

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

Senate Finance Committee Substitute Adopted 7/28/97

Short Title: Dry-Cleaning Solvent Cleanup Act.

(Public)

Sponsors:

Referred to:

February 17, 1997

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

Whereas, there are dry-cleaning operations in the State at which dry-cleaning solvent contamination has or may have occurred; and

Whereas, many instances of dry-cleaning solvent contamination have resulted from solvent handling practices that were lawful and common at the time such practices were undertaken; and

Whereas, the financial resources of individual dry-cleaning operators are frequently insufficient to assess and remediate dry-cleaning solvent contamination to current environmental standards; and

Whereas, the dry-cleaning industry, through the North Carolina Association of Launderers and Cleaners, has expressed a willingness and desire to work cooperatively and to share financial resources to address dry-cleaning solvent contamination resulting from dry-cleaning facilities; and

Whereas, the level of remediation required for dry-cleaning solvent contamination can be determined using the same risk-assessment techniques that are currently being applied to releases of other regulated substances; and

Whereas, assessment and remediation of dry-cleaning solvent contamination sites in this State can be accelerated through the use of an industry-supported funding mechanism;

Now, therefore,

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 ‘Dry-Cleaning Solvent Cleanup Act of 1997’ and may be cited by that name.

“§ 143-215.104B. Definitions.

(a) Unless a different 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. The definitions set out in this subsection apply only to the implementation of this Part and do not define or limit the scope of any other remedial program:

- (1) ‘Abandoned dry-cleaning facility site’ or ‘abandoned site’ means any real property or individual leasehold space on which a dry-cleaning facility or wholesale distribution facility formerly operated.
- (2) ‘Affiliate’ has the same meaning as in 17 Code of Federal Regulations § 240.12b-2 (1 April 1996 Edition).
- (3) ‘Commission’ means the Environmental Management Commission.
- (4) ‘Contaminant’ means a regulated substance released into the environment.
- (5) ‘Current standards’ when used in connection with ‘cleanup’, ‘remediated’, or ‘remediation’ means that cleanup or remediation of contamination complies with generally applicable standards, guidance, or established methods governing the contaminants that are established by statute or adopted, published, or implemented by the Commission, the Commission for Health Services, or the Department instead of the risk-based standards established by the Commission pursuant to this Part.
- (6) ‘Disposal’ shall have the meaning ascribed to it in G.S. 130A-290.
- (7) ‘Dry-cleaning facility’ means a place of business located in this State and engaged in on-site dry-cleaning operations, other than a commercial uniform service or commercial linen supply facility.
- (8) ‘Dry-cleaning operations’ means cleaning of apparel and household fabrics by using one or more dry-cleaning solvents instead of water.

- 1 (9) 'Dry-cleaning solvent' means Perchloroethylene F-1,1,3 or 1,1,1
2 trichlorethane, a petroleum-based solvent, another comparable product
3 used as a cleaning agent in a dry-cleaning operation or the degradation
4 products from these hazardous substances.
- 5 (10) 'Dry-cleaning solvent assessment agreement' or 'assessment agreement'
6 means an agreement between the Commission and a potentially
7 responsible party who desires to assess whether a release of dry-
8 cleaning solvents at a dry-cleaning facility, an abandoned dry-cleaning
9 facility site, or a wholesale distribution facility may be eligible for
10 remediation under this Part and whether any other contaminants that are
11 identified in the agreement may require remediation under other
12 remedial programs operated or administered by the Department.
- 13 (11) 'Dry-cleaning solvent remediation agreement' or 'remediation
14 agreement' means an agreement between the Commission and a
15 potentially responsible party who desires to clean up dry-cleaning
16 solvent contamination resulting from a release at a dry-cleaning facility,
17 an abandoned dry-cleaning facility site, or a wholesale distribution
18 facility under this Part and any other contaminants that are identified in
19 the agreement under other remedial programs operated or administered
20 by the Department.
- 21 (12) 'Dry-cleaning solvent contamination' means the presence of dry-
22 cleaning solvent in the waters or surface or subsurface soils of the State,
23 the bedrock or other rock formations, or buildings in a concentration
24 above the level requiring remediation pursuant to the rules
25 implementing Article 21A of Chapter 143.
- 26 (13) 'Facility' means a dry-cleaning facility or a wholesale distribution
27 facility.
- 28 (14) 'Fund' means the Dry-Cleaning Solvent Cleanup Fund.
- 29 (15) 'Hazardous waste' shall have the meaning ascribed to it in G.S. 130A-
30 290.
- 31 (16) 'Imminent hazard' means a situation that is likely to cause an immediate
32 threat to human life, an immediate threat of serious physical injury, an
33 immediate threat of serious adverse health effects, or a serious risk of
34 irreparable damage to the environment if no immediate action is taken.
- 35 (17) 'Local government' means a town, city, or county.
- 36 (18) 'Operator' means any person operating a dry-cleaning facility or
37 wholesale distribution facility, whether by lease, contract, or any other
38 form of agreement.
- 39 (19) 'Parent' has the same meaning as in 17 Code of Federal Regulations §
40 240.12b-2 (1 April 1996 Edition).
- 41 (20) 'Pollution and remediation legal liability insurance' means property and
42 casualty insurance coverage on a claims-made basis for response costs
43 authorized to be reimbursed from the Fund in G.S. 143-215.104N(a).

- 1 (21) 'Potentially responsible party' means any person who may have liability
2 for assessment, monitoring, treatment, mitigation, or remediation of dry-
3 cleaning solvent contamination resulting from a release at a dry-
4 cleaning facility, an abandoned dry-cleaning facility site, or a wholesale
5 distribution facility.
- 6 (22) 'Public health' means public health as the term is used in Article 9 of
7 Chapter 130A of the General Statutes and 'human health' as the term is
8 used in Articles 21 and 21A of Chapter 143 of the General Statutes.
- 9 (23) 'Regulated substance' means a hazardous waste, as defined in G.S.
10 130A-290; a hazardous substance, as defined in G.S. 143-215.77A; oil,
11 as defined in G.S. 143-215.77; or other substance regulated under any
12 remedial program implemented by the Department other than Part 2A of
13 Article 21A of Chapter 143 of the General Statutes.
- 14 (24) 'Release' means any spillage, leakage, pumping, placement, emptying,
15 or dumping of dry-cleaning solvents resulting from a dry-cleaning
16 operation or the operation of a wholesale distribution facility.
- 17 (25) 'Remedial program' means a program implemented by the Department
18 for the remediation of any contaminant, including the programs
19 implemented under Article 9 of Chapter 130A of the General Statutes
20 and the Oil Pollution and Hazardous Substances Control Act of 1978
21 under Part 2 of Article 21A of Chapter 143 of the General Statutes but
22 not the remedial program implemented under Part 2A of Article 21A of
23 Chapter 143 of the General Statutes.
- 24 (26) 'Remediation' means action to clean up, mitigate, correct, abate,
25 minimize, eliminate, control, or prevent the spreading, migration,
26 leaking, leaching, volatilization, spilling, transporting, or further release
27 of a contaminant into the environment in order to protect public health
28 or the environment.
- 29 (27) 'Response costs' means costs incurred in connection with a certified
30 facility or abandoned site that the Commission determines are
31 reasonably necessary and consistent with the applicable requirements of
32 the Commission and any applicable dry-cleaning solvent assessment
33 agreement or dry-cleaning solvent remediation agreement.
- 34 (28) 'Subsidiary' has the same meaning as in 17 Code of Federal Regulations
35 § 240.12b-2 (1 April 1996 Edition).
- 36 (29) 'Treatment' shall have the meaning ascribed to it in G.S. 130A-290.
- 37 (30) 'Waters' means any stream, river, creek, brook, run, canal, swamp, lake,
38 sound, tidal estuary, bay, reservoir, waterway, wetlands, or any other
39 body or accumulation of water, surface or underground, public or
40 private, natural or artificial, that is contained within, flows through, or
41 borders upon this State, or any portion thereof, including those portions
42 of the Atlantic Ocean over which this State has jurisdiction.

