

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2003**

**S**

**1**

**SENATE BILL 908\***

Short Title: Groundwater Protection Act.

(Public)

---

Sponsors: Senator Hartsell.

---

Referred to: Agriculture/Environment/Natural Resources.

---

April 3, 2003

1                                   A BILL TO BE ENTITLED  
2 AN ACT TO PROTECT GROUNDWATER AS A CURRENT AND FUTURE  
3 WATER RESOURCE AND TO ENCOURAGE REDEVELOPMENT OF  
4 BROWNFIELDS SITES.

5           Whereas, the General Assembly finds that the groundwater of North Carolina  
6 is a valuable public and private resource; and

7           Whereas, the General Assembly finds that half of the population of North  
8 Carolina relies on groundwater as a drinking water source; and

9           Whereas, the General Assembly finds that groundwater provides the water  
10 supply for industrial and commercial uses; and

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

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

19           Whereas, the General Assembly finds that the presence of environmental  
20 contamination creates both potential and actual harm to public health, safety, and  
21 welfare and to the environment; and

22           Whereas, the General Assembly finds that this potential and actual harm  
23 results in substantial economic losses, including reduced property values and tax  
24 revenues; decreased ability to develop and expand the beneficial use of these areas; and  
25 other opportunity costs due to the uncertainties and concerns that result from the  
26 environmental contamination of these areas; and

27           Whereas, the General Assembly finds that it is in the public interest that  
28 contaminated areas are cleaned up and managed in a manner that protects public health,  
29 safety, and welfare and the environment; and

1           Whereas, the General Assembly finds that both private citizens and local  
2 governments would benefit from a source of funding to plan for and provide alternate  
3 drinking water supplies to replace contaminated drinking water wells; and

4           Whereas, the General Assembly finds that North Carolina would benefit both  
5 economically and environmentally by the creation of a source of funding for State  
6 remediation of contaminated sites for which no responsible party has been identified;  
7 and

8           Whereas, the General Assembly finds that persons responsible for  
9 contamination would benefit from the creation of a fund to provide for prevention and  
10 mitigation of hazards on sites that become a threat to the public health, safety, and  
11 welfare and the environment because of a change in conditions after successful  
12 completion of voluntary remediation; and

13           Whereas, the General Assembly finds that such a fund would provide greater  
14 certainty to responsible parties with respect to the extent of their obligation to remediate  
15 and would facilitate the conversion of contaminated properties to an economically  
16 beneficial use; and

17           Whereas, the General Assembly finds that it is the policy of this State that  
18 persons responsible for damaging natural resources have an obligation to repair the  
19 damage or mitigate the damage to the extent possible; and

20           Whereas, the General Assembly finds that public health, safety, and welfare  
21 and the environment can best be protected by encouraging persons responsible for  
22 groundwater contamination to remediate contaminated sites; and

23           Whereas, the General Assembly finds that persons responsible for  
24 groundwater contamination may have a greater incentive to undertake voluntary  
25 remediation of contaminated areas if the remediation process is streamlined; and

26           Whereas, the General Assembly finds that the State would benefit both  
27 environmentally and economically from encouraging redevelopment of brownfields  
28 sites; Now, therefore,

29 The General Assembly of North Carolina enacts:

30           **SECTION 1.** G.S. 130A-310 is amended by adding two new subdivisions to  
31 read:

32           "(1a) 'Contiguous property owner' means a person who owns real property  
33           that is contiguous to real property on which a release of a hazardous  
34           substance has occurred or is threatened and that is or may be  
35           contaminated by the release.

36           "(1b) 'Groundwater Mitigation and Environmental Response Fund' means  
37           the Groundwater Mitigation and Environmental Response Fund  
38           established by G.S.130A-310.14."

