



1 administered by the State pursuant to the federal Resource Conservation and Recovery Act of  
2 1976; the Leaking Petroleum Underground Storage Tank Cleanup Act of 1988; the Brownfields  
3 Property Reuse Act of 1997; the Dry-Cleaning Solvent Cleanup Act of 1997; the federal  
4 Superfund program administered in part by the State pursuant to the Comprehensive  
5 Environmental Response, Compensation, and Liability Act of 1980 and the Superfund  
6 Amendments and Reauthorization Act of 1986; and the groundwater protection rules adopted  
7 by the Environmental Management Commission; and

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

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

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

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

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

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

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

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

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

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

40         "§ 130A-310.65. Definitions.

41                 As used in this Part:

- 42                 (1)         "Background standard" means the naturally occurring concentration of a  
43                                 substance in the absence of the release of a contaminant.  
44                 (2)         "Commission" means the Environmental Management Commission created  
45                                 pursuant to G.S. 143B-282.  
46                 (3)         "Contaminant" means any substance regulated under any program listed in  
47                                 G.S. 130A-310.67(a).  
48                 (4)         "Contaminated industrial site" or "site" means any real property that meets  
49                                 all of the following criteria:

- 1           a.     The property is contaminated and may be subject to remediation  
2                 under any of the programs or requirements set out in  
3                 G.S. 130A-310.67(a).  
4           b.     The property is or has been used primarily for manufacturing or other  
5                 industrial activities for the production of a commercial product. This  
6                 includes a property used primarily for the generation of electricity.  
7           c.     No contaminant associated with activities at the property is located  
8                 off of the property at the time the remedial action plan is submitted.  
9           d.     No contaminant associated with activities at the property will migrate  
10                to any adjacent properties above unrestricted use standards for the  
11                contaminant.

12           (5)   "Contamination" means a contaminant released into an environmental  
13                medium that has resulted in or has the potential to result in an increase in the  
14                concentration of the contaminant in the environmental medium in excess of  
15                unrestricted use standards.

16           (6)   "Fund" means the Inactive Hazardous Sites Cleanup Fund established  
17                pursuant to G.S. 130A-310.11.

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

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

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

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

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

33           (12)  "Unrestricted use standards" means contaminant concentrations for each  
34                environmental medium that are acceptable for all uses; that are protective of  
35                public health, safety, and welfare and the environment; and that comply with  
36                generally applicable standards, guidance, or methods established by statute  
37                or adopted, published, or implemented by the Commission, the Commission  
38                for Public Health, or the Department.