1 (31) 'Wholesale distributor' means a person who operates a wholesale
2 distribution facility.

3 (32) 'Wholesale distribution facility' means a place of business located in
4 this State and engaged in the storage, distribution, or sale of dry-
5 cleaning solvents for use in dry-cleaning facilities.

6 **"§ 143-215.104C. Dry-Cleaning Solvent Cleanup Fund.**

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

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

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

15 (2) Recoveries made pursuant to G.S. 143-215.104N and G.S. 143-
16 215.104O.

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

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

34 **"§ 143-215.104D. Powers of the Commission.**

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

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

- 1 (2) Prioritize certified dry-cleaning facilities, certified wholesale
2 distribution facilities, or certified abandoned dry-cleaning facility sites
3 for the initiation of assessment or remediation activities that are
4 reimbursable from the Fund.
- 5 (3) Develop forms to be used by persons applying for reimbursement of
6 assessment or remediation costs.
- 7 (4) Schedule funding of assessment and remediation activities.
- 8 (5) Determine whether assessment or remediation is necessary at a site at
9 which dry-cleaning solvent contamination has occurred.
- 10 (6) Determine that all necessary assessment and remediation has been
11 completed at a contamination site.
- 12 (7) Make payments from the Fund to reimburse the costs of assessment and
13 remediation. Any payments made by a private contractor engaged by
14 the Commission shall be authorized by the Commission prior to
15 disbursement.

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

- 22 (1) The Commission may adopt rules governing:
- 23 a. Fees for response costs reimbursable under this Part.
- 24 b. The certification and decertification of facilities or abandoned
25 sites.
- 26 c. The prioritization of facilities or abandoned sites and scheduling
27 of funding for assessment and remediation activities. These rules
28 shall provide for:
- 29 1. Consideration of the degree of harm or risk to public
30 health and the environment.
- 31 2. Consideration of the order in which certification is issued
32 for the facility or abandoned site.
- 33 3. Consideration of the relative cost of assessment and
34 remediation activities.
- 35 4. Use of the Fund so as to maximize the reduction of harm
36 or risk posed by certified facilities, certified abandoned
37 sites, uncertified facilities and uncertified sites.
- 38 d. The disbursement of revenue from the Fund for payment or
39 reimbursement of approved assessment or remediation costs.
- 40 e. The determination whether assessment or remediation is
41 necessary at a contamination site.
- 42 f. The determination that all necessary assessment and remediation
43 has been completed at a contamination site.

- 1 g. The terms and conditions of dry-cleaning solvent assessment
2 agreements and remediation agreements.
- 3 h. The determination whether additional assessment or remediation
4 is necessary at a contamination site previously closed under this
5 Part.
- 6 (2) The Commission may adopt rules establishing minimum management
7 practices for handling of dry-cleaning solvent at dry-cleaning facilities
8 and wholesale distribution facilities. The rules may:
- 9 a. Require that all perchloroethylene dry-cleaning machines
10 installed at a dry-cleaning facility after the effective date of the
11 rule or temporary rule meet air emission standards that equal or
12 exceed the standards that apply to comparable dry-to-dry
13 perchloroethylene dry-cleaning machines with integral
14 refrigerated condensation.
- 15 b. Prohibit the discharge of dry-cleaning solvents or water that
16 contains dry-cleaning solvents into sanitary sewers, septic
17 systems, storm sewers, or waters of the State.
- 18 c. Require spill containment structures around dry-cleaning
19 machines, filters, stills, vapor adsorbers, solvent storage areas,
20 and waste solvent storage areas.
- 21 d. Require floor sealants for cleaning room areas if the Commission
22 finds the sealants to be effective.
- 23 e. Require, by 1 January 2002, the use of improved solvent transfer
24 systems to prevent releases at the time of delivery of solvents to a
25 dry-cleaning facility.
- 26 f. Require any other solvent-handling practices the Commission
27 may find necessary and appropriate to minimize the risk of
28 releases at dry-cleaning facilities or wholesale distribution
29 facilities.
- 30 (3) The Commission shall adopt rules establishing a risk-based approach
31 applicable to the assessment, prioritization, and remediation of dry-
32 cleaning solvent contamination resulting from releases at facilities or
33 abandoned sites certified pursuant to G.S. 143-215.104G. The rules
34 shall address, at a minimum:
- 35 a. Criteria and methods for determining remediation requirements,
36 including the level of remediation necessary to assure adequate
37 protection of public health and the environment.
- 38 b. The circumstances under which information specific to the dry-
39 cleaning solvent contamination site should be considered and
40 required.
- 41 c. The circumstances under which restrictions on the future use of
42 any remediated dry-cleaning solvent contamination site should be
43 considered and required as a means of achieving and maintaining

1 an adequate level of protection for public health and the
2 environment.

- 3 d. Strategies for the assessment and remediation of dry-cleaning
4 solvent contamination, including presumptive remedial responses
5 sufficient to provide an adequate level of protection as described
6 under sub-subdivision a. of this subdivision.

7 (c) All rules adopted by the Commission shall be applicable to all dry-cleaning
8 facilities, wholesale distribution facilities, and abandoned dry-cleaning facilities in the
9 State and shall, to the maximum extent practicable, be cost-effective and technically
10 feasible while protecting public health and the environment from the release of dry-
11 cleaning solvents.

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

14 "**§ 143-215.104E. Requirement of financial responsibility for dry-cleaning facilities.**"

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

- 19 (1) Obtaining pollution and remediation legal liability insurance for the
20 facility with coverage limits not less than one million dollars
21 (\$1,000,000) from an insurance carrier authorized to do business in this
22 State, or
23 (2) Depositing with the Commission, securities or a third-party bond
24 acceptable to the Commission in an amount not less than one million
25 dollars (\$1,000,000).

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

32 (c) Unless the Commissioner of Insurance adopts rules providing otherwise, a dry-
33 cleaning facility or wholesale distribution facility shall be determined to be uninsurable if
34 the annual premium for coverage of the dry-cleaning facility or wholesale distribution
35 facility meeting the requirements of this Part is more than three times the average
36 premium for similar coverage for dry-cleaning facilities or wholesale distribution
37 facilities where dry-cleaning solvent contamination is not known to have occurred. Each
38 insurer selling pollution and remediation legal liability insurance in this State shall, on or
39 before 1 March of each year, report to the Commission the number of policies held in
40 force by the company in this State for dry-cleaning facilities and for wholesale
41 distribution facilities and the average premium rate for each type of facility during the
42 preceding calendar year.

1 (d) Dry-cleaning facilities and abandoned dry-cleaning facility sites located on a
2 United States military base or owned by the United States or a department or agency of
3 the United States and dry-cleaning facilities and abandoned dry-cleaning facility sites
4 owned by the State or an agency or department of the State are exempt from complying
5 with this section.

6 **"§ 143-215.104F. Requirements for certification, assessment agreements, and**
7 **remediation agreements.**

8 (a) Any person petitioning for certification of a facility or abandoned site pursuant
9 to G.S. 143-215.104G, for a dry-cleaning solvent assessment agreement pursuant to G.S.
10 143-215.104H, or for a dry-cleaning solvent remediation agreement pursuant to G.S. 143-
11 215.104I, shall meet the requirements set out in this section and any other applicable
12 requirements of this Part.

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

15 (1) Information necessary for the Commission to determine the priority
16 ranking of the facility or abandoned site described in the petition.

