

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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SENATE BILL 127*

Short Title: Dry-Cleaning Solvent Cleanup Act.

(Public)

Sponsors: Senators Odom; Albertson, Cooper, Horton, Kinnaird, and Martin of Pitt.

Referred to: Finance.

February 17, 1997

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR CLEANUP OF DRY-CLEANING SOLVENT
RELEASES IN NORTH CAROLINA, AS RECOMMENDED BY THE
ENVIRONMENTAL REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. Article 21A of Chapter 143 of the General Statutes is amended by
adding a new Part to read:

"PART 6. DRY-CLEANING SOLVENT CLEANUP.

"§ 143-215.104A. Title.

This Part is the 'North Carolina Dry-Cleaning Solvent Cleanup Act' and may be cited
by that name.

"§ 143-215.104B. Definitions. – The following definitions apply in this Part:

- (1) Abandoned dry-cleaning facility site. – Any real property or individual leasehold space on which a dry-cleaning facility formerly operated.
- (2) Commission. – Defined in G.S. 143-215.77.
- (3) Department. – Defined in G.S. 143-215.77.
- (4) Dry-cleaning facility. – A place of business located in this State and engaged in on-site dry-cleaning operations, other than any of the following:

- 1 a. A facility located on a United States military base or owned by
2 the United States or a department or agency of the United States.
3 b. A commercial uniform service or commercial linen supply
4 facility.
5 c. A facility owned by the State or an agency or department of the
6 State.
7 (5) Dry-cleaning operations. – Cleaning of apparel and household fabrics
8 by using one or more dry-cleaning solvents instead of water.
9 (6) Dry-cleaning solvent. – Perchloroethylene, F-1,1,3 or 1,1,1
10 trichlorethane, a petroleum-based solvent, or another comparable
11 product used as a cleaning agent in a dry-cleaning operation.
12 (7) Fund. – The Dry-Cleaning Solvent Cleanup Fund.
13 (8) Impacted third party. – Any of the following:
14 a. A lessor of real property on which a dry-cleaning facility or
15 wholesale distribution facility is located,
16 b. A property owner who has suffered property damage caused by a
17 release from a dry-cleaning facility or wholesale distribution
18 facility,
19 c. The predecessor, successor, assignee, mortgagee, predecessor-in-
20 title, or successor-in-title of a person listed in subparts a. or b. of
21 this subdivision.
22 (9) Pollution and remediation legal liability insurance. – Property and
23 casualty insurance covering, at a minimum, those losses for which
24 reimbursement is authorized in G.S. 143-215.104H(b).
25 (10) Release. – Any spilling, pouring, overfilling, leaking, leaching,
26 emitting, discharging, or escaping of dry-cleaning solvents from a dry-
27 cleaning facility or wholesale distribution facility, or its associated
28 pipng, that impacts groundwater, surface water, or surface or
29 subsurface soils, but shall not include amounts less than quantities that
30 may be harmful as determined pursuant to G.S. 143-215.77A.
31 (11) Secretary. – Defined in G.S. 143-215.77.
32 (12) Wholesale distributor. – A person who operates a wholesale distribution
33 facility.
34 (13) Wholesale distribution facility. – A place of business located in this
35 State and engaged in the storage, distribution, or sale of dry-cleaning
36 solvents and supplies for use in dry-cleaning facilities.

37 **"§ 143-215.104C. Dry-Cleaning Solvent Cleanup Fund.**

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

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

1 (1) Dry-Cleaning solvent taxes collected under Article 5C of Chapter 105
2 of the General Statutes.
3 (2) Registration fees collected under G.S. 143-215.104E.
4 (3) Recoveries made pursuant to G.S. 143-215.104H(i).
5 (4) Gifts and grants made to the Fund.
6 (5) Revenue appropriated to the Fund by the General Assembly.
7 (c) Disbursements. – Revenue in the Fund cannot be disbursed unless the
8 Department has approved the disbursement. A claim filed against the Fund may be paid
9 only from revenue in the Fund and only for a site certified by the Commission. If the
10 amount of claims exceeds the amount of revenue in the Fund, the claims with the highest
11 priority must be paid before claims of lower priority are paid, and claims of equal priority
12 must be paid in the order in which they were determined until the revenue is exhausted.
13 The Department must administer this Part in a manner that ensures that no more than ten
14 percent (10%) of the amount of revenue credited to the Fund in a year is required to cover
15 the Department's costs of administration.

