PART II
SOLID WASTE MANAGEMENT LAW

CHAPTER 130A
PUBLIC HEALTH

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G.S. 130A-290 To -310.77

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ARTICLE 1.

Solid Waste Management

Part 2. Remedies.

§ 130A-17. Right of Entry.

(a) The Secretary and a local health director shall have the right of entry upon the premises of any place where entry is necessary to enforce the provisions of this Chapter or the rules adopted by the Commission or a local board of health. If consent for entry is not obtained, an administrative search and inspection warrant shall be obtained pursuant to G.S. 15-27.2. However, if an imminent hazard exists, no warrant is required for entry upon the premises.

(b) The Secretary of Environment and Natural Resources and a local health director shall have the same rights enumerated in subsection (a) of this section to enforce the provisions of Part 4 of Article 5 and Articles 8, 9, 10, 11, and 12 of this Chapter.

§ 130A-18. Injunction.

(a) If a person shall violate any provision of this Chapter, the rules adopted by the Commission or rules adopted by a local board of health, or a condition or term of a permit or order issued under this Chapter, the Secretary or a local health director may institute an action for injunctive relief, irrespective of all other remedies at law, in the superior court of the county where the violation occurred or where a defendant resides.

(b) The Secretary of Environment and Natural Resources and a local health director shall have the same rights enumerated in subsection (a) of this section to enforce the provisions of Part 4 of Article 5 and Articles 8, 9, 10, 11, and 12 of this Chapter.

§ 130A-19. Abatement of public health nuisance.

(a) If the Secretary or a local health director determines that a public health nuisance exists, the Secretary or a local health director may issue an order of abatement directing the owner, lessee, operator or other person in control of the property to take any action necessary to abate the public health nuisance. If the person refuses to comply with the order, the Secretary or the local health director may institute an action in the superior court of the county where the public health nuisance exists to enforce the order. The action shall be calendared for trial within 60 days after service of the complaint upon the defendant. The court may order the owner to abate the nuisance or direct the Secretary or the local health director to abate the nuisance. If the Secretary or the local health director is ordered to abate the nuisance, the Department or the local health department shall have a lien on the property for the costs of the abatement of the nuisance in the nature of a mechanic's and materialmen's lien as provided in Chapter 44A of the General Statutes and the lien may be enforced as provided therein.

(b) The Secretary of Environment and Natural Resources and a local health director shall have the same rights enumerated in subsection (a) of this section to enforce the provisions of Part 4 of Article 5 and Articles 8, 9, 10, 11, and 12 of this Chapter.

§ 130A-20. Abatement of an imminent hazard.

(a) If the Secretary or a local health director determines that an imminent hazard exists, the Secretary or a local health director may order the owner, lessee, operator, or other person in control of the property to abate the imminent hazard or may, after notice to or reasonable attempt to notify the owner, lessee, operator, or other person in control of the property enter upon any property and take any action necessary to abate the imminent hazard. If the Secretary or a local health director abates the imminent hazard, the Department or the local health department shall have a lien on the property of the owner, lessee, operator, or other person in control of the property where the imminent hazard existed for the cost of the abatement of the imminent hazard. The lien may be enforced in accordance with procedures provided in Chapter 44A of the General Statutes. The lien may be defeated by a showing that an imminent hazard did not exist at the time the Secretary or the local health director took the action. The owner, lessee, operator, or any other person against whose property the lien has been filed may defeat the lien by showing that that person was not culpable in the creation of the imminent hazard.

(b) The Secretary of Environment and Natural Resources and a local health director shall have the same rights enumerated in subsection (a) of this section to enforce the provisions of Part 4 of Article 5 and Articles 8, 9, 10, 11, and 12 of this Chapter.

§ 130A-21. Embargo. Not applicable to Hazardous Waste.

§ 130A-22. Administrative penalties.

(a) The Secretary of Environment and Natural Resources may impose an administrative penalty on a person who violates Article 9 of this Chapter, rules adopted by the Commission pursuant to Article 9, or any term or condition of a permit or any order issued under Article 9. Each day of a continuing violation shall constitute a separate violation. The penalty shall not exceed fifteen thousand dollars ($15,000) per day in the case of a violation involving nonhazardous waste. The penalty shall not exceed thirty-two thousand five hundred dollars ($32,500) per day in the case of a first violation involving hazardous waste as defined in G.S. 130A-290 or involving the disposal of medical waste as defined in G.S. 130A-290 in or upon water in a manner that results in medical waste entering waters or lands of the State; and shall not exceed fifty thousand dollars ($50,000) per day for a second or further violation involving the disposal of medical waste as defined in G.S. 130A-290 in or upon water in a manner that results in medical waste entering waters or lands of the State. The penalty shall not exceed thirty-two thousand five hundred dollars (32,500) per day for a violation involving a voluntary remedial action implemented pursuant to G.S. 130A-310.9(c) or a violation of the rules adopted pursuant to G. S. 130A-310.12(b). If a person fails to pay a civil penalty within 60 days after the final agency decision or court order has been served on the violator, the Secretary of Environment and Natural Resources shall request the Attorney General to institute a civil action in the superior court of any county in which the violator resides or has his or its principal place of business to recover the amount of the assessment. Such civil actions must be filed within three years of the date the final agency decision or court order was served on the violator.

(a1) Part 5 of Article 21A of Chapter 143 of the General Statutes shall apply to the determination of civil liability or penalty pursuant to subsection (a) of this section.

(b) The Secretary of Environment and Natural Resources may impose an administrative penalty on a person who violates G.S. 130A-325. Each day of a continuing violation shall constitute a separate violation. The penalty shall not exceed twenty-five thousand dollars ($25,000) for each day the violation continues.

(b1) The Secretary may impose an administrative penalty on a person who violates Article 19 of this Chapter or a rule adopted pursuant to that Article. Except as provided in subsection (b2) of this section, the penalty shall not exceed one thousand dollars ($1,000) per day per violation. Until the Department has notified the person of the violation, a continuing violation shall be treated as one violation. Each day thereafter of a continuing violation shall be treated as a separate violation.

In determining the amount of a penalty under this subsection or subsection (b2) of this section, the Secretary shall consider all of the following factors:

(1) The degree and extent of harm to the natural resources of the State, to the public health, or to private property resulting from the violation.
(2) The duration and gravity of the violation.
(3) The effect on air quality.
(4) The cost of rectifying the damage.
(5) The amount of money the violator saved by noncompliance.
(6) The prior record of the violator in complying or failing to comply with Article 19 of this Chapter or a rule adopted pursuant to that Article.
(7) The cost to the State of the enforcement procedures.
(8) If applicable, the size of the renovation and demolition involved in the violation.

(b2) The penalty for violations of the asbestos NESHAP for demolition and renovation, as defined in G.S. 130A-444, shall not exceed ten thousand dollars (10,000) per day per violation. Until the Department has provided the person with written notification of the violation of the asbestos NESHAP for demolition and renovation that describes the violation, recommends a general course of action, and establishes a time frame in which to correct the violations, a continuing violation shall be treated as one violation. Each day thereafter of a continuing violation shall be treated as a separate violation. A violation of the asbestos NESHAP for demolition and renovation is not considered to continue during the period a person who has received the notice of violation is following the general course of action and complying with the time frame set forth in the notice of violation.

(b3) The Secretary may impose an administrative penalty on a person who violates Article 19A of this Chapter or any rules adopted pursuant to Article 19A of this Chapter. Each day of a continuing violation is a separate violation. The penalty shall not exceed one thousand dollars ($1,000) for each day the violation continues. The penalty authorized by this section does not apply to a person who is not required to be certified under this Article.

(c) The Secretary of Environment and Natural Resources may impose an administrative penalty on a person who willfully violates Article 11 of this Chapter, rules adopted by the Commission pursuant to Article 11 or any condition imposed upon a permit issued under Article 11. An administrative penalty may not be imposed upon a person who establishes that neither the site nor the system may be improved or a new system installed so as to comply with Article 11 of this Chapter. Each day of a continuing violation shall constitute a separate violation. The penalty shall not exceed fifty dollars ($50.00) per day in the case of a wastewater collection, treatment and disposal system with a design daily flow of no more than 480 gallons or in the case of any system serving a single one-family dwelling. The penalty shall not exceed three hundred dollars ($300.00) per day in the case of a sewage collection, treatment and disposal system with a design daily flow of more than 480 gallons which does not serve a single one-family dwelling.

(c1) Note: See the General Statutes of North Carolina.

(d) In determining the amount of the penalty in subsections (a), (b) and (c), the Secretary and the Secretary of Environment and Natural Resources shall consider the degree and extent of the harm caused by the violation and the cost of rectifying the

damage.

(e) A person contesting a penalty shall, by filing a petition pursuant to G.S. 150B-23(a) not later than 30 days after receipt by the petitioner of the document which constitutes agency action, be entitled to an administrative hearing and judicial review in accordance with Chapter 150B of the General Statutes, the Administrative Procedure Act.

(f) The Commission shall adopt rules concerning the imposition of administrative penalties under this section.

(g) The Secretary or the Secretary of Environment and Natural Resources may bring a civil action in the superior court of the county where the violation occurred or where the defendant resides to recover the amount of an administrative penalty authorized under this section whenever a person:

(1) Who has not requested an administrative hearing in accordance with subsection (e) of this section fails to pay the penalty within 60 days after being notified of the penalty; or

(2) Who has requested an administrative hearing fails to pay the penalty within 60 days after service of a written copy of the final agency decision.

(h) A local health director may impose an administrative penalty on any person who willfully violates wastewater collection, treatment, and disposal rules of the local board of health adopted pursuant to G.S. 130A-335(c) or who willfully violates a condition imposed upon a permit issued under the approved local rules. An administrative penalty may not be imposed upon a person who establishes that neither the site nor the system may be improved or a new system installed so as to comply with Article 11 of this Chapter. The local health director shall establish and recover the amount of the administrative penalty in accordance with subsections (d) and (g). Each day of a continuing violation shall constitute a separate violation. The penalty shall not exceed fifty dollars ($50.00) per day in the case of a wastewater collection, treatment and disposal system with a design daily flow of no more than 480 gallons or in the case of any system serving a single one-family dwelling. The penalty shall not exceed three hundred dollars ($300.00) per day in the case of a wastewater collection, treatment and disposal system with a design daily flow of more than 480 gallons which does not serve a single one-family dwelling. A person contesting a penalty imposed under this subsection shall be entitled to an administrative hearing and judicial review in accordance with G.S. 130A-24. A local board of health shall adopt rules concerning the imposition of administrative penalties under this subsection.

(i) The clear proceeds of penalties assessed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

(j) The Secretary of Environment and Natural Resources may also assess the reasonable costs of any investigation, inspection, or monitoring associated with the assessment of the civil penalty against any person who is assessed a civil penalty under this section.

§ 130A-23. Suspension and revocation of permits and program participation.

(a) The Secretary may suspend or revoke a permit issued under this Chapter upon a finding that a violation of the applicable provisions of this Chapter, the rules of the Commission or a condition imposed upon the permit has occurred. A permit may also be suspended or revoked upon a finding that its issuance was based upon incorrect or inadequate information that materially affected the decision to issue the permit.

(b) The Secretary may suspend or revoke a person's participation in a program administered under this Chapter upon a finding that a violation of the applicable provisions of this Chapter or the rules of the Commission has occurred. Program participation may also be suspended or revoked upon a finding that participation was based upon incorrect or inadequate information that materially affected the decision to grant program participation.

(c) A person shall be given notice that there has been a tentative decision to suspend or revoke the permit or program participation and that an administrative hearing will be held in accordance with Chapter 150B of the General Statutes, the Administrative Procedure Act, at which time the person may challenge the tentative decision.

(d) A permit shall be suspended or revoked immediately if a violation of the Chapter, the rules or a condition imposed upon the permit presents an imminent hazard. An operation permit issued pursuant to G.S. 130A-281 shall be immediately suspended for failure of a public swimming pool to maintain minimum water quality or safety standards or design and construction standards pertaining to the abatement of suction hazardous which result in an unsafe condition. A permit issued pursuant to G.S. 130A-248 shall be revoked immediately for failure of an establishment to maintain a minimum grade of C. The Secretary of Environment and Natural Resources shall immediately give notice of the suspension or revocation and the right of the permit holder or program participant to appeal the suspension or revocation under G.S. 150B-23.

(e) The Secretary of Environment and Natural Resources shall have all of the applicable rights enumerated in this section to enforce the provisions of Articles 8, 9, 10, 11, and 12 of this Chapter.

§ 130A-24. Appeals procedure.

(a) Appeals concerning the enforcement of rules adopted by the Commission, concerning the suspension and revocation of permits and program participation by the Secretary and concerning the imposition of administrative penalties by the Secretary shall be governed by Chapter 150B of the General Statutes, the Administrative Procedure Act.

(a1) through (d): See the General Statutes of N.C.

(e) The appeals procedures enumerated in this section shall apply to appeals concerning the enforcement of rules, the imposition of administrative penalties, or any other action taken by the Department of Environment and Natural Resources pursuant to Articles 8, 9, 10, 11, and 12 of this Chapter.

§ 130A-25. Misdemeanor.

(a) A person who violates a provision of this Chapter or the rules adopted by the Commission or a local board of health shall be guilty of a misdemeanor.
(b) Not applicable to Solid Waste.
(c) Not applicable to Solid Waste.

§ 130A-26.1. Criminal violation of Article 9.

{NOTE: See the General Statutes of North Carolina, §130A-26.1(g) for laws applicable to a Class I Felony and a fine for per day violations for those who generate, store, transport, or dispose of hazardous waste in non-compliance with rules promulgated under G.S. 130A-294(c)}.

§ 130A-27. Recovery of money.

The Secretary or the Secretary of Environment and Natural Resources may institute an action in the county where the action arose or the county where the defendant resides to recover any money, other property or interest in property or the monetary value of goods or services provided or paid for by the Department or the Secretary of Environment and Natural Resources which are wrongfully paid or transferred to a person under a program administered by the Department or the Secretary of Environment and Natural Resources pursuant to this Chapter.

§ 130A-28. Forfeiture of gain.

In the case of a violation of this Chapter or the rules adopted by the Commission, money or other property or interest in property so acquired shall be forfeited to the State unless ownership by an innocent person may be established. An action may be instituted by the Attorney General or a district attorney pursuant to G.S. 1-532.

ARTICLE 9

Solid Waste Management.

Part 1. Definitions.

§ 130A-290. Definitions.

(a) Unless a different meaning is required by the context, the following definitions shall apply throughout this Article:

(1) "Affiliate" has the same meaning as in 17 Code of Federal Regulations §240.12b-2 (1 April 1996 Edition).

(1a) "Business entity" has the same meaning as in G.S. 555-1-40(2a).

(1b) "CERCLA/SARA" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Pub. L. No. 96-510, 94 Stat. 2767, 42 U.S.C. § 9601 et seq., as amended, and the Superfund Amendments and Reauthorization Act of 1986, Publ L. No. 99-499, 100 Stat. 1613, as amended.

(1c) "Chemical or portable toilet" means a self-contained mobile toilet facility and holding tank and includes toilet facilities in recreational vehicles.

(1d) "Chlorofluorocarbon refrigerant" means any of the following when used as a liquid heat transfer agent in a mechanical refrigeration system: carbon tetrachloride, chlorofluorocarbons, halons, or methyl chloroform.

(2) "Closure" means the cessation of operation of a solid waste management facility and the act of securing the facility so that it will pose no significant threat to human health or the environment.

(2a) "Coal-fired generating unit" means a coal-fired generating unit, as defined by 40 Code of Federal Regulations § 96.2 (1 July 2001 Edition), that is located in this State and has the capacity to generate 25 or more megawatts of electricity.

(2b) "Combustion products" means residuals, including fly ash, bottom ash, boiler slag, mill rejects, and flue gas desulfurization residue produced by a coal-fired generating unit.

(2c) "Combustion products landfill" means a facility or unit for the disposal of combustion products, where the landfill is located at the same facility with the coal-fired generating unit or units producing the combustion products, and where the landfill is located wholly or partly on top of a facility that is, or was, being used for the disposal or storage of such combustion products, including, but not limited to, landfills, wet and dry ash ponds, and structural fill facilities.

(3) "Commercial" when applied to a hazardous waste facility, means a hazardous waste facility that accepts hazardous waste from the general public or from another person for a fee.

(4) "Construction" or "demolition" when used in connection with "waste" or "debris" means solid waste resulting solely from construction, remodeling, repair, or demolition operations on pavement, buildings, or other structures, but does not include inert debris, land-clearing debris or yard debris.

(4a) "Department" means the Department of Environment and Natural Resources.

(5) Repealed by Session Laws 1995 (Regular Session, 1996), c.594, s.1, effective October 1, 1996.

(6) "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking or placing of any solid waste into or on any land or water so that the solid waste or any constituent part of the solid waste may enter the environment or be emitted into the air or discharged into any waters, including groundwaters.

(7) "Garbage" means all putrescible wastes, including animal offal and carcasses, and recognizable industrial by-products, but excluding sewage and human waste.

(8) "Hazardous waste" means a solid waste, or combination of solid wastes, which because of its quantity, concentration or physical, chemical or infectious characteristics may:

a. Cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or

b. Pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of or otherwise managed.

(8a) "Hazardous waste constituent" has the same meaning as in 40 Code of Federal Regulations § 260.10 (1 July 2006).

(9) "Hazardous waste facility" means a facility for the collection, storage, processing, treatment, recycling, recovery, or disposal of hazardous waste. Hazardous waste facility does not include a hazardous waste transfer facility that meets the requirements of 40 Code of Federal Regulations § 263.12 (1 July 2006).

(10) "Hazardous waste generation" means the act or process of producing hazardous waste.

(11) "Hazardous waste disposal facility" means any facility or any portion of a facility for disposal of hazardous waste on or in land in accordance with rules adopted under this Article.

(12) "Hazardous waste management" means the systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery and disposal of hazardous wastes.

(13) "Hazardous waste management program" means the program and activities within the Department pursuant to Part 2 of this Article, for hazardous waste management.

(13a) “Hazardous waste transfer facility” means a facility or location where a hazardous waste transporter stores hazardous waste for a period of more than 24 hours but less than 10 days.

(13b) "Industrial solid waste" means solid waste generated by manufacturing or industrial processes that is not hazardous waste.

(14) "Inert debris" means solid waste which consists solely of material that is virtually inert and that is likely to retain its physical and chemical structure under expected conditions of disposal.

(15) "Land-clearing debris" means solid waste which is generated solely from land-clearing activities.

(16) "Landfill" means a disposal facility or part of a disposal facility where waste is placed in or on land and which is not a land treatment facility, a surface impoundment, an injection well, a hazardous waste long-term storage facility or a surface storage facility.

