

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE BILL 1575

Short Title: Accelerate Remediation of Manufacturing Sites. (Public)

Sponsors: Representatives Gibson; and Lucas.

Referred to: Environment and Natural Resources, if favorable, Commerce, Small Business, and Entrepreneurship, if favorable, Finance.

May 5, 2009

1 A BILL TO BE ENTITLED
2 AN ACT TO EXPAND THE CIRCUMSTANCES UNDER WHICH THE DEPARTMENT
3 OF ENVIRONMENT AND NATURAL RESOURCES SHALL ALLOW FOR
4 RISK-BASED REMEDIAL ACTIONS AT CONTAMINATED MANUFACTURING
5 SITES.

6 Whereas, the General Assembly finds that there are contaminated areas in North
7 Carolina, including land and other property, surface water, and groundwater, that are adversely
8 affected by environmental contamination due to the presence of drilling waste; hazardous and
9 toxic materials, substances, and wastes; solid waste; oil; and other wastes, contaminants, and
10 regulated substances; and

11 Whereas, the General Assembly finds that the presence of environmental
12 contamination on these areas creates both potential and actual harm to public health, safety, and
13 welfare and to the environment; and

14 Whereas, the General Assembly finds that this potential and actual harm results in
15 substantial economic losses, including reduced property values and tax revenues; decreased
16 ability to develop and expand the beneficial use of these areas; and other opportunity costs
17 because of the uncertainties and concerns that result from the environmental contamination of
18 these areas; and

19 Whereas, the General Assembly finds that it is in the public interest that
20 contaminated areas are cleaned up or managed in a manner that protects public health, safety,
21 welfare and the environment and protects groundwater that is a current or probable future water
22 supply; and

23 Whereas, the General Assembly finds that North Carolina has numerous and varied
24 State-managed remediation programs to address environmental contamination, including the
25 Inactive Hazardous Sites Response Act of 1987, the hazardous waste management program
26 administered by the State pursuant to the federal Resource Conservation and Recovery Act of
27 1976, the Leaking Petroleum Underground Storage Tank Cleanup Act of 1988, the Brownfields
28 Property Reuse Act of 1997, the Dry-Cleaning Solvent Cleanup Act of 1997, the federal
29 Superfund program administered in part by the State pursuant to the Comprehensive
30 Environmental Response, Compensation, and Liability Act of 1980 and the Superfund
31 Amendments and Reauthorization Act of 1986, and the groundwater protection rules adopted
32 by the Environmental Management Commission; and

33 Whereas, the General Assembly finds that the expenditure of public and private
34 resources on unnecessary remediation could better be channeled to other purposes, including
35 new development, renovation and repair, research and development, training and education,



1 and other activities that maintain and enhance North Carolina's competitive position in the
2 world and the excellent quality of life enjoyed by the citizens of North Carolina; and

3 Whereas, the General Assembly finds that public health, safety, and welfare and the
4 environment can be protected by implementing a risk-based remediation process that requires
5 that contaminated areas be cleaned up to a level that is sufficient to ensure protection of public
6 health, safety, and welfare and the environment without excessive expenditure of public or
7 private resources; and

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

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

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

18 Whereas, the General Assembly finds that use of site-specific remediation standards
19 in appropriate circumstances may encourage cleanup of contaminated sites; and

20 Whereas, the General Assembly intends that the levels of remediation that are
21 established for each contaminated area are to be applicable or relevant and appropriate
22 standards under federal remediation programs; and

23 Whereas, the General Assembly intends that the protections afforded to public
24 health, safety, and welfare and to the environment by existing environmental, health, and safety
25 standards that apply to ongoing activities not be diminished in any way, in order that those
26 standards will continue to protect against the discharge or release of contaminants to the
27 environment that would result in additional contaminated areas; Now, therefore,
28 The General Assembly of North Carolina enacts:

29 **SECTION 1.** Article 7 of Chapter 143B of the General Statutes is amended by
30 adding a new Part to read:

31 "Part 1A. Risk-Based Environmental Remediation.