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

19 (3) Evidence of financial responsibility established in accordance with G.S.
20 143-104.215E(a) or a copy of a determination of uninsurability issued
21 by the Commission pursuant to G.S. 143-25.104E(b).

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

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

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

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

40 (3) The petitioner is an owner or operator of the facility described in the
41 petition and the petitioner had failed, at the time the contamination was
42 discovered, to establish financial responsibility for the facility pursuant

to G.S. 143-215.104E(a) or to obtain a determination of uninsurability pursuant to G.S. 143-215.104E(b).

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

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

(2) The petitioner falsified any information in its petition that was material to the determination of the priority ranking, the nature, scope and extent of contamination to be assessed or remediated, or the appropriate means to contain and remediate the contaminants.

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

<u>Facility or Abandoned Site Where Release Occurred</u>	<u>Costs</u>
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<u>Dry-cleaning facilities owned by persons who employ fewer than five full-time employees, or the equivalent, in activities related to dry-cleaning operations during the preceding calendar year</u>	<u>\$5,000</u>
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<u>Dry-cleaning facilities owned by persons who employ at least five but fewer than 10 full-time employees, or the equivalent, in activities related to dry-cleaning operations during the preceding calendar year</u>	<u>\$10,000</u>
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<u>Dry-cleaning facilities owned by persons who employ 10 or more full-time employees, or the equivalent, in activities related to dry-cleaning operations during the preceding calendar year</u>	<u>\$15,000</u>
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<u>Wholesale distribution facilities</u>	<u>\$25,000</u>
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Abandoned dry-cleaning facility sites \$50,000.

(g) If a dry-cleaning facility is determined to be uninsurable, the financial responsibility requirements for the dry-cleaning facility shall be three times the amount

1 provided above. The financial responsibility requirement for a wholesale distribution
2 facility that is determined to be uninsurable shall be fifty thousand dollars (\$50,000).

3 **"§ 143-215.104G. Certification of facilities and abandoned sites.**

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

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

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

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

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

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

35 (e) The rejection of any petition filed pursuant to this section shall not affect the
36 rights of any other petitioner, other than any parent, subsidiary, or other affiliate of the
37 petitioner, under this Part. The rejection of a petition or the decertification of a facility or
38 abandoned site may be the basis for rejection of a petition by any parent, subsidiary, or
39 other affiliate of the petitioner for the facility or abandoned site.

40 **"§ 143-215.104H. Dry-Cleaning Solvent Assessment Agreements.**

41 (a) Assessment Agreements. – One or more potentially responsible parties may
42 petition the Commission to enter into a dry-cleaning solvent assessment agreement
43 regarding a facility or abandoned site that has been certified pursuant to G.S. 143-

1 215.104G. The Commission may, in its discretion, enter into an assessment agreement
2 with any potentially responsible party who satisfies the requirements of this section and
3 the applicable requirements of G.S. 143-215.104F. If more than one potentially
4 responsible party petitions the Commission, the Commission may enter into a single
5 assessment agreement with one or more of the petitioners. The Commission shall not
6 unreasonably refuse to enter into an assessment agreement pursuant to this section.
7 Petitioners shall provide the Commission with any information necessary to demonstrate
8 that the:

- 9 (1) Priority ranking assigned to the facility or site is consistent with the
10 rules adopted by the Commission or the adjusted priority ranking that
11 the petitioner agrees to accept is consistent with the rules adopted by the
12 Commission.
- 13 (2) Projected schedule for funding of assessment activities, including
14 reimbursements from the Fund is adequate.
- 15 (3) Assessment activities to be undertaken with respect to the dry-cleaning
16 solvent contamination and any other contamination at the contamination
17 site are adequate.
- 18 (4) Person who will be responsible for implementation of the activities is
19 capable and qualified to conduct the assessment.
- 20 (5) Petitioner has and will continue to have available the financial resources
21 necessary to pay the costs of assessment activities and the share of
22 response costs imposed on the petitioner by G.S. 143-215.104F.
- 23 (6) Permits or other authorizations required to conduct the assessment
24 activities and to lawfully dispose of any hazardous substances or wastes
25 generated by the assessment activities have been or can be obtained.
- 26 (7) Assessment activities will not increase the existing level of public
27 exposure to health or environmental hazards at the contamination site.
- 28 (8) Costs to be incurred in connection with the assessment activities
29 contemplated by the assessment agreement are reasonable and
30 necessary.
- 31 (9) Petitioner has obtained the consent of other property owners to enter
32 into their property for the purpose of conducting assessment activities
33 specified in the assessment agreement.

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

- 39 (1) Specify the date on which remediation will begin.
- 40 (2) Provide for the prompt reimbursement of response costs incurred in
41 assessment activities that are found by the Commission to be consistent
42 with the assessment agreement and this Part.

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

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

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

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

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

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

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

29 **§ 143-215.104I. Dry-Cleaning Solvent Remediation Agreements.**

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

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

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

1 (b) In negotiating a remediation agreement, parties may rely on land-use
2 restrictions that will be included in a Notice of Dry-Cleaning Solvent Remediation
3 required under G.S. 143-215.104M. A remediation agreement may provide for
4 remediation in accordance with standards that are based on those land-use restrictions.

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

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

10 a. A description of specific areas where remediation is to be
11 conducted.

12 b. The remediation method or methods to be employed.

13 c. The resources that the petitioner will make available and the
14 degree to which the petitioner intends to rely on the Fund for
15 resources.

16 d. A schedule of remediation activities.

17 e. Applicable remediation standards. Applicable remediation
18 standards for dry-cleaning solvent contamination shall not exceed
19 the requirements adopted by the Commission pursuant to G.S.
20 143-104D(b)(3).

21 f. A schedule and the method or methods for evaluating the
22 remediation.

23 (2) Any land-use restrictions that will apply to the contamination site or
24 other property.

25 (3) The desired results of any remediation or land-use restrictions with
26 respect to the contamination site.

27 (4) The guidelines, including parameters, principles, and policies within
28 which the desired results are to be accomplished.

29 (5) The consequences of achieving or not achieving the desired results.

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

31 (7) The person who will conduct the remediation if that person is not the
32 potentially responsible party entering the remediation agreement.

33 (d) The Commission may refuse to enter into a dry-cleaning solvent assessment
34 agreement or dry-cleaning solvent remediation agreement with any petitioner if:

35 (1) The petitioner will not accept financial responsibility for the share of the
36 response costs established in G.S. 143-215.104F. This requirement
37 shall not apply to a petitioner who (i) is the owner of property upon
38 which the dry-cleaning solvent contamination is located, and (ii) is not a
39 current or former owner or operator of a facility believed to be
40 responsible for the contamination.

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

1 (3) The petitioner fails to provide any information that is necessary to
2 demonstrate the facts required to be shown by subsection (a) of this
3 section.

4 (e) In addition to the bases set forth in subsection (d) of this section, the
5 Commission may refuse to enter into a dry-cleaning solvent remediation agreement with
6 the owner of the property on which a contamination site is located if the owner refuses to
7 accept limitations on the future use of the property and to give notice of these limitations
8 pursuant to G.S. 143-215.104M.

9 (f) The refusal of the Commission to enter into a dry-cleaning remediation
10 agreement with any petitioner shall not affect the rights of any other petitioner, other than
11 any parent, subsidiary, or other affiliate of the petitioner, under this Part. The refusal of
12 the Commission to enter into a remediation agreement may be the basis for rejection of a
13 petition by any parent, subsidiary, or other affiliate of the petitioner for the facility or
14 abandoned site.

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

22 (h) Any failure of a petitioner or the petitioner's agents or employees to comply
23 with the dry-cleaning solvent remediation agreement constitutes a violation of this Part
24 by the petitioner.