(17) "Manifest" means the form used for identifying the quantity, composition and the origin, routing and destination of hazardous waste during its transportation from the point of generation to the point of disposal, treatment or storage.

(17a) "Medical waste" means any solid waste which is generated in the diagnosis, treatment, or immunization of human beings or animals, in research pertaining thereto, or in the production or testing of biologicals, but does not include any hazardous waste identified or listed pursuant to this Article, radioactive waste, household waste as defined in 40 Code of Federal Regulations § 261.4(b)(1) in effect on 1 July 1989, or those substances excluded from the definition of "solid waste" in this section.

(18) “Motor vehicle oil filter” means a filter that removes impurities from the oil used to lubricate an internal combustion engine in a motor vehicle.

(18a) "Municipal solid waste" means any solid waste resulting from the operation of residential, commercial, industrial, governmental, or institutional establishments that would normally be collected, processed, and disposed of through a public or private solid waste management service. Municipal solid waste does not include hazardous waste, sludge, industrial waste managed in a solid waste management facility owned and operated by the generator of the industrial waste for management of that waste, or solid waste from mining or agricultural operations.

(18b) "Municipal solid waste management facility" means any publicly or privately owned solid waste management facility permitted by the Department that receives municipal solid waste for processing, treatment, or disposal.

(19) "Natural resources" means all materials which have useful physical or chemical properties which exist, unused, in nature.

(20) "Open dump" means any facility or site where solid waste is disposed of that is not a sanitary landfill and that is not a facility for the disposal of hazardous waste.

(21) "Operator" means any person, including the owner, who is principally engaged in, and is in charge of, the actual operation, supervision, and maintenance of a solid waste management facility and includes the person in charge of a shift or periods of operation during any part of the day.

(21a) “Parent” has the same meaning as in 17 Code of Federal Regulations § 240.12b-2 (1 April 1996 Edition).

(22) "Person" means an individual, corporation, company, association, partnership, unit of local government, State agency, federal agency or other legal entity.

(22a) “Pre-1983 landfill” means any land area, whether publicly or privately owned, on which municipal solid waste disposal occurred prior to 1 January 1983 but not thereafter, but does not include any landfill used primarily for the disposal of industrial solid waste.

(23) "Processing" means any technique designed to change the physical, chemical, or biological character or composition of any solid waste so as to render it safe for transport; amenable to recovery, storage or recycling; safe for disposal; or reduced in volume or concentration.

(24) "Recovered material" means a material that has known recycling potential, can be feasibly recycled, and has been diverted or removed from the solid waste stream for sale, use, or reuse. In order to qualify as a recovered material, a material must meet the requirements of G.S. 130A-309.05(c).

(25) "RCRA" means the Resource Conservation and Recovery Act of 1976, Pub. L. 94-580, 90 Stat. 2795, 42 U.S.C. § 6901 et seq., as amended.

(26) "Recyclable material" means those materials which are capable of being recycled and which would otherwise be processed or disposed of as solid waste.

(27) "Recycling" means any process by which solid waste, or materials which would otherwise become solid waste, are collected, separated, or processed, and reused or returned to use in the form of raw materials or products..

(28) "Refuse" means all nonputrescible waste.

(28a) "Refuse-derived fuel" means fuel that consists of municipal solid waste from which recyclable and noncombustible materials are removed so that the remaining material is used for energy production.

(29) "Resource recovery" means the process of obtaining material or energy resources from discarded solid waste which no longer has any useful life in its present form and preparing the solid for recycling.

(30) "Reuse" means a process by which resources are reused or rendered usable.

(31) "Sanitary landfill" means a facility for disposal of solid waste on land in a sanitary manner in accordance with the rules concerning sanitary landfills adopted under this Article.

(31a) “Secretary” means the Secretary of Environment and Natural Resources.

(32) "Septage" means solid waste that is a fluid mixture of untreated and partially treated sewage solids, liquids and sludge of human or domestic origin which is removed from a wastewater system. The term septage includes the following:

{NOTE: See the General Statutes of North Carolina, 130A-290. Definitions (32a)-(e)}.

(33) "Septage management firm" means a person engaged in the business of pumping, transporting, storing, treating or disposing septage. The term does not include public or community wastewater systems that treat or dispose septage.

(34) "Sludge" means any solid, semisolid or liquid waste generated from a municipal, commercial, institutional or industrial wastewater treatment plant, water supply treatment plant or air pollution control facility, or any other waste having similar characteristics and effects.

(35) {NOTE: See the General Statutes of North Carolina. 130A-290.}. “Solid waste” means any hazardous or nonhazardous garbage, refuse or sludge from a waste treatment plant, water supply treatment plant or air pollution control facility, domestic sewage and sludges generated by the treatment thereof in sanitary sewage collection, treatment and disposal systems, and other material that is either discarded or is being accumulated, stored or treated prior to being discarded, or has served its original intended use and is generally discarded, including solid, liquid, semisolid or contained gaseous material resulting from industrial, institutional, commercial and agricultural operations, and from community activities. The term does not include:

a. Fecal waste from fowls and animals other than humans;

b. Solid or dissolved material in:

1. Domestic sewage and sludges generated by treatment thereof in sanitary sewage collection, treatment and disposal systems which are designed to discharge effluents to the surface waters;

2. Irrigation return flows; and

3. Wastewater discharges and the sludges incidental to and generated by treatment which are point sources subject to permits granted under Section 402 of the Water Pollution Control Act, as amended (P.L. 92-500), and permits granted under G.S. 143-215.1 by the Environmental Management Commission. However, any sludges that meet the criteria for hazardous waste under RCRA shall also be a solid waste for the purposes of this Article;

c. Oils and other liquid hydrocarbons controlled under Article 21A of Chapter 143 of the General Statutes. However, any oils or other liquid hydrocarbons that meet the criteria for hazardous waste under RCRA shall also be a solid waste for the purposes of this Article;

d. Any source, special nuclear or byproduct material as defined by the Atomic Energy Act of 1954, as amended (42 U.S.C. § 2011).

e. Mining refuse covered by the North Carolina Mining Act, G.S. 74-46 through 74-68 and regulated by the North Carolina Mining Commission (as defined under G.S. 143B-290). However, any specific mining waste that meets the criteria for hazardous waste under RCRA shall also be a solid waste for the purposes of this Article.

f. Recovered material.

(36) "Solid waste disposal site" means any place at which solid wastes are disposed of by incineration, sanitary landfill or any other method.

(37) "Solid waste generation" means the act or process of producing solid waste.

(38) "Solid waste management" means purposeful, systematic control of the generation, storage, collection, transport, separation, treatment, processing, recycling, recovery and disposal of solid waste.

(39) "Solid waste management facility" means land, personnel and equipment used in the management of solid waste.

(40) "Special wastes" means solid wastes that can require special handling and management, including white goods, whole tires, used oil, lead-acid batteries, and medical wastes.

(41) "Storage" means the containment of solid waste, either on a temporary basis or for a period of years, in a manner which does not constitute disposal.

(41a) “Subsidiary” has the same meaning as in 17 code of Federal Regulations § 240.12b-2 (1 April 1996 Edition).

(41b) "Tire-derived fuel" means a form of fuel derived from scrap tires.

(42) "Treatment" means any method, technique or process, including neutralization, designed to change the physical, chemical or biological character or composition of any hazardous waste so as to neutralize such waste or so as to render such waste nonhazardous, safer for transport, amenable for recovery, amenable for storage or reduced in volume. "Treatment" includes any activity or processing designed to change the physical form or chemical composition of hazardous waste so as to render it nonhazardous.

(43) "Unit of local government" means a county, city, town or incorporated village.

(44) "White goods" includes refrigerators, ranges, water heaters, freezers, unit air conditioners, washing machines, dishwashers, clothes dryers, and other similar domestic and commercial large appliances.

(44a) “Wooden pallet” means a wooden object consisting of a flat or horizontal deck or platform supported by structural components that is used as a base for assembling, stacking, handling, and transporting goods.

(45) "Yard trash" means solid waste consisting solely of vegetative matter resulting from landscaping maintenance.

(b) Unless a different meaning is required by the context, the following definitions shall apply throughout G.S. 130A-309.15 through G.S. 130A-309.24:

(1) "Public used oil collection center" means:
   a. Automotive service facilities or governmentally sponsored collection facilities, which in the course of business accept for disposal small quantities of used oil from households; and
   b. Facilities which store used oil in aboveground tanks, which are approved by the Department and which in the course of business accept for disposal small quantities of used oil from households.

(2) "Reclaiming" means the use of methods, other than those used in rerefining, to purify used oil primarily to remove insoluble contaminants, making the oil suitable for further use; the methods may include settling, heating, dehydration, filtration, or centrifuging.

(3) "Recycling" means to prepare used oil for reuse as a petroleum product by rerefining, reclaiming, reprocessing, or other means or to use used oil in a manner that substitutes for a petroleum product made from new oil.

(4) "Rerefining" means the use of refining processes on used oil to produce high-quality base stocks for lubricants or other petroleum products. Rerefining may include distillation, hydrotreating, or treatments employing acid caustic, solvent, clay, or other chemicals, or other physical treatments other than those used in reclaiming.

(5) "Used oil" means any oil which has been refined from crude oil or synthetic oil and, as a result of use, storage, or handling, has become unsuitable for its original purpose due to the presence of impurities or loss of original properties, but which may be suitable for further use and is economically recyclable.

(6) "Used oil recycling facility" means any facility that recycles more than 10,000 gallons of used oil annually.

Part 2. Solid and Hazardous Waste Management.

§ 130A-291. Division of Waste Management.

(a) For the purpose of promoting and preserving an environment that is conducive to public health and welfare, and preventing the creation of nuisances and the depletion of natural resources, the Department shall maintain a Division of Waste Management to promote sanitary processing, treatment, disposal and statewide management of solid waste and the greatest possible recycling and recovery of resources, and the Department shall employ and retain qualified personnel as may be necessary to effect such purposes. It is the purpose and intent of the State to be and remain cognizant not only of its responsibility to authorize and establish a statewide solid waste management program, but also of its responsibility to monitor and supervise through the Department, the activities and operations of units of local government implementing a permitted solid waste management facility serving a specified geographic area in accordance with a solid waste management plan.

(b) In furtherance of this purpose and intent, it is hereby determined and declared that it is necessary for the health and welfare of the inhabitants of the State that solid waste management facilities permitted hereunder and serving a specified geographic area shall be used by public or private owners or occupants of all lands, buildings, and premises within the geographic area, and a unit of local government may, by ordinance, require that all solid waste generated within the geographic area and placed in the waste stream for disposal, shall be delivered to the permitted solid waste management facility or facilities serving the geographic area. Actions taken pursuant to this Article shall be deemed to be acts of the sovereign power of the State of North Carolina, and to the extent reasonably necessary to achieve the purposes of this section, a unit of local government may displace competition with public service for solid waste management and disposal. It is further determined and declared that no person, firm, corporation, association or entity within said geographic area shall engage in any activities which would be competitive with this purpose or with ordinances, rules adopted pursuant to the authority granted herein.

§ 130A-291.1 Septage Management Program; permit fees.

(a) The Department shall establish and administer a septage management program in accordance with the provisions of this section.

(b) For the protection of the public health, the Commission shall adopt rules governing the management of septage. The rules shall include, but are not limited to, criteria for the sanitary management of septage, including standards for the transportation, storage, treatment, and disposal of septage; operator registration and training; the issuance, suspension, and revocation of permits; and procedures for the payment of annual fees.

(c) No septage management firm shall commence or continue operation that does not have a permit issued by the Department. The permit shall be issued only when the septage management firm satisfies all of the requirements of the rules adopted by the Commission. A septage management firm that commences operation without first having obtained a permit shall cease to operate until the firm obtains a permit under this section and shall pay an initial annual fee equal to twice the amount of the annual fee that would otherwise be applicable under subsection (e) of this section.

(d) Septage shall be treated and disposed only at a wastewater system that has been approved by the Department under rules adopted by the Commission or by the Environmental Management Commission or at a site that is permitted by the Department under this section. A permit shall be issued only if the site satisfies all of the requirements of the rules adopted by the Commission.

(e) A septage management firm that operates one pumper truck shall pay an annual fee of five hundred fifty dollars ($550.00) to the Department. A septage management firm that operates two or more pumper trucks shall pay an annual fee of eight hundred dollars ($800.00) to the Department.

(e1) An individual who operates a septage treatment or disposal facility but who does not engage in the business of pumping, transporting, or disposing of septage shall pay an annual fee of two hundred dollars ($200.00).

(e2) A properly completed application for a permit and the annual fee under this section are due by 1 January of each year. The Department shall mail a notice of the annual fees to each permitted septage management firm and each individual who operates a septage treatment or disposal facility prior to 1 November of each calendar year. A late fee in the amount equal to fifty percent (50%) of the annual permit fee under this section shall be submitted when a properly completed application and annual permit fee are not submitted by1 January following the 1 November notice. The clear proceeds of civil penalties collected pursuant to this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

(e3) The Septage Management Account is established as a nonreverting account within the Department. Fees collected under this section shall be placed in the Septage Management Account and shall be applied only to the costs of the septage management program.

(e4) Permits for a new septage management firm operators and permits for septage management firm operators that have not operated a septage management firm in the 24 months immediately preceding the submittal of an application shall be considered probationary for 12 months. The Department may revoke any probationary permit of a firm or an individual that violates any provision of this section, G.S. 130A-291.2, G.S. 130A-291.3, or any rule adopted under these sections. If the Department revokes a probationary permit issued to a firm or individual, the Department shall not issue another permit to that firm or

individual, and the firm or individual may not engage in any septage management activity for a period of 12 months.

(e5) The Department shall provide technical and regulatory assistance to permit applicants and permit holders. Assistance may include, but is not limited to, taking soil samples on proposed and permitted septage land application sites and providing required training to permit applicants and permit holders.

(f) All wastewater systems designed to discharge effluent to the surface waters may accept, treat, and dispose septage from permitted septage management firms, unless acceptance of the septage would constitute a violation of the permit conditions of the wastewater system. The wastewater system may charge a reasonable fee for acceptance, treatment, and disposal of septage based on a fee schedule that takes into account septage composition and quantity and that is consistent with other charges for use of that system.

(g) Production of a crop in accordance with an approved nutrient management plan on land that is permitted as a septage land application site is a bona fide farm purpose under G.S. 153A-340.

(h) The Department shall inspect each septage land application site at least twice a year and shall inspect the records associates with each septage land application site at least annually. The Department shall inspect each pump truck used for septage management at least once every two years.

(i) The Department shall approve innovative or alternative septage treatment or storage methods that are demonstrated to protect the public health and the environment.

(j) Septage generated by the operation of a wastewater system permitted under Article 11 of this Chapter may be managed as provided in this section and may be land applied at a septage land application site permitted under this section.

§ 130A-292. Conveyance of land used for commercial hazardous waste disposal facility to the State.

(a) No land may be used for a commercial hazardous waste disposal facility until the simple title to the land has been conveyed to this State. In consideration for the conveyance, the State shall enter into a lease agreement with the grantor for a term equal to the estimated life of the facility in which the State will be the lessor and the grantor the lessee. The lease agreement shall specify that for an annual rent of fifty dollars ($50.00), the lessee shall be allowed to use the land for the development and operation of a hazardous waste disposal facility. The lease agreement shall provide that the lessor or any person authorized by the lessor shall at all times have the right to enter without a search warrant or permission of the lessee upon any and all parts of the premises for monitoring, inspection and all other purposes necessary to carry out the provisions of this Article. The lessee shall remain fully liable for all damages, losses, personal injury or property damage which may result or arise out of the lessee's operation of the facility, and for compliance with regulatory requirements concerning insurance, bonding for closure and post-closure costs, monitoring and other financial or health and safety requirements as required by applicable law and rules. The State, as lessor, shall be immune from liability except as otherwise provided by statute. The lease shall be transferable with the written consent of the lessor and the consent will not be unreasonably withheld. In the case of a transfer of the lease, the transferee shall be subject to all terms and conditions that the State deems necessary to ensure compliance with applicable laws and rules. If the lessee or any successor in interest fails in any material respect to comply with any applicable law, rule or permit condition, or with any term or condition of the lease, the State may terminate the lease after giving the lessee written notice specifically describing the failure to comply and upon providing the lessee a reasonable time to comply. If the lessee does not effect compliance within the reasonable time allowed, the State may reenter and take possession of the premises.

(b) Notwithstanding the termination of the lease by either the lessee or the lessor for any reason, the lessee shall remain liable for, and be obligated to perform, all acts necessary or required by law, rule, permit condition or the lease for the permanent closure of the site until the site has either been permanently closed or until a substituted operator has been secured and has assumed the obligations of the lessee.

(c) In the event of changes in laws or rules applicable to the facility which make continued operation by the lessee impossible or economically infeasible, the lessee shall have the right to terminate the lease upon giving the State reasonable notice of not less than six months, in which case the lessor shall have the right to secure a substitute lessee and operator.

(d) In the event of termination of the lease by the lessor as provided in subsection (a) of this section, or by the lessee as provided in subsection (c) of this section, the lessee shall be paid the fair market value of any improvements made to the leased premises less the costs to the lessor resulting from termination of the lease and securing a substitute lessee and operator. However, the lessor shall have no obligation to secure a substitute lessee or operator and may require the lessee to permanently close the facility.

§ 130A-293. Local ordinances prohibiting hazardous waste facilities invalid; petition to preempt local ordinance.

(a) It is the intent of the General Assembly to maintain a uniform system for the management of hazardous waste and to place limitations upon the exercise by all units of local government in North Carolina of the power to regulate the management of hazardous waste by means of special, local, or private acts or resolutions, ordinances, property restrictions, zoning regulations, or otherwise. Notwithstanding any authority granted to counties, municipalities or other local authorities to adopt local ordinances (including but not limited to those imposing taxes, fees, or charges or regulating health, environment, or land use), any local ordinance that prohibits or has the effect of prohibiting the establishment or operation of a hazardous waste facility which the

Secretary has preempted pursuant to subsections (b) through (f) of this section, shall be invalid to the extent necessary to effectuate the purposes of this Chapter. To this end, all provisions of special, local, or private acts or resolutions are repealed that:

(1) Prohibit the transportation, treatment, storage or disposal of hazardous waste within any county, city, or other political subdivision.
(2) Prohibit the siting of a hazardous waste facility within any county, city, or other political subdivision.
(3) Place any restriction or condition not placed by this Article upon the transportation, treatment, storage or disposal of hazardous waste or upon the siting of a hazardous waste facility within any county, city, or other political subdivision.
(4) In any manner are in conflict or inconsistent with the provisions of this Article.

