

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007**

**SESSION LAW 2007-530
SENATE BILL 1362**

AN ACT TO AMEND THE DRY-CLEANING SOLVENT CLEANUP ACT TO CLARIFY THE DEFINITION OF DRY-CLEANING SOLVENT, TO AUTHORIZE THE USE OF FUNDS FROM THE DRY-CLEANING SOLVENT CLEANUP FUND FOR THE INVESTIGATION OF INACTIVE HAZARDOUS WASTE DISPOSAL SITES REASONABLY BELIEVED TO BE CONTAMINATED BY DRY-CLEANING SOLVENT, TO PROVIDE THAT ALL SITE WORK WILL BE PERFORMED BY A PRIVATE CONTRACTOR RETAINED BY THE ENVIRONMENTAL MANAGEMENT COMMISSION, TO MODIFY THE FINANCIAL RESPONSIBILITY REQUIREMENTS APPLICABLE TO POTENTIALLY RESPONSIBLE PARTIES, TO AUTHORIZE TEMPORARY RULE MAKING, AND TO INCREASE THE ANNUAL SPENDING CAP FOR THE CLEANUP OF SITES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-215.104B(b) reads as rewritten:

"(b) Unless a different meaning is required by the context, the following definitions apply in this Part. The definitions set out in this subsection apply only to the implementation of this Part and do not define or limit the scope of any other remedial program:

- ...
- (9) "Dry-cleaning solvent" means ~~Perchloroethylene F 1,1,3 or 1,1,1 trichloroethane, a petroleum based solvent, another comparable product used as a cleaning agent~~any hydrocarbon or halogenated hydrocarbon used as a solvent in a dry-cleaning operation or the degradation products from these hazardous substances-solvents.
- (10) "Dry-cleaning solvent assessment agreement" or "assessment agreement" means an agreement between the Commission and a potentially responsible party who desires ~~to assess~~an assessment of whether a release of dry-cleaning solvents at a dry-cleaning facility, an abandoned dry-cleaning facility site, or a wholesale distribution facility may be eligible for remediation under this Part and whether any other contaminants that are identified in the agreement may require remediation under other remedial programs operated or administered by the Department.

...

- (12) "Dry-cleaning solvent remediation agreement" or "remediation agreement" means an agreement between the Commission and a potentially responsible party who desires ~~to clean up~~ the cleanup of dry-cleaning solvent contamination resulting from a release at a dry-cleaning facility, an abandoned dry-cleaning facility site, or a wholesale distribution facility under this Part and any other contaminants that are identified in the agreement under other remedial programs operated or administered by the Department.
- (13) "Facility" means a dry-cleaning facility or a wholesale distribution facility.
- (14) "Fund" means the Dry-Cleaning Solvent Cleanup Fund.
- (14a) "Halogenated hydrocarbon" means any hydrocarbon where at least one hydrogen atom is substituted by a halogen atom.
- (15) "Hazardous waste" ~~shall have~~ has the same meaning ~~ascribed to it~~ as in G.S. 130A-290.
- (15a) "Hydrocarbon" means any linear, branched, saturated, or unsaturated compound whose molecules contain only carbon and hydrogen atoms.

...."

SECTION 2. G.S. 143-215.104C reads as rewritten:

"§ 143-215.104C. Dry-Cleaning Solvent Cleanup Fund.

(a) Creation. – The Dry-Cleaning Solvent Cleanup Fund is established as a special revenue fund to be administered by the Commission. Accordingly, revenue in the Fund at the end of a fiscal year does not revert and interest and other investment income earned by the Fund must be credited to it. The Fund is created to provide revenue to implement this Part.

(b) Sources of Revenue. – The following revenue is credited to the Fund:

- (1) Dry-cleaning solvent taxes collected under Article 5D of Chapter 105 of the General Statutes.
- (2) Recoveries made pursuant to G.S. 143-215.104N and G.S. 143-215.104O.
- (3) Gifts and grants made to the Fund.
- (4) Revenues credited to the Fund under G.S. 105-164.44E.
- (5) Application fees pursuant to G.S. 143-215.104F(a1).

(c) Disbursements. – A claim filed against the Fund may be paid only from monies in the Fund and only in accordance with the provisions of this Part. Any obligation to pay ~~or reimburse~~ claims against the Fund shall be expressly contingent upon availability of monies in the Fund. Neither the State nor any of its agencies shall have any obligation to pay ~~or reimburse~~ any costs for which monies are not available in the Fund. The provisions of this Part shall not constitute a contract, either express or implied, to pay ~~or reimburse~~ costs in excess of the monies available in the Fund. In making disbursements from the Fund, the Commission shall obligate monies to facilities or sites with higher priority before facilities or sites of lower priority, and facilities or sites with equal priority in the order in which the facilities or sites were prioritized until the revenue is exhausted. Consistent with the provisions of this Part, the Commission

may disburse monies from the Fund to abate imminent hazards by dry-cleaning solvent contamination at abandoned dry-cleaning facility sites that have not been certified. Up to twenty percent (20%) of the amount of revenue credited to the Fund in a year may be used to defray costs incurred by the Department and the Attorney General's Office in connection with administration of the program described in this Part, including oversight of response activities.

(d) Up to one percent (1%) of the amount of the Fund balance may be used by the Department in each fiscal year for investigation of inactive hazardous substance disposal sites that the Department reasonably believes to be contaminated by dry-cleaning solvent. If the contamination is determined to originate from a dry-cleaning facility, a potentially responsible party may petition for certification of the facility or abandoned facility site. Acceptance of a petition shall be conditioned upon the written acceptance by the petitioner of responsibility for the costs of investigation incurred by the Department pursuant to this subsection. Costs of investigation that are recovered pursuant to this subsection shall not exceed, and shall be credited toward, the financial responsibility of the petitioner pursuant to G.S. 143-215.104F(f). If a potentially responsible party does not petition for certification of the facility or abandoned facility site, the Commission may request the Attorney General to commence a civil action to secure reimbursement of costs incurred under this subsection."

