

GENERAL ASSEMBLY OF NORTH CAROLINA
1989 SESSION

CHAPTER 656
SENATE BILL 977

AN ACT TO PROTECT NORTH CAROLINA COASTAL RESOURCES FROM
POTENTIAL ADVERSE IMPACTS OF OFFSHORE OIL AND GAS
ACTIVITIES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-215.77 reads as rewritten:

"§ 143-215.77. Definitions.

As used in this Article, unless the context otherwise requires:

- (1) 'Barrel' shall mean 42 U.S. gallons at 60 degrees Fahrenheit.
- (2) 'Commission' means the North Carolina Environmental Management Commission.
- (3) 'Secretary' shall mean the North Carolina Secretary of Natural Resources and Community Development.
- (4) 'Discharge' shall mean, but shall not be limited to, any emission, spillage, leakage, pumping, pouring, emptying, or dumping of oil or other hazardous substances into ~~waters,~~ waters of the State or into waters outside the territorial limits of the State which affect lands, waters or uses related thereto within the territorial limits of the State, or upon land in such proximity to waters that oil or other hazardous substances is reasonably likely to reach the waters, but shall not include amounts less than quantities which may be harmful to the public health or welfare as determined pursuant to G.S. 143-215.77A; provided, however, that this Article shall not be construed to prohibit the oiling of driveways, roads or streets for reduction of dust or routine maintenance; provided further, that the use of oil or other hazardous substances, oil-based products, or chemicals on the land or waters by any State, county, or municipal government agency in any program of mosquito or other pest control, or their use by any person in accepted agricultural, horticultural, or forestry practices, or in connection with aquatic weed control or structural pest and rodent control, in a manner approved by the State, county, or local agency charged with authority over such uses, shall not constitute a discharge; provided, further, that the use of a pesticide regulated by the North Carolina Pesticide Board in a manner consistent with the labelling required by the North Carolina Pesticide Law shall not constitute a 'discharge' for purposes of this Article. The word 'discharge' shall also include any discharge

upon land, whether or not in proximity to waters, which is intentional, knowing or willful.

- (5) 'Having control over oil or other hazardous substances' shall mean, but shall not be limited to, any person, using, transferring, storing, or transporting oil or other hazardous substances immediately prior to a discharge of such oil or other hazardous substances onto the land or into the waters of the State, and specifically shall include carriers and bailees of such oil or other hazardous substances.
- (5a) 'Hazardous substance' shall mean any substance, other than oil, which when discharged in any quantity may present an imminent and substantial danger to the public health or welfare, as designated pursuant to G.S. 143-215.77A.
- (6) Repealed by Session Laws 1979, c. 981, s. 5.
- (7) 'Department' shall mean the Department of Natural Resources and Community Development.
- (8) 'Oil' shall mean oil of any kind and in any form, including, but specifically not limited to, petroleum, crude oil, diesel oil, fuel oil, gasoline, lubrication oil, oil refuse, oil mixed with other waste, oil sludge, petroleum related products or by-products, and all other liquid hydrocarbons, regardless of specific gravity, whether singly or in combination with other substances.
- (9) 'Bailee' shall mean any person who accepts oil or other hazardous substances to hold in trust for another for a special purpose and for a limited period of time.
- (10) 'Carrier' shall mean any person who engages in the transportation of oil or other hazardous substances for compensation.
- (11) 'Oil terminal facility' shall mean any facility of any kind and related appurtenances located in, on or under the surface of any land, or water, including submerged lands, which is used or capable of being used for the purpose of transferring, transporting, storing, processing, or refining oil; but shall not include any facility having a storage capacity of less than 500 barrels, nor any retail gasoline dispensing operation serving the motoring public. A vessel shall be considered an oil terminal facility only in the event that it is utilized to transfer oil from another vessel to an oil terminal facility; or to transfer oil between one oil terminal facility and another oil terminal facility; or is used to store oil.
- (12) 'Operator' shall mean any person owning or operating an oil terminal facility or pipeline, whether by lease, contract, or any other form of agreement.
- (13) 'Person' shall mean any and all natural persons, firms, partnerships, associations, public or private institutions, municipalities or political subdivisions, governmental agencies, or private or public corporations

organized or existing under the laws of this State or any other state or country.

