GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1999

SESSION LAW 2000-19
HOUSE BILL 1326

AN ACT TO DESIGNATE THE STATE SALES TAX REVENUE FROM DRY-CLEANING AND LAUNDRY SERVICES TO THE DRY-CLEANING SOLVENT CLEANUP FUND; TO INCREASE THE STATE SALES TAX ON DRY-CLEANING SOLVENTS; TO AMEND THE DRY-CLEANING SOLVENT CLEANUP ACT OF 1997 TO REPEAL THE REQUIREMENT OF FINANCIAL RESPONSIBILITY FOR DRY-CLEANING FACILITIES AND WHOLESALE DRY-CLEANING SOLVENT DISTRIBUTION FACILITIES; TO ALLOW THE ENVIRONMENTAL MANAGEMENT COMMISSION TO ENTER INTO CONTRACTS WITH PRIVATE CONTRACTORS FOR ASSESSMENT AND REMEDIATION ACTIVITIES AT DRY-CLEANING FACILITIES AND WHOLESALE DRY-CLEANING SOLVENT DISTRIBUTION FACILITIES; TO DIRECT THE SECRETARY OF ENVIRONMENT AND NATURAL RESOURCES TO STUDY THE USE OF DRY-CLEANING SOLVENTS IN NORTH CAROLINA, AND TO MAKE OTHER CHANGES IN THE DRY-CLEANING SOLVENT CLEANUP ACT OF 1997.

The General Assembly of North Carolina enacts:

Section 1.1. Article 5 of Chapter 105 of the General Statutes is amended to add a new section to read:

"**§ 105-164.44E. Transfer to the Dry-Cleaning Solvent Cleanup Fund.**

At the end of each quarter, the Secretary must transfer to the Dry-Cleaning Solvent Cleanup Fund established under G.S. 143-215.104C an amount equal to fifteen percent (15%) of the net State sales and use taxes collected under G.S. 105-164.4(a)(4) during the previous fiscal year, as determined by the Secretary based on available data."

Section 1.2. G.S. 105-187.31 reads as rewritten:

"**§ 105-187.31. (Repealed effective January 1, 2010.) Tax imposed.**

A privilege tax is imposed on a dry-cleaning solvent retailer at a flat rate for each gallon of dry-cleaning solvent sold by the retailer to a dry-cleaning facility. An excise tax is imposed on dry-cleaning solvent purchased outside the State for storage, use, or consumption by a dry-cleaning facility in this State. The rate of the privilege tax and the excise tax is ~~five dollars and eighty-five cents ($5.85)~~ ten dollars ($10.00) for each gallon of dry-cleaning solvent that is chlorine-based and ~~eighty cents (80¢)~~ one dollar and thirty-five cents ($1.35) for each gallon of dry-cleaning solvent that is hydrocarbon-based. These taxes are in addition to all other taxes."

Section 1.3. G.S. 105-164.7 reads as rewritten:

"**§ 105-164.7. Sales tax part of purchase price.**

Every retailer ~~engaged in the business of selling or delivering or taking orders for the sale or delivery of tangible personal property for storage, use or consumption in this State~~ subject to the tax levied in G.S. 105-164.4 shall at the time of selling or delivering or taking an order for the sale or delivery of ~~said~~ taxable tangible personal property or a taxable service, or collecting the sales ~~price thereof or any part thereof,~~ price, add to the sales price ~~of such tangible personal property~~ the amount of ~~the~~ tax due. ~~on the sale thereof and when so added said~~ The tax ~~shall constitute~~ constitutes a part of ~~such~~ the purchase price, ~~shall be~~ is a debt from the purchaser to the retailer until ~~paid~~ paid, and ~~shall be~~ is recoverable at law in the same manner as other debts. ~~Said~~ The tax ~~shall~~ must be stated and charged separately from the sales ~~price and~~ price, shown separately on the retailer's sales ~~records~~ records, and ~~shall be~~ paid by the purchaser to the retailer as trustee for and on account of the ~~State and the~~ State. The retailer ~~shall be~~ is liable for the collection ~~thereof~~ of the tax and for its payment to the ~~Secretary and the~~ Secretary. The retailer's failure to charge to or collect ~~said~~ the tax from the purchaser ~~shall~~ does not affect ~~such~~ this liability. It is the ~~purpose and~~ intent of this Article that the tax ~~herein levied and imposed shall~~ be added to the sales price of tangible personal property and services when sold at retail and ~~thereby~~ be borne and passed on to the customer, instead of being borne by the retailer."

