

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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HOUSE BILL 1778*

Short Title: Amend Dry-Cleaning Solvent Cleanup Act. (Public)

Sponsors: Representatives Gibson, Allen (Primary Sponsors); Glazier and Harrison.

Referred to: Environment and Natural Resources, if favorable, Appropriations.

April 19, 2007

A BILL TO BE ENTITLED

AN ACT TO AMEND THE DRY-CLEANING SOLVENT CLEANUP ACT TO PROVIDE THAT ALL SITE WORK WILL BE PERFORMED BY AN INDEPENDENT CONTRACTOR RETAINED BY THE ENVIRONMENT MANAGEMENT COMMISSION AND TO INCREASE THE ANNUAL SPENDING CAP FOR THE CLEANUP OF SITES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-215.104B(b)(10) and (12) read as rewritten:

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

...

(10) "Dry-cleaning solvent assessment agreement" or "assessment agreement" means an agreement between the Commission and a potentially responsible party who desires ~~to assess~~ an assessment of whether a release of dry-cleaning solvents at a dry-cleaning facility, an abandoned dry-cleaning facility site, or a wholesale distribution facility may be eligible for remediation under this Part and whether any other contaminants that are identified in the agreement may require remediation under other remedial programs operated or administered by the Department.

...

(12) "Dry-cleaning solvent remediation agreement" or "remediation agreement" means an agreement between the Commission and a potentially responsible party who desires ~~to clean up~~ the cleanup of dry-cleaning solvent contamination resulting from a release at a dry-cleaning facility, an abandoned dry-cleaning facility site, or a wholesale distribution facility under this Part and any other

1 contaminants that are identified in the agreement under other remedial
2 programs operated or administered by the Department."

3 **SECTION 2.** G.S. 143-215.104C(c) reads as rewritten:

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

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

22 **"§ 143-215.104D. Powers of the Commission.**

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

- 25 (1) Accept petitions for certification and petitions to enter into
26 dry-cleaning solvent assessment agreements or remediation
27 agreements under this Part.
- 28 (2) Prioritize certified dry-cleaning facilities, certified wholesale
29 distribution facilities, or certified abandoned dry-cleaning facility sites
30 for the initiation of assessment or remediation ~~activities that are~~
31 ~~reimbursable from the Fund.~~ activities.
- 32 (3) ~~Develop forms to be used by persons applying for reimbursement of~~
33 ~~assessment or remediation costs.~~
- 34 (4) Schedule funding of assessment and remediation activities.
- 35 (5) Determine whether assessment or remediation is necessary at a site at
36 which dry-cleaning solvent contamination has occurred.
- 37 (5a) Enter into contracts with private contractors for assessment and
38 remediation activities at certified dry-cleaning facilities, certified
39 wholesale distribution facilities, and certified abandoned dry-cleaning
40 facility sites.
- 41 (6) Determine that all necessary assessment and remediation has been
42 completed at a contamination site.
- 43 (7) Make payments from the Fund ~~to reimburse~~ for the costs of assessment
44 and remediation.

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

7 (1) The Commission may adopt rules governing:

8 a. ~~Fees for response costs reimbursable under this Part.~~

9 b. The certification and decertification of facilities or abandoned
10 sites.

11 c. The prioritization of facilities or abandoned sites and
12 scheduling of funding for assessment and remediation activities.
13 These rules shall provide for:

14 1. Consideration of the degree of harm or risk to public
15 health and the environment.

16 2. Consideration of the order in which certification is
17 issued for the facility or abandoned site.

18 3. Consideration of the relative cost of assessment and
19 remediation activities.

20 4. Use of the Fund so as to maximize the reduction of harm
21 or risk posed by certified facilities, certified abandoned
22 sites, uncertified facilities and uncertified sites.

23 d. The disbursement of revenue from the Fund for payment ~~or~~
24 ~~reimbursement~~ of approved assessment or remediation costs.

25 e. The determination whether assessment or remediation is
26 necessary at a contamination site.

27 f. The determination that all necessary assessment and
28 remediation has been completed at a contamination site.

29 g. The terms and conditions of dry-cleaning solvent assessment
30 agreements and remediation agreements.

31 h. The determination whether additional assessment or
32 remediation is necessary at a contamination site previously
33 closed under this Part.

