

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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HOUSE BILL 1099*

Short Title: Defenses to Liability for Env. Cleanups. (Public)

Sponsors: Representative Gibson.

Referred to: Environment and Natural Resources.

April 4, 2005

1 A BILL TO BE ENTITLED
2 AN ACT TO PROMOTE ECONOMIC DEVELOPMENT BY FACILITATING THE
3 REUSE OF CONTAMINATED REAL PROPERTY BY CLARIFYING THE
4 CIRCUMSTANCES UNDER WHICH THE OWNERS OF REAL PROPERTY
5 HAVE A DEFENSE AGAINST LIABILITY FOR THE CLEANUP OF
6 ENVIRONMENTAL DAMAGE AND RESTORATION OF NATURAL
7 RESOURCES AND BY MAKING THAT DEFENSE APPLICABLE TO STATE
8 CLEANUP PROGRAMS.

9 The General Assembly of North Carolina enacts:

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

12 "§ 143B-279.13. Defenses to liability for environmental cleanups for certain
13 landowners.

14 (a) Applicability. –

15 (1) Except as provided in subdivision (2) of this subsection, this section
16 applies to liability for the cleanup of environmental damage and the
17 restoration of natural resources under Article 9 of Chapter 130A of the
18 General Statutes, Articles 21 and 21A of Chapter 143 of the General
19 Statutes, and rules adopted pursuant to these Articles.

20 (2) This section does not apply to liability arising from causes of action or
21 claims of any entity other than the State.

22 (b) Defenses to Liability. – A person who would otherwise be liable as a
23 landowner for the cleanup of environmental damage and for the restoration of natural
24 resources under any of the provisions of law to which this section applies is not liable if
25 the person demonstrates that the person is either:

26 (1) An innocent landowner under subsection (c) of this section.

27 (2) A prospective purchaser under subsection (d) of this section.

28 (3) A prospective developer under the provisions of Part 5 of Article 9 of
29 Chapter 130A of the General Statutes

1 (c) Innocent Landowner. – An innocent landowner is a bona fide purchaser of
2 real property or a person whose interest or ownership in real property is solely based on
3 or derived from a security interest in the property who establishes all of the following:

4 (1) Any release of a contaminant on the property either:

5 a. Occurred before the owner acquired the property or

6 b. Was caused solely by:

7 1. An act of God.

8 2. An act of war.

9 3. An intentional act or omission of a third party who was
10 not an employee or agent of the owner.

11 4. An intentional act or omission of a third party who has
12 not had and does not have a contractual relationship with
13 the owner.

14 5. Any combination of the foregoing causes.

15 (2) Before acquiring title to the property, the owner made all appropriate
16 inquiries into the previous ownership and uses of the property in
17 accordance with generally accepted and good commercial and
18 customary standards and practices. The Secretary shall take into
19 account any specialized knowledge or experience on the part of the
20 owner, the relationship of the purchase price to the value of the
21 property if the property were not contaminated, commonly known or
22 reasonably ascertainable information about the property, and whether
23 the contaminant is detectable by appropriate inspection. In the case of
24 property that is used as a single-family residence at the time of its
25 purchase by any person other than a governmental entity, a site
26 inspection and title search that does not reveal information that would
27 cause a reasonable person to make further investigation shall satisfy
28 the requirements of this subdivision.

29 (3) The owner has provided all legally required notices with respect to the
30 discovery of a discharge, release, deposit, or disposal of any hazardous
31 substance or waste at the property.

32 (4) The owner has taken all appropriate and reasonable steps to:

33 a. Stop any continuing discharge, release, deposit, or disposal.

34 b. Prevent any threatened future discharge, release, deposit, or
35 disposal.

36 c. Conduct remedial measures approved by the Secretary that
37 prevent or limit human, environmental, or natural resources
38 exposure to any contaminant released at the property and to
39 make the property safe for its intended use.

40 (5) The owner has provided and continues to provide full cooperation,
41 assistance, and access to persons who are authorized to conduct any
42 response, remedial action, or natural resources restoration at the
43 property, including any cooperation and access necessary to install,

1 operate, maintain, or secure any completed or partial response,
2 remedial action, or natural resources restoration at the property.

