source of contamination to ensure that the source will  
24 not cause unrestricted use standards to be exceeded in any medium.
- 25 (2) Address contamination that moves from one medium to another in order to  
26 prevent a violation of the remediation standards established under  
27 G.S. 130A-310.68. A more stringent remediation standard may be required  
28 for a particular medium to control impact on other media.
- 29 (3) Identify the current and anticipated future uses of property comprising the  
30 contaminated site and address any concerns raised in public comment on the  
31 proposed remedial action plan as to the proposed future uses of the property.
- 32 (4) Identify the current and anticipated future uses of groundwater in the  
33 contaminated site and address any concerns raised in public comment on the  
34 proposed remedial action plan as to the future uses of groundwater.
- 35 (5) Determine the appropriate method of remediation to achieve the site-specific  
36 remediation standards.
- 37 (6) Specify any measures that may be necessary to prevent adverse effects to the  
38 environment that may occur at levels of contamination that are lower than  
39 the standard necessary to protect human health.
- 40 (7) Specify any measures that may be necessary to prevent any discharge into  
41 surface waters during implementation of the remedial action plan that  
42 violates applicable surface water quality standards adopted by the  
43 Commission.
- 44 (8) Specify any measures that may be necessary to prevent any air emission  
45 during implementation of the remedial action plan that violates applicable air  
46 quality standards adopted by the Commission.
- 47 (9) Provide for attainment and maintenance of the remediation standards  
48 established under G.S. 130A-310.68.
- 49 (10) Provide for methods and procedures to verify that the quantity,  
50 concentration, range, or other measure of each contaminant remaining at the  
51 contaminated site at the conclusion of the contaminant-reduction phase of

- 1 remediation meets the remediation standards established for the site, that an  
2 acceptable level of risk has been achieved, and that no further remediation is  
3 required.
- 4 (11) Provide for the imposition and recordation of land-use restrictions as  
5 provided in G.S. 143B-279.9, 143B-279.10, 130A-310.3(f), 130A-310.8,  
6 130A-310.35, 143-215.84(f), and 143-215.85A if the remedial action plan  
7 allows contamination in excess of the greater of unrestricted use standards or  
8 background standards to remain on any real property or in groundwater that  
9 underlies any real property.
- 10 (12) Provide for submission of an annual certification to the Department by the  
11 property owner that land use at the site is in compliance with land-use  
12 restrictions recorded pursuant to this Part and that the land-use restrictions  
13 are still properly recorded in the chain of title for the property.
- 14 (13) Provide a detailed description of the proposed remedial action to be taken;  
15 the results of any treatability studies and additional site characterization  
16 needed to support the proposed remedial action; plans for postremedial and  
17 confirmatory sampling; a project schedule; a schedule for progress reports to  
18 the Department; and any other information required by the Department or  
19 considered relevant by the person who submits the proposed remedial action  
20 plan.
- 21 (14) Provide a description of measures that will be employed to ensure that the  
22 safety and health of persons on properties in the vicinity of the site and  
23 persons visiting or doing business on the site will not be adversely affected  
24 by any remediation activity.
- 25 (15) Provide a reasonable estimate of the probable cost of the remedial action  
26 sufficient for the Department to determine an acceptable level of financial  
27 assurance.
- 28 (16) Provide proof of financial assurance as required by G.S. 130A-310.72.
- 29 (c) A remedial action plan shall also include an analysis of each of the following  
30 factors:
- 31 (1) Long-term risks and effectiveness of the proposed remediation, including an  
32 evaluation of all of the following:
- 33 a. The magnitude of risks remaining after completion of the  
34 remediation.
- 35 b. The type, degree, frequency, and duration of any postremediation  
36 activity that may be required, including, but not limited to, operation  
37 and maintenance, monitoring, inspection, reports, and other activities  
38 necessary to protect public health, safety, and welfare and the  
39 environment.
- 40 c. Potential for exposure of human and environmental receptors to  
41 contaminants remaining at the site.
- 42 d. Long-term reliability of any engineering and voluntary institutional  
43 controls, including repair, maintenance, or replacement of  
44 components.
- 45 e. Time required to achieve remediation standards.
- 46 (2) Toxicity, mobility, and volume of contaminants, including the amount of  
47 contaminants that will be removed, contained, treated, or destroyed; the  
48 degree of expected reduction in toxicity, mobility, and volume; and the type,  
49 quantity, toxicity, and mobility of contaminants that will remain after  
50 implementation of the remedial action plan.

