

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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HOUSE BILL 1121
Committee Substitute Favorable 5/14/97
Committee Substitute #2 Favorable 6/11/97

Short Title: Brownfields Property Reuse Act.

(Public)

Sponsors:

Referred to:

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO PROMOTE THE SAFE REUSE OF PROPERTIES WHERE ACTUAL
CONTAMINATION, OR THE POSSIBILITY OF CONTAMINATION, HAS
IMPEDED REDEVELOPMENT.

The General Assembly of North Carolina enacts:

Section 1. Findings. – The General Assembly makes the following findings:

- (1) There are abandoned, idle, and underused properties in North Carolina, often referred to as "brownfields", that may have been or were contaminated by past industrial and commercial activities, but that are attractive locations for redevelopment.
- (2) The reuse, development, redevelopment, transfer, financing, and other use of brownfields is impaired by the potential liability associated with the risk of contamination.
- (3) The safe redevelopment of brownfields would benefit the citizens of North Carolina in many ways, including improving the tax base of local government and creating job opportunities for citizens in the vicinity of brownfields.

1 (4) Potential purchasers and developers of brownfields and other parties
2 who have no connection with the contamination of the property,
3 including redevelopment lenders, should be encouraged to provide
4 capital and labor to improve brownfields without undue risk of liability
5 for problems they did not create, so long as the property can be and is
6 made safe for appropriate future use.

7 (5) Public and local government involvement in commenting on the safe
8 reuse of brownfields will improve the quality and acceptability of their
9 redevelopment.

10 Section 2. Article 9 of Chapter 130A of the General Statutes is amended by
11 adding a new Part to read:

12 **“PART 5. BROWNFIELDS PROPERTY REUSE ACT.**

13 **“§ 130A-310.30. Short title.**

14 This Part may be cited as the Brownfields Property Reuse Act of 1997.

15 **“§ 130A-310.31. Definitions.**

16 (a) Unless a different meaning is required by the context or unless a different
17 meaning is set out in subsection (b) of this section, the definitions in G.S. 130A-2 and
18 G.S. 130A-310 apply throughout this Part.

19 (b) Unless a different meaning is required by the context:

20 (1) ‘Affiliate’ has the same meaning as in 17 Code of Federal Regulations §
21 240.12b-2 (1 April 1996 Edition).

22 (2) ‘Brownfields agreement’ means an agreement between the Department
23 and a prospective developer that meets the requirements of G.S. 130A-
24 310.32.

25 (3) ‘Brownfields property’ or ‘brownfields site’ means abandoned, idled, or
26 underused property at which expansion or redevelopment is hindered by
27 actual environmental contamination or the possibility of environmental
28 contamination and that is or may be subject to remediation under any
29 State remedial program other than Part 2A of Article 21 of Chapter 143
30 of the General Statutes or that is or may be subject to remediation under
31 the Comprehensive Environmental Response, Compensation and
32 Liability Act of 1980, as amended (42 U.S.C. § 9601 et seq.).

33 (4) ‘Contaminant’ means a regulated substance released into the
34 environment.

35 (5) ‘Current standards’ when used in connection with ‘cleanup’,
36 ‘remediated’, or ‘remediation’ means that cleanup or remediation
37 activities at the site comply with generally applicable standards,
38 guidance, or established methods governing contaminants at the site that
39 are adopted or published by the Commission, the Environmental
40 Management Commission, or the Department.

41 (6) ‘Environmental contamination’ means contaminants at the property
42 requiring remediation and that are to be remediated under the
43 brownfields agreement including, at a minimum, hazardous waste, as

1 defined in G.S. 130A-290; a hazardous substance, as defined in G.S.
2 130A-310; a hazardous substance, as defined in G.S. 143-215.77; or oil,
3 as defined in G.S. 143-215.77.

4 (7) 'Local government' means a town, city, or county.

5 (8) 'Parent' has the same meaning as in 17 Code of Federal Regulations §
6 240.12b-2 (1 April 1996 Edition).

7 (9) 'Potentially responsible party' means a person who is or may be liable
8 for remediation under a remedial program.

