

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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HOUSE BILL 225*
Committee Substitute Favorable 5/22/97

Short Title: Dry-Cleaning Solvent Cleanup Act.

(Public)

Sponsors:

Referred to:

February 17, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE FOR CLEANUP OF DRY-CLEANING SOLVENT
3 CONTAMINATION, AS RECOMMENDED BY THE ENVIRONMENTAL
4 REVIEW COMMISSION.

5 The General Assembly of North Carolina enacts:

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

8 **“PART 6. DRY-CLEANING SOLVENT CLEANUP.**

9 **“§ 143-215.104A. Title.**

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

12 **“§ 143-215.104B. Definitions. – The following definitions apply in this Part:**

13 (1) Abandoned dry-cleaning facility site. – Any real property or individual
14 leasehold space on which a dry-cleaning facility formerly operated.

15 (2) Dry-cleaning facility. – A place of business located in this State and
16 engaged in on-site dry-cleaning operations, other than any of the
17 following:

18 a. A facility located on a United States military base or owned by
19 the United States or a department or agency of the United States.

- 1 b. A commercial uniform service or commercial linen supply
2 facility.
- 3 c. A facility owned by the State or an agency or department of the
4 State.
- 5 (3) Dry-cleaning operations. – Cleaning of apparel and household fabrics
6 by using one or more dry-cleaning solvents instead of water.
- 7 (4) Dry-cleaning solvent. – Perchloroethylene, F-1,1,3 or 1,1,1
8 trichloroethane, a petroleum-based solvent, or another comparable
9 product used as a cleaning agent in a dry-cleaning operation.
- 10 (5) Dry-cleaning solvent contamination. – The presence of dry-cleaning
11 solvent in the groundwater, surface water, or surface or subsurface soils
12 of the State, but not the presence of dry-cleaning solvent in amounts less
13 than quantities that may be harmful as determined pursuant to G.S. 143-
14 215.77A.
- 15 (6) Fund. – The Dry-Cleaning Solvent Cleanup Fund.
- 16 (7) Impacted party. – Any of the following:
- 17 a. A current or former lessor of real property on which a dry-
18 cleaning facility or wholesale distribution facility is or was
19 located during the term of the lease.
- 20 b. A property owner who has suffered property damage caused by
21 dry-cleaning solvent contamination resulting from a release at a
22 dry-cleaning facility or wholesale distribution facility.
- 23 c. The successor, assignee, mortgagee, or successor-in-title of a
24 person listed in sub-subdivisions a. or b. of this subdivision.
- 25 (8) Pollution and remediation legal liability insurance. – Property and
26 casualty insurance covering, at a minimum, those losses for which
27 reimbursement is authorized in G.S. 143-215.104H(b).
- 28 (9) Release. – Any spillage, leakage, pumping, placement, emptying, or
29 dumping of dry-cleaning solvents from a dry-cleaning facility or
30 wholesale distribution facility, or its associated piping, that results in or
31 contributes to dry-cleaning solvent contamination.
- 32 (10) Wholesale distributor. – A person who operates a wholesale distribution
33 facility.
- 34 (11) 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 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.

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

1 (1) Dry-cleaning solvent taxes collected under Article 5D of Chapter 105 of
2 the General Statutes.

3 (2) Recoveries made pursuant to G.S. 143-215.104H(j).

4 (3) Gifts and grants made to the Fund.

5 (c) Disbursements. – A claim filed against the Fund may be paid only from
6 revenue in the Fund and only for a site certified in accordance with this Part. If the
7 amount of claims exceeds the amount of revenue in the Fund, the claims with the highest
8 priority must be paid before claims of lower priority are paid, and claims of equal priority
9 must be paid in the order in which their priority was determined until the revenue is
10 exhausted. No more than fifteen percent (15%) of the amount of revenue credited to the
11 Fund in a year may be used to defray costs of administration of the program described in
12 this Part, including oversight of response activities.

13 **"§ 143-215.104D. Powers of the Commission.**

14 (a) Administrative functions. – The Commission may delegate the powers
15 enumerated in this subsection to the Department or engage a private contractor or
16 contractors to carry out the activities enumerated in this subsection. If the Commission
17 engages a private contractor to carry out the functions enumerated in subdivisions (1)
18 through (7) of this subsection, the actions of the contractor shall not be effective until
19 ratified by the Commission. The Commission shall:

20 (1) Accept petitions for certification under this Part.