1           (3) Short-term risks and effectiveness of the remediation, including the  
2 short-term risks that may be posed to the community, workers, or the  
3 environment during implementation of the remedial action plan, and the  
4 effectiveness and reliability of protective measures to address short-term  
5 risks.

6           (4) The ease or difficulty of implementing the remedial action plan, including  
7 commercially available remedial measures; expected operational reliability;  
8 available capacity and location of needed treatment, storage, and disposal  
9 services for wastes; time to initiate remediation; and approvals necessary to  
10 implement the remediation.

11           (d) The development of a remedial action plan may require supplemental submissions  
12 and revisions based on Department review, remedial action pilot studies, and public comment  
13 from local government and citizens.

14 **"§ 130A-310.70. Notice of intent to remediate.**

15           In addition to the public participation requirements of the individual programs listed in  
16 G.S. 130A-310.67(a), the person who proposes to remediate a site under this Part shall send a  
17 notice of intent to remediate to all local governments having taxing or land-use jurisdiction  
18 over the site, and to all adjoining landowners. The notice shall include all of the information  
19 required in G.S. 130A-310.69(a) and include a statement of intent to clean up the site to  
20 site-specific remediation standards. The person shall submit to the Department a copy of the  
21 notice of intent provided to local governments and adjoining landowners, a certification that the  
22 notice of intent to remediate was so provided to those parties, and all information and  
23 comments that the person received in response to the notice. In addition, the person shall, when  
24 appropriate, describe how the remediation plan was modified to address comments received in  
25 response to the notice.

26 **"§ 130A-310.71. Review and approval of proposed remedial action plans.**

27           (a) The Department shall review and approve a proposed remedial action plan  
28 consistent with the remediation standards set out in G.S. 130A-310.68 and the procedures set  
29 out in this section. In its review of a proposed remedial action plan, the Department shall do all  
30 of the following:

31           (1) Determine whether site-specific remediation standards are appropriate for a  
32 particular contaminated site. In making this determination, the Department  
33 shall consider proximity of the contamination to water supply wells or other  
34 receptors; current and probable future reliance on the groundwater as a water  
35 supply; current and anticipated future land use; environmental impacts; and  
36 the feasibility of remediation to unrestricted use standards.

37           (2) Determine whether the party conducting the remediation has adequately  
38 demonstrated through modeling or other scientific means acceptable to the  
39 Department that no contamination will migrate to adjacent property at levels  
40 above unrestricted use standards.

41           (3) Determine whether the proposed remedial action plan meets the  
42 requirements of G.S. 130A-310.69.

43           (4) Determine whether the proposed remedial action plan meets the  
44 requirements of any other applicable remediation program except those  
45 pertaining to remediation standards.

46           (5) Establish the acceptable level or range of levels of risk to public health,  
47 safety, and welfare and to the environment.

48           (6) Establish, for each contaminant, the maximum allowable quantity,  
49 concentration, range, or other measures of contamination that will remain at  
50 the contaminated site at the conclusion of the contaminant-reduction phase  
51 of the remediation.



- 1           (7)    Consider the technical performance, effectiveness, and reliability of the  
2           proposed remedial action plan in attaining and maintaining compliance with  
3           applicable remediation standards.
- 4           (8)    Consider the ability of the person who proposes to remediate the site to  
5           implement the proposed remedial action plan within a reasonable time and  
6           without jeopardizing public health, safety, or welfare or the environment.
- 7           (9)    Determine whether the proposed remedial action plan adequately provides  
8           for the imposition and maintenance of engineering and institutional controls  
9           and for sampling, monitoring, and reporting requirements necessary to  
10          protect public health, safety, and welfare and the environment.
- 11          (10)   Approve the circumstances under which no further remediation is required.

12          (b)    The person who proposes a remedial action plan has the burden of demonstrating  
13          that contamination from the site will not likely migrate in the reasonably foreseeable future to  
14          adjacent property and that the remedial action plan is protective of public health, safety, and  
15          welfare and the environment by virtue of its compliance with this Part.

