

NORTH CAROLINA DEPARTMENT OF ENVIRONMENT
AND NATURAL RESOURCES
DIVISION OF WASTE MANAGEMENT
SUPERFUND SECTION
Dry-Cleaning Solvent Cleanup Act of 1997, as amended (DSCA) Program

IN THE MATTER OF:
[FACILITY NAME] [PETITIONER]
UNDER THE AUTHORITY OF [PETITIONER'S ADDRESS]
THE DRY-CLEANING SOLVENT [ZIP CODE]
CLEANUP ACT OF 1997, AS AMENDED, DSCA SITE I.D. [#]
N.C.G.S. § 143-215.104A, et seq.

AGREEMENT
FOR ASSESSMENT AND REMEDIATION
PURSUANT TO THE DRY-CLEANING SOLVENT CLEANUP ACT OF 1997, AS
AMENDED, PART 6, ARTICLE 21A, CHAPTER 143, N.C.G.S. § 143-215.104A ET SEQ.
("DSCA")

I. INTRODUCTION AND STATEMENT OF PURPOSE

The North Carolina Department of Environment and Natural Resources, Division of Waste Management ("Division") and [Petitioner] ("Petitioner"), collectively ("Parties"), hereby enter into this Agreement for Assessment and Remediation ("Agreement") pursuant to the Dry-Cleaning Solvent Cleanup Act of 1997, as amended, Part 6, Article 21A, Chapter 143, N.C.G.S. § 143-215.104A et seq. ("DSCA").

In executing this Agreement, Petitioner agrees to cooperate with the Division's Dry-Cleaning Solvent Cleanup Act Program ("Program") and the Division's independent contractors ("contractors" or "independent contractors") to assist in the assessment and remediation of the dry-cleaning solvent contamination at the Site, as defined in Section II. E., below. By entering into and complying with this Agreement, Petitioner obtains the liability protection afforded pursuant to N.C.G.S. § 143-215.104K. Unless otherwise expressly provided herein, terms used in this Agreement that are defined in DSCA or at 15A NCAC 2S .0102, shall have the meaning assigned to them in those provisions, including any amendments thereto.

II. STATEMENT OF FACTS

- A. On [date to be filled in by DSCA Program], Petitioner filed with the Division a Petition for Certification for [site name] pursuant to DSCA.
- B. On [date to be filled in by DSCA Program], the Division certified [site name] (hereinafter "Certified Facility Site") pursuant to DSCA and informed Petitioner of its certification decision.

- C. The Certified Facility Site is located at [site address] in [site county] County, North Carolina.
- D. Petitioner is a potentially responsible party, within the meaning of N.C.G.S. § 143-215.104B(b)(21), for assessment and remediation of dry-cleaning solvent contamination at the Site, as defined in subsection E, below.
- E. The "Site" consists of all areas at the Certified Facility Site where dry-cleaning solvent contamination arising from dry-cleaning or wholesale distribution operations is found and all areas where dry-cleaning solvent contamination originating at the Certified Facility Site has come to be located.
- F. The Division is authorized to enter into this Agreement pursuant to the authority vested in the Environmental Management Commission pursuant to DSCA and duly delegated to the Secretary of the North Carolina Department of Environment and Natural Resources and further delegated from the Secretary to the Division.

NOW, THEREFORE, for the purpose of assessing and remediating the dry-cleaning solvent contamination at the Site, the Parties agree as follows:

III. WORK TO BE PERFORMED

It is Petitioner's desire that assessment and remediation at the Site as required or permitted under DSCA, the rules adopted under DSCA and guidance documents provided by the DSCA Program shall be performed by independent contractors selected by the Division. The Division's contractors shall maintain a minimum level of insurance as defined in their contract with the Division.

IV. DISPUTE RESOLUTION

If Petitioner objects to any Division notice of disapproval or decision made pursuant to this Agreement, Petitioner shall notify the Division in writing of Petitioner's objections within fourteen (14) calendar days of receipt of the notice of disapproval or decision. The Parties shall then have an additional fourteen (14) calendar days from receipt by the Division of the notice of disapproval or decision to reach an agreement. If an agreement cannot be reached within the fourteen (14) calendar days, or within an additional period if mutually agreed upon by the Parties, the Division shall provide a written statement of its decision to Petitioner. Any decision or action by the Division that cannot be resolved through the dispute resolution procedure established herein may be subject to review pursuant to Chapter 150B of the North Carolina General Statutes, to the extent such review is provided by law.