9 (10) 'Prospective developer' means any person who desires to either buy or
10 sell a brownfields property for the purpose of developing or
11 redeveloping that brownfields property and who did not cause or
12 contribute to the contamination at the brownfields property.

13 (11) 'Regulated substance' means a hazardous waste, as defined in G.S
14 130A-290; a hazardous substance, as defined in G.S. 143-215.77A; oil,
15 as defined in G.S. 143-215.77; or other substance regulated under any
16 remedial program other than Part 2A of Article 21A of Chapter 143 of
17 the General Statutes.

18 (12) 'Remedial program' means a program implemented by the Department
19 for the remediation of any contaminant, including the Inactive
20 Hazardous Sites Response Act of 1987 under Part 3 of this Article, the
21 Superfund Program under Part 4 of this Article, and the Oil Pollution
22 and Hazardous Substances Control Act of 1978 under Part 2 of Article
23 21A of Chapter 143 of the General Statutes.

24 (13) 'Remediation' means action to clean up, mitigate, correct, abate,
25 minimize, eliminate, control, or prevent the spreading, migration,
26 leaking, leaching, volatilization, spilling, transport, or further release of
27 a contaminant into the environment in order to protect public health or
28 the environment.

29 (14) 'Subsidiary' has the same meaning as in 17 Code of Federal Regulations
30 § 240.12b-2 (1 April 1996 Edition).

31 **"§ 130A-310.32. Brownfields agreement.**

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

36 (1) The prospective developer, and any parent, subsidiary, or other affiliate
37 of the prospective developer has substantially complied with:

38 a. The terms of any brownfields agreement or similar agreement to
39 which the prospective developer or any parent, subsidiary, or
40 other affiliate of the prospective developer has been a party.

41 b. The requirements applicable to any remediation in which the
42 applicant has previously engaged.

1 c. Federal and state laws, regulations, and rules for the protection of
2 the environment.

3 (2) As a result of the implementation of the brownfields agreement, the
4 brownfields property will be suitable for the uses specified in the
5 agreement while fully protecting public health and the environment
6 instead of being remediated to current standards.

7 (3) There is a public benefit commensurate with the liability protection
8 provided under this Part.

9 (4) The prospective developer has or can obtain the financial, managerial,
10 and technical means to fully implement the brownfields agreement and
11 assure the safe use of the brownfields property.

12 (5) The prospective developer has complied with or will comply with all
13 applicable procedural requirements.

14 (b) In negotiating a brownfields agreement, parties may rely on land-use
15 restrictions that will be included in a Notice of Brownfields Property required under G.S.
16 130A-310.35. A brownfields agreement may provide for remediation standards that are
17 based on those land-use restrictions.

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

21 (1) Any remediation to be conducted on the property, including:

22 a. A description of specific areas where remediation is to be
23 conducted.

24 b. The remediation method or methods to be employed.

25 c. The resources that the prospective developer will make available.

26 d. A schedule of remediation activities.

27 e. Applicable remediation standards.

28 f. A schedule and the method or methods for evaluating the
29 remediation.

30 (2) Any land-use restrictions that will apply to the brownfields property.

31 (3) The desired results of any remediation or land-use restrictions with
32 respect to the brownfields property.

33 (4) The guidelines, including parameters, principles, and policies within
34 which the desired results are to be accomplished.

35 (5) The consequences of achieving or not achieving the desired results.

36 (d) Any failure of the prospective developer or the prospective developer's agents
37 and employees to comply with the brownfields agreement constitutes a violation of this
38 Part by the prospective developer.

39 **"§ 130A-310.33. Liability protection.**

40 (a) A prospective developer who enters into a brownfields agreement with the
41 Department and who is complying with the brownfields agreement shall not be held
42 liable for remediation of areas of contaminants identified in the brownfields agreement
43 except as specified in the brownfields agreement, so long as the activities conducted on

1 the brownfields property by or under the control or direction of the prospective developer
2 do not increase the risk of harm to public health or the environment and the prospective
3 developer is not required to undertake additional remediation to current standards
4 pursuant to subsection (c) of this section. The liability protection provided under this
5 Part applies to all of the following persons to the same extent as to a prospective
6 developer, so long as these persons are not otherwise potentially responsible parties or
7 parents, subsidiaries, or affiliates of potentially responsible parties and the person is not
8 required to undertake additional remediation to current standards pursuant to subsection
9 (c) of this section:

10 (1) Any person under the direction or control of the prospective developer
11 who directs or contracts for remediation or redevelopment of the
12 brownfields property.

