

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2015

H.B. 639  
Apr 13, 2015  
HOUSE PRINCIPAL CLERK

H

D

HOUSE DRH10288-RI-16 (02/16)

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

Sponsors: Representatives Millis and Adams (Primary Sponsors).

Referred to:

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- 14 (2) Repealed by Session Laws 2014-122, s. 11(i), effective September 20, 2014.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  
35 concentration of the contaminant in the environmental medium in excess of  
36 unrestricted use standards.



- 1 (6) "Fund" means the ~~Inactive Hazardous Sites Cleanup~~ Risk-Based  
2 Remediation Fund established pursuant to  
3 ~~G.S. 130A-310.11~~ G.S. 130A-310.76.
- 4 (7) "Institutional controls" means nonengineered measures used to prevent  
5 unsafe exposure to contamination, such as land-use restrictions.
- 6 (8) "Registered environmental consultant" means an environmental consulting  
7 or engineering firm approved to implement and oversee voluntary remedial  
8 actions pursuant to Part 3 of Article 9 of Chapter 130A of the General  
9 Statutes and rules adopted to implement the Part.
- 10 (9) "Remedial action plan" means a plan for eliminating or reducing  
11 contamination or exposure to contamination.
- 12 (10) "Remediation" means all actions that are necessary or appropriate to clean  
13 up, mitigate, correct, abate, minimize, eliminate, control, or prevent the  
14 spreading, migration, leaking, leaching, volatilization, spilling, transport, or  
15 further release of a contaminant into the environment in order to protect  
16 public health, safety, or welfare or the environment.
- 17 (11) "Systemic toxicant" means any substance that may enter the body and have a  
18 harmful effect other than causing cancer.
- 19 (12) "Unrestricted use standards" means contaminant concentrations for each  
20 environmental medium that are acceptable for all uses; that are protective of  
21 public health, safety, and welfare and the environment; and that comply with  
22 generally applicable standards, guidance, or methods established by statute  
23 or adopted, published, or implemented by the Commission or the  
24 Department.

25 **"§ 130A-310.66. Purpose.**

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

31 **"§ 130A-310.67. Applicability.**

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

- 34 (1) The Inactive Hazardous Sites Response Act of 1987 under Part 3 of Article 9  
35 of Chapter 130A of the General Statutes, including voluntary actions under  
36 G.S. 130A-310.9 of that act, and rules promulgated pursuant to those  
37 statutes.
- 38 (2) The hazardous waste management program administered by the State  
39 pursuant to the federal Resource Conservation and Recovery Act of 1976,  
40 Public Law 94-580, 90 Stat. 2795, 42 U.S.C. § 6901, et seq., as amended,  
41 and Article 9 of Chapter 130A of the General Statutes.
- 42 (3) The solid waste management program administered pursuant to Article 9 of  
43 Chapter 130A of the General Statutes.
- 44 (4) The federal Superfund program administered in part by the State pursuant to  
45 the Comprehensive Environmental Response, Compensation, and Liability  
46 Act of 1980, Public Law 96-510, 94 Stat. 2767, 42 U.S.C. § 9601, et seq., as  
47 amended, the Superfund Amendments and Reauthorization Act of 1986,  
48 Public Law 99-499, 100 Stat. 1613, as amended, and under Part 4 of Article  
49 9 of Chapter 130A of the General Statutes.
- 50 (5) The groundwater protection corrective action requirements adopted by the  
51 Commission pursuant to Article 21 of Chapter 143 of the General Statutes.

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

20 **"§ 130A-310.68. Remediation standards.**

21 (a) When conducting remediation activities pursuant to this Part, a person who proposes  
22 to or is required to respond to the release of a contaminant at a contaminated ~~industrial~~-site  
23 shall comply with one of the following standards:

- 24 (1) The unrestricted use standards applicable to each affected medium.
- 25 (2) The background standard, if the background standard exceeds the  
26 unrestricted use standards.
- 27 (3) A site-specific remediation standard developed in accordance with  
28 subsection (b) of this section that is approved by the Department.
- 29 (4) Any combination of remediation standards described in this subsection that  
30 is approved by the Department.

