

Part 8. Risk-Based Environmental Remediation of Sites.

§ 130A-310.65. Definitions.

As used in this Part:

- (1) "Background standard" means the naturally occurring concentration of a substance in the absence of the release of a contaminant.
- (2) Repealed by Session Laws 2014-122, s. 11(i), effective September 20, 2014.
- (3) "Contaminant" means any substance regulated under any program listed in G.S. 130A-310.67(a).
- (3a) "Contaminated off-site property" or "off-site property" means property under separate ownership from the contaminated site that is contaminated as a result of a release or migration of contaminants at the contaminated site. This term includes publicly owned property, including rights-of-way for public streets, roads, or sidewalks.
- (4) "Contaminated site," "source site," or "site" means any real property that is contaminated, and is the property from which the contamination originated, and may be subject to remediation under any of the programs or requirements set out in G.S. 130A-310.67(a).
- (5) "Contamination" means a contaminant released into an environmental medium that has resulted in or has the potential to result in an increase in the concentration of the contaminant in the environmental medium in excess of unrestricted use standards.
- (6) "Fund" means the Risk-Based Remediation Fund established pursuant to G.S. 130A-310.76.
- (7) "Institutional controls" means nonengineered measures used to prevent unsafe exposure to contamination, such as land-use restrictions.
- (8) "Registered environmental consultant" means an environmental consulting or engineering firm approved to implement and oversee voluntary remedial actions pursuant to Part 3 of Article 9 of Chapter 130A of the General Statutes and rules adopted to implement the Part.
- (9) "Remedial action plan" means a plan for eliminating or reducing contamination or exposure to contamination.
- (10) "Remediation" means all actions that are necessary or appropriate to clean up, mitigate, correct, abate, minimize, eliminate, control, or prevent the spreading, migration, leaking, leaching, volatilization, spilling, transport, or further release of a contaminant into the environment in order to protect public health, safety, or welfare or the environment.
- (11) "Systemic toxicant" means any substance that may enter the body and have a harmful effect other than causing cancer.
- (12) "Unrestricted use standards" means contaminant concentrations for each environmental medium that are acceptable for all uses; that are protective of public health, safety, and welfare and the environment; and that comply with generally applicable standards, guidance, or methods established by statute or adopted, published, or implemented by the Commission or the Department. (2011-186, s. 2; 2014-122, s. 11(i); 2015-286, s. 4.7(a).)

§ 130A-310.66. Purpose.

It is the purpose of this Part to authorize the Department to approve the remediation of contaminated sites based on site-specific remediation standards in circumstances where site-specific remediation standards are adequate to protect public health, safety, and welfare and the environment and are consistent with protection of current and anticipated future use of groundwater and surface water affected or potentially affected by the contamination. (2011-186, s. 2; 2015-286, s. 4.7(a).)

§ 130A-310.67. Applicability.

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

- (1) The Inactive Hazardous Sites Response Act of 1987 under Part 3 of Article 9 of Chapter 130A of the General Statutes, including voluntary actions under G.S. 130A-310.9 of that act, and rules promulgated pursuant to those statutes.
- (2) The hazardous waste management program administered by the State pursuant to the federal Resource Conservation and Recovery Act of 1976, Public Law 94-580, 90 Stat. 2795, 42 U.S.C. § 6901, et seq., as amended, and Article 9 of Chapter 130A of the General Statutes.

- (3) The solid waste management program administered pursuant to Article 9 of Chapter 130A of the General Statutes.
- (4) The federal Superfund program administered in part by the State pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Public Law 96-510, 94 Stat. 2767, 42 U.S.C. § 9601, et seq., as amended, the Superfund Amendments and Reauthorization Act of 1986, Public Law 99-499, 100 Stat. 1613, as amended, and under Part 4 of Article 9 of Chapter 130A of the General Statutes.
- (5) The groundwater protection corrective action requirements adopted by the Commission pursuant to Article 21 of Chapter 143 of the General Statutes.
- (6) Oil Pollution and Hazardous Substances Control Act of 1978, Parts 1 and 2 of Article 21A of Chapter 143 of the General Statutes, except with respect to those sites identified in subdivision (1a) of subsection (b) of this section.