39           **SECTION 2.** G.S. 130A-310.2 reads as rewritten:

40           "**§ 130A-310.2. Inactive Hazardous Waste Sites Priority List.**

41           ~~No later than six months after July 1, 1987, the~~ The Commission shall develop a  
42 system for the prioritization of inactive hazardous substance or waste disposal sites  
43 based on the extent to which ~~such the sites endanger the public health~~ health, safety, and  
44 welfare and the environment. The Secretary shall apply the prioritization system to the

1 inventory of sites to ~~create and~~ maintain an Inactive Hazardous Waste Site Priority List,  
2 ~~which~~ List. The List shall rank all inactive hazardous substance or waste disposal sites in  
3 decreasing order of danger. This list shall identify the location of each site and the type  
4 and amount of hazardous substances or waste known or believed to be located on the  
5 site. The List shall also identify those sites for which the responsible party has  
6 defaulted, no responsible party can be located, or the responsible party has demonstrated  
7 to the satisfaction of the Secretary that it does not have the funds to assess the site or  
8 remedy the contamination. The first such list shall be published within two years after  
9 July 1, 1987, with subsequent lists to be published at intervals of not more than two  
10 years thereafter. The Secretary shall revise and publish the List at least once every two  
11 years. The Secretary shall notify owners, operators, and responsible parties of sites  
12 listed on the Inactive Hazardous Waste Sites Priority List of their ranking on the list.  
13 The Inactive Hazardous Sites Priority List shall be used by the Department in  
14 determining budget requests and in allocating any State appropriation which may be  
15 made for remedial ~~action,~~ action pursuant to G.S. 130A-310.6, but shall not be used so  
16 as to impede any other action by the Department, or any remedial or other action for  
17 which funds are available."

18 **SECTION 3.** G.S. 130A-310.3 reads as rewritten:

19 "**§ 130A-310.3. Remedial action programs for inactive hazardous substance or**  
20 **waste disposal sites.**

21 (a) The Secretary may issue a written declaration, based upon findings of fact,  
22 that an inactive hazardous substance or waste disposal site endangers the public health  
23 or the environment. After issuing such a declaration, and at any time during which the  
24 declaration is in effect, the Secretary shall be responsible for:

- 25 (1) Monitoring the inactive hazardous substance or waste disposal site;
- 26 (2) Developing a plan for public notice and for community and local  
27 government participation in any inactive hazardous substance or waste  
28 disposal site remedial action program to be undertaken;
- 29 (3) Approving an inactive hazardous substance or waste disposal site  
30 remedial action program for the site;
- 31 (4) Coordinating the inactive hazardous substance or waste disposal site  
32 remedial action program for the site; and
- 33 (5) Ensuring that the hazardous substance or waste disposal site remedial  
34 action program is completed.

35 (a1) Within 90 days of the date on which an owner or responsible party knows or  
36 should have known of the existence of an inactive hazardous substance or waste  
37 disposal site, the owner or responsible party shall submit to the Secretary an assessment  
38 plan for the determination of the nature, concentration, and extent of hazardous  
39 substances present in each environmental medium including but not limited to  
40 groundwater, soil, sediment, surface water, and waste.

41 (a2) Within 90 days of the date the Secretary notifies the responsible party that  
42 hazardous substance remediation will be necessary, the responsible party shall:

1           (1) Develop an inactive hazardous substance or waste disposal site  
2           remedial action plan for the site subject to approval by the Secretary,  
3           and

4           (2) Implement the inactive hazardous substance or waste disposal site  
5           remedial action plan within time limits specified in the  
6           Department-approved plans.

7           (a3) With the approval of the Secretary, a responsible party may employ a private  
8           environmental consulting or engineering firm to implement and oversee an assessment  
9           or a remedial action.

10          (b) ~~Where possible, the Secretary shall work cooperatively with any owner,~~  
11          ~~operator, responsible party, or any appropriate agency of the State or federal~~  
12          ~~government to develop and implement the inactive hazardous substance or waste~~  
13          ~~disposal site remedial action program. The Secretary shall not take action under this~~  
14          ~~section to the extent that~~ To the extent necessary, the Secretary shall coordinate  
15          development and implementation of a remedial action with the Environmental  
16          Management Commission, the Commissioner of Agriculture, ~~or~~ and the Pesticide  
17          ~~Board~~ Board. has assumed jurisdiction pursuant to Articles 21 or 21A of Chapter 143 of  
18          ~~the General Statutes.~~

19          (b1) An owner, operator, or responsible party who has completed a remedial  
20          action for hazardous substances at an inactive hazardous substance or waste disposal  
21          site pursuant to this Part shall not be required to perform any remedial action for the  
22          same release pursuant to Articles 21 or 21A of Chapter 143 of the General Statutes,  
23          unless the Department makes a later determination as provided in G.S. 130A-310.7(c).