SECTION 3. G.S. 143-215.104D reads as rewritten:

"§ 143-215.104D. Powers of the Commission.

(a) Administrative Functions. – The Commission may delegate any or all of the powers enumerated in this subsection to the Department. The Commission shall:

- (1) Accept petitions for certification and petitions to enter into dry-cleaning solvent assessment agreements or remediation agreements under this Part.
- (2) Prioritize certified dry-cleaning facilities, certified wholesale distribution facilities, or certified abandoned dry-cleaning facility sites for the initiation of assessment or remediation ~~activities that are reimbursable from the Fund.~~activities.
- (3) ~~Develop forms to be used by persons applying for reimbursement of assessment or remediation costs.~~
- (4) Schedule funding of assessment and remediation activities.
- (5) Determine whether assessment or remediation is necessary at a site at which dry-cleaning solvent contamination has occurred.
- (5a) Enter into contracts with private contractors for assessment and remediation activities at certified dry-cleaning facilities, certified wholesale distribution facilities, and certified abandoned dry-cleaning facility sites.
- (6) Determine that all necessary assessment and remediation has been completed at a contamination site.
- (7) Make payments from the Fund ~~to reimburse~~for the costs of assessment and remediation.

(b) Rule making. – The Commission shall adopt rules as are necessary to implement the provisions of this Part. Rules adopted by the Commission shall be consistent with and shall not duplicate, but may incorporate by reference, the rules adopted by the Commission for Health Services pursuant to Article 9 of Chapter 130A of the General Statutes. The Commission shall not delegate the rule-making powers provided in this subsection.

- (1) The Commission may adopt rules governing:
 - a. ~~Fees for response costs reimbursable under this Part.~~
 - b. The certification and decertification of facilities or abandoned sites.
 - c. The prioritization of facilities or abandoned sites and scheduling of funding for assessment and remediation activities. These rules shall provide for:
 1. Consideration of the degree of harm or risk to public health and the environment.
 2. Consideration of the order in which certification is issued for the facility or abandoned site.
 3. Consideration of the relative cost of assessment and remediation activities.
 4. Use of the Fund so as to maximize the reduction of harm or risk posed by certified facilities, certified abandoned sites, uncertified facilities and uncertified sites.
 - d. The disbursement of revenue from the Fund for payment ~~or reimbursement~~ of approved assessment or remediation costs.
 - e. The determination whether assessment or remediation is necessary at a contamination site.
 - f. The determination that all necessary assessment and remediation has been completed at a contamination site.
 - g. The terms and conditions of dry-cleaning solvent assessment agreements and remediation agreements.
 - h. The determination whether additional assessment or remediation is necessary at a contamination site previously closed under this Part.
- (2) The Commission may adopt rules establishing minimum management practices for handling of dry-cleaning solvent at dry-cleaning facilities and wholesale distribution facilities. The rules may:
 - a. Require that all perchloroethylene dry-cleaning machines installed at a dry-cleaning facility after the effective date of the rule or temporary rule meet air emission standards that equal or exceed the standards that apply to comparable dry-to-dry perchloroethylene dry-cleaning machines with integral refrigerated condensation.

- b. Prohibit the discharge of dry-cleaning solvents or water that contains dry-cleaning solvents into sanitary sewers, septic systems, storm sewers, or waters of the State.
 - c. Require spill containment structures around dry-cleaning machines, filters, stills, vapor adsorbers, solvent storage areas, and waste solvent storage areas.
 - d. Require floor sealants for cleaning room areas if the Commission finds the sealants to be effective.
 - e. Require, by 1 January 2002, the use of improved solvent transfer systems to prevent releases at the time of delivery of solvents to a dry-cleaning facility.
 - f. Require any other solvent-handling practices the Commission may find necessary and appropriate to minimize the risk of releases at dry-cleaning facilities or wholesale distribution facilities.
- (3) The Commission shall adopt rules establishing a risk-based approach applicable to the assessment, prioritization, and remediation of dry-cleaning solvent contamination resulting from releases at facilities or abandoned sites certified pursuant to G.S. 143-215.104G. The rules shall address, at a minimum:
- a. Criteria and methods for determining remediation requirements, including the level of remediation necessary to assure adequate protection of public health and the environment.
 - b. The circumstances under which information specific to the dry-cleaning solvent contamination site should be considered and required.
 - c. The circumstances under which restrictions on the future use of any remediated dry-cleaning solvent contamination site should be considered and required as a means of achieving and maintaining an adequate level of protection for public health and the environment.
 - d. Strategies for the assessment and remediation of dry-cleaning solvent contamination, including presumptive remedial responses sufficient to provide an adequate level of protection as described under sub-subdivision a. of this subdivision.

(c) All rules adopted by the Commission shall be applicable to all dry-cleaning facilities, wholesale distribution facilities, and abandoned dry-cleaning facilities in the State and shall, to the maximum extent practicable, be cost-effective and technically feasible while protecting public health and the environment from the release of dry-cleaning solvents.

(d) Unless otherwise provided in this Part, the Commission may delegate any of its rights, duties, and responsibilities under this Part to the Department."

SECTION 4. G.S. 143-215.104F reads as rewritten:

"§ 143-215.104F. Requirements for certification, assessment agreements, and remediation agreements.