(b) This Part shall not apply to contaminated sites subject to remediation pursuant to any of the following programs or requirements:

- (1) The Leaking Petroleum Underground Storage Tank Cleanup program under Part 2A of Article 21A of Chapter 143 of the General Statutes and rules promulgated pursuant to that statute.
- (1a) Leaking petroleum aboveground storage tanks and other sources of petroleum releases governed by Part 7 of Article 21A of Chapter 143 of the General Statutes and rules promulgated pursuant to that Part.
- (2) The Dry-Cleaning Solvent Cleanup program under Part 6 of Article 21A of Chapter 143 of the General Statutes and rules promulgated pursuant to that statute.
- (3) The pre-1983 landfill assessment and remediation program established under G.S. 130A-310.6(c) through (g).
- (4) The Coal Ash Management Act of 2014 under Part 2I of Article 9 of Chapter 130A of the General Statutes and rules promulgated pursuant to that Part.
- (5) Animal waste management systems permitted under Part 1 or Part 1A of Article 21 of Chapter 143 of the General Statutes.

(c) Repealed by Session Laws 2015-286 s. 4.7(a), effective October 22, 2015. (2011-186, s. 2; 2015-286, s. 4.7(a).)

§ 130A-310.68. Remediation standards.

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

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

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

- (1) Remediation methods and technologies that result in emissions of air pollutants shall comply with applicable air quality standards adopted by the Commission.
- (2) The site-specific remediation standard for surface waters shall be the water quality standards adopted by the Commission.
- (3) The current and probable future use of groundwater shall be identified and protected. Site-specific sources of contaminants and potential receptors shall be identified. Potential receptors must be protected, controlled, or eliminated whether the receptors are located on or off the site where the source of contamination is located. Natural environmental conditions affecting the

- fate and transport of contaminants, such as natural attenuation, shall be determined by appropriate scientific methods.
- (4) Permits for facilities located at sites covered by any of the programs or requirements set out in G.S. 130A-310.67(a) shall contain conditions to avoid exceedances of applicable groundwater standards adopted by the Commission pursuant to Article 21 of Chapter 143 of the General Statutes due to operation of the facility.
 - (5) Soil shall be remediated to levels that no longer constitute a continuing source of groundwater contamination in excess of the site-specific groundwater remediation standards approved under this Part.
 - (6) Soil shall be remediated to unrestricted use standards on residential property with the following exceptions:
 - a. For mixed-use developments where the ground level uses are nonresidential and where all potential exposure to contaminated soil has been eliminated, the Department may allow soil to remain on the site in excess of unrestricted use standards.
 - b. If soil remediation is impracticable because of the presence of preexisting structures or impracticability of removal, all areas of the real property at which a person may come into contact with soil shall be remediated to unrestricted use standards, and, on all other areas of the real property, engineering and institutional controls that are sufficient to protect public health, safety, and welfare and the environment shall be implemented and maintained.
 - (7) The potential for human inhalation of contaminants from the outdoor air and other site-specific indoor air exposure pathways shall be considered, if applicable.
 - (8) The site-specific remediation standard shall protect against human exposure to contamination through the consumption of contaminated fish or wildlife and through the ingestion of contaminants in surface water or groundwater supplies.
 - (9) For known or suspected carcinogens, site-specific remediation standards shall be established at exposures that represent an excess lifetime cancer risk of one in 1,000,000. The site-specific remediation standard may depart from the one-in-1,000,000 risk level based on the criteria set out in 40 Code of Federal Regulations § 300.430(e)(9)(July 1, 2003 Edition). The cumulative excess lifetime cancer risk to an exposed individual shall not be greater than one in 10,000 based on the sum of carcinogenic risk posed by each contaminant present.
 - (10) For systemic toxicants, site-specific remediation standards shall represent levels to which the human population, including sensitive subgroups, may be exposed without any adverse health effect during a lifetime or part of a lifetime. Site-specific remediation standards for systemic toxicants shall incorporate an adequate margin of safety and shall take into account cases where two or more systemic toxicants affect the same organ or organ system.
 - (11) The site-specific remediation standards for each medium shall be adequate to avoid foreseeable adverse effects to other media or the environment that are inconsistent with the risk-based approach under this Part. (2011-186, s. 2.)