16 **"§ 143-215.104D. Duties and powers of the Commission.**

17 (a) The Commission has the following duties and powers:

- 18 (1) Develop assessment and remediation strategies for dry-cleaning solvent
19 release sites reimbursable pursuant to this Part, including presumptive
20 remedial responses.
21 (2) Establish a schedule of fees for assessment and remedial services
22 reimbursable under this Part.
23 (3) Accept or reject petitions from impacted third parties, from owners and
24 operators of dry-cleaning facilities or wholesale distribution facilities,
25 and from prior or current owners of abandoned dry-cleaning facility
26 sites for reimbursement of the costs of assessments or remedial
27 responses.
28 (4) Prioritize petitions for reimbursement. In establishing priorities for sites,
29 the Commission shall consider the degree of harm or risk to human
30 health and the environment and other factors the Commission finds
31 appropriate.
32 (5) Authorize payments from the Fund to a petitioner or its designee to
33 reimburse the cost of an assessment or remedial response.
34 (6) Adopt rules establishing minimum management practices for handling
35 of dry-cleaning facilities and wholesale distribution facilities. The rules
36 may:
37 a. Require that all perchloroethylene dry-cleaning machines
38 installed at a dry-cleaning facility meet air emission standards
39 that equal or exceed the standards that apply to comparable dry-
40 to-dry perchloroethylene dry-cleaning machines with integral
41 refrigerated condensation.

- 1 b. Limit or prohibit the discharge of dry-cleaning solvents into
2 sanitary sewers, septic systems, storm sewers, or other bodies of
3 water.
- 4 c. Require spill containment structures around dry-cleaning
5 machines, related equipment, solvent storage areas, and waste
6 solvent storage areas.
- 7 d. Require floor sealants for cleaning room areas, provided the
8 sealants are found by the Commission to be effective.
- 9 e. Require, by January 1, 2002, the use of improved solvent transfer
10 systems for delivery of solvents.
- 11 f. Require any solvent handling practices the Commission may find
12 necessary and appropriate for wholesale distribution sites.
- 13 (7) Implement a risk-based approach applicable to the assessment,
14 prioritization, and cleanup of releases at dry-cleaning facilities,
15 wholesale distribution facilities, and abandoned dry-cleaning facilities.
16 The rules shall address, at a minimum, the circumstances where site-
17 specific information should be considered, criteria for determining
18 acceptable cleanup levels, and the acceptable level or range of levels of
19 risk to human health and the environment. These rules may, without
20 limitation, require any person eligible for reimbursement under G.S.
21 143-215.104H to conduct assessments necessary for the Commission to
22 determine the degree of risk to human health and the environment that is
23 posed by a release from dry-cleaning facilities, wholesale distribution
24 facilities, and abandoned dry-cleaning facilities.
- 25 (8) Adopt rules in consultation with the Commissioner of Insurance
26 governing what shall constitute an uninsurable site for the purposes of
27 G.S. 143-215.104E(a)(3). The rules shall base the determination of
28 uninsurability on the availability of pollution and remediation legal
29 liability insurance at an annual premium amount that is not more than
30 two-and-one-half times the average annual premium for all pollution
31 and remediation legal liability insurance policies that are in force for
32 dry-cleaning facilities in this State and are reported to the Commission
33 pursuant to subdivision (9) of this subsection.
- 34 (9) Adopt rules in consultation with the Commissioner of Insurance
35 requiring insurance companies issuing pollution and remediation legal
36 liability insurance for dry-cleaning facilities in this State to report to the
37 Commission or the Commissioner of Insurance the number of such
38 policies held in force by the company in this State and the average
39 premium rate for the policies.
- 40 (10) Adopt other rules necessary to implement the provisions of this Part,
41 including rules governing:
- 42 a. Applications for reimbursement of assessment or remedial
43 response costs.

1 b. Standards for evaluating releases of dry-cleaning solvent at or
2 from affected dry-cleaning facilities, wholesale distribution
3 facilities, or abandoned dry-cleaning facilities and for
4 determining what, if any, response action is necessary for a
5 release.

6 c. Scheduling of assessment and remedial measures.

7 d. Withdrawal of the Commission's certification of a site.

8 e. Disbursement of revenue from the Fund for payment or
9 reimbursement of approved investigative or remedial response
10 costs.

11 f. Certification of completion of all necessary assessment and
12 remedial work, or alternatively, that no assessment or
13 remediation is necessary with respect to a site.

14 (11) Assess civil penalties under this Part.

15 (12) Perform remediations under this Part.

16 (13) Request the Attorney General to bring appropriate actions under this
17 Part.

18 (b) All rules and standards adopted by the Commission shall, to the maximum
19 extent practicable, be applicable to all dry-cleaning facilities, wholesale distribution
20 facilities, and abandoned dry-cleaning facilities in the State, and in any event shall be
21 cost-effective, reasonable and technically feasible.