- (14) 'Pipeline' shall mean any conduit, pipe or system of pipes, and any appurtenances related thereto and used in conjunction therewith, used, or capable of being used, for transporting or transferring oil to, from, or between oil terminal facilities.
- (15) 'Restoration' or 'restore' shall mean any activity or project undertaken in the public interest or to protect public interest or to protect public property or to promote the public health, safety or welfare for the purpose of restoring any lands or waters affected by an oil or other hazardous substances discharge as nearly as is possible or desirable to the condition which existed prior to the discharge.
- (16) 'Transfer' shall mean the transportation, on-loading or off-loading of oil or other hazardous substances between or among two or more oil terminal facilities; between or among oil terminal facilities and vessels; and between or among two or more vessels.
- (17) 'Vessel' shall include every description of watercraft or other contrivance used, or capable of being used, as a means of transportation on water, whether self-propelled or otherwise, and shall include, but shall not be limited to, barges and tugs; provided that the term 'vessel' as used herein shall not apply to any pleasure, sport or commercial fishing vessel which has a fuel capacity of less than 500 gallons and is not used to transport petroleum, petroleum products, or general cargo.
- (18) 'Waters' shall mean any stream, river, creek, brook, run, canal, swamp, lake, sound, tidal estuary, bay, reservoir, ~~waterway~~waterway, wetlands, or any other body or accumulation of water, surface or underground, public or private, natural or artificial, which is contained within, flows through, or borders upon this State, or any portion thereof, including those portions of the Atlantic Ocean over which this State has jurisdiction."

Sec. 2. G.S. 143-215.84 reads as rewritten:

"§ 143-215.84. Removal of prohibited discharges.

(a) Person Discharging. – Any person having control over oil or other hazardous substances discharged in violation of this Article shall immediately undertake to collect and remove the discharge and to restore the area affected by the discharge as nearly as may be to the condition existing prior to the discharge. If it is not feasible to collect and remove the discharge, the person responsible shall take all practicable actions to contain, treat and disperse the discharge; but no chemicals or other dispersants or treatment materials which will be detrimental to the environment or natural resources shall be used for such purposes unless they shall have been previously approved by the Commission.

(b) Removal by Department. – Notwithstanding the requirements of subsection (a) of this section, the Department is authorized and empowered to utilize any staff,

equipment and materials under its control or supplied by other cooperating State or local agencies and to contract with any agent or contractor that it deems appropriate to take such actions as are necessary to collect, investigate, perform surveillance over, remove, contain, treat or disperse oil or other hazardous substances discharged onto the land or into the waters of the State and to perform any necessary restoration. The Secretary shall keep a record of all expenses incurred in carrying out any project or activity authorized under this section, including actual expenses incurred for services performed by the State's personnel and for use of the State's equipment and material. The authority granted by this subsection shall be limited to projects and activities that are designed to protect the public interest or public property, and shall be compatible with the National Contingency Plan established pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. section 1251 **et seq.**

~~(e) The Secretary of the Department of Transportation is authorized and empowered, after consultation with the Secretary [of Natural Resources and Community Development] to purchase and equip a sufficient number of trucks designed to carry out the provisions of subsection (b). These trucks shall be maintained by the Department of Transportation and shall be strategically located at various locations throughout the State so as to furnish a ready response when word of an oil or other hazardous substances discharge has been received. The Secretary [of the Department of Natural Resources and Community Development] or his designee will, after consultation, decide where the trucks are to be located.~~

~~(d) The Secretary of the Department of Transportation and the Secretary [of the Department of Natural Resources and Community Development] or their designees shall adopt rules for the placement of these trucks and shall determine the manner and way in which they are to be used. The Secretary [of the Department of Natural Resources and Community Development] shall reimburse the Department of Transportation for expenses incurred by the Department of Transportation during cleanups as provided in G.S. 143-215.88."~~

Sec. 3. G.S. 143-215.86 reads as rewritten:

"§ 143-215.86. Other State agencies and State-designated local agencies.

