

**GENERAL ASSEMBLY OF NORTH CAROLINA**  
**SESSION 2005**

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**2**

**HOUSE BILL 1778**  
**Committee Substitute Favorable 7/13/06**

Short Title: Risk-Based Environmental Remediation/Fund.

(Public)

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Sponsors:

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Referred to:

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May 12, 2005

A BILL TO BE ENTITLED

1  
2 AN ACT TO EXPAND AND MAKE CONSISTENT THE CIRCUMSTANCES  
3 UNDER WHICH THE DEPARTMENT OF ENVIRONMENT AND NATURAL  
4 RESOURCES SHALL ALLOW FOR RISK-BASED REMEDIAL ACTIONS.

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

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

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

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

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

1 Response, Compensation, and Liability Act of 1980 and the Superfund Amendments  
2 and Reauthorization Act of 1986, and the groundwater protection rules adopted by the  
3 Environmental Management Commission; and

4       Whereas, the General Assembly finds that these remediation programs utilize  
5 varying standards, levels, protocols, means, methods, techniques, interpretations, and  
6 other requirements and apply various federal regulations and State rules applicable to  
7 testing, monitoring, assessing, prioritizing, characterizing, and cleanup or remediation  
8 of contaminated areas; and

9       Whereas, the General Assembly finds that the expenditure of public and  
10 private resources on unnecessary remediation could better be channeled to other  
11 purposes, including new development, renovation and repair, research and development,  
12 training and education, and other activities that maintain and enhance North Carolina's  
13 competitive position in the world and the excellent quality of life enjoyed by the citizens  
14 of North Carolina; and

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

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

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

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

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

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

37       Whereas, the General Assembly intends that the protections afforded to  
38 public health, safety, and welfare and to the environment by existing environmental,  
39 health, and safety standards that apply to ongoing activities not be diminished in any  
40 way, in order that those standards will continue to protect against the discharge or  
41 release of contaminants to the environment that would result in additional contaminated  
42 areas; Now, therefore,

43 The General Assembly of North Carolina enacts:

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

3                   Part 1A. Risk-Based Environmental Remediation.

4           "§ 143B-279.15. Definitions.

5           As used in this Part:

- 6           (1) 'Background standard' means the naturally occurring concentration of a  
7           substance in the absence of the release of a contaminant at the site.
- 8           (2) 'Contaminant' means any substance regulated under any program listed  
9           in subdivisions (1) through (6) of G.S. 143B-279.17.
- 10          (3) 'Department' means the Department of Environment and Natural  
11          Resources.
- 12          (4) 'Groundwater contamination' means a contaminant released to the  
13          environment that has resulted, or has the potential to result, in an  
14          increase in the concentration of the contaminant or contaminants in the  
15          groundwater in excess of unrestricted use standards.
- 16          (5) 'Institutional controls' means nonengineered measures, including  
17          land-use restrictions, used to prevent unsafe exposure to  
18          contamination.
- 19          (6) 'Remedial action plan' means a plan for eliminating or reducing  
20          contamination based on rules established pursuant to this Part.
- 21          (7) 'Remediation' means all actions that are necessary or appropriate to  
22          clean up, mitigate, correct, abate, minimize, eliminate, control, or  
23          prevent the spreading, migration, leaking, leaching, volatilization,  
24          spilling, transport, or further release of a contaminant into the  
25          environment in order to protect public health, safety, or welfare or the  
26          environment.
- 27          (8) 'Responsible person' means a person who is or may be liable for  
28          remediation under any program listed in subdivisions (1) through (6)  
29          of G.S. 143B-279.17.
- 30          (9) 'Secretary' means the Secretary of Environment and Natural  
31          Resources.
- 32          (10) 'Systemic toxicant' means any substance that may enter the body and  
33          have a harmful effect, other than causing cancer.
- 34          (11) "Unrestricted use standards" means contaminant concentrations for  
35          each environmental medium that are acceptable for all uses, that are  
36          protective of public health, safety, and welfare and the environment,  
37          and that comply with generally applicable standards, guidance, or  
38          methods established by statute or adopted, published, or implemented  
39          by the Environmental Management Commission, the Commission for  
40          Health Services, or the Department.

