

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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HOUSE BILL 225\*  
Committee Substitute Favorable 5/22/97  
Committee Substitute #2 Favorable 7/7/97

Short Title: Dry-Cleaning Solvent Cleanup Act.

(Public)

Sponsors:

Referred to:

February 17, 1997

A BILL TO BE ENTITLED  
AN ACT TO PROVIDE FOR CLEANUP OF DRY-CLEANING SOLVENT  
CONTAMINATION IN NORTH CAROLINA, AS RECOMMENDED BY THE  
ENVIRONMENTAL REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

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

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

**“§ 143-215.104A. Title.**

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

**“§ 143-215.104B. Definitions.**

(a) Unless a difference meaning is required by the context or unless a different meaning is set out in subsection (b) of this section, the definitions in G.S. 143-215.77, 130A-2, and 130A-290 apply throughout this Part.

(b) Unless a different meaning is required by the context, the following definitions apply in this Part:

- 1           (1) 'Abandoned dry-cleaning facility site' or 'abandoned site' means any  
2 real property or individual leasehold space on which a dry-cleaning  
3 facility or wholesale distribution facility formerly operated.
- 4           (2) 'Affiliate' has the same meaning as in 17 Code of Federal Regulations §  
5 240.12b-2 (1 April 1996 Edition).
- 6           (3) 'Commission' means the North Carolina Environmental Management  
7 Commission.
- 8           (4) 'Contaminant' means a regulated substance released into the  
9 environment.
- 10          (5) 'Current standards' when used in connection with 'cleanup',  
11 'remediated', or 'remediation' means that cleanup or remediation of  
12 contamination comply with generally applicable standards, guidance, or  
13 established methods governing the contaminants that are established by  
14 statute or adopted, published, or implemented by the Commission, the  
15 Commission for Health Services, or the Department instead of the risk-  
16 based standards established by the Commission pursuant to this Part.
- 17          (6) 'Department' means the North Carolina Department of Environment,  
18 Health, and Natural Resources.
- 19          (7) 'Disposal' shall have the meaning ascribed to it in G.S. 130A-290.
- 20          (8) 'Dry-cleaning facility' means a place of business located in this State  
21 and engaged in on-site dry-cleaning operations, other than a commercial  
22 uniform service or commercial linen supply facility.
- 23          (9) 'Dry-cleaning operations' means cleaning of apparel and household  
24 fabrics by using one or more dry-cleaning solvents instead of water.
- 25          (10) 'Dry-cleaning solvent' means Perchloroethylene F-1,1,3 or 1,1,1  
26 trichloroethane, a petroleum-based solvent, another comparable product  
27 used as a cleaning agent in a dry-cleaning operation or the degradation  
28 products from such hazardous substances.
- 29          (11) 'Dry-Cleaning Solvent Assessment Agreement' or 'assessment  
30 agreement' means an agreement between the Commission and a  
31 potentially responsible party who desires to access whether a release of  
32 dry-cleaning solvents at a dry-cleaning facility, an abandoned dry-  
33 cleaning facility site, or a wholesale distribution facility may be eligible  
34 for remediation under this Part and whether any other contaminants,  
35 which are identified in the agreement, may require remediation under  
36 other remedial programs operated or administered by the Department.
- 37          (12) 'Dry-Cleaning Solvent Remediation Agreement' or 'remediation  
38 agreement' means an agreement between the Commission and a  
39 potentially responsible party who desires to clean up dry-cleaning  
40 solvent contamination resulting from a release at a dry-cleaning facility,  
41 an abandoned dry-cleaning facility site, or a wholesale distribution  
42 facility under this Part and any other contaminants, which are identified

- 1                    in the agreement, under other remedial programs operated or  
2                    administered by the Department.
- 3                    (13) 'Dry-cleaning solvent contamination' means, for the purposes of  
4                    determining eligibility for participation under this Part only, the  
5                    presence of dry-cleaning solvent in the waters or surface or subsurface  
6                    soils of the State, the bedrock or other rock formations, or buildings in a  
7                    concentration above the level requiring remediation pursuant to the rules  
8                    implementing Article 21A of Chapter 143.
- 9                    (14) 'Facility' means a dry-cleaning facility or a wholesale distribution  
10                    facility.
- 11                    (15) 'Fund' means the Dry-Cleaning Solvent Cleanup Fund.
- 12                    (16) 'Hazardous waste' shall have the meaning ascribed to it in G.S. 130A-  
13                    290.
- 14                    (17) 'Imminent hazard' means a situation which is likely to cause an  
15                    immediate threat to human life, an immediate threat of serious physical  
16                    injury, an immediate threat of serious adverse health effects, or a serious  
17                    risk of irreparable damage to the environment if no immediate action is  
18                    taken.
- 19                    (18) 'Local government' means a town, city, or county.
- 20                    (18a) 'Operator' means any person operating a dry-cleaning facility or  
21                    wholesale distribution facility, whether by lease, contract, or any other  
22                    form of agreement.
- 23                    (19) 'Parent' has the same meaning as in 17 Code of Federal Regulations §  
24                    240.12b-2 (1 April 1996 Edition).
- 25                    (20) 'Pollution and remediation legal liability insurance' means property and  
26                    casualty insurance coverage on a claims-made for response costs  
27                    authorized to be reimbursed from the Fund in G.S. 143-215.104N(a).
- 28                    (21) 'Potentially responsible party' means any person who may have liability  
29                    for assessment, monitoring, treatment, mitigation, or remediation of dry-  
30                    cleaning solvent contamination resulting from a release at a dry-  
31                    cleaning facility, an abandoned dry-cleaning facility site, or a wholesale  
32                    distribution facility.
- 33                    (22) 'Public health' means public health as the term is used in Article 9 of  
34                    Chapter 130A of the General Statutes and 'human health' as the term is  
35                    used in Articles 21 and 21A of Chapter 143 of the General Statutes.
- 36                    (23) 'Regulated substance' means a hazardous waste, as defined in G.S.  
37                    130A-290; a hazardous substance, as defined in G.S. 143-215.77A; oil,  
38                    as defined in G.S. 143-215.77; or other substance regulated under any  
39                    remedial program implemented by the Department other than Part 2A of  
40                    Article 21A of Chapter 143 of the General Statutes.
- 41                    (24) 'Release' means any spillage, leakage, pumping, placement, emptying,  
42                    or dumping of dry-cleaning solvents resulting from a dry-cleaning  
43                    operation or the operation of a wholesale distribution facility.

- 1           (25) 'Remedial program' means a program implemented by the Department  
2 for the remediation of any contaminant, including the programs  
3 implemented under Article 9 of Chapter 130A of the General Statutes  
4 and the Oil Pollution and Hazardous Substances Control Act of 1978  
5 under Part 2 of Article 21a of Chapter 143 of the General Statutes but  
6 not the remedial program implemented under Part 2A of Article 21A of  
7 Chapter 143 of the General Statutes.
- 8           (26) 'Remediation' means action to cleanup, mitigate, correct, abate,  
9 minimize, eliminate, control, or prevent the spreading, migration,  
10 leaking, leaching, volatilization, spilling, transporting, or further release  
11 of a contaminant into the environment in order to protect public health  
12 or the environment.
- 13           (27) 'Response costs' means costs incurred in connection with a certified  
14 facility or abandoned site which the Commission determines are  
15 reasonably necessary and consistent with the applicable requirements of  
16 the Commission and any applicable Dry-Cleaning Solvent Assessment  
17 Agreement or Dry-Cleaning Solvent Remediation Agreement.
- 18           (28) 'Secretary' means the North Carolina Secretary of Environment, Health,  
19 and Natural Resources.
- 20           (29) 'Subsidiary' has the same meaning as in 17 Code of Federal Regulations  
21 § 240.12b-2 (1 April 1996 Edition).
- 22           (30) 'Treatment' shall have the meaning ascribed to it in G.S. 130A-290.
- 23           (31) 'Waters' means any stream, river, creek, brook, run, canal, swamp, lake,  
24 sound, tidal estuary, bay, reservoir, waterway, wetlands, or any other  
25 body or accumulation of water, surface or underground, public or  
26 private, natural or artificial, which is contained within, flows through, or  
27 borders upon this State, or any portion thereof, including those portions  
28 of the Atlantic Ocean over which this State has jurisdiction.
- 29           (32) 'Wholesale distributor' means a person who operates a wholesale  
30 distribution facility.
- 31           (33) 'Wholesale distribution facility' means a place of business located in  
32 this State and engaged in the storage, distribution, or sale of dry-  
33 cleaning solvents for use in dry-cleaning facilities.

34 **"§ 143-215.104C. Dry-Cleaning Solvent Cleanup Fund.**

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

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

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

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

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

4           (c) Disbursements. – A claim filed against the Fund may be paid only from  
5 revenue in the Fund and only in accordance with the provisions of this Part. Any  
6 obligation to pay or reimburse response costs pursuant to this Part shall be expressly  
7 contingent upon availability of monies in the Fund, and the State and its departments and  
8 agencies shall have no obligation to pay or reimburse eligible expenses if monies are not  
9 available in the Fund. The provisions of this Part shall not constitute a contract, either  
10 express or implied, to pay or reimburse response costs in excess of the monies available  
11 in the Fund. In making disbursements from the Fund, the Commission shall pay the  
12 claims with the highest priority before claims of lower priority, and claims of equal  
13 priority in the order in which the facility or abandoned site was certified until the revenue  
14 is exhausted. Consistent with the provisions of this Part, the Commission may disburse  
15 monies from the Fund to abate imminent hazards caused by dry-cleaning solvent  
16 contamination at abandoned dry-cleaning facility sites which 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 oversight  
20 of response activities.

