

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

H

1

HOUSE BILL 639

Short Title: Risk-Based Remediation Amends. (Public)

Sponsors: Representatives Millis and Adams (Primary Sponsors).

For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.

Referred to: Environment.

April 14, 2015

1 A BILL TO BE ENTITLED
2 AN ACT TO EXPAND THE USE OF RISK-BASED REMEDIATION TO ACCELERATE
3 THE CLEANUP OF CONTAMINATED SITES.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** Part 8 of Article 9 of Chapter 130A of the General Statutes reads as
6 rewritten:

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

8 "§ 130A-310.65. Definitions.

9 As used in this Part:

- 10 (1) "Adjacent property" means property that abuts the contaminated site that is
11 under separate ownership from the contaminated site.
- 12 (1a) "Background standard" means the naturally occurring concentration of a
13 substance in the absence of the release of a contaminant.
- 14 (2) Repealed by Session Laws 2014-122, s. 11(i), effective September 20, 2014.
- 15 (3) "Contaminant" means any substance regulated under any program listed in
16 G.S. 130A-310.67(a).
- 17 (3a) "Contaminated adjacent property" means adjacent property that is
18 contaminated as a result of migration of contaminants from the contaminated
19 site.
- 20 (4) "Contaminated ~~industrial~~-site" or "site" means any real property that ~~meets~~
21 ~~all of the following criteria:~~
- 22 a. ~~The property is contaminated and may be subject to remediation~~
23 ~~under any of the programs or requirements set out in~~
24 ~~G.S. 130A-310.67(a).~~
- 25 b. ~~The property is or has been used primarily for manufacturing or other~~
26 ~~industrial activities for the production of a commercial product. This~~
27 ~~includes a property used primarily for the generation of electricity.~~
- 28 c. ~~No contaminant associated with activities at the property is located~~
29 ~~off of the property at the time the remedial action plan is submitted.~~
- 30 d. ~~No contaminant associated with activities at the property will migrate~~
31 ~~to any adjacent properties above unrestricted use standards for the~~
32 ~~contaminant.~~
- 33 (5) "Contamination" means a contaminant released into an environmental
34 medium that has resulted in or has the potential to result in an increase in the



* H 6 3 9 - V - 1 *

1 concentration of the contaminant in the environmental medium in excess of
2 unrestricted use standards.

3 (6) "Fund" means the ~~Inactive Hazardous Sites Cleanup Risk-Based~~
4 ~~Remediation~~ Fund established pursuant to
5 ~~G.S. 130A-310.11~~ G.S. 130A-310.76.

6 (7) "Institutional controls" means nonengineered measures used to prevent
7 unsafe exposure to contamination, such as land-use restrictions.

8 (8) "Registered environmental consultant" means an environmental consulting
9 or engineering firm approved to implement and oversee voluntary remedial
10 actions pursuant to Part 3 of Article 9 of Chapter 130A of the General
11 Statutes and rules adopted to implement the Part.

12 (9) "Remedial action plan" means a plan for eliminating or reducing
13 contamination or exposure to contamination.

14 (10) "Remediation" means all actions that are necessary or appropriate to clean
15 up, mitigate, correct, abate, minimize, eliminate, control, or prevent the
16 spreading, migration, leaking, leaching, volatilization, spilling, transport, or
17 further release of a contaminant into the environment in order to protect
18 public health, safety, or welfare or the environment.

19 (11) "Systemic toxicant" means any substance that may enter the body and have a
20 harmful effect other than causing cancer.

21 (12) "Unrestricted use standards" means contaminant concentrations for each
22 environmental medium that are acceptable for all uses; that are protective of
23 public health, safety, and welfare and the environment; and that comply with
24 generally applicable standards, guidance, or methods established by statute
25 or adopted, published, or implemented by the Commission or the
26 Department.