39    **"§ 130A-310.66. Purpose.**

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

45    **"§ 130A-310.67. Applicability.**

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

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

- 1           (2)   The hazardous waste management program administered by the State  
2           pursuant to the federal Resource Conservation and Recovery Act of 1976,  
3           Public Law 94-580, 90 Stat. 2795, 42 U.S.C. § 6901, et seq., as amended,  
4           and Article 9 of Chapter 130A of the General Statutes.
- 5           (3)   The solid waste management program administered pursuant to Article 9 of  
6           Chapter 130A of the General Statutes.
- 7           (4)   The federal Superfund program administered in part by the State pursuant to  
8           the Comprehensive Environmental Response, Compensation, and Liability  
9           Act of 1980, Public Law 96-510, 94 Stat. 2767, 42 U.S.C. § 9601, et seq., as  
10           amended, the Superfund Amendments and Reauthorization Act of 1986,  
11           Public Law 99-499, 100 Stat. 1613, as amended, and under Part 4 of Article  
12           9 of Chapter 130A of the General Statutes.
- 13           (5)   The groundwater protection corrective action requirements adopted by the  
14           Commission pursuant to Article 21 of Chapter 143 of the General Statutes.
- 15           (6)   Oil Pollution and Hazardous Substances Control Act of 1978, Parts 1 and 2  
16           of Article 21A of Chapter 143 of the General Statutes.
- 17       (b)   This Part shall not apply to contaminated industrial sites subject to remediation  
18       pursuant to any of the following programs or requirements:
- 19           (1)   The Leaking Petroleum Underground Storage Tank Cleanup program under  
20           Part 2A of Article 21A of Chapter 143 of the General Statutes and rules  
21           promulgated pursuant to that statute.
- 22           (2)   The Dry-Cleaning Solvent Cleanup program under Part 6 of Article 21A of  
23           Chapter 143 of the General Statutes and rules promulgated pursuant to that  
24           statute.
- 25           (3)   The pre-1983 landfill assessment and remediation program established under  
26           G.S. 130A-310.6(c) through (g).
- 27       (c)   This Part shall apply only to sites where a discharge, spill, or release of  
28       contamination has been reported to the Department prior to March 1, 2011.
- 29       **§ 130A-310.68. Remediation standards.**
- 30       (a)   When conducting remediation activities pursuant to this Part, a person who proposes  
31       to or is required to respond to the release of a contaminant at a contaminated industrial site  
32       shall comply with one of the following standards:
- 33           (1)   The unrestricted use standards applicable to each affected medium.
- 34           (2)   The background standard, if the background standard exceeds the  
35           unrestricted use standards.
- 36           (3)   A site-specific remediation standard developed in accordance with  
37           subsection (b) of this section that is approved by the Department.
- 38           (4)   Any combination of remediation standards described in this subsection that  
39           is approved by the Department.
- 40       (b)   Site-specific remediation standards shall be developed for each medium as provided  
41       in this subsection to achieve remediation that eliminates or reduces to protective levels any  
42       substantial present or probable future risk to human health, including sensitive subgroups, and  
43       the environment based upon the present or currently planned future use of the property  
44       comprising the site. Site-specific remediation standards shall be developed in accordance with  
45       all of the following:
- 46           (1)   Remediation methods and technologies that result in emissions of air  
47           pollutants shall comply with applicable air quality standards adopted by the  
48           Commission.
- 49           (2)   The site-specific remediation standard for surface waters shall be the water  
50           quality standards adopted by the Commission.

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

1           (11) The site-specific remediation standards for each medium shall be adequate to  
2           avoid foreseeable adverse effects to other media or the environment that are  
3           inconsistent with the risk-based approach under this Part.

4 **"§ 130A-310.69. Remedial investigation report; remedial action plans.**

5           (a) A person who proposes to conduct remediation pursuant to this Part shall submit a  
6 remedial investigation report to the Department prior to submitting a remedial action plan. The  
7 remedial investigation report shall include, but is not limited to, a legal description of the  
8 location of the site; a map showing the location of the site; a description of the contaminants  
9 involved and their concentration in the media of the site; a narrative description of the  
10 methodology used in the investigation; a description of all on-site releases of contamination; a  
11 site map, drawn to scale, showing benchmarks, directional arrow, location of property  
12 boundaries, buildings, structures, all perennial and nonperennial surface water features,  
13 drainage ditches, dense vegetation, contaminant spill or disposal areas, underground utilities,  
14 storage vessels, and existing on-site wells; identification of adjacent property owners and  
15 adjacent land uses; description of local geologic and hydrologic conditions; an evaluation of the  
16 site and adjacent properties for the existence of environmentally sensitive areas; a description  
17 of groundwater monitoring well design and installation procedures; a map, drawn to scale, that  
18 shows all groundwater sample locations; a description of field and laboratory quality control  
19 and quality assurance procedures followed during the remedial investigation; a description of  
20 methods used to manage investigation-derived wastes; tabulation of analytical results for all  
21 sampling; copies of all laboratory reports; a description of procedures and the results of any  
22 special assessments; and any other information required by the Department or considered  
23 relevant by the investigator. The remedial investigation shall assess all contaminated areas of  
24 the site, including types and levels of contamination, and the risk that the contamination poses  
25 to public health, safety, and welfare and to the environment.

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

30           (1) Identify actions required to remove, treat, or otherwise appropriately  
31 mitigate or isolate the source of contamination to ensure that the source will  
32 not cause unrestricted use standards to be exceeded in any medium.

33           (2) Address contamination that moves from one medium to another in order to  
34 prevent a violation of the remediation standards established under  
35 G.S. 130A-310.68. A more stringent remediation standard may be required  
36 for a particular medium to control impact on other media.