21 (2) Prioritize certified dry-cleaning facilities, wholesale distribution
22 facilities, or abandoned dry-cleaning facility sites for reimbursement.

23 (3) Develop forms to be used by persons applying for reimbursement of
24 assessment or remediation costs.

25 (4) Schedule funding of assessment and remedial response activities.

26 (5) Determine whether assessment or remediation is necessary at a site.

27 (6) Determine that all necessary assessment and remediation has been
28 completed at a site.

29 (7) Make payments from the Fund to a petitioner or its designee to
30 reimburse the cost of assessment or remediation, provided, however,
31 that any such payments made by a private contractor engaged by the
32 Commission shall be authorized by the Commission prior to
33 disbursement to the petitioner or its designee.

34 (b) Rulemaking. – The Commission shall adopt such rules as are necessary to
35 implement the provisions of this Part. The Commission shall not delegate the rule-
36 making powers provided in this subsection.

37 (1) The Commission may adopt rules governing:

38 a. Fees for assessment and remedial services reimbursable under
39 this Part.

40 b. The certification and decertification of sites.

41 c. The prioritization of sites and scheduling of funding for
42 assessment and remedial response activities. These rules shall
43 provide for the consideration of the degree of harm or risk to

- 1 human health and the environment and other factors the
2 Commission finds appropriate.
- 3 d. The disbursement of revenue from the Fund for payment or
4 reimbursement of approved assessment or remedial responses
5 costs.
- 6 e. The determination whether assessment or remediation is
7 necessary at a site.
- 8 f. The determination that all necessary assessment and remediation
9 has been completed at a site.
- 10 (2) The Commission may adopt rules establishing minimum management
11 practices for handling of dry-cleaning solvent at dry-cleaning facilities
12 and wholesale distribution facilities. The rules may:
- 13 a. Require that all perchloroethylene dry-cleaning machines
14 installed at a dry-cleaning facility after the effective date of the
15 rule meet air emission standards that equal or exceed the
16 standards that apply to comparable dry-to-dry perchloroethylene
17 dry-cleaning machines with integral refrigerated condensation.
- 18 b. Prohibit the discharge of water that is contaminated with dry-
19 cleaning solvents into sanitary sewers, septic systems, storm
20 sewers, or other bodies of water.
- 21 c. Require spill containment structures around dry-cleaning
22 machines, filters, stills, vapor adsorbers, solvent storage areas,
23 and waste solvent storage areas.
- 24 d. Require floor sealants for cleaning room areas, provided that the
25 Commission finds the sealants to be effective.
- 26 e. Require, by 1 January 2002, the use of improved solvent transfer
27 systems for delivery of solvents.
- 28 f. Require any solvent handling practices the Commission may find
29 necessary and appropriate to minimize the risk of releases at
30 wholesale distribution sites.
- 31 (3) The Commission shall adopt rules establishing a risk-based approach
32 applicable to the assessment, prioritization, and cleanup of dry-cleaning
33 solvent contamination. The rules shall address, at a minimum:
- 34 a. Criteria and methods for determining cleanup requirements,
35 including the level of cleanup necessary to assure adequate
36 protection of human health and the environment.
- 37 b. The circumstances under which information specific to the dry-
38 cleaning solvent contamination site should be considered.
- 39 c. The circumstances under which restrictions on the future use of
40 any remediated dry-cleaning solvent contamination site should be
41 considered as a means of achieving and maintaining an adequate
42 level of protection for human health and the environment.

1 d. Strategies for the assessment and remediation of dry-cleaning
2 solvent release sites reimbursable pursuant to this Part, including
3 presumptive remedial responses sufficient to provide an adequate
4 level of protection as described under sub-subdivision a. of this
5 subdivision.

6 The rules may require any person eligible for reimbursement under G.S.
7 143-215.104H to conduct assessments necessary for the Commission to
8 determine the degree of risk to human health and the environment that is
9 posed by dry-cleaning facilities, wholesale distribution facilities, and
10 abandoned dry-cleaning facilities.

11 (4) The Commission shall adopt rules governing what shall constitute an
12 uninsurable site for the purposes of G.S. 143-215.104E(b). The rules
13 shall base the determination of uninsurability on the availability of
14 pollution and remediation legal liability insurance at an annual premium
15 amount that is affordable and proportionate to premium amounts
16 charged for coverage of facilities at which dry-cleaning solvent
17 contamination is not known to be present. The Commission shall
18 consult with the Commissioner of Insurance before adopting rules
19 pursuant to this subdivision.

