

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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SENATE BILL 977

Short Title: Offshore Oil Impact Protection.

(Public)

Sponsors: Senator Basnight.

Referred to: Marine Resources and Wildlife.

April 19, 1989

1 A BILL TO BE ENTITLED
2 AN ACT TO PROTECT NORTH CAROLINA COASTAL RESOURCES FROM
3 POTENTIAL ADVERSE IMPACTS OF OFFSHORE OIL AND GAS
4 ACTIVITIES.

5 The General Assembly of North Carolina enacts:

6 Section 1. G.S. 143-215.77 reads as rewritten:

7 "§ 143-215.77. Definitions.

8 As used in this Article, unless the context otherwise requires:

- 9 (1) 'Barrel' shall mean 42 U.S. gallons at 60 degrees Fahrenheit.
- 10 (2) 'Commission' means the North Carolina Environmental
11 Management Commission.
- 12 (3) 'Secretary' shall mean the North Carolina Secretary of Natural
13 Resources and Community Development.
- 14 (4) 'Discharge' shall mean, but shall not be limited to, any emission,
15 spillage, leakage, pumping, pouring, emptying, or dumping of oil or
16 other hazardous substances into ~~waters,~~ waters of the State or into
17 waters outside the territorial limits of the State which affect lands,
18 waters or uses related thereto within the territorial limits of the State,
19 or upon land in such proximity to waters that oil or other hazardous
20 substances is reasonably likely to reach the waters, but shall not
21 include amounts less than quantities which may be harmful to the
22 public health or welfare as determined pursuant to G.S. 143-215.77A;
23 provided, however, that this Article shall not be construed to prohibit
24 the oiling of driveways, roads or streets for reduction of dust or routine

1 maintenance; provided further, that the use of oil or other hazardous
2 substances, oil-based products, or chemicals on the land or waters by
3 any State, county, or municipal government agency in any program of
4 mosquito or other pest control, or their use by any person in accepted
5 agricultural, horticultural, or forestry practices, or in connection with
6 aquatic weed control or structural pest and rodent control, in a manner
7 approved by the State, county, or local agency charged with authority
8 over such uses, shall not constitute a discharge; provided, further, that
9 the use of a pesticide regulated by the North Carolina Pesticide Board
10 in a manner consistent with the labelling required by the North
11 Carolina Pesticide Law shall not constitute a 'discharge' for purposes
12 of this Article. The word 'discharge' shall also include any discharge
13 upon land, whether or not in proximity to waters, which is intentional,
14 knowing or willful.

15 (5) 'Having control over oil or other hazardous substances' shall mean, but
16 shall not be limited to, any person, using, transferring, storing, or
17 transporting oil or other hazardous substances immediately prior to a
18 discharge of such oil or other hazardous substances onto the land or
19 into the waters of the State, and specifically shall include carriers and
20 bailees of such oil or other hazardous substances.

21 (5a) 'Hazardous substance' shall mean any substance, other than oil, which
22 when discharged in any quantity may present an imminent and
23 substantial danger to the public health or welfare, as designated
24 pursuant to G.S. 143-215.77A.

25 (6) Repealed by Session Laws 1979, c. 981, s. 5.

26 (7) 'Department' shall mean the Department of Natural Resources
27 and Community Development.

28 (8) 'Oil' shall mean oil of any kind and in any form, including, but
29 specifically not limited to, petroleum, crude oil, diesel oil, fuel oil,
30 gasoline, lubrication oil, oil refuse, oil mixed with other waste, oil
31 sludge, petroleum related products or by-products, and all other liquid
32 hydrocarbons, regardless of specific gravity, whether singly or in
33 combination with other substances.

34 (9) 'Bailee' shall mean any person who accepts oil or other hazardous
35 substances to hold in trust for another for a special purpose and for a
36 limited period of time.

37 (10) 'Carrier' shall mean any person who engages in the transportation of
38 oil or other hazardous substances for compensation.

39 (11) 'Oil terminal facility' shall mean any facility of any kind and related
40 appurtenances located in, on or under the surface of any land, or water,
41 including submerged lands, which is used or capable of being used for
42 the purpose of transferring, transporting, storing, processing, or
43 refining oil; but shall not include any facility having a storage capacity
44 of less than 500 barrels, nor any retail gasoline dispensing operation

1 serving the motoring public. A vessel shall be considered an oil
2 terminal facility only in the event that it is utilized to transfer oil from
3 another vessel to an oil terminal facility; or to transfer oil between one
4 oil terminal facility and another oil terminal facility; or is used to store
5 oil.