34 (2) The Commission may adopt rules establishing minimum management
35 practices for handling of dry-cleaning solvent at dry-cleaning facilities
36 and wholesale distribution facilities. The rules may:

37 a. Require that all perchloroethylene dry-cleaning machines
38 installed at a dry-cleaning facility after the effective date of the
39 rule or temporary rule meet air emission standards that equal or
40 exceed the standards that apply to comparable dry-to-dry
41 perchloroethylene dry-cleaning machines with integral
42 refrigerated condensation.

- 1 b. Prohibit the discharge of dry-cleaning solvents or water that
2 contains dry-cleaning solvents into sanitary sewers, septic
3 systems, storm sewers, or waters of the State.
4 c. Require spill containment structures around dry-cleaning
5 machines, filters, stills, vapor adsorbers, solvent storage areas,
6 and waste solvent storage areas.
7 d. Require floor sealants for cleaning room areas if the
8 Commission finds the sealants to be effective.
9 e. Require, by 1 January 2002, the use of improved solvent
10 transfer systems to prevent releases at the time of delivery of
11 solvents to a dry-cleaning facility.
12 f. Require any other solvent-handling practices the Commission
13 may find necessary and appropriate to minimize the risk of
14 releases at dry-cleaning facilities or wholesale distribution
15 facilities.
- 16 (3) The Commission shall adopt rules establishing a risk-based approach
17 applicable to the assessment, prioritization, and remediation of
18 dry-cleaning solvent contamination resulting from releases at facilities
19 or abandoned sites certified pursuant to G.S. 143-215.104G. The rules
20 shall address, at a minimum:
- 21 a. Criteria and methods for determining remediation requirements,
22 including the level of remediation necessary to assure adequate
23 protection of public health and the environment.
24 b. The circumstances under which information specific to the
25 dry-cleaning solvent contamination site should be considered
26 and required.
27 c. The circumstances under which restrictions on the future use of
28 any remediated dry-cleaning solvent contamination site should
29 be considered and required as a means of achieving and
30 maintaining an adequate level of protection for public health
31 and the environment.
32 d. Strategies for the assessment and remediation of dry-cleaning
33 solvent contamination, including presumptive remedial
34 responses sufficient to provide an adequate level of protection
35 as described under sub-subdivision a. of this subdivision.
- 36 (c) All rules adopted by the Commission shall be applicable to all dry-cleaning
37 facilities, wholesale distribution facilities, and abandoned dry-cleaning facilities in the
38 State and shall, to the maximum extent practicable, be cost-effective and technically
39 feasible while protecting public health and the environment from the release of
40 dry-cleaning solvents.
- 41 (d) Unless otherwise provided in this Part, the Commission may delegate any of
42 its rights, duties, and responsibilities under this Part to the Department."

43 **SECTION 4.** G.S. 143-215.104F(c) reads as rewritten:

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

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

10 "**§ 143-215.104H. (Repealed effective January 1, 2012 – See notes) Dry-Cleaning**
11 **Solvent Assessment Agreements.**

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

- 23 (1) The priority ranking assigned to the facility or site is consistent with
24 the rules adopted by the Commission.
- 25 (2) ~~The projected schedule for funding of assessment activities is~~
26 ~~adequate.~~
- 27 (3) ~~The assessment activities to be undertaken with respect to the~~
28 ~~dry cleaning solvent contamination and any other contamination at the~~
29 ~~contamination site are adequate.~~
- 30 (4) ~~The person who will be responsible for implementation of the~~
31 ~~activities is capable and qualified to conduct the assessment.~~
- 32 (4a) ~~The amount of funds already expended by the petitioner for~~
33 ~~assessment or remediation of dry cleaning solvent contamination at the~~
34 ~~facility or abandoned site.~~
- 35 (5) The petitioner has and will continue to have available the financial
36 resources necessary to pay ~~the costs of assessment activities and the~~
37 share of response costs imposed on the petitioner by
38 G.S. 143-215.104F.
- 39 (6) The permits or other authorizations required to conduct the assessment
40 activities and to lawfully dispose of any hazardous substances or
41 wastes generated by the assessment activities have been or can be
42 obtained.
- 43 (7) The assessment activities will not increase the existing level of public
44 exposure to health or environmental hazards at the contamination site.

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

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

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

12 (1) Repealed by Session Laws 2000, c. 19, s. 9.