13 (2) Any future owner of the brownfields property.

14 (3) A person who develops or occupies the brownfields property.

15 (4) A successor or assign of any person to whom the liability protection
16 provided under this Part applies.

17 (5) Any lender or fiduciary that provides financing for remediation or
18 redevelopment of the brownfields property.

19 (b) A person who conducts an environmental assessment or transaction screen on a
20 brownfields property and who is not otherwise a potentially responsible party is not a
21 potentially responsible party as a result of conducting the environmental assessment or
22 transaction screen unless that person increases the risk of harm to public health or the
23 environment by failing to exercise due diligence and reasonable care in performing the
24 environmental assessment or transaction screen.

25 (c) If a land-use restriction set out in the Notice of Brownfields Property required
26 under G.S. 130A-310.35 is violated, the owner of the brownfields property at the time the
27 land-use restriction is violated, the owner's successors and assigns, and the owner's agents
28 who direct or contract for alteration of the brownfields property in violation of a land-use
29 restriction shall be liable for remediation to current standards. A prospective developer
30 who completes the remediation or redevelopment required under a brownfields
31 agreement or other person who receives liability protection under this Part shall not be
32 required to undertake additional remediation at the brownfields property unless any of the
33 following apply:

34 (1) The prospective developer knowingly or recklessly provides false
35 information that forms a basis for the brownfields agreement or that is
36 offered to demonstrate compliance with the brownfields agreement or
37 fails to disclose relevant information about contamination at the
38 brownfields property.

39 (2) New information indicates the existence of previously unreported
40 contaminants or an area of previously unreported contamination on or
41 associated with the brownfields property that has not been remediated to
42 current standards, unless the brownfields agreement is amended to
43 include any previously unreported contaminants and any additional

1 areas of contamination. If the brownfields agreement sets maximum
2 concentrations for contaminants, and new information indicates the
3 existence of previously unreported areas of these contaminants, further
4 remediation shall be required only if the areas of previously unreported
5 contaminants raise the risk of the contamination to public health or the
6 environment to a level less protective of public health and the
7 environment than that required by the brownfields agreement.

8 (3) The level of risk to public health or the environment from contaminants
9 is unacceptable at or in the vicinity of the brownfields property due to
10 changes in exposure conditions, including (i) a change in land use that
11 increases the probability of exposure to contaminants or in the vicinity
12 of the brownfields property or (ii) the failure of remediation to mitigate
13 risks to the extent required to make the brownfields property fully
14 protective of public health and the environment as planned in the
15 brownfields agreement.

16 (4) The Department obtains new information about a contaminant
17 associated with the brownfields property or exposures at or around the
18 brownfields property that raises the risk to public health or the
19 environment associated with the brownfields property beyond an
20 acceptable range and in a manner or to a degree not anticipated in the
21 brownfields agreement. Any person whose use, including any change in
22 use, of the brownfields property causes an unacceptable risk to public
23 health or the environment may be required by the Department to
24 undertake additional remediation measures under the provisions of this
25 Part.

26 (5) A prospective developer fails to file a timely and proper Notice of
27 Brownfields Development under this Part.