24          (c) Whenever the Secretary has issued such a declaration, and at any time during  
25          which the declaration is in effect, the Secretary may, in addition to any other powers he  
26          may have, order any responsible party:

27                 (1) To develop an inactive hazardous substance or waste disposal site  
28                 remedial action program for the site subject to approval by the  
29                 Department, and

30                 (2) To implement the program within reasonable time limits specified in  
31                 the order.

32          Written notice of such an order shall be provided to all persons subject to the order  
33          personally or by certified mail. If given by certified mail, notice shall be deemed to have  
34          been given on the date appearing in the return of the receipt. If giving of notice cannot  
35          be accomplished either personally or by certified mail, notice shall be given as provided  
36          in G.S. 1A-1, Rule 4(j).

37          (d) In any inactive hazardous substance or waste disposal site remedial action  
38          program implemented hereunder, the Secretary shall ascertain the most nearly  
39          applicable cleanup standard as would be applied under CERCLA/SARA, and may seek  
40          federal approval of any such program to insure concurrent compliance with federal  
41          standards. State standards may exceed and be more comprehensive than such federal  
42          standards. The Secretary shall assure concurrent compliance with applicable standards  
43          set by the Environmental Management Commission.

1 (e) For any removal or remedial action conducted entirely on-site under this Part,  
2 to the extent that a permit would not be required under 42 U.S.C. § 9621(e) for a  
3 removal or remedial action conducted entirely on-site under CERCLA/SARA, the  
4 Secretary may grant a waiver from any State law or rule that requires that an  
5 environmental permit be obtained from the Department. The Secretary shall not waive  
6 any requirement that a permit be obtained unless either the removal or remedial action is  
7 being conducted pursuant to G.S. 130A-310.3(c), 130A-310.5, or 130A-310.6, or the  
8 owner, operator, or other responsible party has entered into an agreement with the  
9 Secretary to implement a voluntary remedial action plan under G.S. 130A-310.9(b). The  
10 Secretary shall invite public participation in the development of the remedial action plan  
11 in the manner set out in G.S. 130A-310.4 prior to granting a permit waiver, except for a  
12 removal or remedial action conducted pursuant to G.S. 130A-310.5.

13 (f) In order to reduce or eliminate the danger to public health or the environment  
14 posed by an inactive hazardous substance or waste disposal site, an owner, operator, or  
15 other responsible party may impose restrictions on the current or future use of the real  
16 property comprising any part of the site if the restrictions meet the requirements of this  
17 subsection. The restrictions must be agreed to by the owner of the real property,  
18 included in a remedial action plan for the site that has been approved by the Secretary,  
19 and implemented as a part of the remedial action program for the site. The Secretary  
20 may approve restrictions included in a remedial action plan in accordance with  
21 standards determined as provided in subsection (d) of this section or pursuant to rules  
22 adopted under Chapter 150B of the General Statutes. Restrictions may apply to  
23 activities on, over, or under the land, including, but not limited to, use of groundwater,  
24 building, filling, grading, excavating, and mining. Any approved restriction shall be  
25 enforced by any owner, operator, or other party responsible for the inactive hazardous  
26 substance or waste disposal site. Any land-use restriction may also be enforced by the  
27 Department through the remedies provided in Part 2 of Article 1 of this Chapter or by  
28 means of a civil action. The Department may enforce any land-use restriction without  
29 first having exhausted any available administrative remedies. A land-use restriction may  
30 also be enforced by any unit of local government having jurisdiction over any part of  
31 the site. A land-use restriction shall not be declared unenforceable due to lack of privity  
32 of estate or contract, due to lack of benefit to particular land, or due to lack of any  
33 property interest in particular land. Any person who owns or leases a property subject to  
34 a land-use restriction under this Part shall abide by the land-use restriction."