27 **"§ 130A-310.66. Purpose.**

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

33 **"§ 130A-310.67. Applicability.**

34 (a) This Part applies to contaminated ~~industrial~~-sites subject to remediation pursuant to
35 any of the following programs or requirements:

36 (1) The Inactive Hazardous Sites Response Act of 1987 under Part 3 of Article 9
37 of Chapter 130A of the General Statutes, including voluntary actions under
38 G.S. 130A-310.9 of that act, and rules promulgated pursuant to those
39 statutes.

40 (2) The hazardous waste management program administered by the State
41 pursuant to the federal Resource Conservation and Recovery Act of 1976,
42 Public Law 94-580, 90 Stat. 2795, 42 U.S.C. § 6901, et seq., as amended,
43 and Article 9 of Chapter 130A of the General Statutes.

44 (3) The solid waste management program administered pursuant to Article 9 of
45 Chapter 130A of the General Statutes.

46 (4) The federal Superfund program administered in part by the State pursuant to
47 the Comprehensive Environmental Response, Compensation, and Liability
48 Act of 1980, Public Law 96-510, 94 Stat. 2767, 42 U.S.C. § 9601, et seq., as
49 amended, the Superfund Amendments and Reauthorization Act of 1986,
50 Public Law 99-499, 100 Stat. 1613, as amended, and under Part 4 of Article
51 9 of Chapter 130A of the General Statutes.

- 1 (5) The groundwater protection corrective action requirements adopted by the
2 Commission pursuant to Article 21 of Chapter 143 of the General Statutes.
- 3 (6) Oil Pollution and Hazardous Substances Control Act of 1978, Parts 1 and 2
4 of Article 21A of Chapter 143 of the General Statutes.
- 5 (b) This Part shall not apply to contaminated ~~industrial~~-sites subject to remediation
6 pursuant to any of the following programs or requirements:
- 7 (1) The Leaking Petroleum Underground Storage Tank Cleanup program under
8 Part 2A of Article 21A of Chapter 143 of the General Statutes and rules
9 promulgated pursuant to that statute.
- 10 (1a) Leaking petroleum aboveground storage tanks and other sources of
11 petroleum releases governed by Part 7 of Article 21A of Chapter 143 of the
12 General Statutes and rules promulgated pursuant to that Part.
- 13 (2) The Dry-Cleaning Solvent Cleanup program under Part 6 of Article 21A of
14 Chapter 143 of the General Statutes and rules promulgated pursuant to that
15 statute.
- 16 (3) The pre-1983 landfill assessment and remediation program established under
17 G.S. 130A-310.6(c) through (g).
- 18 (4) The Coal Ash Management Act of 2014 under Part 2I of Article 9 of Chapter
19 130A of the General Statutes and rules promulgated pursuant to that Part.
- 20 (e) ~~This Part shall apply only to sites where a discharge, spill, or release of~~
21 ~~contamination has been reported to the Department prior to March 1, 2011.~~

22 **"§ 130A-310.68. Remediation standards.**

- 23 (a) When conducting remediation activities pursuant to this Part, a person who proposes
24 to or is required to respond to the release of a contaminant at a contaminated ~~industrial~~-site
25 shall comply with one of the following standards:
- 26 (1) The unrestricted use standards applicable to each affected medium.
- 27 (2) The background standard, if the background standard exceeds the
28 unrestricted use standards.
- 29 (3) A site-specific remediation standard developed in accordance with
30 subsection (b) of this section that is approved by the Department.
- 31 (4) Any combination of remediation standards described in this subsection that
32 is approved by the Department.
- 33 (b) Site-specific remediation standards shall be developed for each medium as provided
34 in this subsection to achieve remediation that eliminates or reduces to protective levels any
35 substantial present or probable future risk to human health, including sensitive subgroups, and
36 the environment based upon the present or currently planned future use of the property
37 comprising the site. Site-specific remediation standards shall be developed in accordance with
38 all of the following:
- 39 (1) Remediation methods and technologies that result in emissions of air
40 pollutants shall comply with applicable air quality standards adopted by the
41 Commission.
- 42 (2) The site-specific remediation standard for surface waters shall be the water
43 quality standards adopted by the Commission.
- 44 (3) The current and probable future use of groundwater shall be identified and
45 protected. Site-specific sources of contaminants and potential receptors shall
46 be identified. Potential receptors must be protected, controlled, or eliminated
47 whether the receptors are located on or off the site where the source of
48 contamination is located. Natural environmental conditions affecting the fate
49 and transport of contaminants, such as natural attenuation, shall be
50 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 remedial action plan was modified to address comments received
25 in 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~~ standards, except as may remain pursuant
41 to a cleanup conducted pursuant to G.S. 130A-310.73A(a)(2).