16          (c)    The Department may require a person who proposes a remedial action plan to  
17          supply any additional information necessary for the Department to approve or disapprove the  
18          plan.

19          (d)    In making a determination on a proposed remedial action plan, the Department shall  
20          consider the information provided by the person who proposes the remedial action plan as well  
21          as information provided by local governments and adjoining landowners pursuant to  
22          G.S. 130A-310.70. The Department shall disapprove a proposed remedial action plan unless the  
23          Department finds that the plan is protective of public health, safety, and welfare and the  
24          environment and complies with the requirements of this Part. If the Department disapproves a  
25          proposed remedial action plan, the person who submitted the plan may seek review as provided  
26          in Article 3 of Chapter 150B of the General Statutes. If the Department fails to approve or  
27          disapprove a proposed remedial action plan within 120 days after a complete plan has been  
28          submitted, the person who submitted the plan may treat the plan as having been disapproved at  
29          the end of that time period.

30          **"§ 130A-310.72. Financial assurance requirement.**

31          The person conducting remediation of a contaminated industrial site pursuant to the  
32          provisions of this Part shall establish financial assurance that will ensure that sufficient funds  
33          are available to implement and maintain the actions or controls specified in the remedial action  
34          plan for the site. The person conducting remediation of a site may establish financial assurance  
35          through one of the following mechanisms, or any combination of the following mechanisms, in  
36          a form specified or approved by the Department: insurance products issued from entities having  
37          no corporate or ownership association with the person conducting the remediation; funded  
38          trusts; surety bonds; certificates of deposit; letters of credit; corporate financial tests; local  
39          government financial tests; corporate guarantees; local government guarantees; capital reserve  
40          funds; or any other financial mechanism authorized for the demonstration of financial  
41          assurance under (i) 40 Code of Federal Regulations Part 264, Subpart H (July 1, 2010 Edition)  
42          and (ii) Section .1600 of Subchapter B of Chapter 13 of Title 15A of the North Carolina  
43          Administrative Code.

44          **"§ 130A-310.73. Attainment of the remediation standard.**

45          (a)    Compliance with the approved remediation standards is attained for a site or portion  
46          of a site when a remedial action plan approved by the Department has been implemented and  
47          applicable soil, groundwater, surface water, and air emission standards have been attained. The  
48          remediation standards may be attained through a combination of remediation activities that can  
49          include treatment, removal, engineering, or institutional controls, except that the person  
50          conducting the remediation may not demonstrate attainment of an unrestricted use standard or a  
51          background standard through the use of institutional controls alone. When the remedial action

1 plan has been fully implemented, the person conducting the remediation shall submit a final  
2 report to the Department, with notice to all local governments with taxing and land-use  
3 jurisdiction over the site, that demonstrates that the remedial action plan has been fully  
4 implemented, that any land-use restrictions have been certified on an annual basis, and that the  
5 remediation standards have been attained. The final report shall be accompanied by a request  
6 that the Department issue a determination that no further remediation beyond that specified in  
7 the approved remedial action plan is required.

8 (b) The person conducting the remediation has the burden of demonstrating that the  
9 remedial action plan has been fully implemented and that the remediation standards have been  
10 attained in compliance with the requirements of this Part. The Department may require a person  
11 who implements the remedial action plan to supply any additional information necessary for  
12 the Department to determine whether the remediation standards have been attained.

13 (c) The Department shall review the final report, and, upon determining that the person  
14 conducting the remediation has completed remediation to the approved remediation standard  
15 and met all the requirements of the approved remedial action plan, the Department shall issue a  
16 determination that no further remediation beyond that specified in the approved remedial action  
17 plan is required at the site. Once the Department has issued a no further action determination,  
18 the Department may require additional remedial action by the responsible party only upon  
19 finding any of the following:

- 20 (1) Monitoring, testing, or analysis of the site subsequent to the issuance of the  
21 no further action determination indicates that the remediation standards and  
22 objectives were not achieved or are not being maintained.
- 23 (2) One or more of the conditions, restrictions, or limitations imposed on the site  
24 as part of the remediation have been violated.
- 25 (3) Site monitoring or operation and maintenance activities that are required as  
26 part of the remedial action plan or no further action determination for the site  
27 are not adequately funded or are not adequately implemented.
- 28 (4) A contaminant or hazardous substance release is discovered at the site that  
29 was not the subject of the remedial investigation report or the remedial  
30 action plan.
- 31 (5) A material change in the facts known to the Department at the time the  
32 written no further action determination was issued, or new facts, cause the  
33 Department to find that further assessment or remediation is necessary to  
34 prevent a significant risk to human health and safety or to the environment.
- 35 (6) The no further action determination was based on fraud, misrepresentation,  
36 or intentional nondisclosure of information by the person conducting the  
37 remediation.
- 38 (7) Installation or use of wells would induce the flow of contaminated  
39 groundwater off the site.

40 (d) The Department shall issue a final decision on a request for a determination that  
41 remediation has been completed to approved standards and that no further remediation beyond  
42 that specified in the approved remedial action plan is required within 180 days after receipt of a  
43 complete final report. Failure of the Department to issue a final decision on a no further  
44 remediation determination within 180 days after receipt of a complete final report and request  
45 for a determination of no further remediation may be treated as a denial of the request for a no  
46 further remediation determination. The responsible person may seek review of a denial of a  
47 request for a release from further remediation as provided in Article 3 of Chapter 150B of the  
48 General Statutes.

49 (e) Once the Department issues a determination that no further remediation is required  
50 beyond that specified in the approved remedial action plan for the site, any person who changes

1 the use of the property causing the level of risk to increase beyond the acceptable risk range  
2 shall be required by the Department to undertake additional remediation measures.

3 **"§ 130A-310.74. Compliance with other laws.**

4 Where a site is covered by an agreement under the Brownfields Property Reuse Act of  
5 1997, as codified as Part 5 of Article 9 Chapter 130A of the General Statutes, any work  
6 performed by the prospective developer pursuant to that agreement is not required to comply  
7 with this Part, but any work not covered by such agreement and performed at the site by  
8 another person not a party to that agreement may be performed pursuant to this Part.

9 **"§ 130A-310.75. Use of registered environmental consultants.**

10 The Department may approve the use of a registered environmental consultant to provide  
11 oversight for the assessment and remediation of a site under this Part. If remediation under this  
12 Part is not undertaken voluntarily, the Department may not require the use of a registered  
13 environmental consultant to provide oversight for the assessment and remediation of a site  
14 under this Part.

15 **"§ 130A-310.76. Fees; permissible uses of fees.**

16 (a) A person who undertakes remediation of environmental contamination under  
17 site-specific remediation standards as provided in G.S. 130A-310.68 shall pay a fee to the Fund  
18 in an amount equal to four thousand five hundred dollars (\$4,500) for each acre or portion of an  
19 acre of contamination, including any area that will become contaminated as a result of the  
20 release; however, no person shall be required to pay more than one hundred twenty-five  
21 thousand dollars (\$125,000) to the Fund for any individual site, regardless of its size. This  
22 one-time fee shall be payable at the time the person undertaking remediation submits the  
23 remedial action plan to the Department.

24 (b) Funds collected pursuant to subsection (a) of this section may be used only for the  
25 following purposes:

- 26 (1) To pay for administrative and operating expenses necessary to implement  
27 this Part.  
28 (2) To establish, administer, and maintain a system for the tracking of land-use  
29 restrictions recorded at sites that are remediated pursuant to this Part.

30 **"§ 130A-310.77. Construction of Part.**

31 This Part shall not be construed or implemented in any of the following ways:

- 32 (1) In any manner that would jeopardize federal authorization under any of the  
33 federal statutes, programs, or requirements set out in G.S. 130A-310.67(a) or  
34 would otherwise conflict with federal authority under those statutes,  
35 programs, and requirements. This Part is supplemental to the programs and  
36 requirements set out in G.S. 130A-310.67(a) that would otherwise govern  
37 the remediation of a contaminated industrial site. Where the definitions,  
38 provisions, or requirements of this Part conflict with the definitions,  
39 provisions, or requirements of an otherwise applicable remediation program,  
40 this Part shall control, unless expressly stated to the contrary.  
41 (2) To limit the authority of the Department to require investigation, initial  
42 response, or remediation of environmental contamination under any other  
43 provision of State or federal law necessary to address an imminent threat to  
44 public health, safety, or welfare or the environment.  
45 (3) To alter the requirements of programs to prevent or mitigate the release or  
46 discharge of contaminants to the environment, including permitting  
47 requirements that regulate the handling of hazardous substances or wastes.  
48 (4) To supersede or otherwise affect or prevent the enforcement of any land-use  
49 or development regulation or ordinance adopted by a municipality pursuant  
50 to Article 19 of Chapter 160A of the General Statutes or adopted by a county  
51 pursuant to Article 18 of Chapter 153A of the General Statutes. The use of a