35 **SECTION 4.** G.S. 130A-310.7 reads as rewritten:

36 "**§ 130A-310.7. Action for reimbursement; liability of responsible parties;**  
37 **notification of completed remedial action.**

38 (a) ~~Notwithstanding any other provision or rule of law, and subject~~Subject only  
39 to the defenses set forth in this ~~subsection, any person who~~section, a responsible party  
40 is a person who causes or contributes to the existence of an inactive hazardous  
41 substance or waste disposal site by any of the following:

42 (1) ~~Discharges or deposits; or~~Discharging, releasing, or depositing any  
43 hazardous substance.

- 1           (2) ~~Contracts or arranges for any discharge or deposit; or~~Contracting or  
2 arranging for a discharge, release, or deposit of any hazardous  
3 substance.  
4           (3) ~~Accepts for discharge or deposit; or~~Accepting any hazardous  
5 substance.  
6           (4) ~~Transports or arranges for transport for the purpose of discharge or~~  
7 ~~deposit~~Transporting or arranging for the transport of any hazardous  
8 substance for the purpose of discharging, releasing, or depositing any  
9 hazardous substance.  
10          (5) Owning or operating a site that contains any hazardous substance.  
11          (6) Owning or operating a site at the time of discharge, release, or deposit  
12 of any hazardous substance.

13 ~~any hazardous substance, the result of which discharge or deposit is the existence of an~~  
14 ~~inactive hazardous substance or waste disposal site, shall be considered a responsible~~  
15 ~~party. Neither an~~

16         (a1) An innocent landowner who is a bona fide purchaser of the inactive  
17 hazardous substance or waste disposal site without knowledge or without a reasonable  
18 basis for knowing that hazardous substance or waste disposal had occurred ~~nor a~~ shall  
19 not be considered a responsible party if the landowner establishes all of the following by  
20 a preponderance of the evidence:

- 21           (1) All of the discharge, release, or deposit of hazardous substances at the  
22 site occurred before the landowner acquired the site; or the disposal  
23 was the result of:  
24           a. An act of God; or  
25           b. An act of war; or  
26           c. An intentional act or omission of a third party who is not an  
27 employee or agent of the landowner or who does not have a  
28 contractual relationship with the landowner.  
29          (2) On or before the date of purchase, the landowner made all appropriate  
30 inquiries into the previous ownership and uses of the property in  
31 accordance with generally accepted and customary commercial  
32 standards and practices. The Secretary shall take into account any  
33 specialized knowledge or experience on the part of the landowner, the  
34 relationship of the purchase price to the value of the property if the  
35 property were not contaminated, commonly known or reasonably  
36 ascertainable information about the property, and whether the  
37 contamination is detectable by appropriate inspection. In the case of  
38 property that is used for residential or similar purposes at the time of  
39 its purchase by an entity that is neither governmental or commercial, a  
40 site inspection and title search that does not reveal information that  
41 would cause a reasonable person to make further investigation shall  
42 satisfy the requirements of this subdivision.

- 1           (3) The landowner has provided all legally required notices with respect to  
2           the discovery of a discharge, release, or deposit of any hazardous  
3           substances at the site.
- 4           (4) The landowner has exercised appropriate care with respect to  
5           hazardous substances found at the sites by taking reasonable steps to  
6           do all of the following:
- 7               a. Stop any continuing discharge, release, or deposit.  
8               b. Prevent any threatened future discharge, release, or deposit.  
9               c. Conduct such remedial measures approved by the Secretary that  
10              prevent or limit human, environmental, or natural resource  
11              exposure to any previously discharged, released, or deposited  
12              hazardous substance and make the site safe for its intended use.  
13              Such measures might include the application of institutional  
14              controls and other means of preventing exposure. Unless  
15              necessary to prevent exposure, the innocent landowner is not  
16              required to restore groundwater contamination to State  
17              standards.
- 18           (5) The landowner has provided and continues to provide full cooperation,  
19           assistance, and access to persons who are authorized to conduct any  
20           response, remedial action, or natural resource restoration at the  
21           property, including any cooperation and access necessary to install,  
22           operate, maintain, or secure any completed or partial response,  
23           remedial action, or natural resource restoration at the property.
- 24           (6) The landowner has complied and continues to comply with any  
25           land-use restrictions established or relied on in connection with the  
26           response, remedial action, or natural resources restoration at the  
27           property.
- 28           (7) The landowner has not impeded and continues to not impede the  
29           effectiveness or integrity of any institutional control employed at the  
30           property in connection with a response, remedial action, or natural  
31           resources restoration.
- 32           (8) The landowner has complied or has agreed to comply with any  
33           requirement to record any land-use restrictions that may be required by  
34           the Secretary.
- 35           (9) The landowner has complied and continues to comply with any request  
36           for information or administrative subpoena issued by the Secretary.
- 37           (10) The landowner is not liable, potentially liable, or affiliated with any  
38           other person who is liable or potentially liable for any cost associated  
39           with the response, remedial action, or natural resources restoration at  
40           the property through any of the following:
- 41               a. Any direct or indirect familial relationship.  
42               b. Any contractual, corporate, or financial relations, other than a  
43               contractual, corporate, or financial relationship that is created  
44               by an instrument through which title to the property is