41           "§ 143B-279.16. Purpose

42           It is the purpose of this Part to allow the Department to approve the remediation of  
43           contaminated property based on site-specific remediation standards in circumstances  
44           where site-specific remediation standards are adequate to protect public health, safety,

1 and welfare and the environment and are consistent with protection of current and  
2 anticipated future use of groundwater and surface water affected or potentially affected  
3 by the contamination.

4 **"§ 143B-279.17. Applicability.**

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

- 8 (1) The Inactive Hazardous Sites Response Act of 1987, G.S. 130A-310, et  
9 seq.
- 10 (2) The hazardous waste management program administered by the State  
11 pursuant to the federal Resource Conservation and Recovery Act of 1976,  
12 Pub. L. 94-580, 90 Stat. 2795, 42 U.S.C. § 6901, et seq., as amended.
- 13 (3) Solid waste management facilities regulated under Article 9 of Chapter  
14 130A of the General Statutes.
- 15 (4) The federal Superfund program administered in part by the State pursuant  
16 to the Comprehensive Environmental Response, Compensation, and  
17 Liability Act of 1980, Pub. L. 96-510, 94 Stat. 2767, 42 U.S.C. § 9601, et  
18 seq., as amended, the Superfund Amendments and Reauthorization Act of  
19 1986, Pub. L. 99-499, 100 Stat. 1613, as amended, and G.S. 130A-310.20,  
20 et seq.
- 21 (5) The groundwater protection corrective action requirements adopted by the  
22 Environmental Management Commission pursuant to Article 21 of  
23 Chapter 143 of the General Statutes.
- 24 (6) Oil Pollution and Hazardous Substances Control Act of 1978, Parts 1 and  
25 2 of Article 21A of Chapter 143 of the General Statutes."

26 **"§ 143B-279.18. Remediation standards.**

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

- 30 (1) The unrestricted use standard applicable to each affected media.
- 31 (2) The background standard for any media in which naturally occurring  
32 concentrations of a substance exceeds the unrestricted use standards.
- 33 (3) A site-specific remediation standard developed in accordance with  
34 subsection (b) of this section that is approved by the Department.
- 35 (4) Any combination of remediation standards described in this subsection  
36 that is approved by the Department.

37 (b) Site-Specific Remediation Standard. – Site-specific remediation standards  
38 shall be developed for each medium in accordance with the requirements of this  
39 subsection to achieve remediation that eliminates or reduces to protective levels any  
40 substantial present or probable future risk to human health, including sensitive  
41 subgroups, and the environment based upon the present or currently planned future use  
42 of the property comprising the site.

- 1           (1)   The site-specific remediation standard for ambient air shall be the air  
2           quality standards adopted by the Environmental Management  
3           Commission.
- 4           (2)   The site-specific remediation standard for surface waters shall be the  
5           water quality standards adopted by the Environmental Management  
6           Commission.
- 7           (3)   The current and probable future use of groundwater shall be identified  
8           and protected. Site-specific sources of contaminants and potential  
9           receptors shall be identified. Potential receptors must be protected,  
10          controlled, or eliminated whether the receptors are located on or off  
11          the property where the source of contamination is located. Natural  
12          environmental conditions affecting the fate and transport of  
13          contaminants, such as natural attenuation, shall be determined by  
14          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  
19          property 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  
23            in 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  
26            person may come into contact with soil shall be remediated to  
27            unrestricted use standards, and, on all other areas of the real  
28            property, engineering and institutional controls that are  
29            sufficient to protect public health, safety, and welfare and the  
30            environment shall be implemented and maintained.
- 31          (6)   The potential for human inhalation of contaminants from the outdoor  
32          air and other site-specific air exposure pathways shall be considered if  
33          applicable.
- 34          (7)   The site-specific remediation standard shall protect against human  
35          exposure to contamination through the consumption of contaminated  
36          fish or wildlife and through the ingestion of contaminants in surface  
37          water or groundwater supplies.
- 38          (8)   For known or suspected carcinogens, site-specific remediation  
39          standards shall be established at exposures that represent an excess  
40          lifetime cancer risk of one in 1,000,000. The site-specific remediation  
41          standard may depart from the one in 1,000,000 risk level based on the  
42          criteria set out in 40 Code of Federal Regulations § 300.430(e)(9) (1  
43          July 2003 Edition). The cumulative excess lifetime cancer risk to an

1 exposed individual shall not be greater than one in 10,000 based on the  
2 sum of carcinogenic risk posed by each contaminant present.