32 "§ 143B-279.15. Definitions.

33 As used in this Part:

- 34 (1) 'Background standard' means the naturally occurring concentration of a
35 substance in the absence of the release of a contaminant at the site.
36 (2) 'Contaminant' means any substance regulated under any program listed in
37 subdivisions (1) through (6) of G.S. 143B-279.17.
38 (3) 'Department' means the Department of Environment and Natural Resources.
39 (4) 'Groundwater contamination' means a contaminant released to the
40 environment that has resulted, or has the potential to result, in an increase in
41 the concentration of the contaminant or contaminants in the groundwater in
42 excess of unrestricted use standards.
43 (5) 'Institutional controls' means nonengineered measures, including land-use
44 restrictions, used to prevent unsafe exposure to contamination.
45 (6) 'Remedial action plan' means a plan for eliminating or reducing
46 contamination based on rules established pursuant to this Part.
47 (7) 'Remediation' means all actions that are necessary or appropriate to clean up,
48 mitigate, correct, abate, minimize, eliminate, control, or prevent the
49 spreading, migration, leaking, leaching, volatilization, spilling, transport, or
50 further release of a contaminant into the environment in order to protect
51 public health, safety, or welfare or the environment.

- 1 (8) 'Responsible person' means a person who is or may be liable for remediation
2 under any program listed in subdivisions (1) through (6) of
3 G.S. 143B-279.17.
4 (9) 'Secretary' means the Secretary of Environment and Natural Resources.
5 (10) 'Systemic toxicant' means any substance that may enter the body and have a
6 harmful effect, other than causing cancer.
7 (11) 'Unrestricted use standards' means contaminant concentrations for each
8 environmental medium that are acceptable for all uses, that are protective of
9 public health, safety, and welfare and the environment, and that comply with
10 generally applicable standards, guidance, or methods established by statute
11 or adopted, published, or implemented by the Environmental Management
12 Commission, the Commission for Health Services, or the Department.

13 **"§ 143B-279.16. Purpose.**

14 It is the purpose of this Part to allow the Department to approve the remediation of
15 contaminated property based on site-specific remediation standards in circumstances where
16 site-specific remediation standards are adequate to protect public health, safety, and welfare
17 and the environment and are consistent with protection of current and anticipated future use of
18 groundwater and surface water affected or potentially affected by the contamination.

19 **"§ 143B-279.17. Applicability.**

20 This Part applies to remediation under the following programs to the extent that the
21 programs address the contaminants and the contaminated environmental media and to the
22 extent this Part does not conflict with federal authority:

- 23 (1) The Inactive Hazardous Sites Response Act of 1987, G.S. 130A-310, et seq.
24 (2) The hazardous waste management program administered by the State pursuant
25 to the federal Resource Conservation and Recovery Act of 1976, Public Law
26 94-580, 90 Stat. 2795, 42 U.S.C. § 6901, et seq., as amended.
27 (3) Solid waste management facilities regulated under Article 9 of Chapter 130A of
28 the General Statutes.
29 (4) The federal Superfund program administered in part by the State pursuant to the
30 Comprehensive Environmental Response, Compensation, and Liability Act of
31 1980, Public Law 96-510, 94 Stat. 2767, 42 U.S.C. § 9601, et seq., as amended,
32 the Superfund Amendments and Reauthorization Act of 1986, Public Law
33 99-499, 100 Stat. 1613, as amended, and G.S. 130A-310.20, et seq.
34 (5) The groundwater protection corrective action requirements adopted by the
35 Environmental Management Commission pursuant to Article 21 of Chapter 143
36 of the General Statutes.
37 (6) Oil Pollution and Hazardous Substances Control Act of 1978, Parts 1 and 2 of
38 Article 21A of Chapter 143 of the General Statutes.