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

(a) A person who proposes to conduct remediation pursuant to this Part shall submit a remedial investigation report to the Department prior to submitting a remedial action plan. The remedial investigation report shall include, but is not limited to, a legal description of the location of the site; a map showing the location of the site; a description of the contaminants involved and their concentration in the media of the site; a narrative description of the methodology used in the investigation; a description of all on-site releases of contamination; a site map, drawn to scale, showing benchmarks, directional arrow, location of property boundaries, buildings, structures, all perennial and nonperennial surface water features, drainage ditches, dense vegetation, contaminant spill or disposal areas, underground utilities, storage vessels, and existing on-site wells; identification of adjacent property owners and adjacent land uses; description of local geologic and hydrologic conditions; an evaluation of the site and adjacent properties for the existence of environmentally sensitive areas; a description of groundwater monitoring well design and installation procedures; a map, drawn to scale, that shows all groundwater sample locations; a description of field and laboratory quality control and quality assurance procedures followed during the remedial investigation; a description of methods used to manage investigation-derived wastes; tabulation of

analytical results for all sampling; copies of all laboratory reports; a description of procedures and the results of any special assessments; and any other information required by the Department or considered relevant by the investigator. The remedial investigation shall assess all contaminated areas of the site, including types and levels of contamination, and the risk that the contamination poses to public health, safety, and welfare and to the environment.

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

- (1) Identify actions required to remove, treat, or otherwise appropriately mitigate or isolate the source of contamination to ensure that the source will not cause unrestricted use standards to be exceeded in any medium.
- (2) Address contamination that moves from one medium to another in order to prevent a violation of the remediation standards established under G.S. 130A-310.68. A more stringent remediation standard may be required for a particular medium to control impact on other media.
- (3) Identify the current and anticipated future uses of property comprising the contaminated site and address any concerns raised in public comment on the proposed remedial action plan as to the proposed future uses of the property.
- (4) Identify the current and anticipated future uses of groundwater in the contaminated site and address any concerns raised in public comment on the proposed remedial action plan as to the future uses of groundwater.
- (5) Determine the appropriate method of remediation to achieve the site-specific remediation standards.
- (6) Specify any measures that may be necessary to prevent adverse effects to the environment that may occur at levels of contamination that are lower than the standard necessary to protect human health.
- (7) Specify any measures that may be necessary to prevent any discharge into surface waters during implementation of the remedial action plan that violates applicable surface water quality standards adopted by the Commission.
- (8) Specify any measures that may be necessary to prevent any air emission during implementation of the remedial action plan that violates applicable air quality standards adopted by the Commission.
- (9) Provide for attainment and maintenance of the remediation standards established under G.S. 130A-310.68.
- (10) Provide for methods and procedures to verify that the quantity, concentration, range, or other measure of each contaminant remaining at the contaminated site at the conclusion of the contaminant-reduction phase of remediation meets the remediation standards established for the site, that an acceptable level of risk has been achieved, and that no further remediation is required.
- (11) Provide for the imposition and recordation of land-use restrictions as provided in G.S. 143B-279.9, 143B-279.10, 130A-310.3(f), 130A-310.8, 130A-310.35, 143-215.84(f), and 143-215.85A if the remedial action plan allows contamination in excess of the greater of unrestricted use standards or background standards to remain on any real property or in groundwater that underlies any real property.
- (12) Provide for submission of an annual certification to the Department by the property owner that land use at the site is in compliance with land-use restrictions recorded pursuant to this Part and that the land-use restrictions are still properly recorded in the chain of title for the property.
- (13) Provide a detailed description of the proposed remedial action to be taken; the results of any treatability studies and additional site characterization needed to support the proposed remedial action; plans for postremedial and confirmatory sampling; a project schedule; a schedule for progress reports to the Department; and any other information required by the Department or considered relevant by the person who submits the proposed remedial action plan.
- (14) Provide a description of measures that will be employed to ensure that the safety and health of persons on properties in the vicinity of the site and persons visiting or doing business on the site will not be adversely affected by any remediation activity.