3 (6) The owner has complied and continues to comply with any land-use
4 restrictions established or relied on in connection with the response,
5 remedial action, or natural resources restoration at the property.

6 (7) The owner has not impeded and continues to not impede the
7 effectiveness or integrity of any institutional control employed at the
8 property in connection with a response, remedial action, or natural
9 resources restoration.

10 (8) The owner has complied or has agreed to comply with any requirement
11 to record any land-use restrictions that may be required by the
12 Secretary.

13 (9) The owner has complied and continues to comply with any request for
14 information or administrative subpoena issued by the Secretary.

15 (10) The owner is not liable, potentially liable, or affiliated with any other
16 person who is liable or potentially liable for any cost associated with
17 the response, remedial action, or natural resources restoration at the
18 property through any of the following:

19 a. Any direct or indirect familial relationship.

20 b. Any contractual, corporate, or financial relations, other than a
21 contractual, corporate, or financial relationship that is created
22 by an instrument through which title to the property is
23 conveyed, an instrument through which sale or purchase of the
24 property is financed, or by a contract for the sale of goods or
25 services.

26 c. A reorganization in bankruptcy of a business entity that is liable
27 or potentially liable.

28 (d) Prospective Purchaser. – A prospective purchaser is a person who proposes to
29 purchase real property on which the cleanup of environmental damage or restoration of
30 natural resources may be required under any provision of law to which this section
31 applies and who establishes all of the following to the satisfaction of the Secretary:

32 (1) The prospective purchaser has satisfied or will satisfy all of the
33 requirements that an owner must satisfy under subsection (c) of this
34 section.

35 (2) An owner or other responsible party has provided financial assurance
36 for the full cost of the cleanup of environmental damage and
37 restoration of natural resources to applicable State standards. Financial
38 assurance mechanisms may include, with terms and conditions subject
39 to the approval of the Secretary, letters of credit, insurance, surety
40 bonds, and trust funds. An owner or other party responsible for
41 cleanup of environmental damage and restoration of natural resources
42 who has been determined to be eligible to have the cost of the cleanup
43 and restoration paid under Part 2A of Article 21A of Chapter 143 of
44 the General Statutes shall be required to provide financial assurance

1 for only the amounts for which the owner or other responsible party is
2 responsible under that Part.

3 (3) No new structure that will interfere with soil remediation required
4 under any provision of law to which this section applies will be erected
5 on the property.

6 (e) A prospective purchaser of any real property may request a determination that
7 the prospective purchaser has met all of the conditions set out in subsection (d) of this
8 section by submitting a written request for the determination to the Secretary. A
9 determination may be made subject to the purchaser meeting all the conditions in
10 subsection (d) of this section on or after closing that cannot reasonably be met prior to
11 closing. A request for a determination that a purchaser has met all the conditions set out
12 in subsection (d) of this section must be accompanied by a fee of one thousand dollars
13 (\$1,000) to defray administrative costs of making the determination. The Secretary shall
14 develop and implement procedures to provide expeditious review of requests for
15 determinations so as to expedite real estate transactions involving contaminated
16 properties.

17 (f) A prospective purchaser who is otherwise entitled to a defense to liability as
18 provided in this section is not entitled to the defense if any of the following apply:

19 (1) The prospective purchaser knowingly or recklessly provides false
20 information that forms a basis for the determination by the Secretary
21 under subsection (e) of this section or that is offered to demonstrate
22 compliance with the determination or fails to disclose relevant
23 information about contaminants at the property.

24 (2) New information indicates the existence of previously unreported
25 contaminants or an area of previously unreported contaminants on or
26 associated with the property that has not been remediated to applicable
27 State standards, unless the determination is amended to include any
28 previously unreported contaminant or any additional area where any
29 contaminant is present. If the determination sets maximum
30 concentrations for contaminants and new information indicates the
31 existence of previously unreported areas of these contaminants, further
32 remediation shall be required only if the areas of previously unreported
33 contaminants raise the risk to public health or the environment to a
34 level less protective of public health and the environment than that
35 required by the determination.

36 (3) The level of risk to public health or the environment from
37 contaminants is unacceptable at or in the vicinity of the property due to
38 changes in exposure conditions, including (i) a change in land use that
39 increases the probability of exposure to contaminants or in the vicinity
40 of the property or (ii) the failure of remediation to mitigate risks to the
41 extent required to make the property fully protective of public health
42 and the environment as planned in the determination.