13 (1a) Require that the petitioner shall be liable to the Fund for an amount
14 equal to the difference, if any, between the applicable amount for
15 which the petitioner is responsible under G.S. 143-215.104F and the
16 amount reasonably paid by the petitioner for assessment or
17 remediation activities of the type specified in G.S. 143-215.104N(a)(1)
18 through (7) and that are otherwise consistent with the requirements of
19 this Part.

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

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

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

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

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

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

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

1 cleanup, no further cleanup, or no further action is required in connection with the
2 contamination.

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

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

11 "**§ 143-215.104I. Dry-Cleaning solvent remediation agreements.**

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

24 (1) Repealed by Session Laws 2000, c. 19, s. 10.

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

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

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

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

37 (6) The remediation agreement will not cause the Department to violate
38 the terms and conditions under which the Department operates and
39 administers remedial programs, including the programs established or
40 operated pursuant to Article 9 of Chapter 130A of the General
41 Statutes, by delegation or similar authorization from the United States
42 or its departments or agencies, including the United States
43 Environmental Protection Agency.

- 1 (7) The priority ranking assigned to the facility or site is consistent with
2 the rules adopted by the Commission or the priority ranking that the
3 petitioner agrees to accept is consistent with the rules adopted by the
4 Commission.
- 5 ~~(8) The projected schedule for funding of remediation activities.~~
- 6 (9) The petitioner will continue to have available the financial resources
7 necessary to satisfy the share of response costs imposed on the
8 petitioner by G.S. 143-215.104F.
- 9 ~~(10) The expenditures eligible for reimbursement from the Fund and to be
10 incurred in connection with the remediation agreement are reasonable
11 and necessary.~~
- 12 (11) The consent of other property owners to enter into their property for
13 purposes of conducting remediation activities specified in the
14 remediation agreement.
- 15 (b) In negotiating a remediation agreement, parties may rely on land-use
16 restrictions that will be included in a Notice of Dry-Cleaning Solvent Remediation
17 required under G.S. 143-215.104M. A remediation agreement may provide for
18 remediation in accordance with standards that are based on those land-use restrictions.
- 19 (c) A dry-cleaning solvent remediation agreement shall contain a description of
20 the contamination site that would be sufficient as a description of the property in an
21 instrument of conveyance and, as applicable, a statement of:
- 22 (1) Any remediation, including remediation of contaminants other than
23 dry-cleaning solvents, to be conducted on the property, including:
- 24 a. A description of specific areas where remediation is to be
25 conducted.
- 26 b. The remediation method or methods to be employed.
- 27 ~~c. The resources that the petitioner will make available and the
28 degree to which the petitioner intends to rely on the Fund for
29 resources.~~
- 30 d. A schedule of remediation activities.
- 31 e. Applicable remediation standards. Applicable remediation
32 standards for dry-cleaning solvent contamination shall not
33 exceed the requirements adopted by the Commission pursuant
34 to G.S. 143-104D(b)(3).
- 35 f. A schedule and the method or methods for evaluating the
36 remediation.
- 37 (2) Any land-use restrictions that will apply to the contamination site or
38 other property.
- 39 (3) The desired results of any remediation or land-use restrictions with
40 respect to the contamination site.
- 41 (4) The guidelines, including parameters, principles, and policies within
42 which the desired results are to be accomplished.
- 43 (5) The consequences of achieving or not achieving the desired results.
- 44 (6) The priority ranking of the facility or abandoned site.