(a) General Requirements. – Any person petitioning for certification of a facility or an abandoned site pursuant to G.S. 143-215.104G, for a dry-cleaning solvent assessment agreement pursuant to G.S. 143-215.104H, or for a dry-cleaning solvent remediation agreement pursuant to G.S. 143-215.104I, shall meet the requirements set out in this section and any other applicable requirements of this Part.

(a1) Application Fees. – Each person petitioning or co-petitioning for certification of a facility or an abandoned site pursuant to G.S. 143-215.104G shall pay an application fee of one thousand dollars (\$1,000) to the Commission.

(b) Requirements for Potentially Responsible Persons Generally. – Every petitioner shall provide the Commission with:

- (1) Any information that the petitioner possesses relating to the contamination at the facility or abandoned site described in the petition.
- (2) Information necessary to demonstrate the person's ability to incur the response costs specified in subsection (f) of this section.
- (3) Repealed by Session Laws 2000, c. 19, s. 3.
- (4) Information necessary to demonstrate that the petitioner, and any parent, subsidiary, or other affiliate of the petitioner, has substantially complied with:
 - a. The terms of any dry-cleaning solvent assessment agreement, dry-cleaning solvent remediation agreement, brownfields agreement, or other similar agreement to which the petitioner or any parent, subsidiary, or other affiliate of the petitioner has been a party.
 - b. The requirements applicable to any remediation in which the petitioner has previously engaged.
 - c. Federal and State laws, regulations, and rules for the protection of the environment.
- (5) Evidence demonstrating that a release of dry-cleaning solvent has occurred at the facility or abandoned site and that the release has resulted in dry-cleaning solvent contamination.

(c) Requirement for Property Owners. – In addition to the information required by subsection (b) of this section, a petitioner who is the owner of the property on which the dry-cleaning solvent contamination identified in the petition is located shall provide the Commission a written agreement authorizing the ~~Commission~~ Commission, or its agent ~~agent, and its private contractor~~ to have access to the property for purposes of conducting assessment or remediation activities or determining whether assessment or remediation activities are being conducted in compliance with this Part and any assessment agreement or remediation agreement.

(c1) Costs incurred by the petitioner for activities to obtain certification of a facility or abandoned site shall not be reimbursable from the Fund.

(d) The Commission ~~shall~~ may reject any petition made pursuant to this Part in any of the following circumstances:

- (1) The petitioner is an owner or operator of the facility described in the petition and the facility was not being operated in compliance with minimum management practices adopted by the Commission pursuant to G.S. 143-215.104D(b)(2) at the time the contamination was discovered.
- (2) The petitioner is an owner or operator of the facility described in the petition and the petitioner owed delinquent taxes under Article 5D of Chapter 105 of the General Statutes at the time the dry-cleaning solvent contamination was discovered.
- (3) Repealed by Session Laws 2000, c. 19, s. 3.

(e) ~~The Commission may reject any petition made pursuant to this Part in any of the following circumstances:~~

- ~~(1)~~(4) The petitioner fails to provide the information required by subsection (b) of this section.
- ~~(2)~~(5) The petitioner falsified any information in its petition that was material to the determination of the priority ranking, the nature, scope and extent of contamination to be assessed or remediated, or the appropriate means to contain and remediate the contaminants.

(f) Financial Responsibility Requirements. – Each potentially responsible person who petitions the Commission to certify a facility or abandoned site shall accept written responsibility in the amount specified in this section for the assessment or remediation of the dry-cleaning solvent contamination identified in the petition. If two or more potentially responsible persons petition the Commission jointly, the requirements below shall be the aggregate requirements for the financial responsibility of all potentially responsible persons who are party to the petition. Unless an alternative arrangement is agreed to by co-petitioners, the financial responsibility requirements of this section shall be apportioned equally among the co-petitioners. The financial responsibility required shall be as follows:

- (1) For dry-cleaning facilities owned by persons who employ fewer than five full-time employees, or the equivalent, in activities related to dry-cleaning operations during the calendar year preceding the date of the petition, ~~the first five thousand dollars (\$5,000) of the costs of assessment or remediation and one percent (1%) of the costs of assessment or remediation in excess of two hundred thousand dollars (\$200,000) but~~ not exceeding one million dollars (\$1,000,000).
- (2) For abandoned dry-cleaning facility sites and for dry-cleaning facilities owned by persons who employ at least five but fewer than 10 full-time employees, or the equivalent, in activities related to dry-cleaning operations during the calendar year preceding the date of the petition, ~~the first ten thousand dollars (\$10,000) of the costs of assessment or remediation, two percent (2%) of the costs of assessment or remediation in excess of two hundred thousand dollars (\$200,000) but~~

~~not exceeding five hundred thousand dollars (\$500,000), and one and one-half percent (1.5%) of the costs of assessment or remediation in excess of five hundred thousand dollars (\$500,000) but not exceeding one million dollars (\$1,000,000).~~

- (3) For wholesale distribution facilities and for dry-cleaning facilities owned by persons who employ 10 or more full-time employees, or the equivalent, in activities related to dry-cleaning operations during the calendar year preceding the date of the petition, ~~the first fifteen thousand dollars (\$15,000) of the costs of assessment or remediation, three percent (3%) of the costs of assessment or remediation in excess of two hundred thousand dollars (\$200,000) but not exceeding five hundred thousand dollars (\$500,000), and one percent (1%)~~ two percent (2%) of the costs of assessment or remediation ~~in excess of five hundred thousand dollars (\$500,000) but not exceeding one million dollars (\$1,000,000).~~
- (4) ~~For wholesale distribution facilities and abandoned dry cleaning facility sites, the first twenty five thousands dollars (\$25,000) of the costs of assessment or remediation, three percent (3%) of the costs of assessment or remediation in excess of two hundred thousand dollars (\$200,000) but not exceeding five hundred thousand dollars (\$500,000), and one percent (1%) of the costs of assessment or remediation in excess of five hundred thousand dollars (\$500,000) but not exceeding one million dollars (\$1,000,000).~~

(g) Repealed by Session Laws 2000, c. 19, s. 3."