- (15) Provide a reasonable estimate of the probable cost of the remedial action sufficient for the Department to determine an acceptable level of financial assurance.
- (16) Provide proof of financial assurance as required by G.S. 130A-310.72.
- (c) A remedial action plan shall also include an analysis of each of the following factors:
 - (1) Long-term risks and effectiveness of the proposed remediation, including an evaluation of all of the following:
 - a. The magnitude of risks remaining after completion of the remediation.
 - b. The type, degree, frequency, and duration of any postremediation activity that may be required, including, but not limited to, operation and maintenance, monitoring, inspection, reports, and other activities necessary to protect public health, safety, and welfare and the environment.
 - c. Potential for exposure of human and environmental receptors to contaminants remaining at the site.
 - d. Long-term reliability of any engineering and voluntary institutional controls, including repair, maintenance, or replacement of components.
 - e. Time required to achieve remediation standards.
 - (2) Toxicity, mobility, and volume of contaminants, including the amount of contaminants that will be removed, contained, treated, or destroyed; the degree of expected reduction in toxicity, mobility, and volume; and the type, quantity, toxicity, and mobility of contaminants that will remain after implementation of the remedial action plan.
 - (3) Short-term risks and effectiveness of the remediation, including the short-term risks that may be posed to the community, workers, or the environment during implementation of the remedial action plan, and the effectiveness and reliability of protective measures to address short-term risks.
 - (4) The ease or difficulty of implementing the remedial action plan, including commercially available remedial measures; expected operational reliability; available capacity and location of needed treatment, storage, and disposal services for wastes; time to initiate remediation; and approvals necessary to implement the remediation.
- (d) The development of a remedial action plan may require supplemental submissions and revisions based on Department review, remedial action pilot studies, and public comment from local government and citizens. (2011-186, s. 2.)

§ 130A-310.70. Notice of intent to remediate.

In addition to the public participation requirements of the individual programs listed in G.S. 130A-310.67(a), the person who proposes to remediate a site under this Part shall send a notice of intent to remediate to all local governments having taxing or land-use jurisdiction over the site, and to all adjoining landowners. The notice shall include all of the information required in G.S. 130A-310.69(a) and include a statement of intent to clean up the site to site-specific remediation standards. The person shall submit to the Department a copy of the notice of intent provided to local governments and adjoining landowners, a certification that the notice of intent to remediate was so provided to those parties, and all information and comments that the person received in response to the notice. In addition, the person shall, when appropriate, describe how the remedial action plan was modified to address comments received in response to the notice. (2011-186, s. 2.)

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

- (a) The Department shall review and approve a proposed remedial action plan consistent with the remediation standards set out in G.S. 130A-310.68 and the procedures set out in this section. In its review of a proposed remedial action plan, the Department shall do all of the following:
 - (1) Determine whether site-specific remediation standards are appropriate for a particular contaminated site. In making this determination, the Department shall consider proximity of the contamination to water supply wells or other receptors; current and probable future reliance on the groundwater as a water supply; current and anticipated future land use; environmental impacts; and the feasibility of remediation to unrestricted use standards.
 - (2) Determine whether the party conducting the remediation has adequately demonstrated through modeling or other scientific means acceptable to the Department that no contamination will

migrate to off-site property at levels above unrestricted use standards, except as may remain pursuant to a cleanup conducted pursuant to G.S. 130A-310.73A(a)(2).