43 (4) The Department obtains new information about a contaminant
44 associated with the property or exposures at or around the property that

1 raises the risk to public health or the environment associated with the
 2 property beyond an acceptable range and in a manner or to a degree
 3 not anticipated in the determination. Any person whose use, including
 4 any change in use, of the property causes an unacceptable risk to
 5 public health or the environment may be required by the Department to
 6 undertake additional remediation measures under the provisions of this
 7 Part.

8 (5) A prospective purchaser causes or contributes to a release of a
 9 contaminant on the property.

10 (6) A prospective purchaser fails to meet any continuing obligation under
 11 subsection (d) of this section.

12 (g) The Secretary may adopt rules to implement this section."

13 **SECTION 2.** G.S. 130A-310.7 reads as rewritten:

14 **"§ 130A-310.7. ~~Action for reimbursement; liability~~ Liability of responsible parties;**
 15 **actions for reimbursement; liens; notification of completed remedial**
 16 **action.**

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

19 (1) ~~Discharges or deposits; or~~

20 (2) ~~Contracts or arranges for any discharge or deposit; or~~

21 (3) ~~Accepts for discharge or deposit; or~~

22 (4) ~~Transports or arranges for transport for the purpose of discharge or~~
 23 ~~deposit~~

24 ~~any hazardous substance, the result of which discharge or deposit is the existence of an~~
 25 ~~inactive hazardous substance or waste disposal site, shall be considered a responsible~~
 26 ~~party. Neither an innocent landowner who is a bona fide purchaser of the inactive~~
 27 ~~hazardous substance or waste disposal site without knowledge or without a reasonable~~
 28 ~~basis for knowing that hazardous substance or waste disposal had occurred nor a person~~
 29 ~~whose interest or ownership in the inactive hazardous substance or waste disposal site is~~
 30 ~~based on or derived from a security interest in the property shall be considered a~~
 31 ~~responsible party. Subject only to the defenses set forth in G.S. 143B-279.13, a person~~
 32 ~~is a responsible party if the person either:~~

33 (1) Discharges, releases, deposits, or disposes of any hazardous substance.

34 (2) Contracts or arranges for the discharge, release, deposit, or disposal of
 35 any hazardous substance.

36 (3) Accepts any hazardous substance for discharge, release, deposit, or
 37 disposal.

38 (4) Transports or arranges for the transport of any hazardous substance for
 39 the purpose of discharge, release, deposit, or disposal of the hazardous
 40 substance.

41 (5) Owns or operates a site that contains any hazardous substance.

42 (6) Owned or operated a site at the time any hazardous substance was
 43 discharged, released, deposited, or disposed of at the site.

1 (a1) A responsible party shall be directly liable to the State for any or all of the
2 reasonably necessary expenses of developing and implementing a remedial action
3 program for ~~such site. an inactive hazardous substance or waste disposal site.~~ The
4 Secretary shall bring an action for reimbursement of the Inactive Hazardous Sites
5 Cleanup Fund in the name of the State in the superior court of Wake County, the
6 superior court of the county in which the site is located~~located~~, or in federal court to
7 recover such sum and the cost of bringing the action. ~~The State must show that a danger~~
8 ~~to the public health or the environment existed and that the State complied with the~~
9 ~~provisions of this Part.~~ The State shall have a lien on the property on which the site is
10 located for the unrecovered costs to the State of developing and implementing the
11 remedial action program. The amount of a lien for unrecovered costs shall not exceed
12 the amount by which the remedial action program increases the fair market value of the
13 property. A lien for unrecovered costs shall be superior to all other liens on the property.