37           (3) Identify the current and anticipated future uses of property comprising the  
38 contaminated site and address any concerns raised in public comment on the  
39 proposed remedial action plan as to the proposed future uses of the property.

40           (4) Identify the current and anticipated future uses of groundwater in the  
41 contaminated site and address any concerns raised in public comment on the  
42 proposed remedial action plan as to the future uses of groundwater.

43           (5) Determine the appropriate method of remediation to achieve the site-specific  
44 remediation standards.

45           (6) Specify any measures that may be necessary to prevent adverse effects to the  
46 environment that may occur at levels of contamination that are lower than  
47 the standard necessary to protect human health.

48           (7) Specify any measures that may be necessary to prevent any discharge into  
49 surface waters during implementation of the remedial action plan that  
50 violates applicable surface water quality standards adopted by the  
51 Commission.

- 1           (8)   Specify any measures that may be necessary to prevent any air emission  
2           during implementation of the remedial action plan that violates applicable air  
3           quality standards adopted by the Commission.
- 4           (9)   Provide for attainment and maintenance of the remediation standards  
5           established under G.S. 130A-310.68.
- 6           (10) Provide for methods and procedures to verify that the quantity,  
7           concentration, range, or other measure of each contaminant remaining at the  
8           contaminated site at the conclusion of the contaminant-reduction phase of  
9           remediation meets the remediation standards established for the site, that an  
10          acceptable level of risk has been achieved, and that no further remediation is  
11          required.
- 12          (11) Provide for the imposition and recordation of land-use restrictions as  
13          provided in G.S. 143B-279.9, 143B-279.10, 130A-310.3(f), 130A-310.8,  
14          130A-310.35, 143-215.84(f), and 143-215.85A if the remedial action plan  
15          allows contamination in excess of the greater of unrestricted use standards or  
16          background standards to remain on any real property or in groundwater that  
17          underlies any real property.
- 18          (12) Provide for submission of an annual certification to the Department by the  
19          property owner that land use at the site is in compliance with land-use  
20          restrictions recorded pursuant to this Part and that the land-use restrictions  
21          are still properly recorded in the chain of title for the property.
- 22          (13) Provide a detailed description of the proposed remedial action to be taken;  
23          the results of any treatability studies and additional site characterization  
24          needed to support the proposed remedial action; plans for postremedial and  
25          confirmatory sampling; a project schedule; a schedule for progress reports to  
26          the Department; and any other information required by the Department or  
27          considered relevant by the person who submits the proposed remedial action  
28          plan.
- 29          (14) Provide a description of measures that will be employed to ensure that the  
30          safety and health of persons on properties in the vicinity of the site and  
31          persons visiting or doing business on the site will not be adversely affected  
32          by any remediation activity.
- 33          (15) Provide a reasonable estimate of the probable cost of the remedial action  
34          sufficient for the Department to determine an acceptable level of financial  
35          assurance.
- 36          (16) Provide proof of financial assurance as required by G.S. 130A-310.72.
- 37          (c)   A remedial action plan shall also include an analysis of each of the following  
38          factors:
- 39                  (1)   Long-term risks and effectiveness of the proposed remediation, including an  
40                  evaluation of all of the following:
- 41                          a.   The magnitude of risks remaining after completion of the  
42                          remediation.
- 43                          b.   The type, degree, frequency, and duration of any postremediation  
44                          activity that may be required, including, but not limited to, operation  
45                          and maintenance, monitoring, inspection, reports, and other activities  
46                          necessary to protect public health, safety, and welfare and the  
47                          environment.
- 48                          c.   Potential for exposure of human and environmental receptors to  
49                          contaminants remaining at the site.

1           d.     Long-term reliability of any engineering and voluntary institutional  
2                 controls, including repair, maintenance, or replacement of  
3                 components.

4           e.     Time required to achieve remediation standards.

5           (2)    Toxicity, mobility, and volume of contaminants, including the amount of  
6                 contaminants that will be removed, contained, treated, or destroyed; the  
7                 degree of expected reduction in toxicity, mobility, and volume; and the type,  
8                 quantity, toxicity, and mobility of contaminants that will remain after  
9                 implementation of the remedial action plan.