20 (5) The Commission may adopt rules requiring insurance companies
21 issuing pollution and remediation legal liability insurance for dry-
22 cleaning facilities in the State to report to the Commission or the
23 Commissioner of Insurance the number of such policies held in force by
24 the company in the State and the average premium rate for the policies.
25 The Commission shall consult with the Commissioner of Insurance
26 before adopting rules pursuant to this subdivision.

27 (c) All rules and standards adopted by the Commission shall, to the maximum
28 extent practicable, be applicable to all dry-cleaning facilities, wholesale distribution
29 facilities, and abandoned dry-cleaning facilities in the State, and shall be cost-effective
30 and technically feasible.

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

33 **§ 143-215.104E. Requirement of financial responsibility for dry-cleaning facilities.**

34 (a) The owner or operator of any dry-cleaning facility operating in the State shall
35 establish financial responsibility for legal liability arising in connection with dry-cleaning
36 solvent contamination resulting from a release at the facility by either:

37 (1) Obtaining pollution and remediation legal liability insurance for the
38 facility with coverage limits not less than one million dollars
39 (\$1,000,000) from an insurance carrier authorized to do business in this
40 State, or

41 (2) Depositing with the Commission securities or a third-party bond
42 acceptable to the Commission in an amount not less than one million
43 dollars (\$1,000,000).

(b) If the owner or operator of a dry-cleaning facility demonstrates to the satisfaction of the Commission that the dry-cleaning facility is uninsurable, then the Commission shall issue a certificate of uninsurability to the operator of the facility. A dry-cleaning facility designated as uninsurable by the Commission shall be exempt from the requirements of subsection (a) of this section.

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

(a) If dry-cleaning solvent contamination is found to have resulted from a release at a dry-cleaning facility, a wholesale distribution facility, or an abandoned dry-cleaning facility site, a current or former owner or operator of the dry-cleaning facility or wholesale distribution facility, the owner of the property on which the dry-cleaning or wholesale distribution facility is located, or the 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 for the dry-cleaning solvent contamination described 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>	
<u>Dry-cleaning facilities with at least five but fewer than 10 full-time employees or their equivalent during the preceding calendar year</u>	<u>\$10,000</u>	
<u>Dry-cleaning facilities with 10 or more full-time employees or their equivalent during the preceding calendar year</u>	<u>\$15,000</u>	
<u>Wholesale distribution facilities</u>	<u>\$25,000</u>	
<u>Abandoned dry-cleaning facilities</u>	<u>\$50,000</u>	
<u>Uninsurable dry-cleaning facilities</u>	<u>\$50,000.</u>	

(c) Any request for certification of a dry-cleaning facility or wholesale distribution facility by a current owner or operator of the facility shall be accompanied by either evidence of financial responsibility established in accordance with G.S. 143-215.104E(a) or a copy of a certificate of uninsurability issued by the Commission pursuant to G.S. 143-215.104E(b).

(d) If it determines that the party petitioning for certification of a facility or site has complied with all the applicable requirements of this Part, the Commission shall certify the facility, inform the party of its decision, and inform the party of the priority ranking of the site.