(a1) No special, local, or private acts or resolutions enacted or taking effect hereafter may be construed to modify, amend, or repeal any portion of Article 9 of Chapter 130A of the General Statutes unless it expressly provides for such by specific references to the appropriate section of this Article. Further to this end, all provisions of local ordinances, including those regulating land use, adopted by counties, municipalities, or other local authorities that prohibit or have the effect of prohibiting the establishment or operation of a hazardous waste facility are invalidated to the extent preempted by the Secretary pursuant to this section.

(b) When a hazardous waste facility would be prevented from construction or operation by a county, municipal, or other local ordinance, the operator of the proposed facility may petition the Secretary to review the matter. After receipt of a petition, the Secretary shall hold a hearing in accordance with the procedures in subsection (c) of this section and shall determine whether or to what extent to preempt the local ordinance to allow for the establishment and operation of the facility.

(c) When a petition described in subsection (b) of this section has been filed with the Secretary, the Secretary shall hold a public hearing to consider the petition. The public hearing shall be held in the affected locality within 60 days after receipt of the petition by the Secretary. The Secretary shall give notice of the public hearing by:

(1) Publication in a newspaper or newspapers having general circulation in the county or counties where the facility is or is to be located or operated, once a week for three consecutive weeks, the first notice appearing at least 30 days prior to the scheduled date of the hearing; and
(2) First class mail to persons who have requested such notice. The Secretary shall maintain a mailing list of persons who request notice in advance of the hearing pursuant to this section. Notice by mail shall be complete upon deposit of a copy of the notice in a post-paid wrapper addressed to the person to be notified at the address which appears on the mailing list maintained by the Board, in a post office or official depository under the exclusive care and custody of the United States Postal Service.

(c1) Any interested person may appear before the Secretary at the hearing to offer testimony. In addition to testimony before the Secretary, any interested person may submit written evidence to the Secretary for its consideration. At least 20 days shall be allowed for receipt of written comment following the hearing.

(d) A local zoning or land-use ordinance is presumed to be valid and enforceable to the extent the zoning or land-use ordinance imposes requirements, restrictions, or conditions that are generally applicable to development, including, but not limited to, setback, buffer, and stormwater requirements, unless the Secretary makes a finding of fact to the contrary. The Secretary shall determine whether or to what extent to preempt local ordinances so as to allow for the establishment and operation of the facility no later than 60 days after conclusion of the hearing. The Secretary shall preempt a local ordinance only if the Secretary makes all five of the following findings:

(1) That there is a local ordinance which would prohibit or have the effect of prohibiting the establishment or operation of a hazardous waste facility.
(2) That the proposed facility is needed in order to establish adequate capability to meet the current or projected hazardous waste management needs of this State or to comply with the terms of any interstate agreement for the management of hazardous waste to which the State is a party and therefore serves the interests of the citizens of the State as a whole.
(3) That all legally required State and federal permits or approvals have been issued by the appropriate State and federal agencies or that all State and federal permit requirements have been satisfied and that the permits or approvals have been denied or withheld only because of the local ordinance.
(4) That local citizens and elected officials have had adequate opportunity to participate in the siting process.
(5) That the construction and operation of the facility will not pose an unreasonable health or environmental risk to the surrounding locality and that the facility operator has taken or consented to take reasonable measures to avoid or manage foreseeable risks and to comply to the maximum feasible extent with applicable local ordinances.

(d1) If the Secretary does not make all of the findings under subsection (d) of this section, the Secretary shall not preempt the challenged local ordinance. The Secretary's decision shall be in writing and shall identify the evidence submitted to the Secretary plus any additional evidence used in arriving at the decision.

(e) The decision of the Secretary shall be final unless a party to the action files a written appeal under Article 4 of Chapter 150B of the General Statutes, as modified by G.S. 7A-29 and this section, within 30 days of the date of the decision. The record on appeal shall consist of all materials and information submitted to or considered by the Secretary, the Secretary's written decision, a complete transcript of the hearing, all written material presented to the Secretary regarding the location of the facility, the specific findings required by subsection (d) of this section, and any minority positions on the specific findings required by

subsection (d) of this section. The scope of judicial review shall be that the court may affirm the decision of the Secretary, or may remand the matter for further proceedings, or may reverse or modify the decision if the substantial rights of the parties may have been prejudiced because the agency findings, inferences, conclusions, or decisions are:

(1) In violation of constitutional provisions;
(2) In excess of the statutory authority or jurisdiction of the agency;
(3) Made upon unlawful procedure;
(4) Affected by other error of law;
(5) Unsupported by substantial evidence admissible under G.S. 150B-29(a) or G.S. 150B-30 in view of the entire record as submitted; or
(6) Arbitrary or capricious.

(e1) If the court reverses or modifies the decision of the agency, the judge shall set out in writing, which writing shall become part of the record, the reasons for the reversal or modification.

(f) In computing any period of time prescribed or allowed by this procedure, the provisions of Rule 6(a) of the Rules of Civil Procedure, G.S. 1A-1, shall apply.

(g) Repealed by Session Laws 1989, c.168, s. 13, effective May 30, 1989. (1981, c. 704, s. 5; 1983, s. 891, s. 2; 1983 (Reg. Sess., 1984), c. 973, ss. 3-5; 1987, c. 827, s. 249; 1987 (Reg. Sess., 1988), c. 993, s. 28; c. 1082, s. 13, 1989, c. 168, s. 13; 2001-474,s. 17; 2007-107,s.1.10(a).)

§ 130A-294. Solid waste management program.

(a) The Department is authorized and directed to engage in research, conduct investigations and surveys, make inspections and establish a statewide solid waste management program. In establishing a program, the Department shall have authority to:

(1) Develop a comprehensive program for implementation of safe and sanitary practices for management of solid waste;
(2) Advise, consult, cooperate and contract with other State agencies, units of local government, the federal government, industries and individuals in the formulation and carrying out of a solid waste management program;
(3) Develop and adopt rules to establish standards for qualification as a "recycling, reduction or resource recovering facility" or as "recycling, reduction or resource recovering equipment" for the purpose of special tax classifications or treatment, and to certify as qualifying those applicants which meet the established standards. The standards shall be developed to qualify only those facilities and equipment exclusively used in the actual waste recycling, reduction or resource recovering process and shall exclude any incidental or supportive facilities and equipment;
(4)a. Develop a permit system governing the establishment and operation of solid waste management facilities. A landfill with a disposal area of 1/2 acre or less for the on-site disposal of land clearing and inert debris is exempt from the permit requirement of this section and shall be governed by G.S. 130A-301.1. The Department shall not approve an application for a new permit, the renewal of a permit, or a substantial amendment to a permit for a sanitary landfill, excluding demolition landfills as defined in the rules of the Commission, except as provided in subdivisions (3) and (4) of subsection (b1) of this section. No permit shall be granted for a solid waste management facility having discharges that are point sources until the Department has referred the complete plans and specifications to the Environmental Management Commission and has received advice in writing that the plans and specifications are approved in accordance with the provisions of G.S. 143-215.1. If the applicant is a unit of local government, and has not submitted a solid waste management plan that has been approved by the Department pursuant to G.S. 130A-309.09A(b), the Department may deny a permit for a sanitary landfill or a facility that disposes of solid waste by incineration, unless the Commission has not adopted rules pursuant to G.S. 130A-309.29 for local solid waste management plans. In any case where the Department denies a permit for a solid waste management facility, it shall state in writing the reason for denial and shall also state its estimate of the changes in the applicant's proposed activities or plans that will be required for the applicant to obtain a permit.
b. Repealed by Session Laws 2007-550, s. 1(a), effective August 1, 2007.
c. See the General Statutes of North Carolina, § 130A-294 (c).1. – 9.
(4a) Repealed by Session Laws 2007-550, s 1(a), effective August 1, 2007. Repealed by Session Laws 1983, c. 795, s. 3.
(5) Repealed by Session Laws 1983, c. 795, s.3.
(5a) Designate a geographic area within which the collection, transportation, storage and disposal of all solid waste generated within said area shall be accomplished in accordance with a solid waste management plan. Such designation may be made only after the Department has received a request from the unit or units of local government having jurisdiction within said geographic area that such designation be made and after receipt by the Department of a solid waste management plan which shall include:
a. The existing and projected population for such area;

b. The quantities of solid waste generated and estimated to be generated in such area;
c. The availability of sanitary landfill sites and the environmental impact of continued landfill of solid waste on surface and subsurface waters;
d. The method of solid waste disposal to be utilized and the energy or material which shall be recovered from the waste; and
e. Such other data that the Department may reasonably require.

(5b) Authorize units of local government to require by ordinance, that all solid waste generated within the designated geographic area that is placed in the waste stream for disposal be collected, transported, stored and disposed of at a permitted solid waste management facility or facilities serving such area. The provisions of such ordinance shall not be construed to prohibit the source separation of materials from solid waste prior to collection of such solid waste for disposal, or prohibit collectors of solid waste from recycling materials or limit access to such materials as an incident to collection of such solid waste; provided such prohibitions do not authorize the construction and operation of a resource recovery facility unless specifically permitted pursuant to an approved solid waste management plan. If a private solid waste landfill shall be substantially affected by such ordinance then the unit of local government adopting the ordinance shall be required to give the operator of the affected landfill at least two years written notice prior to the effective date of the proposed ordinance.

(5c) Except for the authority to designate a geographic area to be serviced by a solid waste management facility, delegate authority and responsibility to units of local government to perform all or a portion of a solid waste management program within the jurisdictional area of the unit of local government; provided that no authority over or control of the operations or properties of one local government shall be delegated to any other local government.

(5d) Require that an annual report of the implementation of the solid waste management plan within the designated geographic area be filed with the Department.

(6) Charge and collect fees from operators of hazardous waste disposal facilities. The fees shall be used to establish a fund sufficient for each individual facility to defray the anticipated costs to the State for monitoring and care of the facility after the termination of the period during which the facility operator is required by applicable State and federal statutes, regulations or rules to remain responsible for post-closure monitoring and care. In establishing the fees, consideration shall be given to the size of the facility, the nature of the hazardous waste and the projected life of the facility.

(7) Establish and collect annual fees from generators and transporters of hazardous waste, and from storage, treatment, and disposal facilities regulated under this Article as provided in G.S. 130A-294.1.

(a1) A permit for a solid waste management facility may be transferred only with the approval of the Department.

(b) The Commission shall adopt and the Department shall enforce rules to implement a comprehensive statewide solid waste management program. The rules shall be consistent with applicable State and federal law; and shall be designed to protect the public health, safety, and welfare; preserve the environment; and provide for the greatest possible conservation of cultural and natural resources. Rules for the establishment, location, operation, maintenance, use, discontinuance, recordation, post-closure care of solid waste management facilities also shall be based upon recognized public health practices and procedures, including applicable epidemiological research and studies; hydrogeological research and studies; sanitary engineering research and studies; and current technological development in equipment and methods. The rules shall not apply to the management of solid waste that is generated by an individual or individual family or household unit on the individual's property and is disposed of on the individual's property.

(b1)(1), thru (b)(5) See the General Statutes of North Carolina, § 130A-294.

(b2) The Department shall require an applicant for a permit or a permit holder under this Article to satisfy the Department that the applicant or permit holder; and any parent, subsidiary, or other affiliate of the applicant, permit holder, or parent, including any joint venturer with a direct or indirect interest in the applicant, permit holder, or parent:

(1) Is financially qualified to carry out the activity for which the permit is required. An applicant for a permit and permit holders for solid waste management facilities that are not hazardous waste facilities shall establish financial responsibility as required by G.S. 130A-295.2. An applicant for a permit and permit holders for hazardous waste facilities shall establish financial responsibility as required by G.S. 130A-295.04.

(2) Has substantially complied with the requirements applicable to any activity in which the applicant or permit holder, or a parent, subsidiary, or other affiliate of the applicant, permit holder, or parent, or a joint venturer with a direct or indirect interest in the applicant has previously engaged and has been in substantial compliance with previously engaged and has been in substantial compliance with federal and state laws, regulations, and rules for the protection of the environment as provided in G.S. 130A-295.3.

(b3) An applicant for a permit or a permit holder under this Article shall satisfy the Department that the applicant has met the requirements of subsection (b2) of this section before the Department is required to otherwise review the application.

(c) The Commission shall adopt and the Department shall enforce rules governing the management of hazardous waste. These rules shall establish a complete and integrated regulatory scheme in the area of hazardous waste management, implement this Part, and shall provide for:

(1) Establish criteria for hazardous waste, identify the characteristics of hazardous waste and list particular hazardous waste.

(1a) Establish criteria for hazardous constituents, identify the characteristics of hazardous constituents, and list particular hazardous constituents;

(2) Require record-keeping and reporting by generators and transporters of hazardous waste and owners and operators of hazardous waste facilities.

(3) Require proper labeling of hazardous waste containers.

(4) Require use of appropriate containers for hazardous waste.

(5) Require maintenance of a manifest system to assure that all hazardous waste is designated for treatment, storage or disposal at a hazardous waste facility to which a permit has been issued.

(6) Require proper transportation of hazardous waste.

(7) Develop treatment, storage and disposal standards of performance and techniques to be used by hazardous waste facilities.

(8) Develop standards regarding location, design, ownership and construction of hazardous waste facilities; provided, however, that no hazardous waste disposal facility or polychlorinated biphenyl disposal facility shall be located within 25 miles of any other hazardous waste disposal facility or polychlorinated biphenyl disposal facility.

(9) Require plans to minimize unanticipated damage from treatment, storage or disposal of hazardous waste; and a plan or plans providing for the establishment and/or operation of one or more hazardous waste facilities in the absence of adequate approved hazardous waste facilities established or operated by any person within the State.

(10) Require proper maintenance and operation of hazardous waste facilities, including requirements for ownership by any person or the State, require demonstration of financial responsibility in accordance with this section and G.S. 130A-295.04, provide for training of personnel, and provide for continuity of operation and procedures for establishing and maintaining hazardous waste facilities.

(11) Require owners or operators of hazardous waste facilities to monitor the facilities.

(12) Authorize or require Inspection or copying of records required to be kept by owners or operators.

(13) Provide for collection and analysis of hazardous waste samples and samples of hazardous waste containers and labels from generators and transporters and from owners and operators of hazardous waste facilities.

(14) Develop a permit system governing the establishment and operation of hazardous waste facilities.

(15) Develop additional requirements as necessary for the effective management of hazardous waste.

(16) Require the operator of the hazardous waste disposal facility to maintain adequate insurance to cover foreseeable claims arising from the operation of the facility. The Department shall determine what constitutes an adequate amount of insurance.

(17) Require the bottom of a hazardous waste disposal facility shall be at least 10 feet above the seasonal high water table and more when necessary to protect the public health and the environment.

(18) Require the operator of a hazardous waste disposal facility to make monthly reports to the board of county commissioners of the county in which the facility is located on the kinds and amounts of hazardous wastes in the facility.

(d) The Commission is authorized to adopt and the Department is authorized to enforce rules where appropriate for public participation in the consideration, development, revision, implementation and enforcement of any permit rule, guideline, information or program under this Article.

(e) Rules adopted under this section may incorporate standards and restrictions which exceed and are more comprehensive than comparable federal regulations.

(f) Within 10 days of receiving an application for a permit or for an amendment to an existing permit for a hazardous waste facility, the Department shall notify the clerk of the board of commissioners of the county or counties in which the facility is proposed to be located or is located and, if the facility is proposed to be located or is located within a city, the clerk of the governing board of the city, that the application has been filed, and shall file a copy of the application with the clerk. Prior to the issuance of a permit or an amendment of an existing permit the Secretary or the Secretary's designee shall conduct a public hearing in the county, or in one of the counties in which the hazardous waste facility is proposed to be located or is located. The Secretary or the Secretary's designee shall give notice of the hearing, and the public hearing shall be in accordance with applicable federal regulations adopted pursuant to RCRA and with Chapter 150B of the General Statutes. Where the provisions of the federal regulations and Chapter 150B of the General Statutes are inconsistent, the federal regulations shall apply.

(g) The Commission shall develop and adopt standards for permitting of hazardous waste facilities. Such standards shall be developed with, and provide for, public participation; shall be incorporated into rules; shall be consistent with all applicable federal and State law, including statutes, regulations and rules; shall be developed and revised in light of the best available scientific data; and shall be based on consideration of at least the following factors:

(1) Hydrological and geological factors, including flood plains, depth to water table, groundwater travel time, soil pH, soil cation exchange capacity, soil composition and permeability, cavernous bedrock, seismic activity, slope, mines, and climate;

(2) Environmental and public health factors, including air quality, quality of surface and groundwater, and proximity to public water supply watersheds;

(3) Natural and cultural resources, including wetlands, gamelands, endangered species habitats, proximity to parks, forests, wilderness areas, nature preserves, and historic sites;

(4) Local land uses;
(5) Transportation factors, including proximity to waste generators, route safety, and method of transportation;
(6) Aesthetic factors, including the visibility, appearance, and noise level of the facility;
(7) Availability and reliability of public utilities; and
(8) Availability of emergency response personnel and equipment.

(h) Rules adopted by the Commission shall be subject to the following requirements:

(1) Repealed by Session Laws 1989, c. 168, s. 20.
(2) Hazardous waste shall be treated prior to disposal in North Carolina. The Commission shall determine the extent of waste treatment required before hazardous waste can be disposed of in a hazardous waste disposal facility.
(3) Any hazardous waste disposal facility hereafter constructed in this State shall meet, at the minimum, the standards of construction imposed by federal regulations adopted under the RCRA at the time the permit is issued.
(4) No hazardous waste disposal facility or polychlorinated biphenyl disposal facility shall be located within 25 miles of any other hazardous waste disposal facility or polychlorinated biphenyl disposal facility.
(5) Repealed by Session Laws 2001-474, s. 23, effective November 29, 2001.
(6) The following shall not be disposed of in a hazardous waste disposal facility: ignitables as defined in the RCRA, polyhalogenated biphenyls of 50 ppm or greater concentration, and free liquids whether or not containerized.
(7) Facilities for disposal or long-term storage of hazardous waste shall have at a minimum the following: a leachate collection and removal system above an artificial impervious liner of at least 30 mils in thickness, a minimum of five feet of clay or clay-like liner with a maximum permeability of 1.0×10^{-7} centimeters per second (cm/sec) below said artificial liner, and a leachate detection system immediately below the clay or clay-like liner.
(8) Hazardous waste shall not be stored at a hazardous waste treatment facility for over 90 days prior to treatment or disposal.
(9) The Commission shall consider any hazardous waste treatment process proposed to it, if the process lessens treatment cost or improves treatment over then current methods or standards required by the Commission.
(10) Prevention, reduction, recycling, and detoxification of hazardous wastes should be encouraged and promoted. Hazardous waste disposal facilities and polychlorinated biphenyl disposal facilities shall be detoxified as soon as technology which is economically feasible is available and sufficient money is available without additional appropriation.