10          (3)    Short-term risks and effectiveness of the remediation, including the  
11                 short-term risks that may be posed to the community, workers, or the  
12                 environment during implementation of the remedial action plan, and the  
13                 effectiveness and reliability of protective measures to address short-term  
14                 risks.

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

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

23          **"§ 130A-310.70. Notice of intent to remediate.**

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

35          **"§ 130A-310.71. Review and approval of proposed remedial action plans.**

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

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

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

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

- 1           (4) Determine whether the proposed remedial action plan meets the  
2 requirements of any other applicable remediation program except those  
3 pertaining to remediation standards.
- 4           (5) Establish the acceptable level or range of levels of risk to public health,  
5 safety, and welfare and to the environment.
- 6           (6) Establish, for each contaminant, the maximum allowable quantity,  
7 concentration, range, or other measures of contamination that will remain at  
8 the contaminated site at the conclusion of the contaminant-reduction phase  
9 of the remediation.
- 10          (7) Consider the technical performance, effectiveness, and reliability of the  
11 proposed remedial action plan in attaining and maintaining compliance with  
12 applicable remediation standards.
- 13          (8) Consider the ability of the person who proposes to remediate the site to  
14 implement the proposed remedial action plan within a reasonable time and  
15 without jeopardizing public health, safety, or welfare or the environment.
- 16          (9) Determine whether the proposed remedial action plan adequately provides  
17 for the imposition and maintenance of engineering and institutional controls  
18 and for sampling, monitoring, and reporting requirements necessary to  
19 protect public health, safety, and welfare and the environment.
- 20          (10) Approve the circumstances under which no further remediation is required.

21          (b) The person who proposes a remedial action plan has the burden of demonstrating  
22 with reasonable assurance that contamination from the site will not migrate to adjacent property  
23 above unrestricted use levels and that the remedial action plan is protective of public health,  
24 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 standard or a  
13 background standard through the use of institutional controls alone. When the remedial action  
14 plan has been fully implemented, the person conducting the remediation shall submit a final  
15 report to the Department, with notice to all local governments with taxing and land-use  
16 jurisdiction over the site, that demonstrates that the remedial action plan has been fully  
17 implemented, that any land-use restrictions have been certified on an annual basis, and that the  
18 remediation standards have been attained. The final report shall be accompanied by a request  
19 that the Department issue a determination that no further remediation beyond that specified in  
20 the approved remedial action plan is required.

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

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

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

1           (7) Installation or use of wells would induce the flow of contaminated  
2           groundwater off the site.

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

12 **"§ 130A-310.74. Compliance with other laws.**

13           Where a site is covered by an agreement under the Brownfields Property Reuse Act of  
14 1997, as codified as Part 5 of Article 9 of Chapter 130A of the General Statutes, any work  
15 performed by the prospective developer pursuant to that agreement is not required to comply  
16 with this Part, but any work not covered by such agreement and performed at the site by  
17 another person not a party to that agreement may be performed pursuant to this Part.

18 **"§ 130A-310.75. Use of registered environmental consultants.**

19           The Department may approve the use of a registered environmental consultant to provide  
20 oversight for the assessment and remediation of a site under this Part. If remediation under this  
21 Part is not undertaken voluntarily, the Department may not require the use of a registered  
22 environmental consultant to provide oversight for the assessment and remediation of a site  
23 under this Part.

24 **"§ 130A-310.76. Fees; permissible uses of fees.**

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

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

35           (1) To pay for administrative and operating expenses necessary to implement  
36 this Part.

37           (2) To establish, administer, and maintain a system for the tracking of land-use  
38 restrictions recorded at sites that are remediated pursuant to this Part.

39 **"§ 130A-310.77. Construction of Part.**

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

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

50           (2) To limit the authority of the Department to require investigation, initial  
51 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 3.** G.S. 130A-310.78 through G.S. 130A-310.80 are reserved for future  
 16 codification purposes.

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

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

22 (1) The Inactive Hazardous Waste Sites Priority ~~List~~List.

23 (2) A list of remedial action plans requiring State funding through the Inactive  
 24 Hazardous Sites Cleanup ~~Fund~~Fund.

25 (3) A comprehensive budget to implement these remedial action plans and the  
 26 adequacy of the Inactive Hazardous Sites Cleanup Fund to fund the cost of  
 27 said ~~plans~~plans.

