

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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HOUSE BILL 1586*

Short Title: Dry-Cleaning Solvent Cleanup Amends.

(Public)

Sponsors: Representatives Gibson; Morris, Sherrill, Culp, and Justus.

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

May 18, 2000

A BILL TO BE ENTITLED

1 AN ACT TO ESTABLISH A TEMPORARY ENVIRONMENTAL SURTAX TO
2 FUND CLEANUP OF DRY-CLEANING SOLVENT CONTAMINATION; TO
3 DESIGNATE THE STATE SALES TAX REVENUE FROM DRY-CLEANING
4 AND LAUNDRY SERVICES FOR THE DRY-CLEANING SOLVENT CLEANUP
5 FUND; TO AMEND THE DRY-CLEANING SOLVENT CLEANUP ACT OF 1997
6 TO REPEAL THE REQUIREMENT OF FINANCIAL RESPONSIBILITY FOR
7 DRY-CLEANING FACILITIES AND WHOLESALE DRY-CLEANING SOLVENT
8 DISTRIBUTION FACILITIES; TO ALLOW THE ENVIRONMENTAL
9 MANAGEMENT COMMISSION TO ENTER INTO CONTRACTS WITH
10 PRIVATE CONTRACTORS FOR ASSESSMENT AND REMEDIATION
11 ACTIVITIES AT DRY-CLEANING FACILITIES AND WHOLESALE DRY-
12 CLEANING SOLVENT DISTRIBUTION FACILITIES; TO DIRECT THE
13 DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO STUDY
14 THE USE OF DRY-CLEANING SOLVENTS IN NORTH CAROLINA, AND TO
15 MAKE OTHER CHANGES IN THE DRY-CLEANING SOLVENT CLEANUP
16 ACT OF 1997, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW
17 COMMISSION.
18

19 The General Assembly of North Carolina enacts:

20 Section 1.1. G.S. 105-164.4(a)(4) reads as rewritten:

1 "(4) Every person engaged in the business of ~~operating a dry cleaning,~~
2 ~~pressing, or hat blocking establishment, a laundry, or any similar~~
3 ~~business, engaged in the business of renting clean linen or towels or~~
4 ~~wearing apparel, or any similar business, or engaged in the business of~~
5 ~~soliciting cleaning, pressing, hat blocking, laundering or linen rental~~
6 ~~business for any of these businesses, is considered a retailer under this~~
7 ~~Article. A tax at the general rate of tax is levied on the gross receipts~~
8 ~~derived by these retailers from services rendered in engaging in any of~~
9 ~~the occupations or businesses named in this subdivision. The tax~~
10 ~~imposed by this subdivision does not apply to receipts derived from~~
11 ~~coin or token operated washing machines, extractors, and dryers.~~—The
12 tax imposed by this subdivision does not apply to gross receipts derived
13 from services performed for resale by a retailer that pays the tax on the
14 total gross receipts derived from the services."

15 Section 1.2. G.S. 105-164.4(a) is amended by adding a new subdivision to
16 read:

17 "(4d) Every person engaged in the business of operating a dry-cleaning,
18 pressing, or hat-blocking establishment, or laundry, or any similar
19 business, or engaged in the business of soliciting cleaning, pressing, hat-
20 blocking, or laundering for any of these businesses is considered a
21 retailer for the purposes of this Article. A tax at a rate of general rate is
22 levied on the gross receipts derived by these retailers from services
23 rendered in engaging in any of the occupations or businesses named in
24 this subdivision. The tax imposed by this subdivision does not apply to
25 receipts derived from coin or token-operated washing machines,
26 extractors, and dryers. The tax imposed by this subdivision does not
27 apply to gross receipts derived from services performed for resale by a
28 retailer that pays the tax on the total gross receipts derived from the
29 services."