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

- 1 (1) The petitioner is the owner or operator of a dry-cleaning facility or
2 wholesale distribution facility for which certification is sought and the
3 operator of the facility was not in compliance with minimum
4 management practices adopted by the Commission pursuant to G.S.
5 143-215.104D(b)(2) at the time the contamination was discovered.
- 6 (2) The petitioner is an owner or operator of a dry-cleaning facility or
7 wholesale distribution facility for which certification is sought and the
8 operator of the facility owed delinquent taxes under Article 5D of
9 Chapter 105 of the General Statutes when the dry-cleaning solvent
10 contamination was discovered.
- 11 (3) The petitioner is subject to the requirements of subsections (b) or (c) of
12 this section and fails to comply with the applicable provisions of those
13 subsections.
- 14 (4) The petitioner willfully falsified any information in its petition.
- 15 (f) The rejection of any petition pursuant to subsection (e) of this section shall not
16 affect the rights of any other petitioner under this Part.
- 17 (g) The Commission may decertify a facility or site if:
- 18 (1) The owner or operator of the facility on the site is, at any time
19 subsequent to the certification of the facility or site, in willful violation
20 of any of the minimum management requirements adopted by the
21 Commission pursuant to G.S. 143-215.104D(b)(2).
- 22 (2) In the case of dry-cleaning contamination on property that is owned by
23 the petitioner, the petitioner refuses to comply with a request by the
24 Commission to file a notice of dry-cleaning solvent remediation as
25 provided in G.S. 143-215.104G.
- 26 (3) The Commission is unable to reach an agreement authorized by
27 subsection (i) of this section.
- 28 (h) Prior to decertifying any facility or site, the Commission shall give the
29 petitioner notice and opportunity for hearing. The decertification of any site pursuant to
30 this subsection shall not affect the rights of any other petitioner under this Part.
- 31 (i) If at any time it should appear that response costs paid from the Fund for
32 assessment or remediation of a dry-cleaning contamination site will exceed one million
33 dollars (\$1,000,000), the Commission is authorized to enter into an agreement with the
34 petitioner or other interested parties whereby they make additional resources available,
35 restrict the future use of the property on which the dry-cleaning solvent contamination is
36 located in the manner provided in G.S. 143-215.104G, or otherwise demonstrate the
37 financial and technical means to ensure the safe use of the property in a way that is
38 adequately protective of human health and the environment. An agreement made
39 pursuant to this section may specify the desired results of risk assessment and
40 management activities to be carried out in addressing the dry-cleaning solvent
41 contamination; the nature of restrictions on the use of the property on which the dry-
42 cleaning solvent contamination is located; guidelines, including parameters, principles, or
43 policies within which the desired results are to be accomplished; resources that the parties

1 will make available under the agreement; the standards of performance and time or times
2 of evaluation of any risk assessment or management measures required under the
3 agreement; and the consequences that will occur as a result of achieving or not achieving
4 the desired results. No agreement made pursuant to this subsection shall require
5 assessment or remediation measures in excess of those specified in rules adopted by the
6 Commission pursuant to G.S. 143-215.104D(b)(3).

7 **"§ 143-215.104G. Dry-Cleaning Solvent Remediation Notice; land-use restrictions**
8 **in deeds.**

9 (a) The owner of property upon which dry-cleaning solvent contamination has
10 been discovered may prepare a Dry-Cleaning Solvent Remediation Notice identifying the
11 site on which the contamination has been discovered and providing for current or future
12 restrictions on the use of the property.

13 (b) A Dry-Cleaning Solvent Remediation Notice shall include:

14 (1) A survey plat of the site that has been prepared and certified by a
15 professional land surveyor and that meets the requirements of G.S. 47-
16 30.

17 (2) A legal description of the property that would be sufficient as a
18 description in an instrument of conveyance.

19 (3) A description of the location and dimensions of the areas of potential
20 environmental concern with respect to permanently surveyed
21 benchmarks.

22 (4) The location and quantity of dry-cleaning solvent known to exist on the
23 property.

24 (5) Any restrictions on the current or future use of the property that are
25 necessary to assure adequate protection of human health and the
26 environment as provided in rules adopted pursuant to G.S. 143-
27 215.104D(b)(3).

28 (c) A certified copy of a Dry-Cleaning Solvent Remediation Notice shall be filed
29 in the office of the register of deeds of the county or counties in which the property
30 described is located. The register of deeds shall record the certified copy of the Dry-
31 Cleaning Solvent Remediation Notice and index it in the grantor index under the names
32 of the owners of the land.

33 (d) When property for which a Dry-Cleaning Solvent Remediation Notice has
34 been filed is sold, leased, conveyed, or transferred, the deed or other instrument of
35 transfer shall contain in the description section, in no smaller type than that used in the
36 body of the deed or instrument, a statement that the property has been contaminated with
37 dry-cleaning solvent and, if appropriate, cleaned up under this Part.