28 **"§ 130A-310.34. Public notice and community involvement.**

29 (a) A prospective developer who desires to enter into a brownfields agreement
30 shall notify the public and the community in which the brownfields property is located of
31 planned remediation and redevelopment activities. The prospective developer shall
32 submit a Notice of Intent to Redevelop a Brownfields Property and a summary of the
33 Notice of Intent to the Department. The Notice of Intent shall provide, to the extent
34 known, a legal description of the location of the brownfields property, a map showing the
35 location of the brownfields property, a description of the contaminants involved and their
36 concentrations in the media of the brownfields property, a description of the intended
37 future use of the brownfields property, any proposed investigation and remediation, and a
38 proposed Notice of Brownfields Property prepared in accordance with G.S. 130A-310.35.
39 Both the Notice of Intent and the summary of the Notice of Intent shall state the time
40 period and means for submitting written comment and for requesting a public meeting on
41 the proposed brownfields agreement. The summary of the Notice of Intent shall include
42 a statement as to the public availability of the full Notice of Intent. After approval of the
43 Notice of Intent and summary of the Notice of Intent by the Department, the prospective

1 developer shall provide a copy of the Notice of Intent to all local governments having
2 jurisdiction over the brownfields property. The prospective developer shall publish the
3 summary of the Notice of Intent in a newspaper of general circulation serving the area in
4 which the brownfields property is located and shall file a copy of the summary of the
5 Notice of Intent with the Codifier of Rules, who shall publish the summary of the Notice
6 of Intent in the North Carolina Register. The prospective developer shall also
7 conspicuously post a copy of the summary of the Notice of Intent at the brownfields site.

8 (b) Publication of the approved summary of the Notice of Intent in the North
9 Carolina Register and publication in a newspaper of general circulation shall begin a
10 public comment period of at least 60 days from the later date of publication. During the
11 public comment period, members of the public, residents of the community in which the
12 brownfields property is located, and local governments having jurisdiction over the
13 brownfields property may submit comment on the proposed brownfields agreement,
14 including methods and degree of remediation, future land uses, and impact on local
15 employment.

16 (c) Any person who desires a public meeting on a proposed brownfields
17 agreement shall submit a written request for a public meeting to the Department within
18 30 days after the public comment period begins. The Department shall consider all
19 requests for a public meeting and shall hold a public meeting if the Department
20 determines that there is significant public interest in the proposed brownfields agreement.
21 If the Department decides to hold a public meeting, the Department shall, at least 30 days
22 prior to the public meeting, mail written notice of the public meeting to all persons who
23 requested the public meeting and to any other person who had previously requested
24 notice. The Department shall also direct the prospective developer to publish, at least 30
25 days prior to the date of the public meeting, a notice of the public meeting at least one
26 time in a newspaper having general circulation in such county where the brownfields
27 property is located. In any county in which there is more than one newspaper having
28 general circulation, the Department shall direct the prospective developer to publish a
29 copy of the notice in as many newspapers having general circulation in the county as the
30 Department in its discretion determines to be necessary to assure that the notice is
31 generally available throughout the county. The Department shall prescribe the form and
32 content of the notice to be published. The Department shall prescribe the procedures to
33 be followed in the public meeting. The Department shall take detailed minutes of the
34 meeting. The minutes shall include any written comments, exhibits, or documents
35 presented at the meeting.

36 (d) Prior to entering into a brownfields agreement, the Department shall take into
37 account the comment received during the comment period and at the public meeting if the
38 Department holds a public meeting. The Department shall incorporate into the
39 brownfields agreement provisions that reflect comment received during the comment
40 period and at the public meeting to the extent practical. The Department shall give
41 particular consideration to written comment that is supported by valid scientific and
42 technical information and analysis.

43 **"§ 130A-310.35. Notice of Brownfields Property; land-use restrictions in deed.**

1 (a) In order to reduce or eliminate the danger to public health or the environment
2 posed by a brownfields property being addressed under this Part, a prospective developer
3 who desires to enter into a brownfields agreement with the Department shall submit to
4 the Department a proposed Notice of Brownfields Property. A Notice of Brownfields
5 Property shall be entitled 'Notice of Brownfields Property', shall include a survey plat of
6 areas designated by the Department that has been prepared and certified by a professional
7 land surveyor and that meets the requirements of G.S. 47-30, shall include a legal
8 description of the brownfields property that would be sufficient as a description of the
9 property in an instrument of conveyance, and shall identify all of the following:

- 10 (1) The location and dimensions of the areas of potential environmental
11 concern with respect to permanently surveyed benchmarks.
12 (2) The type, location, and quantity of regulated substances and
13 contaminants known to exist on the brownfields property.
14 (3) Any restrictions on the current or future use of the brownfields property
15 or, with the owner's permission, other property that are necessary or
16 useful to maintain the level of protection appropriate for the designated
17 current or future use of the brownfields property and that are designated
18 in the brownfields agreement. These land-use restrictions may apply to
19 activities on, over, or under the land, including, but not limited to, use of
20 groundwater, building, filling, grading, excavating, and mining. Where
21 a brownfields property encompasses more than one parcel or tract of
22 land, a composite map or plat showing all parcels or tracts may be
23 recorded.