- (3) Determine whether the proposed remedial action plan meets the requirements of G.S. 130A-310.69.
- (4) Determine whether the proposed remedial action plan meets the requirements of any other applicable remediation program except those pertaining to remediation standards.
- (5) Establish the acceptable level or range of levels of risk to public health, safety, and welfare and to the environment.
- (6) Establish, for each contaminant, the maximum allowable quantity, concentration, range, or other measures of contamination that will remain at the contaminated site at the conclusion of the contaminant-reduction phase of the remediation.
- (7) Consider the technical performance, effectiveness, and reliability of the proposed remedial action plan in attaining and maintaining compliance with applicable remediation standards.
- (8) Consider the ability of the person who proposes to remediate the site to implement the proposed remedial action plan within a reasonable time and without jeopardizing public health, safety, or welfare or the environment.
- (9) Determine whether the proposed remedial action plan adequately provides for the imposition and maintenance of engineering and institutional controls and for sampling, monitoring, and reporting requirements necessary to protect public health, safety, and welfare and the environment. In making this determination, the Department may consider, in lieu of land-use restrictions authorized under G.S. 130A-310.69, reliance on other State or local land-use controls. Any land-use controls implemented shall adequately protect public health, safety, and welfare and the environment and provide adequate notice to current and future property owners of any residual contamination and the land-use controls in place.
- (10) Approve the circumstances under which no further remediation is required.

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

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

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

(e) If, pursuant to subdivision (9) of subsection (a) of this section, reliance on other State or local land-use controls is approved by the Department in lieu of land-use restrictions, a "Notice of Residual Contamination" shall be prepared and filed in the chain of title of each contaminated site or contaminated off-site property where any contamination has or will in the future exceed unrestricted use standards. The Notice shall identify the type of contamination on the site or property and the land-use controls that address the contamination and may be filed by the person who proposes to remediate the site. Provided, however, the Department may only approve imposition of land-use controls on contaminated off-site property with the written consent of the owner of the property in conformance with G.S. 130A-310.73A(a)(2). (2011-186, s. 2; 2015-286, s. 4.7(a).)

§ 130A-310.72. Financial assurance requirement.

The person conducting remediation of a contaminated industrial site pursuant to the provisions of this Part shall establish financial assurance that will ensure that sufficient funds are available to implement and maintain the

actions or controls specified in the remedial action plan for the site. The person conducting remediation of a site may establish financial assurance through one of the following mechanisms, or any combination of the following mechanisms, in a form specified or approved by the Department: insurance products issued from entities having no corporate or ownership association with the person conducting the remediation; funded trusts; surety bonds; certificates of deposit; letters of credit; corporate financial tests; local government financial tests; corporate guarantees; local government guarantees; capital reserve funds; or any other financial mechanism authorized for the demonstration of financial assurance under (i) 40 Code of Federal Regulations Part 264, Subpart H (July 1, 2010 Edition) and (ii) Section .1600 of Subchapter B of Chapter 13 of Title 15A of the North Carolina Administrative Code. Proof of financial assurance shall be provided in the remedial action plan and annually thereafter on the anniversary date of the approval of the plan. (2011-186, s. 2.)

§ 130A-310.73. Attainment of the remediation standards.

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

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

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

- (1) Monitoring, testing, or analysis of the site subsequent to the issuance of the no further action determination indicates that the remediation standards and objectives were not achieved or are not being maintained.
- (2) One or more of the conditions, restrictions, or limitations imposed on the site as part of the remediation have been violated.
- (3) Site monitoring or operation and maintenance activities that are required as part of the remedial action plan or no further action determination for the site are not adequately funded or are not adequately implemented.
- (4) A contaminant or hazardous substance release is discovered at the site that was not the subject of the remedial investigation report or the remedial action plan.
- (5) A material change in the facts known to the Department at the time the written no further action determination was issued, or new facts, cause the Department to find that further assessment or remediation is necessary to prevent a significant risk to human health and safety or to the environment.
- (6) The no further action determination was based on fraud, misrepresentation, or intentional nondisclosure of information by the person conducting the remediation, or that person's agents, contractors, or affiliates.
- (7) Installation or use of wells would induce the flow of contaminated groundwater off the contaminated site, as defined in the remedial action plan.