SECTION 5. G.S. 143-215.104H reads as rewritten:

"§ 143-215.104H. Dry-Cleaning Solvent Assessment Agreements.

(a) Assessment Agreements. – One or more potentially responsible parties may petition the Commission to enter into a dry-cleaning solvent assessment agreement regarding a facility or abandoned site that has been certified pursuant to G.S. 143-215.104G. The Commission may, in its discretion, enter into an assessment agreement with any potentially responsible party who satisfies the requirements of this section and the applicable requirements of G.S. 143-215.104F. If more than one potentially responsible party petitions the Commission, the Commission may enter into a single assessment agreement with one or more of the petitioners. The Commission shall not unreasonably refuse to enter into an assessment agreement pursuant to this section. The Commission may require the petitioners to provide the Commission with any information necessary to demonstrate:

- (1) The priority ranking assigned to the facility or site is consistent with the rules adopted by the Commission.
- (2) ~~The projected schedule for funding of assessment activities is adequate.~~
- (3) ~~The assessment activities to be undertaken with respect to the dry cleaning solvent contamination and any other contamination at the contamination site are adequate.~~

- ~~(4) The person who will be responsible for implementation of the activities is capable and qualified to conduct the assessment.~~
- ~~(4a) The amount of funds already expended by the petitioner for assessment or remediation of dry-cleaning solvent contamination at the facility or abandoned site.~~
- (5) The petitioner has and will continue to have available the financial resources necessary to pay the costs of assessment activities and the share of response costs imposed on the petitioner by G.S. 143-215.104F.
- (6) The permits or other authorizations required to conduct the assessment activities and to lawfully dispose of any hazardous substances or wastes generated by the assessment activities have been or can be obtained.
- (7) The assessment activities will not increase the existing level of public exposure to health or environmental hazards at the contamination site.
- ~~(8) The costs to be incurred in connection with the assessment activities contemplated by the assessment agreement are reasonable and necessary.~~
- (9) The petitioner has obtained the consent of other property owners to enter into their property for the purpose of conducting assessment activities specified in the assessment agreement.

(b) The terms and conditions of an assessment agreement regarding dry-cleaning solvent contamination shall be guided by and consistent with the rules adopted by the Commission pursuant to G.S. 143-215.104D and the ~~reimbursement-disbursement~~ authorities and limitations set out in this Part. An assessment agreement shall, subject to the availability of monies from the Fund:

- (1) Repealed by Session Laws 2000, c. 19, s. 9.
- (1a) Require that the petitioner shall be liable to the Fund for an amount equal to the difference, if any, between the applicable amount for which the petitioner is responsible under G.S. 143-215.104F and the amount reasonably paid by the petitioner for assessment or remediation activities of the type specified in G.S. 143-215.104N(a)(1) through (7) and that are otherwise consistent with the requirements of this Part.
- ~~(2) Provide for the prompt reimbursement of response costs incurred in assessment activities that are found by the Commission to be consistent with the assessment agreement and this Part.~~

(c) The Commission may refuse to enter into a dry-cleaning solvent assessment agreement with any petitioner if:

- (1) The petitioner will not accept financial responsibility for the petitioner's share of the response costs required by G.S. 143-215.104F.
- ~~(2) The petitioner will not accept responsibility for conducting, supervising, or otherwise undertaking assessment activities required by the Commission.~~

(3) The petitioner fails to provide any information required by subsection (a) of this section.

(d) The refusal of the Commission to enter into a dry-cleaning solvent assessment agreement with any petitioner shall not affect the rights of any other petitioner under this Part, except that the refusal may be the basis for rejection of a petition by any parent, subsidiary or other affiliate of the petitioner for the facility or abandoned site.

(e) If the Commission determines from an assessment prepared pursuant to this Part that the degree of risk to public health or the environment resulting from dry-cleaning solvent contamination otherwise subject to assessment or remediation under this Part and Article 9 of Chapter 130A is acceptable in light of the criteria established pursuant to G.S. 143-215.104D(b)(3) and Article 9 of Chapter 130A, the Commission shall issue a written statement of its determination and notify the owner or operator of the facility or abandoned site responsible for the contamination that no cleanup, no further cleanup, or no further action is required in connection with the contamination.

(f) If the Commission determines that no remediation or further action is required in connection with dry-cleaning solvent contamination otherwise subject to assessment or remediation pursuant to this Part and Article 9 of Chapter 130A, the Commission shall not pay ~~or reimburse~~ any ~~response~~ costs otherwise payable ~~or reimbursable~~ under this Part from the Fund other than costs reasonable and necessary to conduct the risk assessment pursuant to this section and in compliance with a dry-cleaning solvent assessment agreement."

SECTION 6. G.S. 143-215.104I reads as rewritten:

"§ 143-215.104I. Dry-Cleaning solvent remediation agreements.

(a) Upon the completion of assessment activities required by a dry-cleaning solvent assessment agreement, one or more potentially responsible parties may petition the Commission to enter into a dry-cleaning solvent remediation agreement for any contamination requiring remediation. The Commission may, in its discretion, enter into a remediation agreement with any petitioner who satisfies the requirements of this section and the applicable requirements of G.S. 143-215.104F. If more than one potentially responsible party petitions the Commission, the Commission may enter into a single remediation agreement with one or more of the petitioners. The Commission shall not unreasonably refuse to enter into a remediation agreement pursuant to this section. The Commission may, in its discretion, enter into a remediation agreement that includes the assessment described in G.S. 143-215.104H. Petitioners shall provide the Commission with any information necessary to demonstrate:

- (1) Repealed by Session Laws 2000, c. 19, s. 10.
- (2) As a result of the remediation agreement, the contamination site will be suitable for the uses specified in the remediation agreement while fully protecting public health and the environment from dry-cleaning solvent contamination and any other contaminants included in the remediation agreement.