Section 2. G.S. 143-215.104C(b) reads as rewritten:

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

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

(2) Recoveries made pursuant to G.S. 143-215.104N and G.S. 143-215.104O.

(3) Gifts and grants made to the Fund.

(4) Revenues credited to the Fund under G.S. 105-164.44E."

Section 3. G.S. 143-215.104B(b)(20), 143-215.104E, 143-215.104F(b)(3), 143-215.104F(d)(3), 143-215.104F(g), 143-215.104J(a)(5), 143-215.104P(a)(1), and Section 3 of S.L. 1997-392 are repealed.

Section 4. G.S. 143-215.104F(f) reads as rewritten:

"(f) Financial Responsibility Requirements. – Each potentially responsible person who petitions the Commission to enter into a dry-cleaning solvent assessment agreement or dry-cleaning solvent remediation agreement shall accept written responsibility in the amount specified in this section for the assessment or remediation of the dry-cleaning solvent contamination identified in the petition. If two or more potentially responsible persons petition the Commission jointly, the requirements below shall be the aggregate requirements for the financial responsibility of all potentially responsible persons who are party to the petition. Unless an alternative arrangement is agreed to by co-petitioners, the financial responsibility requirements of this section shall be apportioned equally among the co-petitioners. ~~The requirements in this subsection shall be in addition to any insurance or other financial responsibility, including deductibles or retentions, established pursuant to G.S. 143-215.104E.~~ The financial responsibility required shall be as follows:

~~Facility or Abandoned Site Where Release Occurred Costs~~

~~Dry-cleaning facilities owned by persons who employ fewer than five full-time employees, or the equivalent, in activities related to dry-cleaning operations during the preceding calendar year $5,000~~

~~Dry-cleaning facilities owned by persons who employ at least five but fewer than 10 full-time employees, or the equivalent, in activities related to dry-cleaning operations during the preceding calendar year $10,000~~

~~Dry-cleaning facilities owned by persons who employ 10 or more full-time employees, or the equivalent, in activities related to dry-cleaning operations during the preceding calendar year $15,000~~

~~Wholesale distribution facilities $25,000~~

~~Abandoned dry-cleaning facility sites $50,000.~~

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

(2) For dry-cleaning facilities owned by persons who employ at least five but fewer than 10 full-time employees, or the equivalent, in activities related to dry-cleaning operations during the calendar year preceding the date of the petition, the first ten thousand dollars ($10,000) of the costs of assessment or remediation, two percent (2%) of the costs of assessment or remediation in excess of two hundred thousand dollars ($200,000) but not exceeding five hundred thousand dollars ($500,000), and one percent (1%) of the costs of assessment or remediation in excess of five hundred thousand dollars ($500,000) but not exceeding one million dollars ($1,000,000).

(3) For dry-cleaning facilities owned by persons who employ 10 or more full-time employees, or the equivalent, in activities related to dry-cleaning operations during the calendar year preceding the date of the petition, the first fifteen thousand dollars ($15,000) of the costs of assessment or remediation, three percent (3%) of the costs of assessment or remediation in excess of two hundred thousand dollars ($200,000) but not exceeding five hundred thousand dollars ($500,000), and one percent (1%) of the costs of assessment or

remediation in excess of five hundred thousand dollars ($500,000) but not exceeding one million dollars ($1,000,000).

(4) For wholesale distribution facilities and abandoned dry-cleaning facility sites, the first twenty-five thousand dollars ($25,000) of the costs of assessment or remediation, three percent (3%) of the costs of assessment or remediation in excess of two hundred thousand dollars ($200,000) but not exceeding five hundred thousand dollars ($500,000), and one percent (1%) of the costs of assessment or remediation in excess of five hundred thousand dollars ($500,000) but not exceeding one million dollars ($1,000,000)."