31 (b) Site-specific remediation standards shall be developed for each medium as provided  
32 in this subsection to achieve remediation that eliminates or reduces to protective levels any  
33 substantial present or probable future risk to human health, including sensitive subgroups, and  
34 the environment based upon the present or currently planned future use of the property  
35 comprising the site. Site-specific remediation standards shall be developed in accordance with  
36 all of the following:

- 37 (1) Remediation methods and technologies that result in emissions of air  
38 pollutants shall comply with applicable air quality standards adopted by the  
39 Commission.
- 40 (2) The site-specific remediation standard for surface waters shall be the water  
41 quality standards adopted by the Commission.
- 42 (3) The current and probable future use of groundwater shall be identified and  
43 protected. Site-specific sources of contaminants and potential receptors shall  
44 be identified. Potential receptors must be protected, controlled, or eliminated  
45 whether the receptors are located on or off the site where the source of  
46 contamination is located. Natural environmental conditions affecting the fate  
47 and transport of contaminants, such as natural attenuation, shall be  
48 determined by appropriate scientific methods.
- 49 (4) Permits for facilities located at sites covered by any of the programs or  
50 requirements set out in G.S. 130A-310.67(a) shall contain conditions to  
51 avoid exceedances of applicable groundwater standards adopted by the

1 Commission pursuant to Article 21 of Chapter 143 of the General Statutes  
2 due to operation of the facility.

3 (5) Soil shall be remediated to levels that no longer constitute a continuing  
4 source of groundwater contamination in excess of the site-specific  
5 groundwater remediation standards approved under this Part.

6 (6) Soil shall be remediated to unrestricted use standards on residential property  
7 with the following exceptions:

8 a. For mixed-use developments where the ground level uses are  
9 nonresidential and where all potential exposure to contaminated soil  
10 has been eliminated, the Department may allow soil to remain on the  
11 site in excess of unrestricted use standards.

12 b. If soil remediation is impracticable because of the presence of  
13 preexisting structures or impracticability of removal, all areas of the  
14 real property at which a person may come into contact with soil shall  
15 be remediated to unrestricted use standards, and, on all other areas of  
16 the real property, engineering and institutional controls that are  
17 sufficient to protect public health, safety, and welfare and the  
18 environment shall be implemented and maintained.

19 (7) The potential for human inhalation of contaminants from the outdoor air and  
20 other site-specific indoor air exposure pathways shall be considered, if  
21 applicable.

22 (8) The site-specific remediation standard shall protect against human exposure  
23 to contamination through the consumption of contaminated fish or wildlife  
24 and through the ingestion of contaminants in surface water or groundwater  
25 supplies.

26 (9) For known or suspected carcinogens, site-specific remediation standards  
27 shall be established at exposures that represent an excess lifetime cancer risk  
28 of one in 1,000,000. The site-specific remediation standard may depart from  
29 the one-in-1,000,000 risk level based on the criteria set out in 40 Code of  
30 Federal Regulations § 300.430(e)(9)(July 1, 2003 Edition). The cumulative  
31 excess lifetime cancer risk to an exposed individual shall not be greater than  
32 one in 10,000 based on the sum of carcinogenic risk posed by each  
33 contaminant present.

34 (10) For systemic toxicants, site-specific remediation standards shall represent  
35 levels to which the human population, including sensitive subgroups, may be  
36 exposed without any adverse health effect during a lifetime or part of a  
37 lifetime. Site-specific remediation standards for systemic toxicants shall  
38 incorporate an adequate margin of safety and shall take into account cases  
39 where two or more systemic toxicants affect the same organ or organ  
40 system.

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

44 **"§ 130A-310.69. Remedial investigation report; remedial action plans.**

45 (a) A person who proposes to conduct remediation pursuant to this Part shall submit a  
46 remedial investigation report to the Department prior to submitting a remedial action plan. The  
47 remedial investigation report shall include, but is not limited to, a legal description of the  
48 location of the site; a map showing the location of the site; a description of the contaminants  
49 involved and their concentration in the media of the site; a narrative description of the  
50 methodology used in the investigation; a description of all on-site releases of contamination; a  
51 site map, drawn to scale, showing benchmarks, directional arrow, location of property