- (3) There is a public benefit commensurate with the liability protection provided under this Part.
- (4) ~~The petitioner has or can obtain the financial, managerial, and technical means to fully implement the remediation agreement and assure the safe use of the contamination site.~~
- (5) The petitioner has complied with or will comply with all applicable procedural requirements.
- (6) The remediation agreement will not cause the Department to violate the terms and conditions under which the Department operates and administers remedial programs, including the programs established or operated pursuant to Article 9 of Chapter 130A of the General Statutes, by delegation or similar authorization from the United States or its departments or agencies, including the United States Environmental Protection Agency.
- (7) The priority ranking assigned to the facility or site is consistent with the rules adopted by the Commission or the priority ranking that the petitioner agrees to accept is consistent with the rules adopted by the Commission.
- (8) ~~The projected schedule for funding of remediation activities.~~
- (9) The petitioner will continue to have available the financial resources necessary to satisfy the share of response costs imposed on the petitioner by G.S. 143-215.104F.
- (10) ~~The expenditures eligible for reimbursement from the Fund and to be incurred in connection with the remediation agreement are reasonable and necessary.~~
- (11) The consent of other property owners to enter into their property for purposes of conducting remediation activities specified in the remediation agreement.

(b) In negotiating a remediation agreement, parties may rely on land-use restrictions that will be included in a Notice of Dry-Cleaning Solvent Remediation required under G.S. 143-215.104M. A remediation agreement may provide for remediation in accordance with standards that are based on those land-use restrictions.

(c) A dry-cleaning solvent remediation agreement shall contain a description of the contamination site that would be sufficient as a description of the property in an instrument of conveyance and, as applicable, a statement of:

- (1) Any remediation, including remediation of contaminants other than dry-cleaning solvents, to be conducted on the property, including:
 - a. A description of specific areas where remediation is to be conducted.
 - b. The remediation method or methods to be employed.
 - e. ~~The resources that the petitioner will make available and the degree to which the petitioner intends to rely on the Fund for resources.~~
 - d. A schedule of remediation activities.

- e. Applicable remediation standards. Applicable remediation standards for dry-cleaning solvent contamination shall not exceed the requirements adopted by the Commission pursuant to G.S. 143-104D(b)(3).
 - f. A schedule and the method or methods for evaluating the remediation.
- (2) Any land-use restrictions that will apply to the contamination site or other property.
 - (3) The desired results of any remediation or land-use restrictions with respect to the contamination site.
 - (4) The guidelines, including parameters, principles, and policies within which the desired results are to be accomplished.
 - (5) The consequences of achieving or not achieving the desired results.
 - (6) The priority ranking of the facility or abandoned site.
 - (7) ~~The person who will conduct the remediation if that person is not the potentially responsible party entering the remediation agreement.~~
- (d) The Commission may refuse to enter into a dry-cleaning solvent assessment agreement or dry-cleaning solvent remediation agreement with any petitioner ~~if:~~if
- (1) ~~The petitioner will not accept financial responsibility for the share of the response costs established in G.S. 143-215.104F. This requirement shall not apply to a petitioner who (i) is the owner of property upon which the dry-cleaning solvent contamination is located, and (ii) is not a current or former owner or operator of a facility believed to be responsible for the contamination.~~
 - (2) ~~The petitioner will not accept responsibility for conducting, supervising, or otherwise undertaking remediation activities required by the Commission.~~
 - (3) ~~The~~the petitioner fails to provide any information that is necessary to demonstrate the facts required to be shown by subsection (a) of this section.
- (e) In addition to the ~~bases-~~basis set forth in subsection (d) of this section, the Commission may refuse to enter into a dry-cleaning solvent remediation agreement with ~~the~~an owner of the property on which a contamination site is located if the owner refuses to accept limitations on the future use of the property and to give notice of these limitations pursuant to G.S. 143-215.104M.
- (f) The refusal of the Commission to enter into a dry-cleaning remediation agreement with any petitioner shall not affect the rights of any other petitioner, other than any parent, subsidiary, or other affiliate of the petitioner, under this Part. The refusal of the Commission to enter into a remediation agreement may be the basis for rejection of a petition by any parent, subsidiary, or other affiliate of the petitioner for the facility or abandoned site.
- (g) The terms and conditions of a dry-cleaning solvent remediation agreement concerned with dry-cleaning solvent contamination shall be guided by and consistent with the rules adopted by the Commission pursuant to G.S. 143-215.104D and the

~~reimbursement—disbursement~~ authorities and limitations set out in this Part. A ~~remediation agreement shall provide, subject to availability of monies in the Fund, for prompt reimbursement of response costs incurred in assessment or remediation activities that are found by the Commission to be consistent with the remediation agreement and this Part.~~ A remediation agreement ~~may~~ shall provide that the ~~Commission~~ Commission's private contractor conduct assessment and remediation activities at the facility or abandoned site.

(h) Any failure of a petitioner or the petitioner's agents or employees to comply with the dry-cleaning solvent remediation agreement constitutes a violation of this Part by the petitioner."