(i) The Department shall develop a comprehensive hazardous waste management plan for the State and shall revise the plan on or before 1 July of even-numbered years. The Department shall report to the Environmental Review Commission on or before 1 October of each year on the implementation or the comprehensive hazardous waste management plan. The report shall include an evaluation of how well the State and private parties are managing and cleaning up hazardous waste. The report shall also include recommendations to the Governor, State agencies, and the General Assembly on ways to: improve waste management; reduce the amount of waste generated; maximize resource recovery, reuse, and conservation; and minimize the amount of hazardous waste which must be disposed of.

(j) Repealed by Session Laws 2007-107, s. 1.1(e), effective October 1, 2007.

(k) Each person who generates hazardous waste who is required to pay a fee under G.S. 130A-294.1, and each operator of a hazardous waste treatment facility which treats waste generated on-site who is required to pay a fee under G.S. 130A-294.1, shall submit to the Department at the time such fees are due, a written description of any program to minimize or reduce the volume and quantity or toxicity of such waste.

(l) Disposal of solid waste in or upon water in a manner that results in solid waste entering waters or lands of the State is unlawful. Nothing herein shall be interpreted to affect disposal of solid waste in a permitted landfill.

(m) Demolition debris consisting of used asphalt or used asphalt mixed with dirt, sand, gravel, rock, concrete, or similar nonhazardous material may be used as fill and need not be disposed of in a permitted landfill or solid waste disposal facility. Such demolition debris may not be placed in the waters of the State or at or below the seasonal high water table.

(n) The Department shall encourage research and development and disseminate information on state-of-the-art means of handling and disposing of hazardous waste. The Department may establish a waste information exchange for the State.

(o) The Department shall promote public education and public involvement in the decision-making process for the siting and permitting of proposed hazardous waste facilities. The Department shall assist localities in which facilities are proposed in collecting and receiving information relating to the suitability of the proposed site. At the request of a local government in which facilities are proposed, the Department shall direct the appropriate agencies of State government to develop such relevant data as that locality shall reasonably request.

(p) The Department shall each year recommend to the Governor a recipient for a "Governor's Award of Excellence" which the Governor shall award for outstanding achievement by an industry or company in the area of waste management.

(q) The Secretary shall, at the request of the Governor and under the Governor's direction, assist with the negotiation of interstate agreements for the management of hazardous waste.

(r) The Commission shall, in accordance with procedures set forth in G.S. 160A-211.1 and G.S. 153A-152.1, review upon appeal specific privilege license tax rates that localities may apply to waste management facilities in their jurisdiction.

(s) The Department is authorized to enter upon any lands and structures upon lands to make surveys, borings, soundings, and examinations as may be necessary to determine the suitability of a site for a hazardous waste facility or hazardous waste disposal

facility. The Department shall give 30 days notice of the intended entry authorized by this section in the manner prescribed for service of process by G.S. 1A-1, Rule 4. Entry under this section shall not be deemed a trespass or taking; provided, however, that the Department shall make reimbursement for any damage to land or structures caused by these activities.

§ 130A-294.1. Fees applicable to generators and transporters of hazardous waste, and to hazardous waste storage, treatment, and disposal facilities.

(a) It is the intent of the General Assembly that the fee system established by this section is solely to provide funding in addition to federal and State appropriations to support the State's hazardous waste management program.

(b) Funds collected pursuant to this section shall be used for personnel and other resources necessary to:

(1) Provide a high level of technical assistance and waste minimization effort for the hazardous waste management program;
(2) Provide timely review of permit applications;
(3) Insure that permit decisions are made on a sound technical basis and that permit decisions incorporate all conditions necessary to accomplish the purposes of this Part;
(4) Improve monitoring and compliance of the hazardous waste management program;
(5) Increase the frequency of inspections;
(6) Provide chemical, biological, toxicological, and analytical support for the hazardous waste management program; and
(7) Provide resources for emergency response to imminent hazards associated with the hazardous waste management program.

(c) It is the intent of the General Assembly that the total funds collected per year pursuant to this section not exceed thirty percent (30%) of the total funds budgeted from all sources for the hazardous waste management program. This subsection shall not be construed to limit the obligation of any person to pay any fee imposed by this section.

(d) The Hazardous Waste Management Account is established as a nonreverting account within the Department. All fees collected under this section shall be credited to the Account and shall be used for the purposes listed in subsection (b).

(e) A person who generates either one kilogram or more of any acute hazardous waste as listed in 40 C.F.R. §261.30(d) or §261.33(e) as revised 1 July 1987, or 1000 kilograms or more of hazardous waste, in any calendar month during the year beginning 1 July and ending 30 June shall pay an annual fee of one thousand four hundred dollars ($1,400).

(f) A person who generates 100 kilograms or more of hazardous waste in any calendar month during the year beginning 1 July and ending 30 June but less than 1000 kilograms of hazardous waste in each calendar month during that year shall pay an annual fee of one hundred seventy-five dollars ($175.00).

(g) A person who generates one kilogram or more of acute hazardous waste or 1000 kilograms or more of hazardous waste in any calendar month during the calendar year shall pay, in addition to any fee under subsections (e) and (f) of this section, a tonnage fee of seventy cents ($0.70) per ton or any part thereof of hazardous waste generated during that year up to a maximum of 25,000 tons.

(h) A person who generates less than one kilogram of acute hazardous waste and less than 100 kilograms of hazardous waste in each calendar month during the year beginning 1 July and ending 30 June shall not be liable for payment of a fee under subsections (e) and (f) of this section for that year.

(i) Hazardous waste generated as a result of any type of remedial action or by collection by a local government of hazardous waste from households shall not be subject to a tonnage fee under subsection (g) and (l) of this section.

(j) A person who transports hazardous waste shall pay an annual fee of eight hundred forty dollars ($840.00).

(k) A storage, treatment, or disposal facility shall pay an annual activity fee of one thousand six hundred eighty dollars ($1,680) for each activity.

(l) A commercial hazardous waste storage, treatment, or disposal facility shall pay annually, in addition to the fees applicable to all hazardous waste storage, treatment, or disposal facilities, a single tonnage charge of two dollars and forty-five cents ($2.45) per ton or any part thereof of hazardous waste stored, treated, or disposed of at the facility. A manufacturing facility that receives hazardous waste generated from the use of a product typical of its manufacturing process for the purpose of recycling is exempt from this tonnage charge. A facility must have a permit issued under this Article which includes the recycling activity and specifies the type and amount of waste allowed to be received from off-site for recycling.

(m) An applicant for a permit for a hazardous waste storage, treatment, or disposal facility that proposes to operate as a commercial facility shall pay an application fee for each proposed activity as follows:

(1)	Storage facility	$ 14,000;
(2)	Treatment facility	$ 21,000;
(3)	Disposal facility	$ 35,000.

(n) The Commission may adopt rules setting fees for modifications to permits. Such fees shall not exceed fifty percent (50%) of the application fee.

(o) Annual fees established under this section are due no later than 31 July for the fiscal year beginning 1 July in the same

year. Tonnage fees established under this section are due no later than 31 July for the previous calendar year.

(p) The Department shall make an annual report on or before 1 October to the General Assembly and its Fiscal Research Division on the cost of the hazardous waste management program. The report shall include, but is not limited to, beginning fund balance, fees collected under this section, anticipated revenue from all other sources, total expenditures by activities and categories for the hazardous waste management program, ending fund balance, any recommended adjustments in the annual and tonnage fees which may be necessary to assure the continued availability of funds sufficient to pay the State's share of the cost of the hazardous waste management program, and any other information requested by the General Assembly. In recommending adjustments in annual and tonnage fees, the Department may propose fees for hazardous waste generators, and for hazardous waste treatment facilities which treat waste generated on-site, which are designed to encourage reductions in the volume or quantity and toxicity of hazardous waste.

§ 130A-295. Additional requirements for hazardous waste facilities.

(a) An applicant for a permit for a hazardous waste facility shall satisfy the Department that:

(1) Any hazardous waste facility constructed or operated by the applicant, or any parent or subsidiary corporation if the applicant is a corporation, has been operated in accordance with sound waste management practices and in substantial compliance with federal and state laws, regulations and rules; and

(2) The applicant, or any parent or subsidiary corporation if the applicant is a corporation, is financially qualified to operate the proposed hazardous waste facility.

(b) An applicant for a permit for a hazardous waste facility shall satisfy the Department that he has met the requirements of subsection (a) of this section before the Department is required to otherwise review the application. In order to continue to hold a permit under this Chapter, a permittee must remain financially qualified and must provide any information requested by the Department to demonstrate that he continues to be financially qualified.

(c) No permit for any new commercial hazardous waste treatment, storage, or disposal facility shall be issued or become effective, and no permit for a commercial hazardous waste treatment, storage, or disposal facility shall be modified until the applicant has satisfied the Department that such facility is needed to meet the current or projected hazardous waste management needs of this State or to comply with the terms of any interstate agreement for the management of hazardous waste to which the State is a party. The Commission shall adopt rules to implement this subsection.

(d) At least 120 days prior to submitting an application, an applicant for a permit for a hazardous waste facility shall provide to the county in which the facility is located, to any municipality with planning jurisdiction over the site of the facility, and to all emergency response agencies that have a role under the contingency plan for the facility all of the following information:

(1) Information on the nature and type of operations to occur at the facility.

(2) Identification of the properties of the hazardous waste to be managed at the facility.

(3) A copy of the draft contingency plan for the facility that includes the proposed role for each local government and each emergency response agency that received information under this subsection.

(4) Information on the hazardous waste locations within the facility.

(e) Within 60 days of receiving the information, each local government and emergency response agency that receives information under subsection (d) of this section shall respond to the applicant in writing as to the adequacy of the contingency plan and the availability and adequacy of its resources and equipment to respond to an emergency at the facility that results in a release of hazardous waste or hazardous waste constituents into the environment according to the role set forth for the local government or emergency response agency under the contingency plan.

(f) An applicant for a permit for a hazardous waste facility shall include documentation that each local government and emergency response agency received the information required under subsection (d) of this section, the written responses the applicant received under subsection (e) of this section, and verification by each that its resources and equipment are available and adequate to respond to an emergency at the facility in accordance with its role as set forth in the contingency plan. If the applicant does not receive a timely verification from a local government or emergency response agency notified under subsection (d) of this section, the Department shall verify the adequacy of resources and equipment for emergency response during the course of review of the permit application, taking into account any contracts entered into by the applicant for such emergency response resources.

(g) At each two-year interval after a permit for a hazardous waste facility is issued, the permit holder shall verify that the resources and equipment of each local government and emergency response agency are available and adequate to respond to an emergency at the facility in accordance with its role as set forth in the contingency plan and shall submit this verification to the Department.

§ 130A-295.01. Additional Requirement for Commercial Hazardous Waste Facilities.

(a) As used in this section:

(1) "Commercial hazardous waste facility" means any hazardous waste facility that accepts hazardous waste from the general public or from another person for a fee, but does not include any facility owned or operated by a

generator of hazardous waste solely for his own use, and does not include any facility owned by the State or by any agency or subdivision thereof solely for the management of hazardous waste generated by agencies or subdivisions of the State;

(2) "New" when used in connection with "facility" refers to a planned or proposed facility, or a facility that has not been placed in operation, but does not include facilities that have commenced operations as of 22 June 1987, including facilities operated under interim status.

(3) "Modified", when used in connection with "permit" means any change in any permit in force on or after 22 June 1987 that would either expand the scope of permitted operations, or extend the expiration date of the permit, or otherwise constitute a Class 2 or Class 3 modification of the permit as defined in 40 Code of Federal Regulations § 270.41 (1 July 2006).

(4) "7Q10 conditions", when used in connection with "surface water," refers to the minimum average flow for a period of seven consecutive days that has an average occurrence of once in 10 years as referenced in 15 NCAC 2B .0206(a)(3) as adopted 1 February 1976.

(b) No permit for any new commercial hazardous waste facility shall be issued or become effective, and no permit for a commercial hazardous waste facility shall be modified until the applicant has satisfied the Department that such facility meets, in addition to all other applicable requirements, the following requirements:

(1) The facility shall not discharge directly a hazardous or toxic substance into a surface water that is upstream from a public drinking water supply intake in North Carolina, unless there is a dilution factor of 1000 or greater at the point of discharge into the surface water under 7Q10 conditions.

(2) The facility shall not discharge indirectly through a publicly owned treatment works (POTW) a hazardous or toxic substance into a surface water that is upstream from a public drinking water supply intake in North Carolina, unless there is a dilution factor of 1000 or greater, irrespective of any dilution occurring in a wastewater treatment plant, at the point of discharge into the surface water under 7Q10 conditions.

(c) The Department shall not issue a permit for a commercial hazardous waste facility for a period of more than five years. A permit holder for a commercial hazardous waste facility who intends to apply for renewal of the permit shall submit an application for the renewal of the permit at least one year before the permit expires unless the Department approves a shorter period of time.

(d) The owner or operator of a commercial hazardous waste facility shall maintain a record of information at an off-site location that identifies the generators of the waste and the quantity, type, location, and hazards of the waste at the facility and shall make this information available in a form and manner to be determined by the Department, accessible to the Department, to the county in which the facility is located, to any municipality with planning jurisdiction over the site of the facility, and to emergency response agencies that have a role under the contingency plan for the facility.

(e)(1) Within 10 days of filing an application for a permit for a commercial hazardous waste facility, the applicant shall notify every person who resides or owns property located within one-fourth mile of any property boundary of the facility that the application has been filed. The notice shall be by mail to residents and by certified mail to property owners, or by any other means approved by the Department, shall be in a form approved by the Department, and shall include all of the following:

a. The location of the facility.
b. A description of the facility.
c. The hazardous and nonhazardous wastes that are to be received and processed at the facility.
d. A description of the emergency response plan for the facility.

(e)(2) The permit holder for a commercial hazardous waste facility shall publish a notice that includes the information set out in subdivision (1) of this subsection annually beginning one year after the permit is issued. The notice shall be published in a form and manner approved by the Department in a newspaper of general circulation in the community where the facility is located.

(e)(3) The permit holder for a commercial hazardous waste facility shall provide the information set out in subdivision (1) of this subsection by mail to the persons described in subdivision (1) of this subsection at the midpoint of the period for which the permit is issued.

(e)(4) Each commercial hazardous waste facility applicant and permit holder shall provide documentation to demonstrate to the Department that the requirements set out in subdivisions (1), (2), and (3) of this subsection have been met.

(f) No later than 31 January of each year, the owner or operator of a commercial hazardous waste facility shall report to the Department any increase or decrease in the number of sensitive land uses and any increase or decrease in estimated population density based on information provided by the local government that has planning jurisdiction over the site on which the facility is located that occurred during the previous calendar year in the area located within one-fourth mile of any property boundary of the facility. Changes shall be recorded in the operating record of the facility. As used in this subsection, “sensitive land use” includes residential housing, places of assembly, places of worship, schools, day care providers, and hospitals. Sensitive land use does not include retail businesses.

(g) The owner or operator of a commercial hazardous waste facility shall provide a security and surveillance system at the facility 24 hours a day, seven days a week in order to continuously monitor site conditions and to control entry. The security and surveillance system shall be capable of promptly detecting unauthorized access to the facility; monitoring conditions; identifying operator errors; and detecting any discharge that could directly or indirectly cause a fire, explosion, or release of hazardous waste

or hazardous waste constituents into the environment or threaten human health. The requirements of this subsection may be satisfied either by employing trained facility personnel or by providing an electronic security and surveillance system which may include television, motion detectors, heat-sensing equipment, combustible gas monitors, or any combination of these, as approved by the Department.

(h) The operator of a commercial hazardous waste facility shall install an on-site wind monitor approved by the Department. The wind monitor required shall be located so that the real-time wind direction can be determined from a remote location in the event of a release of hazardous waste or hazardous waste constituents into the environment.

§ 130A-295.02. Resident inspectors required at commercial hazardous waste facilities; recovery of costs for same.

(a) The Division shall employ full-time resident inspectors for each commercial hazardous waste facility located within the State. Such inspectors shall be employed and assigned so that at least one inspector is on duty at all times during which any component of the facility is in operation, is undergoing any maintenance or repair, or is undergoing any test or calibration. Resident inspectors shall be assigned to commercial hazardous waste management facilities so as to protect the public health and the environment, to monitor all aspects of the operation of such facilities, and to assure compliance with all laws and rules administered by the Division and by any other division of the Department. Such inspectors may also enforce laws or rules administered by any other agency of the State pursuant to an appropriate memorandum of agreement entered into by the Secretary and the chief administrative officer of such agency. The Division may assign additional resident inspectors to a facility depending upon the quantity and toxicity of waste managed at a facility, diversity of types of waste managed at the facility, complexity of management technologies utilized at the facility, the range of components which are included at the facility, operating history of the facility, and other factors relative to the need for on-site inspection and enforcement capabilities. The Division, in consultation with other divisions of the Department, shall define the duties of each resident inspector and shall determine whether additional resident inspectors are needed at a particular facility to meet the purposes of this section.

(b) The Division shall establish requirements pertaining to education, experience, and training for resident inspectors so as to assure that such inspectors are fully qualified to serve the purposes of this section. The Division shall provide its resident inspectors with such training, equipment, facilities, and supplies as may be necessary to fulfill the purposes of this section.

(c) As a condition of its permit, the owner or operator of each commercial hazardous waste facility located within the State shall provide and maintain such appropriate and secure offices and laboratory facilities as the Department may require for the use of the resident inspectors required by this section.

(d) Resident inspectors assigned to a commercial hazardous waste facility shall have unrestricted access to all operational areas of such facility at all times. For the protection of resident inspectors and the public, the provisions of G.S. 143-215.107(f) shall not apply to commercial hazardous waste facilities to which a resident inspector is assigned.

(e) No commercial hazardous waste facility shall be operated, undergo any maintenance or repair, or undergo any testing or calibration unless an inspector employed by the Division is present at the facility.

(f) The requirements of this section are intended to enhance the ability of the Department to protect the public health and the environment by providing the Department with the authority and resources necessary to maintain a rigorous inspection and enforcement program at commercial hazardous waste management facilities. The requirements of this section are intended to be supplementary to other requirements imposed on hazardous waste facilities. This section shall not be construed to relieve either the owner or the operator of any such facility or the Department from any other requirement of law or to require any unnecessary duplication of reporting or monitoring requirements.

(g) For the purpose of enforcing the laws and rules enacted or adopted for the protection of the public health and the environment, resident inspectors employed pursuant to this section may be commissioned as special peace officers as provided in G.S. 113-28.1. The provisions of Article 1A of Chapter 113 of the General Statutes shall apply to resident inspectors commissioned as special peace officers pursuant to this subsection.