28 (4) A prioritized list of sites that are eligible for remedial action under  
 29 CERCLA/SARA together with recommended remedial action plans and a  
 30 comprehensive budget to implement such plans. The budget for  
 31 implementing a remedial action plan under CERCLA/SARA shall include a  
 32 statement as to any appropriation that may be necessary to pay the State's  
 33 share of such ~~plan~~plan.

34 (5) A list of sites and remedial action plans undergoing voluntary cleanup with  
 35 Departmental ~~approval~~approval.

36 (6) A list of sites and remedial action plans that may require State funding, a  
 37 comprehensive budget if implementation of these possible remedial action  
 38 plans is required, and the adequacy of the Inactive Hazardous Sites Cleanup  
 39 Fund to fund the possible costs of said ~~plans~~plans.

40 (7) A list of sites that pose an imminent ~~hazard~~hazard.

41 (8) A comprehensive budget to develop and implement remedial action plans for  
 42 sites that pose imminent hazards and that may require State funding, and the  
 43 adequacy of the Inactive Hazardous Sites Cleanup ~~Fund~~and Fund.

44 (8a) The amounts and sources of funds collected by year received under  
 45 G.S. 130A-310.76, the amounts and sources of those funds paid into the  
 46 Inactive Hazardous Sites Cleanup Fund established pursuant to  
 47 G.S. 130A-310.11, the number of acres of contamination for which funds  
 48 have been received pursuant to G.S. 130A-310.76, and a detailed annual  
 49 accounting of how the funds collected pursuant to G.S. 130A-310.76 have  
 50 been utilized by the Department to advance the purposes of Part 8 of Article  
 51 9 of Chapter 130A of the General Statutes.

1 (9) Any other information requested by the General Assembly or the  
2 Environmental Review Commission."

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

10 **SECTION 6.** G.S. 143-215.104M(f) reads as rewritten:

11 "**§ 143-215.104M. (Repealed effective January 1, 2012 – See notes) Notice of**  
12 **Dry-Cleaning Solvent Remediation; land-use restrictions in deeds.**

13 ...

14 (f) Enforcement. – Any restriction on the current or future use of property subject to a  
15 Notice of Dry-Cleaning Solvent Remediation filed pursuant to this section shall be enforced by  
16 any owner of the property or by any other potentially responsible party. Any land-use  
17 restriction may also be enforced by the Commission through the remedies provided in this Part  
18 or by means of a civil action in the superior court. The Commission may enforce any land-use  
19 restriction without first having exhausted any available administrative remedies. Restrictions  
20 also may be enforced by any unit of local government having jurisdiction over any part of the  
21 property by means of a civil action without the unit of local government having first exhausted  
22 any available administrative remedy. A land-use restriction may also be enforced by any person  
23 eligible for liability protection under this Part who will lose liability protection if the land-use  
24 restriction is violated. A restriction shall not be declared unenforceable due to lack of privity of  
25 estate or contract, due to lack of benefit to particular land, or due to lack of privity of any  
26 property interest in particular land. Any person who owns or leases a property subject to a  
27 land-use restriction under this section shall abide by the land-use restriction. Failure to submit  
28 an annual certification that land-use restrictions are properly recorded and followed shall result  
29 in a notice from the Commission to the property owner. The notice shall inform the person of  
30 the actions that need to be taken in order for the person to come into compliance and specify a  
31 date by which the person must comply, which shall not be less than 30 calendar days from the  
32 date the notice is mailed. Any person who fails to comply within the time specified shall then  
33 be subject to enforcement procedures as provided in this Part."

34 **SECTION 7.** The Environmental Review Commission, with the assistance of the  
35 Department of Environment and Natural Resources, shall study the cost of assessing and  
36 remediating inactive hazardous substance or waste disposal sites for which there is no  
37 financially viable responsible party. The Commission shall also identify potential sources of  
38 funds to address the projected need for assessment and remediation. The Environmental  
39 Review Commission shall report its findings and recommendations, including any legislative  
40 proposals, to the 2012 General Assembly upon its convening.

41 **SECTION 8.** This act is effective when it becomes law.