~~(a) Cooperative Effort. — The Board of Transportation, the North Carolina Wildlife Resources Commission, and any other agency of this State and any local agency designated by the State shall cooperate with and lend assistance to the Commission by assigning to the Commission upon its request personnel, equipment and material to be utilized in any project or activity related to the containment, collection, dispersal or removal of oil or other hazardous substances discharged upon the land or into the waters of this State.~~

~~(b) Planning. — Subsequent to May 16, 1973, and prior to September 1, 1973, The State Emergency Response Commission shall be responsible for developing a program, including training, for the waters of the State, including offshore marine waters, to enable the State to respond to an emergency oil or other hazardous substances spillage. In carrying out its duties under this section, designated representatives of the Commission, State Emergency Response Commission, the Board of Transportation, and the Wildlife Resources Commission—Commission, the Environmental Management~~

Commission, the Division of Marine Fisheries, the Outer Continental Shelf Lands Office of the Department of Administration, and any other agency or agencies of the State which the ~~Commission~~ State Emergency Response Commission shall deem necessary and appropriate, shall confer and establish plans and procedures for the assignment and utilization of personnel, equipment and material to be used in carrying out the purposes of this Part. Every State agency involved is authorized to adopt such rules as shall be necessary to effectuate the purposes of this section.

~~(e) Accounts. — Every State agency or other State-designated local agency participating in the containment, collection, dispersal or removal of an oil or other hazardous substances discharge or in restoration necessitated by such discharge, shall keep a record of all expenses incurred in carrying out any such project or activity including the actual services performed by the agency's personnel and the use of the agency's equipment and material. A copy of all records shall be delivered to the Commission upon completion of the project or activity.~~

(b) Cooperative Effort. — The Board of Transportation, the North Carolina Wildlife Resources Commission, the Division of Marine Fisheries, and any other agency of this State and any local agency designated by the State shall cooperate with and lend assistance to the Commission by assigning to the Commission upon its request personnel, equipment, and material to be utilized in any project or activity related to the containment, collection, dispersal, or removal of oil or other hazardous substances discharged upon the land or discharged into waters affecting this State.

(c) Trucks. — The Secretary of the Department of Transportation may, after consultation with the Secretary of Natural Resources and Community Development, purchase and equip a sufficient number of trucks designed to carry out the provisions of subsection (b) of this section. These trucks shall be maintained by the Department of Transportation and shall be strategically located at various locations throughout the State so as to furnish a ready response when word of an oil or other hazardous substances discharge has been received. The Secretary of the Department of Natural Resources and Community Development or his designee will, after consultation, decide where the trucks are to be located.

(d) Rules. — The Secretary of the Department of Transportation and the Secretary of the Department of Natural Resources and Community Development or their designees shall adopt rules for the placement of these trucks and shall determine the manner and way in which they are to be used. The Secretary of the Department of Natural Resources and Community Development shall reimburse the Department of Transportation for expenses incurred by the Department of Transportation during cleanups as provided in G.S. 143-215.88.

(e) Accounts. — Every State agency or other State-designated local agency participating in the containment, collection, dispersal, or removal of an oil or other hazardous substances discharge or in restoration necessitated by such discharge, shall keep a record of all expenses incurred in carrying out any such project or activity including the actual services performed by the agency's personnel and the use of the agency's personnel and the use of the agency's equipment and material. A copy of all

records shall be delivered to the Commission upon completion of the project or activity."

Sec. 4. G.S. 143-215.87 reads as rewritten:

"§ 143-215.87. Oil or Other Hazardous Substances Pollution Protection Fund.