1 site and any land-use restrictions imposed as part of a remedial action plan  
2 shall comply with land-use and development controls adopted by a  
3 municipality pursuant to Article 19 of Chapter 160A of the General Statutes  
4 or adopted by a county pursuant to Article 18 of Chapter 153A of the  
5 General Statutes."

6 **SECTION 3.** G.S. 130A-310.78 through G.S. 130A-310.80 are reserved for future  
7 codification purposes.

8 **SECTION 4.** G.S. 130A-310.10(a) reads as rewritten:

9 "(a) The Secretary shall report on inactive hazardous sites to the Joint Legislative  
10 Commission on Governmental Operations, the Environmental Review Commission, and the  
11 Fiscal Research Division on or before 1 October of each year. The report shall include at  
12 ~~least~~least the following:

- 13 (1) The Inactive Hazardous Waste Sites Priority ~~List~~List.
- 14 (2) A list of remedial action plans requiring State funding through the Inactive  
15 Hazardous Sites Cleanup ~~Fund~~Fund.
- 16 (3) A comprehensive budget to implement these remedial action plans and the  
17 adequacy of the Inactive Hazardous Sites Cleanup Fund to fund the cost of  
18 said ~~plans~~plans.
- 19 (4) A prioritized list of sites that are eligible for remedial action under  
20 CERCLA/SARA together with recommended remedial action plans and a  
21 comprehensive budget to implement such plans. The budget for  
22 implementing a remedial action plan under CERCLA/SARA shall include a  
23 statement as to any appropriation that may be necessary to pay the State's  
24 share of such ~~plan~~plan.
- 25 (5) A list of sites and remedial action plans undergoing voluntary cleanup with  
26 Departmental ~~approval~~approval.
- 27 (6) A list of sites and remedial action plans that may require State funding, a  
28 comprehensive budget if implementation of these possible remedial action  
29 plans is required, and the adequacy of the Inactive Hazardous Sites Cleanup  
30 Fund to fund the possible costs of said ~~plans~~plans.
- 31 (7) A list of sites that pose an imminent ~~hazard~~hazard.
- 32 (8) A comprehensive budget to develop and implement remedial action plans for  
33 sites that pose imminent hazards and that may require State funding, and the  
34 adequacy of the Inactive Hazardous Sites Cleanup ~~Fund~~and Fund.
- 35 (8a) The amounts and sources of funds collected by year received under  
36 G.S. 130A-310.76, the amounts and sources of those funds paid into the  
37 Inactive Hazardous Sites Cleanup Fund established pursuant to  
38 G.S. 130A-310.11, the number of acres of contamination for which funds  
39 have been received pursuant to G.S. 130A-310.76, and a detailed annual  
40 accounting of how the funds collected pursuant to G.S. 130A-310.76 have  
41 been utilized by the Department to advance the purposes of Part 8 of Article  
42 9 of Chapter 130A of the General Statutes.
- 43 (9) Any other information requested by the General Assembly or the  
44 Environmental Review Commission."

45 **SECTION 5.** The Secretary of Environment and Natural Resources shall make all  
46 reasonable efforts to obtain a written agreement from the United States Environmental  
47 Protection Agency that Part 8 of Article 9 of Chapter 130A of the General Statutes, as enacted  
48 by Section 2 of this act, is consistent with the Comprehensive Environmental Response,  
49 Compensation, and Liability Act of 1980, Public Law 96-510, 94 Stat. 2767, 42 U.S.C. § 9601,  
50 et seq., as amended, and the Superfund Amendments and Reauthorization Act of 1986, Public  
51 Law 99-499, 100 Stat. 1613, as amended.

1

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