25 **"§ 143-215.104J. Decertification; termination of assessment agreements and**
26 **remediation agreements.**

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

30 (1) The owner or operator of the facility, at any time subsequent to the
31 certification of the facility, violates any of the minimum management
32 requirements adopted by the Commission pursuant to G.S. 143-
33 215.104D(b)(2).

34 (2) In the case of dry-cleaning contamination on property that is owned by a
35 petitioner, the petitioner fails to file a Notice of Dry-Cleaning Solvent
36 Remediation, if required, as provided in G.S. 143-215.104M.

37 (3) The potentially responsible persons who are parties to a dry-cleaning
38 solvent assessment agreement are unable to reach an agreement with the
39 Commission to enter into a dry-cleaning solvent remediation agreement
40 within the time specified in the assessment agreement.

41 (4) The payment of taxes assessed to the facility under Article 5D of
42 Chapter 105 of the General Statutes is delinquent.

- 1 (5) The financial responsibility to meet the requirement of G.S. 143-
2 215.104E is not maintained continuously for any facility, unless a
3 determination of uninsurability has been issued for the facility.
- 4 (6) The owner or operator fails to comply with all applicable requirements
5 of this Part to complete any assessment or remediation activities
6 required by an assessment agreement or remediation agreement.
- 7 (7) The owner or operator of a facility for which an assessment or
8 remediation activity is scheduled or in progress transfers the ownership
9 or operation of the facility or abandoned site to another person without
10 the prior consent of the Commission and the execution of a substitute
11 assessment agreement or remediation agreement.
- 12 (8) The standards applied to the dry-cleaning solvent contamination
13 remediation or containment under the provisions of this Part and the
14 dry-cleaning solvent remediation agreement will, or are likely to, cause
15 the Department to fail to comply with the terms and conditions under
16 which it operates and administers a remediation program by delegation
17 or similar authorization from the United States or one of its departments
18 or agencies, including the Environmental Protection Agency.

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

26 (c) Decertification of any facility or abandoned site or renegotiation or termination
27 of any assessment agreement or remediation agreement pursuant to this section shall not
28 affect the rights of any petitioner, other than a petitioner whose violation of the
29 provisions of subsection (a) of this section was the basis for the decertification,
30 renegotiation, or termination and any parent, subsidiary, or other affiliate of that
31 petitioner. If the Commission decertifies a facility or abandoned site or terminates an
32 assessment agreement or remediation agreement with any party to the agreement
33 pursuant to subsection (a) of this section, the Commission shall use its best efforts to
34 negotiate a substitute agreement with any remaining parties to the agreement.

35 **"§ 143-215.104K. Liability protection.**

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

1 provided under this Part applies to all of the following persons to the same extent as the
2 petitioner, so long as these persons are not otherwise potentially responsible parties or
3 parents, subsidiaries, or affiliates of potentially responsible parties and the person is not
4 required to undertake additional remediation to current standards pursuant to subsection
5 (c) of this section:

6 (1) Any person under the direction or control of the petitioner who directs
7 or contracts for assessment, remediation, or redevelopment of the
8 contamination site.

9 (2) Any future owner of the contamination site.

10 (3) A person who develops or occupies the contamination site.

11 (4) A successor or assign of any person to whom the liability protection
12 provided under this Part applies.

13 (5) Any lender or fiduciary that provides financing for assessment,
14 remediation, or redevelopment of the contamination site.

15 (b) A person who conducts an environmental assessment or transaction screen on
16 contamination resulting from a release at a certified facility or certified abandoned site
17 consistent with a dry-cleaning solvent assessment agreement, if any was required under
18 this Part, and who is not otherwise a potentially responsible party is not a potentially
19 responsible party as a result of conducting the environmental assessment or transaction
20 screen unless that person increases the risk of harm to public health or the environment
21 by failing to exercise due diligence and reasonable care in performing the environmental
22 assessment or transaction screen.

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

32 (1) The petitioner knowingly or recklessly provides false information that
33 forms a basis for the remediation agreement or that is offered to
34 demonstrate compliance with the remediation agreement or fails to
35 disclose relevant information about contamination related to a facility or
36 abandoned site.

37 (2) New information indicates the existence of previously unreported dry-
38 cleaning solvent contaminants or any other contaminants to be
39 remediated under the remediation agreement, or an area of previously
40 unreported contamination by contaminants addressed in the remediation
41 agreement is discovered to be associated with the facility or abandoned
42 site and has not been remediated to current standards, unless the
43 remediation agreement is amended to include any previously unreported

1 contaminants and any additional area of contamination. If the
2 remediation agreement sets maximum concentrations for contaminants
3 and new information indicates the existence of previously unreported
4 areas of these contaminants, further remediation shall be required only if
5 the areas of previously unreported contaminants raise the risk of the
6 contamination to public health or the environment to a level less
7 protective of public health and the environment than that required by the
8 remediation agreement.

9 (3) The level of risk to public health and the environment from
10 contaminants is unacceptable at or in the vicinity of the contamination
11 site due to changes in exposure conditions, including (i) a change in
12 land use that increases the probability of exposure to contaminants at or
13 in the vicinity of the contamination site or (ii) the failure of remediation
14 to mitigate risks to the extent required to make the contamination site
15 fully protective of public health and the environment as planned in the
16 remediation agreement.

17 (4) The Commission obtains new information about a contaminant to be
18 remediated under the remediation agreement and associated with the
19 facility or abandoned site or exposures at or around the contamination
20 site that raises the risk to public health or the environment associated
21 with the contamination site beyond an acceptable range and in a manner
22 or to a degree not anticipated in the remediation agreement. Any person
23 whose use, including any change in use, of the contamination site causes
24 an unacceptable risk to public health or the environment may be
25 required by the Commission to undertake additional remediation
26 measures under the provisions of this Part.

27 (5) A petitioner fails to file a timely and proper Notice of Dry-Cleaning
28 Solvent Remediation under this Part.

29 (6) A facility or abandoned site loses its certification before the assessment
30 and any remediation required under the provisions of this Part and the
31 dry-cleaning solvent remediation agreement are completed to the
32 satisfaction of the Department.

33 (7) The remediation required in the remediation agreement has resulted in
34 notification from the United States or its departments and agencies,
35 including the Environmental Protection Agency, that the Department
36 will violate the terms and conditions under which it operates and
37 administers remedial programs by delegation or similar authorization.

38 **"§ 143-215.104L. Public notice and community involvement.**

39 (a) If a petitioner desires to enter into a dry-cleaning solvent remediation
40 agreement based on remediation standards that rely on the creation of land-use
41 restrictions, the petitioner shall notify the public and the community in which the facility
42 or abandoned site is located of the planned remediation and redevelopment activities.
43 The petitioner shall submit a Notice of Intent to Remediate a Dry-Cleaning Solvent

1 Facility or Abandoned Site and a summary of the Notice of Intent to the Commission.
2 The Notice of Intent shall provide, to the extent known, a legal description of the location
3 of the contamination site, a map showing the location of the contamination site, a
4 description of the contaminants involved and their concentrations in the media of the
5 contamination site, a description of the future use of the contamination site, any proposed
6 investigation and remediation, and a proposed Notice of Dry-Cleaning Solvent
7 Remediation prepared in accordance with G.S. 143-215.104M. Both the Notice of Intent
8 and the summary of the Notice of Intent shall state the time period and means for
9 submitting written comment and for requesting a public meeting on the proposed dry-
10 cleaning solvent remediation agreement. The summary of the Notice of Intent shall
11 include a statement as to the public availability of the full Notice of Intent. After
12 approval of the Notice of Intent and summary of the Notice of Intent by the Commission,
13 the petitioner shall provide a copy of the Notice of Intent to all local governments having
14 jurisdiction over the contamination site. The petitioner shall publish the summary of the
15 Notice of Intent in a newspaper of general circulation serving the area in which the
16 contamination is located and shall file a copy of the summary of the Notice of Intent with
17 the Codifier of Rules, who shall publish the summary of the Notice of Intent in the North
18 Carolina Register. The petitioner shall also conspicuously post a copy of the summary of
19 the Notice of Intent at the contamination site.