There is hereby established under the control and direction of the Department an Oil or Other Hazardous Substances Pollution Protection Fund which shall be a nonlapsing, revolving fund consisting of any moneys appropriated for such purpose by the General Assembly or that shall be available to it from any other source. The moneys shall be used to defray the expenses of any project or program for the containment, collection, dispersal or removal of oil or other hazardous substances discharged to the land or waters of this ~~State~~State, or discharged into waters outside the territorial limits of the State which affect land and waters or related uses within the State, or for restoration necessitated by the discharge. In addition to any moneys that shall be appropriated or otherwise made available to it, the fund shall be maintained by fees, charges, penalties or other moneys paid to or recovered by or on behalf of the Department under the provisions of this Part. Any moneys paid to or recovered by or on behalf of the Department as fees, charges, penalties or other payments as damages authorized by this Part shall be paid to the Oil or Other Hazardous Substances Pollution Protection Fund in an amount equal to the sums expended from the fund for the project or activity. Within the meaning of this section, the word 'penalties' means civil penalties and does not include criminal fines or penalties."

Sec. 5. A new Part is added to Article 21A of Chapter 143 of the General Statutes to read as follows:

"Part 2B. Offshore Oil and Gas Activities.

"Adverse Environmental Impact Protection.

"§ 143-215.94N. Declaration of public policy.

The General Assembly hereby finds and declares as follows:

- (1) The traditional uses of the seacoast of the State are public and private recreation, commercial and sports fishing, and habitat for natural resources;
- (2) The preservation of these uses is a matter of the highest urgency and priority, and such uses can only be preserved effectively by maintaining and enhancing the existing condition of the coastal waters, estuaries, wetlands, tidal flats, beaches, and public lands adjoining the seacoast;
- (3) The coastal economy, including access to the coast of the State, depends, either directly or indirectly, upon a ready and continuous reserve of petroleum products and by-products, including that portion of the supply resulting from oil and gas activities on the Outer Continental Shelf;
- (4) Offshore oil and natural gas exploration, production, processing, recovery, and transportation pose increased potential for damage to the State's coastal environment, to the traditional uses of the area, and to the beauty of the North Carolina coast;

- (5) Spills, discharges, and escapes of pollutants occurring as a result of procedures involving offshore oil and natural gas related activities have occurred in the past, and future threats of potentially catastrophic proportions from such activities require adoption of this Part as mitigation against such events;
- (6) The economic burdens imposed by the General Assembly upon those engaged in the offshore exploration, production, processing, recovery, and transportation of oil and natural gas are reasonable and necessary in light of the traditional uses and interests herein protected, which are expressly declared to be of grave public interest and concern to the State in promoting its general interest and welfare promoting the public health, preventing diseases, and providing for the public safety.

"§ 143-215.940. Definitions.

In addition to the definitions set out in G.S. 143-215.77, as used in this Part, the following definitions shall apply:

- (1) 'Damages' are damages for any of the following:
 - a. Injury or harm to real or personal property, which includes the cost of restoring, repairing, or replacing any real or personal property damaged or destroyed by a discharge under this section, any income lost from the time such property is damaged to the time such property is restored, repaired, or replaced, and any reduction in value of such property caused by such discharge by comparison with its value prior thereto.
 - b. Business loss, including loss of income or impairment of earning capacity due to damage to real or personal property or to damage or destruction of natural resources upon which such income or earning capacity is reasonably dependent.
 - c. Interest on loans obtained or other financial obligations incurred by an injured party for the purpose of ameliorating the adverse effects of a discharge pending the payment of a claim in full as provided by this Article.
 - d. Costs of cleanup, removal, or treatment of natural gas, oil, or drilling waste discharges.
 - e. Costs of restoration, rehabilitation, and, where possible, replacement of wildlife or other natural resources damaged as a result of a discharge.
 - f. When the injured party is the State or one of its political subdivisions, in addition to any injury described in subparagraphs (a) to (e), inclusive, damages include all of the following:
 1. Injury to natural resources or wildlife, including recreational or commercial fisheries, and loss of use and enjoyment of public beaches and other public resources

