

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S

D

SENATE DRS35218-RIx-13 (03/09)

Short Title: Dry-Cleaning Solvent Act Amends.

(Public)

Sponsors: Senator Rand.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO: (1) EXTEND SUNSET DATES APPLICABLE TO THE DRY-CLEANING SOLVENT CLEANUP ACT, THE DRY-CLEANING SOLVENT CLEANUP FUND, AND THE DRY-CLEANING SOLVENT TAX; (2) ALLOW THE USE OF STATE AND LOCAL LAND-USE CONTROLS AND DEED NOTICES IN LIEU OF LAND-USE RESTRICTIONS FOR PROPERTIES IN THE AREA OF CONTAMINATED DRY-CLEANING SITES, NOT INCLUDING PROPERTIES ON WHICH A DRY-CLEANING FACILITY IS OR WAS LOCATED WHICH IS THE SOURCE OF A SITE'S CONTAMINATION; (3) MODIFY NOTICE AND COMMENT REQUIREMENTS ASSOCIATED WITH A NOTICE OF INTENT TO REMEDIATE; AND (4) REMOVE THE LIMITATION ON DISBURSEMENT OF MONIES FROM THE DRY-CLEANING SOLVENT CLEANUP FUND FOR COSTS INCURRED TO ADDRESS DRY-CLEANING SOLVENT CONTAMINATION ON STATE-OWNED PROPERTY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-215.104I reads as rewritten:

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

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

(1) Repealed by Session Laws 2000, c. 19, s. 10, effective June 26, 2000.

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



* D R S 3 5 2 1 8 - R I X - 1 3 *

- 1 (3) There is a public benefit commensurate with the liability protection provided
2 under this Part.
- 3 (4) Repealed by Session Laws 2007-530, s. 6, effective August 31, 2007.
- 4 (5) The petitioner has complied with or will comply with all applicable
5 procedural requirements.
- 6 (6) The remediation agreement will not cause the Department to violate the
7 terms and conditions under which the Department operates and administers
8 remedial programs, including the programs established or operated pursuant
9 to Article 9 of Chapter 130A of the General Statutes, by delegation or
10 similar authorization from the United States or its departments or agencies,
11 including the United States Environmental Protection Agency.
- 12 (7) The priority ranking assigned to the facility or site is consistent with the
13 rules adopted by the Commission or the priority ranking that the petitioner
14 agrees to accept is consistent with the rules adopted by the Commission.
- 15 (8) Repealed by Session Laws 2007-530, s. 6, effective August 31, 2007.
- 16 (9) The petitioner will continue to have available the financial resources
17 necessary to satisfy the share of response costs imposed on the petitioner by
18 G.S. 143-215.104F.
- 19 (10) Repealed by Session Laws 2007-530, s. 6, effective August 31, 2007.
- 20 (11) The consent of other property owners to enter into their property for
21 purposes of conducting remediation activities specified in the remediation
22 agreement.

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

27 (b1) For properties in the area of a contamination site, other State or local land-use
28 controls and notifications may be used in lieu of land-use restrictions. Any land-use controls
29 used shall adequately protect human health and the environment, both currently and in the
30 future, from exposure to dry-cleaning solvent contamination. If controls are used in lieu of
31 land-use restrictions, then a Notice of Dry-Cleaning Solvent Remediation shall be prepared in
32 accordance with the provision set forth in subdivisions (1) through (4) of
33 G.S. 143-215.104M(b) and filed in accordance with subsections (c) through (g) of
34 G.S. 143-215.104M. In the event that the owner of the property fails to submit and file the
35 required Notice within the time specified, the Commission may prepare and file the Notice.
36 This subsection shall not apply to properties on which a dry-cleaning facility is or was located
37 which is the source of the contamination.

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

- 41 (1) Any remediation, including remediation of contaminants other than
42 dry-cleaning solvents, to be conducted on the property, including:
- 43 a. A description of specific areas where remediation is to be conducted.
 - 44 b. The remediation method or methods to be employed.
 - 45 c. Repealed by Session Laws 2007-530, s. 6, effective August 31, 2007.
 - 46 d. A schedule of remediation activities.
 - 47 e. Applicable remediation standards. Applicable remediation standards
48 for dry-cleaning solvent contamination shall not exceed the
49 requirements adopted by the Commission pursuant to
50 G.S. 143-104D(b)(3).