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

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

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

49 (6) Establish, for each contaminant, the maximum allowable quantity,
50 concentration, range, or other measures of contamination that will remain at

1 the contaminated site at the conclusion of the contaminant-reduction phase
2 of the remediation.

3 (7) Consider the technical performance, effectiveness, and reliability of the
4 proposed remedial action plan in attaining and maintaining compliance with
5 applicable remediation standards.

6 (8) Consider the ability of the person who proposes to remediate the site to
7 implement the proposed remedial action plan within a reasonable time and
8 without jeopardizing public health, safety, or welfare or the environment.

9 (9) Determine whether the proposed remedial action plan adequately provides
10 for the imposition and maintenance of engineering and institutional controls
11 and for sampling, monitoring, and reporting requirements necessary to
12 protect public health, safety, and welfare and the environment. In making
13 this determination, the Department may consider, in lieu of land-use
14 restrictions authorized under G.S. 130A-310.69, reliance on other State or
15 local land-use controls. Any land-use controls implemented shall adequately
16 protect public health, safety, and welfare and the environment, and provide
17 adequate notice to current and future property owners of any residual
18 contamination and the land-use controls in place.

19 (10) Approve the circumstances under which no further remediation is required.

20 (b) The person who proposes a remedial action plan has the burden of demonstrating
21 with reasonable assurance that contamination from the site will not migrate to adjacent property
22 above unrestricted use ~~levels~~ levels, except as may remain pursuant to a cleanup conducted
23 pursuant to G.S. 130A-310.73A(a)(2), and that the remedial action plan is protective of public
24 health, safety, and welfare and the environment by virtue of its compliance with this Part. The
25 demonstration shall (i) take into account actions proposed in the remedial action plan that will
26 prevent contamination from migrating off the site; and (ii) use scientifically valid site-specific
27 data.

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

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

42 **"§ 130A-310.72. Financial assurance requirement.**

43 The person conducting remediation of a contaminated ~~industrial~~ site pursuant to the
44 provisions of this Part shall establish financial assurance that will ensure that sufficient funds
45 are available to implement and maintain the actions or controls specified in the remedial action
46 plan for the site. The person conducting remediation of a site may establish financial assurance
47 through one of the following mechanisms, or any combination of the following mechanisms, in
48 a form specified or approved by the Department: insurance products issued from entities having
49 no corporate or ownership association with the person conducting the remediation; funded
50 trusts; surety bonds; certificates of deposit; letters of credit; corporate financial tests; local
51 government financial tests; corporate guarantees; local government guarantees; capital reserve

1 funds; or any other financial mechanism authorized for the demonstration of financial
2 assurance under (i) 40 Code of Federal Regulations Part 264, Subpart H (July 1, 2010 Edition)
3 and (ii) Section .1600 of Subchapter B of Chapter 13 of Title 15A of the North Carolina
4 Administrative Code. Proof of financial assurance shall be provided in the remedial action plan
5 and annually thereafter on the anniversary date of the approval of the plan.