Section 5. G.S. 143-215.104C(c) reads as rewritten:

"(c) Disbursements. – A claim filed against the Fund may be paid only from monies in the Fund and only in accordance with the provisions of this Part. Any obligation to pay or reimburse claims against the Fund shall be expressly contingent upon availability of monies in the Fund. Neither the State nor any of its agencies shall have any obligation to pay or reimburse any costs for which monies are not available in the Fund. The provisions of this Part shall not constitute a contract, either express or implied, to pay or reimburse costs in excess of the monies available in the Fund. In making disbursements from the Fund, the Commission shall ~~pay the claims with the highest priority before claims of lower priority, and claims of equal priority in the order in which the facility or abandoned site was certified~~ obligate monies to facilities or abandoned sites with higher priority before facilities or abandoned sites of lower priority, and facilities or abandoned sites with equal priority in the order in which the facilities or abandoned sites were prioritized until the revenue is exhausted. Consistent with the provisions of this Part, the Commission may disburse monies from the Fund to abate imminent hazards caused by dry-cleaning solvent contamination at abandoned dry-cleaning facility sites that have not been certified. Up to twenty percent (20%) of the amount of revenue credited to the Fund in a year may be used to defray costs incurred by the Department and the Attorney General's Office in connection with administration of the program described in this Part, including oversight of response activities."

Section 5.1. Effective July 1, 2001, G.S. 143-215.104(C)(c), as amended by Section 5 of this act, reads as rewritten:

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

may disburse monies from the Fund to abate imminent hazards by dry-cleaning solvent contamination at abandoned dry-cleaning facility sites that have not been certified. Up to ~~twenty percent (20%)~~ forty percent (40%) of the amount of revenue credited to the Fund in a year may be used to defray costs incurred by the Department and the Attorney General's Office in connection with administration of the program described in this Part, including oversight of response activities."

Section 5.2. Effective July 1, 2002, G.S. 143-215.104C(c), as amended by Sections 5 and 5.1 of this act, reads as rewritten:

"(c) Disbursements. – A claim filed against the Fund may be paid only from monies in the Fund and only in accordance with the provisions of this Part. Any obligation to pay or reimburse claims against the Fund shall be expressly contingent upon availability of monies in the Fund. Neither the State nor any of its agencies shall have any obligation to pay or reimburse any costs for which monies are not available in the Fund. The provisions of this Part shall not constitute a contract, either express or implied, to pay or reimburse costs in excess of the monies available in the Fund. In making disbursements from the Fund, the Commission shall obligate monies to facilities or sites with higher priority before facilities or sites of lower priority, and facilities or sites with equal priority in the order in which the facilities or sites were prioritized until the revenue is exhausted. Consistent with the provisions of this Part, the Commission may disburse monies from the Fund to abate imminent hazards by dry-cleaning solvent contamination at abandoned dry-cleaning facility sites that have not been certified. Up to ~~forty percent (40%)~~ forty-five percent (45%) of the amount of revenue credited to the Fund in a year may be used to defray costs incurred by the Department and the Attorney General's Office in connection with administration of the program described in this Part, including oversight of response activities."

Section 5.3. Effective July 1, 2003, G.S. 143-215.104C(c), as amended by Sections 5, 5.1, and 5.2 of this act, reads as rewritten:

"(c) Disbursements. – A claim filed against the Fund may be paid only from monies in the Fund and only in accordance with the provisions of this Part. Any obligation to pay or reimburse claims against the Fund shall be expressly contingent upon availability of monies in the Fund. Neither the State nor any of its agencies shall have any obligation to pay or reimburse any costs for which monies are not available in the Fund. The provisions of this Part shall not constitute a contract, either express or implied, to pay or reimburse costs in excess of the monies available in the Fund. In making disbursements from the Fund, the Commission shall obligate monies to facilities or sites with higher priority before facilities or sites of lower priority, and facilities or sites with equal priority in the order in which the facilities or sites were prioritized until the revenue is exhausted. Consistent with the provisions of this Part, the Commission may disburse monies from the Fund to abate imminent hazards by dry-cleaning solvent contamination at abandoned dry-cleaning facility sites that have not been certified. Up to ~~forty-five percent (45%)~~ twenty percent (20%) of the amount of revenue credited to the Fund in a year may be used to defray costs incurred by the Department and the Attorney General's Office in connection with administration of the program described in this Part, including oversight of response activities."

Section 6. G.S. 143-215.104D(a) reads as rewritten:

"(a) Administrative Functions. – The Commission may delegate any or all of the powers enumerated in this subsection to the ~~Department or engage a private contractor or contractors to carry out the activities enumerated in this subsection. If the Commission engages a private contractor to carry out the functions enumerated in subdivisions (1) through (6) of this subsection, no action of the contractor shall be effective until ratified by the Commission.~~ Department. The Commission shall:

(1) Accept petitions for certification and petitions to enter into dry-cleaning solvent assessment agreements or remediation agreements under this Part.