- 1 ~~(7) The person who will conduct the remediation if that person is not the~~
2 ~~potentially responsible party entering the remediation agreement.~~
- 3 (d) The Commission may refuse to enter into a dry-cleaning solvent assessment
4 agreement or dry-cleaning solvent remediation agreement with any petitioner ~~if:~~
5 ~~(1) The petitioner will not accept financial responsibility for the share of~~
6 ~~the response costs established in G.S. 143-215.104F. This requirement~~
7 ~~shall not apply to a petitioner who (i) is the owner of property upon~~
8 ~~which the dry-cleaning solvent contamination is located, and (ii) is not~~
9 ~~a current or former owner or operator of a facility believed to be~~
10 ~~responsible for the contamination.~~
- 11 ~~(2) The petitioner will not accept responsibility for conducting,~~
12 ~~supervising, or otherwise undertaking remediation activities required~~
13 ~~by the Commission.~~
- 14 ~~(3) The~~ the petitioner fails to provide any information that is necessary to
15 demonstrate the facts required to be shown by subsection (a) of this
16 section.
- 17 (e) In addition to the ~~bases~~ basis set forth in subsection (d) of this section, the
18 Commission may refuse to enter into a dry-cleaning solvent remediation agreement with
19 ~~the~~ an owner of the property on which a contamination site is located if the owner
20 refuses to accept limitations on the future use of the property and to give notice of these
21 limitations pursuant to G.S. 143-215.104M.
- 22 (f) The refusal of the Commission to enter into a dry-cleaning remediation
23 agreement with any petitioner shall not affect the rights of any other petitioner, other
24 than any parent, subsidiary, or other affiliate of the petitioner, under this Part. The
25 refusal of the Commission to enter into a remediation agreement may be the basis for
26 rejection of a petition by any parent, subsidiary, or other affiliate of the petitioner for the
27 facility or abandoned site.
- 28 (g) The terms and conditions of a dry-cleaning solvent remediation agreement
29 concerned with dry-cleaning solvent contamination shall be guided by and consistent
30 with the rules adopted by the Commission pursuant to G.S. 143-215.104D and the
31 ~~reimbursement~~ disbursement authorities and limitations set out in this Part. A
32 ~~remediation agreement shall provide, subject to availability of monies in the Fund, for~~
33 ~~prompt reimbursement of response costs incurred in assessment or remediation~~
34 ~~activities that are found by the Commission to be consistent with the remediation~~
35 ~~agreement and this Part.~~ A remediation agreement ~~may~~ shall provide that the
36 ~~Commission~~ Commission's private contractor conduct assessment and remediation
37 activities at the facility or abandoned site.
- 38 (h) Any failure of a petitioner or the petitioner's agents or employees to comply
39 with the dry-cleaning solvent remediation agreement constitutes a violation of this Part
40 by the petitioner."

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

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

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

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

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

1 potentially responsible parties or parents, subsidiaries, or affiliates of potentially
2 responsible parties and the person is not required to undertake additional remediation to
3 unrestricted use standards pursuant to subsection (c) of this section:

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

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

16 "**§ 143-215.104L. Public notice and community involvement.**

17 (a) If a petitioner desires to enter into a dry-cleaning solvent remediation
18 agreement based on remediation standards that rely on the creation of land-use
19 restrictions, the Commission or the Commission's private contractor on behalf of the
20 petitioner shall notify the public and the community in which the facility or abandoned
21 site is located of the planned remediation and redevelopment activities. ~~The~~
22 ~~petitioner~~On behalf of the petitioner, the Commission or the Commission's private
23 contractor shall submit prepare a Notice of Intent to Remediate a Dry-Cleaning Solvent
24 Facility or Abandoned Site and a summary of the Notice of ~~Intent to the~~
25 ~~Commission.~~Intent. The Notice of Intent shall provide, to the extent known, a legal
26 description of the location of the contamination site, a map showing the location of the
27 contamination site, a description of the contaminants involved and their concentrations
28 in the media of the contamination site, a description of the future use of the
29 contamination site, any proposed investigation and remediation, and a proposed Notice
30 of Dry-Cleaning Solvent Remediation prepared in accordance with G.S. 143-215.104M.
31 Both the Notice of Intent and the summary of the Notice of Intent shall state the time
32 period and means for submitting written comment and for requesting a public meeting
33 on the proposed dry-cleaning solvent remediation agreement. The summary of the
34 Notice of Intent shall include a statement as to the public availability of the full Notice
35 of Intent. After approval of the Notice of Intent and summary of the Notice of Intent by
36 the Commission, ~~the petitioner~~the Commission or the Commission's private contractor
37 shall provide a copy of the Notice of Intent to all local governments having jurisdiction
38 over the contamination site. ~~The petitioner~~Commission or Commission's private
39 contractor shall publish the summary of the Notice of Intent in a newspaper of general
40 circulation serving the area in which the contamination is located and shall file a copy
41 of the summary of the Notice of Intent with the Codifier of Rules, who shall publish the
42 summary of the Notice of Intent in the North Carolina Register. ~~The petitioner~~
43 Commission or the Commission's private contractor shall also conspicuously post a
44 copy of the summary of the Notice of Intent at the contamination site.

