

§ 143-215.84. Removal of prohibited discharges.

(a) Person Discharging. – Except as provided in subsection (a2) of this section, any person having control over oil or other hazardous substances discharged in violation of this Article shall immediately undertake to collect and remove the discharge and to restore the area affected by the discharge as nearly as may be to the condition existing prior to the discharge. If it is not feasible to collect and remove the discharge, the person responsible shall take all practicable actions to contain, treat and disperse the discharge; but no chemicals or other dispersants or treatment materials which will be detrimental to the environment or natural resources shall be used for such purposes unless they shall have been previously approved by the Commission. The owner of an underground storage tank who is the owner of the tank only because he is the owner of the land on which the underground storage tank is located, who did not know or have reason to know that the underground storage tank was located on his property, and who did not become the owner of the land as the result of a transfer or transfers to avoid liability for the underground storage tank shall not be deemed to be responsible for a release or discharge from the underground storage tank.

(a1) The Commission shall not require collection or removal of a discharge or restoration of an affected area under subsection (a) of this section if the person having control over oil or other hazardous substances discharged in violation of this Article complies with rules governing the collection and removal of a discharge and the restoration of an affected area adopted by the Commission pursuant to G.S. 143-214.1 or G.S. 143-215.94V. This subsection shall not be construed to affect the rights of any person under this Article or any other provision of law.

(a2) Discharges of Mineral Oil From Electrical Equipment. – As used in this subsection, "mineral oil" means a light nontoxic liquid petroleum distillate used as a coolant and insulator in electrical equipment owned by a public utility. Any person having control over mineral oil discharged from electrical equipment owned by a public utility, as defined in G.S. 62-100, including, but not limited to, transformers, regulators, bushings, and capacitors, shall restore the area affected by the discharge as nearly as may be to the condition existing prior to the discharge. A person shall notify the applicable regional office of the Department by telephone, hand delivery, electronic mail, or fax when the restoration has been properly completed for a discharge that (i) exceeds 25 gallons, (ii) is directly to surface waters or causes a sheen on surface waters of the State, or (iii) is at a distance of 100 feet or less from any surface water and contains 50 parts per million or more of polychlorinated biphenyls. Where soil removal is necessary as part of a cleanup, all visible traces of the mineral oil shall be removed. For discharges of mineral oil which contain 50 parts per million or more of polychlorinated biphenyls, cleanup shall be performed in compliance with applicable provisions of the Toxic Substances Control Act, 15 U.S.C. § 2601, et seq., as amended. If it is not feasible to collect and remove the discharge of mineral oil from electrical equipment within 24 hours of confirmation of the release, the person responsible shall take all practicable actions to contain, treat, and disperse the discharge, except that no chemical or other dispersants or treatment materials which will be detrimental to the environment or natural resources shall be used for such purposes unless they shall have been previously approved by the Commission.

(b) Removal by Department. – Notwithstanding the requirements of subsections (a) and (a2) of this section, the Department is authorized and empowered to utilize any staff, equipment and materials under its control or supplied by other cooperating State or local agencies and to contract with any agent or contractor that it deems appropriate to take such actions as are necessary to collect, investigate, perform surveillance over, remove, contain, treat or disperse oil or other hazardous substances discharged onto the land or into the waters of the State and to perform any necessary restoration. The Secretary shall keep a record of all

expenses incurred in carrying out any project or activity authorized under this section, including actual expenses incurred for services performed by the State's personnel and for use of the State's equipment and material. The authority granted by this subsection shall be limited to projects and activities that are designed to protect the public interest or public property, and shall be compatible with the National Contingency Plan established pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. section 1251 et seq.

(c), (d) Repealed by Session Laws 1989, c. 656, s. 2.

(e) Notification of Completed Removal of Prohibited Discharges. – The definitions set out in G.S. 130A-310.31(b) apply to this subsection. Any person may submit a written request to the Department for a determination that a discharge of oil or a hazardous substance in violation of this Article has been remediated to unrestricted use standards. A request for a determination that a discharge has been remediated to unrestricted use standards shall be accompanied by the fee required by G.S. 130A-310.39(a)(2). If the Department determines that the discharge has been remediated to unrestricted use standards, the Department shall issue a written notification that no further remediation of the discharge will be required. The notification shall state that no further remediation of the discharge will be required unless the Department later determines, based on new information or information not previously provided to the Department, that the discharge has not been remediated to unrestricted use standards or that the Department was provided with false or incomplete information. Under any of those circumstances, the Department may withdraw the notification and require responsible parties to remediate the discharge to unrestricted use standards.

(f) In order to reduce or eliminate the danger to public health or the environment posed by a discharge or release of oil or a hazardous substance, an owner, operator, or other responsible party may impose restrictions on the current or future use of the real property comprising any part of the site if the restrictions meet the requirements of this subsection. The restrictions must be agreed to by the owner of the real property, included in a remedial action plan for the site that has been approved by the Secretary, and implemented as a part of the remedial action program for the site. The Secretary may approve restrictions included in a remedial action plan in accordance with standards determined: (i) pursuant to rules for remediation of soil or groundwater contamination adopted by the Commission; (ii) with respect to the cleanup of a discharge or release from a petroleum underground storage tank, pursuant to rules adopted by the Commission pursuant to G.S. 143-215.94V; or (iii) as provided in G.S. 130A-310.3(d). Restrictions may apply to activities on, over, or under the land, including, but not limited to, use of groundwater, building, filling, grading, excavating, and mining. Any approved restriction shall be enforced by any owner, operator, or other party responsible for the oil or hazardous substance discharge site. Any land-use restriction may also be enforced by the Department through the remedies provided in this Article, Part 2 of Article 1 of Chapter 130A of the General Statutes, or by means of a civil action. The Department may enforce any land-use restriction without first having exhausted any available administrative remedies. A land-use restriction may also be enforced by any unit of local government having jurisdiction over any part of the site. A land-use restriction shall not be declared unenforceable due to lack of privity of estate or contract, due to lack of benefit to particular land, or due to lack of any property interest in particular land. Any person who owns or leases a property subject to a land-use restriction under this Part shall abide by the land-use restriction. (1973, c. 534, s. 1; c. 1262, s. 23; 1975, c. 885; 1977, c. 771, s. 4; 1979, c. 535, s. 15; 1987, c. 827, ss. 154, 193; 1989, c. 656, s. 2; 1991, c. 538, s. 14; 1995, c. 377, s. 13; 1997-357, s. 7; 1997-394, s. 4; 1997-456, s. 50; 2001-384, s. 11; 2011-38, s. 2.)