(2) Prioritize certified dry-cleaning facilities, certified wholesale distribution facilities, or certified abandoned dry-cleaning facility sites for the initiation of assessment or remediation activities that are reimbursable from the Fund.

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

(4) Schedule funding of assessment and remediation activities.

(5) Determine whether assessment or remediation is necessary at a site at which dry-cleaning solvent contamination has occurred.

(5a) Enter into contracts with private contractors for assessment and remediation activities at certified dry-cleaning facilities, certified wholesale distribution facilities, and certified abandoned dry-cleaning facility sites.

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

(7) Make payments from the Fund to reimburse the costs of assessment and remediation. ~~Any payments made by a private contractor engaged by the Commission shall be authorized by the Commission prior to disbursement.~~"

Section 7. G.S. 143-215.104F, as amended by Sections 3 and 4 of this act, reads as rewritten:

"**§ 143-215.104F. (Repealed effective January 1, 2012) Requirements for certification, assessment agreements, and remediation agreements.**

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

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

(1) ~~Information necessary for the Commission to determine the priority ranking of~~ Any information that the petitioner possesses relating to the contamination at the facility or abandoned site described in the petition.

(2) Information necessary to demonstrate the person's ability to incur the response costs specified in subsection (f) of this section.

(4) Information necessary to demonstrate that the petitioner, and any parent, subsidiary, or other affiliate of the petitioner, has substantially complied with:

a. The terms of any dry-cleaning solvent assessment agreement, dry-cleaning solvent remediation agreement, brownfields agreement, or other similar agreement to which the petitioner or any parent, subsidiary, or other affiliate of the petitioner has been a party.

b. The requirements applicable to any remediation in which the petitioner has previously engaged.

c. Federal and State laws, regulations, and rules for the protection of the environment.

(5) Evidence demonstrating that a release of dry-cleaning solvent has occurred at the facility or abandoned site and that the release has resulted in dry-cleaning solvent contamination.

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

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

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

(1) The petitioner is an owner or operator of the facility described in the petition and the facility was not being operated in compliance with minimum management practices adopted by the Commission pursuant to G.S. 143-215.104D(b)(2) at the time the contamination was discovered.

(2) The petitioner is an owner or operator of the facility described in the petition and the petitioner owed delinquent taxes under Article 5D of Chapter 105 of the General Statutes at the time the dry-cleaning solvent contamination was discovered.

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

(1) The petitioner fails to provide the information required by subsection (b) of this section.

(2) The petitioner falsified any information in its petition that was material to the determination of the priority ranking, the nature, scope and

extent of contamination to be assessed or remediated, or the appropriate means to contain and remediate the contaminants.

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

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

(2) For dry-cleaning facilities owned by persons who employ at least five but fewer than 10 full-time employees, or the equivalent, in activities related to dry-cleaning operations during the calendar year preceding the date of the petition, the first ten thousand dollars ($10,000) of the costs of assessment or remediation, two percent (2%) of the costs of assessment or remediation in excess of two hundred thousand dollars ($200,000) but not exceeding five hundred thousand dollars ($500,000), and one percent (1%) of the costs of assessment or remediation in excess of five hundred thousand dollars ($500,000) but not exceeding one million dollars ($1,000,000).

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

(4) For wholesale distribution facilities and abandoned dry-cleaning facility sites, the first twenty-five thousands dollars ($25,000) of the costs of assessment or remediation, three percent (3%) of the costs of assessment or remediation in excess of two hundred thousand dollars

($200,000) but not exceeding five hundred thousand dollars ($500,000), and one percent (1%) of the costs of assessment or remediation in excess of five hundred thousand dollars ($500,000) but not exceeding one million dollars ($1,000,000)."

Section 8. G.S. 143-215.104G reads as rewritten:

"**§ 143-215.104G. (Effective January 1, 1999; repealed effective January 1, 2012) Certification of facilities and abandoned sites.**

(a) A potentially responsible party may petition the Commission to certify a facility or abandoned site where a release of dry-cleaning solvent ~~is believed to have~~ has occurred. The Commission shall certify the facility or abandoned site if the petitioner meets the applicable requirements of G.S. 143-215.104F. Upon its decision to certify a facility or abandoned site, the Commission shall inform the petitioner of its decision and of the initial priority ranking of the facility or site.