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

9 (c) Any person who desires a public meeting on a proposed dry- cleaning solvent
10 remediation agreement shall submit a written request for a public meeting to the
11 Commission within 30 days after the public comment period begins. The Commission
12 shall consider all requests for a public meeting and shall hold a public meeting if the
13 Commission determines that there is significant public interest in the proposed
14 remediation agreement. If the Commission decides to hold a public meeting, the
15 Commission shall, at least 30 days prior to the public meeting, mail written notice of the
16 public meeting to all persons who requested the public meeting and to any other person
17 who had previously requested notice. The Commission shall also ~~direct the petitioner to~~
18 publish, at least 30 days prior to the date of the public meeting, a notice of the public
19 meeting at least one time in a newspaper having general circulation in the county where
20 the contamination site is located. In any county in which there is more than one
21 newspaper having general circulation, the Commission shall ~~direct the petitioner to~~
22 publish a copy of the notice in as many newspapers having general circulation in the
23 county as the Commission in its discretion determines to be necessary to assure that the
24 notice is generally available throughout the county. The Commission shall prescribe the
25 form and content of the notice to be published. The Commission shall prescribe the
26 procedures to be followed in the public meeting. The Commission shall take detailed
27 minutes of the meeting. The minutes shall include any written dry-cleaning solvent
28 remediation agreement. The Commission shall take into account the comment received
29 during the comment period and at the public meeting if the Commission holds a public
30 meeting. The Commission shall incorporate into the remediation agreement provisions
31 that reflect comment received during the comment period and at the public meeting to
32 the extent practical. The Commission shall give particular consideration to written
33 comment that is supported by valid scientific and technical information and analysis."

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

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

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

2 "**§ 143-215.104N. Reimbursement—Disbursement of dry-cleaning solvent**
3 **assessment and remediation costs; limitations; ~~collection—of~~**
4 **reimbursement.cost recovery.**

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

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

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

- 28 (1) For costs incurred in connection with facilities or abandoned sites not
29 certified pursuant to G.S. 143-215.104G.
- 30 (2) For costs not incurred pursuant to a dry-cleaning solvent assessment
31 agreement or a dry-cleaning solvent remediation agreement.
- 32 (3) ~~For costs incurred in connection with dry cleaning solvent~~
33 ~~contamination from a facility or abandoned site for which funds~~
34 ~~obligated by petitioners pursuant to a dry-cleaning solvent assessment~~
35 ~~agreement or dry cleaning solvent remediation agreement in~~
36 ~~accordance with G.S. 143-214.104F(f) are overdue.~~
- 37 (4) For costs at a contamination site that has been identified by the United
38 States Environmental Protection Agency as a federal Superfund site
39 pursuant to 40 Code of Federal Regulations, Part 300 (1 July 1996
40 Edition), except that the Commission may authorize distribution of the
41 required State match in an amount not to exceed two hundred thousand
42 dollars (\$200,000) per year per site. The Commission shall not
43 delegate its authority to disburse funds pursuant to this subdivision.

- 1 (5) For remediation beyond the level required under the Commission's
2 risk-based criteria for determining the appropriate level of remediation.
- 3 (6) For assessment or remediation response costs incurred in connection
4 with any individual dry-cleaning solvent assessment agreement or
5 dry-cleaning solvent remediation agreement in excess of ~~two~~five
6 hundred thousand dollars ~~(\$200,000)~~ (\$500,000) per year. However,
7 that the Commission may disburse up to ~~four hundred thousand~~one
8 million dollars ~~(\$400,000)~~(\$1,000,000) per year for assessment and
9 remediation costs incurred in connection with a certified facility or a
10 certified abandoned site that poses an imminent hazard.
- 11 (7) That would result in a diminution of the Fund balance below one
12 hundred thousand dollars (\$100,000), unless an emergency exists in
13 connection with a dry-cleaning solvent contamination abandoned site
14 that constitutes an imminent hazard.
- 15 (8) For any costs incurred in connection with dry-cleaning solvent
16 contamination from a facility located on a United States military base
17 or owned by the United States or a department or agency of the United
18 States.
- 19 (9) For any costs incurred in connection with dry-cleaning solvent
20 contamination from a facility or abandoned site owned by the State or
21 a department or agency of the State.