21 **"§ 143-215.104D. Powers of the Commission.**

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

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

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

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

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

37           (5) Determine whether assessment or remediation is necessary at a  
38 contamination site.

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

41           (7) Make payments from the Fund to reimburse the costs of assessment and  
42 remediation, provided, however, that any such payments made by a

1           private contractor engaged by the Commission shall be authorized by  
2           the Commission prior to disbursement.

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

9           (1) The Commission may adopt rules governing:

10          a. Fees for response costs reimbursable under this Part.

11          b. The certification and decertification of facilities or abandoned  
12 sites.

13          c. The prioritization of facilities or abandoned sites and scheduling  
14 of funding for assessment and remedial response activities.  
15 These rules shall take into consideration the degree of harm or  
16 risk to public health and the environment; the order in which  
17 certification issued for the facility or abandoned site; and other  
18 factors the Commission finds appropriate in the use of the Fund  
19 to maximize the reduction of harm or risk posed by certified  
20 facilities, certified abandoned sites, and uncertified facilities and  
21 sites.

22          d. The disbursement of revenue from the Fund for payment or  
23 reimbursement of approved assessment or remedial responses  
24 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 remediation  
28 has been completed at a contamination site.

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

31          h. The determination whether additional assessment or remediation  
32 is necessary at a contamination site previously closed under this  
33 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 absorbers, solvent storage areas,  
6                   and waste solvent storage areas.
- 7           **d.**     Require floor sealants for cleaning room areas, provided that the  
8                   Commission finds the sealants to be effective.
- 9           **e.**     Require, by 1 January 2002, the use of improved solvent transfer  
10                   systems to prevent releases at the time of delivery of solvents to a  
11                   dry-cleaning facility.
- 12           **f.**     Require any solvent handling practices the Commission may find  
13                   necessary and appropriate to minimize the risk of releases at  
14                   wholesale distribution facilities.

15       **(3)**    The Commission shall adopt rules establishing a risk-based approach  
16                   applicable to the assessment, prioritization, and cleanup of dry-cleaning  
17                   solvent contamination resulting from releases at facilities or abandoned  
18                   sites certified pursuant to G.S. 143-215.104G. The rules shall address,  
19                   at a minimum:

- 20           **a.**     Criteria and methods for determining cleanup requirements,  
21                   including the level of cleanup necessary to assure adequate  
22                   protection of public health and the environment.
- 23           **b.**     The circumstances under which information specific to the dry-  
24                   cleaning solvent contamination site should be considered and  
25                   required.
- 26           **c.**     The circumstances under which restrictions on the future use of  
27                   any remediated dry-cleaning solvent contamination site should be  
28                   considered and required as a means of achieving and maintaining  
29                   an adequate level of protection for public health and the  
30                   environment.
- 31           **d.**     Strategies for the assessment and remediation of dry-cleaning  
32                   solvent contamination, including presumptive remedial responses  
33                   sufficient to provide an adequate level of protection as described  
34                   under sub-subdivision a. of this subdivision.

35       **(c)**    All rules adopted by the Commission shall be applicable to all dry-cleaning  
36                   facilities, wholesale distribution facilities, and abandoned dry-cleaning facilities in the  
37                   State and shall, to the maximum extent practicable, be cost-effective and technically  
38                   feasible while protecting public health and the environment from the release of dry-  
39                   cleaning solvents.

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

42       **"§ 143-215.104E. Requirement of financial responsibility for dry-cleaning facilities.**

1       (a) The owner or operator of any dry-cleaning facility or any wholesale  
2 distribution facility operating in the State shall establish and continuously maintain  
3 financial responsibility for legal liability arising in connection with dry-cleaning solvent  
4 contamination resulting from a release at the facility by either:

5           (1) Obtaining pollution and remediation legal liability insurance for the  
6 facility with coverage limits not less than one million dollars  
7 (\$1,000,000) from an insurance carrier authorized to do business in this  
8 State, or

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

12       (b) If the owner or operator of a dry-cleaning facility or any wholesale distribution  
13 facility demonstrates to the satisfaction of the Commission an inability to establish  
14 financial responsibility consistent with the standards of subsection (a) of this section, then  
15 the Commission shall issue a determination of uninsurability to the operator of the  
16 facility. When a facility is designated as uninsurable by the Commission, the financial  
17 responsibility requirements of subsection (a) of this section are satisfied.

18       (c) Unless the Commissioner of Insurance adopts rules providing otherwise, a dry-  
19 cleaning facility or wholesale distribution facility shall be determined to be uninsurable if  
20 the annual premium for coverage of the dry-cleaning facility or wholesale distribution  
21 facility meeting the requirements of this Part is more than three times the average  
22 premium for similar coverage for dry-cleaning facilities or wholesale distribution  
23 facilities where dry-cleaning solvent contamination is not known to have occurred. Each  
24 insurer selling pollution and remediation legal liability insurance in this State shall  
25 annually report to the Commission the number of policies held in force by the company  
26 in this State for dry-cleaning facilities and for wholesale distribution facilities, and the  
27 average premium rate for each type of facility. The first report required by this section  
28 shall be made no later than 1 January 1998.

29       (d) Dry-cleaning facilities and abandoned dry-cleaning facility sites located on a  
30 United States military base or owned by the United States or a department or agency of  
31 the United States and dry-cleaning facilities and abandoned dry-cleaning facility sites  
32 owned by the State or an agency or department of the State are exempt from complying  
33 with this section.

34 **"§ 143-215.104F. Requirements for certification, assessment agreements, and**  
35 **remediation agreements.**

36       (a) Any person petitioning for certification of a facility or abandoned site pursuant  
37 to G.S. 143-215.104G, for a Dry-Cleaning Solvent Assessment Agreement pursuant to  
38 G.S. 143-215.104H, or for a Dry-Cleaning Solvent Remediation Agreement pursuant to  
39 G.S. 143-215.104I, shall meet the requirements set out in this section and any other  
40 applicable requirements of this Part.

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

- 1           (1) Information necessary for the Commission to determine the priority  
2 ranking of the facility or abandoned site described in the petition.  
3           (2) Information necessary to demonstrate the person's ability to incur the  
4 response costs specified in subsection (e) of this section.  
5           (3) Evidence of financial responsibility established in accordance with G.S.  
6 143-104.215E(a) or a copy of a determination of uninsurability issued  
7 by the Commission pursuant to G.S. 143-25.104E(b).

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

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

- 17           (1) The petitioner is an owner or operator of the facility described in the  
18 petition and the facility was not being operated in compliance with  
19 minimum management practices adopted by the Commission pursuant  
20 to G.S. 143-215.104D(b)(2) at the time the contamination was  
21 discovered.  
22           (2) The petitioner is an owner or operator of a facility described in the  
23 petition and the petitioner owed delinquent taxes under Article 5D of  
24 Chapter 105 of the General Statutes at the time the dry-cleaning solvent  
25 contamination was discovered.  
26           (3) The petitioner is the owner or operator of the facility described in the  
27 petition and the petitioner had failed, at the time the contamination was  
28 discovered, to establish financial responsibility for the facility pursuant  
29 to G.S. 143-215.104E(a) or to obtain a determination of uninsurability  
30 pursuant to G.S. 143-215.104E(b).

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

- 33           (1) The petitioner fails to provide the information required by subsection  
34 (b) of this section.  
35           (2) The petitioner falsified any information in its petition which was  
36 material to the determination of the priority ranking, the nature, scope  
37 and extent of contamination to be assessed or remediated, or the  
38 appropriate means to contain and remediate the contaminants.

39           (f) Financial Responsibility Requirements. – Each potentially responsible person  
40 who petitions the Commission to enter into a Dry-Cleaning Solvent Assessment or  
41 Remediation Agreement shall accept written responsibility in the amount specified in this  
42 section for the assessment or remediation of the dry-cleaning solvent contamination  
43 identified in the petition. If two or more potentially responsible persons petition the

1 Commission jointly, the requirements below shall be the aggregate requirements for the  
2 financial responsibility of all potentially responsible persons who are party to the petition.  
3 Unless an alternative arrangement is agreed to by copetitioners, the financial  
4 responsibility requirements of this section shall be apportioned equally among the  
5 copetitioners. The requirements in this subsection shall be in addition to any insurance or  
6 other financial responsibility, including deductibles or retentions, established pursuant to  
7 G.S. 143-215.104E.