1 f. A schedule and the method or methods for evaluating the
2 remediation.

3 (2) Any land-use ~~restrictions~~ restrictions and State and local land-use controls
4 and notifications that will apply to the contamination site or other property.

5 (3) The desired results of any ~~remediation or remediation~~, land-use ~~restrictions~~
6 restrictions, or State or local land-use controls or notifications with respect to
7 the contamination site.

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

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

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

12 (7) Repealed by Session Laws 2007-530, s. 6, effective August 31, 2007.

13 (d) The Commission may refuse to enter into a dry-cleaning solvent assessment
14 agreement or dry-cleaning solvent remediation agreement with any petitioner if the petitioner
15 fails to provide any information that is necessary to demonstrate the facts required to be shown
16 by subsection (a) of this section.

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

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

27 (g) The terms and conditions of a dry-cleaning solvent remediation agreement
28 concerned with dry-cleaning solvent contamination shall be guided by and consistent with the
29 rules adopted by the Commission pursuant to G.S. 143-215.104D and the disbursement
30 authorities and limitations set out in this Part. A remediation agreement shall provide that the
31 Commission's private contractor conduct assessment and remediation activities at the facility or
32 abandoned site.

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

36 **SECTION 2.** G.S. 143-215.104K reads as rewritten:

37 **"§ 143-215.104K. Liability protection.**

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

50 (1) Repealed by Session Laws 2007-503, s. 8, effective August 31, 2007.

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

- 1 (3) A person who occupies the contamination site.
2 (4) A successor or assign of any person to whom the liability protection
3 provided under this Part applies.
4 (5) Any lender or fiduciary that provides financing to the petitioner to pay the
5 petitioner's financial obligations under G.S. 143-215.104F.

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

14 (c) If a land-use restriction set out in a Notice of Dry-Cleaning Solvent Remediation
15 required under G.S. 143-215.104M is violated, the owner of the contamination site at the time
16 the land-use restriction is violated, the owner's successors and assigns, and the owner's agents
17 who direct or contract for alteration of the contamination site in violation of a land-use
18 restriction shall be liable for remediation of all contaminants to unrestricted use standards. A
19 petitioner who completes the remediation ~~or redevelopment~~ required under a dry-cleaning
20 solvent remediation agreement or other person who receives liability protection under this Part
21 shall not be required to undertake additional remediation unless:

- 22 (1) The petitioner knowingly or recklessly provides false information that forms
23 a basis for the remediation agreement or that is offered to demonstrate
24 compliance with the remediation agreement or fails to disclose relevant
25 information about contamination related to a facility or abandoned site.
26 (2) New information indicates the existence of previously unreported
27 dry-cleaning solvent contaminants or any other contaminants to be
28 remediated under the remediation agreement, or an area of previously
29 unreported contamination by contaminants addressed in the remediation
30 agreement is discovered to be associated with the facility or abandoned site
31 and has not been remediated to unrestricted use standards, unless the
32 remediation agreement is amended to include any previously unreported
33 contaminants and any additional area of contamination. If the remediation
34 agreement sets maximum concentrations for contaminants and new
35 information indicates the existence of previously unreported areas of these
36 contaminants, further remediation shall be required only if the areas of
37 previously unreported contaminants raise the risk of the contamination to
38 public health or the environment to a level less protective of public health
39 and the environment than that required by the remediation agreement.
40 (3) The level of risk to public health and the environment from contaminants is
41 unacceptable at or in the vicinity of the contamination site due to changes in
42 exposure conditions, including (i) a change in land use that increases the
43 probability of exposure to contaminants at or in the vicinity of the
44 contamination ~~site or site~~; (ii) the failure of remediation to mitigate risks to
45 the extent required to make the contamination site fully protective of public
46 health and the environment as planned in the remediation
47 ~~agreement~~ agreement; or (iii) removal of a State or local land-use control.
48 (4) The Commission obtains new information about a contaminant to be
49 remediated under the remediation agreement and associated with the facility
50 or abandoned site or exposures at or around the contamination site that raises
51 the risk to public health or the environment associated with the

1 contamination site beyond an acceptable range and in a manner or to a
2 degree not anticipated in the remediation agreement. Any person whose use,
3 including any change in use, of the contamination site causes an
4 unacceptable risk to public health or the environment may be required by the
5 Commission to undertake additional remediation measures under the
6 provisions of this Part.