38 (e) A Dry-Cleaning Solvent Remediation Notice filed pursuant to this Part may, at
39 the request of the owner of the property subject to the Dry-Cleaning Solvent Remediation
40 Notice, be cancelled by the Secretary after the risk to human health and the environment
41 associated with the dry-cleaning solvent contamination has been eliminated as a result of
42 remediation of the property. The Secretary shall forward notice of cancellation to the
43 register of deeds of the county or counties where the Dry-Cleaning Solvent Remediation

1 Notice is recorded and request that the Dry-Cleaning Solvent Remediation Notice be
2 cancelled. The notice of cancellation shall contain the names of the landowners as shown
3 in the Dry-Cleaning Solvent Remediation Notice. The register of deeds shall record the
4 notice of cancellation in the deed books and index it on the grantor index in the name of
5 the landowner as shown in the Dry-Cleaning Solvent Remediation Notice and on the
6 grantee index in the name 'Secretary of Environment, Health, and Natural Resources'.
7 The register of deeds shall make a marginal entry on the Dry-Cleaning Solvent
8 Remediation Notice showing the date of cancellation and the book and page where the
9 notice of cancellation is recorded, and the register of deeds shall sign the entry. If a
10 marginal entry is impracticable because of the method used to record maps and plats, the
11 register of deeds shall not be required to make a marginal entry.

12 (f) Any restriction on the current or future use of property subject to a Dry-
13 Cleaning Solvent Remediation Notice filed pursuant to this section shall be enforced by
14 any owner of the property or by any other responsible party. Restrictions also may be
15 enforced by the Department or any unit of local government having jurisdiction over any
16 part of the property. A restriction shall not be declared unenforceable due to lack of
17 privity of estate or contract, due to lack of benefit to particular land, or due to lack of
18 privity of any property interest in particular land.

19 (g) This section shall apply in lieu of the provisions of G.S. 130A-310.8 for
20 properties remediated under this Part.

21 **"§ 143-215.104H. Assessment and remediation.**

22 (a) The owner or operator of a certified dry-cleaning facility or a certified
23 wholesale distribution facility, the current owner of a certified abandoned dry-cleaning
24 facility site, or an impacted party affected by a certified facility or site may seek
25 reimbursement from the Fund for response costs incurred in connection with dry-cleaning
26 solvent contamination found to have resulted from a release at the facility or site.

27 (b) The Commission may authorize reimbursement for the following response
28 costs incurred in connection with dry-cleaning solvent contamination found to have
29 resulted from a release at any certified facility or site:

- 30 (1) Costs of assessment or risk assessment with respect to dry-cleaning
31 solvent contamination.
- 32 (2) Costs of treatment or replacement of potable water supplies affected by
33 the contamination.
- 34 (3) Costs of remediation of affected soil, groundwater, and surface waters.
- 35 (4) Monitoring of the contamination.
- 36 (5) Inspection and supervision of activities described in this subsection.
- 37 (6) Reasonable costs of restoring property as nearly as practicable to the
38 conditions that existed prior to activities associated with assessment and
39 remediation conducted pursuant to this Part.
- 40 (7) Other activities reasonably required to protect human health and the
41 environment.

42 (c) The Commission shall not authorize any reimbursement from the Fund for
43 response costs that can be paid from funds available through the financial responsibility

1 demonstrated by the owner or operator of the facility or site pursuant to G.S. 143-
2 215.104E or by a petitioner pursuant to G.S. 143-215.104F(b).

3 (d) The Commission shall not authorize the disbursement of moneys from the
4 Fund in an amount in excess of two hundred thousand dollars (\$200,000) per year for
5 response costs incurred in connection with any individual facility or site certified
6 pursuant to G.S. 143-215.104; provided, however, that the Commission may authorize
7 the disbursement of up to four hundred thousand dollars (\$400,000) per year for response
8 costs incurred in connection with dry-cleaning solvent contamination that poses an
9 imminent and substantial threat to human health or the environment.

10 (e) The Commission shall not authorize the disbursement of moneys from the
11 Fund that would result in a diminution of the Fund balance below one hundred thousand
12 dollars (\$100,000), unless an emergency exists in connection with dry-cleaning solvent
13 contamination that constitutes an imminent and substantial threat to human health or the
14 environment.

15 (f) The Commission shall not authorize distribution of moneys from the Fund for
16 any of the following:

17 (1) Dry-cleaning solvent contamination that did not result from dry-
18 cleaning operations or the operation of a wholesale distribution facility.

19 (2) Any dry-cleaning solvent contamination that has been identified by the
20 United States Environmental Protection Agency as a federal Superfund
21 site pursuant to 40 Code of Federal Regulations, Part 300, except that
22 the Commission may authorize distribution of the required State match
23 up to two hundred thousand dollars (\$200,000) per year per site.