6 (12) 'Operator' shall mean any person owning or operating an oil terminal
7 facility or pipeline, whether by lease, contract, or any other form of
8 agreement.

9 (13) 'Person' shall mean any and all natural persons, firms, partnerships,
10 associations, public or private institutions, municipalities or political
11 subdivisions, governmental agencies, or private or public corporations
12 organized or existing under the laws of this State or any other state or
13 country.

14 (14) 'Pipeline' shall mean any conduit, pipe or system of pipes, and any
15 appurtenances related thereto and used in conjunction therewith, used,
16 or capable of being used, for transporting or transferring oil to, from,
17 or between oil terminal facilities.

18 (15) 'Restoration' or 'restore' shall mean any activity or project undertaken
19 in the public interest or to protect public interest or to protect public
20 property or to promote the public health, safety or welfare for the
21 purpose of restoring any lands or waters affected by an oil or other
22 hazardous substances discharge as nearly as is possible or desirable to
23 the condition which existed prior to the discharge.

24 (16) 'Transfer' shall mean the transportation, on-loading or off-loading of
25 oil or other hazardous substances between or among two or more oil
26 terminal facilities; between or among oil terminal facilities and
27 vessels; and between or among two or more vessels.

28 (17) 'Vessel' shall include every description of watercraft or other
29 contrivance used, or capable of being used, as a means of
30 transportation on water, whether self-propelled or otherwise, and shall
31 include, but shall not be limited to, barges and tugs; provided that the
32 term 'vessel' as used herein shall not apply to any pleasure, sport or
33 commercial fishing vessel which has a fuel capacity of less than 500
34 gallons and is not used to transport petroleum, petroleum products, or
35 general cargo.

36 (18) 'Waters' shall mean any stream, river, creek, brook, run, canal, swamp,
37 lake, sound, tidal estuary, bay, reservoir, ~~waterway~~ waterway, wetlands,
38 or any other body or accumulation of water, surface or underground,
39 public or private, natural or artificial, which is contained within, flows
40 through, or borders upon this State, or any portion thereof, including
41 those portions of the Atlantic Ocean over which this State has
42 jurisdiction."

43 Sec. 2. G.S. 143-215.83(b) reads as rewritten:

1 "(b) Excepted Discharges. – This section shall not apply to discharges of oil or
2 other hazardous substances in the following circumstances:

3 (1) When the discharge was authorized by an existing rule of the
4 Commission.

5 (2) When any person subject to liability under this Article proves that a
6 discharge was caused by any of the following:

7 a. An act of ~~God~~-God, which means only an unforeseeable act
8 exclusively occasioned by the violence of nature without the
9 interference of any human agency.

10 b. An act of war or sabotage.

11 c. Negligence on the part of the United States government or the
12 State of North Carolina or its political subdivisions.

13 d. An act or omission of a third party, whether any such act or
14 omission was or was not negligent. In any action arising under
15 the provisions of this Article wherein this exception is raised as
16 a defense to liability, the burden of proving that the alleged
17 third-party intervention occurred in such a manner as to limit
18 the liability of the person sought to be held liable shall be upon
19 the person charged.

20 e. Any act or omission by or at the direction of a law-enforcement
21 officer or fireman."

22 Sec. 3. G.S. 143-215.84 reads as rewritten:

23 ♦"§ 143-215.84. Removal of prohibited discharges.

24 (a) Person Discharging. – Any person owning or having control over oil or other
25 hazardous substances discharged in violation of this Article shall immediately undertake
26 to collect and remove the discharge and to restore the area affected by the discharge as
27 nearly as may be to the condition existing prior to the discharge. If it is not feasible to
28 collect and remove the discharge, the person responsible shall take all practicable
29 actions to contain, treat and disperse the discharge; but no chemicals or other
30 dispersants or treatment materials which will be detrimental to the environment or
31 natural resources shall be used for such purposes unless they shall have been previously
32 approved by the Commission.

33 (b) Removal by Department. – Notwithstanding the requirements of subsection
34 (a) of this section, the Department is authorized and empowered to utilize any staff,
35 equipment and materials under its control or supplied by other cooperating State or local
36 agencies and to contract with any agent or contractor that it deems appropriate to take
37 such actions as are necessary to collect, investigate, perform surveillance over, remove,
38 contain, treat or disperse oil or other hazardous substances discharged onto the land or
39 into the waters of the State and to perform any necessary restoration. The Secretary
40 shall keep a record of all expenses incurred in carrying out any project or activity
41 authorized under this section, including actual expenses incurred for services performed
42 by the State's personnel and for use of the State's equipment and material. The authority
43 granted by this subsection shall be limited to projects and activities that are designed to
44 protect the public interest or public property, and shall be compatible with the National