24 (b) After the Department approves and certifies the Notice of Brownfields
25 Property under subsection (a) of this section, a prospective developer who enters into a
26 brownfields agreement with the Department shall file a certified copy of the Notice of
27 Brownfields Property in the register of deeds' office in the county or counties in which
28 the land is located. The prospective developer shall file the Notice of Brownfields
29 Property within 15 days of the prospective developer's receipt of the Department's
30 approval of the notice or the prospective developer's entry into the brownfields
31 agreement, whichever is later.

32 (c) The register of deeds shall record the certified copy of the notice and index it
33 in the grantor index under the names of the owners of the land, and, if different, also
34 under the name of the prospective developer conducting the redevelopment of the
35 brownfields property.

36 (d) When a brownfields property is sold, leased, conveyed, or transferred, the deed
37 or other instrument of transfer shall contain in the description section, in no smaller type
38 than that used in the body of the deed or instrument, a statement that the brownfields
39 property has been classified and, if appropriate, cleaned up as a brownfields property
40 under this Part.

41 (e) A Notice of Brownfields Property filed pursuant to this section may, at the
42 request of the owner of the land, be cancelled by the Secretary after the hazards have
43 been eliminated. If requested in writing by the owner of the land and if the Secretary

1 concurs with the request, the Secretary shall send to the register of deeds of each county
2 where the notice is recorded a statement that the hazards have been eliminated and
3 request that the notice be cancelled of record. The Secretary's statement shall contain the
4 names of the owners of the land as shown in the notice and reference the plat book and
5 page where the notice is recorded. The register of deeds shall record the Secretary's
6 statement in the deed books and index it on the grantor index in the names of the owners
7 of the land as shown in the Notice of Brownfields Property and on the grantee index in
8 the name 'Secretary of Environment, Health, and Natural Resources'. The register of
9 deeds shall make a marginal entry on the Notice of Brownfields Property showing the
10 date of cancellation and the book and page where the Secretary's statement is recorded,
11 and the register of deeds shall sign the entry. If a marginal entry is impracticable because
12 of the method used to record maps and plats, the register of deeds shall not be required to
13 make a marginal entry.

14 (f) Any land-use restriction filed pursuant to this section shall be enforced by any
15 owner of the land. Any land-use restriction may also be enforced by the Department
16 through the remedies provided in Part 2 of Article 1 of this Chapter or by means of a civil
17 action. The Department may enforce any land-use restriction without first having
18 exhausted any available administrative remedies. A land-use restriction may also be
19 enforced by any unit of local government having jurisdiction over any part of the
20 brownfields property by means of a civil action without the unit of local government
21 having first exhausted any available administrative remedy. A land-use restriction may
22 also be enforced by any person eligible for liability protection under this Part who will
23 lose liability protection if the land-use restriction is violated. A land-use restriction shall
24 not be declared unenforceable due to lack of privity of estate or contract, due to lack of
25 benefit to particular land, or due to lack of any property interest in particular land. Any
26 person who owns or leases a property subject to a land-use restriction under this section
27 shall abide by the land-use restriction.

28 (g) This section shall apply in lieu of the provisions of G.S. 130A-310.8 for
29 brownfields properties remediated under this Part.

30 **"§ 130A-310.36. Appeals.**

31 A decision by the Department as to whether or not to enter into a brownfields
32 agreement including the terms of any brownfields agreement is reviewable under Article
33 3 of Chapter 150B of the General Statutes.