(h) The Department shall determine the full cost of the employment and assignment of resident inspectors at each commercial hazardous waste facility located within the State. Such costs shall include, but are not limited to, costs incurred for salaries, benefits, travel, training, equipment, supplies, telecommunication and data transmission, offices and other facilities other than those provided by the owner or operator, and administrative expenses. The Department shall establish and revise as necessary a schedule of fees to be assessed on the users of each such facility to recover the actual cost of the resident inspector program at that facility. The operator of each such facility shall serve as the collection agent for such fees, shall account to the Department on a monthly basis for all fees collected, and shall deposit with the Department all funds collected pursuant to this section within 15 days following the last day of the month in which such fees are collected. Fees collected under this section shall be credited to the General Fund as nontax revenue.

(i) The Division shall establish and revise as necessary a program for assigning resident inspectors to commercial hazardous waste facilities so that scheduled rotation or equivalent oversight procedures ensure that each resident inspector will maintain objectivity.

(j) For purposes of this subsection, special purpose commercial hazardous waste facilities include: a facility that manages limited quantities of hazardous waste; a facility that limits its hazardous waste management activities to reclamation or recycling, including energy or materials recovery or a facility that stores hazardous waste primarily for use at such facilities; or a facility that is determined to be low risk under rules adopted by the Commission pursuant to this subsection. The Commission shall

adopt rules to determine whether a commercial hazardous waste facility is a special purpose commercial hazardous waste facility and to establish classifications of special purpose commercial hazardous waste facilities. The rules to determine whether a commercial hazardous waste facility is a special purpose commercial hazardous waste facility and to establish classifications of special purpose commercial hazardous waste facilities shall be based on factors including, but not limited to, the size of the facility, the type of treatment or storage being performed, the nature and volume of waste being treated or stored, the uniformity, similarity, or lack of diversity of the waste streams, the predictability of the nature of the waste streams and their treatability, whether the facility utilizes automated monitoring or safety devices that adequately perform functions that would otherwise be performed by a resident inspector, the fact that reclamation or recycling is being performed at the facility, and the compliance history of the facility and its operator. Based on the foregoing factors and any increase or decrease in the number of sensitive land uses over time or in estimated population density over time reported pursuant to G.S. 130A-295.01(f), rules adopted pursuant to this subsection shall establish times and frequencies for the presence of a resident inspector on less than a full-time basis at special purpose commercial hazardous waste facilities and specify a minimum number of additional inspections at special purpose hazardous waste (facilities). Special purpose commercial hazardous waste facilities that utilize hazardous waste as a fuel source shall be inspected a minimum of 40 hours per week, unless compliance data for these facilities can be electronically monitored and recorded off-site by the Department. The Department, considering the benefits provided by electronic monitoring, shall determine the number of hours of on-site inspection required at these facilities. The Department shall maintain records of all inspections at special purpose commercial hazardous waste facilities. Such records shall contain sufficient detail and shall be arranged in a readily understandable format so as to facilitate determination at any time as to whether the special purpose commercial hazardous waste facility is in compliance with the requirements of this subsection and of rules adopted pursuant to this subsection. Notwithstanding any other provision of this section, special purpose commercial hazardous waste facilities shall be subject to inspection at all times during which the facility is in operation, undergoing any maintenance or repair, or undergoing any test or calibration.

(k) For purposes of this section, a facility that utilizes hazardous waste as a fuel or that has used hazardous waste as a fuel within the preceding calendar year, and that is an affiliate of and adjacent or contiguous to a commercial hazardous waste facility, shall be subject to inspection as a special purpose commercial hazardous waste facility under subsection (j) of this section as if the facility that utilizes hazardous waste as a fuel were a part of the commercial hazardous waste facility.

(l) As used in this section, the words "affiliate", "parent", and "subsidiary" have the same meaning as in 17 Code of Federal Regulations Section 240.12b-2 (1 April 1990 Edition).

(m) The Department shall report annually on or before 1 October to the Environmental Review Commission on the implementation of the resident inspectors program.

§ 130A-295.03. Additional requirement for hazardous waste disposal facilities; hazardous waste to be placed in containers.

(a) For purposes of this section, the term "container" means any portable device into which waste is placed for storage, transportation, treatment, disposal, or other handling, and includes the first enclosure which encompasses the waste.

(b) All hazardous waste shall be placed in containers for disposal, except as the Commission shall provide for by rule. The Commission shall adopt standards for the design and construction of containers for disposal. Standards for containers may vary for different types of waste. The standards for disposal containers may supplement or duplicate any of the performance or engineering standards for hazardous waste disposal facilities required under State or federal law; however, the performance or engineering standards for hazardous waste disposal facilities are separate and cumulative, and the performance or engineering standards for hazardous waste disposal facilities and containers may not substitute for or replace one another.

§ 130A-295.04 Financial responsibility requirements for applicants for a permit and permit holders for hazardous waste facilities.

(a) In addition to any other financial responsibility requirements for solid waste management facilities under this Part, the applicant for a permit or a permit holder for a hazardous waste facility shall establish financial assurance that will ensure that sufficient funds are available for facility closure, post-closure maintenance and monitoring, any corrective action that the Department may require, and to satisfy any potential liability for sudden and nonsudden accidental occurrences, and subsequent costs incurred by the Department in response to an incident at a facility, even if the applicant or permit holder becomes insolvent or ceases to reside, be incorporated, do business, or maintain assets in the State.

(b) To establish sufficient availability of funds under this section, the applicant for a permit or a permit holder for a hazardous waste facility may use insurance, financial tests, third-party guarantees by persons who can pass the financial test, guarantees by corporate parents who can pass the financial test, irrevocable letters of credit, trusts, surety bonds, or any other financial device, or any combination of the foregoing, shown to provide protection equivalent to the financial protection that would be provided by insurance if insurance were the only mechanism used.

(c) The applicant for a permit or a permit holder for a hazardous waste facility, and any parent, subsidiary, or other affiliate of the applicant, permit holder, or parent, including any joint venturer with a direct or indirect interest in the applicant, permit holder, or parent, shall be a guarantor of payment for closure, post-closure maintenance and monitoring, and corrective action that the Department may require, and to satisfy any potential liability for sudden and nonsudden accidental occurrences arising

from the operation of the hazardous waste facility.

(d) {NOTE: See the General Statutes of North Carolina. 130A-295.04.}

(e) {NOTE: See the General Statutes of North Carolina. 130A-295.04.}

(f) Assets used to meet the financial assurance requirements of this section shall be in a form that will allow the Department to readily access funds for the purposes set out in this section. Assets used to meet financial assurance requirements of this section shall not be accessible to the permit holder except as approved by the Department. Compliance with the financial assurance requirements set forth in Subpart H of Part 264 of 40 Code of Federal Regulations (July 1, 2010 edition) shall be sufficient to meet the requirements of this subsection.

(g) The Department may provide a copy of any filing that an applicant for a permit or a permit holder for a hazardous waste facility submits to the Department to meet the financial responsibility requirements under this section to the State Treasurer. The State Treasurer shall review the filing and provide the Department with a written opinion as to the adequacy of the filing to meet the purposes of this section, including any recommended changes.

(h) In order to continue to hold a permit for a hazardous waste facility, a permit holder must maintain financial responsibility as required by this Part and must provide any information requested by the Department to establish that the permit holder continues to maintain financial responsibility.

(i) An applicant for a permit or a permit holder for a hazardous waste facility shall satisfy the Department that the applicant or permit holder has met the financial responsibility requirements of this Part before the Department is required to otherwise review the application.

§ 130A-295.05. Hazardous waste transfer facilities.

(a) The owner or operator of a hazardous waste transfer facility in North Carolina shall register the facility with the Department and shall obtain a hazardous waste transfer facility identification number for the facility. In order to obtain a hazardous waste transfer facility identification number for the facility, the owner or operator of the facility shall provide all of the following information to the Department at the time of registration:

(1) The location of the hazardous waste transfer facility.

(2) The name of the owner of the property on which the hazardous waste transfer facility is located.

(b) Except during transportation emergencies as determined by the Department, the temporary storage, consolidation, or commingling of hazardous waste may occur only at a hazardous waste transfer facility that has been issued a facility identification number by the Department.

(c) A hazardous waste transporter and the owner or operator of a hazardous waste transfer facility shall conduct all operations at any hazardous waste transfer facility in compliance with the requirements of 40 Code of Federal Regulations Part 263 (1 July 2006), 49 U.S.C. § 5101, et seq., and any laws, regulations, or rules enacted or adopted pursuant to these federal laws. Except as preempted under 49 U.S.C. § 5125, a hazardous waste transporter and the owner or operator of a hazardous waste transfer facility shall also conduct all operations at any hazardous waste transfer facility in compliance with all applicable State laws or rules.

(d) A hazardous waste transporter shall notify the Department, on a form prescribed by the Department, of every hazardous waste transfer facility in North Carolina that the transporter uses. A hazardous waste transporter shall retain all records that are required to be maintained for at least three years.

(e) The owner or operator of a hazardous waste transfer facility shall notify the Department, on a form prescribed by the Department, of every hazardous waste transporter that makes use of the facility. The owner or operator of a hazardous waste transfer facility shall retain all records that are required to be maintained for at least three years.

§ 130A-295.1. Limitations on permits for sanitary landfills. Inapplicable pursuant to s. 210.

§ 130A-296. Repealed by Session Laws 1993.

§ 130A-297. Receipt and distribution of funds.

The Department may accept loans and grants from the federal government and other sources for carrying out the purposes of this Article, and shall adopt reasonable policies governing the administration and distribution of funds to units of local government, other State agencies, and private agencies, institutions or individuals for studies, investigations, demonstrations, surveys, planning, training, and construction or establishment of solid waste management facilities.

§ 130A-298. Hazardous waste fund.

A nonreverting hazardous waste fund is established within the Department which shall be available to defray the cost to the State for monitoring and care of hazardous waste disposal facilities after the termination of the period during which the facility operator is required by applicable State and federal statutes, rules or regulations to remain responsible for post-closure monitoring

and care. The establishment of this fund shall in no way be construed to relieve or reduce the liability of facility operators or any persons for damages caused by the facility. The fund shall be maintained by fees collected pursuant to the provisions of G.S. 130A-294(a)(6).

§ 130A-299. Single agency designation.

The Department is designated as the single State agency for purposes of RCRA or any State or federal legislation enacted to promote the proper management of solid waste.

§ 130A-300. Effect on laws applicable to water pollution control.

This Article shall not be construed as amending, repealing or in any manner abridging or interfering with those sections of the General Statutes of North Carolina relative to the control of water pollution as now administered by the Environmental Management Commission nor shall the provisions of this Article be construed as being applicable to or in any way affecting the authority of the Environmental Management Commission to control the discharges of wastes to the waters of the State as provided in Articles 21 and 21A, Chapter 143 of the General Statutes.

§ 130A-301. Recordation of permits for disposal of waste on land and Notice of Open Dump.

(a) Whenever the Department approves a permit for a sanitary landfill or a facility for the disposal of hazardous waste on land, the owner of the facility shall be granted both an original permit and a copy certified by the Secretary. The permit shall include a legal description of the site that would be sufficient as a description in an instrument of conveyance.

(b) The owner of a facility granted a permit for a sanitary landfill or a facility for the disposal of hazardous waste on land shall file the certified copy of the permit in the office of the register of deeds in the county or counties in which the land is located.

(c) The register of deeds shall record the certified copy of the permit and index it in the grantor index under the name of the owner of the land.

(d) The permit shall not be effective unless the certified copy is filed as required under Subsection (b) of this section.

(e) When a sanitary landfill or a facility for the disposal of hazardous waste on land is sold, leased, conveyed or transferred, the deed or other instrument of transfer shall contain in the description section in no smaller type than that used in the body of the deed or instrument a statement that the property has been used as a sanitary landfill or a disposal site for hazardous waste and a reference by book and page to the recordation of the permit.

(f) See the General Statutes of North Carolina.

§ 130A-302. Sludge deposits at sanitary landfills.

Sludges generated by the treatment of wastewater discharges which are point sources subject to permits granted under Section 402 of the Federal Water Pollution Control Act, as amended (P.L. 92-500), or permits generated under G.S. 143-215.1 by the Environmental Management Commission shall not be deposited in or on a sanitary landfill permitted under this Article unless in a compliance with the rules concerning solid waste adopted under this Article.

§ 130A-303. Imminent hazard.

(a) The judgment of the Secretary that an imminent hazard exists concerning solid waste shall be supported by findings of fact made by the Secretary.

(b) In order to eliminate an imminent hazard, the Secretary may, without notice or hearing, issue an order requiring that immediate action be taken to protect the public health or the environment. This order may be directed to a generator or transporter of solid waste or to the owner or operator of a solid waste management facility. Where the imminent hazard is caused by an inactive hazardous substance or waste disposal site, the Secretary shall follow the procedures set forth in G.S. 130A-310.5.

§ 130A-304. Confidential information protected.

(a) The following information received or prepared by the Department in the course of carrying out its duties and responsibilities under this Article is confidential information and shall not be subject to disclosure under G.S. 132-6:

(1) Information which the Secretary determines is entitled to confidential treatment pursuant to G.S. 132-1.2. If the Secretary determines that information received by the Department is not entitled to confidential treatment, the Secretary shall inform the person who provided the information of that determination at the time such determination is made. The Secretary may refuse to accept or may return any information that is claimed to be confidential that the Secretary determines is not entitled to confidential treatment.
(2) Information that is confidential under any provision of federal or state law.
(3) Information compiled in anticipation of enforcement or criminal proceedings, but only to the extent disclosure could reasonably be expected to interfere with the institution of such proceedings.

(b) Confidential information may be disclosed to officers, employees, or authorized representatives of federal or state agencies if such disclosure is necessary to carry out a proper function of the Department or the requesting agency or when relevant in any proceeding under this Article.

(c) Except as provided in subsection (b) of this section or as otherwise provided by law, any officer or employee of the State who knowingly discloses information designated as confidential under this section shall be guilty of a Class 1 misdemeanor and shall be removed from office or discharged from employment.

§ 130A-305. Construction.

This Article shall be interpreted as enabling the State to obtain federal financial assistance in carrying out its solid waste management program and to obtain the authority needed to assume primary enforcement responsibility for that portion of the solid waste management program concerning the management of hazardous waste.

§ 130A-306. Emergency Response Fund.

There is established under the control and direction of the Department, an Emergency Response Fund which shall be a nonreverting fund consisting of any money appropriated for such purpose by the General Assembly or available to it from grants, fees, charges, and other money paid to or recovered by or on behalf of the Department pursuant to this Article, except fees and penalties specifically designated by this Article for some other use or purpose. The Emergency Response Fund shall be treated as a special trust fund and shall be credited with interest by the State Treasurer pursuant to G.S. 147-69.2 and G.S. 147-69.3. The Fund shall be used to defray expenses incurred by the Department in developing and implementing an emergency hazardous waste remedial plan and to reimburse any federal, State or local agency and any agent or contractor for expenses incurred in developing and implementing such a plan that has been approved by the Department. These funds shall be used upon a determination that sufficient funds or corrective action cannot be obtained from other sources without incurring a delay that would significantly increase the threat to life or risk or damage to the environment. This Fund may not exceed five hundred thousand dollars ($500,000); money in excess of five hundred thousand dollars ($500,000) shall be deposited in the Inactive Hazardous Sites Cleanup Fund. The Secretary is authorized to take the necessary action to recover all costs incurred by the State for site investigation and the development and implementation of an emergency hazardous waste remedial plan, including attorney's fees and other expenses of bringing the cost recovery action from the responsible party or parties. The provisions of G.S. 130A-310.7 shall apply to actions to recover costs under this section except that: (i) reimbursement shall be to the Emergency Response Fund and (ii) the State need not show that it has complied with the provisions of Part 3 of this Article.

§ 130A-307. Reserved for future codification purposes.

§ 130A-308. Continuing releases at permitted facilities; notification of completed corrective action.

(a) Standards adopted under G.S. 130A-294(c) and a permit issued under G.S. 130A-294(c) shall require corrective action for all releases of hazardous waste or constituents from any solid waste management unit at a treatment, storage, or disposal facility seeking a permit under G.S. 130A-294(c), regardless of the time at which waste was placed in such unit. Permits issued under G.S. 130A-294(c) which implement Section 3005 of RCRA (42 U.S.C. § 6925) shall contain schedules of compliance for such corrective action if corrective action cannot be completed prior to issuance of the permit and establishment of financial assurance for completing corrective action. Notwithstanding any other provision of this section, this section shall apply only to units, facilities, and permits that are covered by Section 3004(u) of RCRA (42 U.S.C. §6924 (u)). Notwithstanding the foregoing, corrective action authorized elsewhere in this Chapter shall not be limited by this section.

(b) The definitions set out in G.S. 130A-310.31(b) apply to this subsection. Any person may submit a written request to the Department for a determination that a corrective action for a release of a hazardous waste or constituents from a solid waste management unit that is a treatment, storage, or disposal facility permitted under G.S. 130A-294(c) has been completed to unrestricted use standards. A request for a determination that a corrective action at a facility has been completed to unrestricted use standards shall be accompanied by the fee required by G.S. 130A-310.39(a)(2). If the Department determines that the

corrective action at a facility has been completed to unrestricted use standards, the Department shall issue a written notification that no further corrective action will be required at the facility. The notification shall state that no further corrective action will be required at the facility unless the Department later determines, based on new information or information not previously provided to the Department, that the corrective action at the facility has not been completed to unrestricted use standards or that the Department was provided with false or incomplete information. Under any of those circumstances, the Department may withdraw the notification and require responsible parties to take corrective action at a facility to bring the facility into compliance with unrestricted use standards.

§ 130A-309. Corrective actions beyond facility boundary.

Standards adopted under G.S. 130A-294(c) shall require that corrective action be taken beyond the facility boundary where necessary to protect human health and the environment unless the owner or operator of the facility concerned demonstrates to the satisfaction of the Department that, despite the owner or operator's best efforts, the owner or operator was unable to obtain the necessary permission to undertake such action. Such standards shall take effect upon adoption and shall apply to:

(1) All facilities operating under permits issued under G.S.130A-294(c); and
(2) All disposal facilities, surface impoundments, and waste pile units (including any new units, replacements of existing units or lateral expansions of existing units) which receive hazardous waste after July 26, 1982.

Pending adoption of such rules, the Department shall issue corrective action orders for facilities referred to in (1) and (2), on a case-by-case basis, consistent with the purposes of this section. Notwithstanding any other provision of this section, this section shall apply only to units, facilities, and permits that are covered by Section 3004(v) of RCRA (42 U.S.C. § 6924(v)). Notwithstanding the foregoing, corrective action authorized elsewhere in this Chapter shall not be limited by this section.