6 **"§ 130A-310.73. Attainment of the remediation standards.**

7 (a) Compliance with the approved remediation standards is attained for a site or portion
8 of a site when a remedial action plan approved by the Department has been implemented and
9 applicable soil, groundwater, surface water, and air emission standards have been attained. The
10 remediation standards may be attained through a combination of remediation activities that can
11 include treatment, removal, engineering, or institutional controls, except that the person
12 conducting the remediation may not demonstrate attainment of ~~an unrestricted use~~ a remediation
13 standard or a background standard through the use of institutional controls ~~alone that result in~~
14 an incompatible use of the property relative to surrounding land uses. When the remedial action
15 plan has been fully implemented, the person conducting the remediation shall submit a final
16 report to the Department, with notice to all local governments with taxing and land-use
17 jurisdiction over the site, that demonstrates that the remedial action plan has been fully
18 implemented, that any land-use restrictions have been certified on an annual basis, and that the
19 remediation standards have been attained. The final report shall be accompanied by a request
20 that the Department issue a determination that no further remediation beyond that specified in
21 the approved remedial action plan is required.

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

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

- 34 (1) Monitoring, testing, or analysis of the site subsequent to the issuance of the
35 no further action determination indicates that the remediation standards and
36 objectives were not achieved or are not being maintained.
- 37 (2) One or more of the conditions, restrictions, or limitations imposed on the site
38 as part of the remediation have been violated.
- 39 (3) Site monitoring or operation and maintenance activities that are required as
40 part of the remedial action plan or no further action determination for the site
41 are not adequately funded or are not adequately implemented.
- 42 (4) A contaminant or hazardous substance release is discovered at the site that
43 was not the subject of the remedial investigation report or the remedial
44 action plan.
- 45 (5) A material change in the facts known to the Department at the time the
46 written no further action determination was issued, or new facts, cause the
47 Department to find that further assessment or remediation is necessary to
48 prevent a significant risk to human health and safety or to the environment.
- 49 (6) The no further action determination was based on fraud, misrepresentation,
50 or intentional nondisclosure of information by the person conducting the
51 ~~remediation~~ remediation, or that person's agents, contractors, or affiliates.

1 (7) Installation or use of wells would induce the flow of contaminated
2 groundwater off the ~~site~~contaminated site, as defined in the remedial action
3 plan.

4 (d) The Department shall issue a final decision on a request for a determination that
5 remediation has been completed to approved standards and that no further remediation beyond
6 that specified in the approved remedial action plan is required within 180 days after receipt of a
7 complete final report. Failure of the Department to issue a final decision on a no further
8 remediation determination within 180 days after receipt of a complete final report and request
9 for a determination of no further remediation may be treated as a denial of the request for a no
10 further remediation determination. The responsible person may seek review of a denial of a
11 request for a release from further remediation as provided in Article 3 of Chapter 150B of the
12 General Statutes.

13 **"§ 130A-310.73A. Remediation of sites with off-site migration of contaminants.**

14 (a) Contaminated sites at which contamination has migrated to adjacent properties may
15 be remediated pursuant to this Part, if either of the following occur:

16 (1) The person who proposes to conduct the remediation pursuant to this Part
17 remediates the contaminated adjacent property to unrestricted use standards.

18 (2) The person who proposes to conduct the remediation pursuant to this Part (i)
19 provides the owner of the contaminated adjacent property with a copy of this
20 Part and the publication produced by the Department pursuant to subsection
21 (b) of this section and (ii) obtains written consent from the owner of the
22 contaminated adjacent property for the person to remediate the contaminated
23 adjacent property using site-specific remediation standards pursuant to this
24 Part. Written consent from the owner of the adjacent property shall be on a
25 form prescribed by the Department and include an affirmation that the owner
26 has received and read the publication and authorizes the person to remediate
27 the owner's property using site-specific remediation standards pursuant to
28 this Part.