8  
9 Facility or Abandoned Site Where Release Occurred Costs

10  
11 Dry-cleaning facilities owned by persons who employ fewer  
12 than five full-time employees or the equivalent in activities related to  
13 dry-cleaning operations during the preceding calendar year \$5,000

14  
15 Dry-cleaning facilities owned by persons who employ at least five but fewer  
16 than 10 full-time employees or their equivalent in activities related to  
17 dry-cleaning operations during the preceding calendar year \$10,000

18  
19 Dry-cleaning facilities owned by persons who employ 10 or more  
20 full-time employees or their equivalent in activities related to  
21 dry-cleaning operations during the preceding calendar year \$15,000

22  
23 Wholesale distribution facilities \$25,000

24  
25 Abandoned dry-cleaning facility sites \$50,000

26  
27 Provided, however, that if a dry-cleaning facility is determined to be uninsurable, the  
28 financial responsibility requirements for the facility shall be three times the amount  
29 provided above; and provided further, that the financial responsibility requirement for a  
30 wholesale distribution facility that is determined to be uninsurable shall be fifty thousand  
31 dollars (\$50,000).

32 **"§ 143-215.104G. Certification of facilities and abandoned sites.**

33 (a) A potentially responsible party who meets the applicable requirements of G.S.  
34 143-215.104F may petition the Commission to certify a facility or abandoned site where  
35 a release of dry-cleaning solvent is believed to have occurred. The Commission shall  
36 certify the facility or abandoned site if the petitioner meets the requirements of this Part.  
37 Upon its decision to certify a facility or abandoned site, the Commission shall inform the  
38 petitioner of its decision and of the initial priority ranking of the facility or site.

39 (b) The Commission may change the initial priority rankings of any facility or  
40 abandoned site as additional facilities or abandoned sites are certified which are  
41 determined by the Commission, in its sole discretion, to pose a higher degree of harm or  
42 risk to public health and the environment; provided, however, that the Commission shall

1 not change the priority ranking of an abandoned site that is set in a Dry-Cleaning Solvent  
2 Remediation Agreement.

3 (c) A potentially responsible person petitioning for certification of a facility or  
4 abandoned site shall provide the Commission with either of the following:

5 (1) A proposed Dry-Cleaning Solvent Assessment or Remediation  
6 Agreement, or an indication of the petitioner's intent to enter into such  
7 an agreement.

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

10 (d) A person who has access to the property on which a facility or abandoned site  
11 is located and who has successfully petitioned for certification of the abandoned site  
12 pursuant to this section may undertake assessment or remediation of dry-cleaning solvent  
13 contamination located on the property consistent with the standards established by the  
14 Commission pursuant to G.S. 143-215.104D(b)(3) without first entering into a Dry-  
15 Cleaning Solvent Assessment Agreement or a Dry-Cleaning Solvent Remediation  
16 Agreement; provided, however, no assessment or remediation activities undertaken  
17 pursuant to this subsection shall rely on standards that require the creation of land-use  
18 restrictions. A person who undertakes assessment or remediation activities pursuant to  
19 this subsection shall provide the Commission prior written notice of the activity. Costs  
20 associated with assessment or remediation activities undertaken pursuant to this  
21 subsection shall not be eligible for reimbursement from the Fund.

22 (e) The rejection of any petition filed pursuant to this section shall not affect the  
23 rights of any other petitioner, other than any parent, subsidiary, or other affiliate of the  
24 petitioner, under this Part. The rejection of a petition or the decertification of a facility or  
25 abandoned site may be the basis for rejection of a petition by any parent, subsidiary, or  
26 other affiliate of the petitioner for the facility or abandoned site.

27 **"§ 143-215.104H. Dry-Cleaning Solvent Assessment Agreements.**

28 (a) Assessment Agreements. – One or more potentially responsible parties may  
29 petition the Commission to enter into a Dry-Cleaning Solvent Assessment Agreement  
30 regarding a facility or abandoned site that has been certified pursuant to G.S. 143-  
31 215.104G and for which the party may have responsibility. The Commission may, in its  
32 discretion, enter into an assessment agreement with any potentially responsible party who  
33 satisfied the requirements of this section and the applicable requirements of G.S. 143-  
34 215.104F. If more than one potentially responsible party petitions the Commission, the  
35 Commission may enter into a single agreement with one or more of the petitioners. The  
36 Commission shall not unreasonably refuse to enter into an assessment agreement  
37 pursuant to this section. Petitioners shall provide the Commission with any information  
38 necessary to demonstrate:

39 (1) The priority ranking assigned to the facility or site is consistent with the  
40 rules adopted by the Commission or the adjusted priority ranking which  
41 the petitioner agrees to accept is consistent with the rules adopted by the  
42 Commission.

- 1           (2)    The projected schedule for funding of assessment activities, including  
2           reimbursements from the Fund.
- 3           (3)    The assessment activities to be undertaken with respect to the dry-  
4           cleaning solvent contamination and any other contamination at the  
5           contamination site.
- 6           (4)    The person who will be responsible for implementation of the activities  
7           is capable and qualified to conduct the assessment.
- 8           (5)    The financial responsibilities of the petitioner with respect to the costs  
9           of the assessment activities and the ability to meet those responsibilities.
- 10          (6)    The permits or other authorizations required to conduct the assessment  
11          activities and to lawfully dispose of any hazardous substances or wastes  
12          generated by the assessment activities have been or can be obtained.
- 13          (7)    The assessment activities will not increase the existing level of public  
14          exposure to health or environmental hazards at the contamination site.
- 15          (8)    The petitioner continues to have available the financial resources  
16          necessary to satisfy the share of response costs imposed on the  
17          petitioner by G.S. 143-215.104F.
- 18          (9)    The response costs to be incurred in connection with the agreement are  
19          reasonable and necessary.
- 20          (10)   The consent of other property owners to enter into their property for  
21          purpose of conducting assessment activities specified in the assessment  
22          agreement.
- 23          (11)   The date that any necessary remediation of the contamination site could  
24          begin assuming the availability of monies in the Fund.

25        (b)    The terms and conditions of an assessment agreement regarding dry-cleaning  
26        solvent contamination shall be guided by and consistent with the rules adopted by the  
27        Commission pursuant to G.S. 143-215.104D and the reimbursement authorities and  
28        limitations set out in this Part. Agreements shall provide, subject to availability of  
29        monies in the Fund, for prompt reimbursement of response costs incurred in assessment  
30        activities that are found by the Commission to be consistent with the assessment  
31        agreement and this Part.

32        (c)    The Commission may refuse to enter into a dry-cleaning solvent assessment  
33        agreement with any potentially responsible person if:

- 34           (1)    The petitioner will not accept financial responsibility for the share of the  
35           response costs established in G.S. 143-215.104F.
- 36           (2)    The petitioner will not accept responsibility for conducting, supervising,  
37           or otherwise undertaking assessment activities required by the  
38           Commission.
- 39           (3)    The petitioner fails to provide any information required by subsection  
40           (a) of this section.

41        (d)    The refusal of the Commission to enter into a Dry-Cleaning Solvent  
42        Assessment Agreement with any potentially responsible person shall not affect the rights  
43        of any other petitioner, other than any parent, subsidiary or other affiliate of the

1 petitioner, other than any parent, subsidiary or other affiliate of the petitioner, under this  
2 Part. The refusal of the Commission to enter into an agreement may be the basis for  
3 rejection of a petition by any parent, subsidiary or other affiliate of the petitioner for the  
4 facility or abandoned site.

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

13 (f) If the Commission determines that no remediation or further action is required  
14 in connection with dry-cleaning solvent contamination otherwise subject to assessment or  
15 remediation pursuant to this Part and Article 9 of Chapter 130A, the Commission shall  
16 not pay or reimburse any response costs otherwise payable or reimbursable under this  
17 Part from the Fund other than costs reasonable and necessary to conduct the risk  
18 assessment pursuant to this section and in compliance with a Dry-Cleaning Solvent  
19 Assessment Agreement.

20 **"§ 143-215.104I. Dry-Cleaning Solvent Remediation Agreements.**

21 (a) Upon the completion of assessment activities required by a Dry-Cleaning  
22 Solvent Assessment Agreement, a potentially responsible party may petition the  
23 Commission to enter into a Dry-Cleaning Solvent Remediation Agreement for any  
24 contamination requiring remediation. The Commission may, in its discretion, enter into a  
25 remediation agreement with any petitioner who satisfies the requirements of this section  
26 and the applicable requirements of G.S. 143-215.104F. If more than one potentially  
27 responsible party petitions the Commission, the Commission may enter into a single  
28 agreement with one or more of the petitioners. The Commission shall not unreasonably  
29 refuse to enter into an assessment agreement pursuant to this section. The Commission  
30 may, in its discretion, enter into a remediation agreement that includes the assessment  
31 described in G.S. 143-215.104H. Petitioners shall provide the Commission with any  
32 information necessary to demonstrate that:

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

35 a. The terms of the Dry-Cleaning Solvent Assessment Agreement  
36 and any Dry-Cleaning Solvent Remediation Agreement,  
37 brownfields agreement or similar agreement to which the  
38 requesting party, or any parent, subsidiary or other affiliate of the  
39 requesting person has been a party.