30 Section 1.3. G.S. 105-164.7 reads as rewritten:

31 "**§ 105-164.7. Sales Tax Part of Purchase Price.**

32 Every retailer ~~engaged in the business of selling or delivering or taking orders for the~~
33 ~~sale or delivery of tangible personal property for storage, use or consumption in this State~~
34 ~~subject to the tax established by G.S. 105-164.4 shall at the time of selling or delivering~~
35 ~~or taking an order for the sale or delivery of said—tangible personal property or service~~
36 ~~subject to the tax established by G.S. 105-164.4, or collecting the sales price thereof or~~
37 ~~any part thereof, add to the sales price of such tangible personal property or service the~~
38 ~~amount of the tax on the sale thereof and when so added said tax shall constitute a part of~~
39 ~~such purchase price, shall be a debt from the purchaser to the retailer until paid and shall~~
40 ~~be recoverable at law in the same manner as other debts. Said tax shall be stated and~~
41 ~~charged separately from the sales price and shown separately on the retailer's sales~~
42 ~~records and shall be paid by the purchaser to the retailer as trustee for and on account of~~
43 ~~the State and the retailer shall be liable for the collection thereof and for its payment to~~

1 the Secretary and the retailer's failure to charge to or collect said tax from the purchaser
2 shall not affect such liability. It is the purpose and intent of this Article that the tax herein
3 levied and imposed shall be added to the sales price of tangible personal property or
4 service when sold at retail and thereby be borne and passed on to the customer, instead of
5 being borne by the retailer."

6 Section 1.4.(a) Article 5D of Chapter 105 of the General Statutes reads as rewritten:

7 **"ARTICLE 5D.**

8 **DRY-CLEANING-DRY-CLEANING SOLVENT TAX-CLEANUP."**

9 Section 1.4(b) Article 5D of Chapter 105 of the General Statutes, as amended by
10 Section 1.3(a) of this act, is further amended by designating the provisions thereof as a
11 new Part, to be entitled:

12 **"PART 1. DRY-CLEANING SOLVENT TAX."**

13 Section 1.5. Article 5D of Chapter 105 of the General Statutes, as amended by
14 Sections 1.4(a) and 1.4(b) of this act, is further amended by adding a new Part to read:

15 **"PART 2. ENVIRONMENTAL SURTAX ON DRY-CLEANING AND**
16 **LAUNDRY BUSINESSES.**

17 **"§ 105-187.35. Definitions.**

18 The definitions set out in G.S. 105-164.3 apply to this Article, except that the term
19 'sale' does not include lease or rental.

20 **"§ 105-187.36. Tax imposed.**

21 A privilege surtax is imposed on every person engaged in the business of operating a
22 dry-cleaning, pressing, or hat-blocking establishment, or laundry, or any similar business,
23 or engaged in the business of soliciting cleaning, pressing, hat-blocking, or laundering
24 business for any of these businesses at the rate of one cent (1¢) for every two cents (2¢)
25 of tax payable pursuant to G.S. 105-164.4(a)(4d).

26 **"§ 105-187.37. Administration.**

27 Except as otherwise provided in this Article, the tax imposed by this Article shall be
28 collected and administered in the same manner as the State sales tax imposed by Article 5
29 of this Chapter.

30 **"§ 105-187.38. Use of tax proceeds.**

31 The Secretary shall deposit the taxes collected under this Article in the Dry-Cleaning
32 Solvent Cleanup Fund established by G.S. 143-215.104C."

33 Section 1.6. Article 5 of Chapter 105 of the General Statutes is amended to
34 add a new section to read:

35 **"§ 105-164.44E. Transfer to the Dry-Cleaning Solvent Cleanup Fund.**

36 At the end of each quarter, the Secretary shall transfer to the Dry-Cleaning Solvent
37 Cleanup Fund established under G.S. 143-215.104C an amount equal to the State sales
38 and use taxes collected under G.S. 105-164.4(a)(4d), as determined by the Secretary
39 based on available data."

40 Section 1.7. G.S. 105-187.31 reads as rewritten:

41 **"§ 105-187.31. (Repealed effective January 1, 2010.) Tax imposed.**

42 A privilege tax is imposed on a dry-cleaning solvent retailer at a flat rate for each
43 gallon of dry-cleaning solvent sold by the retailer to a dry-cleaning facility. An excise tax

1 is imposed on dry-cleaning solvent purchased outside the State for storage, use, or
 2 consumption by a dry-cleaning facility in this State. The rate of the privilege tax and the
 3 excise tax is ~~five dollars and eighty-five cents (\$5.85)~~ seven dollars and fifty cents (\$7.50)
 4 for each gallon of dry-cleaning solvent that is chlorine-based and ~~eighty cents (80¢)~~ one
 5 dollar (\$1.00) for each gallon of dry-cleaning solvent that is hydrocarbon-based. These
 6 taxes are in addition to all other taxes."