39 **"§ 143B-279.18. Remediation standards.**

40 (a) Remediation Standards. – When conducting remediation activities pursuant to this
41 Part, any person who proposes or is required to respond to the release of a contaminant at a site
42 shall attain compliance with one of the following standards:

- 43 (1) The unrestricted use standard applicable to each affected media.
44 (2) The background standard for any media in which naturally occurring
45 concentrations of a substance exceeds the unrestricted use standards.
46 (3) A site-specific remediation standard developed in accordance with
47 subsection (b) of this section that is approved by the Department.
48 (4) Any combination of remediation standards described in this subsection that
49 is approved by the Department.

50 (b) Site-Specific Remediation Standard. – Site-specific remediation standards shall be
51 developed for each medium in accordance with the requirements of this subsection to achieve

1 remediation that eliminates or reduces to protective levels any substantial present or probable
2 future risk to human health, including sensitive subgroups, and the environment based upon the
3 present or currently planned future use of the property comprising the site.

4 (1) The site-specific remediation standard for ambient air shall be the air quality
5 standards adopted by the Environmental Management Commission.

6 (2) The site-specific remediation standard for surface waters shall be the water
7 quality standards adopted by the Environmental Management Commission.

8 (3) The current and probable future use of groundwater shall be identified and
9 protected. Site-specific sources of contaminants and potential receptors shall
10 be identified. Potential receptors must be protected, controlled, or eliminated
11 whether the receptors are located on or off the property where the source of
12 contamination is located. Natural environmental conditions affecting the fate
13 and transport of contaminants, such as natural attenuation, shall be
14 determined by appropriate scientific methods.

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

18 (5) Soil shall be remediated to unrestricted use standards on residential property
19 except:

20 a. For mixed-use developments where the ground level uses are
21 nonresidential and where all potential exposure to soil has been
22 eliminated, the Department may allow soil to remain on the site in
23 excess of unrestricted use standards.

24 b. If soil remediation is impracticable because of the presence of
25 preexisting structures, all areas of the real property at which a person
26 may come into contact with soil shall be remediated to unrestricted
27 use standards, and, on all other areas of the real property, engineering
28 and institutional controls that are sufficient to protect public health,
29 safety, and welfare and the environment shall be implemented and
30 maintained.

31 (6) The potential for human inhalation of contaminants from the outdoor air and
32 other site-specific air exposure pathways shall be considered if applicable.

33 (7) The site-specific remediation standard shall protect against human exposure
34 to contamination through the consumption of contaminated fish or wildlife
35 and through the ingestion of contaminants in surface water or groundwater
36 supplies.

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

45 (9) For systemic toxicants, site-specific remediation standards shall represent
46 levels to which the human population, including sensitive subgroups, may be
47 exposed without any adverse health effect during a lifetime or part of a
48 lifetime. Site-specific remediation standards for systemic toxicants shall
49 incorporate an adequate margin of safety and shall take into account cases
50 where two or more systemic toxicants affect the same organ or organ
51 system.

- 1 (10) The site-specific remediation standards for each medium shall be adequate to
2 prevent adverse effects to the environment.

3 **"§ 143B-279.19. Remedial action plans.**

4 (a) A person who proposes to conduct remediation pursuant to this Part shall develop
5 and submit a proposed remedial action plan to the Department. A remedial action plan shall
6 provide for the protection of public health, safety, and welfare and the environment. A
7 proposed remedial action plan shall include a legal description of the location of the site, a map
8 showing the location of the site, a description of the contaminants involved and their
9 concentration in the media of the site, a description of the intended future use of the site, and
10 any proposed investigation and remediation.

