

15A NCAC 13C .0302 GENERAL PROVISIONS

(a) The rules in this Section shall govern the selection and use of private environmental consulting and engineering firms to implement and oversee voluntary remedial actions by remediating parties pursuant to G.S. 130A-310.9(c).

(b) All remedial actions conducted pursuant to the rules of this Section shall comply with applicable federal, State, or local laws.

(c) A person who violates a provision of this Section or any other requirement in connection with the voluntary remedial action program, including making a false statement, representation, or certification or knowingly rendering inaccurate a recording or monitoring device or method, shall be subject to enforcement, including disqualification as an REC or RSM.

(d) A party wishing to conduct a Department-approved voluntary remedial action pursuant to this Section shall enter into a written agreement with the Department pursuant to G.S. 130A-310.9(c).

(e) For the purpose of administration and enforcement of the voluntary remedial action program and for protection of human health or the environment, employees, agents, and contractors of the Department may enter any site, or other location undergoing a voluntary remedial action pursuant to this Section, during either the working hours of any business on the property or during daylight hours and upon notice, to investigate, sample, or inspect any documents, conditions, equipment, practice, or property. In the event that the Department determines as a result of an investigation, sampling, or inspection that there has been a release or that there exists a threat of release of a hazardous substance, the Department may enter a site or location and perform or arrange for the performance of response actions.

(f) Remedial Actions conducted pursuant to this Section shall be overseen by an REC. All work performed by an REC shall be under the supervision and direction of an RSM representing the REC.

(g) The Department shall have complete discretion to effect cleanup itself, or oversee a remediating party's cleanup if:

- (1) the Department determines that the site poses an imminent hazard;
- (2) in the Department's determination, the number and frequency of public concerns about actions at the site have risen to a level that direct oversight by the Department would not increase the demand on its resources beyond that already being expended;
- (3) the Department has initiated an enforcement action;
- (4) it appears to the Department that the voluntary remedial action is not being implemented or overseen in accordance with G.S. 130A-310.9(c);
- (5) hazardous substances have migrated to adjoining property; or
- (6) other conditions, such as the presence of sensitive environments, sensitive populations or property uses, or radioactive wastes.

(h) The remedial investigation shall be completed within three years of the effective date of the agreement to conduct a voluntary remedial action. Non-groundwater remedial action shall be completed within eight years of the effective date of that agreement. Groundwater remedial action shall be initiated within two years of completion of the remedial investigation. All document and work phase certifications pursuant to Rule .0306(b) of this Section shall be completed and all documents received by the Department prior to these deadlines. The Department may approve a remediating party's written request for extension of these deadlines if one or more of the following conditions exists and the remediating party or the REC provides documentation to support the request and a schedule with timelines commensurate with the activities to be performed:

- (1) documented access delays outside of the remediating party's control;
- (2) the REC learns of previously unconsidered facts, data, or other information as described in Rule .0305(b)(5) or (6) of this Section, including changes to standards or risk targets;
- (3) the proposed remedy includes a pilot study to be implemented prior to full-scale remedial action implementation;
- (4) there has been a change in REC; or
- (5) during and after implementation of a remedial action, a demonstration is made that cleanup standards cannot be achieved by the required deadline due to technical impracticability.

(i) The REC shall preserve and maintain all documents submitted to the REC on behalf of or by the remediating party, prepared by the REC, or within the REC's possession, custody, or control, that relate to work performed pursuant to the rules in this Section, including documents to substantiate the facts, data, conclusions, and other information set forth in any REC opinion or certification. Such documents shall be kept at one or more locations accessible to the Department and in such a form as to enable the Department to ascertain whether the response actions that are the subject of the REC opinion or certification have been performed in compliance with the provisions of the rules in this Section until such time as the record is provided to the Department for the public file.

The REC shall submit to the Department for the public file all work plans, reports, and work-phase completion statements within 30 days of their completion.

(j) Any person required by Paragraph (i) of this Rule to preserve and maintain any documents shall preserve and maintain those documents until the REC confirms that the Department has received the records.

(k) RECs shall comply with Department site-related requests for information not supplied in accordance with Paragraph (i) of this Rule.

(l) Within 60 days of notice from the Department of revocation of an REC's approval, remediating parties shall submit the name of a successor REC. A remediating party shall provide written notice to the Department within 60 days of a change in REC for any other reason.

(m) Nothing in this Section shall be construed to imply authorization by the Department to any person other than the Department or the Department's employees, agents, or contractors to enter any property not owned by him or her to carry out a response action or otherwise to injure or interfere with any other person's rights or interests in real or personal property without that person's consent. After making efforts to obtain access to any site or other location to be investigated as a possible site not owned by the remediating party, an REC or remediating party who is unable to obtain such access may request, in writing, that the Department authorize him or her or his or her employees, agents, representatives, or contractors to enter such site or location for the purpose of performing one or more necessary response actions. Each such request for authorization shall include all of the following information:

- (1) the identity of the person making the request and his or her relationship to the site or location;
- (2) the nature and location of the actions that he or she intends to undertake, the anticipated duration of the actions and the reasons such access is necessary to perform the actions;
- (3) the identity of each person who owns or operates the site or location to which access is sought;
- (4) the results of any and all attempts to obtain such access; and
- (5) certification that a copy of the request has been sent to each person who owns or operates such sites or locations.

*History Note: Authority G.S. 130A-310.1(c); 130A-310.1(e); 130A -310.3(c); 130A-310.5(a); 130A-310.6; 130A-310.12(b);
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