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

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

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

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

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

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

39 **SECTION 3.** Subsections (b) and (c) of G.S. 130A-310.3 read as rewritten:

40 "(b) Where possible, the Secretary shall work cooperatively with any owner,
41 operator, responsible party, or any appropriate agency of the State or federal
42 government to develop and implement the inactive hazardous substance or waste
43 disposal site remedial action program. ~~The Secretary shall not take action under this~~
44 ~~section to the extent that the Environmental Management Commission, the~~

1 ~~Commissioner of Agriculture, or the Pesticide Board has assumed jurisdiction pursuant~~
2 ~~to Articles 21 or 21A of Chapter 143 of the General Statutes. An owner, operator, or~~
3 ~~responsible party who satisfies the Secretary that the owner, operator, or responsible~~
4 ~~party has implemented an inactive hazardous substance or waste disposal site remedial~~
5 ~~action program pursuant to this Part shall not be required, pursuant to Article 21 or 21A~~
6 ~~of Chapter 143 of the General Statutes, to clean up environmental damage that results~~
7 ~~from the same release or to restore natural resources damaged by that release.~~

8 (c) Whenever the Secretary has issued ~~such a declaration,~~ a declaration under this
9 ~~section,~~ and at any time during which the declaration is in effect, the Secretary may, in
10 addition to any other powers he may have, order any responsible party:

- 11 (1) To develop an inactive hazardous substance or waste disposal site
12 remedial action program for the site subject to approval by the
13 Department, and
14 (2) To implement the program within reasonable time limits specified in
15 the order.

16 (c1) Written notice of ~~such an order under this section~~ shall be provided to all
17 persons subject to the order personally or by certified mail. If given by certified mail,
18 notice shall be deemed to have been given on the date appearing in the return of the
19 receipt. If giving of notice cannot be accomplished either personally or by certified
20 mail, notice shall be given as provided in G.S. 1A-1, Rule 4(j)."

21 **SECTION 4.** The catchline of G.S. 143-215.3 reads as rewritten:

22 "**§ 143-215.3. General powers of Commission and Department; auxiliary**
23 **powers; powers; research functions; relation with the federal**
24 **government; variances; remedial actions.**"

25 **SECTION 5.** G.S. 143-215.3 is amended by adding a new subsection to
26 read:

27 "(g) A person who would otherwise be liable as a landowner for the remediation
28 of groundwater to meet the standards and classifications established under this Part is
29 not liable as provided in G.S. 143B-279.13."

30 **SECTION 6.** G.S. 143-215.84 reads as rewritten:

31 "**§ 143-215.84. Removal of prohibited discharges.**

32 (a) Person Discharging. – Any person having control over oil or other hazardous
33 substances discharged in violation of this Article shall immediately undertake to collect
34 and remove the discharge and to restore the area affected by the discharge as nearly as
35 may be to the condition existing prior to the discharge. If it is not feasible to collect and
36 remove the discharge, the person responsible shall take all practicable actions to
37 contain, treat and disperse the discharge; but no chemicals or other dispersants or
38 treatment materials which will be detrimental to the environment or natural resources
39 shall be used for such purposes unless they shall have been previously approved by the
40 Commission. The owner of an underground storage tank who is the owner of the tank
41 only because he is the owner of the land on which the underground storage tank is
42 located, who did not know or have reason to know that the underground storage tank
43 was located on his property, and who did not become the owner of the land as the result

1 of a transfer or transfers to avoid liability for the underground storage tank shall not be
2 deemed to be responsible for a release or discharge from the underground storage tank.

3 (a1) Relation to Other Programs. – The Commission shall not require collection or
4 removal of a discharge or restoration of an affected area under subsection (a) of this
5 section if the person having control over oil or other hazardous substances discharged in
6 violation of this Article complies with rules governing the collection and removal of a
7 discharge and the restoration of an affected area adopted by the Commission pursuant to
8 G.S. 143 214.1 or G.S. 143 215.94V. This subsection shall not be construed to affect the
9 rights of any person under this Article or any other provision of law.

10 (b) Removal by Department. – Notwithstanding the requirements of subsection
11 (a) of this section, the Department is authorized and empowered to utilize any staff,
12 equipment and materials under its control or supplied by other cooperating State or
13 local agencies and to contract with any agent or contractor that it deems appropriate
14 to take such actions as are necessary to collect, investigate, perform surveillance
15 over, remove, contain, treat or disperse oil or other hazardous substances discharged
16 onto the land or into the waters of the State and to perform any necessary restoration.
17 The Secretary shall keep a record of all expenses incurred in carrying out any project
18 or activity authorized under this section, including actual expenses incurred for
19 services performed by the State's personnel and for use of the State's equipment and
20 material. The authority granted by this subsection shall be limited to projects and
21 activities that are designed to protect the public interest or public property, and shall
22 be compatible with the National Contingency Plan established pursuant to the
23 Federal Water Pollution Control Act, as amended, 33 U.S.C. section 1251 et seq.