11 (b) A remedial action plan shall:

- 12 (1) Identify immediate actions required to remove the source of contamination
13 and to address any imminent threat to public health, safety, or welfare or the
14 environment.
- 15 (2) Assess all contaminated areas, including types and levels of contamination;
16 the horizontal and vertical extent of contamination; and the risk to public
17 health, safety, and welfare and to the environment posed by the
18 contamination.
- 19 (3) Address contamination that moves from one medium to another in order to
20 prevent a violation of the remediation standards established under
21 G.S. 143B-279.18. A more stringent remediation standard may be required
22 for a particular medium to control impact on other media.
- 23 (4) Identify the current and anticipated future uses of property comprising the
24 contaminated area and address any concerns raised in public comment on the
25 proposed remedial action plan as to the proposed future uses of the property.
- 26 (5) Identify the current and anticipated future uses of groundwater in the
27 contaminated area and address any concerns raised in public comment on the
28 proposed remedial action plan as to the future uses of groundwater.
- 29 (6) Determine the appropriate method of remediation to achieve an acceptable
30 level or range of levels of risk.
- 31 (7) Specify any measures that may be necessary to prevent adverse effects to the
32 environment that may occur at levels of contamination that are lower than
33 the standard necessary to protect human health.
- 34 (8) Specify any measures that may be necessary to prevent any discharge into
35 surface waters or air emission in violation of applicable surface water quality
36 and air quality standards adopted by the Environmental Management
37 Commission during implementation of the remedial action plan.
- 38 (9) Provide for attainment and maintenance of the remediation standards
39 established under G.S. 143B-279.18.
- 40 (10) Provide for methods and procedures to verify that the quantity,
41 concentration, range, or other measure of each contaminant remaining at the
42 contaminated area at the conclusion of active remediation meets the
43 remediation standards established for the site, that an acceptable level of risk
44 has been achieved, and that no further remediation is required.
- 45 (11) Provide an appropriate level of oversight for implementation of the proposed
46 remedial action plan based on the nature and complexity of the site and the
47 proposed remedial actions.
- 48 (12) Provide for the imposition and recordation of land-use restrictions as
49 provided in G.S. 143B-279.9, 143B-279.11, 130A-310.3(f), 130A-310.8,
50 130A-310.35, 143-215.84(f), and 143-215.85(a) if the remedial action plan
51 allows contamination in excess of the greater of unrestricted use standards or

- 1 background standards to remain on any real property or in groundwater that
2 underlies any real property.
3 (13) Define the circumstances under which no further remediation is required.
4 (c) A remedial action plan shall also include an analysis of each of the following
5 factors:
6 (1) Long-term risks and effectiveness of the proposed remediation, including an
7 evaluation of:
8 a. The magnitude of risks remaining after completion of the
9 remediation.
10 b. The type, degree, frequency, and duration of any postremediation
11 activity that may be required, including, but not limited to, operation
12 and maintenance, monitoring, inspection, reports, and other activities
13 necessary to protect public health, safety, and welfare and the
14 environment.
15 c. Potential for exposure of human and environmental receptors to
16 contaminants remaining at the site.
17 d. Long-term reliability of any engineering and voluntary institutional
18 controls, including repair, maintenance, or replacement of
19 components.
20 e. Time required to achieve remediation standards.
21 (2) Toxicity, mobility, or volume of contaminants, including the amount of
22 contaminants that will be removed, contained, treated, or destroyed; the
23 degree of expected reduction in toxicity, mobility, or volume; and the type,
24 quantity, toxicity, and mobility of contaminants that will remain after
25 implementation of the remedial action plan.
26 (3) Short-term risks and effectiveness of the remediation, including the
27 short-term risks that may be posed to the community, workers, or the
28 environment during implementation of the remedial action plan, and the
29 effectiveness and reliability of protective measures to address short-term
30 risks.
31 (4) The ease or difficulty of implementing the remedial action plan, including
32 commercially available remedial measures, expected operational reliability,
33 available capacity and location of needed treatment, storage and disposal
34 services for wastes, time to initiate remediation, and approvals necessary to
35 implement the remediation.