SECTION 7. G.S. 143-215.104J(a) reads as rewritten:

"(a) The Commission may decertify a facility or abandoned site or renegotiate or terminate an assessment agreement or remediation agreement with respect to any party thereto in the following circumstances:

- (1) The owner or operator of the facility, at any time subsequent to the certification of the facility, violates any of the minimum management requirements adopted by the Commission pursuant to G.S. 143-215.104D(b)(2).
- (2) In the case of dry-cleaning contamination on property that is owned by a petitioner, the petitioner fails to file a Notice of Dry-Cleaning Solvent Remediation, if required, as provided in G.S. 143-215.104M.
- (3) The potentially responsible persons who are parties to a dry-cleaning solvent assessment agreement are unable to reach an agreement with the Commission to enter into a dry-cleaning solvent remediation agreement within the time specified in the assessment agreement.
- (4) The payment of taxes assessed to the facility under Article 5D of Chapter 105 of the General Statutes is delinquent.
- (5) Repealed by Session Laws 2000, c. 19, s. 3.
- (6) The owner or operator fails to comply with all applicable requirements of this Part ~~to complete any assessment or remediation activities required by~~ or fails to comply with all applicable requirements of an assessment agreement or remediation agreement.
- (7) The owner or operator of a facility for which an assessment or remediation activity is scheduled or in progress transfers the ownership or operation of the facility or abandoned site to another person without the prior consent of the Commission and the execution of a substitute assessment agreement or remediation agreement.
- (8) The standards applied to the dry-cleaning solvent contamination remediation or containment under the provisions of this Part and the dry-cleaning solvent remediation agreement will, or are likely to, cause the Department to fail to comply with the terms and conditions under which it operates and administers a remediation program by delegation or similar authorization from the United States or one of its

departments or agencies, including the Environmental Protection Agency.

- (9) A petitioner fails to pay the Commission any amounts for which a petitioner is responsible pursuant to G.S. 143-215.104F."

SECTION 8. G.S. 143-215.104K(a) reads as rewritten:

"(a) A potentially responsible party who enters into an assessment agreement or remediation agreement with the Commission and who is complying with the agreement shall not be held liable for assessment or remediation of areas of contamination identified in the agreement except as specified in the assessment agreement or remediation agreement, so long as ~~the any~~ activities conducted at the contamination site by or under the control or direction of the petitioner do not increase the risk of harm to public health or the environment and the petitioner is not required to undertake additional remediation to unrestricted use standards pursuant to subsection (c) of this section. The liability protection provided under this Part applies to all of the following persons to the same extent as the petitioner, so long as these persons are not otherwise potentially responsible parties or parents, subsidiaries, or affiliates of potentially responsible parties and the person is not required to undertake additional remediation to unrestricted use standards pursuant to subsection (c) of this section:

- (1) ~~Any person under the direction or control of the petitioner who directs or contracts for assessment, remediation, or redevelopment of the contamination site.~~
- (2) Any future owner of the contamination site.
- (3) A person who ~~develops or occupies~~ the contamination site.
- (4) A successor or assign of any person to whom the liability protection provided under this Part applies.
- (5) Any lender or fiduciary that provides financing ~~for assessment, remediation, or redevelopment of the contamination site.~~ to the petitioner to pay the petitioner's financial obligations under G.S. 143-215.104F."

SECTION 9. G.S. 143-215.104L reads as rewritten:

"§ 143-215.104L. Public notice and community involvement.

(a) If a petitioner desires to enter into a dry-cleaning solvent remediation agreement based on remediation standards that rely on the creation of land-use restrictions, the Commission or the Commission's private contractor on behalf of the petitioner shall notify the public and the community in which the facility or abandoned site is located of the planned remediation and redevelopment activities. ~~The petitioner~~ On behalf of the petitioner, the Commission or the Commission's private contractor shall ~~submit~~ prepare a Notice of Intent to Remediate a Dry-Cleaning Solvent Facility or Abandoned Site and a summary of the Notice of ~~Intent to the Commission.~~ Intent. The Notice of Intent shall provide, to the extent known, a legal description of the location of the contamination site, a map showing the location of the contamination site, a description of the contaminants involved and their concentrations in the media of the contamination site, a description of the future use of the contamination site, any proposed investigation and remediation, and a proposed Notice

of Dry-Cleaning Solvent Remediation prepared in accordance with G.S. 143-215.104M. Both the Notice of Intent and the summary of the Notice of Intent shall state the time period and means for submitting written comment and for requesting a public meeting on the proposed dry-cleaning solvent remediation agreement. The summary of the Notice of Intent shall include a statement as to the public availability of the full Notice of Intent. After approval of the Notice of Intent and summary of the Notice of Intent by the Commission, ~~the petitioner~~ the Commission or the Commission's private contractor shall provide a copy of the Notice of Intent to all local governments having jurisdiction over the contamination site. The ~~petitioner~~ Commission or Commission's private contractor shall publish the summary of the Notice of Intent in a newspaper of general circulation serving the area in which the contamination is located and shall file a copy of the summary of the Notice of Intent with the Codifier of Rules, who shall publish the summary of the Notice of Intent in the North Carolina Register. The ~~petitioner~~ Commission or the Commission's private contractor shall also conspicuously post a copy of the summary of the Notice of Intent at the contamination site.

(b) Publication of the approved summary of the Notice of Intent in the North Carolina Register and publication in a newspaper of general circulation shall begin a public comment period of at least 60 days from the later date of publication. During the public comment period, members of the public, residents of the community in which the contamination site is located, and local governments having jurisdiction over the contamination site may submit comment on the proposed dry-cleaning solvent remediation agreement, including methods and degree of remediation, future land uses, and impact on local employment.