§ 130A-309.15. Prohibited acts regarding used oil.

(a) No person may knowingly:
(1) Collect, transport, store, recycle, use, or dispose of used oil in any manner which endangers the public health or welfare.
(2) Discharge used oil into sewers, drainage systems, septic tanks, surface waters, groundwaters, watercourses, or marine waters.
(3) Dispose of used oil in landfills in the State unless such disposal has been approved by the Department.
(4) Mix used oil with solid waste that is to be disposed of in landfills.
(5) Mix used oil with hazardous substances that make it unsuitable for recycling or beneficial use.

(b) A person who violates subsection (a) of this section shall be guilty of a misdemeanor and upon conviction shall be punished as provided by G.S. 130A-25(a) and G.S. 14-3.

(c) A person who disposes of used oil in a landfill where such used oil has been mixed with other solid waste which may be lawfully disposed of in such landfill, and who is without knowledge that such solid waste has been mixed with used oil, is not guilty of a violation under this section.

(d) Used oil shall not be used for road oiling, dust control, weed abatement, or other similar purposes that have the potential to release used oil into the environment.

§ 130A-309.16. Public education program regarding used oil collection and recycling.

The Department shall conduct a public education program to inform the public of the needs for and benefits of collecting and recycling used oil and shall:

(1) Encourage persons who annually sell at retail, in containers for use off the premises, more than 500 gallons of oil to provide the purchasers with information on the locations of collection facilities and information on proper disposal practices.
(2) Establish, maintain, and publicize a used oil information center that disperses materials or information explaining local, State, and federal laws and rules governing used oil and informing the public of places and methods for proper disposal of used oil.
(3) Encourage the voluntary establishment of used oil collection and recycling programs and provide technical assistance to persons who organize such programs.
(4) Encourage the procurement of recycled automotive, industrial, and fuel oils and oils blended with recycled oils for all State and local government uses. Recycled oils procured under this section shall meet equipment manufacturer's specifications.

§ 130A-309.17. Registration of persons transporting, collecting, or recycling used oil; fees; reports and records.

(a) The following persons shall register annually with the Department pursuant to rules of the Department on forms prescribed by it:

(1) Any person who transports over public highways more than 500 gallons of used oil per week.

(2) Any person who maintains a collection facility that receives more than 6,000 gallons of used oil annually. For purposes of registration, the amount received does not include used oil delivered to collection centers by individuals that change their own personal motor oil.

(3) Any facility that recycles more than 10,000 gallons of used oil annually.

(b) An electric utility which generates during its operation used oil that is then reclaimed, recycled, or rerefined by the electric utility for use in its operations is not required to register or report pursuant to this section.

(c) An on-site burner which only burns a specification used oil generated by the burner is not required to register or report pursuant to this section, provided that the burning is done in compliance with any air permits issued by the Department.

(d) The Department may prescribe a fee for the registration required by this section in an amount which is sufficient to cover the cost of processing applications but which does not exceed twenty five dollars ($25.00).

(e) The Department shall require each registered person to submit, no later than 1 July of each year, a report which specifies the type and quantity of used oil transported, collected, and recycled during the preceding calendar year.

(f) Each registered person who transports or recycles used oil shall maintain records which identify:

(1) The source of the materials transported or recycled;

(2) The quantity of materials received;

(3) The date of receipt; and

(4) The destination or end use of the materials.

(g) The Department shall perform technical studies to sample used oil at facilities of representative used oil transporters and at representative recycling facilities to determine the incidence of contamination of used oil with hazardous, toxic, or other harmful substances.

(h) Any person who fails to register with the Department as required by this section shall be guilty of a misdemeanor and upon conviction shall be punished as provided by G.S. 130A-25(a) and G.S. 14-3.

(i) The proceeds from the registration fees imposed by this section shall be deposited into the Solid Waste Management Trust Fund.

§ 130A-309.18. Regulation of used oil as hazardous waste.

Nothing in this Part shall prohibit the Department from regulating used oil as a hazardous waste in a manner consistent with applicable federal law and this Article.

§ 130A-309.19. Coordination with other State agencies.

The Department of Transportation shall study the feasibility of using recycled oil products in road construction activities and shall report to the President Pro Tempore of the Senate and the Speaker of the House of Representatives annually, beginning 1 January 1991, on the results of its study.

§ 130A-309.20. Public used oil collection centers.

(a) The Department shall encourage the voluntary establishment of public used oil collection centers and recycling programs and provide technical assistance to persons who organize such programs.

(b) All State agencies and businesses that change motor oil for the public are encouraged to serve as public used oil collection centers.

(c) A public used oil collection center must:

(1) Notify the Department annually that it is accepting used oil from the public; and

(2) Annually report quantities of used oil collected from the public.

(d) No person may recover from the owner or operator of a used oil collection center any costs of response actions resulting from a release of either used oil or a hazardous substance against the owner or operator of a used oil collection center if such used oil is:

(1) Not mixed with any hazardous substance by the owner or operator of the used oil collection center;

(2) Not knowingly accepted with any hazardous substances contained therein;

(3) Transported from the used oil collection center by a certified transporter pursuant to G.S. 130A-309.23; and

(4) Stored in a used oil collection center that is in compliance with this section.

(e) Subsection (d) of this section applies only to that portion of the public used oil collection center used for the collection of

used oil and does not apply if the owner or operator is grossly negligent in the operation of the public used oil collection center. Nothing in this section shall affect or modify in any way the obligations or liability of any person under any other provisions of State or federal law, including common law, for injury or damage resulting from a release of used oil or hazardous substances. For purposes of this section, the owner or operator of a used oil collection center may presume that a quantity of no more than five gallons of used oil accepted from any member of the public is not mixed with a hazardous substance, provided that the owner or operator acts in good faith.

§ 130A-309.21. Incentives program.

(a) The Department is authorized to establish an incentives program for individuals who change their own oil to encourage them to return their used oil to a used oil collection center.

(b) The incentives used by the Department may involve the use of discount or prize coupons, prize drawings, promotional giveaways, or other activities the Department determines will promote collection, reuse, or proper disposal of used oil.

(c) The Department may contract with a promotion company to administer the incentives program.

§ 130A-309.22. Grants to local governments.

(a) The Department shall develop a grants program for units of local government to encourage the collection, reuse, and proper disposal of used oil. No grant may be made for any project unless the project is approved by the Department.

(b) The Department shall consider for grant assistance any unit of local government project that used one or more of the following programs or any activity that the Department feels will reduce the improper disposal and reuse of used oil:

(1) Curbside pickup of used oil containers by a unit of local government or its designee.
(2) Retrofitting of solid waste equipment to promote curbside pickup or disposal of used oil at used oil collection centers designated by the unit of local government.
(3) Establishment of publicly operated used oil collection centers at landfills or other public places.
(4) Providing containers and other materials and supplies that the public can utilize in an environmentally sound manner to store used oil for pickup or return to a used oil collection center.
(5) Providing incentives for the establishment of privately operated public used oil collection centers.

(c) Eligible projects shall be funded according to provisions established by the Department; however, no grant may exceed twenty-five thousand dollars ($25,000).

(d) The Department shall initiate rule making on or before 1 January 1991, necessary to carry out the purposes of this section.

§ 130A-309.23. Certification of used oil transporters.

(a) Any person who transports over public highways after 1 January 1992, more than 500 gallons of used oil in any week must be a certified transporter or must be employed by a person who is a certified transporter.

(b) The Department of Transportation shall develop a certification program for transporters of used oil, and shall issue, deny, or revoke certifications authorizing the holder to transport used oil. Certification requirements shall help assure that a used oil transporter is familiar with appropriate rules and used oil management procedures.

(c) The Department of Transportation shall adopt rules governing certification, which shall include requirements for the following:

(1) Registration and annual reporting pursuant to G.S.130A-309.17.
(2) Evidence of familiarity with applicable State laws and rules governing used oil transportation.
(3) Proof of liability insurance or other means of financial responsibility for any liability which may be incurred in the transport of used oil.
(4) Marking, by the certified transporter of used oil, of all vehicles which transport used oil or all containers of used oil when it is not feasible to mark the vehicle. The mark must clearly identify the certified used oil transporter and clearly indicate that the vehicle is used to transport used oil. The marking must be visible to others travelling on the highway.

§ 130A-309.24. Permits for used oil recycling facilities.

(a) Each person who intends to operate, modify, or close a used oil recycling facility shall obtain an operation or closure permit from the Department prior to operating, modifying, or closing the facility.

(b) By 1 January 1992, the Department shall develop a permitting system for used oil recycling facilities after reviewing and considering the applicability of the permit system for hazardous waste treatment, storage, or disposal facilities.

(c) Permits shall not be required under this section for the burning of used oil as a fuel, provided:

(1) A valid air permit issued by the Department is in effect for the facility; and
(2) The facility burns used oil in accordance with applicable United States Environmental Protection Agency regulations, local government regulations, and the requirements and conditions of its air permit.

(d) No permit is required under this section for the use of used oil for the beneficiation or flotation of phosphate rock.

Part 3. Inactive Hazardous Sites

§ 130A-310. Definitions.

Unless a different meaning is required by the context, the following definitions shall apply throughout this Part:

(1) "CERCLA/SARA" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, P. L. 96-510, 94 Stat. 2767, 42 U.S.C. 9601 et seq., as amended, and the Superfund Amendments and Reauthorization Act of 1986, Pub. L. 99-499, 100 Stat. 1613, as amended.
(2) "Hazardous substance" means hazardous substance as defined in CERCLA/SARA.
(3) "Inactive hazardous substance or waste disposal site" or "site" means any facility, as defined in CERCLA/SARA. These sites do not include hazardous waste facilities permitted or in interim status under this Article.
(4) "Operator" means the person responsible for the overall operation of an inactive hazardous substance or waste disposal site.
(5) "Owner" means any person who owns an inactive hazardous substance or waste disposal site, or any part thereof.
(6) "Release" means release as defined in the CERCLA/SARA.
(7) "Remedy" or "Remedial Action" means remedy or remedial action as defined in CERCLA/SARA.
(8) "Remove" or "Removal" means remove or removal as defined in CERCLA/SARA.
(9) "Responsible party" means any person who is liable pursuant to G.S. 130A-310.7.

§ 130A-310.1. Identification, Inventory, and Monitoring of Inactive Hazardous Substance or Waste Disposal Sites; duty of owners, operators, and responsible parties to provide information and access; remedies.

(a) The Department shall develop and implement a program for locating, cataloguing, and monitoring all inactive hazardous substance or waste disposal sites in North Carolina. The Secretary shall compile and maintain an inventory of all inactive hazardous substance or waste disposal sites based on information submitted by owners, operators, and responsible parties, and on data obtained directly by the Secretary. The Secretary shall maintain records of any evidence of contamination to the air, surface water, groundwater, surface or subsurface soils, or waste streams for inventoried sites. The records shall include all available information on the extent of any actual damage or potential danger to public health or to the environment resulting from such contamination.

(b) The Commission shall develop and make available a format and checklist for submission of data relevant to inactive hazardous substance or waste disposal sites. Within 90 days of the date on which an owner, operator, or responsible party knows or should know of the existence of an inactive hazardous substance or waste disposal site, the owner, operator, or responsible party shall submit to the Secretary all site data that is known or readily available to the owner, operator, or responsible party. The owner, operator, or responsible party shall certify under oath that, to the best of his knowledge and belief, such data is complete and accurate.

(c) Whenever the Secretary determines that there is a release, or substantial threat of a release, into the environment of a hazardous substance from an inactive hazardous substance or waste disposal site, the Secretary may, in addition to any other powers he may have, order any responsible party to conduct any monitoring, testing, analysis, and reporting that the Secretary deems reasonable and necessary to ascertain the nature and extent of any hazard posed by the site. Written notice of any order issued pursuant to this section shall be given to all persons subject to the order as set out in G.S. 130A-310.3(c). The Secretary, prior to the entry of any such order, shall solicit the cooperation of the responsible party.

(d) If a person fails to submit data as required in subsection (b) of this section or violates the requirements or schedules in an order issued pursuant to subsection (c) of this section, the Secretary may institute an action for injunctive relief, irrespective of all other remedies at law, in the superior court of the county where the violation occurred or where a defendant resides.

(e) Whenever a person ordered to take any action pursuant to this section is unable or fails to do so, or if the Secretary, after making a reasonable attempt, is unable to locate any responsible party, the Secretary may take the action. The cost of any action by the Secretary pursuant to this section may be paid from the Inactive Hazardous Sites Cleanup Fund, subject to a later action for reimbursement pursuant to G.S. 130A-310.7. The provisions of subdivisions (a)(1) to (a)(3) of G.S. 130A-310.6 shall apply to any action taken by the Secretary pursuant to this section.

(f) Upon reasonable notice, the Secretary may require any person to furnish to the Secretary any information, document, or record in that person's possession or under that person's control that relates to:

(1) The identification, nature, and quantity of material that has been or is generated, treated, stored, or disposed of at an inactive hazardous substance or waste disposal site or that is transported to an inactive hazardous substance or waste disposal site.
(2) The nature and extent of a release or threatened release of a hazardous substance or hazardous waste at or from an inactive hazardous substance or waste disposal site.
(3) Information relating to the ability of a person to pay for or to perform a cleanup.

(g) A person who is required to furnish any information, document, or record under subsection (f) of this section shall either allow the Secretary to inspect and copy all information, documents, and records or shall copy and furnish to the Secretary all

information, documents, and records at the expense of the person.

(h) To collect information to administer this Part, the Secretary may subpoena the attendance and testimony of witnesses and the production of documents, records, reports, answers to questions, and any other information that the Secretary deems necessary. Witnesses shall be paid the same fees and mileage that are paid to witnesses in proceedings in the General Court of Justice. In the event that a person fails to comply with a subpoena issued under this subsection, the Secretary may seek enforcement of the subpoena in the superior court in any county where the inactive hazardous substance or waste disposal site is located, in the county where the person resides, or in the county where the person has his or her principal place of business.

(i) A person who owns or has control over an inactive hazardous substance or waste disposal site shall grant the Secretary access to the site at reasonable times. If a person fails to grant the Secretary access to the site, the Secretary may obtain an administrative search and inspection warrant as provided by G.S. 15-27.2.

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

No later than six months after July 1, 1987, the Commission shall develop a system for the prioritization of inactive hazardous substance or waste disposal sites based on the extent to which such sites endanger the public health and the environment. The Secretary shall apply the prioritization system to the inventory of sites to create and maintain an Inactive Hazardous Waste Site Priority List, which shall rank all inactive hazardous substance or waste disposal sites in decreasing order of danger. This list shall identify the location of each site and the type and amount of hazardous substances or waste known or believed to be located on the site. The first such list shall be published within two years after July 1, 1987, with subsequent lists to be published at intervals of not more than two years thereafter. The Secretary shall notify owners, operators, and responsible parties of sites listed on the Inactive Hazardous Waste Sites Priority List of their ranking on the list. The Inactive Hazardous Sites Priority List shall be used by the Department in determining budget requests and in allocating any State appropriation which may be made for remedial action, but shall not be used so as to impede any other action by the Department, or any remedial or other action for which funds are available.

§ 130A-310.3. Remedial Action Programs for Inactive Hazardous Substance or Waste Disposal Sites.

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

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

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

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

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

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

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

(e) For any removal or remedial action conducted entirely on-site under this Part, to the extent that a permit would not be required under 42 U.S.C § 9621(e) for a removal or remedial action conducted entirely on-site under CERCLA/SARA, the Secretary may grant a waiver from any State law or rule that requires that an environmental permit be obtained from the Department. The Secretary shall not waive any requirement that a permit be obtained unless either the removal or remedial action is being conducted pursuant to G.S. 130A-310.3(c), 130A-310.5, or 130A-310.6, or the owner, operator, or other

responsible party has entered into an agreement with the Secretary to implement a voluntary remedial action plan under G.S. 130A-310.9(b). The Secretary shall invite public participation in the development of the remedial action plan in the manner set out in G.S. 130A-310.4 prior to granting a permit waiver, except for a removal or remedial action conducted pursuant to G.S. 130A-310.5.

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

§ 130A-310.4. Public Participation in the Development of the Remedial Action Plan.

(a) Within 10 days after the Secretary issues a declaration pursuant to G.S. 130A-310.3, he shall notify in writing the local board of health and the local health director having jurisdiction in the county or counties in which an inactive hazardous substance or waste disposal site is located that the site may endanger the public health or environment and that a remedial action plan is being developed. The Secretary shall involve the local health director in the development of the remedial action plan.

(b) Before approving any remedial action plan, the Secretary shall make copies of the proposed plan available for inspection as follows:

(1) A copy of the plan shall be provided to the local health director.
(2) Repealed by Session Laws 2010-180, s. 3, effective August 2, 2010.
(3) A copy of the plan shall be provided to the public library located in closest proximity to the site in the county or counties in which the site is located;
(4) The Secretary may place copies of the plan in other locations so as to assure the availability thereof to the public.

In addition, copies of the plan shall be available for inspection and copying at cost by the public during regular business hours in the offices of the agency within the Department with responsibility for the administration of the remedial action program.

(c) Before approving any remedial action plan, the Secretary shall give notice of the proposed plan as follows:

(1) A notice and summary of the proposed plan shall be published weekly for a period of three consecutive weeks in a newspaper having general circulation in the county or counties where the site is located;
(2) Notice that a proposed remedial action plan has been developed shall be given by first class mail to persons who have requested such notice. Such notice shall state the locations where a copy of the remedial action plan is available for inspection. The Department shall maintain a mailing list of persons who request notice pursuant to this section.

(d) The Secretary may conduct a public meeting to explain the proposed plan and alternatives to the public.

(e) At least 45 days from the latest date on which notice is provided pursuant to subsection (c)(1) of this section shall be allowed for the receipt of written comment on the proposed remedial action plan prior to its approval. If a public hearing is held pursuant to subsection (f) of this section, at least 20 days will be allowed for receipt of written comment following the hearing prior to the approval of the remedial action plan.

(f) If the Secretary determines that significant public interest exists, he shall conduct a public hearing on the proposed plan and alternatives. The Department shall give notice of the hearing at least 30 days prior to the date thereof by:

(1) Publication as provided in subdivision (c)(1) of this section, with first publication to occur not less than 30 days prior to the scheduled date of the hearing; and
(2) First class mail to persons who have requested notice as provided in subdivision (c)(2) of this section.

(g) The Commission on Health Services [Commission for Public Health] shall adopt rules prescribing the form and content of the notices required by this section. The proposed remedial action plan shall include a summary of all alternatives considered in the development of the plan. A record shall be maintained of all comment received by the Department regarding the remedial action plan.