22 (c) Unless otherwise provided in this Part, the Commission may delegate any of its
23 rights, duties, and responsibilities under this Part to the Department, except the power to
24 make a final agency decision in a contested case and the power to adopt rules.

25 **§ 143-215.104E. Registration of dry-cleaning facilities.**

26 (a) The owner or operator of each dry-cleaning facility and the owner or operator
27 of each wholesale distribution facility shall register with the Department before October 1
28 of each year on forms provided by the Department. The Department shall issue a
29 registration certificate to the owner or operator of each facility when the owner or
30 operator has done all of the following:

31 (1) Has paid the registration fee for the facility as required by subsection (c)
32 of this section.

33 (2) Certifies that the facility is in compliance with the best management
34 practices adopted by the Commission pursuant to G.S. 143-
35 215.104D(a)(6).

36 (3) Either has demonstrated financial responsibility by obtaining pollution
37 and remediation legal liability insurance with coverage limits not less
38 than one million dollars (\$1,000,000) from an insurance carrier
39 authorized to do business in this State, or, in lieu of obtaining pollution
40 and remediation legal liability insurance, has deposited with the
41 Commission securities or a third-party bond acceptable to the
42 Commission for the purpose of securing payment for pollution and
43 remediation of legal liability occurring during the registration period in

and amount not less than one million dollars (\$1,000,000), or in lieu of demonstrating financial responsibility has present evidence satisfactory to the Commission that the dry cleaning facility or the wholesale distribution facility is uninsurable.

(b) Current or prior owners or operators of abandoned dry-cleaning facility sites may register the site on which the facility was located as provided in subsection (a) of this section; provided, however, no certification or compliance with minimum management practices shall be required for abandoned dry-cleaning facility sites.

(c) The owner or operator of every dry-cleaning facility or wholesale distribution facility shall pay an annual registration fee based on the average number of full-time employees, or their equivalent, during the preceding calendar year and on whether the facility has demonstrated financial responsibility pursuant to subdivision (3) of subsection (a) of this section as follows:

<u>Type of Facility</u>	<u>Financial</u>	<u>No Financial</u>
	<u>Responsibility</u>	<u>Responsibility</u>
<u>Dry-cleaning facilities with five or fewer full-time employees</u>	<u>\$250.00</u>	<u>\$2,250</u>
<u>Dry-cleaning facilities with more than five but 10 or fewer full-time employees</u>	<u>\$500.00</u>	<u>\$2,500</u>
<u>Dry-cleaning facilities with more than 10 full-time employees</u>	<u>\$750.00</u>	<u>\$2,750</u>
<u>Wholesale distribution facilities</u>	<u>\$750.00</u>	<u>\$2,750.</u>

A current or prior owner of an abandoned dry-cleaning facility site who elects to register the site shall pay a one-time registration fee of two hundred dollars (\$200.00) upon initial registration of the site.

(d) At least 30 days before payment of a registration fee is due, the Department shall attempt to furnish each dry-cleaning facility, each wholesale distribution facility, and each current or prior owner or operator of an abandoned dry-cleaning facility site in the State with forms necessary for registration pursuant to this Part.

"§ 143-215.104G. Certification of facilities and sites.

(a) If a release is discovered at a dry-cleaning facility, a wholesale distribution facility, or an abandoned dry-cleaning facility site, the owner or operator of the dry-cleaning facility or wholesale distribution facility, or the current owner of the abandoned dry-cleaning facility site, may petition the Commission to certify the facility or site.

(b) Any request for certification of a facility or site shall be accompanied by the petitioning party's written acceptance of responsibility for incurring response costs per occurrence for the site named in the petition according to the following schedule:

<u>Type</u>	<u>of</u>	<u>Facility</u>
	<u>Costs</u>	
<u>Dry-cleaning facilities with fewer than five full time employees or the equivalent during the preceding calendar year</u>	<u>\$5,000</u>	

1 Dry-cleaning facilities with more than
2 five but fewer than 10 full-time employees
3 or their equivalent during the preceding
4 calendar year \$10,000

5 Dry-cleaning facilities with more
6 than 10 full-time employees or their
7 equivalent during the preceding
8 calendar year \$15,000

9 Wholesale distribution facilities \$25,000

10 Abandoned dry-cleaning facilities \$25,000.

11 (c) If it determines that the party petitioning for certification of a facility or site
12 has complied with all the applicable requirements of this Part, the Commission shall
13 accept the party's petition for certification, inform the party of its decision, and inform the
14 party of the priority ranking of the site.

15 (d) The Commission shall reject a petition in any of the following circumstances:

16 (1) The petitioner willfully failed to comply with minimum management
17 practices adopted by the Commission pursuant to G.S. 143-
18 215.104D(a)(6).