- or facilities within the jurisdiction of the State or one of its political subdivisions.
2. Costs to assess damages to natural resources, wildlife, or habitat.
 3. Costs incurred to monitor the cleanup of the natural gas, oil, or drilling waste spilled.
 4. Loss of State or local government tax revenues resulting from damages to real or personal property proximately resulting from a discharge.
- (2) For the purposes of this Part, 'oil' and 'drilling wastes' include, but are not limited to: petroleum, refined or processed petroleum, petroleum by-products, oil sludge, oil refuse, oil mixed with wastes and chemicals, or other materials used in the exploration, recovery, or processing of oil. 'Oil' does not include oil carried in a vessel for use as fuel in that vessel.
 - (3) 'Natural gas' includes natural gas, liquefied natural gas, and natural gas by-products. 'Natural gas' does not include natural gas carried in a vessel for use as fuel in that vessel.
 - (4) 'Exploration' means undersea boring, drilling, and soil sampling.
 - (5) 'Injured party' means any person who suffers damages from natural gas, oil, or drilling waste which is discharged or leaks into marine waters, or from offshore exploration. The State, or a county or municipality, may be an injured party.
 - (6) 'Responsible person' means any of the following:
 - a. The owner or transporter of natural gas, oil, or drilling waste which causes an injury covered by this Part.
 - b. The owner, operator, lessee of, or person who charters by demise, any offshore well, undersea site, facility, oil rig, oil platform, vessel, or pipeline which is the source of natural gas, oil, drilling waste, or is the source or location of exploration which causes an injury covered by this Part.

'Responsible party' does not include the United States, the State, any county, municipality or public governmental agency; however, this exception to the definition of 'responsible person' shall not be read to exempt utilities from the provisions of this Part.
 - (7) 'Offshore waters' shall include both the territorial sea extending seaward from the coastline of North Carolina to the State and federal boundary, and United States jurisdictional waters of the Atlantic Ocean adjacent to the territorial sea of the State.
 - (8) 'Natural resources' shall include 'marine and estuarine resources' and 'wildlife resources' as those terms are defined in G.S. 113-129(11) and G.S. 113-129(17), respectively.

"§ 143-215.94P. Liability under this section; exceptions.

(a) Any responsible person shall be strictly liable, notwithstanding any language of limitation found in G.S. 143-215.89, for all cleanup and removal costs and all direct or indirect damages incurred within the territorial jurisdiction of the State by any injured party, which arise out of, or are caused by, the discharge or leaking of natural gas, oil, or drilling waste into or onto 'coastal fishing waters' as defined in G.S. 113-129(4), or offshore waters, or by any exploration in or upon coastal fishing or offshore waters, from any of the following sources:

- (1) Any offshore well or undersea site at which there is exploration for or extraction or recovery of natural gas or oil.
- (2) Any offshore facility, oil rig, or oil platform at which there is exploration for, or extraction, recovery, processing, or storage of, natural gas or oil.
- (3) Any vessel offshore in which natural gas, oil, or drilling waste is transported, processed or stored other than for purposes of fuel for the vessel carrying it.
- (4) Any pipeline located offshore in which natural gas, oil, or drilling waste is transported.

(b) A responsible person is not liable to an injured party under this section for any of the following:

- (1) Damages, other than costs of removal incurred by the State or a local government, caused solely by any act of war, hostilities, civil war, or insurrection or by an unanticipated grave natural disaster or other act of God of an exceptional, inevitable, and irresistible character, which could not have been prevented or avoided by the exercise of due care or foresight.
- (2) Damages caused solely by the negligence or intentional malfeasance of that injured party.
- (3) Damages caused solely by the criminal act of a third party other than the defendant or an agent or employee of the defendant. In any action arising under the provisions of this Article wherein this exception is raised as a defense to liability, the burden of proving that the alleged third-party intervention occurred in such a manner as to limit the liability of the person sought to be held liable shall be upon the person charged.
- (4) Natural seepage not caused by a responsible person.
- (5) Discharge or leaking of oil or natural gas from a private pleasure boat or commercial fishing vessel having a fuel capacity of less than 5,000 gallons.
- (6) Damages which arise out of, or are caused by, a discharge which is authorized by a State or federal permit.
- (7) Damages that could have been mitigated by the injured party in accordance with common law.