34 **"§ 130A-310.37. Construction of Part.**

35 (a) This Part is not intended and shall not be construed to:

36 (1) Affect the ability of local governments to regulate land use under
37 Article 19 of Chapter 160A of the General Statutes and Article 18 of
38 Chapter 153A of the General Statutes. The use of the identified
39 brownfields property and any land-use restrictions in the brownfields
40 agreement shall be consistent with local land-use controls adopted under
41 those statutes.

42 (2) Amend, modify, repeal, or otherwise alter any provision of any remedial
43 program or other provision of this Chapter, Chapter 143 of the General

1 Statutes, or any other provision of law relating to civil and criminal
2 penalties or enforcement actions and remedies available to the
3 Department, except as may be provided in a brownfields agreement.

4 (3) Prevent or impede the immediate response of the Department or
5 responsible party to an emergency that involves an imminent or actual
6 release of a regulated substance that threatens public health or the
7 environment.

8 (4) Relieve a person receiving liability protection under this Part from any
9 liability for contamination later caused by that person on a brownfields
10 property.

11 (5) Affect the right of any person to seek any relief available against any
12 party to the brownfields agreement who may have liability with respect
13 to the brownfields property, except that this Part does limit the relief
14 available against any party to a brownfields agreement with respect to
15 remediation of the brownfields property to the remediation required
16 under the brownfields agreement.

17 (6) Affect the right of any person who may have liability with respect to the
18 brownfields property to seek contribution from any other person who
19 may have liability with respect to the brownfields property and who
20 neither received nor has liability protection under this Part.

21 (7) Prevent the State from enforcing specific numerical remediation
22 standards, monitoring, or compliance requirements specifically required
23 to be enforced by the federal government as a condition to receive
24 program authorization, delegation, primacy, or federal funds.

25 (8) Create a defense against the imposition of criminal and civil fines or
26 penalties or administrative penalties otherwise authorized by law and
27 imposed as the result of the illegal disposal of waste or for the pollution
28 of the land, air, or waters of this State on a brownfields property.

29 (9) Relieve a person of any liability for failure to exercise due diligence and
30 reasonable care in performing an environmental assessment or
31 transaction screen.

32 (b) Notwithstanding the provisions of the Tort Claims Act, G.S. 143-291 through
33 G.S. 143-300.1 or any other provision of law waiving the sovereign immunity of the
34 State of North Carolina, the State, its agencies, officers, employees, and agents shall be
35 absolutely immune from any liability in any proceeding for any injury or claim arising
36 from negotiating, entering, monitoring, or enforcing a brownfields agreement or a Notice
37 of Brownfields Property under this Part or any other action implementing this Part.

38 **"§ 130A-310.38. Brownfields Property Reuse Act Implementation Account.**

39 The Brownfields Property Reuse Act Implementation Account is created as a
40 nonreverting interest-bearing account in the Office of the State Treasurer. The Account
41 shall consist of fees collected under G.S. 130A-310.39, moneys appropriated to it by the
42 General Assembly, moneys received from the federal government, moneys contributed
43 by private organizations, and moneys received from any other source. Funds in the

1 Account shall be used by the Department to defray a portion of the costs of implementing
2 this Part.

3 **"§ 130A-310.39. Fees.**

4 (a) The Department shall collect the following fees:

5 (1) A prospective developer who submits a proposed brownfields
6 agreement for review by the Department shall pay a fee of one thousand
7 dollars (\$1,000).

8 (2) A prospective developer who submits a final report certifying
9 completion of remediation under a brownfields agreement shall pay a
10 fee of five hundred dollars (\$500.00).

11 (b) Fees imposed under this section shall be credited to the Brownfields Property
12 Reuse Act Implementation Account.

13 **"§ 130A-310.40. Legislative reports.**

14 The Department shall prepare and submit to the Environmental Review Commission,
15 concurrently with the report on the Inactive Hazardous Sites Response Act of 1987
16 required under G.S. 130A-310.10, an evaluation of the effectiveness of this Part in
17 facilitating the remediation and reuse of existing industrial and commercial properties.
18 This evaluation shall include any recommendations for additional incentives or changes,
19 if needed, to improve the effectiveness of this Part in addressing such properties. This
20 evaluation shall also include a report on receipts by and expenditures from the
21 Brownfields Property Reuse Act Implementation Account."