29 (b) In order to inform owners of contaminated adjacent property of the issues and
30 liabilities associated with the contamination on their property, the Department, in consultation
31 with the Consumer Protection Division of the North Carolina Department of Justice and the
32 North Carolina Real Estate Commission, shall develop and make available a publication
33 entitled "Contaminated Property: Issues and Liabilities" to provide information on the nature of
34 risk-based remediation and how it differs from remediation to unrestricted use standards,
35 potential health impacts that may arise from residual contamination, as well as identification of
36 liabilities that arise from contaminated property and associated issues, including potential
37 impacts to real estate transactions and real estate financing. The Department shall update the
38 publication as necessary.

39 (c) If, after issuance of a no further action determination, the Department determines
40 that additional remedial action is required for a contaminated adjacent property pursuant to
41 G.S. 130A-310.73(c), the responsible party shall be liable for the additional remediation
42 deemed necessary.

43 (d) Nothing in this section shall be construed to preclude or impair any person from
44 obtaining any and all other remedies allowed by law.

45 **"§ 130A-310.74. Compliance with other laws.**

46 Where a site is covered by an agreement under the Brownfields Property Reuse Act of
47 1997, as codified as Part 5 of Article 9 of Chapter 130A of the General Statutes, any work
48 performed by the prospective developer pursuant to that agreement is not required to comply
49 with this Part, but any work not covered by such agreement and performed at the site by
50 another person not a party to that agreement may be performed pursuant to this Part.

51 **"§ 130A-310.75. Use of registered environmental consultants.**

1 The Department may approve the use of a registered environmental consultant to provide
2 oversight for the assessment and remediation of a site under this ~~Part~~Part based on the risk
3 posed by the site and the availability of Department staff for oversight of remediation activities.
4 If remediation under this Part is not undertaken voluntarily, the Department may not require the
5 use of a registered environmental consultant to provide oversight for the assessment and
6 remediation of a site under this Part.

7 **"§ 130A-310.76. Fees; permissible uses of fees.**

8 (a) There is established under the control and direction of the Department the
9 Risk-Based Remediation Fund. This fund shall be a revolving fund consisting of fees collected
10 pursuant to subsection (b) of this section and other monies paid to it or recovered by or on
11 behalf of the Department. The Risk-Based Remediation Fund shall be treated as a nonreverting
12 special trust fund pursuant to G.S. 147-69.2 and G.S. 147-69.3, except that interest and other
13 income received on the Fund balance shall be treated as set forth in G.S. 147-69.1(d).

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

22 ~~(b)(c)~~ Funds collected pursuant to subsection ~~(a)~~(b) of this section may be used only for
23 the following purposes:

- 24 (1) To pay for administrative and operating expenses necessary to implement
25 this ~~Part~~Part, including the full cost of the Department's activities associated
26 with any human health or ecological risk assessments, groundwater
27 modeling, financial assurance matters, or community outreach.
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 (d) The Department shall report to the Joint Legislative Commission on Governmental
31 Operations, the Environmental Review Commission, and the Fiscal Research Division on or
32 before October 1 of each year on the amounts and sources of funds collected by year received
33 pursuant to this Part, the amounts and sources of those funds paid into the Risk-Based
34 Remediation Fund established pursuant to this section, the number of acres of contamination
35 for which funds have been received pursuant to subsection (b) of this section, and a detailed
36 annual accounting of how the funds collected pursuant to this Part have been utilized by the
37 Department to advance the purposes of this Part.

38 **"§ 130A-310.77. Construction of Part.**

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

- 40 (1) In any manner that would jeopardize federal authorization under any of the
41 federal statutes, programs, or requirements set out in G.S. 130A-310.67(a) or
42 would otherwise conflict with federal authority under those statutes,
43 programs, and requirements. This Part is supplemental to the programs and
44 requirements set out in G.S. 130A-310.67(a) that would otherwise govern
45 the remediation of a contaminated ~~industrial~~-site. Where the definitions,
46 provisions, or requirements of this Part conflict with the definitions,
47 provisions, or requirements of an otherwise applicable remediation program,
48 this Part shall control, unless expressly stated to the contrary.
49 (2) To limit the authority of the Department to require investigation, initial
50 response, or remediation of environmental contamination under any other

1 provision of State or federal law necessary to address an imminent threat to
2 public health, safety, or welfare or the environment.