(c) A court of suitable jurisdiction in any action under this Part may award reasonable costs of the suit and attorneys' fees, and the costs of any necessary expert

witnesses, to any prevailing plaintiff. The court may award reasonable costs of the suit and attorneys' fees to any prevailing defendant only if the court finds that the plaintiff commenced or prosecuted the suit under this Part in bad faith or solely for purposes of harassing the defendant.

"§ 143-215.94Q. Joint and several liability; damages; personal injury.

(a) Liability under this Part shall be joint and several. However, this section does not bar a cause of action that a responsible person has or would have, by reason of subrogation or otherwise, against any person.

(b) This section does not prohibit any person from bringing an action for damages caused by natural gas, oil or drilling waste, or by exploration, under any other provisions or principle of law, including, but not limited to, common law. However, damages shall not be awarded pursuant to this section to an injured party for any loss or injury for which the party is or has been awarded damages under any other provisions or principles of law. G.S. 143-215.94P(b) does not create any defense not otherwise available regarding any action brought under any other provision or principle of law, including, but not limited to, common law.

(c) This section shall not apply to claims for damages for personal injury or wrongful death, and does not limit the right of any person to bring such an action under any provision or theory of law.

"§ 143-215.94R. Removal of prohibited discharges.

(a) The Department shall be authorized and empowered to proceed with the cleanup of discharges covered under this Part pursuant to the authority granted to the Department in G.S. 143-215.84(b) and G.S. 143-215.94U(b)(2).

(b) Any unexplained discharge of oil, natural gas or drilling wastes occurring in waters beyond the jurisdiction of the State that for any reason penetrates within State jurisdiction shall be removed by or under the direction of the Department. Except for any expenses incurred by the responsible person, should such person become known, all expenses incurred in the removal of such discharges shall be paid promptly by the State from the 'Oil and Other Hazardous Substances Pollution Protection Fund' established pursuant to G.S. 143-215.87 or from any other available sources. In the case of unexplained discharges, the matter shall be referred by the Secretary to the North Carolina Attorney General for collection of damages pursuant to G.S. 143-215.94S of this Part. At his discretion, the Attorney General may refer the matter to the State Bureau of Investigation or other appropriate State or federal authority to determine the identity of the responsible person.

(c) Nothing in this section is intended to preclude cleanup and removal by any person threatened by such discharges, who, as soon as is reasonably possible, coordinates and obtains approval for such actions with ongoing State or federal operations and appropriate State and federal authorities.

(d) No action taken by any person to contain or remove an unlawful discharge shall be construed as an admission of liability for said discharge.

"§ 143-215.94S. Authorization of the Attorney General; citizens' suits.

(a) For any violation of this Part, the Attorney General may, on behalf of the State and on behalf of affected citizens of the State as a class, bring a civil action in the

Superior Court of Wake County against the alleged responsible person. The action may seek:

- (1) Injunctive relief; or
- (2) Damages caused by the violation; or
- (3) Both damages and injunctive relief; or
- (4) Such other and further relief in the premises as the Court shall deem proper.

(b) Any injured party under this Part may bring a civil action for damages against the alleged responsible person. Civil actions under this subsection shall be brought in the superior court of the county in which the alleged injury occurred or in which the alleged damaged property is located, or in the county in which the injured party resided.

(c) Nothing in this section shall restrict any right which any person (or class of persons) may have under any statute or common law to seek injunctive or other relief.

"§ 143-215.94T. Notification by persons responsible for discharge.

(a) Any person responsible for an offshore discharge under this Part shall immediately notify the Division of Emergency Management pursuant to rules established by the Secretary of Crime Control and Public Safety, if any, but in no case later than two hours after the discharge. Failure to so notify the Division of Emergency Management shall make the responsible person liable to the penalties set out in subsection (b) of this section. No penalty shall be imposed under this section when the owner or operator has promptly reported the discharge to federal authorities designated pursuant to 33 U.S.C. § 1321.