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

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

13 (7) The remediation required in the remediation agreement has resulted in
14 notification from the United States or its departments and agencies,
15 including the Environmental Protection Agency, that the Department will
16 violate the terms and conditions under which it operates and administers
17 remedial programs by delegation or similar authorization."

18 **SECTION 3.** G.S. 143-215.104L reads as rewritten:

19 "**§ 143-215.104L. Public notice and community involvement.**

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

49 (b) Publication of the approved summary of the Notice of Intent ~~in the North Carolina~~
50 ~~Register and publication~~ in a newspaper of general circulation shall begin a public comment
51 period of at least ~~60~~ 30 days from the ~~later~~ date of publication. During the public comment

1 period, members of the public, residents of the community in which the contamination site is
2 located, and local governments having jurisdiction over the contamination site may submit
3 comment on the proposed dry-cleaning solvent remediation agreement, including methods and
4 degree of remediation, future land uses, and impact on local employment.

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

29 **SECTION 4.** G.S. 143-215.104N(b) reads as rewritten:

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

32 ...
33 (9) ~~For any costs incurred in connection with dry cleaning solvent~~
34 ~~contamination from a facility or abandoned site owned by the State or a~~
35 ~~department or agency of the State."~~

36 **SECTION 5.** Section 8 of S.L. 1997-392 reads as rewritten:

37 "Section 8. Section 7 of this act is repealed effective 1 January 2000. Any reimbursement
38 authorized pursuant to Section 7 prior to 1 January 2000 shall be paid in accordance with the
39 provisions of that section. Sections 1 and 4.1 of this act are repealed effective 1 January 2022.
40 Section 4 of this act is repealed effective 1 January 2020. ~~Section 4 of this act is repealed~~
41 ~~effective 1 January 2010. Sections 1 and 4.1 of this act are repealed effective 1 January 2012.~~
42 However:

- 43 (1) G.S. 143-215.104K is not repealed to the extent that it applies to liability
44 arising from dry-cleaning solvent contamination described in a Dry-Cleaning
45 Solvent Assessment Agreement or Dry-Cleaning Solvent Remediation
46 Agreement entered into by the Environmental Management Commission
47 pursuant to G.S. 143-215.104H and G.S. 143-215.104I.
48 (2) Any Dry-Cleaning Solvent Assessment Agreement or Dry-Cleaning Solvent
49 Remediation Agreement in force as of 1 January 2012 shall continue to be
50 governed by the provisions of Part 6 of Article 21A of Chapter 143 of the
51 General Statutes as though those provisions had not been repealed.

1 (3) G.S. 143-215.104D(b)(2) is not repealed; rules adopted by the
2 Environmental Management Commission pursuant to
3 G.S. 143-215.104D(b)(2) shall continue in effect; and those rules may be
4 enforced pursuant to G.S. 143-215.104P, 143-215.104Q, and 143-215.104R,
5 which shall remain in effect for that purpose."

6 **SECTION 6.** Section 23 of S.L. 2000-12 reads as rewritten:

7 "Section 23. Section 1.1 of this act becomes effective April 1, 2003, and expires June 30,
8 ~~2010-2020~~. Section 1.2 of this act becomes effective October 1, 2001, and expires January 1,
9 ~~2010-2020~~. Sections 3 and 4 of this act are effective on and after April 1, 1998. Section 5.1 of
10 this act becomes effective July 1, 2001. Section 5.2 of this act becomes effective July 1, 2002.
11 Section 5.3 of this act becomes effective July 1, 2003. All other sections of this act are effective
12 when this act becomes law."

13 **SECTION 7.** This act becomes effective July 1, 2009.