36 **"§ 143B-279.20. Notice of intent to remediate.**

37 At the time that a person who proposes a remedial action plan submits the plan to the
38 Department, the person shall send a notice of intent to remediate to all local governments
39 having taxing or land-use jurisdiction over the site. The notice shall include all of the
40 information required in G.S. 143B-279.19(a) and provide for a public comment period of at
41 least 30 days during which the municipality or county or any citizen may submit comments to
42 the applicant and to the Department. The Department may conduct a public hearing on the
43 proposed remedial action plan if there is significant public interest. The person shall also
44 publish a summary of the notice at least once in a newspaper of general circulation in the
45 county or counties where the site is located. The person shall consider any information
46 provided pertaining to current and future uses of groundwater in the area of the site and any
47 concerns expressed with respect to proposed future uses of the site following remediation. The
48 person shall provide a response to any information or comments on the remediation standards
49 or the proposed remedial action plan that are received during the comment period. The person
50 may modify the plan based on information or comments received during the comment period.

1 "§ 143B-279.21. Review and approval of proposed remedial action plans by the
2 Department.

3 (a) The Department shall review and approve a proposed remedial action plan
4 consistent with the remediation standards set out in G.S. 143B-279.18 and the procedures set
5 out in this section. In its review of a proposed remedial action plan, the Department shall:

6 (1) Determine whether the proposed remedial action plan meets the
7 requirements of G.S. 143B-279.19.

8 (2) Determine whether a risk-based approach to remediation is appropriate for a
9 particular contaminated area. In making this determination the Department
10 shall consider proximity of the contamination to water supply wells or other
11 receptors; current and anticipated future reliance on the groundwater as a
12 water supply; current and anticipated future land use; environmental
13 impacts; and the feasibility of remediation to unrestricted use standards.

14 (3) Establish the acceptable level or range of levels of risk to public health,
15 safety, and welfare and to the environment.

16 (4) Establish, for each contaminant, the maximum allowable quantity,
17 concentration, range, or other measures of contamination that will remain at
18 the contaminated area at the conclusion of active remediation.

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

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

25 (7) Determine whether the proposed remedial action plan adequately provides
26 for the imposition and maintenance of engineering and institutional controls
27 and for sampling, monitoring, and reporting requirements necessary to
28 protect public health, safety, and welfare and the environment.

29 (8) Approve the circumstances under which no further remediation is required.

30 (b) The person who proposes a remedial action plan shall certify to the Department that
31 a notice of intent to remediate has been provided as required by G.S. 143B-279.20.

32 (c) The person who proposes a remedial action plan has the burden of demonstrating
33 that the remedial action plan is protective of public health, safety, and welfare and the
34 environment and complies with the requirements of this Part. The Department may require a
35 person who proposes a remedial action plan to supply any additional information necessary for
36 the Department to approve or disapprove the plan.

37 (d) In making a determination on a proposed remedial action plan, the Department shall
38 consider the information provided by the person who proposes the remedial action plan as well
39 as information provided by local governments pursuant to G.S. 143B-279.20. The Department
40 shall disapprove a proposed remedial action plan unless the Department finds that the plan is
41 protective of public health, safety, and welfare and the environment and complies with the
42 requirements of this Part. The Department shall approve or disapprove a proposed remedial
43 action plan within 90 days after a complete plan has been submitted for review. If the
44 Department disapproves a proposed remedial action plan, the person who submitted the plan
45 may seek review as provided in Article 3 of Chapter 150B of the General Statutes. If the
46 Department fails to approve or disapprove a proposed remedial action plan within 90 days after
47 a complete plan has been submitted, the person who submitted the plan may treat the plan as
48 having been disapproved.

49 "§ 143B-279.22. Attainment of the remediation standard.

50 (a) Compliance with the approved remediation standards is attained for a site or portion
51 of a site when a remedial action plan approved by the Department has been implemented and

1 applicable soil, groundwater, surface water and air emission standards have been attained. The
2 remediation standards may be attained through a combination of remediation activities that can
3 include treatment, removal, engineering, or institutional controls, except that the responsible
4 person may not demonstrate attainment of an unrestricted use standard or a background
5 standard through the use of institutional controls alone. When the remedial action plan has been
6 fully implemented, the responsible person shall submit a final report to the Department, with
7 notice to the local government with taxing and land-use jurisdiction, that demonstrates that the
8 remedial action plan has been fully implemented and that the remediation standards have been
9 attained. The final report shall be accompanied by a request that the Department issue a release
10 from further remediation.