24 (c), (d) Repealed by Session Laws 1989, c. 656, s. 2.

25 (e) Notification of Completed Removal of Prohibited Discharges. – The
26 definitions set out in G.S. 130A-310.31(b) apply to this subsection. Any person may
27 submit a written request to the Department for a determination that a discharge of oil or
28 a hazardous substance in violation of this Article has been remediated to unrestricted
29 use standards. A request for a determination that a discharge has been remediated to
30 unrestricted use standards shall be accompanied by the fee required by
31 G.S. 130A-310.39(a)(2). If the Department determines that the discharge has been
32 remediated to unrestricted use standards, the Department shall issue a written
33 notification that no further remediation of the discharge will be required. The
34 notification shall state that no further remediation of the discharge will be required
35 unless the Department later determines, based on new information or information not
36 previously provided to the Department, that the discharge has not been remediated to
37 unrestricted use standards or that the Department was provided with false or incomplete
38 information. Under any of those circumstances, the Department may withdraw the
39 notification and require responsible parties to remediate the discharge to unrestricted
40 use standards.

41 (f) Land-use Restrictions. – In order to reduce or eliminate the danger to public
42 health or the environment posed by a discharge or release of oil or a hazardous
43 substance, an owner, operator, or other responsible party may impose restrictions on the
44 current or future use of the real property comprising any part of the site if the

1 restrictions meet the requirements of this subsection. The restrictions must be agreed to
2 by the owner of the real property, included in a remedial action plan for the site that has
3 been approved by the Secretary, and implemented as a part of the remedial action
4 program for the site. The Secretary may approve restrictions included in a remedial
5 action plan in accordance with standards determined: (i) pursuant to rules for
6 remediation of soil or groundwater contamination adopted by the Commission; (ii) with
7 respect to the cleanup of a discharge or release from a petroleum underground storage
8 tank, pursuant to rules adopted by the Commission pursuant to G.S. 143-215.94V; or
9 (iii) as provided in G.S. 130A-310.3(d). Restrictions may apply to activities on, over, or
10 under the land, including, but not limited to, use of groundwater, building, filling,
11 grading, excavating, and mining. Any approved restriction shall be enforced by any
12 owner, operator, or other party responsible for the oil or hazardous substance discharge
13 site. Any land-use restriction may also be enforced by the Department through the
14 remedies provided in this Article, Part 2 of Article 1 of Chapter 130A of the General
15 Statutes, or by means of a civil action. The Department may enforce any land-use
16 restriction without first having exhausted any available administrative remedies. A
17 land-use restriction may also be enforced by any unit of local government having
18 jurisdiction over any part of the site. A land-use restriction shall not be declared
19 unenforceable due to lack of privity of estate or contract, due to lack of benefit to
20 particular land, or due to lack of any property interest in particular land. Any person
21 who owns or leases a property subject to a land-use restriction under this Part shall
22 abide by the land-use restriction

23 "(g) Defense to Liability. – A person who would otherwise be liable as a
24 landowner for the removal of a prohibited discharge of oil or other hazardous substance
25 or for the restoration of an affected area is not liable as provided in G.S. 143B-279.13."

26 **SECTION 7.** G.S. 130A-310.31(b)(3) reads as rewritten:

27 "(3) "Brownfields property" or "brownfields site" means abandoned, idled,
28 or underused property at which expansion or redevelopment is
29 hindered by actual environmental contamination or the possibility of
30 environmental contamination and that is or may be subject to
31 remediation ~~under any~~ under either:

32 a. Any State remedial program other than Part 2A of Article 21A
33 of Chapter 143 of the General Statutes or that is or may be
34 subject to remediation under the program.

35 b. The Comprehensive Environmental Response, Compensation
36 and Liability Act of 1980, as amended (42 U.S.C. § 9601 et
37 seq.) (42 U.S.C. § 9601, et seq.) except for a site listed on the
38 National Priorities List pursuant to 42 U.S.C. § 9605."