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

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

- 1           (2) As a result of the remediation agreement, the contamination site will be  
2 suitable for the uses specified in the agreement while fully protecting  
3 public health and the environment from dry-cleaning solvent  
4 contamination and any other contaminants included in the remediation  
5 agreement instead of being remediated to current standards.
- 6           (3) There is a public benefit commensurate with the liability protection  
7 provided under this Part.
- 8           (4) The petitioner has or can obtain the financial, managerial, and technical  
9 means to fully implement the remediation agreement and assure the safe  
10 use of the contamination site.
- 11          (5) The petitioner has complied with or will comply with all applicable  
12 procedural requirements.
- 13          (6) The agreement will not cause the Department to violate, or potentially  
14 violate, the terms and conditions under which it operates and  
15 administers remedial programs, including the programs established or  
16 operated pursuant to Article 9 of Chapter 130A of the General Statutes,  
17 by delegation or similar authorization from the United States or its  
18 departments or agencies including the Environmental Protection  
19 Agency.
- 20          (7) The priority ranking assigned to the facility or site is consistent with the  
21 rules adopted by the Commission or the adjusted priority ranking which  
22 the petitioner agrees to accept is consistent with the rules adopted by the  
23 Commission.
- 24          (8) The projected schedule for funding of remediation activities, including  
25 reimbursements from the Fund.
- 26          (9) The petitioner continues to have available the financial resources  
27 necessary to satisfy the share of response costs imposed on the  
28 petitioner by G.S. 143-215.104F.
- 29          (10) The expenditures eligible for reimbursement from the Fund and to be  
30 incurred in connection with the agreement are reasonable and necessary.
- 31          (11) The consent of other property owners to enter into their property for  
32 purposes of conducting remediation activities specified in the  
33 assessment agreement.

34       (b) In negotiating a remediation agreement, parties may rely on land-use  
35 restrictions that will be included in a notice of Dry-Cleaning Solvent Remediation notice  
36 required under G.S. 143-215.104M. A remediations agreement may provide for  
37 remediations standards that are based on those land-use restriction.

38       (c) A Dry-Cleaning Solvent Remediation Agreement shall contain a description of  
39 the contamination site that would be sufficient as a description of the property in an  
40 instrument of conveyance and, as applicable, a statement of:

- 41           (1) Any remediation, including remediation of contaminants other than dry-  
42 cleaning solvents, to be conducted on the property, including:

- 1           a.     A description of specific areas where remediation is to be  
2                 conducted.
- 3           b.     The remediation method or methods to be employed.
- 4           c.     The resources that the petitioner will make available and the  
5                 degree to which the petitioner intends to rely on the Fund for  
6                 resources.
- 7           d.     A schedule of remediation activities.
- 8           e.     Applicable remediation methods which for dry-cleaning solvent  
9                 contamination shall not be in excess of the requirements adopted  
10                by the Commission pursuant to G.S. 143-104D(b)(3).
- 11          f.     A schedule and the method or methods for evaluating the  
12                 remediation.
- 13          (2)    Any land-use restrictions that will apply to the contamination site or  
14                 other property.
- 15          (3)    The desired results of any remediation or land-use restrictions with  
16                 respect to the contamination site.
- 17          (4)    The guidelines, including parameters, principles, and policies within  
18                 which the desired results are to be accomplished.
- 19          (5)    The consequences of achieving or not achieving the desired results.
- 20          (6)    The final priority ranking of the facility or abandoned site.
- 21          (7)    The person who will conduct the remediation if that person is not the  
22                 potentially responsible party entering the agreement.
- 23          (d)    In addition to the bases in subsection (c) of this section, the Commission may  
24                 refuse to enter into a dry-cleaning solvent assessment or remediation agreement with any  
25                 potentially responsible person if:
- 26                (1)    The petitioner will not accept financial responsibility for the share of the  
27                        response costs established in G.S. 143-215.104F. This requirement  
28                        shall not apply to a potentially responsible person who (i) is the owner  
29                        of property upon which the dry-cleaning solvent contamination is  
30                        located, and (ii) is not a current or former owner or operator of a facility  
31                        believed to be responsible for the contamination.
- 32                (2)    The petitioner will not accept responsibility for conducting, supervising,  
33                        or otherwise undertaking remediation activities required by the  
34                        Commission.
- 35                (3)    The petitioner does not provide any information that is necessary to  
36                        demonstrate the facts required to be shown by subsection (a) of this  
37                        section.
- 38          (e)    In addition to the bases set forth in subsection (d) of this section, the  
39                 Commission may refuse to enter into a dry-cleaning solvent remediation agreement with  
40                 the owner of the property on which a contamination site is located if the owner refuses to  
41                 accept limitations on the future use of the property and to give notice of such limitations  
42                 pursuant to G.S. 143-215.104M.

1       (f) The refusal of the Commission to enter into a Dry-Cleaning Remediation  
2 Agreement with any potentially responsible person shall not affect the rights of any other  
3 petitioner, other than any parent, subsidiary or other affiliate of the petitioner, under this  
4 Part. The refusal of the Commission to enter into an agreement may be the basis for  
5 rejection of a petition by any parent, subsidiary or other affiliate of the petitioner for the  
6 facility or abandoned site.

7       (g) The terms and conditions of a Dry-Cleaning Solvent Remediation Agreement  
8 concerned with dry-cleaning solvent contamination shall be guided by and consistent  
9 with the rules adopted by the Commission pursuant to G.S. 143-215.104D and the  
10 reimbursement authorities and limitations set out in this Part. Agreements shall provide,  
11 subject to availability of monies in the Fund, for prompt reimbursement of response costs  
12 incurred in assessment activities that are found by the Commission to be consistent with  
13 the remediation agreement and this Part.

14       (h) Any failure of the requesting person or the requesting person's agents or  
15 employees to comply with the Dry-Cleaning Solvent Remediation Agreement constitutes  
16 a violation of this part by the requesting party.

17 **"§ 143-215.104J. Decertification; termination of assessment or remediation**  
18 **agreements.**

19       (a) The Commission may decertify a facility or abandoned site, renegotiate a Dry-  
20 Cleaning Solvent Assessment or Remediation Agreement, or terminate a Dry-Cleaning  
21 Solvent Assessment or Remediation Agreement with respect to any party thereto in the  
22 following circumstances:

- 23       (1) The owner or operator of the facility, at any time subsequent to the  
24 certification of the facility, violates any of the minimum management  
25 requirements adopted by the Commission pursuant to G.S. 143-  
26 215.104D(b)(2).
- 27       (2) In the case of dry-cleaning contamination on property that is owned by a  
28 petitioner, the petitioner fails to file a notice of dry-cleaning solvent  
29 remediation as provided in G.S. 143-215.104M.
- 30       (3) The potentially responsible persons who are parties to a Dry-Cleaning  
31 Solvent Assessment Agreement are unable to reach an agreement with  
32 the Commission to enter into a Dry-Cleaning Solvent Remediation  
33 Agreement within the time specified in the assessment agreement.
- 34       (4) The payment of taxes assessed to the facility under Article 5D of  
35 Chapter 105 of the General Statutes is delinquent.
- 36       (5) The financial responsibility to meet the requirement of G.S. 143-  
37 215.104E is not maintained continuously for any facility, unless a  
38 determination of uninsurability has been issued for the facility.
- 39       (6) The owner or operator fails to comply with all applicable requirements  
40 of this Part to complete any assessment or remediation activities  
41 required by a Dry-Cleaning Solvent Assessment and Remediation  
42 Agreement.

1           (7) The owner or operator of a facility where assessment or remediation  
2 activities are scheduled or in progress transfers the ownership or  
3 operation of the facility or abandoned site to another person without the  
4 prior consent of the Commission and the execution of a substitute Dry-  
5 Cleaning Solvent Assessment or Remediation Agreement.

6           (8) The standards applied to the dry-cleaning solvent contamination  
7 remediation or containment under the provisions of this Part and the  
8 Dry-Cleaning Solvent Remediation Agreement will, or are likely to,  
9 cause the Department to fail to comply with the terms and conditions  
10 under which it operates and administers a remediation program by  
11 delegation or similar authorization from the United States or one of its  
12 departments and agencies, including the Environmental Protection  
13 Agency.

14           (b) Prior to decertifying any facility or abandoned site or renegotiating or  
15 terminating any assessment or remediation agreement, the Commission shall give the  
16 petitioners notice and opportunity for hearing. The Commission is not required to give  
17 the petitioners notice and opportunity for hearing when the Commission reasonably takes  
18 an emergency action to abate an imminent hazard caused by or arising from assessment  
19 or remediation activities at a contamination site whether the Commission issues a special  
20 order pursuant to G.S. 143-215.2 or takes other action.

21           (c) Neither the decertification of any facility or abandoned site, the renegotiation  
22 of any agreement, nor the termination of any agreement pursuant to this subsection shall  
23 not affect the rights of any petitioner, other than any parent, subsidiary or other affiliate  
24 of the petitioner, found to be in violation of the provisions of subsection (a) of this  
25 section. If the Commission decertifies a facility or abandoned site or terminates an  
26 assessment or remediation agreement with any party to the agreement pursuant to  
27 subsection (a) of this section, the Commission shall use its best efforts to negotiate a  
28 substitute agreement with any remaining parties to the agreement.