19 (2) The petitioner owed delinquent taxes under Article 5C of Chapter 105
20 of the General Statutes when the release was discovered.

21 (3) The petitioner owed delinquent registration fees when the release was
22 discovered.

23 (4) The petitioner had failed to demonstrate, as provided in G.S. 143-
24 215.104E(a)(3), either financial responsibility or that the dry-cleaning
25 facility or the wholesale distribution facility named in the petition was
26 uninsurable.

27 (5) The petitioner willfully falsified any information in its petition.

28 (e) The rejection of any petition pursuant to subsection (d) of this section shall not
29 affect the rights of any other petitioner under this Part.

30 (f) The Commission may withdraw its certification of a facility or site if it
31 determines the petitioner is, at any time subsequent to the acceptance of the petition, in
32 willful violation of any of the minimum management requirements adopted by the
33 Commission pursuant to G.S. 143-215.104D(a)(6). Prior to withdrawing its acceptance
34 of any petition, the Commission shall give the petitioner notice and opportunity for
35 hearing. The withdrawal of the Commission's acceptance of any petition pursuant to this
36 subsection shall not affect the rights of any other petitioner under this Part.

37 **"§ 143-215.104H. Assessment and remediation.**

38 (a) The owner or operator of a certified dry-cleaning facility or a certified
39 wholesale distribution facility, the current owner of a certified abandoned dry-cleaning
40 facility site, or an impacted third party affected by a certified facility or site may seek
41 reimbursement from the Fund for response costs incurred in connection with a release at
42 the facility or site.

1 (b) The Commission may authorize reimbursement for the following response
2 costs at any certified facility or site:

3 (1) Costs of assessment of releases occurring at a dry-cleaning facility,
4 abandoned dry-cleaning facility, or wholesale distribution facility.

5 (2) Costs of treatment or replacement of potable water supplies
6 contaminated as a result of a release occurring at a dry-cleaning facility,
7 abandoned dry-cleaning facility, or wholesale distribution facility.

8 (3) Costs of remediation of affected soil, groundwater, and surface waters.

9 (4) Monitoring of contamination that results from a release occurring at a
10 dry-cleaning facility, abandoned dry-cleaning facility, and wholesale
11 distribution facility.

12 (5) Inspection and supervision of activities described in this subsection.

13 (6) Reasonable costs of restoring property as nearly as practicable to the
14 conditions that existed prior to activities associated with assessment and
15 remediation conducted pursuant to this Part.

16 (7) Other activities reasonably required to protect human health and the
17 environment.

18 (c) The Commission shall not authorize any reimbursement from the Fund for
19 response costs that can be paid from funds available through the financial responsibility
20 demonstrated by the owner or operator of the facility or site pursuant to G.S. 143-
21 215.104E.

22 (d) The Commission shall not authorize the disbursement of moneys from the
23 Fund except as required based on a risk assessment.

24 (e) The Commission shall not authorize the disbursement of moneys from the
25 Fund in an amount in excess of two hundred thousand dollars (\$200,000) per year for
26 releases from any individual dry-cleaning facility or wholesale distribution facility;
27 provided, however, that the Commission may authorize the disbursement of up to four
28 hundred thousand dollars (\$400,000) per year for releases from any individual dry-
29 cleaning facility or wholesale distribution facility that pose an imminent and substantial
30 threat to human health or the environment.

31 (f) The Commission shall not authorize any distribution of moneys from the Fund
32 that would result in a diminution of the Fund balance below one hundred thousand dollars
33 (\$100,000), unless an emergency exists at a dry-cleaning facility, abandoned dry-cleaning
34 facility, or wholesale distribution facility that constitutes an imminent and substantial
35 threat to human health or the environment. The Commission may not delegate its power
36 to approve these disbursements.

37 (g) The Commission shall not authorize distribution of moneys from the Fund for
38 any of the following:

39 (1) Sites that are contaminated by solvents normally used in dry-cleaning
40 operations where the contamination at the site did not result from dry-
41 cleaning operations or the operation of a wholesale distribution facility.

42 (2) Sites that are contaminated by a release that results from dry-cleaning
43 solvents being transported to or from a dry-cleaning facility or

1 wholesale distribution facility, but are not sites on which dry-cleaning
2 facilities, wholesale distribution facilities, or abandoned dry-cleaning
3 facilities are located.

4 (3) Any dry-cleaning facility that has been identified by the United States
5 Environmental Protection Agency as a federal superfund site pursuant to
6 40 Code of Federal Regulations, Part 300, except that the Commission
7 may authorize distribution of the required State match up to two
8 hundred thousand dollars (\$200,000) per year per site.