(c) Any person who desires a public meeting on a proposed dry-cleaning solvent remediation agreement shall submit a written request for a public meeting to the Commission within 30 days after the public comment period begins. The Commission shall consider all requests for a public meeting and shall hold a public meeting if the Commission determines that there is significant public interest in the proposed remediation agreement. If the Commission decides to hold a public meeting, the Commission shall, at least 30 days prior to the public meeting, mail written notice of the public meeting to all persons who requested the public meeting and to any other person who had previously requested notice. The Commission shall also ~~direct the petitioner to~~ publish, at least 30 days prior to the date of the public meeting, a notice of the public meeting at least one time in a newspaper having general circulation in the county where the contamination site is located. In any county in which there is more than one newspaper having general circulation, the Commission shall ~~direct the petitioner to~~ publish a copy of the notice in as many newspapers having general circulation in the county as the Commission in its discretion determines to be necessary to assure that the notice is generally available throughout the county. The Commission shall prescribe the form and content of the notice to be published. The Commission shall prescribe the procedures to be followed in the public meeting. The Commission shall take detailed minutes of the meeting. The minutes shall include any written dry-cleaning solvent remediation agreement. The Commission shall take into account the comment received during the comment period and at the public meeting if the Commission holds a public

meeting. The Commission shall incorporate into the remediation agreement provisions that reflect comment received during the comment period and at the public meeting to the extent practical. The Commission shall give particular consideration to written comment that is supported by valid scientific and technical information and analysis."

SECTION 10. G.S. 143-215.104M(a) reads as rewritten:

"(a) Land-Use Restriction. – In order to reduce or eliminate the danger to public health or the environment posed by a dry-cleaning solvent contamination site, the owner of property upon which dry-cleaning solvent contamination has been discovered may ~~prepare and submit to the Commission for approval~~ file a Notice of Dry-Cleaning Solvent Remediation approved by the Commission identifying the site on which the contamination has been discovered and providing for current or future restrictions on the use of the property. If a petitioner requests that a contamination site be remediated to standards that require land-use restrictions, the owner of the property must file a Notice of Dry-Cleaning Solvent Remediation for the remediation agreement to become effective."

SECTION 11. G.S. 143-215.104N reads as rewritten:

"§ **143-215.104N.** ~~Reimbursement—Disbursement of dry-cleaning solvent assessment and remediation costs; limitations; collection—of reimbursement.~~ cost recovery.

(a) ~~Reimbursement.~~ Allowable Costs. – To the extent monies are available in the ~~Fund for reimbursement of response costs,~~ Fund, the Commission shall ~~reimburse any person, including a private contractor, responsible for implementing pay for~~ reasonable and necessary assessment and remediation activities at a contamination site associated with a certified facility or a certified abandoned site pursuant to a dry-cleaning solvent assessment agreement or dry-cleaning solvent remediation agreement for the following assessment and remediation response costs, for which appropriate documentation is submitted:

- (1) Costs of assessment with respect to dry-cleaning solvent contamination.
- (2) Costs of treatment or replacement of potable water supplies affected by the contamination.
- (3) Costs of remediation of affected soil, groundwater, surface waters, bedrock or other rock formations, or buildings.
- (4) Monitoring of the contamination.
- (5) Inspection and supervision of activities described in this subsection.
- (6) Reasonable costs of restoring property as nearly as practicable to the conditions that existed prior to activities associated with assessment and remediation conducted pursuant to this Part.
- (7) Other activities reasonably required to protect public health and the environment.

(b) Limitations. – Notwithstanding subsection (a) of this section, the Commission shall not make any disbursement from the Fund:

- (1) For costs incurred in connection with facilities or abandoned sites not certified pursuant to G.S. 143-215.104G.

- (2) For costs not incurred pursuant to a dry-cleaning solvent assessment agreement or a dry-cleaning solvent remediation agreement.
- (3) ~~For costs incurred in connection with dry-cleaning solvent contamination from a facility or abandoned site for which funds obligated by petitioners pursuant to a dry-cleaning solvent assessment agreement or dry-cleaning solvent remediation agreement in accordance with G.S. 143-214.104F(f) are overdue.~~
- (4) For costs at a contamination site that has been identified by the United States Environmental Protection Agency as a federal Superfund site pursuant to 40 Code of Federal Regulations, Part 300 (1 July 1996 Edition), except that the Commission may authorize distribution of the required State match in an amount not to exceed two hundred thousand dollars (\$200,000) per year per site. The Commission shall not delegate its authority to disburse funds pursuant to this subdivision.
- (5) For remediation beyond the level required under the Commission's risk-based criteria for determining the appropriate level of remediation.
- (6) For assessment or remediation response costs incurred in connection with any individual dry-cleaning solvent assessment agreement or dry-cleaning solvent remediation agreement in excess of ~~two~~ five hundred thousand dollars ~~(\$200,000)~~ (\$500,000) per year. However, that the Commission may disburse up to ~~four hundred thousand~~ one million dollars ~~(\$400,000)~~ (\$1,000,000) per year for assessment and remediation costs incurred in connection with a ~~certified~~ certified facility or a ~~certified~~ certified ~~an~~ abandoned site ~~that if the facility or abandoned site has been certified and poses an imminent hazard.~~
- (7) That would result in a diminution of the Fund balance below one hundred thousand dollars (\$100,000), unless an emergency exists in connection with a dry-cleaning solvent contamination abandoned site that constitutes an imminent hazard.
- (8) For any costs incurred in connection with dry-cleaning solvent contamination from a facility located on a United States military base or owned by the United States or a department or agency of the United States.
- (9) For any costs incurred in connection with dry-cleaning solvent contamination from a facility or abandoned site owned by the State or a department or agency of the State.