29 **"§ 143-215.104K. Liability protection.**

30           (a) A potentially responsible party who enters into a Dry-Cleaning Solvent  
31 Assessment or Remediation Agreement with the Commission and who is complying with  
32 the agreement shall not be held liable for assessment or remediation of areas of  
33 contamination identified in the agreement except as specified in the assessment or  
34 remediation agreement, so long as the activities conducted at the contamination site by  
35 and under the control or direction of the petitioner do not increase the risk of harm to  
36 public health or the environment and the petitioner is not required to undertake additional  
37 remediation to current standards pursuant to subsection (c) of this section. The liability  
38 protection provided under this Part applies to all of the following persons to the same  
39 extent as the petitioner, so long as these persons are not otherwise potentially responsible  
40 parties or parent, subsidiaries, or affiliates of potentially responsible parties and the  
41 person is not required to undertake additional remediation to current standards pursuant  
42 to subsection (c) of this section:

- 1           (1) Any person under the direction or control of the requesting person who  
2           directs or contracts for remediation or redevelopment of the  
3           contamination site.
- 4           (2) Any future owner of the contamination site.
- 5           (3) A person who develops or occupies the contamination site.
- 6           (4) A successor or assign of any person to whom the liability protection  
7           provided under this Part applies.
- 8           (5) Any lender or fiduciary that provides financing for remediation or  
9           redevelopment of the contamination site.

10       (b) A person who conducts an environmental assessment or transaction screen on  
11 contamination resulting from a release at a certified facility or certified abandoned site  
12 consistent contamination resulting from a release at a certified facility or certified  
13 abandoned site consistent with the Dry-Cleaning Solvent Assessment Agreement, if any  
14 was required under this Part, and who is not otherwise a potentially responsible party is  
15 not a potentially responsible party as a result of conducting the environmental assessment  
16 or transaction screen unless that person increases the risk of harm to public health, or the  
17 environment by failing to exercise due diligence and reasonable care in performing the  
18 environmental assessment or transaction screen.

19       (c) If a land-use restriction set out in the Dry-Cleaning Solvent Remediation  
20 Notice required under G.S. 143-215.104M is violated, the owner of the contamination  
21 site at the time the land-use restriction is violated, the owner's successors and assigns, and  
22 the owner's agents who direct or contract for alteration of the contamination site in  
23 violation of a land-use restriction shall be liable for remediation of all contaminants to  
24 current standards. A petitioner who completes the remediation or redevelopment  
25 required under a Dry-Cleaning Solvent Remediation Agreement or other person who  
26 receives liability protection under this Part shall not be required to undertake additional  
27 remediation unless any of the following apply:

- 28           (1) The petitioner knowingly or recklessly provides false information that  
29           forms a basis for the remediation agreement or that is offered to  
30           demonstrate compliance with the agreement or fails to disclose relevant  
31           information about contamination related to a facility or abandoned site.
- 32           (2) New information indicates the existence of previously unreported dry-  
33           cleaning solvent contaminants or any other contaminants to be  
34           remediated under the remediation agreement, or an area of previously  
35           unreported contamination by contaminants addressed in the agreement  
36           on or associated with the facility or abandoned site which has not been  
37           remediated to current standards, unless the agreement is amended to  
38           include any previously unreported contaminants and any additional area  
39           of contamination. If the agreement sets maximum concentrations for  
40           contaminants and new information indicates the existence of previously  
41           unreported areas of these contaminants, further remediation shall be  
42           required only if the areas of previously unreported contaminants raise  
43           the risk of the contamination to public health or the environment to a

- 1           level less protective of public health and the environment than that  
2           required by the agreement.
- 3           (3)   The level of risk to public health and the environment from  
4           contaminants is unacceptable at or in the vicinity of the contamination  
5           site due to changes in exposure conditions, including (i) a change in  
6           land use that increases the probability of exposure to contaminants at or  
7           in the vicinity of the contamination site or (ii) the failure of remediation  
8           to mitigate risks to the extent required to make the contamination site  
9           fully protective of public health and the environment as planned in the  
10           agreement.
- 11           (4)   The Commission obtains new information about a contaminant to be  
12           remediated under the remediation agreement and associated with the  
13           facility or abandoned site or exposures at or around the contamination  
14           site that raises the risk to public health and the environment associated  
15           with the contamination site beyond an acceptable range and in a manner  
16           or to a degree not anticipated in the agreement. Any person whose use,  
17           including any change in use, of the contamination site causes an  
18           unacceptable risk to public health and the environment may be required  
19           by the Commission to undertake additional remediation measures under  
20           the provisions of this Part.
- 21           (5)   A petitioner fails to file a timely and proper Dry-Cleaning Solvent  
22           Remediation Notice under this Part.
- 23           (6)   A facility or abandoned site loses its certification before the assessment  
24           and any remediation required under the provisions of this Part and the  
25           Dry-Cleaning Solvent Remediation Agreement are completed to the  
26           satisfaction of the Department.
- 27           (7)   The remediation required in the remediation agreement has resulted in  
28           notification from the United States or its departments and agencies,  
29           including the Environmental Protection Agency, that the Department  
30           will violate the terms and conditions under which it operates and  
31           administers remedial programs by delegation or similar authorization.

32   **"§ 143-215.104L. Public notice and community involvement.**

33           (a)   If a petitioner desires to enter into a Dry-Cleaning Solvent Remediation  
34           Agreement based on remediation standards that rely on the creation of land-use  
35           restriction, the petitioner shall notify the public and the community in which the facility  
36           or abandoned site is located of planned remediation and redevelopment activities. The  
37           petitioner shall submit Notice of Intent to Remediate a Dry-Cleaning Solvent Facility or  
38           Abandoned Site and a summary of the Notice of Intent to the Commission. The Notice  
39           of Intent shall provide, to the extent known, a legal description of the location of the  
40           contamination site, a map showing the location of the contamination site, a description of  
41           the contaminants involved and their concentrations in the media of the contamination  
42           site, a description of the future use of the contamination site, any proposed investigation  
43           and remediation, and a proposed Dry-Cleaning Solvent Remediation Notice prepared in

1 accordance with G.S. 143-215.104M. Both the Notice of Intent and the summary of the  
2 Notice of Intent shall state the time period and means for submitting written comment  
3 and for requesting a public meeting on the proposed Dry-Cleaning Solvent Remediation  
4 Agreement. The summary of the Notice of Intent shall include a statement as to the  
5 public availability of the full Notice of Intent. After approval of the Notice of Intent and  
6 summary of the Notice of Intent by the Commission, the petitioner shall provide a copy  
7 of the Notice of Intent to all local governments having jurisdiction over the  
8 contamination site. The petitioner shall publish the summary of the Notice of Intent in a  
9 newspaper of general circulation serving the area in which the contamination is located  
10 and shall file a copy of the summary of the Notice of Intent with the Codifier of Rules,  
11 who shall publish the summary of the Notice of Intent in the North Carolina Register.  
12 The petitioner shall also conspicuously post a copy of the summary of the Notice of  
13 Intent at the contamination site.

14 (b) Publication of the approved summary of the Notice of Intent in the North  
15 Carolina Register and publication in a newspaper of general circulation shall begin a  
16 public comment period of at least 60 days from the later date of publication. During the  
17 public comment period, members of the public, residents of the community in which the  
18 contamination site is located, and local governments having jurisdiction over the  
19 contamination site may submit comment on the proposed Dry-Cleaning Solvent  
20 Remediation Agreement, including methods and degree of remediation, future land uses,  
21 and impact on local employment.

22 (c) Any person who desires a public meeting on a proposed Dry-Cleaning Solvent  
23 Remediation Agreement shall submit a written request for a public meeting to the  
24 Commission within 30 days after the public comment period begins. The Commission  
25 shall consider all requests for a public meeting and shall hold a public meeting if the  
26 Commission determines that there is significant public interest in the proposed  
27 agreement. If the Commission decides to hold a public meeting, the Commission shall, at  
28 least 30 days prior to the public meeting, mail written notice of the public meeting to all  
29 persons who requested the public meeting and to any other person who had previously  
30 requested notice. The Commission shall also direct the petitioner to publish, at least 30  
31 days prior to the date of the public meeting, a notice of the public meeting at least one  
32 time in a newspaper having general circulation in such county where the contamination  
33 site is located. In any county in which there is more than one newspaper having general  
34 circulation, the Commission shall direct the petitioner to publish a copy of the notice in as  
35 many newspapers having general circulation in the county as the Commission in its  
36 discretion determines to be necessary to assure that the notice is generally available  
37 throughout the county. The Commission shall prescribe the form and content of the  
38 notice to be published. The Commission shall prescribe the procedures to be followed in  
39 the public meeting. The Commission shall take detailed minutes of the meeting. The  
40 minutes shall include any written Dry-Cleaning Solvent Remediation Agreement, the  
41 Commission shall take into account the comment received during the comment period  
42 and at the public meeting if the Commission holds a public meeting. The Commission  
43 shall incorporate into the agreement provisions that reflect comment received during the

1 comment period and at the public meeting to the extent practical. The Commission shall  
2 give particular consideration to written comment that is supported by valid scientific and  
3 technical information and analysis.

4 **"§ 143-215.104M. Dry-Cleaning Solvent Remediation Notice; land-use restrictions**  
5 **in deeds.**

6 (a) Land-Use Restriction. – In order to reduce or eliminate the danger to public  
7 health or the environment posed by a dry-cleaning solvent contamination site, the owner  
8 of property upon which dry-cleaning solvent contamination has been discovered may  
9 prepare a Dry-Cleaning Solvent Remediation Notice identifying the site on which the  
10 contamination has been discovered and providing for current or future restrictions on the  
11 use of the property. If a petitioner requests that a contamination site be remediated to  
12 standards which require land-use restrictions, the petitioner must file a Dry-Cleaning  
13 Solvent Remediation Notice for the remediation agreement to become effective.