3 (3) To alter the requirements of programs to prevent or mitigate the release or
4 discharge of contaminants to the environment, including permitting
5 requirements that regulate the handling of hazardous substances or wastes.

6 (4) To supersede or otherwise affect or prevent the enforcement of any land-use
7 or development regulation or ordinance adopted by a municipality pursuant
8 to Article 19 of Chapter 160A of the General Statutes or adopted by a county
9 pursuant to Article 18 of Chapter 153A of the General Statutes. The use of a
10 site and any land-use restrictions imposed as part of a remedial action plan
11 shall comply with land-use and development controls adopted by a
12 municipality pursuant to Article 19 of Chapter 160A of the General Statutes
13 or adopted by a county pursuant to Article 18 of Chapter 153A of the
14 General Statutes."

15 **SECTION 2.** Article 21A of Chapter 143 of the General Statutes is amended by
16 adding a new Part to read:

17 "Part 7. Risk-Based Remediation for Petroleum Releases from Aboveground Storage Tanks
18 and Other Sources.

19 **"§ 143-215.104AA. Standards for petroleum releases from aboveground storage tanks**
20 **and other sources.**

21 (a) Legislative Findings and Intent. -

22 (1) The General Assembly finds the following:

23 a. Risk-based corrective action gives the State flexibility in requiring
24 different levels of cleanup based on scientific analysis of different
25 site characteristics, and allowing no action or no further action at
26 sites that pose little risk to human health or the environment.

27 b. A risk-based approach to the cleanup of environmental damage can
28 adequately protect human health and the environment while
29 preventing excessive or unproductive cleanup efforts, thereby
30 assuring that limited resources are directed toward those sites that
31 pose the greatest risk to human health and the environment.

32 c. Risk-based corrective action has successfully been used to clean up
33 contamination from petroleum underground storage tanks, as well as
34 contamination at sites governed by other environmental programs.

35 (2) The General Assembly intends the following:

36 a. To direct the Commission to adopt rules that will provide for
37 risk-based assessment and cleanup of discharges and releases of
38 petroleum from aboveground storage tanks and other sources. These
39 rules are intended to combine groundwater standards that protect
40 current and potential future uses of groundwater with risk-based
41 analysis to determine the appropriate cleanup levels and actions.

42 b. That these rules apply to all discharges or releases that are reported
43 on or after the date the rules become effective in order to ascertain
44 whether cleanup is necessary, and if so, the appropriate level of
45 cleanup.

46 c. That these rules may be applied to any discharge or release that has
47 been reported at the time the rules become effective at the discretion
48 of the Commission.

49 d. That these rules, and decisions of the Commission and the
50 Department in implementing these rules, facilitate the completion of
51 more cleanups in a shorter period of time.

1 **(b)** The Commission shall adopt rules to establish a risk-based approach for the cleanup
2 of discharges and releases of petroleum from aboveground storage tanks and other sources. At
3 a minimum, the rules shall address all of the following:

4 **(1)** The circumstances where site-specific information should be considered.

5 **(2)** Criteria for determining acceptable cleanup levels.

6 **(3)** The acceptable level or range of levels of risk to human health and the
7 environment. Rules that use the distance between a source area of a
8 confirmed discharge or release to a water supply well or a private drinking
9 water well, as those terms are defined under G.S. 87-85, shall include a
10 determination whether a nearby well is likely to be affected by the discharge
11 or release as a factor in determining levels of risk.

12 **(4)** Remediation standards and processes.

13 **(5)** Requirements for financial assurance, where the Commission deems it
14 necessary.

15 **(6)** Appropriate fees to be applied to persons who undertake remediation of
16 environmental contamination under site-specific remediation pursuant to this
17 Part, to pay for administrative and operating expenses necessary to
18 implement this Part and rules adopted to implement this Part.