V. FINANCIAL RESPONSIBILITY REQUIREMENTS

Upon demand by the Division, Petitioner shall pay to the Division, on behalf of the Dry-Cleaning Solvent Cleanup Fund ("Fund"), any amounts for which Petitioner is responsible pursuant to N.C.G.S. § 143-215.104F(f). Petitioner shall have thirty (30) days from the date of notice of such demand to make payment to the Division. These payments will only be required by the Division when task-specific work has been completed by the Division's contractor.

VI. ADDITIONAL PROVISIONS

- A. To obtain a unique EPA ID number for the disposal of hazardous wastes generated during the assessment and remediation of the Site, Petitioner agrees that Petitioner will be the Operator on the RCRA Subtitle C Site Identification Form. For the purposes of disposing of hazardous waste generated during the assessment and remediation of the Site, Petitioner agrees that Petitioner will be the Generator on Hazardous Waste Manifests.
- B. The Petitioner agrees to allow the Division and the Division's independent contractors to act as its authorized representatives for the preparation, signing, filing and delivery of any permit application, hazardous waste manifest, non-hazardous waste manifest, National Pollution Discharge Elimination System ("NPDES") permit, for complying with reporting requirements and for any administrative activities that may be necessary during the course of assessment and remediation conducted pursuant to this Agreement on the Petitioner's behalf. Contemporaneous with the execution of this Agreement, Petitioner has executed the Limited Power of Attorney, Attachment 1, which is incorporated herein by reference, granting this authority to the State and its independent contractors.
- C. The Petitioner agrees to execute such amendments to this Agreement as may be required in order to comply with the provisions of DSCA and rules adopted under DSCA. If Petitioner is a property owner of the Certified Facility Site, Petitioner agrees to file such land use restrictions as shall be required by the Division.
- D. If, at any time, Petitioner becomes aware of information that may affect the priority ranking score of the Site, Petitioner shall within thirty (30) days provide such information to the Division. The DSCA Prioritization Ranking Form may be downloaded from the Division's web site at www.ncdsca.org or by requesting a copy from the Division. The Division may revise the Site's priority ranking score using the most current version of the DSCA Prioritization Ranking System.
- E. Except as provided by this Agreement, the Division retains all its authority under the Inactive Hazardous Sites Response Act of 1987, as amended, regarding inactive hazardous substance or waste disposal sites in relation to the Site. If active dry-cleaning operations or wholesale distribution operations are occurring at the Site, any hazardous wastes generated by those operations shall be managed in accordance with Article 9 of Chapter 130A of the North Carolina General Statutes and the rules adopted at 15A NCAC 13A.
- F. The signatory for Petitioner to this Agreement certifies that he/she is authorized to execute this Agreement on behalf of Petitioner.

- G. The Petitioner has designated the following representative(s) as the point of contact and the Division will direct all correspondence related to this Agreement to:

[Name of Representative(s) and representatives company if applicable]
representing [Name of Petitioners(s)]
[Representatives Mailing Address]

All documents submitted to the Division pursuant to this Agreement shall be mailed or hand delivered to:

North Carolina Division of Waste Management
DSCA Program
Attn: [Project Manager]
1646 Mail Service Center
Raleigh, NC 27699-1646

