

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 700
Commerce Committee Substitute Adopted 6/1/09
Finance Committee Substitute Adopted 6/10/09
House Committee Substitute Favorable 6/25/09
PROPOSED HOUSE COMMITTEE SUBSTITUTE S700-PCS75290-SUx-75

Short Title: Dry-Cleaning Solvent Act Amends.

(Public)

Sponsors:

Referred to:

March 24, 2009

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(1) Repealed by Session Laws 2000, c. 19, s. 10, effective June 26, 2000.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



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1 protecting public health and the environment from dry-cleaning solvent
2 contamination and any other contaminants included in the remediation
3 agreement.

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

6 (4) Repealed by Session Laws 2007-530, s. 6, effective August 31, 2007.

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

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

15 (7) The priority ranking assigned to the facility or site is consistent with the
16 rules adopted by the Commission or the priority ranking that the petitioner
17 agrees to accept is consistent with the rules adopted by the Commission.

18 (8) Repealed by Session Laws 2007-530, s. 6, effective August 31, 2007.

19 (9) The petitioner will continue to have available the financial resources
20 necessary to satisfy the share of response costs imposed on the petitioner by
21 G.S. 143-215.104F.

22 (10) Repealed by Session Laws 2007-530, s. 6, effective August 31, 2007.

23 (11) The consent of other property owners to enter into their property for
24 purposes of conducting remediation activities specified in the remediation
25 agreement.

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

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

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

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

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

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

48 c. Repealed by Session Laws 2007-530, s. 6, effective August 31, 2007.

49 d. A schedule of remediation activities.

50 e. Applicable remediation standards. Applicable remediation standards
51 for dry-cleaning solvent contamination shall not exceed the

1 requirements adopted by the Commission pursuant to
2 G.S. 143-104D(b)(3).

3 f. A schedule and the method or methods for evaluating the
4 remediation.

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

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

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

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

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

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

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

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

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

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

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

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

39 **"§ 143-215.104K. Liability protection.**

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

- 1 (1) Repealed by Session Laws 2007-503, s. 8, effective August 31, 2007.
- 2 (2) Any future owner of the contamination site.
- 3 (3) A person who occupies the contamination site.
- 4 (4) A successor or assign of any person to whom the liability protection
- 5 provided under this Part applies.
- 6 (5) Any lender or fiduciary that provides financing to the petitioner to pay the
- 7 petitioner's financial obligations under G.S. 143-215.104F.
- 8 (b) A person who conducts an environmental assessment or transaction screen on
- 9 contamination resulting from a release at a certified facility or certified abandoned site
- 10 consistent with a dry-cleaning solvent assessment agreement, if any was required under this
- 11 Part, and who is not otherwise a potentially responsible party is not a potentially responsible
- 12 party as a result of conducting the environmental assessment or transaction screen unless that
- 13 person increases the risk of harm to public health or the environment by failing to exercise due
- 14 diligence and reasonable care in performing the environmental assessment or transaction
- 15 screen.
- 16 (c) If a land-use restriction set out in a Notice of Dry-Cleaning Solvent Remediation
- 17 required under G.S. 143-215.104M is violated, the owner of the contamination site at the time
- 18 the land-use restriction is violated, the owner's successors and assigns, and the owner's agents
- 19 who direct or contract for alteration of the contamination site in violation of a land-use
- 20 restriction shall be liable for remediation of all contaminants to unrestricted use standards. A
- 21 petitioner who completes the remediation ~~or redevelopment~~ required under a dry-cleaning
- 22 solvent remediation agreement or other person who receives liability protection under this Part
- 23 shall not be required to undertake additional remediation unless:
- 24 (1) The petitioner knowingly or recklessly provides false information that forms
- 25 a basis for the remediation agreement or that is offered to demonstrate
- 26 compliance with the remediation agreement or fails to disclose relevant
- 27 information about contamination related to a facility or abandoned site.
- 28 (2) New information indicates the existence of previously unreported
- 29 dry-cleaning solvent contaminants or any other contaminants to be
- 30 remediated under the remediation agreement, or an area of previously
- 31 unreported contamination by contaminants addressed in the remediation
- 32 agreement is discovered to be associated with the facility or abandoned site
- 33 and has not been remediated to unrestricted use standards, unless the
- 34 remediation agreement is amended to include any previously unreported
- 35 contaminants and any additional area of contamination. If the remediation
- 36 agreement sets maximum concentrations for contaminants and new
- 37 information indicates the existence of previously unreported areas of these
- 38 contaminants, further remediation shall be required only if the areas of
- 39 previously unreported contaminants raise the risk of the contamination to
- 40 public health or the environment to a level less protective of public health
- 41 and the environment than that required by the remediation agreement.
- 42 (3) The level of risk to public health and the environment from contaminants is
- 43 unacceptable at or in the vicinity of the contamination site due to changes in
- 44 exposure conditions, including (i) a change in land use that increases the
- 45 probability of exposure to contaminants at or in the vicinity of the
- 46 contamination ~~site or site~~; (ii) the failure of remediation to mitigate risks to
- 47 the extent required to make the contamination site fully protective of public
- 48 health and the environment as planned in the remediation
- 49 ~~agreement~~; agreement; or (iii) removal of a State or local land-use control.
- 50 (4) The Commission obtains new information about a contaminant to be
- 51 remediated under the remediation agreement and associated with the facility