~~(b) The Commission may change the initial priority rankings of any facility or abandoned site as additional facilities or abandoned sites are certified if the Commission, in its sole discretion, determines that additional facilities or sites pose a higher degree of harm or risk to public health and the environment. However, the Commission shall not change the priority ranking of a facility or an abandoned site that is set in a dry-cleaning solvent remediation agreement.~~

(c) A potentially responsible party who petitions for certification of a facility or abandoned site shall provide the Commission with either of the following:

(1) A ~~proposed dry-cleaning solvent assessment agreement or dry-cleaning solvent remediation agreement or an indication~~ written statement of the petitioner's intent to enter into an assessment agreement or remediation agreement.

(2) A written statement of the petitioner's intent to conduct assessment and remediation activities pursuant to subsection (d) of this section.

(d) A person who has access to property that is contaminated by dry-cleaning solvent and who has successfully petitioned for certification of the facility or abandoned site from which the contamination is believed to have resulted may undertake assessment or remediation of dry-cleaning solvent contamination located on the property consistent with the standards established by the Commission pursuant to G.S. 143-215.104D(b)(3) without first entering into a dry-cleaning solvent assessment agreement or a dry-cleaning solvent remediation agreement. No assessment or remediation activities undertaken pursuant to this subsection shall rely on standards that require the creation of land-use restrictions. A person who undertakes assessment or remediation activities pursuant to this subsection shall provide the Commission prior written notice of the activity. Costs associated with assessment or remediation activities undertaken pursuant to this subsection shall not be eligible for reimbursement from the Fund.

(e) The rejection of any petition filed pursuant to this section shall not affect the rights of any other petitioner, other than any parent, subsidiary, or other affiliate of the petitioner, under this Part. The rejection of a petition or the decertification of a facility

or abandoned site may be the basis for rejection of a petition by any parent, subsidiary, or other affiliate of the petitioner for the facility or abandoned site."

Section 9. G.S. 143-215.104H reads as rewritten:

"**§ 143-215.104H. (Effective January 1, 1999; repealed effective January 1, 2012) Dry-Cleaning Solvent Assessment Agreements.**

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

(1) ~~Priority~~ The priority ranking assigned to the facility or site is consistent with the rules adopted ~~by the Commission or the adjusted priority ranking that the petitioner agrees to accept is consistent with the rules adopted~~ by the Commission.

(2) ~~Projected~~ The projected schedule for funding of assessment ~~activities, including reimbursements from the Fund~~ activities is adequate.

(3) ~~Assessment~~ The assessment activities to be undertaken with respect to the dry-cleaning solvent contamination and any other contamination at the contamination site are adequate.

(4) ~~Person~~ The person who will be responsible for implementation of the activities is capable and qualified to conduct the assessment.

(4a) The amount of funds already expended by the petitioner for assessment or remediation of dry-cleaning solvent contamination at the facility or abandoned site.

(5) ~~Petitioner~~ The petitioner has and will continue to have available the financial resources necessary to pay the costs of assessment activities and the share of response costs imposed on the petitioner by G.S. 143-215.104F.

(6) ~~Permits~~ The permits or other authorizations required to conduct the assessment activities and to lawfully dispose of any hazardous substances or wastes generated by the assessment activities have been or can be obtained.

(7) ~~Assessment~~ The assessment activities will not increase the existing level of public exposure to health or environmental hazards at the contamination site.

(8) ~~Costs~~ The costs to be incurred in connection with the assessment activities contemplated by the assessment agreement are reasonable and necessary.

(9) ~~Petitioner~~ The petitioner has obtained the consent of other property owners to enter into their property for the purpose of conducting assessment activities specified in the assessment agreement.

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

~~(1) Specify the date on which remediation will begin.~~

(1a) Require that the petitioner shall be liable to the Fund for an amount equal to the difference, if any, between the applicable amount for which the petitioner is responsible under G.S. 143-215.104F and the amount reasonably paid by the petitioner for assessment or remediation activities of the type specified in G.S. 143-215.104N(a)(1) through (7) and that are otherwise consistent with the requirements of this Part.

(2) Provide for the prompt reimbursement of response costs incurred in assessment activities that are found by the Commission to be consistent with the assessment agreement and this Part.