22 Section 3. G.S. 130A-26.1(g) is amended by adding three new subdivisions to
23 read:

24 "(5) Provides false information or fails to provide information relevant to a
25 decision by the Department as to whether or not to enter into a
26 brownfields agreement under Part 5 of Article 9 of this Chapter.

27 (6) Provides false information or fails to provide information required by a
28 brownfields agreement under Part 5 of Article 9 of this Chapter.

29 (7) Provides false information relevant to a decision by the Department
30 pursuant to:

31 a. G.S. 130A-308(b).

32 b. G.S. 130A-310.7(c).

33 c. G.S. 143-215.3(f).

34 d. G.S. 143-215.84(e)."

35 Section 4. G.S. 130A-308 reads as rewritten:

36 **"§ 130A-308. Continuing releases at permitted facilities. ~~facilities; notification of~~**
37 **completed corrective action.**

38 (a) Standards adopted under G.S. 130A-294(c) shall require, and a permit issued after
39 November 8, 1984, and a permit issued under G.S. 130A-294(c) shall require corrective
40 action for all releases of hazardous waste or constituents from any solid waste
41 management unit at a treatment, storage, or disposal facility seeking a permit under G.S.
42 130A-294(c), regardless of the time at which waste was placed in such unit. Permits
43 issued under G.S. 130A-294(c) which implement Section 3005 of RCRA (42 U.S.C. §

1 6925) shall contain schedules of compliance for such corrective action (where such
2 corrective action cannot be completed prior to issuance of the permit) and assurances of
3 financial responsibility for completing such corrective action. Notwithstanding any other
4 provision of this section, this section shall apply only to units, facilities, and permits that
5 are covered by Section 3004(u) of RCRA (42 U.S.C. § 6924(u)). Notwithstanding the
6 foregoing, corrective action authorized elsewhere in this Chapter shall not be limited by
7 this section.

8 (b) The definitions set out in G.S. 130A-310.31(b) apply to this subsection. Any
9 person may submit a written request to the Department for a determination that a
10 corrective action for a release of a hazardous waste or constituents from a solid waste
11 management unit that is a treatment, storage, or disposal facility permitted under G.S.
12 130A-294(c) has been completed to current standards. A request for a determination that
13 a corrective action at a facility has been completed to current standards shall be
14 accompanied by the fee required by G.S. 130A-310.39(a)(2). If the Department
15 determines that the corrective action at a facility has been completed to current standards,
16 the Department shall issue a written notification that no further corrective action will be
17 required at the facility. The notification shall state that no further corrective action will
18 be required at the facility unless the Department later determines, based on new
19 information or information not previously provided to the Department, that the corrective
20 action at the facility has not been completed to current standards or that the Department
21 was provided with false or incomplete information. Under any of those circumstances,
22 the Department may withdraw the notification and require responsible parties to take
23 corrective action at a facility to bring the facility into compliance with current standards."

24 Section 5. G.S. 130A-310.7 reads as rewritten:

25 "**§ 130A-310.7. Action for reimbursement; liability of responsible ~~parties~~; parties;**
26 **notification of completed remedial action.**

27 (a) Notwithstanding any other provision or rule of law, and subject only to the
28 defenses set forth in this subsection, any person who:

- 29 (1) Discharges or deposits; or
- 30 (2) Contracts or arranges for any discharge or deposit; or
- 31 (3) Accepts for discharge or deposit; or
- 32 (4) Transports or arranges for transport for the purpose of discharge or
33 deposit

34 any hazardous substance, the result of which discharge or deposit is the existence of an
35 inactive hazardous substance or waste disposal site, shall be considered a responsible
36 party. Neither an innocent landowner who is a bona fide purchaser of the inactive
37 hazardous substance or waste disposal site without knowledge or without a reasonable
38 basis for knowing that hazardous substance or waste disposal had occurred nor a person
39 whose interest or ownership in the inactive hazardous substance or waste disposal site is
40 based on or derived from a security interest in the property shall be considered a
41 responsible party. A responsible party shall be directly liable to the State for any or all of
42 the reasonably necessary expenses of developing and implementing a remedial action
43 program for such site. The Secretary shall bring an action for reimbursement of the

1 Inactive Hazardous Sites Cleanup Fund in the name of the State in the superior court of
2 the county in which the site is located to recover such sum and the cost of bringing the
3 action. The State must show that a danger to the public health or the environment existed
4 and that the State complied with the provisions of this Part.