(d) The Department shall issue a final decision on a request for a determination that remediation has been completed to approved standards and that no further remediation beyond that specified in the approved remedial action plan is required within 180 days after receipt of a complete final report. Failure of the Department to issue a final decision on a no further remediation determination within 180 days after receipt of a complete final report and request for a determination of no further remediation may be treated as a denial of the request for a no further remediation determination. The responsible person may seek review of a denial of a request for a release from further remediation as provided in Article 3 of Chapter 150B of the General Statutes. (2011-186, s. 2; 2015-286, s. 4.7(a).)

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

(a) Contaminated sites at which contamination has migrated to off-site properties may be remediated pursuant to this Part consistent with the remediation standards set out in G.S. 130A-310.68 if either of the following occur:

- (1) The person who proposes to conduct the remediation pursuant to this Part remediates the contaminated off-site property to unrestricted use standards.
- (2) The person who proposes to conduct the remediation pursuant to this Part (i) provides the owner of the contaminated off-site property with a copy of this Part and the publication produced by the Department pursuant to subsection (b) of this section and (ii) obtains written consent from the owner of the contaminated off-site property for the person to remediate the contaminated off-site property using site-specific remediation standards pursuant to this Part; provided that the site-specific remediation standards shall not allow concentrations of contaminants on the off-site property to increase above the levels present on the date the written consent is obtained. Written consent from the owner of the off-site property shall be on a form prescribed by the Department and include an affirmation that the owner has received and read the publication and authorizes the person to remediate the owner's property using site-specific remediation standards pursuant to this Part.

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

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

(d) Nothing in this section shall be construed to preclude or impair any person from obtaining any and all other remedies allowed by law. (2015-286, s. 4.7(a).)

§ 130A-310.74. Compliance with other laws.

Where a site is covered by an agreement under the Brownfields Property Reuse Act of 1997, as codified as Part 5 of Article 9 of Chapter 130A of the General Statutes, any work performed by the prospective developer pursuant to that agreement is not required to comply with this Part, but any work not covered by such agreement and performed at the site by another person not a party to that agreement may be performed pursuant to this Part. (2011-186, s. 2.)

§ 130A-310.75. Use of registered environmental consultants.

The Department may approve the use of a registered environmental consultant to provide oversight for the assessment and remediation of a site under this Part based on the risk posed by the site and the availability of Department staff for oversight of remediation activities. If remediation under this Part is not undertaken voluntarily, the Department may not require the use of a registered environmental consultant to provide oversight for the assessment and remediation of a site under this Part. (2011-186, s. 2; 2015-286, s. 4.7(a).)

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

(a) The following fees, payable to the Risk-Based Remediation Fund established under G.S. 130A-310.76A, are applicable to activities under this Part:

- (1) Application fee. - A person who proposes to conduct remediation pursuant to this Part shall pay an application fee due at the time a proposed remedial action plan is submitted to the Department for approval. The application fee shall not exceed five thousand dollars (\$5,000) for each acre or portion of an acre of contamination, including any area that will become contaminated as a result of the release; however, no person shall be required to pay more than one hundred thousand dollars (\$100,000) in fees attributable to this subdivision to the Fund, with the total amount owed calculated by the Department after evaluation of the factors set forth in subsection (a1) of this section and any rules promulgated thereunder.
- (2) Oversight fee. - A person who has been approved by the Department to conduct a remedial action plan pursuant to this Part shall pay an oversight fee to the Department within 30 days of such approval or at such other time as the Department may authorize. The total ongoing oversight fees shall not exceed five hundred dollars (\$500.00) for each acre or portion of an acre of contamination, including any area that will become contaminated as a result of the release; however, no person shall be required to pay more than twenty-five thousand dollars (\$25,000) in fees attributable to this subdivision to the Fund, with the total amount owed calculated by the Department after evaluation of the factors set forth in subsection (a1) of this section and any rules promulgated thereunder.