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

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

12 **"§ 143B-279.19. Remedial action plans.**

13 (a) A person who proposes to conduct remediation pursuant to this Part shall  
14 develop and submit a proposed remedial action plan to the Department. A remedial  
15 action plan shall provide for the protection of public health, safety, and welfare and the  
16 environment. A proposed remedial action plan shall include a legal description of the  
17 location of the site, a map showing the location of the site, a description of the  
18 contaminants involved and their concentration in the media of the site, a description of  
19 the intended future use of the site, and any proposed investigation and remediation.

20 (b) A remedial action plan shall:

21 (1) Identify immediate actions required to remove the source of  
22 contamination and to address any imminent threat to public health,  
23 safety, or welfare or the environment.

24 (2) Assess all contaminated areas, including types and levels of  
25 contamination; the horizontal and vertical extent of contamination; and  
26 the risk to public health, safety, and welfare and to the environment  
27 posed by the contamination.

28 (3) Address contamination that moves from one medium to another in  
29 order to prevent a violation of the remediation standards established  
30 under G.S. 143B-279.18. A more stringent remediation standard may  
31 be required for a particular medium to control impact on other media.

32 (4) Identify the current and anticipated future uses of property comprising  
33 the contaminated area and address any concerns raised in public  
34 comment on the proposed remedial action plan as to the proposed  
35 future uses of the property.

36 (5) Identify the current and anticipated future uses of groundwater in the  
37 contaminated area and address any concerns raised in public comment  
38 on the proposed remedial action plan as to the future uses of  
39 groundwater.

40 (6) Determine the appropriate method of remediation to achieve an  
41 acceptable level or range of levels of risk.

42 (7) Specify any measures that may be necessary to prevent adverse effects  
43 to the environment that may occur at levels of contamination that are  
44 lower than the standard necessary to protect human health.

- 1           (8) Specify any measures that may be necessary to prevent any discharge  
2 into surface waters or air emission in violation of applicable surface  
3 water quality and air quality standards adopted by the Environmental  
4 Management Commission during implementation of the remedial  
5 action plan.
- 6           (9) Provide for attainment and maintenance of the remediation standards  
7 established under G.S. 143B-279.18.
- 8           (10) Provide for methods and procedures to verify that the quantity,  
9 concentration, range, or other measure of each contaminant remaining  
10 at the contaminated area at the conclusion of active remediation meets  
11 the remediation standards established for the site, that an acceptable  
12 level of risk has been achieved, and that no further remediation is  
13 required.
- 14           (11) Provide an appropriate level of oversight for implementation of the  
15 proposed remedial action plan based on the nature and complexity of  
16 the site and the proposed remedial actions.
- 17           (12) Provide for the imposition and recordation of land use restrictions as  
18 provided in G.S. 143B-279.9, 143B-279.11, 130A-310.3(f),  
19 130A-310.8, 130A-310.35, 143-215.84(f), and 143-215.85(a) if the  
20 remedial action plan allows contamination in excess of the greater of  
21 unrestricted use standards or background standards to remain on any  
22 real property or in groundwater that underlies any real property.
- 23           (13) Define the circumstances under which no further remediation is  
24 required.
- 25       (c) A remedial action plan shall also include an analysis of each of the following  
26 factors:
- 27           (1) Long-term risks and effectiveness of the proposed remediation  
28 including an evaluation of:
- 29               a. The magnitude of risks remaining after completion of the  
30 remediation.
- 31               b. The type, degree, frequency, and duration of any  
32 post-remediation activity that may be required, including but  
33 not limited to, operation and maintenance, monitoring,  
34 inspection, reports, and other activities necessary to protect  
35 public health, safety, and welfare and the environment.
- 36               c. Potential for exposure of human and environmental receptors to  
37 contaminants remaining at the site.
- 38               d. Long-term reliability of any engineering and voluntary  
39 institutional controls, including repair, maintenance, or  
40 replacement of components.
- 41               f. Time required to achieve remediation standards.
- 42           (2) Toxicity, mobility, or volume of contaminants, including the amount  
43 of contaminants that will be removed, contained, treated, or destroyed;  
44 the degree of expected reduction in toxicity, mobility, or volume; and

1           the type, quantity, toxicity, and mobility of contaminants that will  
2           remain after implementation of the remedial action plan.