§ 130A-310.5 Authority of the Secretary with Respect to Sites which pose an Imminent Hazard.

(a) An imminent hazard exists whenever the Secretary determines that there exists a condition caused by an inactive hazardous substance or waste disposal site, including a release or a substantial threat of a release into the environment of a hazardous substance from the site, which is causing serious harm to the public health or environment, or which is likely to cause such harm before a remedial action plan can be developed. Whenever the Secretary determines that an imminent hazard exists, he may, in addition to any other powers he may have, without notice or hearing, order any known responsible party to take immediately any action necessary to eliminate or correct the condition; or the Secretary, in his discretion, may take such action without issuing an order. Written notice of any order issued pursuant to this section shall be provided to all persons subject to the order as set out in G.S. 130A-310.3(c). Unless the time required to do so would increase the harm to the public health or the environment, the Secretary shall solicit the cooperation of responsible parties prior to the entry of any such order. The provisions of subdivisions (1) to (3) of G.S. 130A-310.6(a) shall apply to any action taken by the Secretary pursuant to this section, and any such action shall be considered part of a remedial action program, the cost of which may be recovered from any responsible party.

(b) If a person violates the requirements or schedules in an order issued pursuant to this section, the Secretary may institute an action for injunctive relief, irrespective of all other remedies at law, in the superior court of the county where the violation occurred or where a defendant resides.

(c) The cost of any action by the Secretary pursuant to this section may be paid from the Inactive Hazardous Sites Cleanup Fund or the Emergency Response Fund established pursuant to G.S. 130A-306, subject to a later action for reimbursement pursuant to G.S. 130A-310.7.

§ 130A-310.6. State Action Upon Default of Responsible Parties or When No Responsible Party Can be located.

(a) Whenever a person ordered to develop and implement an inactive hazardous substance or waste disposal site remedial action program is unable or fails to do so within the time specified in the order, the Secretary may develop and implement or cause to be developed and implemented such a program. The cost of developing and implementing a remedial action program pursuant to this section may be paid from the Inactive Hazardous Sites Cleanup Fund, subject to a later action for reimbursement pursuant to G.S. 130A-310.7.

(1) The Department is authorized and empowered to use any staff, equipment or materials under its control or provided by other cooperating federal, State or local agencies and to contract with any agent or contractor it deems appropriate to develop and implement the remedial action program. State agencies shall provide to the maximum extent feasible such staff, equipment, and material as may be available for developing and implementing a remedial action program.

(2) Upon completion of any inactive hazardous substance or waste disposal remedial action program, any State or local agency that has provided personnel, equipment, or material shall deliver to the Department a record of expenses incurred by the agency. The amount of the incurred expenses shall be disbursed by the Secretary to each such agency. The Secretary shall keep a record of all expenses incurred for the services of State personnel and for the use of the State's equipment and material.

(3) As soon as feasible or after completion of any inactive hazardous substance or waste disposal site remedial action program, the Secretary shall prepare a statement of all expenses and costs of the program expended by the State and issue an order demanding payment from responsible parties. Written notice of such an order shall be provided to all persons subject to the order personally or by certified mail. If given by certified mail, notice shall be deemed to have been given on the date appearing on the return of the receipt. If giving of notice cannot be accomplished either personally or by certified mail, notice shall then be given as provided in G.S. 1A-1, Rule 4(j).

(b) If the Secretary, after declaring that an inactive hazardous substance or waste disposal site may endanger the public health or the environment, is unable, after making a reasonable attempt, to locate any responsible party, the Department may develop and implement a remedial action program for the site as provided in subsection (a)(1) and (2) of this section. If responsible parties are subsequently located, the Secretary may issue an order demanding payment from such persons in the manner set forth in subdivision (a)(3) of this section for the necessary expenses incurred by the Department for developing and implementing the remedial action program. If the persons subject to such an order refuse to pay the sum expended, or fail to pay such sum within the time specified in the order, the Secretary shall bring an action in the manner set forth in G.S. 130A-310.7.

(c) – (g) (Effective July 1, 2008) See the General Statutes of North Carolina.

§ 130A-310.7. Action for Reimbursement; Liability of Responsible Parties notification of completed remedial action.

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

(1) Discharges or deposits; or

(2) Contracts or arranges for any discharge or deposit; or
(3) Accepts for discharge or deposit; or
(4) Transports or arranges for transport for the purpose of discharge or deposit

any hazardous substance, the result of which discharge or deposit is the existence of an inactive hazardous substance or waste disposal site, shall be considered a responsible party. Neither an innocent landowner who is a bona fide purchaser of the inactive hazardous substance or waste disposal site without knowledge or without a reasonable basis for knowing that hazardous substance or waste disposal had occurred nor a person whose interest or ownership in the inactive hazardous substance or waste disposal site is based on or derived from a security interest in the property shall be considered a responsible party. A responsible party shall be directly liable to the State for any or all of the reasonably necessary expenses of developing and implementing a remedial action program for such site. The Secretary shall bring an action for reimbursement of the Inactive Hazardous Sites Cleanup Fund in the name of the State in the superior court of the county in which the site is located to recover such sum and the cost of bringing the action. The State must show that a danger to the public health or the environment existed and that the State complied with the provisions of this Part.

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

(1) An act of God; or
(2) An act of war; or
(3) An intentional act or omission of a third party (but this defense shall not be available if the act or omission is that of an employee or agent of the defendant, or if the act or omission occurs in connection with a contractual relationship with the defendant); or
(4) Any combination of the above causes.

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

§ 130A-310.8. Recordation of Inactive Hazardous Substance or Waste Disposal Sites.

(a) After determination by the Department of the existence and location of an inactive hazardous substance or waste disposal site, the owner of the real property on which the site is located, within 180 days after official notice to him to do so, shall submit to the Department a survey plat of areas designated by the Department which has been prepared and certified by a professional land surveyor, and entitled "NOTICE OF INACTIVE HAZARDOUS SUBSTANCE OR WASTE DISPOSAL SITE." Where an inactive hazardous substance or waste disposal site is located on more than one parcel or tract of land, a composite map or plat showing all parcels or tracts may be recorded. The Notice shall include a legal description of the site that would be sufficient as a description in an instrument of conveyance, shall meet the requirements of G.S. 47-30 for maps and plats, and shall identify:

(1) The location and dimensions of the disposal areas and areas of potential environmental concern with respect to permanently surveyed benchmarks;
(2) The type, location, and quantity of hazardous substances known by the owner of the site to exist on the site.
(3) Any restrictions approved by the Department on the current or future use of the site.

(b) After the Department approves and certifies the Notice, the owner of the site shall file the certified copy of the Notice in the register of deeds' office in the county or counties in which the land is located within 15 days of the date on which the owner receives approval of the Notice from the Department.

(c) The register of deeds shall record the certified copy of the Notice and index it in the grantor index under the names of the owners of the lands.

(d) In the event that the owner of the site fails to submit and file the Notice required by this section within the time specified, the Secretary may prepare and file such Notice. The costs thereof may be recovered by the Secretary from any responsible party. In the event that an owner of a site who is not a responsible party submits and files the Notice required by this section, he may recover the reasonable costs thereof from any responsible party.

(e) When an inactive hazardous substance or waste disposal site is sold, leased, conveyed, or transferred, the deed or other instrument of transfer shall contain in the description section, in no smaller type than that used in the body of the deed or instrument, a statement that the property has been used as a hazardous substance or waste disposal site and a reference by book and page to the recordation of the Notice.

(f) A Notice of Inactive Hazardous Substance or Waste Disposal Site filed pursuant to this section may, at the request of the

owner of the land, be cancelled by the Secretary after the hazards have been eliminated. If requested in writing by the owner of the land and if the Secretary concurs with the request, the Secretary shall send to the register of deeds of each county where the Notice is recorded a statement that the hazards have been eliminated and request that the Notice be cancelled of record. The Secretary's statement shall contain the names of the owners of the land as shown in the Notice and reference the plat book and page where the Notice is recorded. The register of deeds shall record the Secretary's statement in the deed books and index it on the grantor index in the names of the owners of the land as shown in the Notice and on the grantee index in the name "Secretary of Environment and Natural Resources". The register of deeds shall make a marginal entry on the Notice showing the date of cancellation and the book and page where the Secretary's statement is recorded, and the register of deeds shall sign the entry. If a marginal entry is impracticable because of the method used to record maps and plats, the register of deeds shall not be required to make a marginal entry.

(g) Recordation under this section is not required for any inactive hazardous substance or waste disposal site that is undergoing voluntary remedial action pursuant to this Part unless the Secretary determines that either:

(1) A concentration of a hazardous substance or hazardous waste that poses a danger to public health or the environment will remain following implementation of the voluntary remedial action program.

(2) The voluntary remedial action program is not being implemented in a manner satisfactory to the Secretary and in compliance with the agreement between the Secretary and the owner, operator, or other responsible party.

(h) The Secretary may waive recordation under this section with respect to any residential real property that is contaminated solely because a hazardous substance or hazardous waste migrated to the property from other property by means of groundwater flow if disclosure of the contamination is required under Chapter 47E of the General Statutes. An owner of residential real property whose recordation requirement is waived by the Secretary under this subsection and who fails to disclose contamination as required by Chapter 47E of the General Statutes is subject to both the penalties and remedies under this Chapter applicable to a person who fails to comply with the recordation requirements of this section as though those requirements had not been waived and to the remedies available under Chapter 47E of the General Statutes.

§ 130A-310.9. Voluntary remedial actions; limitation of liability; agreements; implementation and oversight by private engineering and consulting firms.

(a) No one owner, operator, or other responsible party who voluntarily participates in the implementation of a remedial action program under G.S. 130A-310.3 or G.S. 130A-310.5 may be required to pay in excess of three million dollars ($3,000,000) for the cost of implementing a remedial action program at a single inactive hazardous substance or waste disposal site. The limitation of liability contained in this section applies only to the cost of implementation of the program and does not apply to the cost of the development of the remedial action plan.

(b) The Secretary may enter into an agreement with an owner, operator, or other responsible party that provides for implementation of a voluntary remedial action program in accordance with a remedial action plan approved by the Department. Investigations, evaluations, and voluntary remedial actions are subject to the provisions of G.S. 130A-310.1(c), 130A-310.1(d), 130A-310.3(d), 130A-310.3(f), 130A-310.5, 130A-310.8, and any other requirement imposed by the Department. A voluntary remedial action and all documents that relate to the voluntary remedial action shall be fully subject to inspection and audit by the Department. At least 30 days prior to entering into any agreement providing for the implementation of a voluntary remedial action program, the Secretary shall mail notice of the proposed agreement as provided in G.S. 130A-310.4(c)(2). Sites undergoing voluntary remedial actions shall be so identified as a separate category in the inventory of sites maintained pursuant to G.S. 130A-310.1 but shall not be included on the Inactive Hazardous Waste Sites Priority List required by G.S. 130A-310.2.

(c) The Department may approve a private environmental consulting and engineering firm to implement and oversee a voluntary remedial action by an owner, operator, or other responsible party. An owner, operator, or other responsible party who enters into an agreement with the Secretary to implement a voluntary remedial action may hire a private environmental consulting or engineering firm approved by the Department to implement and oversee the voluntary remedial action. A voluntary remedial action that is implemented and overseen by a private environmental consulting or engineering firm shall be implemented in accordance with all federal and State laws, regulations, and rules that apply to remedial actions generally and is subject to rules adopted pursuant to G.S. 130A-310.12(b). The Department may revoke its approval of the oversight of a voluntary remedial action by a private environmental consulting or engineering firm and assume direct oversight of the voluntary remedial action whenever it appears to the Department that the voluntary remedial action is not being properly implemented or is not being adequately overseen. The Department may require the owner, operator, other responsible party, or private environmental consulting or engineering firm to take any action necessary to bring the voluntary remedial action into compliance with applicable requirements.

§ 130A-310.10. Annual Reports.

(a) The Secretary shall report on inactive hazardous sites to the Joint Legislative Commission on Governmental Operations, the Environmental Review Commission, and the Fiscal Research Division on or before 1 October of each year. The report shall include at least the following:

(1) The Inactive Hazardous Waste Sites Priority List.
(2) A list of remedial action plans requiring State funding through the Inactive Hazardous Sites Cleanup Fund.
(3) A comprehensive budget to implement these remedial action plans and the adequacy of the Inactive Hazardous Sites Cleanup Fund to fund the cost of said plans.
(4) A prioritized list of sites that are eligible for remedial action under CERCLA/SARA together with recommended remedial action plans and a comprehensive budget to implement such plans. The budget for implementing a remedial action plan under CERCLA/SARA shall include a statement as to any appropriation that may be necessary to pay the State's share of such plan.
(5) A list of sites and remedial action plans undergoing voluntary cleanup with Departmental approval.
(6) A list of sites and remedial action plans that may require State funding, a comprehensive budget if implementation of these possible remedial action plans is required, and the adequacy of the Inactive Hazardous Sites Cleanup Fund to fund the possible costs of said plans.
(7) A list of sites that pose an imminent hazard.
(8) A comprehensive budget to develop and implement remedial action plans for sites that pose imminent hazards and that may require State funding, and the adequacy of the Inactive Hazardous Sites Cleanup Fund.
(8a) The amounts and sources of funds collected by year received under G.S. 130A-310.76, the amounts and sources of those funds paid into the Inactive Hazardous Sites Cleanup Fund established pursuant to G.S. 130A-310.11, the number of acres of contamination for which funds have been received pursuant to G.S. 130A-310.76, and a detailed annual accounting of how the funds collected pursuant to G.S. 130A-310.76 have been utilized by the Department to advance the purposes of Part 8 of Article 9 of chapter 130A of the General Statutes.
(9) Any other information requested by the General Assembly or the Environmental Review Commission.

(b) Repealed by Session Laws 2001-452, s.2.3, Effective October 28, 2001.

§ 130A-310.11. *(Effective July 1, 2008)* Inactive Hazardous Sites Cleanup Fund Created.

(a) There is established under the control and direction of the Department the Inactive Hazardous Sites Cleanup Fund. This fund shall be a revolving fund consisting of any monies appropriated for such purpose by the General Assembly or available to it from grants, taxes, and other monies paid to it or recovered by or on behalf of the Department. The Inactive Hazardous Sites Cleanup Fund shall be treated as a nonreverting special trust fund and shall be credited with interest by the State Treasurer pursuant to G.S. 147-69.2 and G.S. 147-69.3.

(b) Funds credited to the Inactive Hazardous Sites Cleanup Fund pursuant to G.S. 130A-295.9 shall be used only as provided in G.S. 130A-310.6(c).

§ 130A-310.12. Administrative Procedure; adoption of rules.

(a) The provisions of Chapter 150B of the General Statutes apply to this Part. The Commission shall adopt rules for the implementation of this Part.

(b) The Commission shall adopt rules governing the selection and use of private environmental consulting and engineering firms to implement and oversee voluntary remedial actions by owners, operators, or other responsible parties under G.S. 130A-310.9(c). Rules adopted under this subsection shall specify:

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

Part 4. Superfund Program.

§ 130A-310.20. Definitions

Unless a different meaning is required by the context, the following definitions shall apply throughout this Part:

(1) "CERCLA/SARA" or "Superfund" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Pub. L. No. 96-510, 94 Stat. 2767, 42 U.S.C. § 9601 et seq., as amended, and the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499, 100 Stat. 1613, as amended.

§ 130A-310.21. Administration of the Superfund Program.

The Department shall maintain an appropriate administrative subunit within the solid waste management unit authorized by G.S. 130A-291 to carry out those activities in which the State is authorized to engage under CERCLA/SARA.

§ 130A-310.22. Contracts Authorized.

(a) The Department is authorized to enter into contracts and cooperative agreements with the United States and to engage in any activity otherwise authorized by law to identify, investigate, evaluate, and clean up any site or facility covered by CERCLA/SARA including but not limited to performing preliminary assessments, site investigations, remedial investigations, and feasibility studies; preparation of records of decision; conducting emergency response, remedial, and removal actions; and engaging in enforcement activities in accordance with the provisions of CERCLA/SARA.

(b) The Department may make all assurances required by federal law or regulation including but not limited to assuring that the State will assume responsibility for the operation and maintenance of any remedial action for the anticipated duration of the remedial action; assuring that the State will provide its share of the cost of any remedial action at a site or facility which was privately owned or operated; assuring that the State will provide its share of the cost of any removal, remedial planning, and remedial action at a site or facility owned or operated by the State or a political subdivision of the State; assuring the availability of off-site treatment, storage, or disposal capacity needed to effectuate a remedial action; assuring that the State will take title to, acquire an interest in, or accept transfer of any interest in real property needed to effectuate a remedial action; assuring that the State has adequate capacity to meet the assurances required by CERCLA/SARA (42 U.S.C. § 9604(c)(9)); assuring access to the facility and any adjacent property including the securing of any right-of-way or easement needed to effectuate a remedial action; and assuring that the State will satisfy all federal, State, and local requirements for permits and approvals necessary to effectuate a remedial action.

(c) Each contract entered into by the Department under this section shall stipulate that all obligations of the State are subject to the availability of funds. Neither this section nor any contract entered into under authority of this section shall be construed to obligate the General Assembly to make any appropriation to implement this Part or any contract entered into under this section. The Department shall implement this Part and any contract entered into under this section from funds otherwise available or appropriated to the Department for such purpose.

Part 8. Risk-Based Environmental Remediation of Industrial Sites.

§ 130A-310.65 Definitions.

As used in this Part:

(1) "Background standard" means the naturally occurring concentration of a substance in the absence of the release of a contaminant.
(2) "Commission" means the Environmental Management Commission created pursuant to G.S. 143B-282.
(3) "Contaminant" means any substance regulated under any program listed in G.S. 130A-310.67(a).
(4) "Contaminated industrial site" or "site" means any real property that meets all of the following criteria:.
  (a) The property is contaminated and may be subject to remediation under any of the programs or requirements set out in G.S. 130A-310.67(a).
  (b) The property is or has been used primarily for manufacturing or other industrial activities for the production of a commercial product. This includes a property used primarily for the generation of electricity.
  (c) No contaminant associated with activities at the property is located off of the property at the time the remedial action plan is submitted.
  (d) No contaminant associated with activities at the property will migrate to any adjacent properties above unrestricted use standards for the contaminant.
(5) "Contamination" means a contaminant released into an environmental medium that has resulted in or has the potential to result in an increase in the concentration of the contaminant in the environmental medium in excess of unrestricted use standards.
(6) "Fund" means the Inactive Hazardous Sites Cleanup Fund established pursuant to G.S. 130A-310.11.
(7) "Institutional controls" means nonengineered measures used to prevent unsafe exposure to contamination, such as land-use restrictions.
(8) "Registered environmental consultant" means an environmental consulting or engineering firm approved to implement and oversee voluntary remedial actions pursuant to Part 3 of Article 9 of Chapter 130A of the General Statutes and rules adopted to implement the Part.
(9) "Remedial action plan" means a plan for eliminating or reducing contamination or exposure to contamination.
(10) "Remediation" means all actions that are necessary or appropriate to clean up, mitigate, correct, abate, minimize, eliminate, control, or prevent the spreading, migration, leaking, leaching, volatilization, spilling, transport, or further release of a contaminant into the environment in order to protect public health, safety, or welfare or the environment.
(11) "Systemic toxicant" means any substance that may enter the body and have a harmful effect other than causing cancer.
(12) Unrestricted use standards" means contaminant concentrations for each environmental medium that are acceptable for all uses; that are protective of public health, safety, and welfare and the environment; and that comply with generally applicable standards, guidance, or methods established by statute or adopted, published, or implemented by the Commission, the Commission for Public Health, or the Department.