9 (h) The Commission may not delegate its power to authorize distribution of the
10 required State match as provided by subdivision (3) of subsection (f) of this section.

11 (i) The Commission shall not authorize any distribution of moneys from the Fund
12 which would result in remediation beyond the level required under the Commission's
13 risk-based criteria for determining the appropriate level of remediation.

14 (j) In the event the owner or operator of a dry-cleaning facility or wholesale
15 distribution facility or the current owner of an abandoned dry-cleaning facility site cannot
16 be identified or located or fails to comply with all the applicable requirements of this
17 Part, the Commission may use staff, equipment, or materials under its control or provided
18 by other cooperating federal, State, or local agencies and may contract with any agent or
19 subcontractor it deems appropriate to develop and implement a remediation plan, to
20 provide interim alternative sources of drinking water to third parties, and shall pay the
21 costs resulting from any release. The cost of any of these actions shall be paid, to the
22 extent funds are available, from the Fund. The Department shall keep a record of all
23 expenses incurred for State personnel and for the use of the State's equipment and
24 materials and all other expenses of developing and implementing the remediation plan
25 and shall seek reimbursement through any legal means available. In the event that a civil
26 action is commenced to secure reimbursement, the Department may recover, in addition
27 to any amount due, the costs of the action, including reasonable attorneys' fees and
28 investigation expenses. Any moneys received or recovered as reimbursement shall be
29 paid into the Fund or other source from which the expenditures were made.

30 **"§ 143-215.104I. Risk assessment.**

31 (a) If the Commission determines that the degree of risk to human health or the
32 environment resulting from a release is acceptable in light of the criteria established
33 pursuant to G.S. 143-215.104D(1)(9), the Commission shall notify the owner or operator
34 of the release site that no cleanup, no further cleanup, or no further action is required in
35 connection with the release site.

36 (b) If the Commission determines that no cleanup or further action is required in
37 connection with a release site, the Department shall not pay or reimburse any costs
38 otherwise payable or reimbursable under this Part from the Fund, other than reasonable
39 and necessary to conduct the risk assessment required by this section; provided the
40 Commission may pay or reimburse costs that were either:

41 (1) Incurred prior to or as a result of notification of a determination by the
42 Commission that no cleanup, no further cleanup, or no action is
43 required.

- 1 (2) Incurred as a result of a later determination by the Commission that the
2 release poses a threat or potential threat to human health or the
3 environment as provided in subsection (d) of this section.

4 **"§ 143-215.104J. Enforcement procedures: civil penalties.**

5 (a) A civil penalty of not more than ten thousand dollars (\$10,000) may be
6 assessed by the Secretary against any person who:

- 7 (1) Fails to apply for or to secure registration of a dry-cleaning facility or a
8 wholesale distribution facility as required by this Part.
9 (2) Engages in dry-cleaning operations using dry-cleaning solvent for
10 which the appropriate transfer fee has not been paid.
11 (3) Transfers dry-cleaning solvent to a dry-cleaning facility or wholesale
12 distribution facility not registered pursuant to this Part.
13 (4) Otherwise violates any provision of this Part or rule adopted pursuant to
14 this Part.

15 (b) If any action or failure to act for which a penalty may be assessed under this
16 section is continuous, the Secretary may assess a penalty not to exceed ten thousand
17 dollars (\$10,000) per day for so long as the violation continues. A penalty for a
18 continuous violation shall not exceed two hundred thousand dollars (\$200,000) for each
19 period of 30 days during which the violation continues.

20 (c) In determining the amount of the penalty, the Secretary shall consider the
21 factors set out in G.S. 143B-282.1(b). The procedures set out in G.S. 143B-282.1 shall
22 apply to civil penalty assessments that are presented to the Commission for final agency
23 decision.

24 (d) The Secretary shall notify any person assessed a civil penalty for the
25 assessment and the specific reasons therefore by registered or certified mail, or by any
26 means authorized by G.S. 1A-1, Rule 4. Contested case petitions shall be filed pursuant
27 to G.S. 150B-23 within 30 days of receipt of the notice of assessment. The Secretary
28 shall make the final decision regarding assessment of a civil penalty under this section.

29 (e) Requests for remission of civil penalties shall be filed with the Secretary.
30 Remission requests shall not be considered unless made within 30 days of receipt of the
31 notice of assessment. Remission requests must be accompanied by a waiver of the right
32 to a contested case hearing pursuant to Chapter 150B and a stipulation of the facts on
33 which the assessment was based. Consistent with the limitations in G.S. 143B-282.1(c)
34 and (d), remission requests may be resolved by the Secretary and the violator. If the
35 Secretary and the violator are unable to resolve the request, the Secretary shall deliver the
36 remission request and the recommended action to the Committee on Civil Penalty
37 Remissions of the Environmental Management Commission appointed pursuant to G.S.
38 143B.282.1(c).