14 (b) Notice of Restriction. – A Dry-Cleaning Solvent Remediation Notice shall  
15 include:

- 16 (1) A survey plat of the contamination site that has been prepared and  
17 certified by a professional land surveyor and that meets the  
18 requirements of G.S. 47-30.
- 19 (2) A legal description of the property that would be sufficient as a  
20 description in an instrument of conveyance.
- 21 (3) A description of the location and dimensions of the areas of potential  
22 environmental concern with respect to permanently surveyed  
23 benchmarks.
- 24 (4) The type, location, and quantity of dry-cleaning solvent known to exist  
25 on the property.
- 26 (5) Any restrictions on the current or future use of the property or other  
27 property that are necessary to assure adequate protection of public  
28 health and the environment as provided in rules adopted pursuant to  
29 G.S. 143-215.104D(b)(3). These land-use restrictions may apply to  
30 activities on, over, or under the land, including, but not limited to, use of  
31 groundwater, building, filling, grading, excavating, and mining. Where  
32 a contamination site encompasses more than one parcel or tract of land,  
33 a composite map or plat showing all parcels or tracts may be recorded.

34 (c) Recordation of Notice. – After the Commission approves and certifies the Dry-  
35 Cleaning Solvent Remediation Notice under subsection (a) of this section, a certified  
36 copy of a Dry-Cleaning Solvent Remediation Notice shall be filed in the office of the  
37 register of deeds of the county or counties in which the property described is located.  
38 The petitioner shall file the Dry-Cleaning Solvent Remediation Notice within 15 days of  
39 the petitioner's receipt of the Commission's approval of the notice or the petitioner's entry  
40 into the Dry-Cleaning Solvent Remediation Agreement, whichever is later. The register  
41 of deeds shall record the certified copy of the Dry-Cleaning Solvent Remediation Notice  
42 and index it in the grantor index under the names of the owners of the land.

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

7       (e) Cancellation of Notice. – A Dry-Cleaning Solvent Remediation Notice filed  
8 pursuant to this Part may, at the request of the owner of the property subject to the Dry-  
9 Cleaning Solvent Remediation Notice, be canceled by the Secretary after the risk to  
10 public health and the environment associated with the dry-cleaning solvent contamination  
11 and any other contaminants included in the Dry-Cleaning Solvent Remediation  
12 Agreement has been eliminated as a result of remediation of the property. The Secretary  
13 shall forward notice of cancellation to the register of deeds of the county or counties  
14 where the Dry-Cleaning Solvent Remediation Notice is recorded and request that the  
15 Dry-Cleaning Solvent Remediation Notice be canceled. The notice of cancellation shall  
16 contain the names of the landowners as shown in the Dry-Cleaning Solvent Remediation  
17 Notice. The register of deeds shall record the notice of cancellation in the deed books  
18 and index it on the grantor index in the name of the landowner as shown in the Dry-  
19 Cleaning Solvent Remediation Notice and on the grantee index in the name 'Secretary of  
20 Environment, Health, and Natural Resources'. The register of deeds shall make a  
21 marginal entry on the Dry-Cleaning Solvent Remediation Notice showing the date of  
22 cancellation and the book and page where the notice of cancellation is recorded, and the  
23 register of deeds shall sign the entry. If a marginal entry is impracticable because of the  
24 method used to record maps and plats, the register of deeds shall not be required to make  
25 a marginal entry.

26       (f) Enforcement. – Any restriction on the current or future use of property subject  
27 to a Dry-Cleaning Solvent Remediation Notice filed pursuant to this section shall be  
28 enforced by any owner of the property or by any other responsible party. Any land-use  
29 restriction may also be enforced by the Commission through the remedies provided in  
30 this Part or by means of a civil action in the superior court. The Commission may  
31 enforce any land-use restriction without first having exhausted any available  
32 administrative remedies. Restrictions also may be enforced by any unit of local  
33 government having jurisdiction over any part of the property by means of a civil action  
34 without the unit of local government having first exhausted any available administrative  
35 remedy. A land-use restriction may also be enforced by any person eligible for liability  
36 protection under this Part who will lose liability protection if the land-use restriction is  
37 violated. A restriction shall not be declared unenforceable due to lack of privity of estate  
38 or contract, due to lack of benefit to particular land, or due to lack of privity of any  
39 property interest in particular land. Any person who owns or leases a property subject to  
40 a land-use restriction under this section shall abide by the land-use restriction.

41       (g) Relation to Brownfields Notice. – Unless the Commission decertifies a  
42 previously certified facility or a previously certified abandoned site, this section shall  
43 apply in lieu of the provisions of Article 9 of Chapter 130A of the General Statutes and

1 Parts 1 and 2 of Article 21A of Chapter 143 of the General Statutes for properties  
2 remediated under this Part.

3 **"§ 143-215.104N. Reimbursement of dry-cleaning solvent assessment and**  
4 **remediation costs; limitations; collection of reimbursement.**

5 (a) Reimbursement. – To the extent monies are available in the Fund for  
6 reimbursement of response costs, the Commission shall reimburse any person responsible  
7 for implementing assessment and remediation activities at a contamination site associated  
8 with a certified facility or a certified abandoned site pursuant to a Dry-Cleaning Solvent  
9 Assessment or Remediation Agreement for the following assessment and remediation  
10 response costs:

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

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

- 24 (1) For costs incurred in connection with facilities or abandoned sites not  
25 certified pursuant to G.S. 143-215.104G.
- 26 (2) For costs not incurred pursuant to a Dry-Cleaning Solvent Assessment  
27 Agreement or a Dry-Cleaning Solvent Remediation Agreement.
- 28 (3) For costs before funds available through the financial responsibility  
29 demonstrated by the owner or operator of the facility or abandoned site  
30 pursuant to G.S. 143-215.104E and funds obligated by potentially  
31 responsible persons pursuant to a Dry-Cleaning Solvent Assessment or  
32 Remediation Agreement in accordance with G.S. 143-215.104F(f) are  
33 exhausted.
- 34 (4) For costs at a contamination site that has been identified by the United  
35 States Environmental Protection Agency as a federal Superfund site  
36 pursuant to 40 Code of Federal Regulations, Part 300, except that the  
37 Commission may authorize distribution of the required State matchup to  
38 two hundred thousand dollars (\$200,000) per year per site. The  
39 Commission shall not delegate its authority to disburse funds pursuant  
40 to this subdivision.
- 41 (5) For remediation beyond the level required under the Commission's risk-  
42 based criteria for determining the appropriate level of remediation and  
43 the remediations agreement.

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

19           The Commission shall not pay or reimburse any response costs arising from a dry-  
20 cleaning solvent assessment or remediation agreement until the petitioners who are party  
21 to the agreement have exhausted the financial resources made available under the  
22 agreement pursuant to G.S. 143-215.104E and G.S. 143-215.104F.

23           (c) All dry-cleaning solvent assessment or remediation agreements made by the  
24 Commission pursuant to this Part shall expressly state that the Commission's obligation  
25 to reimburse response costs incurred pursuant to such agreements shall be contingent  
26 upon the availability of monies from the Fund and that the State and its departments and  
27 agencies have no obligation to reimburse otherwise eligible expenses if monies are not  
28 available in the Fund to pay the reimbursements. If, at any time, the Commission  
29 determines that the cost of assessment and remediation activities reimbursable pursuant  
30 to existing dry-cleaning solvent assessment or remediation agreements equals or exceeds  
31 the total revenues expected to be credited to the Fund over the life of the Fund, the  
32 Commission shall publish notice of the determination in the North Carolina Register.  
33 Following the publication of a notice pursuant to this Section, the Commission may  
34 continue to enter into dry-cleaning solvent assessment or remediation agreements until  
35 the day of adjournment of the first regular session of the General Assembly that begins  
36 after the date the notice is published, but shall have no authority to enter into additional  
37 dry-cleaning solvent assessment or remediation agreements after that date unless the  
38 Commission first determines either (i) that revenues will be available from the Fund to  
39 reimburse the costs of assessment and remediation activities expected to be reimbursable  
40 pursuant to the agreement, or (ii) that assessment and remediation activities undertaken  
41 pursuant to the agreement will be paid entirely from sources other than the Fund. For the  
42 purposes of this subsection, the term 'day of adjournment' shall mean: (i) in the case of a  
43 regular session held in an odd-numbered year, the day the General Assembly adjourns by

1 joint resolution for more than 10 days, and (ii) in the case of a regular session held in an  
2 even-numbered year, the day the General Assembly adjourns sine die.

3 (d) The Commission shall reimburse the response costs of eligible parties as they  
4 are incurred. If the cleanup of the contamination site is not completed as required by the  
5 agreement, any response costs previously reimbursed for the cleanup shall be repaid to  
6 the Fund, with interest. The Commission shall request the Attorney General to  
7 commence a civil action to secure repayment of such response costs and interest of the  
8 costs.

9 **"§ 143-215.104O. Remediation of uncertified sites.**

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

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

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

32 **"§ 143-215.104P Enforcement procedures; civil penalties.**

33 (a) Unless the violation involves a hazardous waste as defined in G.S. 130A-290, a  
34 civil penalty of not more than ten thousand dollars (\$10,000) may be assessed by the  
35 Secretary against any person who:

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

38 (2) Engages in dry-cleaning operations using dry-cleaning solvent for  
39 which the appropriate sales or use tax has not been paid.