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

28 (c) Any person who desires a public meeting on a proposed dry-cleaning solvent
29 remediation agreement shall submit a written request for a public meeting to the
30 Commission within 30 days after the public comment period begins. The Commission
31 shall consider all requests for a public meeting and shall hold a public meeting if the
32 Commission determines that there is significant public interest in the proposed
33 remediation agreement. If the Commission decides to hold a public meeting, the
34 Commission shall, at least 30 days prior to the public meeting, mail written notice of the
35 public meeting to all persons who requested the public meeting and to any other person
36 who had previously requested notice. The Commission shall also direct the petitioner to
37 publish, at least 30 days prior to the date of the public meeting, a notice of the public
38 meeting at least one time in a newspaper having general circulation in the county where
39 the contamination site is located. In any county in which there is more than one
40 newspaper having general circulation, the Commission shall direct the petitioner to
41 publish a copy of the notice in as many newspapers having general circulation in the
42 county as the Commission in its discretion determines to be necessary to assure that the
43 notice is generally available throughout the county. The Commission shall prescribe the

1 form and content of the notice to be published. The Commission shall prescribe the
2 procedures to be followed in the public meeting. The Commission shall take detailed
3 minutes of the meeting. The minutes shall include any written dry-cleaning solvent
4 remediation agreement. The Commission shall take into account the comment received
5 during the comment period and at the public meeting if the Commission holds a public
6 meeting. The Commission shall incorporate into the remediation agreement provisions
7 that reflect comment received during the comment period and at the public meeting to the
8 extent practical. The Commission shall give particular consideration to written comment
9 that is supported by valid scientific and technical information and analysis.

10 **"§ 143-215.104M. Notice of Dry-Cleaning Solvent Remediation; land-use**
11 **restrictions in deeds.**

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

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

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

41 (c) Recordation of Notice. – After the Commission approves and certifies the
42 Notice of Dry-Cleaning Solvent Remediation under subsection (a) of this section, a
43 certified copy of a Notice of Dry-Cleaning Solvent Remediation shall be filed in the

1 office of the register of deeds of the county or counties in which the property described is
2 located. The owner of the property shall file the Notice of Dry-Cleaning Solvent
3 Remediation within 15 days of the property owner's receipt of the Commission's approval
4 of the notice or the effective date of the dry-cleaning solvent remediation agreement,
5 whichever is later. The register of deeds shall record the certified copy of the Notice of
6 Dry-Cleaning Solvent Remediation and index it in the grantor index under the names of
7 the owners of the land.

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

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

33 (f) Enforcement. – Any restriction on the current or future use of property subject
34 to a Notice of Dry-Cleaning Solvent Remediation filed pursuant to this section shall be
35 enforced by any owner of the property or by any other potentially responsible party. Any
36 land-use restriction may also be enforced by the Commission through the remedies
37 provided in this Part or by means of a civil action in the superior court. The Commission
38 may enforce any land-use restriction without first having exhausted any available
39 administrative remedies. Restrictions also may be enforced by any unit of local
40 government having jurisdiction over any part of the property by means of a civil action
41 without the unit of local government having first exhausted any available administrative
42 remedy. A land-use restriction may also be enforced by any person eligible for liability
43 protection under this Part who will lose liability protection if the land-use restriction is

1 violated. A restriction shall not be declared unenforceable due to lack of privity of estate
2 or contract, due to lack of benefit to particular land, or due to lack of privity of any
3 property interest in particular land. Any person who owns or leases a property subject to
4 a land-use restriction under this section shall abide by the land-use restriction.

5 (g) Relation to Brownfields Notice. – Unless the Commission decertifies a
6 previously certified facility or a previously certified abandoned site, this section shall
7 apply in lieu of the provisions of Article 9 of Chapter 130A of the General Statutes and
8 Parts 1 and 2 of Article 21A of Chapter 143 of the General Statutes for properties
9 remediated under this Part.

10 **"§ 143-215.104N. Reimbursement of dry-cleaning solvent assessment and**
11 **remediation costs; limitations; collection of reimbursement.**

12 (a) Reimbursement. – To the extent monies are available in the Fund for
13 reimbursement of response costs, the Commission shall reimburse any person responsible
14 for implementing assessment and remediation activities at a contamination site associated
15 with a certified facility or a certified abandoned site pursuant to a dry-cleaning solvent
16 assessment agreement or dry-cleaning solvent remediation agreement for the following
17 assessment and remediation response costs:

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

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

- 32 (1) For costs incurred in connection with facilities or abandoned sites not
33 certified pursuant to G.S. 143-215.104G.
- 34 (2) For costs not incurred pursuant to a dry-cleaning solvent assessment
35 agreement or a dry-cleaning solvent remediation agreement.
- 36 (3) For costs before funds available through the financial responsibility
37 demonstrated by the owner or operator of the facility or abandoned site
38 pursuant to G.S. 143-215.104E and funds obligated by petitioners
39 pursuant to a dry-cleaning solvent assessment agreement or dry-
40 cleaning solvent remediation agreement in accordance with G.S. 143-
41 215.104F(f) are exhausted.
- 42 (4) For costs at a contamination site that has been identified by the United
43 States Environmental Protection Agency as a federal Superfund site

1 pursuant to 40 Code of Federal Regulations, Part 300 (1 July 1996
2 Edition), except that the Commission may authorize distribution of the
3 required State match in an amount not to exceed two hundred thousand
4 dollars (\$200,000) per year per site. The Commission shall not delegate
5 its authority to disburse funds pursuant to this subdivision.

6 (5) For remediation beyond the level required under the Commission's risk-
7 based criteria for determining the appropriate level of remediation.

8 (6) For assessment or remediation response costs incurred in connection
9 with any individual dry-cleaning solvent assessment agreement or dry-
10 cleaning solvent remediation agreement in excess of two hundred
11 thousand dollars (\$200,000) per year. However, that the Commission
12 may disburse up to four hundred thousand dollars (\$400,000) per year
13 for assessment and remediation costs incurred in connection with a
14 certified facility or a certified abandoned site that poses an imminent
15 hazard.

16 (7) That would result in a diminution of the Fund balance below one
17 hundred thousand dollars (\$100,000), unless an emergency exists in
18 connection with a dry-cleaning solvent contamination abandoned site
19 that constitutes an imminent hazard.

20 (8) For any costs incurred in connection with dry-cleaning solvent
21 contamination from a facility located on a United States military base or
22 owned by the United States or a department or agency of the United
23 States.

24 (9) For any costs incurred in connection with dry-cleaning solvent
25 contamination from a facility or abandoned site owned by the State or a
26 department or agency of the State.

27 (c) Commission shall not pay or reimburse any response costs arising from a dry-
28 cleaning solvent assessment agreement or dry-cleaning solvent remediation agreement
29 until the petitioners who are party to the agreement have exhausted the financial
30 resources made available under the agreement pursuant to G.S. 143-215.104E and G.S.
31 143-215.104F.