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

(1) The petitioner will not accept financial responsibility for the share of the response costs required by G.S. 143-215.104F.

(2) The petitioner will not accept responsibility for conducting, supervising, or otherwise undertaking assessment activities required by the Commission.

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

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

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

(f) If the Commission determines that no remediation or further action is required in connection with dry-cleaning solvent contamination otherwise subject to assessment or remediation pursuant to this Part and Article 9 of Chapter 130A, the

Commission shall not pay or reimburse any response costs otherwise payable or reimbursable under this Part from the Fund other than costs reasonable and necessary to conduct the risk assessment pursuant to this section and in compliance with a dry-cleaning solvent assessment agreement."

Section 10. G.S. 143-215.104I(a) reads as rewritten:

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

~~(1) The petitioner, and any parent, subsidiary, or other affiliate of the petitioner has substantially complied with:~~

~~a. The terms of any dry-cleaning solvent assessment agreement, dry-cleaning solvent remediation agreement, brownfields agreement, or other similar agreement to which the petitioner or any parent, subsidiary, or other affiliate of the petitioner has been a party.~~

~~b. The requirements applicable to any remediation in which the petitioner has previously engaged.~~

~~c. Federal and State laws, regulations, and rules for the protection of the environment.~~

(2) As a result of the remediation agreement, the contamination site will be suitable for the uses specified in the remediation agreement while fully protecting public health and the environment from dry-cleaning solvent contamination and any other contaminants included in the remediation agreement.

(3) There is a public benefit commensurate with the liability protection provided under this Part.

(4) The petitioner has or can obtain the financial, managerial, and technical means to fully implement the remediation agreement and assure the safe use of the contamination site.

(5) The petitioner has complied with or will comply with all applicable procedural requirements.

(6) The remediation agreement will not cause the Department to violate the terms and conditions under which the Department operates and administers remedial programs, including the programs established or operated pursuant to Article 9 of Chapter 130A of the General

Statutes, by delegation or similar authorization from the United States or its departments or agencies, including the United States Environmental Protection Agency.

(7) The priority ranking assigned to the facility or site is consistent with the rules adopted by the Commission or the ~~adjusted~~ priority ranking that the petitioner agrees to accept is consistent with the rules adopted by the Commission.

(8) The projected schedule for funding of remediation ~~activities, including reimbursements from the Fund.~~ activities.

(9) The petitioner will continue to have available the financial resources necessary to satisfy the share of response costs imposed on the petitioner by G.S. 143-215.104F.

(10) The expenditures eligible for reimbursement from the Fund and to be incurred in connection with the remediation agreement are reasonable and necessary.

(11) The consent of other property owners to enter into their property for purposes of conducting remediation activities specified in the remediation agreement."

Section 11. G.S. 143-215.104I(c)(6) reads as rewritten:

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

…

(6) The ~~final~~ priority ranking of the facility or abandoned site."

Section 12. G.S. 143-215.104N(a) reads as rewritten:

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

(1) Costs of assessment with respect to dry-cleaning solvent contamination.

(2) Costs of treatment or replacement of potable water supplies affected by the contamination.

(3) Costs of remediation of affected soil, groundwater, surface waters, bedrock or other rock formations, or buildings.

(4) Monitoring of the contamination.

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

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

(7) Other activities reasonably required to protect public health and the environment."

Section 13. G.S. 143-215.104I(g) reads as rewritten:

"(g) The terms and conditions of a dry-cleaning solvent remediation agreement concerned with dry-cleaning solvent contamination shall be guided by and consistent with the rules adopted by the Commission pursuant to G.S. 143-215.104D and the reimbursement authorities and limitations set out in this Part. A remediation agreement shall provide, subject to availability of monies in the Fund, for prompt reimbursement of response costs incurred in assessment or remediation activities that are found by the Commission to be consistent with the remediation agreement and this Part. A remediation agreement may provide that the Commission conduct assessment and remediation activities at the facility or abandoned site."

Section 14.(a) G.S. 143-215.104N(b)(3) reads as rewritten:

"(3) ~~For costs before funds available through the financial responsibility demonstrated by the owner or operator of the facility or abandoned site pursuant to G.S. 143-215.104E and~~ For costs incurred in connection with dry-cleaning solvent contamination from a facility or abandoned site for which funds obligated by petitioners pursuant to a dry-cleaning solvent assessment agreement or dry-cleaning solvent remediation agreement in accordance with G.S. 143-214.104F(f) are ~~exhausted.~~ overdue."