40 (3) Fails to comply with rules adopted by the Commission pursuant to this  
41 Part.

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

- 1           (5) Violates or fails to act in accordance with the terms, conditions, or  
2 requirements of any special order or other appropriate document issued  
3 pursuant to G.S. 143-215.2.
- 4           (6) Falsifies or tampers with any recording or monitoring device or method  
5 required to be operated or maintained under this Part or rules  
6 implementing this Part.
- 7           (7) Knowingly renders inaccurate any recording or monitoring device or  
8 method required to be operated or maintained under this Part or rules  
9 implementing this Part.
- 10          (8) Knowingly makes any false statement, representation, or certification in  
11 any application, record, report, plan, or other document filed or required  
12 to be maintained under this Part or rule implementing this Part.
- 13          (9) Knowingly makes a false statement of material fact in a rule-making  
14 proceeding or contested case under this Part.
- 15          (10) Refuses access to the Commission or its duly designated representative  
16 to any premises for purposes of conducting a lawful inspection provided  
17 for in this Part or rule implementing this Part.
- 18          (11) Fails to comply with the terms and conditions established in the Dry-  
19 Cleaning Solvent Assessment or Remediation Agreement.

20        If the violation involves a hazardous waste as defined in G.S. 130-290, the penalty  
21 shall not exceed twenty-five thousand dollars (\$25,000) per day.

22        (b) If any action or failure to act for which a penalty may be assessed under this  
23 section is continuous, the Secretary may assess a penalty not to exceed ten thousand  
24 dollars (\$10,000) per day for so long as the violation continues. A penalty for a  
25 continuous violation shall not exceed two hundred thousand dollars (\$200,000) for each  
26 period of 30 days during which the violation continues. If the violation involves a  
27 hazardous waste as defined in G.S. 130-290, the penalty shall not exceed twenty-five  
28 thousand dollars (\$25,000) per day.

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

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

38        (e) Requests for remission of civil penalties shall be filed with the Secretary.  
39 Remission requests shall not be considered unless made within 30 days of receipt of the  
40 notice of assessment. Remission requests must be accompanied by a waiver of the right  
41 to a contested case hearing pursuant to Chapter 150B of the General Statutes and a  
42 stipulation of the facts on which the assessment was based. Consistent with the  
43 limitations in G.S. 143B-282.1(c) and (d), remission requests may be resolved by the

1 Secretary and the violator. If the Secretary and the violator are unable to resolve the  
2 request, the Secretary shall deliver the remission request and the recommended action to  
3 the Committee on Civil Penalty Remissions of the Environmental Management  
4 Commission appointed pursuant to G.S. 143B-282.1(c).

5 (f) If any civil penalty has not been paid within 30 days after notice of assessment  
6 has been served on the violator, the Secretary shall request the Attorney General to  
7 institute a civil action in the superior court of any county in which the violator resides or  
8 the violator's principal place of business is located in order to recover the amount of the  
9 assessment, unless the violator contests the assessment as provided in subsection (d) of  
10 this section or requests remission of the assessment in whole or in part as provided in  
11 subsection (e) of this section. If any civil penalty has not been paid within 30 days after  
12 the final agency decision or order has been served on the violator, the Secretary shall  
13 request the Attorney General to institute a civil action in the superior court of any county  
14 in which the violator resides or the violator's principal place of business is located to  
15 recover the amount of the assessment. Such civil actions must be filed within three years  
16 of the date the final agency decision or court order was served on the violator.

17 **"§ 143-215.104Q. Enforcement procedures; criminal penalties.**

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

24 (b) Any person who knowingly and willfully commits any of the offenses set out  
25 in subdivisions (1) through (12) of G.S. 143-215.104P(a) shall be guilty of a Class I  
26 felony, which may include a fine not to exceed one hundred thousand dollars (\$100,000)  
27 per day of violation, provided that this fine shall not exceed a cumulative total of five  
28 hundred thousand dollars (\$500,000) for each period of 30 days during which the  
29 violation continues. For the purposes of this subsection, the phrase 'knowingly and  
30 willfully' shall mean 'intentionally and consciously' as the courts of this State, according  
31 to the principles of common law, interpret the phrase in the light of reason and  
32 experience.

33 (c) (1) Any person who knowingly commits any of the offenses set  
34 out in subdivisions (4) through (12) of G.S. 143-215.104P(a) and who  
35 knows at that time that he thereby places another person in imminent  
36 danger of death or serious bodily injury shall be guilty of a Class C  
37 felony, which may include a fine not to exceed two hundred fifty  
38 thousand dollars (\$250,000) per day of violation, provided that this  
39 fine shall not exceed a cumulative total of one million dollars  
40 (\$1,000,000) for each period of 30 days during which the violation  
41 continues.

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

- 1           a.     His conduct, if he is aware of the nature of his conduct.  
2           b.     An existing circumstance, if he is aware or believes that the  
3                 circumstance exists.  
4           c.     A result of his conduct, if he is aware or believes that his conduct  
5                 is substantially certain to cause danger of death or serious bodily  
6                 injury.
- 7       (3)   Under this subsection, the following should be considered in  
8           determining whether a defendant who is a natural person knew that his  
9           conduct placed another person in imminent danger of death or serious  
10          bodily injury:
- 11          a.     The person is responsible only for actual awareness or actual  
12                 belief that he possessed, and  
13          b.     knowledge possessed by a person other than the defendant but not  
14                 by the defendant himself may not be attributed to the defendant.
- 15       (4)   It is an affirmative defense to a prosecution under this subsection that  
16           the conduct charged was conduct consented to by the person endangered  
17           and that the danger and conduct charged were reasonably foreseeable  
18           hazards of an occupation, a business or profession, or of medical  
19           treatment or medical or scientific experimentation conducted by  
20           professionally approved methods, and such other person had been made  
21           aware of the risks involved prior to giving consent. The defendant may  
22           establish an affirmative defense under this subdivision by a  
23           preponderance of the evidence.
- 24       (d)   No proceeding shall be brought or continued under this section for or on  
25       account of a violation by any person who has previously been convicted of a federal  
26       violation based upon the same set of facts.
- 27       (e)   In proving the defendant's possession of actual knowledge, circumstantial  
28       evidence may be used, including evidence that the defendant took affirmative steps to  
29       shield himself from relevant information. Consistent with the principles of common law,  
30       the subjective mental state of defendants may be inferred from their conduct.
- 31       (f)   For the purposes of the felony provisions of this section, a person's state of  
32       mind shall not be found 'knowingly and willfully' or 'knowingly' if the conduct that is the  
33       subject of the prosecution is the result of any of the following occurrences or  
34       circumstances:
- 35           (1)   A natural disaster or other act of God which could not have been  
36                 prevented or avoided by the exercise of due care or foresight.
- 37           (2)   An act of third parties other than agents, employees, contractors, or  
38                 subcontractors of the defendant.
- 39           (3)   An act done in reliance on the written advice or emergency on- site  
40                 direction of an employee of the Department. In emergencies, oral  
41                 advice may be relied upon if written confirmation is delivered to the  
42                 employee as soon as practicable after receiving and relying on the  
43                 advice.

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

7           (5) Violations causing no significant harm to the environment or risk to  
8 public health, safety, or welfare for which no enforcement action or civil  
9 penalty could have been imposed under any written civil enforcement  
10 guidelines in use by the Department at the time. This subdivision shall  
11 not be construed to require the Department to develop or use written  
12 civil enforcement guidelines.

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

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

23           (h) All general defenses, affirmative defenses, and bars to prosecution that may  
24 apply with respect to other criminal offenses under law may apply to prosecutions  
25 brought under this section or other criminal statutes that refer to this section and shall be  
26 determined by the courts of this State according to the principles of common law as they  
27 maybe applied in light of reason and experience. Concepts of justification and excuse  
28 applicable under this section maybe developed in light of reason and experience.

29           (h) For purposes of this section, the term ‘person’ shall mean, in addition to the  
30 definition contained in G.S. 143-212, any responsible corporate or public office or  
31 employee; provided, however, that where a vote of the people is required to effectuate the  
32 intent and purpose of this Article by a county, city, town, or other political subdivision of  
33 the State, and the vote on the referendum is against the means or machinery for carrying  
34 out said intent and purpose into effect, then, and only then, this section shall not apply to  
35 elected officials or to any responsible appointed officials or employees of such county,  
36 city, town, or other political subdivision.

37 **"§ 143-215.104R. Enforcement procedures; injunctive relief.**

38 Whenever the Commission has reasonable cause to believe that any person has  
39 violated or is threatening to violate any of the provisions of this Part or rule implementing  
40 this Part, the Commission may, either before or after the institution of any other action or  
41 proceeding authorized by this Part, request the Attorney General to institute a civil action  
42 in the name of the State upon the relation of the Commission for injunctive relief to  
43 restrain the violation or threatened violation and for such other and further relief in the

1 premises as the court shall deem proper. The Attorney General may institute such action  
2 in the superior court of the county in which the violation occurred or may occur or, in his  
3 discretion, in the superior court of the county in which the person responsible for the  
4 violation or threatened violation resides or has his or its principal place of business.  
5 Upon a determination by the court that the alleged violation of the provisions of this Part  
6 or the rules of the Commission has occurred or is threatened, the court shall grant the  
7 relief necessary to prevent or abate the violation or threatened violation. Neither the  
8 institution of the action nor any of the proceedings thereon shall relieve any part to such  
9 proceedings from any penalty prescribed for violation of this Part. In the event a civil  
10 action is commenced pursuant to this section, the Commission may recover the costs of  
11 the action, including attorneys' fees and investigation expenses. All monies received or  
12 recovered shall be paid into the Fund or other source from which the expenditures were  
13 made.