19 **(c)** The Commission may require an owner, operator, or landowner to provide
20 information necessary to determine the degree of risk to human health and the environment that
21 is posed by a discharge or release of petroleum from an aboveground storage tank, or other
22 source, and to identify the most cost-effective cleanup that addresses imminent threats to
23 human health and the environment.

24 **(d)** If the Commission concludes that a discharge or release poses a degree of risk to
25 human health or the environment that is no greater than the acceptable level of risk established
26 by the Commission, the Commission shall notify an owner, operator, or landowner who
27 provides the information required by subsection (c) of this section that no cleanup, further
28 cleanup, or further action will be required unless the Commission later determines that the
29 discharge or release poses an unacceptable level of risk or a potentially unacceptable level of
30 risk to human health or the environment. If the Commission concludes that a discharge or
31 release poses a degree of risk to human health or the environment that requires further cleanup,
32 the Commission shall notify the owner, operator, or landowner who provides the information
33 required by subsection (c) of this section of the cleanup method approved by the Commission.
34 This section shall not be construed to prohibit an owner, operator, or landowner from selecting
35 a cleanup method other than the cleanup method approved by the Commission so long as the
36 Commission determines that the alternative cleanup method will address imminent threats to
37 human health and the environment.

38 **(e)** Remediation of sites with off-site migration shall be subject to the following
39 provisions:

40 **(1)** Contaminated sites at which contamination has migrated to adjacent
41 properties may be remediated pursuant to this Part, if either of the following
42 occur:

43 **a.** The person who proposes to conduct the remediation pursuant to this
44 Part remediates the contaminated adjacent property to unrestricted
45 use standards.

46 **b.** The person who proposes to conduct the remediation pursuant to this
47 Part (i) provides the owner of the contaminated adjacent property
48 with a copy of this Part and the publication produced by the
49 Department pursuant to subdivision (2) of this subsection and (ii)
50 obtains written consent from the owner of the contaminated adjacent
51 property for the person to remediate the contaminated adjacent

1 property using site-specific remediation standards pursuant to this
2 Part. Written consent from the owner of the adjacent property shall
3 be on a form prescribed by the Department and include an
4 affirmation that the owner has received and read the publication and
5 authorizes the person to remediate the owner's property using
6 site-specific remediation standards pursuant to this Part.

7 (2) In order to inform owners of contaminated adjacent property of the issues
8 and liabilities associated with the contamination on their property, the
9 Department, in consultation with the Consumer Protection Division of the
10 North Carolina Department of Justice and the North Carolina Real Estate
11 Commission, shall develop and make available a publication entitled
12 "Contaminated Property: Issues and Liabilities" to provide information on
13 the nature of risk-based remediation and how it differs from remediation to
14 unrestricted use standards, potential health impacts that may arise from
15 residual contamination, as well as identification of liabilities that arise from
16 contaminated property and associated issues, including potential impacts to
17 real estate transactions and real estate financing. The Department shall
18 update the publication as necessary.

19 (3) If, after issuance of a no further action determination, the Department
20 determines that additional remedial action is required for a contaminated
21 adjacent property pursuant to G.S. 130A-310.73(c), the responsible party
22 shall be liable for the additional remediation deemed necessary.

23 (4) Nothing in this subsection shall be construed to preclude or impair any
24 person from obtaining any and all other remedies allowed by law.

25 (f) This section shall not be construed to limit the authority of the Commission to
26 require investigation, initial response, and abatement of a discharge or release pending a
27 determination by the Commission under subsection (d) of this section as to whether cleanup,
28 further cleanup, or further action will be required.

29 (g) This section shall apply to discharges of petroleum from aboveground storage tanks
30 and other sources not otherwise governed by the provisions of G.S. 143-215.94V."

31 **SECTION 3.** G.S. 130A-310.10(a)(8a) is repealed.

32 **SECTION 4.** This act is effective when it becomes law.