5 (b) There shall be no liability under this section for a person who can establish by
6 a preponderance of the evidence that the danger to the public health or the environment
7 caused by the site was caused solely by:

8 (1) An act of God; or

9 (2) An act of war; or

10 (3) An intentional act or omission of a third party (but this defense shall not
11 be available if the act or omission is that of an employee or agent of the
12 defendant, or if the act or omission occurs in connection with a
13 contractual relationship with the defendant); or

14 (4) Any combination of the above causes.

15 (c) The definitions set out in G.S. 130A-310.31(b) apply to this subsection. Any
16 person may submit a written request to the Department for a determination that a site that
17 is subject to this Part has been remediated to current standards as provided in Part 5 of
18 Article 9 of Chapter 130A of the General Statutes. A request for a determination that a
19 site has been remediated to current standards shall be accompanied by the fee required by
20 G.S. 130A-310.39(a)(2). If the Department determines that the site has been remediated
21 to current standards, the Department shall issue a written notification that no further
22 remediation will be required at the site. The notification shall state that no further
23 remediation will be required at the site unless the Department later determines, based on
24 new information or information not previously provided to the Department, that the site
25 has not been remediated to current standards or that the Department was provided with
26 false or incomplete information. Under any of those circumstances, the Department may
27 withdraw the notification and require responsible parties to remediate the site to current
28 standards."

29 Section 6. G.S. 143-215.3 is amended by adding a new subsection to read:

30 "(f) Notification of Completed Remedial Action. – The definitions set out in G.S.
31 130A-310.31(b) apply to this subsection. Any person may submit a written request to the
32 Department for a determination that groundwater has been remediated to meet the
33 standards and classifications established under this Part. A request for a determination
34 that groundwater has been remediated to meet the standards and classifications
35 established under this Part shall be accompanied by the fee required by G.S. 130A-
36 310.39(a)(2). If the Department determines that groundwater has been remediated to
37 established standards and classifications, the Department shall issue a written notification
38 that no further remediation of the groundwater will be required. The notification shall
39 state that no further remediation of the groundwater will be required unless the
40 Department later determines, based on new information or information not previously
41 provided to the Department, that the groundwater has not been remediated to established
42 standards and classifications or that the Department was provided with false or
43 incomplete information. Under any of those circumstances, the Department may

1 withdraw the notification and require responsible parties to remediate the groundwater to
2 established standards and classifications."

3 Section 7. G.S. 143-215.84 is amended by adding a new subsection to read:
4 "(e) Notification of Completed Removal of Prohibited Discharges. – The
5 definitions set out in G.S. 130A-310.31(b) apply to this subsection. Any person may
6 submit a written request to the Department for a determination that a discharge of oil or a
7 hazardous substance in violation of this Article has been remediated to current standards.
8 A request for a determination that a discharge has been remediated to current standards
9 shall be accompanied by the fee required by G.S. 130A-310.39(a)(2). If the Department
10 determines that the discharge has been remediated to current standards, the Department
11 shall issue a written notification that no further remediation of the discharge will be
12 required. The notification shall state that no further remediation of the discharge will be
13 required unless the Department later determines, based on new information or
14 information not previously provided to the Department, that the discharge has not been
15 remediated to current standards or that the Department was provided with false or
16 incomplete information. Under any of those circumstances, the Department may
17 withdraw the notification and require responsible parties to remediate the discharge to
18 current standards."

19 Section 8. This act shall not be construed to obligate the General Assembly to
20 make any appropriation to implement the provisions of this act. The Department of
21 Environment, Health, and Natural Resources shall implement the provisions of this act
22 from funds otherwise available or appropriated to the Department.

23 Section 9. This act becomes effective 1 October 1997.