39 (f) If any civil penalty has not been paid within 30 days after notice of assessment
40 has been served on the violator, the Secretary shall request the Attorney General to
41 institute a civil action in the superior court of any county in which the violator resides, or
42 has his or its principal place of business to recover the amount of the assessment, unless
43 the violator contests the assessment as provided in subsection (d) of this section, or

1 requests remission of the assessment in whole or in part as provided in subsection (e) of
2 this section. If any civil penalty has not been paid within 30 days after the final agency
3 decision or order has been served on the violator, the Secretary shall request the Attorney
4 General to institute a civil action in the superior court of any county in which the violator
5 resides or has his or its principal place of business to recover the amount of the
6 assessment. Such civil actions must be filed within three years of the date the final
7 agency decision or court order was served on the violator.

8 **"§ 143-215.104K. Enforcement procedures; criminal penalties.**

9 (a) Any person who negligently commits any of the offenses set out in
10 subdivisions (1) through (4) of G.S. 143-215.104J(a) shall be guilty of a Class 2
11 misdemeanor which may include a fine not to exceed fifteen thousand dollars (\$15,000)
12 per day of violation, provided that such fine shall not exceed a cumulative total of two
13 hundred thousand dollars (\$200,000) for each period of 30 days during which a violation
14 continues.

15 (b) Any person who knowingly and willfully commits any of the offenses set out
16 in subdivisions (1) through (3) of G.S. 143-215.104J(a) shall be guilty of a Class I felony,
17 which may include a fine not to exceed one hundred thousand dollars (\$100,000) per day
18 of violation, provided that this fine shall not exceed a cumulative total of five hundred
19 thousand dollars (\$500,000) for each period of 30 days during which the violation
20 continues. For the purposes of this subsection, the phrase 'knowingly and willfully' shall
21 mean intentionally and consciously as the courts of this State, according to the principles
22 of common law, interpret the phrase in the light of reason and experience.

23 (c) (1) Any person who knowingly commits any of the offenses set
24 out in subdivision (4) of G.S. 143-215.104J(a) and who knows at that
25 time that he thereby places another person in imminent danger of
26 death or serious bodily injury shall be guilty of a Class C felony.

27 (2) For the purposes of this subsection, a person's state of mind is knowing
28 with respect to:

29 a. His conduct, if he is aware of the nature of his conduct.

30 b. An existing circumstance, if he is aware or believes that the
31 circumstance exists.

32 c. A result of his conduct, if he is aware or believes that his conduct
33 is substantially certain to cause danger of death or serious bodily
34 injury.

35 (3) Under this subsection, in determining whether a defendant who is a
36 natural person knew that his conduct placed another person in imminent
37 danger of death or serious bodily injury:

38 a. The person is responsible only for actual awareness or actual
39 belief that he possessed; and

40 b. Knowledge possessed by a person other than the defendant but
41 not by the defendant himself may not be attributed to the
42 defendant.

1 (4) It is an affirmative defense to a prosecution under this subsection that
2 the conduct charged was conduct consented to by the person endangered
3 and that the danger and conduct charged were reasonably foreseeable
4 hazards of an occupation, a business, or a profession; or of medical
5 treatment or medical or scientific experimentation conducted by
6 professionally approved methods and such other person had been made
7 aware of the risks involved prior to giving consent. The defendant may
8 establish an affirmative defense under this subdivision by a
9 preponderance of the evidence.

10 (d) No proceeding shall be brought or continued under this section for or on
11 account of a violation by any person who has previously been convicted of a federal
12 violation based upon the same set of facts.

13 (e) In proving the defendant's possession of actual knowledge, circumstantial
14 evidence may be used, including evidence that the defendant took affirmative steps to
15 shield himself from relevant information. Consistent with the principles of common law,
16 the subjective mental state of defendants may be inferred from their conduct.

17 (f) For the purposes of the felony provisions of this section, a person's state of
18 mind shall not be found 'knowingly and willfully' or 'knowingly' if the conduct that is the
19 subject of the prosecution is the result of any of the following occurrences or
20 circumstances:

21 (1) A natural disaster or other act of God which could not have been
22 prevented or avoided by the exercise of due care or foresight.

23 (2) An act of third parties other than agents, employees, contractors, or
24 subcontractors of the defendant.

25 (3) An act done in reliance on the written advice or emergency on-site
26 direction of an employee of the Department. In emergencies, oral
27 advice may be relied upon if written confirmation is delivered to the
28 employee as soon as practicable after receiving and relying on the
29 advice.