(b) The civil penalty for failure to immediately report a discharge under this Part shall be determined by the Commission. In determining the amount of a penalty for failure to report under this section, the Commission shall take into consideration such circumstances as the gravity of the violation, the previous record of the responsible person in complying with the terms of this Article, whether the violator reported the discharge and if so after what period of time following the spill, the size of the business of the responsible person and the effect of the penalty on the violator's ability to continue in business, and other relevant factors; provided that the penalty assessed under this section shall not exceed the following daily maximum amounts, based upon the quantity of oil spilled:

- | | |
|--------------------------------------|------------------|
| <u>(1) Up to 50,000 gallons</u> | <u>\$ 50,000</u> |
| <u>(2) More than 50,000 gallons.</u> | <u>250,000</u> |

For purposes of this section, each day or any part thereof during which a discharge goes unreported by the responsible person shall constitute a separate offense.

"§ 143-215.94U. Oil spill contingency plan.

(a) The State Emergency Response Commission, in consultation with the Secretary of Administration or his designee in the Outer Continental Shelf Lands Office, shall develop a State oil spill contingency plan relating solely to the undersea exploration, extraction, production and transport of oil or natural gas in the marine environment off the North Carolina coast, including any such development on the Outer Continental Shelf seaward of the State's jurisdiction over its territorial waters.

(b) The Secretary of Crime Control and Public Safety or his designee shall establish, pursuant to such a plan, an emergency oil spill control network which shall be comprised of available equipment from appropriate State, county and municipal governmental agencies. Such network shall be employed to provide an immediate response to an oil discharge into the offshore marine environment which is reasonably likely to affect the State's coastal waters. Furthermore, such network shall be employed in conjunction with the cleanup operations under this Article or any applicable federal law, required of the owner or operator of the discharging operation, vessel, or facility, the Department of Natural Resources and Community Development, and any federal agency.

- (1) The Secretary of Crime Control and Public Safety or his designee shall make an inventory, including its location and condition, of all equipment owned by the State, its counties and municipalities, and private equipment that is available to the State for leasing in the case of an oil spill including costs of leasing, that would be capable of participating in discharge cleanup operations.
- (2) The Secretary of Crime Control and Public Safety shall at his discretion have the power to deploy such equipment in participating in a discharge cleanup operation.
- (3) The Secretary of Natural Resources and Community Development shall be authorized to reimburse such State agencies, counties, and municipalities for use of such equipment with such funds as may be available from the 'Oil or Other Hazardous Substances Pollution Protection Fund' created pursuant to G.S. 143-215.87 or any other sources.
- (4) The oil spill contingency plan and oil spill response network developed pursuant to this section shall be reviewed and evaluated for adequacy and continued feasibility every three years, or more often if deemed appropriate by the Secretary of Crime Control and Public Safety.

"§ 143-215.94V. Emergency proclamation; Governor's powers.

(a) Whenever any emergency exists or appears imminent, arising from the discharge of oil or other pollutants within the marine environment, the Governor shall by proclamation declare the fact and that a state of emergency exists in the appropriate sections of the State. Upon such proclamation, the Governor shall have all powers enumerated in G.S. 14-288.15, subject to the provisions of G.S. 14-288.16.

(b) If the Governor is unavailable, the Lieutenant Governor shall, by proclamation, declare the fact and that a state of emergency exists in the appropriate sections of the State.

(c) In performing his duties under this section, the Governor is authorized and directed to cooperate with all departments and agencies of the federal government, the offices and agencies of other states and foreign countries and the political subdivisions thereof, and private agencies in all matters pertaining to an emergency described herein.

(d) In addition to the powers enumerated in G.S. 14-288.15, in the case of such an emergency described in subsection (a) of this section, the Governor is further authorized and empowered to transfer any funds available to him by statute for emergency use into the 'Oil and Other Hazardous Substances Pollution Protection Fund' created pursuant to G.S. 143-215.87, to be utilized for the purposes specified therein.

"§ 143-215.94W. Federal law.

Nothing in this Part shall authorize State agencies to impose any duties or obligations in conflict with limitations on State authority established by federal law at the time such agency action is taken. Likewise, no additional liability is established by this Part to the extent that, at the time of the injury, federal law establishes limits on liability which preempt State law."

Sec. 6. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 19th day of July, 1989.