32 (d) Each dry-cleaning solvent assessment agreement or dry-cleaning solvent
33 remediation agreements made by the Commission pursuant to this Part shall expressly
34 state that the Commission's obligation to reimburse response costs incurred pursuant to
35 these agreements shall be contingent upon the availability of monies from the Fund and
36 that the State and its departments and agencies have no obligation to reimburse otherwise
37 eligible expenses if monies are not available in the Fund to pay the reimbursements. If, at
38 any time, the Commission determines that the cost of assessment and remediation
39 activities reimbursable pursuant to existing dry-cleaning solvent assessment agreements
40 and dry-cleaning solvent remediation agreements equals or exceeds the total revenues
41 expected to be credited to the Fund over the life of the Fund, the Commission shall
42 publish notice of the determination in the North Carolina Register. Following the
43 publication of a notice pursuant to this section, the Commission may continue to enter

1 into dry-cleaning solvent assessment agreements and dry-cleaning solvent remediation
2 agreements until the day of adjournment of the first regular session of the General
3 Assembly that begins after the date the notice is published, but shall have no authority to
4 enter into additional dry-cleaning solvent assessment agreements and dry-cleaning
5 solvent remediation agreements after that date unless the Commission first determines
6 either (i) that revenues will be available from the Fund to reimburse the costs of
7 assessment and remediation activities expected to be reimbursable pursuant to the
8 agreements, or (ii) that assessment and remediation activities undertaken pursuant to the
9 agreements will be paid entirely from sources other than the Fund. For the purposes of
10 this subsection, the term 'day of adjournment' shall mean: (i) in the case of a regular
11 session held in an odd-numbered year, the day the General Assembly adjourns by joint
12 resolution for more than 10 days, and (ii) in the case of a regular session held in an even-
13 numbered year, the day the General Assembly adjourns sine die.

14 (e) The Commission shall pay the reimbursable response costs of eligible parties
15 as they are incurred. If the cleanup of the contamination site is not completed as required
16 by the remediation agreement, any response costs previously reimbursed for the cleanup
17 shall be repaid to the Fund, with interest. The Commission shall request the Attorney
18 General to commence a civil action to secure repayment of response costs and interest of
19 the costs.

20 **"§ 143-215.104O. Remediation of uncertified sites.**

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

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

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

42 **"§ 143-215.104P. Enforcement procedures; civil penalties.**

1 (a) The Secretary may assess a civil penalty of not more than ten thousand dollars
2 (\$10,000) or, if the violation involves a hazardous waste, as defined in G.S. 130-290, of
3 not more than twenty-five thousand dollars (\$25,000) against any person who:

- 4 (1) Fails to establish financial responsibility for a dry-cleaning facility or a
5 wholesale distribution facility as required by this Part.
- 6 (2) Engages in dry-cleaning operations using dry-cleaning solvent for
7 which the appropriate sales or use tax has not been paid.
- 8 (3) Fails to comply with rules adopted by the Commission pursuant to this
9 Part.
- 10 (4) Fails to file, submit, or make available, as the case may be, any
11 documents, data, or reports required by this Part.
- 12 (5) Violates or fails to act in accordance with the terms, conditions, or
13 requirements of any special order or other appropriate document issued
14 pursuant to G.S. 143-215.2.
- 15 (6) Falsifies or tampers with any recording or monitoring device or method
16 required to be operated or maintained under this Part or rules
17 implementing this Part.
- 18 (7) Knowingly renders inaccurate any recording or monitoring device or
19 method required to be operated or maintained under this Part or rules
20 implementing this Part.
- 21 (8) Knowingly makes any false statement, representation, or certification in
22 any application, record, report, plan, or other document filed or required
23 to be maintained under this Part or rule implementing this Part.
- 24 (9) Knowingly makes a false statement of material fact in a rule-making
25 proceeding or contested case under this Part.
- 26 (10) Refuses access to the Commission or its duly designated representative
27 to any premises for purposes of conducting a lawful inspection provided
28 for in this Part or rule implementing this Part.

29 (b) If any action or failure to act for which a penalty may be assessed under
30 subsection (a) of this section is continuous, the Secretary may assess a penalty not to
31 exceed ten thousand dollars (\$10,000) per day or, if the violation involves a hazardous
32 waste, as defined in G.S. 130-290, not exceed twenty-five thousand dollars (\$25,000) per
33 day. A penalty for a continuous violation shall not exceed two hundred thousand dollars
34 (\$200,000) for each period of 30 days during which the violation continues.

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

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

1 (e) Requests for remission of civil penalties shall be filed with the Secretary.
2 Remission requests shall not be considered unless made within 30 days of receipt of the
3 notice of assessment. Remission requests must be accompanied by a waiver of the right
4 to a contested case hearing pursuant to Chapter 150B of the General Statutes and a
5 stipulation of the facts on which the assessment was based. Consistent with the
6 limitations in G.S. 143B-282.1(c) and (d), remission requests may be resolved by the
7 Secretary and the violator. If the Secretary and the violator are unable to resolve the
8 request, the Secretary shall deliver the remission request and the recommended action to
9 the Committee on Civil Penalty Remissions of the Environmental Management
10 Commission appointed pursuant to G.S. 143B-282.1(c).

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

23 **"§ 143-215.104Q. Enforcement procedures; criminal penalties.**

24 (a) Any person who negligently commits any of the offenses set out in
25 subdivisions (1) through (10) of G.S. 143-215.104P(a) shall be guilty of a Class 2
26 misdemeanor, which may include a fine not to exceed fifteen thousand dollars (\$15,000)
27 per day of violation, provided that the fine shall not exceed a cumulative total of two
28 hundred thousand dollars (\$200,000) for each period of 30 days during which a violation
29 continues.

30 (b) Any person who knowingly and willfully commits any of the offenses set out
31 in subdivisions (1) through (10) of G.S. 143-215.104P(a) shall be guilty of a Class I
32 felony, which may include a fine not to exceed one hundred thousand dollars (\$100,000)
33 per day of violation, provided that this fine shall not exceed a cumulative total of five
34 hundred thousand dollars (\$500,000) for each period of 30 days during which the
35 violation continues. For the purposes of this subsection, the phrase 'knowingly and
36 willfully' shall mean 'intentionally and consciously' as the courts of this State, according
37 to the principles of common law, interpret the phrase in the light of reason and
38 experience.

39 (c) (1) Any person who knowingly commits any of the offenses set
40 out in subdivisions (3) through (10) of G.S. 143-215.104P(a) and who
41 knows at that time that he thereby places another person in imminent
42 danger of death or serious bodily injury shall be guilty of a Class C
43 felony, which may include a fine not to exceed two hundred fifty

1 thousand dollars (\$250,000) per day of violation, provided that this
2 fine shall not exceed a cumulative total of one million dollars
3 (\$1,000,000) for each period of 30 days during which the violation
4 continues.

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

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

8 b. An existing circumstance, if he is aware or believes that the
9 circumstance exists.

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

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

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

19 b. Knowledge possessed by a person other than the defendant but
20 not by the defendant himself may not be attributed to the
21 defendant.

22 (4) It is an affirmative defense to a prosecution under this subsection that
23 the conduct charged was conduct consented to by the person endangered
24 and that the danger and conduct charged were reasonably foreseeable
25 hazards of an occupation, a business or profession, or of medical
26 treatment or medical or scientific experimentation conducted by
27 professionally approved methods, and the person had been made aware
28 of the risks involved prior to giving consent. The defendant may
29 establish an affirmative defense under this subdivision by a
30 preponderance of the evidence.