14 **"§ 143-215.104S. Appeals.**

15 Any person who is aggrieved by a decision of the Commission under G.S. 143-  
16 215.104F through G.S. 143-215.104O may commence a contested case by filing a  
17 petition under G.S. 150B-23 within 60 days after the Commission's decision. If no  
18 contested case is initiated within the allotted time period, the Commission's decision shall  
19 be final and not subject to review. The Commission shall make the final agency decision  
20 in contested cases initiated pursuant to this section. The Commission shall not delegate  
21 its authority to make a final agency decision pursuant to this section.

22 **"§ 143-215.104T. Construction of the Part.**

23 (a) This Part is not intended to and shall not be construed to:

- 24 (1) Affect the ability of local governments to regulate land use under  
25 Article 19 of Chapter 160A of the General Statutes and Article 18 of  
26 Chapter 153A of the General Statutes. The use of the identified  
27 contamination site and any land-use restrictions in the Dry-Cleaning  
28 Solvent Remediation Agreement shall be consistent with local land-use  
29 controls adopted under those statutes.
- 30 (2) Amend, modify, repeal, or otherwise alter any provision of any use  
31 remedial program or other provision of law relating to civil and criminal  
32 penalties or enforcement actions and remedies available to the  
33 Department, except as may be provided in a Dry-Cleaning Solvent  
34 Remediation Agreement.
- 35 (3) Prevent or impede the immediate response of the Department or  
36 responsible party to an emergency that involves an imminent or actual  
37 release of a regulated substance that threatens public health or the  
38 environment.
- 39 (4) Relieve a person receiving liability protection under this Part from any  
40 liability for contamination later caused by that person at a facility or  
41 abandoned site.
- 42 (5) Affect the right of any person to seek any relief available against any  
43 party to the Dry-Cleaning Solvent Remediation Agreement who may

1 have liability with respect to the facility or abandoned site, except that  
2 this Part does limit the relief available against any party to an agreement  
3 with respect to remediation of the contamination site to the remediation  
4 required under the agreement.

5 (6) Affect the right of any person who may have liability with respect to the  
6 facility or abandoned site to seek contribution from any other person  
7 who may have liability with respect to the facility or abandoned site and  
8 who neither received nor has liability protection under this Part.

9 (7) Prevent the State from enforcing specific numerical remediation  
10 standards, monitoring, or compliance requirements specifically required  
11 to be enforced by the federal government as condition to receive  
12 program authorization, delegation, primacy or federal funds.

13 (8) Create a defense against the imposition of criminal and civil fines or  
14 penalties or administrative penalties otherwise authorized by law and  
15 imposed as the result of the illegal disposal of waste or from the  
16 pollution of the land, air, or waters of this State on facility or abandoned  
17 site.

18 (9) Relieve a person of any liability for failure to exercise due diligence and  
19 reasonable care in performing an environmental assessment or  
20 transaction screen.

21 (b) Notwithstanding the provision of the Tort Claims Act, G.S. 143-291 through  
22 G.S. 143-300.1 or any other provision of law waiving the sovereign immunity of the  
23 State of North Carolina, the State, its agencies, officers, employees, and agents shall be  
24 absolutely immune from any liability in any proceeding for any injury or claim arising  
25 from negotiating, entering, monitoring, or enforcing a Dry-Cleaning Solvent Remediation  
26 Agreement or a Dry-Cleaning Solvent Remediation Notice under this Part or any other  
27 action implementing this Part.

28 **"§ 143-215.104U. Reporting requirements.**

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

31 (1) A list of all dry-cleaning solvent contamination reported to the  
32 Department.

33 (2) A list of all dry-cleaning facilities, wholesale distribution facilities, and  
34 abandoned dry-cleaning facilities, certified by the Commission, and the  
35 status of contamination associated with each such facility or abandoned  
36 site.

37 (3) An estimate of the cost of assessment and remediation required in  
38 connection with facilities or abandoned sites certified by the  
39 Commission and an estimate of such assessment and remediation costs  
40 expected to be paid from the Fund.

41 (4) A statement of receipts and disbursements for the Fund.



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

9 **"§ 105-187.33. Exemptions and refunds.**

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

13 **"§ 105-187.34. Use of tax proceeds.**

14       The Secretary must credit the taxes collected under this Article, less the Department  
 15 of Revenue's allowance for administrative expenses, to the Dry-Cleaning Solvent  
 16 Cleanup Fund. The Secretary may retain the Department's cost of collection, not to  
 17 exceed one hundred twenty-five thousand dollars (\$125,000) a year, as reimbursement to  
 18 the Department."

19       Section 5. This act constitutes a recent act of the General Assembly within the  
 20 meaning of G.S. 150B-21.1. The Environmental Management Commission may adopt  
 21 temporary rules to implement this act.

22       Section 6. (a) The statutes in Sections 1 and 4 of this act become effective on the  
 23 date specified in the following table:

24 Statute	Effective Date
25 143-215.104A	When this act becomes law
26 143-215.104B	When this act becomes law
27 143-215.104C	When this act becomes law
28 143-215.104D	When this act becomes law
29 143-215.104E	1 April 1998
30 143-215.104F	1 January 1999
31 143-215.104G	1 January 1999
32 143-215.104H	1 January 1999
33 143-215.104I	1 January 1999
34 143-215.104J	1 January 1999
35 143-215.104K	1 January 1999
36 143-215.104L	1 January 1999
37 143-215.104M	1 January 1999
38 143-215.104N	1 January 1999
39 143-215.104O	1 January 1999
40 143-215.104P	1 January 1998
41 143-215.104Q	1 January 1998
42 143-215.104R	1 January 1998
43 143-215.104S	1 January 1998

1	143-215.104T	1 January 1998
2	143-215.104U	1 January 1998
3	105-187.30	1 October 1997
4	105-187.31	1 October 1997
5	105-187.32	1 October 1997
6	105-187.33	1 October 1997
7	105-187.34	1 October 1997

8 Sections 2 and 3 of this act become effective 1 October 1997.

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

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

14 Section 7. (a) Any person who undertakes assessment or remediation of dry-  
15 cleaning solvent contamination pursuant to an enforcement action by the Department of  
16 Environment, Health, and Natural Resources during the period beginning 1 October 1997  
17 and 1 January 1999 may, on or after 1 January 1999 seek reimbursement from the Dry-  
18 Cleaning Solvent Clean-Up Fund for any such costs exceeding fifty thousand dollars  
19 (\$50,000). The Commission shall pay such reimbursement if it finds that the costs  
20 incurred were (i) reasonably necessary to assess or remediate the dry-cleaning solvent  
21 contamination; (ii) for any of the activities described in G.S. 143-215.104N(a)(1) through  
22 (7); (iii) not subject to any of the limitations in G.S. 143-215.104N(b)(2), (4), or (5); and  
23 (iv) not reimbursable from pollution and remediation legal liability insurance: Provided,  
24 however, that no reimbursement may be paid pursuant to this section for dry-cleaning  
25 solvent contamination that did not result from operations at a dry-cleaning or wholesale  
26 distribution facility.

27 (b) Any person who, as of 1 January 1999 is undertaking assessment or  
28 remediation of dry-cleaning solvent contamination shall be eligible to petition the  
29 Commission to enter into a dry-cleaning solvent assessment or remediation agreement  
30 with respect to the contamination. In calculating the required financial contribution of  
31 parties to such an agreement, the Commission shall determine the cost of any  
32 unreimbursed assessment or remediation activity undertaken by the parties with respect  
33 to the contamination site prior to 1 January 1999 and shall credit such amount toward any  
34 applicable financial responsibility limits established in G.S. 143-215.104F.

35 Section 8. Section 7 of this act is repealed effective 1 January 2000; provided,  
36 however, that any reimbursement authorized pursuant to that section prior to 1 January  
37 2000 shall be paid in accordance with the provisions of that section. Section 4 of this act  
38 is repealed effective 1 January 2010. Section 1 of this act is repealed effective 1 January  
39 2012; provided, however, that G.S. 143-215.104K is not repealed to the extent that it  
40 applies to liability arising from dry-cleaning solvent contamination described in dry-  
41 cleaning assessment or remediation agreements entered into by the Environmental  
42 Management Commission pursuant to G.S. 143-215.104H and G.S. 143-215.104I; and  
43 provided further that any such agreements in force as of 1 January 2012 shall continue to

1 be subject to the requirements of the statutes in Section 1 of this act; and provided further  
2 that the Commission shall continue to be authorized to adopt rules described in G.S. 143-  
3 215.104D(b)(2) and to enforce the rules in accordance with the provisions of G.S. 143-  
4 215.104P, 143-215.104Q, and 143-215.104R.