7 Section 2. G.S. 143-215.104C(b) reads as rewritten:

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

- 9 (1) Dry-cleaning solvent taxes collected under Article 5D of Chapter 105 of
 10 the General Statutes.
- 11 (2) Recoveries made pursuant to G.S. 143-215.104N and G.S. 143-
 12 215.104O.
- 13 (3) Gifts and grants made to the Fund.
- 14 (4) Revenues credited to the Fund under G.S. 105-164.44E."

15 Section 3. G.S. 143-215.104B(b)(20), 143-215.104E, 143-215.104F(b)(3),
 16 143-215.104F(d)(3), 143-215.104F(g), 143-215.104J(a)(5), 143-215.104P(a)(1), and
 17 Section 3 of S.L. 1997-392 are repealed.

18 Section 4. G.S. 143-215.104F(f) reads as rewritten:

19 "(f) Financial Responsibility Requirements. – Each potentially responsible person
 20 who petitions the Commission to enter into a dry-cleaning solvent assessment agreement
 21 or dry-cleaning solvent remediation agreement shall accept written responsibility in the
 22 amount specified in this section for the assessment or remediation of the dry-cleaning
 23 solvent contamination identified in the petition. If two or more potentially responsible
 24 persons petition the Commission jointly, the requirements below shall be the aggregate
 25 requirements for the financial responsibility of all potentially responsible persons who are
 26 party to the petition. Unless an alternative arrangement is agreed to by co-petitioners, the
 27 financial responsibility requirements of this section shall be apportioned equally among
 28 the co-petitioners. ~~The requirements in this subsection shall be in addition to any insurance or~~
 29 ~~other financial responsibility, including deductibles or retentions, established pursuant to G.S.~~
 30 ~~143-215.104E.~~ The financial responsibility required shall be as follows:

Facility or Abandoned Site Where Release Occurred	Costs
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	\$5,000
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	\$10,000
Dry-cleaning facilities owned by persons who employ 10 or more full-time employees, or the equivalent, in activities related to	

1 ~~dry-cleaning operations during the preceding calendar year~~ \$15,000

2
3 Wholesale ~~distribution facilities~~ \$25,000

4
5 Abandoned ~~dry-cleaning facility sites~~ \$50,000.

6
7 (1) For dry-cleaning facilities owned by persons who employ fewer than
8 five full-time employees, or the equivalent, in activities related to dry-
9 cleaning operations during the calendar year next preceding the date of
10 the petition, the first five thousand dollars (\$5,000) of the costs of
11 assessment or remediation and one percent (1%) of costs of assessment
12 or remediation in excess of two hundred thousand dollars (\$200,000),
13 but not more than one million dollars (\$1,000,000).

14 (2) For dry-cleaning facilities owned by persons who employ at least five
15 but fewer than 10 full-time employees, or the equivalent, in activities
16 related to dry-cleaning operations during the calendar year next
17 preceding the date of the petition, the first ten thousand dollars
18 (\$10,000) of the costs of assessment or remediation, two percent (2%)
19 of costs of assessment or remediation in excess of two hundred
20 thousand dollars (\$200,000) but not more than five hundred thousand
21 dollars (\$500,000), and one percent (1%) of costs of assessment or
22 remediation in excess of five hundred thousand dollars (\$500,000) but
23 not more than one million dollars (\$1,000,000).

24 (3) For dry-cleaning facilities owned by persons who employ 10 or more
25 full-time employees, or the equivalent, in activities related to dry-
26 cleaning operations during the calendar year next preceding the date of
27 the petition, the first fifteen thousand dollars (\$15,000) of the costs of
28 assessment or remediation, three percent (3%) of costs of assessment or
29 remediation in excess of two hundred thousand dollars (\$200,000) but
30 not more than five hundred thousand dollars (\$500,000), and one
31 percent (1%) of costs of assessment or remediation in excess of five
32 hundred thousand dollars (\$500,000) but not more than one million
33 dollars (\$1,000,000).