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

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

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

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

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

21 **"§ 143-215.104L. Public notice and community involvement.**

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

50 (b) Publication of the approved summary of the Notice of Intent ~~in the North Carolina~~
51 ~~Register and publication~~ in a newspaper of general circulation shall begin a public comment

1 period of at least ~~60~~30 days from the ~~later~~ date of publication. During the public comment
2 period, members of the public, residents of the community in which the contamination site is
3 located, and local governments having jurisdiction over the contamination site may submit
4 comment on the proposed dry-cleaning solvent remediation agreement, including methods and
5 degree of remediation, future land uses, and impact on local employment.

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

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

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

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

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

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

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

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

SECTION 6. Section 23 of S.L. 2000-19 reads as rewritten:

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

SECTION 7. G.S. 143-215.104A reads as rewritten:

"§ 143-215.104A. Title, Title; sunset.

This part is the "Dry-Cleaning Solvent Cleanup Act of 1997" and may be cited by that name. Except as otherwise provided in this section, this part expires 1 January 2022.

(1) G.S. 143-215.104K is not repealed to the extent that it applies to liability arising from dry-cleaning solvent contamination described in a Dry-Cleaning Solvent Assessment Agreement or Dry-Cleaning Solvent Remediation Agreement entered into by the Environmental Management Commission pursuant to G.S. 143-215.104H and G.S. 143-215.104I.

(2) Any Dry-Cleaning Solvent Assessment Agreement or Dry-Cleaning Solvent Remediation Agreement in force as of 1 January 2012 shall continue to be governed by the provisions of Part 6 of Article 21A of Chapter 143 of the General Statutes as though those provisions had not been repealed.

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

SECTION 8. G.S. 105-164.44E reads as rewritten:

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

(a) Transfer. – At the end of each quarter, the Secretary must transfer to the Dry-Cleaning Solvent Cleanup Fund established under G.S. 143-215.104C an amount equal to fifteen percent (15%) of the net State sales and use taxes collected under G.S. 105-164.4(a)(4) during the previous fiscal year, as determined by the Secretary based on available data.

(b) Sunset. – This section is repealed effective July 1, 2020."

SECTION 9. Article 5D of Chapter 105 of the General Statutes is amended by adding a new section to read:

"§ 105-187.35. Sunset.

This Article is repealed effective January 1, 2020."

SECTION 10. G.S. 105-259(b)(20) reads as rewritten:

"(b) Disclosure Prohibited. – An officer, an employee, or an agent of the State who has access to tax information in the course of service to or employment by the State may not disclose the information to any other person unless the disclosure is made for one of the following purposes:

...

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

1 is repealed when Part 6 of Article 21A of Chapter 143 of the General
2 Statutes expires."

3 **SECTION 11.** This act is effective when it becomes law.