39 **SECTION 8.** G.S. 130A-310.31(b)(5) reads as rewritten:

40 "(5) "Unrestricted use standards" when used in connection with "cleanup",
41 "remediated", or "remediation" means ~~that cleanup or remediation of~~
42 contamination complies with contaminant concentrations for each
43 environmental medium that are considered acceptable for all uses and
44 that comply with generally applicable standards, guidance, or

1 established methods governing the contaminants that are established
2 by statute or adopted, published, or implemented by the Environmental
3 Management Commission, the Commission, or the Department instead
4 of the ~~risk-based standards established by the Commission pursuant to~~
5 ~~this Part~~-site-specific contaminant levels established pursuant to this
6 Part."

7 **SECTION 9.** G.S. 130A-310.31(b)(10) reads as rewritten:

8 "(10) "Prospective developer" means any person ~~who desires~~with a bona
9 fide, demonstrable desire to either buy or sell a brownfields property
10 for the purpose of developing or redeveloping that brownfields
11 property and who did not cause or contribute to the contamination at
12 the brownfields property."

13 **SECTION 10.** G.S. 130A-310.34(b) reads as rewritten:

14 "(b) Publication of the approved summary of the Notice of Intent in the North
15 Carolina Register and publication in a newspaper of general circulation shall begin a
16 public comment period of at least ~~60-30~~ days from the later date of publication. During
17 the public comment period, members of the public, residents of the community in which
18 the brownfields property is located, and local governments having jurisdiction over the
19 brownfields property may submit comment on the proposed brownfields agreement,
20 including methods and degree of remediation, future land uses, and impact on local
21 employment."

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

23 "(c) Any person who desires a public meeting on a proposed brownfields
24 agreement shall submit a written request for a public meeting to the Department within
25 ~~30-21~~ days after the public comment period begins. The Department shall consider all
26 requests for a public meeting and shall hold a public meeting if the Department
27 determines that there is significant public interest in the proposed brownfields
28 agreement. If the Department decides to hold a public meeting, the Department shall, at
29 least ~~30-15~~ days prior to the public meeting, mail written notice of the public meeting to
30 all persons who requested the public meeting and to any other person who had
31 previously requested notice. The Department shall also direct the prospective developer
32 to publish, at least ~~30-15~~ days prior to the date of the public meeting, a notice of the
33 public meeting at least one time in a newspaper having general circulation in such
34 county where the brownfields property is located. In any county in which there is more
35 than one newspaper having general circulation, the Department shall direct the
36 prospective developer to publish a copy of the notice in as many newspapers having
37 general circulation in the county as the Department in its discretion determines to be
38 necessary to assure that the notice is generally available throughout the county. The
39 Department shall prescribe the form and content of the notice to be published. The
40 Department shall prescribe the procedures to be followed in the public meeting. The
41 Department shall take detailed minutes of the meeting. The minutes shall include any
42 written comments, exhibits, or documents presented at the meeting."

43 **SECTION 12.** G.S. 130A-310.37(c) reads as rewritten:

1 "(c) The Department shall not enter into a brownfields agreement for a
2 brownfields site ~~that is identified by the United States Environmental Protection Agency~~
3 ~~as a federal Superfund site pursuant to 40 Code of Federal Regulations, Part 300 (1 July~~
4 ~~1996 Edition)~~ site listed on the National Priorities List pursuant to 42 U.S.C. § 9605."

5 **SECTION 13.** G.S. 105-277.13(a) reads as rewritten:

6 "(a) Qualifying improvements on brownfields properties are designated a special
7 class of property under Article V, Sec. 2(2) of the North Carolina Constitution and shall
8 be appraised, assessed, and taxed in accordance with this section. ~~An~~ Except as
9 provided in this subsection, an owner of land who is protected from liability for
10 remediation under G.S. 130A-310.33(a) is entitled to the partial exclusion provided by
11 this section for the first five taxable years beginning after completion of qualifying
12 improvements made after the later of July 1, 2000, or the date of the brownfields
13 agreement. A person who caused or contributed to contamination at the brownfields
14 property and who holds any ownership in the brownfields property is not eligible for the
15 partial exclusion under this section. After property has qualified for the exclusion
16 provided by this section, the assessor for the county in which the property is located
17 shall annually appraise the improvements made to the property during the period of time
18 that the owner is entitled to the exclusion."

19 **SECTION 14.** This act becomes effective 1 January 2006.