34 (4) For wholesale distribution facilities and abandoned dry-cleaning facility
35 sites, the first twenty-five thousands dollars (\$25,000) of the costs of
36 assessment or remediation, three percent (3%) of the costs of assessment
37 or remediation in excess of two hundred thousand dollars (\$200,000)
38 but not more than five hundred thousand dollars (\$500,000), and one
39 percent (1%) of costs of assessment or remediation in excess of five
40 hundred thousand dollars (\$500,000) but not more than one million
41 dollars (\$1,000,000)."

42 Section 5. G.S. 143-215.104C reads as rewritten:

1 **"§ 143-215.104C. (Repealed effective January 1, 2012) Dry-Cleaning Solvent**
2 **Cleanup Fund.**

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

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

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

11 (2) Recoveries made pursuant to G.S. 143-215.104N and G.S. 143-
12 215.104O.

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

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

32 Section 6. G.S. 143-215.104D(a) reads as rewritten:

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

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

42 (2) Prioritize certified dry-cleaning facilities, certified wholesale
43 distribution facilities, or certified abandoned dry-cleaning facility sites

1 for the initiation of assessment or remediation activities that are
2 reimbursable from the Fund.

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

5 (4) Schedule funding of assessment and remediation activities.

6 (5) Determine whether assessment or remediation is necessary at a site at
7 which dry-cleaning solvent contamination has occurred.

8 (5a) Enter into contracts with private contractors for assessment and
9 remediation activities at certified dry-cleaning facilities, certified
10 wholesale distribution facilities, or certified abandoned dry-cleaning
11 facility sites.

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

14 (7) Make payments from the Fund to reimburse the costs of assessment and
15 remediation. ~~Any payments made by a private contractor engaged by~~
16 ~~the Commission shall be authorized by the Commission prior to~~
17 ~~disbursement."~~

18 Section 7. G.S. 143-215.104F, as amended by Sections 3 and 4 of this act,
19 reads as rewritten:

20 **"§ 143-215.104F. (Repealed effective January 1, 2012) Requirements for**
21 **certification, assessment agreements, and remediation agreements.**

22 (a) Any person petitioning for certification of a facility or abandoned site pursuant
23 to G.S. 143-215.104G, for a dry-cleaning solvent assessment agreement pursuant to G.S.
24 143-215.104H, or for a dry-cleaning solvent remediation agreement pursuant to G.S. 143-
25 215.104I, shall meet the requirements set out in this section and any other applicable
26 requirements of this Part.

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

29 (1) ~~Information necessary for the Commission to determine the priority ranking of~~
30 Any information that the petitioner possesses relating to the
31 contamination at the facility or abandoned site described in the petition.

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

34 (4) Information necessary to demonstrate that the petitioner, and any parent,
35 subsidiary, or other affiliate of the petitioner has substantially complied
36 with:

37 a. The terms of any dry-cleaning solvent assessment agreement,
38 dry-cleaning solvent remediation agreement, brownfields
39 agreement, or other similar agreement to which the petitioner or
40 any parent, subsidiary, or other affiliate of the petitioner has been
41 a party.

42 b. The requirements applicable to any remediation in which the
43 petitioner has previously engaged.

1 c. Federal and State laws, regulations, and rules for the protection
2 of the environment.

3 (5) Evidence demonstrating that a release of dry-cleaning solvent has
4 occurred at the facility or abandoned site and that the release has
5 resulted in dry-cleaning solvent contamination.

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

13 (c1) Costs incurred by the petitioner for activities to obtain certification of a
14 facility or site shall not be reimbursable from the Fund.

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

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

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

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

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

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

34 (f) Financial Responsibility Requirements. – Each potentially responsible
35 person who petitions the Commission to ~~enter into a dry-cleaning solvent assessment~~
36 ~~agreement or dry-cleaning solvent remediation agreement~~ certify a facility or abandoned site
37 shall accept written responsibility in the amount specified in this section for the
38 assessment or remediation of the dry-cleaning solvent contamination identified in the
39 petition. If two or more potentially responsible persons petition the Commission jointly,
40 the requirements below shall be the aggregate requirements for the financial
41 responsibility of all potentially responsible persons who are party to the petition. Unless
42 an alternative arrangement is agreed to by co-petitioners, the financial responsibility
43 requirements of this section shall be apportioned equally among the co-petitioners.