1                    conveyed, an instrument through which sale or purchase of the  
2                    property is financed, or by a contract for the sale of goods or  
3                    services.

4                    c. A reorganization in bankruptcy of a business entity that is liable  
5                    or potentially liable.

6                    (a2) A person whose interest or ownership in the inactive hazardous substance or  
7                    waste disposal site is based on or derived from a security interest in the property shall be  
8                    considered a responsible party. A responsible party shall be directly liable to the State  
9                    for any or all of the reasonably necessary expenses of developing and implementing a  
10                    remedial action program for such site. The Secretary shall bring an action for  
11                    reimbursement of the Inactive Hazardous Sites Cleanup Fund in the name of the State in  
12                    the superior court of the county in which the site is located to recover such sum and the  
13                    cost of bringing the action.

14                    (a3) A responsible party shall also be directly liable to the State for any damage to  
15                    natural resources that result from a discharge, release, or deposit of hazardous  
16                    substances as provided in subsection (a) of this section. Damages shall be based on the  
17                    replacement value of any contaminated groundwater for the period of time between the  
18                    discovery of the contamination and the completion of an approved remedial action. To  
19                    determine the replacement value of the contaminated groundwater, the Secretary shall  
20                    multiply the groundwater recharge rate for the area of contaminated groundwater by a  
21                    median per gallon water rate charged by public water systems in the State as determined  
22                    by the Secretary. The Secretary may bring an action for natural resource damages for  
23                    groundwater contamination in the superior court of the county in which the site is  
24                    located or in any county in which the responsible party resides or has a place of business  
25                    to recover the replacement value of contaminated groundwater and the cost of bringing  
26                    the action. The State must show that a danger to the public health, safety, or  
27                    welfare or the environment existed and that the State complied with the provisions of  
28                    this Part. Natural resource damages recovered pursuant to this section shall be deposited  
29                    in the Groundwater Mitigation and Environmental Response Fund established by G.S.  
30                    130A-310.14.

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

34                    ~~(1) An act of God; or~~

35                    ~~(2) An act of war; or~~

36                    ~~(3) An intentional act or omission of a third party (but this defense shall~~  
37                    ~~not be available if the act or omission is that of an employee or agent~~  
38                    ~~of the defendant, or if the act or omission occurs in connection with a~~  
39                    ~~contractual relationship with the defendant); or~~

40                    ~~(4) Any combination of the above causes.~~

41                    If there are any unrecovered response costs incurred by the State at a property for  
42                    which an owner of the property is not liable under this section and the remedial action  
43                    increases the fair market value of the property above the fair market value of the  
44                    property that existed before the remedial action was initiated, the State shall have a lien



1 on the property. The owner of the property may substitute a lien on other property or  
2 provide other assurance of payment of unrecovered costs satisfactory to the Secretary. A  
3 lien created pursuant to this subsection shall meet all of the following requirements:

4 (1) Be in an amount not to exceed the increase in fair market value of the  
5 property attributable to the response action at the time of the sale or  
6 other disposition of the property.

7 (2) Arise at the time at which costs are first incurred by the State with  
8 respect to a response action at the site.

9 (3) Continue until the earlier of:

10 a. Satisfaction of the lien by sale or other means or

11 b. Notwithstanding any statute of limitations under this Chapter,  
12 recovery of all response costs incurred at the site.