§ 130A-310.66. Purpose.

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

§ 130A-310.67. Applicability.

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

(1) The Inactive Hazardous Sites Response Act of 1987 under Part 3 of Article 9 of Chapter 130A of the General Statutes, including voluntary actions under G.S. 130A-310.9 of that act, and rules promulgated pursuant to those statutes.
(2) The hazardous waste management program administered by the State pursuant to the federal Resource Conservation and Recovery Act of 1976, Public Law 94-580, 90 Stat. 2795, 42 U.S.C. § 6901, et seq., as amended, and Article 9 of Chapter 130A of the General Statutes.
(3) The solid waste management program administered pursuant to Article 9 of Chapter 130A of the General Statutes.
(4) The federal Superfund program administered in part by the State pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Public Law 96-510, 94 Stat. 2767, 42 U.S.C. § 9601, et seq.,

as amended, the Superfund Amendments and Reauthorization Act of 1986, Public Law 99-499, 100 Stat. 1613, as amended, and under Part 4 of Article 9 of Chapter 130A of the General Statutes.

(5) The groundwater protection corrective action requirements adopted by the Commission pursuant to Article 21 of Chapter 143 of the General Statutes.

(6) Oil Pollution and Hazardous Substances Control Act of 1978, Parts 1 and 2 of Article 21A of Chapter 143 of the General Statutes.

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

(1) The Leaking Petroleum Underground Storage Tank Cleanup program under Part 2A of Article 21A of Chapter 143 of the General Statutes and rules promulgated pursuant to that statute.

(2) The Dry-Cleaning Solvent Cleanup program under Part 6 of Article 21A of Chapter 143 of the General Statutes and rules promulgated pursuant to that statute.

(3) The pre-1983 landfill assessment and remediation program established under G.S. 130A-310.6(c) through (g).

(c) This Part shall apply only to sites where a discharge, spill, or release of contamination has been reported to the Department prior to March 1, 2011.

§ 130A-310.68. Remediation standards.

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

(1) The unrestricted use standards applicable to each affected medium.

(2) The background standard, if the background standard exceeds the unrestricted use standards.

(3) A site-specific remediation standard developed in accordance with subsection (b) of this section that is approved by the Department.

(4) Any combination of remediation standards described in this subsection that is approved by the Department.

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

(1) Remediation methods and technologies that result in emissions of air pollutants shall comply with applicable air quality standards adopted by the Commission.

(2) The site-specific remediation standard for surface waters shall be the water quality standards adopted by the Commission.

(3) The current and probable future use of groundwater shall be identified and protected. Site-specific sources of contaminants and potential receptors shall be identified. Potential receptors must be protected, controlled, or eliminated whether the receptors are located on or off the site where the source of contamination is located. Natural environmental conditions affecting the fate and transport of contaminants, such as natural attenuation, shall be determined by appropriate scientific methods.

(4) Permits for facilities located at sites covered by any of the programs or requirements set out in G.S. 130A-310.67(a) shall contain conditions to avoid exceedances of applicable groundwater standards adopted by the Commission pursuant to Article 21 of Chapter 143 of the General Statutes due to operation of the facility.

(5) Soil shall be remediated to levels that no longer constitute a continuing source of groundwater contamination in excess of the site-specific groundwater remediation standards approved under this Part.

(6) Soil shall be remediated to unrestricted use standards on residential property with the following exceptions:

a. For mixed-use developments where the ground level uses are nonresidential and where all potential exposure to contaminated soil has been eliminated, the Department may allow soil to remain on the site in excess of unrestricted use standards.

b. If soil remediation is impracticable because of the presence of preexisting structures or impracticability of removal, all areas of the real property at which a person may come into contact with soil shall be remediated to unrestricted use standards, and, on all other areas of the real property, engineering and institutional controls that are sufficient to protect public health, safety, and welfare and the environment shall be implemented and maintained.

(7) The potential for human inhalation of contaminants from the outdoor air and other site-specific indoor air exposure pathways shall be considered, if applicable.

(8) The site-specific remediation standard shall protect against human exposure to contamination through the consumption of contaminated fish or wildlife and through the ingestion of contaminants in surface water or groundwater supplies.

(9) For known or suspected carcinogens, site-specific remediation standards shall be established at exposures that represent an excess lifetime cancer risk of one in 1,000,000. The site-specific remediation standard may depart

from the one-in-1,000,000 risk level based on the criteria set out in 40 Code of Federal Regulations § 300.430(e)(9) (July 1, 2003 Edition). The cumulative excess lifetime cancer risk to an exposed individual shall not be greater than one in 10,000 based on the sum of carcinogenic risk posed by each contaminant present.

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

(11) The site-specific remediation standards for each medium shall be adequate to avoid foreseeable adverse effects to other media or the environment that are inconsistent with the risk-based approach under this Part.

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

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

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

(1) Identify actions required to remove, treat, or otherwise appropriately mitigate or isolate the source of contamination to ensure that the source will not cause unrestricted use standards to be exceeded in any medium.

(2) Address contamination that moves from one medium to another in order to prevent a violation of the remediation standards established under G.S. 130A-310.68. A more stringent remediation standard may be required for a particular medium to control impact on other media.

(3) Identify the current and anticipated future uses of property comprising the contaminated site and address any concerns raised in public comment on the proposed remedial action plan as to the proposed future uses of the property.

(4) Identify the current and anticipated future uses of groundwater in the contaminated site and address any concerns raised in public comment on the proposed remedial action plan as to the future uses of groundwater.

(5) Determine the appropriate method of remediation to achieve the site-specific remediation standards.

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

(7) Specify any measures that may be necessary to prevent any discharge into surface waters during implementation of the remedial action plan that violates applicable surface water quality standards adopted by the Commission.

(8) Specify any measures that may be necessary to prevent any air emission during implementation of the remedial action plan that violates applicable air quality standards adopted by the Commission.

(9) Provide for attainment and maintenance of the remediation standards established under G.S. 130A-310.68.

(10) Provide for methods and procedures to verify that the quantity, concentration, range, or other measure of each contaminant remaining at the contaminated site at the conclusion of the contaminant-reduction phase of remediation meets the remediation standards established for the site, that an acceptable level of risk has been achieved, and that no further remediation is required.

(11) Provide for the imposition and recordation of land-use restrictions as provided in G.S. 143B-279.9, 143B-279.10, 130A-310.3(f), 130A-310.8, 130A-310.35, 143-215.84(f), and 143-215.85A if the remedial action plan allows contamination in excess of the greater of unrestricted use standards or background standards to remain on any real property or in groundwater that underlies any real property.

(12) Provide for submission of an annual certification to the Department by the property owner that land use at the site is in compliance with land-use restrictions recorded pursuant to this Part and that the land-use restrictions are still properly recorded in the chain of title for the property.

(13) Provide a detailed description of the proposed remedial action to be taken; the results of any treatability studies and additional site characterization needed to support the proposed remedial action; plans for postremedial and confirmatory sampling; a project schedule; a schedule for progress reports to the Department; and any other information required by the Department or considered relevant by the person who submits the proposed remedial action plan.

(14) Provide a description of measures that will be employed to ensure that the safety and health of persons on properties in the vicinity of the site and persons visiting or doing business on the site will not be adversely affected by any remediation activity.

(15) Provide a reasonable estimate of the probable cost of the remedial action sufficient for the Department to determine an acceptable level of financial assurance.

(16) Provide proof of financial assurance as required by G.S. 130A-310.72.

(c) A remedial action plan shall also include an analysis of each of the following factors:

(1) Long-term risks and effectiveness of the proposed remediation, including an evaluation of all of the following:

a. The magnitude of risks remaining after completion of the remediation.

b. The type, degree, frequency, and duration of any postremediation activity that may be required, including, but not limited to, operation and maintenance, monitoring, inspection, reports, and other activities necessary to protect public health, safety, and welfare and the environment.

c. Potential for exposure of human and environmental receptors to contaminants remaining at the site.

d. Long-term reliability of any engineering and voluntary institutional controls, including repair, maintenance, or replacement of components.

e. Time required to achieve remediation standards.

(2) Toxicity, mobility, and volume of contaminants, including the amount of contaminants that will be removed, contained, treated, or destroyed; the degree of expected reduction in toxicity, mobility, and volume; and the type, quantity, toxicity, and mobility of contaminants that will remain after implementation of the remedial action plan.

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

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

(d) The development of a remedial action plan may require supplemental submissions and revisions based on Department review, remedial action pilot studies, and public comment from local government and citizens.

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

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

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

(a) The Department shall review and approve a proposed remedial action plan consistent with the remediation standards set out in G.S. 130A-310.68 and the procedures set out in this section. In its review of a proposed remedial action plan, the Department shall do all of the following:

(1) Determine whether site-specific remediation standards are appropriate for a particular contaminated site. In making this determination, the Department shall consider proximity of the contamination to water supply wells or other receptors; current and probable future reliance on the groundwater as a water supply; current and anticipated future land use; environmental impacts; and the feasibility of remediation to unrestricted use standards.

(2) Determine whether the party conducting the remediation has adequately demonstrated through modeling or other scientific means acceptable to the Department that no contamination will migrate to adjacent property at levels above unrestricted use standards.

(3) Determine whether the proposed remedial action plan meets the requirements of G.S. 130A-310.69.

(4) Determine whether the proposed remedial action plan meets the requirements of any other applicable remediation program except those pertaining to remediation standards.

(5) Establish the acceptable level or range of levels of risk to public health, safety, and welfare and to the environment.

(6) Establish, for each contaminant, the maximum allowable quantity, concentration, range, or other measures of contamination that will remain at the contaminated site at the conclusion of the contaminant-reduction phase of the remediation.

(7) Consider the technical performance, effectiveness, and reliability of the proposed remedial action plan in attaining and maintaining compliance with applicable remediation standards.

(8) Consider the ability of the person who proposes to remediate the site to implement the proposed remedial action plan within a reasonable time and without jeopardizing public health, safety, or welfare or the environment.

(9) Determine whether the proposed remedial action plan adequately provides for the imposition and maintenance of engineering and institutional controls and for sampling, monitoring, and reporting requirements necessary to protect public health, safety, and welfare and the environment.

(10) Approve the circumstances under which no further remediation is required.

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

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

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

§ 130A-310.72. Financial assurance requirement.

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

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

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

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

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

remedial action by the responsible party only upon finding any of the following:

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

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

§ 130A-310.74. Compliance with other laws.

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

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

The Department may approve the use of a registered environmental consultant to provide oversight for the assessment and remediation of a site under this Part. If remediation under this Part is not undertaken voluntarily, the Department may not require the use of a registered environmental consultant to provide oversight for the assessment and remediation of a site under this Part.

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

(a) A person who undertakes remediation of environmental contamination under site-specific remediation standards as provided in G.S. 130A-310.68 shall pay a fee to the Fund in an amount equal to four thousand five hundred dollars ($4,500) for each acre or portion of an acre of contamination, including any area that will become contaminated as a result of the release; however, no person shall be required to pay more than one hundred twenty-five thousand dollars ($125,000) to the Fund for any individual site, regardless of its size. This one-time fee shall be payable at the time the person undertaking remediation submits the remedial action plan to the Department.

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

(1) To pay for administrative and operating expenses necessary to implement this Part.
(2) To establish, administer, and maintain a system for the tracking of land-use restrictions recorded at sites that are remediated pursuant to this Part.

§ 130A-310.77. Construction of Part.

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

(1) In any manner that would jeopardize federal authorization under any of the federal statutes, programs, or requirements set out in G.S. 130A-310.67(a) or would otherwise conflict with federal authority under those statutes, programs, and requirements. This Part is supplemental to the programs and requirements set out in G.S. 130A-310.67(a) that would otherwise govern the remediation of a contaminated industrial site. Where the definitions, provisions, or requirements of this Part conflict with the definitions, provisions, or requirements of an otherwise applicable remediation program, this Part shall control, unless expressly stated to the contrary.

(2) To limit the authority of the Department to require investigation, initial response, or remediation of environmental contamination under any other provision of State or federal law necessary to address an imminent threat to public health, safety, or welfare or the environment.

(3) To alter the requirements of programs to prevent or mitigate the release or discharge of contaminants to the environment, including permitting requirements that regulate the handling of hazardous substances or wastes

(4) To supersede or otherwise affect or prevent the enforcement of any land-use or development regulation or ordinance adopted by a municipality pursuant to Article 19 of Chapter 160A of the General Statutes or adopted by a county pursuant to Article 18 of Chapter 153A of the General Statutes. The use of a site and any land-use restrictions imposed as part of a remedial action plan shall comply with land-use and development controls adopted by a municipality pursuant to Article 19 of Chapter 160A of the General Statutes or adopted by a county pursuant to Article 18 of Chapter 153A of the General Statutes."

PART III

15A NCAC 13B

SECTION .0700 - ADMINISTRATIVE PENALTY PROCEDURES

SECTION .0700 - ADMINISTRATIVE PENALTY PROCEDURES

.0701 ADMINISTRATIVE PENALTIES

The following rules shall govern the assessment, remission, mitigation and appeal of administrative penalties imposed by the Division under the Solid Waste Management Act, Article 9 of Chapter 130A of the North Carolina General Statutes.

History Note: Statutory Authority G.S. 130A-22(f);
Eff. April 1, 1982;
Amended Eff. September 1, 1990; October 1, 1984.

.0702 STANDARDS

In determining the amount of the administrative penalty, the Division shall consider the following standards:

(1) Nature of the violation and the degree and extent of the harm, including at least the following:
- (a) For a violation of the Solid Waste Management Act, Article 9 of Chapter 130A of the North Carolina General Statutes, and the rules adopted thereunder:
  - (i) type of violation;
  - (ii) type of waste involved;
  - (iii) duration of the violation;
  - (iv) cause (whether resulting from a negligent, reckless or intentional act or omission);
  - (v) potential effect on public health and the environment;
  - (vi) effectiveness of responsive measures taken by the violator;
  - (vii) damage to private property.
- (b) For a violation of an order issued under the Solid Waste Management Act, Article 9 of Chapter l30A of the North Carolina General Statutes:
  - (i) subject matter of order;
  - (ii) duration of the violation;
  - (iii) cause (whether resulting from a negligent, reckless or intentional act or omission);
  - (iv) type of violation, if any;
  - (v) potential effect on public health and the environment;
  - (vi) effectiveness of responsive measures taken by violator.
- (c) For refusing to allow an authorized representative of the Commission for Public Health, any local board of health, or the Department of Human Resources a right of entry as provided for in G.S. 130A-17:
  - (i) type of previous violation or other violation found after entry, if any;
  - (ii) duration of refusal;
  - (iii) potential effect on public health and the environment;
  - (iv) type of waste handled by violator at the solid waste management facility.

(2) Cost of rectifying any damage.

(3) The violator's previous record in complying or not complying with the Solid Waste Management Act and the regulations promulgated thereunder.

History Note: Statutory Authority G.S. 130A-22(f);
Eff. April 1, 1982;
Amended Eff. September 1, 1990; October 1, 1984.

.0703 PROCEDURE FOR ASSESSMENT; REVOCATION OF PERMIT

(a) Depending on the violation involved, the Division may issue a notice of penalty assessment immediately or grant the violator a period of time within which to cease the violation.

(b) For all violations for which a penalty is assessed, a notice of such action shall be sent the respondent by registered or certified mail. The notice shall describe the nature of the violation with reasonable particularity, the amount of the penalty for each violation, that each day of a continuing violation constitutes a separate violation, advise that the penalty is now due or that it will become due at the end of a specified time, and advise the respondent of his rights of appeal.

(c) In addition to any assessment that might be appropriate, the Division may suspend or revoke the permit of any facility in accordance with G.S. 130A-23.

(d) The Division or its delegates may modify a penalty upon finding that additional or different facts should have been considered in determining the amount of the assessment or upon finding that the respondent has corrected or mitigated the harm caused by the violation.

History Note: Statutory Authority G.S. 130A-22(f);
Eff. April 1, 1982;
Amended Eff. May 1, 1987.

.0704 PAYMENTS: HEARING

(a) Within 60 days after receipt of notification of a penalty assessment, payment must be tendered unless a written request for an administrative hearing has been filed pursuant to G.S. 130A-22. All written requests for a hearing shall be made in accordance with G.S. 150B.

(b) Payment may be tendered in conjunction with a hearing request and in such case, the payment will be accepted as conditional upon final action.

(c) This Rule shall not preclude informal conferences concerning the penalty assessed.

(d) The Division will acknowledge the receipt of all payments.

History Note: Statutory Authority G.S. 130A-22(f);
Eff. April 1, 1982;
Amended Eff. September 1, 1990; February 1, 1988;
May 1, 1987.

.0705 STAY OF PENALTY ASSESSMENT

When an administrative hearing is requested for a purpose other than remission or reduction of the penalty assessed, the penalty will be stayed as of the date of receipt of the request by the Office of Administrative Hearings until service of the final decision or other settlement of the matter.

History Note: Statutory Authority G.S. 130A-22(f);
Eff. April 1, 1982;
Amended Eff. May 1, 1987.

.0706 WAIVER OF ADMINISTRATIVE HEARING

A respondent waives his right to a hearing when he:

(1) submits a written waiver to the Division or its delegates of his right to an administrative hearing;
(2) fails to request a hearing within 30 days of receipt of notice of penalty assessment; or
(3) fails to attend a scheduled administrative hearing.

History Note: Statutory Authority G.S. 130A-22(f);
Eff. April 1, 1982;
Amended Eff. May 1, 1987.

.0707 REFERRAL - Repealed:

History Note: Statutory Authority G.S. 130A-22(f); Eff. April 1, 1982;
Amended Eff. May 1, 1987;
Repealed Eff. September 1, 1990.