1 Facility or Abandoned Site Where Release Occurred Costs

2
3 Dry-cleaning facilities owned by persons who employ fewer
4 than five full-time employees, or the equivalent, in
5 activities related to dry-cleaning operations during
6 the preceding calendar year \$10,000

7
8 Dry-cleaning facilities owned by persons who employ at
9 least five but fewer than 10 full-time employees, or the
10 equivalent, in activities related to dry-cleaning
11 operations during the preceding calendar year \$15,000

12
13 Dry-cleaning facilities owned by persons who employ
14 10 or more full-time employees, or the equivalent, in
15 activities related to dry-cleaning operations during
16 the preceding calendar year \$20,000

17
18 Wholesale distribution facilities \$30,000

19
20 Abandoned dry-cleaning facility sites \$50,000."

21 Section 8. G.S. 143-215.104G reads as rewritten:

22 "**§ 143-215.104G. (Effective January 1, 1999; repealed effective January 1, 2012)**

23 **Certification of facilities and abandoned sites.**

24 (a) A potentially responsible party may petition the Commission to certify a
25 facility or abandoned site where a release of dry-cleaning solvent ~~is believed to have~~ has
26 occurred. The Commission shall certify the facility or abandoned site if the petitioner
27 meets the applicable requirements of G.S. 143-215.104F. Upon its decision to certify a
28 facility or abandoned site, the Commission shall inform the petitioner of its decision and
29 of the initial priority ranking of the facility or site.

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

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

38 (1) ~~A proposed dry-cleaning solvent assessment agreement or dry-cleaning~~
39 ~~solvent remediation agreement or an indication written statement of the~~
40 ~~petitioner's intent to enter into an assessment agreement or remediation~~
41 ~~agreement.~~

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

1 (d) A person who has access to property that is contaminated by dry-cleaning
2 solvent and who has successfully petitioned for certification of the facility or abandoned
3 site from which the contamination is believed to have resulted may undertake assessment
4 or remediation of dry-cleaning solvent contamination located on the property consistent
5 with the standards established by the Commission pursuant to G.S. 143-215.104D(b)(3)
6 without first entering into a dry-cleaning solvent assessment agreement or a dry-cleaning
7 solvent remediation agreement. No assessment or remediation activities undertaken
8 pursuant to this subsection shall rely on standards that require the creation of land-use
9 restrictions. A person who undertakes assessment or remediation activities pursuant to
10 this subsection shall provide the Commission prior written notice of the activity. Costs
11 associated with assessment or remediation activities undertaken pursuant to this
12 subsection shall not be eligible for reimbursement from the Fund.

13 (e) The rejection of any petition filed pursuant to this section shall not affect the
14 rights of any other petitioner, other than any parent, subsidiary, or other affiliate of the
15 petitioner, under this Part. The rejection of a petition or the decertification of a facility or
16 abandoned site may be the basis for rejection of a petition by any parent, subsidiary, or
17 other affiliate of the petitioner for the facility or abandoned site."

18 Section 9. G.S. 143-215.104H reads as rewritten:

19 "**§ 143-215.104H. (Effective January 1, 1999; repealed effective January 1, 2012)**

20 **Dry-Cleaning Solvent Assessment Agreements.**

21 (a) Assessment Agreements. – One or more potentially responsible parties may
22 petition the Commission to enter into a dry-cleaning solvent assessment agreement
23 regarding a facility or abandoned site that has been certified pursuant to G.S. 143-
24 215.104G. The Commission may, in its discretion, enter into an assessment agreement
25 with any potentially responsible party who satisfies the requirements of this section and
26 the applicable requirements of G.S. 143-215.104F. If more than one potentially
27 responsible party petitions the Commission, the Commission may enter into a single
28 assessment agreement with one or more of the petitioners. The Commission shall not
29 unreasonably refuse to enter into an assessment agreement pursuant to this section.
30 ~~Petitioners shall~~ The Commission may require the petitioners to provide the Commission
31 with any information necessary to demonstrate that the: ~~demonstrate:~~