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

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

- 19 (1) Identify actions required to remove, treat, or otherwise appropriately  
20 mitigate or isolate the source of contamination to ensure that the source will  
21 not cause unrestricted use standards to be exceeded in any medium.
- 22 (2) Address contamination that moves from one medium to another in order to  
23 prevent a violation of the remediation standards established under  
24 G.S. 130A-310.68. A more stringent remediation standard may be required  
25 for a particular medium to control impact on other media.
- 26 (3) Identify the current and anticipated future uses of property comprising the  
27 contaminated site and address any concerns raised in public comment on the  
28 proposed remedial action plan as to the proposed future uses of the property.
- 29 (4) Identify the current and anticipated future uses of groundwater in the  
30 contaminated site and address any concerns raised in public comment on the  
31 proposed remedial action plan as to the future uses of groundwater.
- 32 (5) Determine the appropriate method of remediation to achieve the site-specific  
33 remediation standards.
- 34 (6) Specify any measures that may be necessary to prevent adverse effects to the  
35 environment that may occur at levels of contamination that are lower than  
36 the standard necessary to protect human health.
- 37 (7) Specify any measures that may be necessary to prevent any discharge into  
38 surface waters during implementation of the remedial action plan that  
39 violates applicable surface water quality standards adopted by the  
40 Commission.
- 41 (8) Specify any measures that may be necessary to prevent any air emission  
42 during implementation of the remedial action plan that violates applicable air  
43 quality standards adopted by the Commission.
- 44 (9) Provide for attainment and maintenance of the remediation standards  
45 established under G.S. 130A-310.68.
- 46 (10) Provide for methods and procedures to verify that the quantity,  
47 concentration, range, or other measure of each contaminant remaining at the  
48 contaminated site at the conclusion of the contaminant-reduction phase of  
49 remediation meets the remediation standards established for the site, that an  
50 acceptable level of risk has been achieved, and that no further remediation is  
51 required.

- 1 (11) Provide for the imposition and recordation of land-use restrictions as  
2 provided in G.S. 143B-279.9, 143B-279.10, 130A-310.3(f), 130A-310.8,  
3 130A-310.35, 143-215.84(f), and 143-215.85A if the remedial action plan  
4 allows contamination in excess of the greater of unrestricted use standards or  
5 background standards to remain on any real property or in groundwater that  
6 underlies any real property.
- 7 (12) Provide for submission of an annual certification to the Department by the  
8 property owner that land use at the site is in compliance with land-use  
9 restrictions recorded pursuant to this Part and that the land-use restrictions  
10 are still properly recorded in the chain of title for the property.
- 11 (13) Provide a detailed description of the proposed remedial action to be taken;  
12 the results of any treatability studies and additional site characterization  
13 needed to support the proposed remedial action; plans for postremedial and  
14 confirmatory sampling; a project schedule; a schedule for progress reports to  
15 the Department; and any other information required by the Department or  
16 considered relevant by the person who submits the proposed remedial action  
17 plan.
- 18 (14) Provide a description of measures that will be employed to ensure that the  
19 safety and health of persons on properties in the vicinity of the site and  
20 persons visiting or doing business on the site will not be adversely affected  
21 by any remediation activity.
- 22 (15) Provide a reasonable estimate of the probable cost of the remedial action  
23 sufficient for the Department to determine an acceptable level of financial  
24 assurance.
- 25 (16) Provide proof of financial assurance as required by G.S. 130A-310.72.
- 26 (c) A remedial action plan shall also include an analysis of each of the following  
27 factors:
- 28 (1) Long-term risks and effectiveness of the proposed remediation, including an  
29 evaluation of all of the following:
- 30 a. The magnitude of risks remaining after completion of the  
31 remediation.
- 32 b. The type, degree, frequency, and duration of any postremediation  
33 activity that may be required, including, but not limited to, operation  
34 and maintenance, monitoring, inspection, reports, and other activities  
35 necessary to protect public health, safety, and welfare and the  
36 environment.
- 37 c. Potential for exposure of human and environmental receptors to  
38 contaminants remaining at the site.
- 39 d. Long-term reliability of any engineering and voluntary institutional  
40 controls, including repair, maintenance, or replacement of  
41 components.
- 42 e. Time required to achieve remediation standards.
- 43 (2) Toxicity, mobility, and volume of contaminants, including the amount of  
44 contaminants that will be removed, contained, treated, or destroyed; the  
45 degree of expected reduction in toxicity, mobility, and volume; and the type,  
46 quantity, toxicity, and mobility of contaminants that will remain after  
47 implementation of the remedial action plan.
- 48 (3) Short-term risks and effectiveness of the remediation, including the  
49 short-term risks that may be posed to the community, workers, or the  
50 environment during implementation of the remedial action plan, and the

1 effectiveness and reliability of protective measures to address short-term  
2 risks.

