

§ 130A-310.32. Brownfields agreement.

(a) The Department may, in its discretion, enter into a brownfields agreement with a prospective developer who satisfies the requirements of this section. A prospective developer shall provide the Department with any information necessary to demonstrate that:

- (1) The prospective developer, and any parent, subsidiary, or other affiliate of the prospective developer has substantially complied with:
 - a. The terms of any brownfields agreement or similar agreement to which the prospective developer or any parent, subsidiary, or other affiliate of the prospective developer has been a party.
 - b. The requirements applicable to any remediation in which the applicant has previously engaged.
 - c. Federal and state laws, regulations, and rules for the protection of the environment.
- (2) As a result of the implementation of the brownfields agreement, the brownfields property will be suitable for the uses specified in the agreement while fully protecting public health and the environment instead of being remediated to unrestricted use standards.
- (3) There is a public benefit commensurate with the liability protection provided under this Part.
- (4) The prospective developer has or can obtain the financial, managerial, and technical means to fully implement the brownfields agreement and assure the safe use of the brownfields property.
- (5) The prospective developer has complied with or will comply with all applicable procedural requirements.

(b) In negotiating a brownfields agreement, parties may rely on land-use restrictions that will be included in a Notice of Brownfields Property required under G.S. 130A-310.35. A brownfields agreement may provide for remediation standards that are based on those land-use restrictions.

(c) A brownfields agreement shall contain a description of the brownfields property that would be sufficient as a description of the property in an instrument of conveyance and, as applicable, a statement of:

- (1) Any remediation to be conducted on the property, including:
 - a. A description of specific areas where remediation is to be conducted.
 - b. The remediation method or methods to be employed.
 - c. The resources that the prospective developer will make available.
 - d. A schedule of remediation activities.
 - e. Applicable remediation standards.
 - f. A schedule and the method or methods for evaluating the remediation.
- (2) Any land-use restrictions that will apply to the brownfields property.
- (3) The desired results of any remediation or land-use restrictions with respect to the brownfields property.
- (4) The guidelines, including parameters, principles, and policies within which the desired results are to be accomplished.
- (5) The consequences of achieving or not achieving the desired results.

(d) Any failure of the prospective developer or the prospective developer's agents and employees to comply with the brownfields agreement constitutes a violation of this Part by the prospective developer. (1997-357, s. 2; 2001-384, s. 11.)