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

28 **SECTION 5.** Part 3 of Article 9 of Chapter 130A is amended by adding a  
29 new section to read:

30 **"§ 130A-310.14. Groundwater Mitigation and Environmental Response Fund.**

31 (a) There is established under the control and direction of the Department the  
32 Groundwater Mitigation and Environmental Response Fund. The Fund shall be a  
33 nonreverting, interest-bearing fund consisting of groundwater mitigation fee payments  
34 made to the Department, monies appropriated to the Fund by the General Assembly,  
35 investment interest credited to the Fund, payments for expedited review of a risk  
36 assessment or site-specific remediation standards, administrative fees for review of a  
37 site-specific remedial action, and other monies paid to or recovered on behalf of the  
38 Fund.

39 (b) The Fund may be used to pay the costs of any of the following:

40 (1) Assessment or remediation of environmental contamination at sites  
41 where a responsible party cannot be identified or located, or where the  
42 responsible party is unable to pay the costs of assessment or  
43 remediation, and where there is no other dedicated source of State or  
44 federal funds to undertake remediation.

- 1           (2) Assessment or remediation of environmental contamination at sites  
2 where a responsible party fails to comply with the requirements of  
3 G.S. 130A-310.1 or G.S. 130A-310.3.
- 4           (3) Provision of alternative drinking water supplies for third parties  
5 affected by environmental contamination either on a temporary basis  
6 until a responsible party has been identified or on a permanent basis  
7 with respect to sites described in subdivision (1) of this subsection.
- 8           (4) Establishment, administration, and maintenance of a geographic  
9 information system capable of mapping the land and water resources  
10 of the State where contamination exists above statewide health  
11 standards.
- 12           (5) Administration of the Brownfields Property Reuse Act of 1997.
- 13           (6) Audits of institutional controls."

14       **SECTION 6.** G.S. 130A-22(a) reads as rewritten:

15       "(a) The Secretary of Environment and Natural Resources may impose an  
16 administrative penalty on a person who violates Article 9 of this Chapter, rules adopted  
17 by the Commission pursuant to Article 9, or any order issued under Article 9. Each day  
18 of a continuing violation shall constitute a separate violation. The penalty shall not  
19 exceed five thousand dollars (\$5,000) per day in the case of a violation involving  
20 nonhazardous waste. The penalty shall not exceed twenty-five thousand dollars  
21 (\$25,000) per day in the case of a first violation involving hazardous ~~waste~~ waste, as  
22 defined in ~~G.S. 130A-290~~ or G.S. 130A-290, involving the disposal of medical waste as  
23 defined in G.S. 130A-290 in or upon water in a manner that results in medical waste  
24 entering waters or lands of the ~~State~~ State, or hazardous substances as defined in G.S.  
25 130A-310; and shall not exceed fifty thousand dollars (\$50,000) per day for a second or  
26 further violation involving the disposal of medical waste as defined in G.S. 130A-290 in  
27 or upon water in a manner that results in medical waste entering waters or lands of the  
28 State. The penalty shall not exceed twenty-five thousand dollars (\$25,000) per day for a  
29 violation involving a voluntary remedial action implemented pursuant to G.S.  
30 130A-310.9(c) or a violation of the rules adopted pursuant to G.S. 130A-310.12(b). If a  
31 person fails to pay a civil penalty within 60 days after the final agency decision or court  
32 order has been served on the violator, the Secretary of Environment and Natural  
33 Resources shall request the Attorney General to institute a civil action in the superior  
34 court of any county in which the violator resides or has his or its principal place of  
35 business to recover the amount of the assessment. Such civil actions must be filed  
36 within three years of the date the final agency decision or court order was served on the  
37 violator."