3           (3) Short-term risks and effectiveness of the remediation, including the  
4           short-term risks that may be posed to the community, workers, or the  
5           environment during implementation of the remedial action plan, and  
6           the effectiveness and reliability of protective measures to address  
7           short-term risks.

8           (4) The ease or difficulty of implementing the remedial action plan,  
9           including commercially available remedial measures, expected  
10           operational reliability, available capacity and location of needed  
11           treatment, storage and disposal services for wastes, time to initiate  
12           remediation, and approvals necessary to implement the remediation.

13 **"§ 143B-279.20. Notice of intent to remediate.**

14           At the time that a person who proposes a remedial action plan submits the plan to the  
15           Department, the person shall send a notice of intent to remediate to all local  
16           governments having taxing or land-use jurisdiction over the site. The notice shall  
17           include all of the information required in G.S. 143B-279.19(a) and provide for a public  
18           comment period of at least 30 days during which the municipality or county or any  
19           citizen may submit comments to the applicant and to the Department. The Department  
20           may conduct a public hearing on the proposed remedial action plan if there is significant  
21           public interest. The person shall also publish a summary of the notice at least once in a  
22           newspaper of general circulation in the county or counties where the site is located. The  
23           person shall consider any information provided pertaining to current and future uses of  
24           groundwater in the area of the site and any concerns expressed with respect to proposed  
25           future uses of the site following remediation. The person shall provide a response to any  
26           information or comments on the remediation standards or the proposed remedial action  
27           plan that are received during the comment period. The person may modify the plan  
28           based on information or comments received during the comment period.

29 **"§ 143B-279.21. Review and approval of proposed remedial action plans by the**  
30 **Department.**

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

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

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



- 1           (3) Establish the acceptable level or range of levels of risk to public  
2 health, safety, and welfare and to the environment.
- 3           (4) Establish, for each contaminant, the maximum allowable quantity,  
4 concentration, range, or other measures of contamination that will  
5 remain at the contaminated area at the conclusion of active  
6 remediation.
- 7           (5) Consider the technical performance, effectiveness, and reliability of  
8 the proposed remedial action plan in attaining and maintaining  
9 compliance with applicable remediation standards.
- 10          (6) Consider the ability of the person who proposes to remediate the site to  
11 implement the proposed remedial action plan within a reasonable time  
12 and without jeopardizing public health, safety, or welfare or the  
13 environment.
- 14          (7) Determine whether the proposed remedial action plan adequately  
15 provides for the imposition and maintenance of engineering and  
16 institutional controls and for sampling, monitoring, and reporting  
17 requirements necessary to protect public health, safety, and welfare  
18 and the environment.
- 19          (8) Approve the circumstances under which no further remediation is  
20 required.

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

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

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

42 **"§ 143B-279.22. Attainment of the remediation standard.**

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

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

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

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

- 23 (1) Monitoring, testing, or analysis of the property subsequent to the  
24 issuance of the release letter indicates that the remediation standards  
25 and objectives were not achieved or are not being maintained.
- 26 (2) One or more of the conditions, restrictions, or limitations imposed on  
27 the property as part of the remediation have been violated.
- 28 (3) Site monitoring or operation and maintenance activities that are  
29 required as part of the remedial action plan or written determination of  
30 completion for the property are not adequately funded or are not  
31 adequately implemented.
- 32 (4) A hazardous substance release is discovered at the property that was  
33 not the subject of the site investigation and remediation for which the  
34 release letter was issued.
- 35 (5) A material change in the facts known to the Department at the time the  
36 written determination of completion was issued, or new facts, cause  
37 the Department to find that further assessment or remediation is  
38 necessary to prevent a significant risk to human health and safety or to  
39 the environment.
- 40 (6) The release letter was based on fraud, misrepresentation, or intentional  
41 nondisclosure of information by the responsible person.

42 (d) The Department shall issue a final decision on a request for release from  
43 further remediation within 90 days after receipt of a complete final report. Failure of the  
44 Department to issue a final decision on release from further remediation within 90 days

1 after receipt of a complete final report may be treated as a denial of the request for  
2 release from further remediation. The responsible person may seek review of a denial of  
3 a request for a release from further remediation as provided in Article 3 of Chapter  
4 150B of the General Statutes.