24 (g) The Commission may not delegate its power to authorize distribution of the
25 required State match as provided by subdivision (2) of subsection (f) of this section.

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

29 (i) The Department shall reimburse the response costs of eligible parties as they
30 are incurred.

31 (j) In the event the owner or operator of a dry-cleaning facility or wholesale
32 distribution facility or the current owner of an abandoned dry-cleaning facility site cannot
33 be identified or located or fails to comply with all the applicable requirements of this
34 Part, the Commission may direct the Department or a private contractor engaged by the
35 Commission to use staff, equipment, or materials under the control of the Department or
36 contractor or provided by other cooperating federal, State, or local agencies to develop
37 and implement a remediation plan for, or to provide interim alternative sources of
38 drinking water to, third parties affected by dry-cleaning solvent contamination resulting
39 from a release at a dry-cleaning facility, wholesale distribution facility, or abandoned dry-
40 cleaning facility site. The cost of any of these actions shall be paid, to the extent funds
41 are available, from the Fund. The Department or private contractor shall keep a record of
42 all expenses incurred for personnel and for the use of equipment and materials and all
43 other expenses of developing and implementing the remediation plan. The Commission

1 may request the Attorney General to commence a civil action to secure reimbursement of
2 costs incurred under this subsection. In the event a civil action is commenced, the
3 Commission may recover, in addition to any amount due, the costs of the action,
4 including reasonable attorneys' fees and investigation expenses. Any moneys received or
5 recovered as reimbursement shall be paid into the Fund or other source from which the
6 expenditures were made.

7 **"§ 143-215.104I. Risk assessment.**

8 (a) If the Commission determines that the degree of risk to human health or the
9 environment resulting from dry-cleaning solvent contamination otherwise subject to
10 assessment or remediation under this Part is acceptable in light of the criteria established
11 pursuant to G.S. 143-215.104D(b)(3), the Commission shall notify the owner or operator
12 of the site or facility responsible for the contamination that no cleanup, no further
13 cleanup, or no further action is required in connection with the contamination.

14 (b) If the Commission determines that no cleanup or further action is required in
15 connection with dry-cleaning solvent contamination otherwise subject to assessment or
16 remediation pursuant to this Part, the Commission shall not pay or reimburse any costs
17 otherwise payable or reimbursable under this Part from the Fund other than reasonable
18 and necessary to conduct the risk assessment required by this section, provided that the
19 Commission may pay or reimburse costs that were either:

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

23 (2) Incurred as a result of a later determination by the Commission that the
24 contamination poses a threat or potential threat to human health or the
25 environment.

26 **"§ 143-215.104J. Enforcement procedures; civil penalties.**

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

29 (1) Fails to establish responsibility for a dry-cleaning facility or a wholesale
30 distribution facility as required by this Part.

31 (2) Engages in dry-cleaning operations using dry-cleaning solvent for
32 which the appropriate transfer fee has not been paid.

33 (3) Transfers dry-cleaning solvent to a dry-cleaning facility or wholesale
34 distribution facility not registered pursuant to this Part.

35 (4) Fails to comply with rules adopted by the Commission pursuant to G.S.
36 143-214.104D(b)(2).

37 (5) Fails to file, submit, or make available, as the case may be, any
38 documents, data, or reports required by this Part.

39 (6) Violates or fails to act in accordance with the terms, conditions, or
40 requirements of any special order or other appropriate document issued
41 pursuant to G.S. 143-215.2.

- 1 (7) Falsifies or tampers with any recording or monitoring device or method
2 required to be operated or maintained under this Part, or rules
3 implementing this Part.
- 4 (8) Knowingly renders inaccurate any recording or monitoring device or
5 method required to be operated or maintained under this Part or rules
6 implementing this Part.
- 7 (9) Knowingly makes any false statement, representation, or certification in
8 any application, record, report, plan, or other document filed or required
9 to be maintained under this Part or rule implementing this Part.
- 10 (10) Knowingly makes a false statement of material fact in a rule-making
11 proceeding or contested case under this Part.
- 12 (11) Refuses access to the Commission or its duly designated representative
13 to any premises for purposes of conducting a lawful inspection provided
14 for in this Part or rule implementing 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 of the General Statutes and a
33 stipulation of the facts on which the assessment was based. Consistent with the
34 limitations in G.S. 143B-282.1(c) and (d), remission requests may be resolved by the
35 Secretary and the violator. If the Secretary and the violator are unable to resolve the
36 request, the Secretary shall deliver the remission request and the recommended action to
37 the Committee on Civil Penalty Remissions of the Environmental Management
38 Commission appointed pursuant to G.S. 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 the violator's principal place of business is located in order to recover the amount of the
43 assessment, unless the violator contests the assessment as provided in subsection (d) of