- 32 (1) ~~Priority~~ The priority ranking assigned to the facility or site is consistent
33 with the rules adopted by the Commission or the adjusted priority
34 ranking that the petitioner agrees to accept is consistent with the rules
35 adopted by the Commission.
- 36 (2) ~~Projected~~ The projected schedule for funding of assessment activities,
37 including reimbursements from the Fund activities is adequate.
- 38 (3) ~~Assessment~~ The assessment activities to be undertaken with respect to
39 the dry-cleaning solvent contamination and any other contamination at
40 the contamination site are adequate.
- 41 (4) ~~Person~~ The person who will be responsible for implementation of the
42 activities is capable and qualified to conduct the assessment.

- 1 (4a) The amount of funds already expended by the petitioner for assessment
2 or remediation of dry-cleaning solvent contamination at the facility or
3 site.
- 4 (5) ~~Petitioner~~ The petitioner has and will continue to have available the
5 financial resources necessary to pay the costs of assessment activities
6 and the share of response costs imposed on the petitioner by G.S. 143-
7 215.104F.
- 8 (6) ~~Permits~~ The permits or other authorizations required to conduct the
9 assessment activities and to lawfully dispose of any hazardous
10 substances or wastes generated by the assessment activities have been or
11 can be obtained.
- 12 (7) ~~Assessment~~ The assessment activities will not increase the existing level
13 of public exposure to health or environmental hazards at the
14 contamination site.
- 15 (8) ~~Costs~~ The costs to be incurred in connection with the assessment
16 activities contemplated by the assessment agreement are reasonable and
17 necessary.
- 18 (9) ~~Petitioner~~ The petitioner has obtained the consent of other property
19 owners to enter into their property for the purpose of conducting
20 assessment activities specified in the assessment agreement.
- 21 (b) The terms and conditions of an assessment agreement regarding dry-cleaning
22 solvent contamination shall be guided by and consistent with the rules adopted by the
23 Commission pursuant to G.S. 143-215.104D and the reimbursement authorities and
24 limitations set out in this Part. An assessment agreement shall, subject to the availability
25 of monies from the Fund:
- 26 ~~(1) Specify the date on which remediation will begin.~~
- 27 (1a) Require that the petitioner shall be liable to the Fund for an amount
28 equal to the difference, if any, between the applicable amount of
29 financial responsibility established by G.S. 143-215.104F and the
30 amount reasonably paid by the petitioner for assessment or remediation
31 activities of the type specified in G.S. 143-215.104N(a)(1) through (7)
32 and otherwise consistent with the requirements of this Part.
- 33 (2) Provide for the prompt reimbursement of response costs incurred in
34 assessment activities that are found by the Commission to be consistent
35 with the assessment agreement and this Part.
- 36 (c) The Commission may refuse to enter into a dry-cleaning solvent assessment
37 agreement with any petitioner if:
- 38 (1) The petitioner will not accept financial responsibility for the share of the
39 response costs required by G.S. 143-215.104F.
- 40 (2) The petitioner will not accept responsibility for conducting, supervising,
41 or otherwise undertaking assessment activities required by the
42 Commission.

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

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

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

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

22 Section 10. G.S. 143-215.104I(a) reads as rewritten:

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

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

37 ~~a. The terms of any dry cleaning solvent assessment agreement,~~
38 ~~dry cleaning solvent remediation agreement, brownfields~~
39 ~~agreement, or other similar agreement to which the petitioner or~~
40 ~~any parent, subsidiary, or other affiliate of the petitioner has been~~
41 ~~a party.~~

42 ~~b. The requirements applicable to any remediation in which the~~
43 ~~petitioner has previously engaged.~~

1 e. ~~Federal and State laws, regulations, and rules for the protection~~
2 ~~of the environment.~~

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

37 Section 11. G.S. 143-215.104I(c)(6) reads as rewritten:

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

41 ...

- 42 (6) The ~~final~~ priority ranking of the facility or abandoned site."