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

9 **"§ 143B-279.23. Compliance with other laws.**

10 This Part shall not be construed to limit the authority of the Department to require  
11 investigation, initial response, or remediation of environmental contamination under any  
12 other provision of State or federal law or to direct actions necessary to address an  
13 imminent threat to public health, safety, or welfare or the environment. This Part shall  
14 not be construed or implemented to alter the requirements of programs, including  
15 permitting programs that regulate the handling of hazardous substances, or otherwise  
16 impose requirements intended to prevent or mitigate the release or discharge of  
17 contaminants to the environment.

18 **"§ 143B-279.24. Adoption of rules.**

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

23 **"§ 143B-279.25. Risk-based remediation fees.**

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

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

36 **"§ 143B-279.26. Risk-Based Remediation Fund.**

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

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

- 1           (1) Remediation of environmental contamination at sites that have  
2 previously undergone a risk-based remediation but are later found to  
3 present an imminent hazard to public health, safety, or welfare or the  
4 environment, where a responsible person cannot be identified or  
5 located or where the responsible person is unable to pay the costs of  
6 remediation, and where there is no other dedicated source of State or  
7 federal funds to undertake the remediation.
- 8           (2) Establishing alternative drinking water supplies for third parties,  
9 affected by environmental contamination at sites that are remediated  
10 under this Part, where a responsible person cannot be identified or  
11 located or where the responsible person is unable to pay the costs of  
12 establishing alternative drinking water supplies, and where there is no  
13 other dedicated source of State or federal funds to undertake the  
14 establishment of alternative drinking water supplies.
- 15           (3) Establishing, administering, and maintaining a geographic information  
16 system capable of mapping the land and water resources of the State  
17 that are remediated under risk-based remediation.
- 18           (4) Administrative and staffing support necessary to implement this Part.

19 **"§ 143B-279.27. Construction of Part.**

20       No provision of this Part shall be construed to supersede or otherwise affect or  
21 prevent the enforcement of any land-use or development regulation or ordinance  
22 adopted by a city pursuant to Article 19 of Chapter 160A of the General Statutes or by a  
23 county pursuant to Article 18 of Chapter 153A of the General Statutes. The use of the  
24 site and any land-use restrictions imposed as part of a remedial action plan shall comply  
25 with local land-use and development controls adopted by a city pursuant to Article 19 of  
26 Chapter 160A of the General Statutes or by a county pursuant to Article 18 of Chapter  
27 153A of the General Statutes."

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

36       **SECTION 3.** On or before 1 October 2008, the Department of Environment  
37 and Natural Resources shall report to the Environmental Review Commission as to the  
38 steps the Secretary of Environment and Natural Resources and the Department have  
39 taken to implement this act. The report shall include information on the adoption of  
40 rules to implement Part 1A of Article 7 of Chapter 143B of the General Statutes, as  
41 enacted by Section 1 of this act, the number of contaminated areas that have been  
42 proposed for remediation under the rules, the number of contaminated areas that are  
43 undergoing active remediation under the rules, the number of contaminated areas at  
44 which remediation under the rules has been completed, the number of contaminated

1 areas that are known or believed to be appropriate for remediation under the rules, and  
2 the number of contaminated areas for which the Department has determined that a  
3 risk-based approach to remediation under the rules is not appropriate and the reasons for  
4 each determination. On or before 1 October 2009, the Department shall undertake an  
5 examination of the risk-based remediation procedures currently in place for remediation  
6 programs administered by the Department that are not included in G.S. 143B-279.17, as  
7 enacted by Section 1 of this act, and report to the Environmental Review Commission  
8 on what actions would be necessary to make remediation under those programs  
9 consistent with Part 1A of Article 7 of Chapter 143B of the General Statutes, as enacted  
10 by Section 1 of this act. Those programs include the following:

- 11 (1) The Leaking Petroleum Underground Storage Tank Cleanup Act of  
12 1988, G.S. 143-215.94A, et seq.
- 13 (2) The Brownfields Property Reuse Act of 1997, G.S. 130A-310.30, et  
14 seq.
- 15 (3) The Dry-Cleaning Solvent Cleanup Act of 1997, G.S. 143-215.104A,  
16 et seq.

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