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

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

11 **"§ 130A-310.70. Notice of intent to remediate.**

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

23 **"§ 130A-310.71. Review and approval of proposed remedial action plans.**

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

- 28 (1) Determine whether site-specific remediation standards are appropriate for a  
29 particular contaminated site. In making this determination, the Department  
30 shall consider proximity of the contamination to water supply wells or other  
31 receptors; current and probable future reliance on the groundwater as a water  
32 supply; current and anticipated future land use; environmental impacts; and  
33 the feasibility of remediation to unrestricted use standards.
- 34 (2) Determine whether the party conducting the remediation has adequately  
35 demonstrated through modeling or other scientific means acceptable to the  
36 Department that no contamination will migrate to adjacent property at levels  
37 above unrestricted use ~~standards~~ standards, except as may remain pursuant  
38 to a cleanup conducted pursuant to G.S. 130A-310.73A(a)(2).
- 39 (3) Determine whether the proposed remedial action plan meets the  
40 requirements of G.S. 130A-310.69.
- 41 (4) Determine whether the proposed remedial action plan meets the  
42 requirements of any other applicable remediation program except those  
43 pertaining to remediation standards.
- 44 (5) Establish the acceptable level or range of levels of risk to public health,  
45 safety, and welfare and to the environment.
- 46 (6) Establish, for each contaminant, the maximum allowable quantity,  
47 concentration, range, or other measures of contamination that will remain at  
48 the contaminated site at the conclusion of the contaminant-reduction phase  
49 of the remediation.

- 1 (7) Consider the technical performance, effectiveness, and reliability of the  
2 proposed remedial action plan in attaining and maintaining compliance with  
3 applicable remediation standards.
- 4 (8) Consider the ability of the person who proposes to remediate the site to  
5 implement the proposed remedial action plan within a reasonable time and  
6 without jeopardizing public health, safety, or welfare or the environment.
- 7 (9) Determine whether the proposed remedial action plan adequately provides  
8 for the imposition and maintenance of engineering and institutional controls  
9 and for sampling, monitoring, and reporting requirements necessary to  
10 protect public health, safety, and welfare and the environment. In making  
11 this determination, the Department may consider, in lieu of land-use  
12 restrictions authorized under G.S. 130A-310.69, reliance on other State or  
13 local land-use controls. Any land-use controls implemented shall adequately  
14 protect public health, safety, and welfare and the environment, and provide  
15 adequate notice to current and future property owners of any residual  
16 contamination and the land-use controls in place.
- 17 (10) Approve the circumstances under which no further remediation is required.

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

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

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

40 **"§ 130A-310.72. Financial assurance requirement.**

41 The person conducting remediation of a contaminated ~~industrial~~ site pursuant to the  
42 provisions of this Part shall establish financial assurance that will ensure that sufficient funds  
43 are available to implement and maintain the actions or controls specified in the remedial action  
44 plan for the site. The person conducting remediation of a site may establish financial assurance  
45 through one of the following mechanisms, or any combination of the following mechanisms, in  
46 a form specified or approved by the Department: insurance products issued from entities having  
47 no corporate or ownership association with the person conducting the remediation; funded  
48 trusts; surety bonds; certificates of deposit; letters of credit; corporate financial tests; local  
49 government financial tests; corporate guarantees; local government guarantees; capital reserve  
50 funds; or any other financial mechanism authorized for the demonstration of financial  
51 assurance under (i) 40 Code of Federal Regulations Part 264, Subpart H (July 1, 2010 Edition)



1 and (ii) Section .1600 of Subchapter B of Chapter 13 of Title 15A of the North Carolina  
2 Administrative Code. Proof of financial assurance shall be provided in the remedial action plan  
3 and annually thereafter on the anniversary date of the approval of the plan.

4 **"§ 130A-310.73. Attainment of the remediation standards.**

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

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

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

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