43 Section 12. G.S. 143-215.104N(a) reads as rewritten:

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

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

20 Section 13. G.S. 143-215.104I(g) reads as rewritten:

21 (g) The terms and conditions of a dry-cleaning solvent remediation agreement
22 concerned with dry-cleaning solvent contamination shall be guided by and consistent
23 with the rules adopted by the Commission pursuant to G.S. 143-215.104D and the
24 reimbursement authorities and limitations set out in this Part. A remediation agreement
25 shall provide, subject to availability of monies in the Fund, for prompt reimbursement of
26 response costs incurred in assessment or remediation activities that are found by the
27 Commission to be consistent with the remediation agreement and this Part. A
28 remediation agreement may provide for the Commission to conduct assessment and
29 remediation activities at the site."

30 Section 14. (a) G.S. 143-215.104N(b)(3) reads as rewritten:

31 (3) ~~For costs before funds available through the financial responsibility~~
32 ~~demonstrated by the owner or operator of the facility or abandoned site~~
33 ~~pursuant to G.S. 143-215.104FE and for costs at a contamination site for~~
34 ~~which funds obligated by petitioners pursuant to a dry-cleaning solvent~~
35 ~~assessment agreement or dry-cleaning solvent remediation agreement in~~
36 ~~accordance with G.S. 143-214.104F(f) are exhausted.~~overdue."

37 (b) G.S. 143-215.104N(c) reads as rewritten:

38 (c) The Commission shall not pay or reimburse any response costs arising from a
39 dry-cleaning solvent assessment agreement or dry-cleaning solvent remediation
40 agreement until the petitioners who are party to the agreement have exhausted the financial
41 resources made available under ~~paid all sums due thereunder.~~ ~~G.S. 143-215.104E and G.S.~~
42 ~~143-215.104F."~~

43 Section 15. G.S. 143-215.104O reads as rewritten:

1 **"§ 143-215.104O. (Repealed effective January 1, 2012) Remediation of uncertified**
2 **sites.**

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

17 (b) The Commission shall request the Attorney General to commence a civil
18 action to secure reimbursement of costs incurred under this ~~subsection~~-section.

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

24 Section 16. Section 5 of S.L. 1997-392 reads as rewritten:

25 "Section 5. This act constitutes a recent act of the General Assembly within the
26 meaning of G.S. 150B-21.1. The Environmental Management Commission may adopt
27 temporary rules to implement this act until ~~1 January 1999~~-30 June 2001." ♦

28 Section 17. Section 7 of S.L. 1997-392 reads as rewritten:

29 "Section 7. (a) Any person who undertakes assessment or remediation of dry-
30 cleaning solvent contamination pursuant to ~~an~~-a notice of violation or enforcement action
31 by the Department of ~~Environment, Health, Environment~~ and Natural Resources during the
32 period beginning 1 October 1997 and ~~1 January 1999~~-ending 30 June 2001 may, on or
33 after ~~1 January 1999~~-30 June 2001 seek reimbursement from the Dry-Cleaning Solvent
34 Cleanup Fund for any costs exceeding fifty thousand dollars (\$50,000). The Commission
35 shall reimburse costs if it finds that the costs incurred were (i) appropriately documented
36 and reasonably necessary to assess or remediate the dry-cleaning solvent contamination;
37 (ii) for any of the activities described in subdivisions (1) through (7) of G.S. 143-
38 215.104N(a); (iii) not subject to any of the limitations in subdivisions (4) ~~or (5)~~-through
39 (9) of G.S. 143-215.104N(b); and (iv) not reimbursable from pollution and remediation
40 legal liability insurance; and (v) required by a notice of violation or a specific order of the
41 Department of ~~Environment, Health, Environment~~ and Natural Resources issued on or after
42 30 June 1996. No reimbursement may be paid pursuant to this section for dry-cleaning
43 solvent contamination that did not result from operations at a dry-cleaning or wholesale

1 distribution facility. Notwithstanding any other provision of this subsection, the
2 Commission may by rule shorten the period during which costs subject to reimbursement
3 pursuant to this subsection may be incurred.