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

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

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

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

- 1 (2) An act of third parties other than agents, employees, contractors, or
2 subcontractors of the defendant.
- 3 (3) An act done in reliance on the written advice or emergency on-site
4 direction of an employee of the Department. In emergencies, oral
5 advice may be relied upon if written confirmation is delivered to the
6 employee as soon as practicable after receiving and relying on the
7 advice.
- 8 (4) An act causing no significant harm to the environment or risk to public
9 health, safety, or welfare and done in compliance with other conflicting
10 environmental requirements or other constraints imposed in writing by
11 environmental agencies or officials after written notice is delivered to
12 all relevant agencies that the conflict exists and will cause a violation of
13 the identified standard.
- 14 (5) Violations causing no significant harm to the environment or risk to
15 public health, safety, or welfare for which no enforcement action or civil
16 penalty could have been imposed under any written civil enforcement
17 guidelines in use by the Department at the time. This subdivision shall
18 not be construed to require the Department to develop or use written
19 civil enforcement guidelines.
- 20 (6) Occasional, inadvertent, short-term violations causing no significant
21 harm to the environment or risk to public health, safety, or welfare. If
22 the violation occurs within 30 days of a prior violation or lasts for more
23 than 24 hours, it is not an occasional, short-term violation.
- 24 (g) All general defenses, affirmative defenses, and bars to prosecution that may
25 apply with respect to other criminal offenses under law may apply to prosecutions
26 brought under this section or other criminal statutes that refer to this section and shall be
27 determined by the courts of this State according to the principles of common law as they
28 may be applied in light of reason and experience. Concepts of justification and excuse
29 applicable under this section may be developed in light of reason and experience.
- 30 (h) All general defenses, affirmative defenses, and bars to prosecution that may
31 apply with respect to other criminal offenses under law may apply to prosecutions
32 brought under this section or other criminal statutes that refer to this section and shall be
33 determined by the courts of this State according to the principles of common law as they
34 may be applied in light of reason and experience. Concepts of justification and excuse
35 applicable under this section may be developed in light of reason and experience.
- 36 (i) For purposes of this section, the term 'person' means, in addition to the
37 definition contained in G.S. 143-212, any responsible corporate or public office or
38 employee. If a vote of the people is required to effectuate the intent and purpose of this
39 Article by a county, city, town, or other political subdivision of the State and the vote on
40 the referendum is against the means or machinery for carrying out the intent and purpose,
41 then this section shall not apply to elected officials or to any responsible appointed
42 officials or employees of the county, city, town, or other political subdivision.

43 **"§ 143-215.104R. Enforcement procedures; injunctive relief.**

1 Whenever the Commission has reasonable cause to believe that any person has
2 violated or is threatening to violate any of the provisions of this Part or rule implementing
3 this Part, the Commission may, either before or after the institution of any other action or
4 proceeding authorized by this Part, request the Attorney General to institute a civil action
5 in the name of the State upon the relation of the Commission for injunctive relief to
6 restrain the violation or threatened violation and for other and further relief in the
7 premises as the court shall deem proper. The Attorney General may institute an action in
8 the superior court of the county in which the violation occurred or may occur or, in the
9 Attorney General's discretion, in the superior court of the county in which the person
10 responsible for the violation or threatened violation resides or has a principal place of
11 business. Upon a determination by the court that the alleged violation of the provisions
12 of this Part or the rules of the Commission has occurred or is threatened, the court shall
13 grant the relief necessary to prevent or abate the violation or threatened violation.
14 Neither the institution of the action nor any of the proceedings thereon shall relieve any
15 party to the proceedings from any penalty prescribed for violation of this Part. In the
16 event a civil action is commenced pursuant to this section, the Commission may recover
17 the costs of the action, including attorneys' fees and investigation expenses. All monies
18 received or recovered shall be paid into the Fund or other source from which the
19 expenditures were made.

20 **"§ 143-215.104S. Appeals.**

21 Any person who is aggrieved by a decision of the Commission under G.S. 143-
22 215.104E through G.S. 143-215.104O may commence a contested case by filing a
23 petition under G.S. 150B-23 within 60 days after the Commission's decision. If no
24 contested case is initiated within the allotted time period, the Commission's decision shall
25 be final and not subject to review. The Commission shall make the final agency decision
26 in contested cases initiated pursuant to this section. The Commission shall not delegate
27 its authority to make a final agency decision pursuant to this section.

28 **"§ 143-215.104T. Construction of this Part.**

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

- 30 (1) Affect the ability of local governments to regulate land use under
31 Article 19 of Chapter 160A of the General Statutes and Article 18 of
32 Chapter 153A of the General Statutes. The use of the identified
33 contamination site and any land-use restrictions in the dry-cleaning
34 solvent remediation agreement shall be consistent with local land-use
35 controls adopted under those statutes.
- 36 (2) Amend, modify, repeal, or otherwise alter any provision of any remedial
37 program or other provision of law relating to civil and criminal penalties
38 or enforcement actions and remedies available to the Department,
39 except as may be provided in a dry-cleaning solvent remediation
40 agreement.
- 41 (3) Prevent or impede the immediate response of the Department or
42 responsible party to an emergency that involves an imminent or actual

1 release of a regulated substance that threatens public health or the
2 environment.

3 (4) Relieve a person receiving liability protection under this Part from any
4 liability for contamination later caused by that person at a facility or
5 abandoned site.

6 (5) Affect the right of any person to seek any relief available against any
7 party to the dry-cleaning solvent remediation agreement who may have
8 liability with respect to the facility or abandoned site, except that this
9 Part does limit the relief available against any party to a remediation
10 agreement with respect to assessment or remediation of the
11 contamination site to the assessment remediation required under the
12 remediation agreement.

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

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

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

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

29 (b) Notwithstanding the provision of the Tort Claims Act, G.S. 143-291 through
30 G.S. 143-300.1 or any other provision of law waiving the sovereign immunity of the
31 State of North Carolina, the State, its agencies, officers, employees, and agents shall be
32 absolutely immune from any liability in any proceeding for any injury or claim arising
33 from negotiating, entering into, monitoring, or enforcing a dry-cleaning solvent
34 assessment agreement, a dry-cleaning solvent remediation agreement, or a Notice of Dry-
35 Cleaning Solvent Remediation under this Part or any other action implementing this Part.
36 **"§ 143-215.104U. Reporting requirements.**

37 (a) The Secretary shall present an annual report to the Environmental Review
38 Commission that shall include at least the following:

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

41 (2) A list of all facilities and abandoned sites certified by the Commission
42 and the status of contamination associated with each facility or
43 abandoned site.

1 (3) An estimate of the cost of assessment and remediation required in
 2 connection with facilities or abandoned sites certified by the
 3 Commission and an estimate of assessment and remediation costs
 4 expected to be paid from the Fund.

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

6 (5) A statement of all claims against the Fund, including claims paid,
 7 claims denied, pending claims, anticipated claims, and any other
 8 obligations.

9 (6) The adequacy of the Fund to carry out the purposes of this Part together
 10 with any recommendations as to measures that may be necessary to
 11 assure the continued solvency of the Fund.

12 (b) The Secretary shall make the annual report required by this section on or
 13 before 1 October of each year."

14 Section 2. (a) G.S. 143B-282(a)(1)t. reads as rewritten:

15 "t. To have jurisdiction and supervision over oil pollution and dry-
 16 cleaning solvent use, contamination, and remediation pursuant to
 17 Article 21A of Chapter ~~143-~~143 of the General Statutes."

18 (b) G.S. 143B-282(a)(2) is amended by the addition of a new sub-subdivision to
 19 read:

20 "j. To implement the provisions of Part 6 of Article 21A of Chapter
 21 143 of the General Statutes."

22 Section 3. G.S. 58-2-40 is amended by adding a new subdivision to read:

23 "(9) Adopt rules governing what shall constitute an uninsurable facility for
 24 the purposes of G.S. 143-215.104E(b). The rules shall base the
 25 determination of uninsurability on the availability of pollution and
 26 remediation legal liability insurance at an annual premium amount that
 27 is affordable and proportionate to premium amounts charged for
 28 coverage of facilities at which dry-cleaning solvent contamination is not
 29 known to be present. In no event shall the annual premium amount on
 30 which a determination of uninsurability is based be greater than three
 31 times the average premium that is charged for coverage of facilities at
 32 which dry-cleaning solvent contamination is not known to be present."