11 (b) The responsible person has the burden of demonstrating that the remedial action
12 plan has been fully implemented and that the remediation standards have been attained in
13 compliance with the requirements of this Part. The Department may require a person who
14 implements the remedial action plan to supply any additional information necessary for the
15 Department to determine whether the remediation standards have been attained.

16 (c) The Department shall review the final report, and, upon determining that the
17 responsible person has completed remediation to the approved remediation standard, the
18 Department shall issue a release from further remediation at the site. Once the Department has
19 issued a release, the Department may require additional remedial action by the responsible
20 party only upon finding that:

21 (1) Monitoring, testing, or analysis of the property subsequent to the issuance of
22 the release letter indicates that the remediation standards and objectives were
23 not achieved or are not being maintained.

24 (2) One or more of the conditions, restrictions, or limitations imposed on the
25 property as part of the remediation have been violated.

26 (3) Site monitoring or operation and maintenance activities that are required as
27 part of the remedial action plan or written determination of completion for
28 the property are not adequately funded or are not adequately implemented.

29 (4) A hazardous substance release is discovered at the property that was not the
30 subject of the site investigation and remediation for which the release letter
31 was issued.

32 (5) A material change in the facts known to the Department at the time the
33 written determination of completion was issued or new facts cause the
34 Department to find that further assessment or remediation is necessary to
35 prevent a significant risk to human health and safety or to the environment.

36 (6) The release letter was based on fraud, misrepresentation, or intentional
37 nondisclosure of information by the responsible person.

38 (d) The Department shall issue a final decision on a request for release from further
39 remediation within 90 days after receipt of a complete final report. Failure of the Department to
40 issue a final decision on release from further remediation within 90 days after receipt of a
41 complete final report may be treated as a denial of the request for release from further
42 remediation. The responsible person may seek review of a denial of a request for a release from
43 further remediation as provided in Article 3 of Chapter 150B of the General Statutes.

44 (e) Once the Department issues a release from further remediation at the site, any
45 person that changes the use of the property causing the level of risk to increase beyond the
46 acceptable risk range shall be required by the Department to undertake additional remediation
47 measures.

48 **"§ 143B-279.23. Compliance with other laws.**

49 This Part shall not be construed to limit the authority of the Department to require
50 investigation, initial response, or remediation of environmental contamination under any other
51 provision of State or federal law or to direct actions necessary to address an imminent threat to

1 public health, safety, or welfare or the environment. This Part shall not be construed or
2 implemented to alter the requirements of programs, including permitting programs that regulate
3 the handling of hazardous substances, or otherwise impose requirements intended to prevent or
4 mitigate the release or discharge of contaminants to the environment.

5 **"§ 143B-279.24. Adoption of rules.**

6 The Secretary may adopt rules to implement this Part. This Part shall not be deemed to
7 modify the bases upon which the unrestricted use standards are adopted by the Environmental
8 Management Commission pursuant to Article 21 of Chapter 143 of the General Statutes.

9 **"§ 143B-279.25. Risk-based remediation fees.**

10 (a) A person who undertakes remediation of environmental contamination under
11 site-specific remediation standards as provided in G.S. 143B-279.18 shall pay a fee to the
12 Risk-Based Remediation Fund in an amount equal to three thousand dollars (\$3,000) for each
13 acre or portion of an acre of contamination; however, no person shall be required to pay more
14 than seventy-five thousand dollars (\$75,000) to the Risk-Based Remediation Fund for any
15 individual site, regardless of its size. This onetime fee shall be payable at the time the person
16 undertaking remediation submits the remedial action plan to the Department.