4 (b) Any person who, as of ~~1 January 1999, 30 June 2001~~, is undertaking assessment
5 or remediation of dry-cleaning solvent contamination shall be eligible to petition the
6 Commission to enter into a dry-cleaning solvent assessment agreement or dry-cleaning
7 solvent remediation agreement with respect to the contamination. In calculating the
8 required financial contribution of parties to any agreement, the Commission shall
9 determine the reasonable cost of any necessary unreimbursed assessment or remediation
10 activity undertaken by the parties with respect to the contamination site prior to ~~1 January~~
11 ~~1999~~ 30 June 2001 and shall credit the amount toward any applicable financial
12 responsibility limits established in G.S. 143-215.104F. Notwithstanding any other
13 provision of this subsection, the Commission may by rule establish a different cutoff date
14 for assessment and remediation activities covered by this subsection."

15 Section 18. The Commission on Health Services shall adopt regulations
16 which, notwithstanding any other provision of statute or rule, require that a person who
17 generates wastes at a dry-cleaning facility or wholesale distribution facility that contains
18 the solvents perchloroethylene, F-1,1,3, or 1,1,1 trichloroethane ensures delivery of the
19 wastes to a facility that is legally authorized to manage or recycle hazardous wastes
20 containing these solvents; provided, however, that such rules shall not apply to the
21 disposal of wastewater generated from the dry-cleaning process, which shall be regulated
22 as otherwise provided by law.

23 Section 19. If any section or provision of this act is declared unconstitutional
24 or invalid by the courts, the unconstitutional or invalid section or provision does not
25 affect the validity of this act as a whole or any part of this act other than the part declared
26 to be unconstitutional or invalid.

27 Section 20.(a)The Secretary of Environment and Natural Resources, with the
28 assistance of a balanced working group of interested parties, shall do the following:

- 29 (1) Identify dry-cleaning processes and equipment currently in use or under
30 development;
- 31 (2) Identify the historical trends in the use of these processes and
32 equipment; and
- 33 (3) Evaluate the benefits and costs of these processes and equipment and
34 the feasibility of implementing and installing alternative processes or
35 equipment.

36 Section 20.(b) In evaluating processes and equipment, the Secretary shall consider,
37 at a minimum, the following factors:

- 38 (1) The environmental and public health impacts of the process or
39 equipment;
- 40 (2) The ability of the process or equipment to clean a wide variety of
41 natural and synthetic fabrics without damage;
- 42 (3) The ability of small business organizations to finance, own, and operate
43 the process or equipment; and

1 (4) The effect of widespread use of the process or equipment on fire safety.
2 Section 20.(c) If the Secretary finds that there are significant potential obstacles to
3 the implementation of beneficial alternative dry-cleaning processes or equipment, the
4 Secretary shall recommend to the General Assembly specific regulatory and
5 nonregulatory policy measures to promote the increased use of such alternative processes
6 or equipment by the State's dry-cleaning industry. The Secretary shall complete this
7 study and report the findings to the Environmental Review Commission by December 1,
8 2000.

9 Section 20.(d) The working group established by the Secretary shall consist, at a
10 minimum, of representatives of nonprofit conservation organizations, representatives of
11 the dry-cleaning industry, manufacturers of dry-cleaning processes and equipment,
12 manufacturers of dry-cleaning solvents, and researchers knowledgeable about garment
13 cleaning and the dry-cleaning industry.

14 Section 21. This act constitutes a recent act of the General Assembly within
15 the meaning of G.S. 150B-21.1. The Environmental Management Commission and the
16 Commission on Health Services may each adopt temporary rules to implement the
17 provisions of this act until 1 July 2001. The Secretary shall make the annual report
18 required by this section on or before 1 October of each year.

19 Section 22. Sections 1.1 and 1.2 of this act become effective July 1, 2001.
20 Section 1.3 of this act is effective when it becomes law. Section 1.4 of this act becomes
21 effective July 1, 2001, and is repealed effective July 1, 2010. Section 1.5 of this act
22 becomes effective July 1, 2001, and is repealed effective July 1, 2003. Section 1.6 of this
23 act becomes effective July 1, 2003, and is repealed effective July 1, 2010. Section 1.7 of
24 this act becomes effective July 1, 2003. The remainder of this act is effective when it
25 becomes law. Sections 3 and 4 of this act apply retroactively to April 1, 1998.