Section 14.(b) G.S. 143-215.104N(c) reads as rewritten:

"(c) The Commission shall not pay or reimburse any response costs arising from a dry-cleaning solvent assessment agreement or dry-cleaning solvent remediation agreement until the petitioners who are party to the agreement have ~~exhausted the financial resources made available under G.S. 143-215.104E and G.S. 143-215.104F.~~ paid all sums due under the agreement."

Section 15. G.S. 143-215.104O reads as rewritten:

"**§ 143-215.104O. (Repealed effective January 1, 2012) Remediation of uncertified sites.**

(a) In the event the owner or operator of a facility or the current owner of an abandoned site cannot be identified or located, unreasonably refuses to enter into either an assessment agreement or remediation agreement or cannot be made to comply with the provisions of an assessment agreement or remediation agreement between the petitioner and the Commission, the Commission may direct the Department or a private contractor engaged by the Commission to use staff, equipment, or materials under the control of the Department or contractor or provided by other cooperating federal, State, or local agencies to develop and implement a plan for abatement of an imminent hazard, or to provide interim alternative sources of drinking water to third parties affected by dry-cleaning solvent contamination resulting from a release at the facility or abandoned site. The cost of any of these actions shall be paid from the Fund. The Department or private contractor shall keep a record of all expenses incurred for personnel and for the use of equipment and materials and all other expenses of developing and implementing the remediation plan.

(b) The Commission shall request the Attorney General to commence a civil action to secure reimbursement of costs incurred under this ~~subsection.~~ section.

(c) In the event a civil action is commenced pursuant to this Part to recover monies paid from the Fund, the Commission may recover, in addition to any amount due, the costs of the action, including reasonable attorneys' fees and investigation expenses. Any monies received or recovered as reimbursement shall be paid into the Fund or other source from which the expenditures were made."

Section 16. G.S. 143-215.104S reads as rewritten:

"**§ 143-215.104S. (Repealed effective January 1, 2012) Appeals.**

Any person who is aggrieved by a decision of the Commission under G.S. 143-215.104E through G.S. 143-215.104O may commence a contested case by filing a petition under G.S. 150B-23 within 60 days after the Commission's decision. If no contested case is initiated within the allotted time period, the Commission's decision shall be final and not subject to review. The Commission shall make the final agency decision in contested cases initiated pursuant to this section. Notwithstanding the provisions of G.S. 6-19.1, no party seeking to compel remediation of dry-cleaning solvent contamination in excess of that required by a dry-cleaning solvent remediation agreement approved by the Commission shall be eligible to recover attorneys' fees. The Commission shall not delegate its authority to make a final agency decision pursuant to this section."

Section 17. Section 5 of S.L. 1997-392 reads as rewritten:

"Section 5. This act constitutes a recent act of the General Assembly within the meaning of G.S. 150B-21.1. The Environmental Management Commission may adopt temporary rules to implement this act until ~~1 January 1999.~~ 30 June 2001."

Section 18. Section 7 of S.L. 1997-392 reads as rewritten:

"Section 7. (a) Any person who undertakes assessment or remediation of dry-cleaning solvent contamination pursuant to ~~an~~ a notice of violation or enforcement action by the Department of ~~Environment, Health,~~ Environment and Natural Resources during the period beginning 1 October 1997 and ~~1 January 1999~~ ending 30 June 2001 may, on or after ~~1 January 1999~~ 30 June 2001 seek reimbursement from the Dry-Cleaning Solvent Cleanup Fund for any costs exceeding fifty thousand dollars ($50,000). The Commission shall reimburse costs if it finds that the costs incurred were (i) appropriately documented and reasonably necessary to assess or remediate the dry-cleaning solvent contamination; (ii) for any of the activities described in subdivisions (1) through (7) of G.S. 143-215.104N(a); (iii) not subject to any of the limitations in subdivisions (4) ~~or (5)~~ through (9) of G.S. 143-215.104N(b); (iv) not reimbursable from pollution and remediation legal liability insurance; and (v) required by a notice of violation or a specific order of the Department of ~~Environment, Health,~~ Environment and Natural Resources issued on or after 30 June 1996. No reimbursement may be paid pursuant to this section for dry-cleaning solvent contamination that did not result from operations at a dry-cleaning or wholesale distribution facility.

