

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2005

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SENATE DRS75232-RTxf-3\* (1/11)

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

Sponsors: Senator Clodfelter.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO PROMOTE ECONOMIC DEVELOPMENT BY FACILITATING THE REUSE OF CONTAMINATED REAL PROPERTY BY CLARIFYING THE CIRCUMSTANCES UNDER WHICH THE OWNERS OF REAL PROPERTY HAVE A DEFENSE AGAINST LIABILITY FOR THE CLEANUP OF ENVIRONMENTAL DAMAGE AND RESTORATION OF NATURAL RESOURCES AND BY MAKING THAT DEFENSE APPLICABLE TO STATE CLEANUP PROGRAMS.

The General Assembly of North Carolina enacts:

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

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

(a) Applicability. –

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

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

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

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

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

- 1           (3) A prospective developer under the provisions of Part 5 of Article 9 of  
2           Chapter 130A of the General Statutes
- 3           (c) Innocent Landowner. – An innocent landowner is a bona fide purchaser of  
4 real property or a person whose interest or ownership in real property is solely based on  
5 or derived from a security interest in the property who establishes all of the following:
- 6           (1) Any release of a contaminant on the property either:
- 7           a. Occurred before the owner acquired the property or  
8           b. Was caused solely by:
- 9               1. An act of God.  
10              2. An act of war.  
11              3. An intentional act or omission of a third party who was  
12               not an employee or agent of the owner.  
13              4. An intentional act or omission of a third party who has  
14               not had and does not have a contractual relationship with  
15               the owner.  
16              5. Any combination of the foregoing causes.
- 17           (2) Before acquiring title to the property, the owner made all appropriate  
18 inquiries into the previous ownership and uses of the property in  
19 accordance with generally accepted and good commercial and  
20 customary standards and practices. The Secretary shall take into  
21 account any specialized knowledge or experience on the part of the  
22 owner, the relationship of the purchase price to the value of the  
23 property if the property were not contaminated, commonly known or  
24 reasonably ascertainable information about the property, and whether  
25 the contaminant is detectable by appropriate inspection. In the case of  
26 property that is used as a single-family residence at the time of its  
27 purchase by any person other than a governmental entity, a site  
28 inspection and title search that does not reveal information that would  
29 cause a reasonable person to make further investigation shall satisfy  
30 the requirements of this subdivision.
- 31           (3) The owner has provided all legally required notices with respect to the  
32 discovery of a discharge, release, deposit, or disposal of any hazardous  
33 substance or waste at the property.
- 34           (4) The owner has taken all appropriate and reasonable steps to:
- 35           a. Stop any continuing discharge, release, deposit, or disposal.  
36           b. Prevent any threatened future discharge, release, deposit, or  
37               disposal.  
38           c. Conduct remedial measures approved by the Secretary that  
39               prevent or limit human, environmental, or natural resources  
40               exposure to any contaminant released at the property and to  
41               make the property safe for its intended use.
- 42           (5) The owner has provided and continues to provide full cooperation,  
43 assistance, and access to persons who are authorized to conduct any  
44 response, remedial action, or natural resources restoration at the

1 property, including any cooperation and access necessary to install,  
2 operate, maintain, or secure any completed or partial response,  
3 remedial action, or natural resources restoration at the property.

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

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

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

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

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

20 a. Any direct or indirect familial relationship.

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

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

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

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

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

1           the General Statutes shall be required to provide financial assurance  
2           for only the amounts for which the owner or other responsible party is  
3           responsible under that Part.

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

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

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

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

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

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

1           (4) The Department obtains new information about a contaminant  
2 associated with the property or exposures at or around the property that  
3 raises the risk to public health or the environment associated with the  
4 property beyond an acceptable range and in a manner or to a degree  
5 not anticipated in the determination. Any person whose use, including  
6 any change in use, of the property causes an unacceptable risk to  
7 public health or the environment may be required by the Department to  
8 undertake additional remediation measures under the provisions of this  
9 Part.

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

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

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

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

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

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

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

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

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

24           (4) ~~Transports or arranges for transport for the purpose of discharge or~~  
25 ~~deposit~~

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

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

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

38           (3) Accepts any hazardous substance for discharge, release, deposit, or  
39 disposal.

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

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

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

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

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

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

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

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

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

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

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

42           "(b) Where possible, the Secretary shall work cooperatively with any owner,  
43 operator, responsible party, or any appropriate agency of the State or federal  
44 government to develop and implement the inactive hazardous substance or waste

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

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

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

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

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

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

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

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

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

33 "**§ 143-215.84. Removal of prohibited discharges.**

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

1 was located on his property, and who did not become the owner of the land as the result  
2 of a transfer or transfers to avoid liability for the underground storage tank shall not be  
3 deemed to be responsible for a release or discharge from the underground storage tank.

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

44 **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.