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

26 ~~(d) Each dry cleaning solvent assessment agreement or dry cleaning solvent~~
27 ~~remediation agreements made by the Commission pursuant to this Part shall expressly~~
28 ~~state that the Commission's obligation to reimburse response costs incurred pursuant to~~
29 ~~these agreements shall be contingent upon the availability of monies from the Fund and~~
30 ~~that the State and its departments and agencies have no obligation to reimburse~~
31 ~~otherwise eligible expenses if monies are not available in the Fund to pay the~~
32 ~~reimbursements. If, at any time, the Commission determines that the cost of assessment~~
33 ~~and remediation activities reimbursable incurred pursuant to existing dry-cleaning~~
34 ~~solvent assessment agreements and dry-cleaning solvent remediation agreements equals~~
35 ~~or exceeds the total revenues expected to be credited to the Fund over the life of the~~
36 ~~Fund, the Commission shall publish notice of the determination in the North Carolina~~
37 ~~Register. Following the publication of a notice pursuant to this section, the Commission~~
38 ~~may continue to enter into dry-cleaning solvent assessment agreements and dry-cleaning~~
39 ~~solvent remediation agreements until the day of adjournment of the first regular session~~
40 ~~of the General Assembly that begins after the date the notice is published, but shall have~~
41 ~~no authority to enter into additional dry-cleaning solvent assessment agreements and~~
42 ~~dry-cleaning solvent remediation agreements after that date unless the Commission first~~
43 ~~determines either (i) that revenues will be available from the Fund to reimburse pay the~~
44 ~~costs of assessment and remediation activities expected to be reimbursable incurred~~

1 pursuant to the agreements, or (ii) that assessment and remediation activities undertaken
2 pursuant to the agreements will be paid entirely from sources other than the Fund. For
3 the purposes of this subsection, the term "day of adjournment" shall mean: (i) in the
4 case of a regular session held in an odd-numbered year, the day the General Assembly
5 adjourns by joint resolution for more than 10 days, and (ii) in the case of a regular
6 session held in an even-numbered year, the day the General Assembly adjourns sine die.

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

14 **SECTION 12.** G.S. 143-215.104P(a) reads as rewritten:

15 "(a) The Secretary may assess a civil penalty of not more than ten thousand
16 dollars (\$10,000) or, if the violation involves a hazardous waste, as defined in
17 G.S. 130-290, of not more than twenty-five thousand dollars (\$25,000) against any
18 person who:

- 19 (1) Repealed by Session Laws 2000, c. 19, s. 3.
- 20 (2) Engages in dry-cleaning operations using dry-cleaning solvent for
21 which the appropriate sales or use tax has not been paid.
- 22 (3) Fails to comply with rules adopted by the Commission pursuant to this
23 Part.
- 24 (3a) Fails to comply with the rules adopted by the Commission pursuant to
25 Article 21B of Chapter 143 of the General Statutes that apply to
26 dry-cleaning solvents at facilities as defined in this Part. This
27 enforcement authority does not apply to facilities located in counties
28 that have been delegated as local air pollution control programs by the
29 Commission pursuant to G.S. 143-215-112.
- 30 (3b) Fails to comply with rules adopted by the Commission for Health
31 Services pursuant to Article 9 of Chapter 130A of the General Statutes
32 that apply to dry-cleaning solvents at facilities as defined in this Part.
- 33 (4) Fails to file, submit, or make available, as the case may be, any
34 documents, data, or reports required by this Part.
- 35 (5) Violates or fails to act in accordance with the terms, conditions, or
36 requirements of any special order or other appropriate document issued
37 pursuant to G.S. 143-215.2.
- 38 (6) Falsifies or tampers with any recording or monitoring device or
39 method required to be operated or maintained under this Part or rules
40 implementing this Part.
- 41 (7) Knowingly renders inaccurate any recording or monitoring device or
42 method required to be operated or maintained under this Part or rules
43 implementing this Part.

1 (8) Knowingly makes any false statement, representation, or certification
2 in any application, record, report, plan, or other document filed or
3 required to be maintained under this Part or rule implementing this
4 Part.

5 (9) Knowingly makes a false statement of material fact in a rule-making
6 proceeding or contested case under this Part.

7 (10) Refuses access to the Commission or its duly designated representative
8 to any premises for purposes of conducting a lawful inspection
9 provided for in this Part or rule implementing this Part."

10 **SECTION 13.** G.S. 43-215.104T(b) reads as rewritten:

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

19 **SECTION 14.** This act becomes effective 1 July 2007.