1 this section or requests remission of the assessment in whole or in part as provided in
2 subsection (e) of this section. If any civil penalty has not been paid within 30 days after
3 the final agency decision or order has been served on the violator, the Secretary shall
4 request the Attorney General to institute a civil action in the superior court of any county
5 in which the violator resides or the violator's principal place of business is located to
6 recover the amount of the assessment. Such civil actions must be filed within three years
7 of the date the final 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 (11) 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 (11) of G.S. 143-215.104J(a) shall be guilty of a Class I
17 felony, which may include a fine not to exceed one hundred thousand dollars (\$100,000)
18 per day of violation, provided that this fine shall not exceed a cumulative total of five
19 hundred thousand dollars (\$500,000) for each period of 30 days during which the
20 violation continues. For the purposes of this subsection, the phrase 'knowingly and
21 willfully' shall mean 'intentionally and consciously' as the courts of this State, according
22 to the principles of common law, interpret the phrase in the light of reason and
23 experience.

24 (c) (1) Any person who knowingly commits any of the offenses set
25 out in subdivisions (4) through (11) of G.S. 143-215.104J(a) and who
26 knows at that time that he thereby places another person in imminent
27 danger of death or serious bodily injury shall be guilty of a Class C
28 felony.

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

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

32 b. An existing circumstance, if he is aware or believes that the
33 circumstance exists.

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

37 (3) Under this subsection, the following should be considered in
38 determining whether a defendant who is a natural person knew that his
39 conduct placed another person in imminent danger of death or serious
40 bodily injury:

41 a. The person is responsible only for actual awareness or actual
42 belief that he possessed, and

1 b. Knowledge possessed by a person other than the defendant but
2 not by the defendant himself may not be attributed to the
3 defendant.

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

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

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

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

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

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

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

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

39 (5) Violations causing no significant harm to the environment or risk to the
40 public health, safety, or welfare for which no enforcement action or civil
41 penalty could have been imposed under any written civil enforcement
42 guidelines in use by the Department at the time. This subdivision shall

1 not be construed to require the Department to develop or use written
2 civil enforcement guidelines.

3 (6) Occasional, inadvertent, short-term violations causing no significant
4 harm to the environment or risk to the public health, safety, or welfare.
5 If the violation occurs within 30 days of a prior violation or lasts for
6 more than 24 hours, it is not an occasional, short-term violation.

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

13 **"§ 143-215.104L. Enforcement procedures; injunctive relief.**

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

29 **"§ 143-215.104M. Appeals.**

30 An owner or operator of a dry-cleaning facility or wholesale distribution facility, a
31 current or prior owner of an abandoned dry-cleaning facility site, or an impacted third
32 party who is dissatisfied with a decision of the Commission under G.S. 143-215.104F,
33 215.104G, 143-215.104H, or 143-215.104I may commence a contested case by filing a
34 petition under G.S. 150B-23 within 60 days after the Commission's decision. If no
35 contested case is initiated within the allotted time period, the Commission's decision shall
36 be final and not subject to review. The Commission shall make the final agency decision
37 in contested cases initiated pursuant to this section. The Commission shall not delegate
38 its authority to make a final agency decision pursuant to this section.

39 **"§ 143-215.104N. Preemption.**

40 (a) If a dry-cleaning facility, wholesale distribution facility, or abandoned dry-
41 cleaning facility site is certified by the Commission in accordance with G.S. 143-
42 215.104F, the remedies provided in this Part shall be the sole and exclusive remedies
43 available to any person seeking to either:

1 (2) Dry-cleaning solvent. – Defined in G.S. 143-215.104B.