33 Section 4. Subchapter I of Chapter 105 of the General Statutes is amended by
 34 adding a new Article to read:

35 **"ARTICLE 5D.**

36 **"DRY-CLEANING SOLVENT TAX.**

37 **"§ 105-187.30. Definitions.**

38 The definitions in G.S. 105-164.3 apply to this Article, and the following definitions
 39 apply to this Article:

40 (1) Dry-cleaning facility. – Defined in G.S. 143-215.104B.

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

42 **"§ 105-187.31. Tax imposed.**

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

8 **"§ 105-187.32. Administration.**

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

17 **"§ 105-187.33. Exemptions and refunds.**

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

21 **"§ 105-187.34. Use of tax proceeds.**

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

27 Section 4.1. G.S. 105-259(b) is amended by adding a new subdivision to read:

28 "(20) To furnish to the Environmental Management Commission information
29 concerning whether a person who is requesting certification of a dry-
30 cleaning facility or wholesale distribution facility from the Commission
31 is liable for privilege tax under Article 5D of this Chapter."

32 Section 4.2. G.S. 130A-310.31(b)(3) reads as rewritten:

33 "(3) 'Brownfields property' or 'brownfields site' means abandoned, idled, or
34 underused property at which expansion or redevelopment is hindered by
35 actual environmental contamination or the possibility of environmental
36 contamination and that is or may be subject to remediation under any
37 State remedial program other than Part 2A of Article ~~24~~21A of Chapter
38 143 of the General Statutes or that is or may be subject to remediation
39 under the Comprehensive Environmental Response, Compensation and
40 Liability Act of 1980, as amended (42 U.S.C. § 9601 et seq.)."

41 Section 4.3. G.S. 130A-310.31(b)(5) reads as rewritten:

42 "(5) 'Current standards' when used in connection with 'cleanup',
43 'remediated', or 'remediation' means that cleanup or remediation

1 ~~activities at the site comply of~~ contamination complies with generally
 2 applicable standards, guidance, or established methods governing the
 3 contaminants at the site that are adopted or published established by
 4 statute or adopted, published, or implemented by the Commission, the
 5 Environmental Management Commission, the Commission, or the
 6 Department. Department instead of the risk-based standards established
 7 by the Commission pursuant to this Part."

8 Section 4.4. G.S. 130A-310.31(b)(11) reads as rewritten:

9 "(11) 'Regulated substance' means a hazardous waste, as defined in G.S.
 10 130A-290; a hazardous substance, as defined in G.S. 143-215.77A; oil,
 11 as defined in G.S. 143-215.77; or other substance regulated under any
 12 remedial program implemented by the Department other than Part 2A of
 13 Article 21A of Chapter 143 of the General Statutes."

14 Section 4.5. G.S. 130A-310.37 is amended by adding a new subsection to
 15 read:

16 "(c) The Department shall not enter into a brownfields agreement for a brownfields
 17 site that is identified by the United States Environmental Protection Agency as a federal
 18 Superfund site pursuant to 40 Code of Federal Regulations, Part 300 (1 July 1996
 19 Edition)."

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

23 Section 6. (a) The General Statutes set out in Sections 1, 4, and 4.1 of this act
 24 become effective on the date specified in the following table:

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

- 1 143-215.104S 1 January 1998
2 143-215.104T 1 January 1998
3 143-215.104U 1 January 1998
4 105-187.30 1 October 1997
5 105-187.31 1 October 1997
6 105-187.32 1 October 1997
7 105-187.33 1 October 1997
8 105-187.34 1 October 1997
9 105-259(b)(20) 1 January 1999.
- 10 (b) Sections 2 and 3 of this act become effective 1 October 1997.
11 (c) Sections 4.2 through 4.5 of this act become effective if and when 1997 House
12 Bill 1121 becomes law.
13 (d) Sections 5 through 8 of this act are effective when this act becomes law.
14 (e) The Secretary of Environment, Health, and Natural Resources shall make
15 the first annual report required under G.S. 143-215.104U on or before 1 October 1998.
16 (f) The Environmental Management Commission shall adopt rules and
17 develop forms, strategies, and other procedures required or authorized by subdivisions (1)
18 and (3) of G.S. 143-215.104D(b) on or before 1 January 1999.
- 19 Section 7. (a) Any person who undertakes assessment or remediation of dry-
20 cleaning solvent contamination pursuant to an enforcement action by the Department of
21 Environment, Health, and Natural Resources during the period beginning 1 October 1997
22 and 1 January 1999 may, on or after 1 January 1999 seek reimbursement from the Dry-
23 Cleaning Solvent Cleanup Fund for any costs exceeding fifty thousand dollars (\$50,000).
24 The Commission shall reimburse costs if it finds that the costs incurred were (i)
25 reasonably necessary to assess or remediate the dry-cleaning solvent contamination; (ii)
26 for any of the activities described in subdivisions (1) through (7) of G.S. 143-
27 215.104N(a); (iii) not subject to any of the limitations in subdivisions (4) or (5) of G.S.
28 143-215.104N(b); (iv) not reimbursable from pollution and remediation legal liability
29 insurance; and (v) required by a specific order of the Department of Environment, Health,
30 and Natural Resources issued on or after 30 June 1996. No reimbursement may be paid
31 pursuant to this section for dry-cleaning solvent contamination that did not result from
32 operations at a dry-cleaning or wholesale distribution facility.
- 33 (b) Any person who, as of 1 January 1999, is undertaking assessment or
34 remediation of dry-cleaning solvent contamination shall be eligible to petition the
35 Commission to enter into a dry-cleaning solvent assessment agreement or dry-cleaning
36 solvent remediation agreement with respect to the contamination. In calculating the
37 required financial contribution of parties to any agreement, the Commission shall
38 determine the cost of any unreimbursed assessment or remediation activity undertaken by
39 the parties with respect to the contamination site prior to 1 January 1999 and shall credit
40 the amount toward any applicable financial responsibility limits established in G.S. 143-
41 215.104F.
- 42 Section 8. Section 7 of this act is repealed effective 1 January 2000. Any
43 reimbursement authorized pursuant to Section 7 prior to 1 January 2000 shall be paid in

1 accordance with the provisions of that section. Section 4 of this act is repealed effective
2 1 January 2010. Sections 1 and 4.1 of this act are repealed effective 1 January 2012.
3 However:

- 4 (1) G.S. 143-215.104K is not repealed to the extent that it applies to
5 liability arising from dry-cleaning solvent contamination described in a
6 Dry-Cleaning Solvent Assessment Agreement or Dry-Cleaning Solvent
7 Remediation Agreement entered into by the Environmental
8 Management Commission pursuant to G.S. 143-215.104H and G.S.
9 143-215.104I.
- 10 (2) Any Dry-Cleaning Solvent Assessment Agreement or Dry-Cleaning
11 Solvent Remediation Agreement in force as of 1 January 2012 shall
12 continue to be governed by the provisions of Part 6 of Article 21A of
13 Chapter 143 of the General Statutes as though those provisions had not
14 been repealed.
- 15 (3) G.S. 143-215.104D(b)(2) is not repealed; rules adopted by the
16 Environmental Management Commission pursuant to G.S. 143-
17 215.104D(b)(2) shall continue in effect; and those rules may be
18 enforced pursuant to G.S. 143-215.104P, 143-215.104Q, and 143-
19 215.104R, which shall remain in effect for that purpose.