(b) Any person who, as of ~~1 January 1999,~~ 30 June 2001, is undertaking assessment or remediation of dry-cleaning solvent contamination shall be eligible to petition the Commission to enter into a dry-cleaning solvent assessment agreement or

dry-cleaning solvent remediation agreement with respect to the contamination. In calculating the required financial contribution of parties to any agreement, the Commission shall determine the reasonable cost of any necessary unreimbursed assessment or remediation activity undertaken by the parties with respect to the contamination site prior to ~~1 January 1999~~ 30 June 2001 and shall credit the amount toward any applicable financial responsibility limits established in G.S. 143-215.104F.

(c) Notwithstanding any other provision of this section, the total of all payments made pursuant to this section in a single fiscal year shall not exceed ten percent (10%) of the revenues credited to the Dry-Cleaning Solvent Cleanup Fund in the preceding fiscal year. The Commission may by rule establish a different cutoff date for assessment and remediation activities covered by this section."

Section 19. The Commission on Health Services shall adopt a rule that, notwithstanding any other rule, requires that a person who generates wastes at a dry-cleaning facility or wholesale distribution facility that contains the solvents perchloroethylene, F-1,1,3, or 1,1,1 trichloroethane to deliver the wastes to a facility that is legally authorized to manage or recycle hazardous wastes containing these solvents. The rule required by this section shall not apply to the disposal of wastewater generated from the dry-cleaning process, which shall be regulated as otherwise provided by law.

Section 20. If any section or provision of this act is declared unconstitutional or invalid by the courts, the unconstitutional or invalid section or provision does not affect the validity of this act as a whole or any part of this act other than the part declared to be unconstitutional or invalid.

Section 21. The Secretary of Environment and Natural Resources shall study dry-cleaning processes and equipment that are potential alternatives to the predominant dry-cleaning processes and equipment currently utilized. The Secretary shall be assisted in this study by a balanced working group of stakeholders that includes representatives of nonprofit conservation organizations, representatives of the dry-cleaning industry, manufacturers of dry-cleaning processes and equipment, manufacturers of dry-cleaning solvents, and researchers knowledgeable about garment cleaning and the dry-cleaning industry.

The study shall identify alternative dry-cleaning processes and equipment currently in use or under development, identify the historical trends in the use of these processes and equipment, and evaluate the benefits and costs of, and the feasibility of implementing and installing, these processes and equipment. In evaluating the alternative processes and equipment, the Secretary shall consider, at a minimum, the following factors:

(1) The environmental and public health impacts of the processes and equipment;

(2) The ability of the processes and equipment to clean a wide variety of natural and synthetic fabrics without damage;

(3) The ability of small business organizations to finance, own, and operate the processes and equipment; and

(4) The effect of widespread use of the processes and equipment on fire safety.

If the Secretary finds that there are significant potential obstacles to the implementation of beneficial alternative dry-cleaning processes and equipment, the Secretary shall recommend to the General Assembly specific regulatory and nonregulatory policy measures to promote the increased use of such alternative processes and equipment by the State's dry-cleaning industry. The Secretary shall submit an interim report no later than November 1, 2000, and a final report no later than September 1, 2001, to the Environmental Review Commission. These reports shall include the Secretary's findings and recommendations, including any legislative proposals.

Section 22. This act constitutes a recent act of the General Assembly within the meaning of G.S. 150B-21.1. The Environmental Management Commission and the Commission on Health Services may adopt temporary rules to implement the provisions of this act until 1 July 2001.

Section 23. Section 1.1 of this act becomes effective April 1, 2003, and expires June 30, 2010. Section 1.2 of this act becomes effective October 1, 2001, and expires January 1, 2010. Sections 3 and 4 of this act are effective on and after April 1, 1998. Section 5.1 of this act becomes effective July 1, 2001. Section 5.2 of this act becomes effective July 1, 2002. Section 5.3 of this act becomes effective July 1, 2003. All other sections of this act are effective when this act becomes law.

In the General Assembly read three times and ratified this the 19th day of June, 2000.

s/ Dennis A. Wicker
President of the Senate

s/ James B. Black
Speaker of the House of Representatives

s/ James B. Hunt, Jr.
Governor

Approved 1:53 p.m. this 26th day of June, 2000