~~(e) The Commission shall not pay or reimburse any response costs arising from a dry-cleaning solvent assessment agreement or dry-cleaning solvent remediation agreement until the petitioners who are party to the agreement have paid all sums due under the agreement.~~

~~(d) Each dry-cleaning solvent assessment agreement or dry-cleaning solvent remediation agreements made by the Commission pursuant to this Part shall expressly state that the Commission's obligation to reimburse response costs incurred pursuant to these agreements shall be contingent upon the availability of monies from the Fund and~~

~~that the State and its departments and agencies have no obligation to reimburse otherwise eligible expenses if monies are not available in the Fund to pay the reimbursements.~~ If, at any time, the Commission determines that the cost of assessment and remediation activities ~~reimbursable~~ incurred pursuant to existing dry-cleaning solvent assessment agreements and dry-cleaning solvent remediation agreements equals or exceeds the total revenues expected to be credited to the Fund over the life of the Fund, the Commission shall publish notice of the determination in the North Carolina Register. Following the publication of a notice pursuant to this section, the Commission may continue to enter into dry-cleaning solvent assessment agreements and dry-cleaning solvent remediation agreements until the day of adjournment of the first regular session of the General Assembly that begins after the date the notice is published, but shall have no authority to enter into additional dry-cleaning solvent assessment agreements and dry-cleaning solvent remediation agreements after that date unless the Commission first determines either (i) that revenues will be available from the Fund to ~~reimburse~~ pay the costs of assessment and remediation activities expected to be ~~reimbursable~~ incurred pursuant to the agreements, or (ii) that assessment and remediation activities undertaken pursuant to the agreements will be paid entirely from sources other than the Fund. For the purposes of this subsection, the term "day of adjournment" shall mean: (i) in the case of a regular session held in an odd-numbered year, the day the General Assembly adjourns by joint resolution for more than 10 days, and (ii) in the case of a regular session held in an even-numbered year, the day the General Assembly adjourns sine die.

(e) ~~The Commission shall pay the reimbursable response costs of eligible parties as they are incurred.~~ If the cleanup of the contamination site is not completed through fault of the petitioner as required by the remediation agreement, the petitioner shall reimburse the Fund for any response costs previously ~~reimbursed~~ disbursed from the fund for the cleanup ~~shall be repaid to the Fund, cleanup,~~ with interest. The Commission shall request the Attorney General to commence a civil action to secure repayment of response costs and interest of the costs."

SECTION 12. G.S. 143-215.104T(b) reads as rewritten:

"(b) Notwithstanding the provision of the Tort Claims Act, G.S. 143-291 through G.S. 143-300.1 or any other provision of law waiving the sovereign immunity of the State of North Carolina, the State, its agencies, officers, employees, and agents shall be absolutely immune from any liability in any proceeding for any injury or claim arising from negotiating, entering into, implementing, monitoring, or enforcing a dry-cleaning solvent assessment agreement, a dry-cleaning solvent remediation agreement, or a Notice of Dry-Cleaning Solvent Remediation under this Part or any other action implementing this Part."

SECTION 13. G.S. 105-187.31 reads as rewritten:

"§ 105-187.31. Tax imposed.

A privilege tax is imposed on a dry-cleaning solvent retailer at a flat rate for each gallon of dry-cleaning solvent sold by the retailer to a dry-cleaning facility. An excise tax is imposed on dry-cleaning solvent purchased outside the State for storage, use, or consumption by a dry-cleaning facility in this State. The rate of the privilege tax and the excise tax is ten dollars (\$10.00) for each gallon of halogenated hydrocarbon-based

dry-cleaning solvent ~~that is chlorine-based~~ and one dollar and thirty-five cents (\$1.35) for each gallon of hydrocarbon-based dry-cleaning solvent ~~that is hydrocarbon-based solvent.~~ These taxes are in addition to all other taxes."

SECTION 14. If the Environmental Management Commission adopts rules establishing a risk-based approach applicable to the assessment, prioritization, and remediation of dry-cleaning solvent contamination, the original notice of text for which was published at 21 N.C. Reg. 1818 (April 16, 2007); the Rules Review Commission approves these rules, including any changes incorporated as a result of public comments or Rules Review Commission requirements; and the Rules Review Commission receives 10 or more letters of objection to these rules in accordance with G.S. 150B-21.3(b2), the Environmental Management Commission, notwithstanding the requirements of G.S. 150B-21.1 and G.S. 150B-21.3, may adopt these rules as temporary rules in accordance with the temporary rule-making procedures set out in Chapter 150B of the General Statutes.

SECTION 15.(a) G.S. 143-215.104F(a1), as enacted by Section 4 of this act, becomes effective on 1 September 2007 and applies to applications for certifications made and assessment agreements and remediation agreements entered into on or after that date. G.S. 143-215.104F(f), as amended by Section 4 of this act, is effective retroactively to 1 August 2001 and applies to assessment agreements and remediation agreements entered into on or after that date. The Environmental Management Commission shall credit any payment received from a petitioner prior to 1 September 2007 against the petitioner's co-payment obligations under G.S. 143-215.104F, but the Environmental Management Commission shall not repay, and this section shall not operate to create any right for a petitioner to demand, any refund of funds received prior to 1 September 2007. All other amendments to G.S. 143-215.104F, as enacted by Section 4 of this act, are effective when this act becomes law.

SECTION 15.(b) G.S. 143-215.104N(b)(6), as enacted by Section 11 of this act, is effective retroactively to 1 January 2007. All other amendments to G.S. 143-215.104N, as enacted by Section 11 of this act, are effective when this act becomes law.

SECTION 15.(c) Section 12 of this act becomes effective retroactively to 1 January 1998.

SECTION 15.(d) Except as provided in subsections (a) through (c) of this section, this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 2nd day of August, 2007.

s/ Beverly E. Perdue
President of the Senate

s/ Joe Hackney
Speaker of the House of Representatives

s/ Michael F. Easley
Governor

Approved 11:48 a.m. this 31st day of August, 2007