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

40       "**§ 143B-279.12. Use of private environmental consulting and engineering firms.**

41       A responsible party who enters into an agreement with the Secretary to implement a  
42 voluntary remedial action pursuant to this Part may hire a private environmental  
43 consulting or engineering firm approved by the Department to implement and oversee  
44 the voluntary remedial action. A voluntary remedial action that is implemented and

1 overseen by a private environmental consulting or engineering firm shall be  
2 implemented in accordance with all federal and State laws, regulations, and rules that  
3 apply to remedial actions generally and is subject to rules adopted pursuant to this  
4 section. The Department may revoke its approval of the oversight of a voluntary  
5 remedial action by a private environmental consulting or engineering firm and assume  
6 direct oversight of the remedial action whenever it appears to the Department that the  
7 remedial action is not being implemented in accordance with federal and State laws,  
8 regulations, and rules or is not being implemented in accordance with the approved  
9 remediation plan. The Department may require the responsible party to take any action  
10 necessary to bring the remedial action into compliance with applicable requirements.  
11 The Environmental Management Commission shall adopt rules governing the selection  
12 and use of private environmental consulting and engineering firms to implement and  
13 oversee voluntary remedial actions by owners, operators, and responsible parties under  
14 all programs for the remediation of groundwater contamination administered by any  
15 agency of the Department of Environment and Natural Resources. Rules adopted under  
16 this subsection shall specify:

- 17 (1) Standards applicable to private environmental consulting and  
18 engineering firms.
- 19 (2) Criteria and procedures for approval of firms by the Department.
- 20 (3) Requirements and procedures under which the Department monitors  
21 and audits a voluntary remedial action to ensure that the voluntary  
22 remedial action complies with applicable federal and State law,  
23 regulations, and under which the owner, operator, or other responsible  
24 party reimburses the Department for the cost of monitoring and  
25 auditing the voluntary remedial action.
- 26 (4) Any financial assurances that may be required of an owner, operator,  
27 or other responsible party.
- 28 (5) Requirements for the preparation, maintenance, and public availability  
29 of work plans and records, reports of data collection including  
30 sampling, sample analysis, and other site testing, and other records and  
31 reports that are consistent with the requirements applicable to remedial  
32 actions generally."

33 **SECTION 8.** G.S. 130A-310.31(b)(3) reads as rewritten:

34 "(3) 'Brownfields property' or 'brownfields site' means abandoned, idled, or  
35 underused property at which expansion or redevelopment is hindered  
36 by actual environmental contamination or the possibility of  
37 environmental contamination and that is or may be subject to  
38 remediation ~~under any~~ under:

- 39 a. ~~Any State remedial program other than Part 2A of Article 21A~~  
40 ~~of Chapter 143 of the General Statutes or that is or may be~~  
41 ~~subject to remediation under the program or~~
- 42 b. The Comprehensive Environmental Response, Compensation  
43 and Liability Act of 1980, as amended (42 U.S.C. § 9601 et

1                    ~~see~~ 42 U.S.C. § 9601; except for sites listed in the National  
2                    Priorities List promulgated pursuant to 42 U.S.C. § 9605."

3                    **SECTION 9.** G.S. 130A-310.31(b)(5) reads as rewritten:

4                    "(5) 'Unrestricted use standards' when used in connection with 'cleanup',  
5                    'remediated', or 'remediation' means that cleanup or remediation of  
6                    contamination complies with generally applicable standards, guidance,  
7                    or established methods governing ~~the~~ remediation of contaminants that  
8                    are established by statute or adopted, published, or implemented by the  
9                    Environmental Management Commission, the Commission, or the  
10                    Department instead of the site-specific requirements that may allow  
11                    remediation to less than unrestricted use standards incorporated in a  
12                    brownfields agreement. the risk-based standards established by the  
13                    Commission pursuant to this Part."

14                    **SECTION 10.** G.S. 130A-310.32(a) reads as rewritten:

15                    "(a) The Department may, in its discretion, enter into a brownfields agreement  
16                    with a prospective developer who satisfies the requirements of this section. A  
17                    prospective developer shall provide the Department with any information necessary to  
18                    demonstrate that:

- 19                    (1) The prospective developer, and any parent, subsidiary, or other  
20                    affiliate of the prospective developer has substantially complied with:  
21                    a. The terms of any brownfields agreement or similar agreement  
22                    to which the prospective developer or any parent, subsidiary, or  
23                    other affiliate of the prospective developer has been a party.  
24                    b. The requirements applicable to any remediation in which the  
25                    applicant has previously engaged.  
26                    c. Federal and state laws, regulations, and rules for the protection  
27                    of the environment.  
28                    (2) As a result of the implementation of the brownfields agreement, the  
29                    brownfields property will be suitable for the uses specified in the  
30                    agreement while fully protecting public health and the environment  
31                    instead of being remediated to unrestricted use standards.  
32                    (3) There is a public benefit commensurate with the liability protection  
33                    provided under this Part.  
34                    (4) The prospective developer has or can obtain the financial, managerial,  
35                    and technical means to fully implement the brownfields agreement and  
36                    assure the safe use of the brownfields property.  
37                    (5) The prospective developer has complied with or will comply with all  
38                    applicable procedural requirements.  
39                    (6) The prospective developer has a bona fide intention to buy or sell the  
40                    brownfields property."