30 (4) An act causing no significant harm to the environment or risk to the
31 public health, safety, or welfare and done in compliance with other
32 conflicting environmental requirements or other constraints imposed in
33 writing by environmental agencies or officials after written notice is
34 delivered to all relevant agencies that the conflict exists and will cause a
35 violation of the identified standard.

36 (5) Violations causing no significant harm to the environment or risk to the
37 public health, safety, or welfare for which no enforcement action or civil
38 penalty could have been imposed under any written civil enforcement
39 guidelines in use by the Department at the time. This subdivision shall
40 not be construed to require the Department to develop or use written
41 civil enforcement guidelines.

42 (6) Occasional, inadvertent, short-term violations causing no significant
43 harm to the environment or risk to the public health, safety, or welfare.

1 If the violation occurs within 30 days of a prior violation or lasts for
2 more than 24 hours, it is not an occasional, short-term violation.

3 (g) All general defenses, affirmative defenses, and bars to prosecution that may
4 apply with respect to other criminal offenses under law may apply to prosecutions
5 brought under this section or other criminal statutes that refer to this section and shall be
6 determined by the courts of this State according to the principles of common law as they
7 may be applied in light of reason and experience. Concepts of justification and excuse
8 applicable under this section may be developed in light of reason and experience.

9 **"§ 143-215.104L. Enforcement procedures; injunctive relief.**

10 Whenever the Department has reasonable cause to believe that any person has
11 violated or is threatening to violate any of the provisions of this Part or rule implementing
12 this Part, the Department may, either before or after the institution of any other action or
13 proceeding authorized by this Part, request the Attorney General to institute a civil action
14 in the name of the State upon the relation of the Department for injunctive relief to
15 restrain the violation or threatened violation and for such other and further relief in the
16 premises as the court shall deem proper. The Attorney General may institute such action
17 in the superior court of the county in which the violation occurred or may occur or, in his
18 discretion, in the superior court of the county in which the person responsible for the
19 violation or threatened violation resides or has his or its principal place of business.
20 Upon a determination by the court that the alleged violation of the provisions of this Part
21 or the rules of the Commission has occurred or is threatened, the court shall grant the
22 relief necessary to prevent or abate the violation or threatened violation. Neither the
23 institution of the action nor any of the proceedings thereon shall relieve any part to such
24 proceedings from any penalty prescribed for violation of this Part.

25 **"§ 143-215.104M. Appeals.**

26 An owner or operator of a dry-cleaning facility or wholesale distribution facility, a
27 current or prior owner of an abandoned dry-cleaning facility site, or an impacted third
28 party who is dissatisfied with a decision of the Commission under this Part may
29 commence a contested case by filing a petition under G.S. 150B-23 within 60 days after
30 the Commission's decision. If no contested case is initiated within the allotted time
31 period, the Commission's decision shall be final and not subject to review. The
32 Commission shall make the final agency decision in contested cases initiated pursuant to
33 this section.

34 **"§ 143-215.104N. Preemption.**

35 (a) If a facility or site is certified by the Commission in accordance with G.S. 143-
36 215.104G, the remedies provided in this Part shall be the sole and exclusive remedies
37 available to any person seeking to either:

38 (1) Compel any assessment, monitoring, treatment, mitigation, replacement,
39 or remediation activities made necessary by the release of any dry-
40 cleaning solvent described in the petition.

41 (2) Recover damages to property or costs of assessment, monitoring,
42 treatment, mitigation, replacement, or remediation incurred in

1 connection with the release of dry-cleaning solvent described in the
2 petition.

3 (b) Nothing in this section shall preclude an action to compel the payment of
4 response costs with moneys obligated pursuant to G.S. 143-215.104E(a)(3) or G.S. 143-
5 215.104G(b).

6 **"§ 143-215.104O. Reporting requirements.**

7 (a) The Secretary shall present an annual report to the Environmental Review
8 Commission which shall include at least the following:

- 9 (1) A list of all releases or dry-cleaning solvent discovered in the State.
10 (2) A list of all cleanups requiring State funding through the Fund and a
11 comprehensive budget to complete such cleanups.
12 (3) A list of all dry-cleaning facilities and wholesale distribution facilities
13 certified by the Commission.
14 (4) A list of all cleanups of dry-cleaning solvent releases undertaken by
15 owners or operators of dry-cleaning facilities or wholesale distribution
16 facilities.
17 (5) A statement of receipts and disbursements for the Fund.
18 (6) A statement of all claims against the Fund, including claims paid,
19 claims denied, pending claims, anticipated claims, and any other
20 obligations.
21 (7) The adequacy of the Fund to carry out the purposes of this Part together
22 with any recommendations as to measures that may be necessary to
23 assure the continued solvency of the Fund.