2 **"§ 105-187.31. Tax imposed.**

3 A privilege tax is imposed on a dry-cleaning solvent retailer at a flat rate for each
4 gallon of dry-cleaning solvent sold by the retailer to a dry-cleaning facility. An excise
5 tax is imposed on dry-cleaning solvent purchased outside the State for storage, use, or
6 consumption by a dry-cleaning facility in this State. The rate of the privilege tax and the
7 excise tax is five dollars and eighty-five cents (\$5.85) for each gallon of dry-cleaning
8 solvent that is chlorine-based and eighty cents (80¢) for each gallon of dry-cleaning
9 solvent that is hydrocarbon-based. These taxes are in addition to all other taxes.

10 **"§ 105-187.32. Administration.**

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

19 **"§ 105-187.33. Exemptions and refunds.**

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

23 **"§ 105-187.34. Use of tax proceeds.**

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

29 Section 3. This act constitutes a recent act of the General Assembly within the
30 meaning of G.S. 150B-21.1. The Environmental Management Commission may adopt
31 temporary rules to implement this act.

32 Section 4. (a) The statutes in Sections 1 and 2 of this act become effective on the
33 date specified in the following table:

<u>Statute</u>	<u>Effective Date</u>
34 143-215.104A	When this act becomes law
35 143-215.104B	When this act becomes law
36 143-215.104C	When this act becomes law
37 143-215.104D	When this act becomes law
38 143-215.104E	1 January 1998
39 143-215.104F	1 January 2000
40 143-215.104G	1 January 2000
41 143-215.104H	1 January 2000
42 143-215.104I	1 January 2000

1	143-215.104J	1 January 1998
2	143-215.104K	1 January 1998
3	143-215.104L	1 January 1998
4	143-215.104M	1 January 2000
5	143-215.104N	1 January 2000
6	143-215.104O	1 January 1998
7	105-187.30	1 October 1997
8	105-187.31	1 October 1997
9	105-187.32	1 October 1997
10	105-187.33	1 October 1997
11	105-187.34	1 October 1997.

12 (b) The Secretary of Environment, Health, and Natural Resources shall make the
13 first annual report required under G.S. 143-215.104O on or before 1 October 1998.

14 (c) The Environmental Management Commission shall adopt rules and develop
15 forms, strategies, and other procedures required or authorized by subsections (1) and (3)
16 of G.S. 143-215.104D(b) on or before 1 January 2000.

17 (d) Reimbursements authorized under this act shall be available for eligible
18 expenses incurred by petitioners after 1 January 2000, provided that any funds expended
19 by a petitioner for assessment or remediation of a site prior to 1 January 2000 shall be
20 credited by the Commission toward the applicant's required financial contribution to the
21 cost of assessment or remedial actions at the site.

22 (e) The Commission shall establish a moratorium on administrative and
23 judicial actions by the Commission or the Department concerning dry-cleaning facilities,
24 wholesale distribution facilities, and abandoned dry-cleaning facility sites resulting from
25 the release of dry-cleaning solvents. The moratorium shall apply only to:

- 26 (1) Dry-cleaning facility sites abandoned as of the date this act becomes
27 law.
- 28 (2) Facilities for which financial responsibility has been demonstrated.
- 29 (3) Facilities found to be uninsurable pursuant to the provisions of G.S.
30 143-215.104E(b), provided the moratorium shall not apply to a facility
31 if dry-cleaning solvent contamination resulting from releases at the
32 facility is discovered after 1 January 1998.

33 (f) The moratorium shall not apply to administrative or judicial actions by the
34 Department that are required to address contamination of drinking water supplies
35 resulting from releases of dry-cleaning solvent at a dry-cleaning facility or wholesale
36 distribution facility. The moratorium established by this subsection shall begin on the
37 date this act becomes law and remain in effect until 1 January 2000.

38 Section 5. Section 2 of this act is repealed effective 1 January 2010. Section 1
39 of this act is repealed effective 1 January 2012, provided however, that G.S. 143-
40 215.104N is not repealed to the extent that it applies to liability arising from dry-cleaning
41 solvent contamination described in the certifications issued by the Environmental
42 Management Commission pursuant to G.S. 143-215.104F and regarding which the
43 Commission has determined in writing that no further assessment or remediation of the

1 contamination is required to adequately protect the public health and environment; and
2 provided further that the Commission shall continue to be authorized to adopt rules
3 described in G.S. 143-215.104D(b)(2) and to enforce the rules in accordance with the
4 provisions of G.S. 143-215.104J, 143-215.104K, and 143-215.104L.