41                    **SECTION 11.** G.S. 130A-310.34(b) reads as rewritten:

42                    "(b) Publication of the approved summary of the Notice of Intent in the North  
43                    Carolina Register and publication in a newspaper of general circulation shall begin a  
44                    public comment period of at least ~~60~~ 30 days from the later date of publication. During

1 the public comment period, members of the public, residents of the community in which  
2 the brownfields property is located, and local governments having jurisdiction over the  
3 brownfields property may submit comment on the proposed brownfields agreement,  
4 including methods and degree of remediation, future land uses, and impact on local  
5 employment."

6 **SECTION 12.** G.S. 130A-310.34(c) reads as rewritten:

7 "(c) Any person who desires a public meeting on a proposed brownfields  
8 agreement shall submit a written request for a public meeting to the Department within  
9 ~~30~~21 days after the public comment period begins. The Department shall consider all  
10 requests for a public meeting and shall hold a public meeting if the Department  
11 determines that there is significant public interest in the proposed brownfields  
12 agreement. If the Department decides to hold a public meeting, the Department shall, at  
13 least ~~30~~15 days prior to the public meeting, mail written notice of the public meeting to  
14 all persons who requested the public meeting and to any other person who had  
15 previously requested notice. The Department shall also direct the prospective developer  
16 to publish, at least ~~30~~15 days prior to the date of the public meeting, a notice of the  
17 public meeting at least one time in a newspaper having general circulation in such  
18 county where the brownfields property is located. In any county in which there is more  
19 than one newspaper having general circulation, the Department shall direct the  
20 prospective developer to publish a copy of the notice in as many newspapers having  
21 general circulation in the county as the Department in its discretion determines to be  
22 necessary to assure that the notice is generally available throughout the county. The  
23 Department shall prescribe the form and content of the notice to be published. The  
24 Department shall prescribe the procedures to be followed in the public meeting. The  
25 Department shall take detailed minutes of the meeting. The minutes shall include any  
26 written comments, exhibits, or documents presented at the meeting."

27 **SECTION 13.** G.S. 130A-310.37(c) reads as rewritten:

28 "(c) The Department shall not enter into a brownfields agreement for a  
29 ~~brownfields site that is identified by the United States Environmental Protection Agency~~  
30 ~~as a federal Superfund~~ any site on the National Priorities List promulgated pursuant to  
31 the Comprehensive Environmental Response, Compensation, and Liability Act of 1980,  
32 42 U.S.C. § 9605. pursuant to 40 Code of Federal Regulations, Part 300 (1 July 1996  
33 Edition)."

34 **SECTION 14.** G.S. 105-277.13(a) reads as rewritten:

35 "(a) Qualifying improvements on brownfields properties are designated a special  
36 class of property under Article V, Sec. 2(2) of the North Carolina Constitution and shall  
37 be appraised, assessed, and taxed in accordance with this section. ~~An~~ Except as  
38 provided in this subsection, an owner of land who is protected from liability for  
39 remediation pursuant to G.S. 130A-310.33(a) is entitled to the partial exclusion  
40 provided by this section for the first five taxable years beginning after completion of  
41 qualifying improvements made after the later of July 1, 2000, or the date of the  
42 brownfields agreement. If a person who caused or contributed to contamination at a  
43 brownfields property holds any ownership interest in the property, that owner is not  
44 eligible for the partial exclusion. After property has qualified for the exclusion provided

1 by this section, the assessor for the county in which the property is located shall  
2 annually appraise the improvements made to the property during the period of time that  
3 the owner is entitled to the exclusion."

4 **SECTION 15.** This act becomes effective 1 July 2003.