- H. Petitioner shall not assign or transfer any interest in this Agreement without the prior consent of the Division. If Petitioner is the owner or operator of the facility or abandoned site, Petitioner shall not transfer the ownership or operation of the facility or abandoned site to another person without prior written notification to the Division. The notification form can be downloaded from the Division's web site at www.ncdsca.org or by requesting a copy from the Division.
- I. If Petitioner is a property owner of the Certified Facility Site, Petitioner shall provide a copy of this Agreement, a copy of the Required Minimum Management Practices Rules, codified at 15A NCAC 2S .0200 and a copy of the Access Agreement executed by the property owner to all owners and operators of any dry-cleaning business operating at the Certified Facility Site before the execution of this Agreement and provide written documentation to the Division demonstrating that Petitioner has complied with this subsection. The written documentation required to be executed to satisfy this subsection is attached to this Agreement as Attachment 2, incorporated herein by reference.
- J. If Petitioner owns or operates a wholesale distribution facility or dry-cleaning business engaged in dry-cleaning operations at the Certified Facility Site, Petitioner shall comply with the Required Minimum Management Practices Rules, codified at 15A NCAC 2S .0200, a copy of which is included as part of Attachment 2 to this Agreement.
- K. All actions taken pursuant to this Agreement shall be in accordance with applicable local, state and federal laws and regulations.
- L. Petitioner understands and agrees that pursuant to N.C.G.S. § 143-215.104T, the State, its agencies, officers, employees, and agents shall be absolutely immune from any liability in any proceeding for any injury or claim arising from negotiating, entering into, monitoring, or enforcing a dry-cleaning solvent assessment agreement, a dry-cleaning solvent remediation agreement, or a Notice of Dry-Cleaning Solvent Remediation under DSCA or any other action implementing DSCA. Petitioner agrees to indemnify and save and hold harmless the

Division and its officials and employees from any and all claims or causes of action arising from or on account of acts or omissions of Petitioner or its officers, employees, receivers, trustees, agents, or assigns during the term of this Agreement relating to the Site. Neither the Division nor any official or employee thereof shall be held to be a party to any contract other than (i) this Agreement involving Petitioner relating to the Site or (ii) any other contract expressly executed by the Division or the State of North Carolina. Petitioner further agrees that the Division and its officers and employees will not become potentially responsible parties pursuant to N.C.G.S. § 143-215.104B(21) by virtue of negotiating, entering into, monitoring, enforcing, or undertaking any other act relating to this Agreement and may not be held liable for any acts of Petitioner's contractors or representatives in implementing this Agreement.

- M. The Division's authorization of assessment and/or remediation activities pursuant to this Agreement shall be contingent upon the availability of monies in the Fund. The Division shall have no obligation to authorize assessment and/or remediation activities at the Site for which monies are not available in the Fund.
- N. The Parties agree that Petitioner's entry into this Agreement and actions undertaken by Petitioner in accordance with this Agreement do not constitute an admission of liability by Petitioner. No approval hereunder or receipt of funds hereby shall be taken as a warranty as to the sufficiency or efficacy of the assessment or remediation of the Site.
- O. Except as provided under N.C.G.S. § 143-215.104K, nothing herein shall constitute a satisfaction of, or release from, liability for any claim arising as a result of operation, ownership or use of the Site by Petitioner, its agents, lessees, successors or assigns.
- P. This Agreement may not be modified without the written consent of the Parties; provided, however, Petitioner agrees to execute such amendments to this Agreement as required by section VI.C.
- Q. Petitioner agrees that, except as provided in Section VI.A., all products generated by, from or as the result of assessment and remediation of the Site are and shall remain the property of the Division. These products may include but are not limited to documents, remediation equipment, pumps and monitoring wells. Provided, however, "products" shall not include any dry-cleaning solvent as defined at N.C.G.S. § 143-215.104B(b)(9), any hazardous substance as defined at N.C.G.S. § 130A-310(2), or any contaminant as defined at N.C.G.S. § 130A-310.31(b)(4).
- R. The obligations under Section VI, Paragraphs, (J) (L) and (Q) above shall survive the termination of this Agreement.
- S. This Agreement shall continue in force until (1) it is terminated or dissolved by either or both Parties pursuant to its terms, (2) the Parties execute a subsequent agreement governing the assessment and/or remediation of the Site, (3) the Division issues a "no further action" letter with respect to the Site or (4) the Division is unable to obtain the consent of any property owner to file any restrictions on the current or future use of any portion of the Site that are

necessary to assure adequate protection of public health and the environment as provided in rules adopted pursuant to G.S. 143-215.104D(b)(3).