17 (b) The Department shall not allow risk-based remediation under rules adopted pursuant
18 to this Part for environmental contamination that occurs after 1 July 2006 unless the petitioner
19 pays a fee of five thousand dollars (\$5,000) to the Risk-Based Remediation Fund.

20 **"§ 143B-279.26. Risk-Based Remediation Fund.**

21 (a) There is established under the control and direction of the Department of
22 Environment and Natural Resources the Risk-Based Remediation Fund. The Risk-Based
23 Remediation Fund shall be a nonreverting fund consisting of fee payments made to the
24 Department pursuant to G.S. 143B-279.25, monies appropriated for such purpose by the
25 General Assembly, investment interest credited to the Fund, and other monies paid to or
26 recovered on behalf of the Fund.

27 (b) The Risk-Based Remediation Fund may be used to pay the costs of:

28 (1) Remediation of environmental contamination at sites that have previously
29 undergone a risk-based remediation but are later found to present an
30 imminent hazard to public health, safety, or welfare or the environment,
31 where a responsible person cannot be identified or located or where the
32 responsible person is unable to pay the costs of remediation, and where there
33 is no other dedicated source of State or federal funds to undertake the
34 remediation.

35 (2) Establishing alternative drinking water supplies for third parties, affected by
36 environmental contamination at sites that are remediated under this Part,
37 where a responsible person cannot be identified or located or where the
38 responsible person is unable to pay the costs of establishing alternative
39 drinking water supplies, and where there is no other dedicated source of
40 State or federal funds to undertake the establishment of alternative drinking
41 water supplies.

42 (3) Establishing, administering, and maintaining a geographic information
43 system capable of mapping the land and water resources of the State that are
44 remediated under risk-based remediation.

45 (4) Administrative and staffing support necessary to implement this Part.

46 **"§ 143B-279.27. Construction of Part.**

47 No provision of this Part shall be construed to supersede or otherwise affect or prevent the
48 enforcement of any land-use or development regulation or ordinance adopted by a city pursuant
49 to Article 19 of Chapter 160A of the General Statutes or by a county pursuant to Article 18 of
50 Chapter 153A of the General Statutes. The use of the site and any land-use restrictions imposed
51 as part of a remedial action plan shall comply with local land-use and development controls

1 adopted by a city pursuant to Article 19 of Chapter 160A of the General Statutes or by a county
2 pursuant to Article 18 of Chapter 153A of the General Statutes."

3 **SECTION 2.** The Secretary of Environment and Natural Resources shall use all
4 reasonable efforts to obtain a written agreement from the United States Environmental
5 Protection Agency that Part 1A of Article 7 of Chapter 143B of the General Statutes, as enacted
6 by Section 1 of this act, and the rules adopted by the Secretary pursuant to G.S. 143B-279.25
7 are consistent with the Comprehensive Environmental Response, Compensation, and Liability
8 Act of 1980, Public Law 96-510, 94 Stat. 2767, 42 U.S.C. § 9601, et seq., as amended, and the
9 Superfund Amendments and Reauthorization Act of 1986, Public Law 99-499, 100 Stat. 1613,
10 as amended.

11 **SECTION 3.** On or before 1 October 2010, the Department of Environment and
12 Natural Resources shall report to the Environmental Review Commission as to the steps the
13 Secretary of Environment and Natural Resources and the Department have taken to implement
14 this act. The report shall include information on the adoption of rules to implement Part 1A of
15 Article 7 of Chapter 143B of the General Statutes, as enacted by Section 1 of this act, the
16 number of contaminated areas that have been proposed for remediation under the rules, the
17 number of contaminated areas that are undergoing active remediation under the rules, the
18 number of contaminated areas at which remediation under the rules has been completed, the
19 number of contaminated areas that are known or believed to be appropriate for remediation
20 under the rules, and the number of contaminated areas for which the Department has
21 determined that a risk-based approach to remediation under the rules is not appropriate and the
22 reasons for each determination.

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