(a1) The Department shall take all of the following factors into account prior to imposing a fee on a person pursuant to subsection (a) of this section and provide the person written documentation of the Department's findings with respect to each factor at the time the fee is imposed:

- (1) The size of the site subject to a proposed remedial action plan.
- (2) Whether groundwater contamination from the site has migrated, or is likely to migrate, to off-site properties.
- (3) The complexity of the work to be conducted at a site under a proposed remedial action plan.
- (4) The resources that the Department will need to evaluate and oversee the work to be conducted at a site under a proposed remedial action plan and the resources the Department will need to monitor a site after completion of remediation. If such work, or any portion thereof, is to be performed by a registered environmental consultant in accordance with the provisions of G.S. 130A-310.75, the Department shall take this into account accordingly in imposing a reduced fee.

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

- (1) To pay for administrative and operating expenses necessary to implement this Part, including the full cost of the Department's activities associated with any human health or ecological risk assessments, groundwater modeling, financial assurance matters, or community outreach.
- (2) To establish, administer, and maintain a system for the tracking of land-use restrictions recorded at sites that are remediated pursuant to this Part.

(c) The Department shall report to the Joint Legislative Commission on Governmental Operations, the Environmental Review Commission, and the Fiscal Research Division on or before October 1 of each year on the amounts and sources of funds collected by year received pursuant to this Part, the amounts and sources of those funds paid into the Risk-Based Remediation Fund established under G.S. 130A-310.76A, the number of acres of contamination for which funds have been received pursuant to subsection (a) of this section, and a detailed annual accounting of how the funds collected pursuant to this Part have been utilized by the Department to advance the purposes of this Part.

(d) The Commission may adopt rules to implement the requirements of subsection (a1) of this section. (2011-186, s. 2; 2015-286, s. 4.7(a).)

§ 130A-310.76A. Risk-Based Remediation Fund.

There is established under the control and direction of the Department the Risk-Based Remediation Fund. This fund shall be a revolving fund consisting of fees collected pursuant to G.S. 130A-310.76 and other monies paid to it or recovered by or on behalf of the Department. The Risk-Based Remediation Fund shall be treated as a

nonreverting special trust fund pursuant to G.S. 147-69.2 and G.S. 147-69.3, except that interest and other income received on the Fund balance shall be treated as set forth in G.S. 147-69.1(d). (2015-286, s. 4.7(a).)

§ 130A-310.77. Construction of Part.

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

- (1) In any manner that would jeopardize federal authorization under any of the federal statutes, programs, or requirements set out in G.S. 130A-310.67(a) or would otherwise conflict with federal authority under those statutes, programs, and requirements. This Part is supplemental to the programs and requirements set out in G.S. 130A-310.67(a) that would otherwise govern the remediation of a contaminated industrial site. Where the definitions, provisions, or requirements of this Part conflict with the definitions, provisions, or requirements of an otherwise applicable remediation program, this Part shall control, unless expressly stated to the contrary.
- (2) To limit the authority of the Department to require investigation, initial response, or remediation of environmental contamination under any other provision of State or federal law necessary to address an imminent threat to public health, safety, or welfare or the environment.
- (3) To alter the requirements of programs to prevent or mitigate the release or discharge of contaminants to the environment, including permitting requirements that regulate the handling of hazardous substances or wastes.
- (4) To supersede or otherwise affect or prevent the enforcement of any land-use or development regulation or ordinance adopted by a municipality pursuant to Article 19 of Chapter 160A of the General Statutes or adopted by a county pursuant to Article 18 of Chapter 153A of the General Statutes. The use of a site and any land-use restrictions imposed as part of a remedial action plan shall comply with land-use and development controls adopted by a municipality pursuant to Article 19 of Chapter 160A of the General Statutes or adopted by a county pursuant to Article 18 of Chapter 153A of the General Statutes. (2011-186, s. 2.)

§ 130A-310.78: Reserved for future codification purposes.

§ 130A-310.79: Reserved for future codification purposes.

§ 130A-310.80: Reserved for future codification purposes.