- T. Termination under Section VI.S. (1) shall be effective upon ten (10) business days prior written notice to the other Party. Termination by the Petitioner shall effect forfeiture of the liability protection afforded pursuant to N.C.G.S. § 143-215.104K. Termination by the Division shall entitle the Petitioner to initiate a contested case pursuant to N.C.G.S. Section 143-215.104S and N.C.G.S. Section 150B-23.
- U. In the event that this Agreement is terminated, the Division shall retain all applicable enforcement rights against Petitioner, and Petitioner shall retain all applicable defenses.
- V. If Petitioner is a property owner of the Certified Facility Site, Petitioner agrees to grant access to the Division and the Division's independent contractors to undertake all work to be performed at the Certified Facility Site. If Petitioner is not a property owner of the Certified Facility Site, Petitioner shall obtain access for the Division and the Division's independent contractors to undertake all work to be performed at the Certified Facility Site.

This Agreement shall be deemed executed on the date on which it is signed by the chief of the Superfund Section of the Division or his designee.

By: _____ [Date]
Jim Bateson
Chief, Superfund Section
Division of Waste Management
North Carolina Department of Environment
and Natural Resources

By: _____ [Date]
[Signature of/for Petitioner]

[Title of Signatory]

AGREEMENT FOR ASSESSMENT AND REMEDIATION PURSUANT TO DSCA

ATTACHMENT 1

LIMITED POWER OF ATTORNEY

I, _____ (“Petitioner”), do hereby grant a limited power of attorney to the Division and to the Division’s independent contractors, as follows.

The Division and the Division’s independent contractors shall have the limited power of attorney for the preparation, signing, filing and delivery of any permit application, hazardous waste manifest, non-hazardous waste manifest, National Pollution Discharge Elimination System (NPDES) permit, for complying with any reporting requirements and for any administrative activities that may be necessary in the course of assessment and remediation conducted pursuant to the Agreement into which this Attachment 1 is incorporated.

This limited power of attorney shall terminate upon termination of the Agreement.

Dated _____, _____.
(Seal)

Signature of Petitioner _____

STATE OF _____ COUNTY OF _____

On this _____ day of _____, _____, personally appeared before me, the said named _____ to me known and known to me to be the person described in and who executed the foregoing limited power of attorney and he (or she) acknowledged that he (or she) executed the same and being duly sworn by me, made oath that the statements in the foregoing limited power of attorney are true.

My Commission Expires _____.

_____ (Signature of Notary Public)

Notary Public (Official Seal)

AGREEMENT FOR ASSESSMENT AND REMEDIATION PURSUANT TO DSCA

ATTACHMENT 2

REQUIRED NOTIFICATION OF DRY-CLEANING BUSINESS
OWNERS AND OPERATORS

Pursuant to the requirements set out at Section VI, paragraph I. of the Agreement into which this Attachment 2 is incorporated, the Petitioner has provided a copy of the Agreement, including all attachments, and a copy of the Required Minimum Management Practices Rules, codified at 15A NCAC 2S .0200 to all owners and operators of any dry-cleaning business operating at the Certified Facility Site, located at [site address] in [site county] County, North Carolina.

The dry-cleaning owner(s) or operator(s) has/have read this notice and acknowledge(s) that the Petitioner has provided a copy of the Agreement and a copy of the Required Minimum Management Practices.

For more information please call [Project Manager] at [Phone Number].

Signature of Petitioner Date

Signature of dry-cleaning business owner, operator or representative Date

Title

Name of dry-cleaning business

15A NCAC 2S .0200

DEFINITIONS

The definition of any word or phrase used in this Subchapter shall be the same as given in G.S. 143-215.104B and the following words and phrases shall have the following meanings:

- (1) "Act" means the Dry-Cleaning Solvent Cleanup Act of 1997 and any amendments thereto.
- (2) "Apparel and household fabrics" means apparel and fabrics that have been purchased at retail or have been purchased at wholesale for rental at retail.
- (3) "Business" means "business" as defined in 15A NCAC 13A .0104, which is hereby incorporated by reference including subsequent amendments and editions. A copy may be inspected or obtained at no cost from the Division of Waste Management, Dry-Cleaning Solvent Cleanup Act Program, 401 Oberlin Road, Raleigh, NC.
- (4) "Closed container solvent transfer system" means a device or system specifically designed to fill a dry-cleaning machine with dry-cleaning solvent through a mechanical valve or sealed coupling in order to prevent spills or other loss of solvent liquids or vapors to the environment.
- (5) "Discovery Site" means the physical site or area where dry-cleaning solvent contamination has been discovered. A discovery site may or may not be the same property as the facility site.
- (6) "Division" means the Division of Waste Management of the Department of Environment and Natural Resources.
- (7) "Dry-Cleaning Business" means a business having engaged in dry-cleaning operations or the operation of a wholesale distribution facility at a facility site.
- (8) "Environmental media" means soil, sediment, surface water, groundwater or other physical substance.
- (9) "Facility site" means the physical location of a dry-cleaning facility, a wholesale distribution facility or an abandoned site.
- (10) "Material impervious to dry-cleaning solvent" means a material that has been demonstrated by the manufacturer, an independent testing laboratory such as Underwriters Laboratory, or another organization determined by the Division to be comparable, to maintain its chemical and structural integrity in the presence of the applicable dry-cleaning solvent and prevent the movement of dry-cleaning solvent for a period of a least 72 hours.
- (11) "Number of full time employees" means the number of full-time equivalent employees employed by a person who owns a dry-cleaning facility, as calculated pursuant to 15A NCAC 02S .0103.
- (12) "Person" means "person" as defined in G.S. 130A-290, which is hereby incorporated by reference including subsequent amendments and additions. A copy may be inspected or obtained at no cost from the Division of Waste Management, Dry-Cleaning Solvent Cleanup Act Program, 401 Oberlin Road, Raleigh, NC.
- (13) "Petitioner" means a potentially responsible party who submits a petition for certification of a facility site.

APPLICABILITY

The provisions contained in this Section set forth the minimum management practices for the storage and handling of dry-cleaning solvents required to be implemented at all dry-cleaning facilities, dry-cleaning solvent wholesale distribution facilities, and abandoned sites. The provisions contained in this Section are applicable only to owners and operators of dry-cleaning facilities, dry-cleaning solvent wholesale distribution facilities, and abandoned sites.

REQUIRED MINIMUM MANAGEMENT PRACTICES

(a) All abandoned sites, as defined by G.S.143-215.104(B)(b)(1), shall at all times after this Rule becomes effective, comply with Required Minimum Management Practice, Subparagraph (b)(5) of this Rule.

(b) All dry-cleaning facilities and wholesale distribution facilities shall, at all times after this Rule becomes effective, comply with the following minimum management practices:

(1) At no time shall any dry-cleaning solvent, wastes containing dry-cleaning solvent, or water containing dry-cleaning solvent be discharged onto land or into waters of the State, sanitary sewers, storm drains, floor drains, septic systems, boilers, or cooling-towers. All invoices generated as a result of disposal of all dry-cleaning solvent waste shall be made available for review by the Department. If a dry-cleaning facility uses devices such as atomizers, evaporators, carbon filters, or other equipment for the treatment of wastewater containing solvent, all records, including but not limited to, invoices for the purchase, maintenance, and service of such devices, shall be made available to the Department. Records shall be kept for a period of three years.

(2) Spill containment shall be installed and maintained under and around dry-cleaning machines, filters, dry-cleaning solvent pumps, stills, vapor adsorbers, solvent storage areas, and waste solvent storage areas by January 1, 2002. Spill containment shall have a volumetric capacity of 110 percent of the largest vessel, tank, or container within the spill containment area and shall be capable of preventing the release of the applicable liquid dry-cleaning solvent beyond the spill containment area for a period of at least 72 hours. All floor drains within or beneath the spill containment area shall be removed or permanently sealed with materials impervious to dry-cleaning solvents. Emergency adsorbent spill clean-up materials shall be on the premises. Facilities must maintain an emergency response plan that is in compliance with federal, state and local requirements.

(3) All perchloroethylene dry-cleaning machines installed at a dry-cleaning facility after the effective date of this Rule shall meet air emissions that equal or exceed the standards that apply to a comparable dry-to-dry perchloroethylene dry-cleaning machine with an integrated refrigerated condenser. All perchloroethylene dry-cleaning facilities must be in compliance with the EPA Perchloroethylene Dry Cleaner NESHAP: 40CFR, Part 63, Subpart M to be eligible for certification.

(4) Facilities that use perchloroethylene shall use a closed container solvent transfer system by January 1, 2002.

(5) No dry-cleaning facility shall use underground storage tanks for solvents or waste.