24 (b) The annual reports required by this section shall be made by the Secretary on 1
25 June and 1 December of each year."

26 Section 2. Subchapter I of Chapter 105 of the General Statutes is amended by
27 adding a new Article to read:

28 **"ARTICLE 5C.**

29 **"DRY-CLEANING SOLVENT TAX.**

30 **"§ 105-187.30. Definitions.**

31 The definitions in G.S. 105-164.3 apply to this Article and the following definitions
32 apply to this Article:

- 33 (1) Dry-cleaning facility. – Defined in G.S. 143-215.104A.
34 (2) Dry-cleaning solvent. – Defined in G.S. 143-215.104A.

35 **"§ 105-187.31. Tax imposed.**

36 A privilege tax is imposed on a dry-cleaning solvent retailer at a flat rate for each
37 gallon of dry-cleaning solvent sold by the retailer to a dry-cleaning facility. An excise
38 tax is imposed on dry-cleaning solvent purchased outside the State for storage, use, or
39 consumption by a dry-cleaning facility in this State. The rate of the privilege tax and the
40 excise tax is four dollars and twenty-five cents (\$4.25) for each gallon of dry-cleaning
41 solvent that is chlorine-based and is eighty-five cents (85¢) for each gallon of dry-
42 cleaning solvent that is hydrocarbon-based. These taxes are in addition to all other taxes.

43 **"§ 105-187.32. Administration.**

The privilege tax this Article imposes on a dry-cleaning solvent retailer is an additional State sales tax and the excise tax this Article imposes on the storage, use, or consumption of dry-cleaning solvent by a dry-cleaning facility in this State is an additional State use tax. Except as otherwise provided in this Article, these taxes shall be collected and administered in the same manner as the State sales and use taxes imposed by Article 5 of this Chapter. As under Article 5 of this Chapter, the additional State sales tax paid when dry-cleaning solvent is sold at retail is a credit against the additional State use tax imposed on the storage, use, or consumption of the same dry-cleaning solvent.

"§ 105-187.33. Exemptions and refunds.

The exemptions in G.S. 105-164.13 do not apply to the taxes imposed by this Article. The refunds allowed in G.S. 105-164.14 do not apply to the taxes imposed by this Article.

"§ 105-187.34. Use of tax proceeds.

The Secretary must credit the taxes collected under this Article, less the Department of Revenue's allowance for administrative expenses, to the Dry-Cleaning Solvent Cleanup Fund. The Secretary may retain the Department's cost of collection, not to exceed two hundred twenty-five thousand dollars (\$225,000) a year, as reimbursement to the Department."

Section 3. This act constitutes a recent act of the General Assembly under G.S. 150B-21.3 and, accordingly, serves as a basis for the adoption of temporary rules.

Section 4. The statutes in Section 1 of this act become effective on the date specified in the following table:

<u>Statute</u>	<u>Effective Date</u>
143-215.104A	Ratification
143-215.104B	Ratification
143-215.104C	Ratification
143-215.104D	Ratification
143-215.104E	January 1, 1998
143-215.104F	January 1, 1998
143-215.104G	July 1, 1998
143-215.104H	July 1, 1998
143-215.104I	July 1, 1998
143-215.104J	January 1, 1998
143-215.104K	January 1, 1998
143-215.104L	January 1, 1998
143-215.104M	July 1, 1998
143-215.104N	July 1, 1997
143-215.104O	January 1, 1998

Reimbursements authorized under this act shall be available for eligible expenses incurred by petitioners after 1 January 1998, provided that any funds expended by a petitioner for assessment or remediation of a site prior to 1 January 1998 shall be credited by the Commission toward the applicant's required financial contribution to the cost of assessment or remedial actions at the site.

1 The remaining sections of this act become effective July 1, 1997.
2 Section 5. G.S. 143-215.104E, 143-215.104F, and 143-215.104M are repealed
3 effective 1 January 2010. The remaining sections in Part 6 of Article 21A of Chapter 143
4 of the General Statutes are repealed effective 1 January 2012; provided, however, that
5 G.S. 143-215.104N is not repealed to the extent that it applies to liability arising from
6 releases on any sites for which a petition has been accepted by the Commission pursuant
7 to G.S. 143-215.104G and regarding which the Commission has determined in writing
8 that no further assessment or remediation of the release is required to adequately protect
9 the public health and environment; and provided further that the Commission shall
10 continue to be authorized to adopt rules described in G.S. 143-215.104D(a)(6) and to
11 enforce the rules in accordance with the provisions of G.S. 143-215.104J, 143-215.104K,
12 and 143-215.104L.