1 Contingency Plan established pursuant to the Federal Water Pollution Control Act, as
2 amended, 33 U.S.C. section 1251 **et seq.**

3 ~~(e) The Secretary of the Department of Transportation is authorized and~~
4 ~~empowered, after consultation with the Secretary to purchase and equip a sufficient~~
5 ~~number of trucks designed to carry out the provisions of subsection (b). These trucks~~
6 ~~shall be maintained by the Department of Transportation and shall be strategically~~
7 ~~located at various locations throughout the State so as to furnish a ready response when~~
8 ~~word of an oil or other hazardous substances discharge has been received. The Secretary~~
9 ~~[of the Department of Natural Resources and Community Development] or his designee~~
10 ~~will, after consultation, decide where the trucks are to be located.~~

11 ~~(d) The Secretary of the Department of Transportation and the Secretary [of the~~
12 ~~Department of Natural Resources and Community Development] or their designees~~
13 ~~shall adopt rules for the placement of these trucks and shall determine the manner and~~
14 ~~way in which they are to be used. The Secretary [of the Department of Natural~~
15 ~~Resources and Community Development] shall reimburse the Department of~~
16 ~~Transportation for expenses incurred by the Department of Transportation during~~
17 ~~cleanups as provided in G.S. 143-215.88."~~

18 Sec. 4. G.S. 143-215.86 reads as rewritten:

19 **"§ 143-215.86. Other State agencies and State-designated local agencies.**

20 ~~(a) Cooperative Effort. — The Board of Transportation, the North Carolina~~
21 ~~Wildlife Resources Commission, and any other agency of this State and any local~~
22 ~~agency designated by the State shall cooperate with and lend assistance to the~~
23 ~~Commission by assigning to the Commission upon its request personnel, equipment and~~
24 ~~material to be utilized in any project or activity related to the containment, collection,~~
25 ~~dispersal or removal of oil or other hazardous substances discharged upon the land or~~
26 ~~into the waters of this State.~~

27 ~~(b) Planning. — Subsequent to May 16, 1973, and prior to September 1, 1973, The~~
28 ~~Commission shall be responsible for developing a program, including training, to enable~~
29 ~~the State to respond to an emergency oil or other hazardous substance spillage for the~~
30 ~~waters of the State, excluding offshore marine waters. In carrying out its duties under~~
31 ~~this section, designated representatives of the Commission, the Board of Transportation,~~
32 ~~and the Wildlife Resources Commission—Commission, the Division of Marine Fisheries,~~
33 ~~and any other agency or agencies of the State which the Commission shall deem~~
34 ~~necessary and appropriate, shall confer and establish plans and procedures for the~~
35 ~~assignment and utilization of personnel, equipment and material to be used in carrying~~
36 ~~out the purposes of this Part. Every State agency involved is authorized to adopt such~~
37 ~~rules as shall be necessary to effectuate the purposes of this section.~~

38 ~~(c) Accounts. — Every State agency or other State designated local agency~~
39 ~~participating in the containment, collection, dispersal or removal of an oil or other~~
40 ~~hazardous substances discharge or in restoration necessitated by such discharge, shall~~
41 ~~keep a record of all expenses incurred in carrying out any such project or activity~~
42 ~~including the actual services performed by the agency's personnel and the use of the~~
43 ~~agency's equipment and material. A copy of all records shall be delivered to the~~
44 ~~Commission upon completion of the project or activity.~~

1 **(b) Cooperative Effort.** – The Board of Transportation, the North Carolina
2 Wildlife Resources Commission, the Division of Marine Fisheries, and any other
3 agency of this State and any local agency designated by the State shall cooperate with
4 and lend assistance to the Commission by assigning to the Commission upon its request
5 personnel, equipment, and material to be utilized in any project or activity related to the
6 containment, collection, dispersal, or removal of oil or other hazardous substances
7 discharged upon the land or discharged into waters affecting this State.

8 **(c) Trucks.** – The Secretary of the Department of Transportation may, after
9 consultation with the Secretary of Natural Resources and Community Development,
10 purchase and equip a sufficient number of trucks designed to carry out the provisions of
11 subsection (b) of this section. These trucks shall be maintained by the Department of
12 Transportation and shall be strategically located at various locations throughout the
13 State so as to furnish a ready response when word of an oil or other hazardous
14 substances discharge has been received. The Secretary of the Department of Natural
15 Resources and Community Development or his designee will, after consultation, decide
16 where the trucks are to be located.

17 **(d) Rules.** – The Secretary of the Department of Transportation and the Secretary
18 of the Department of Natural Resources and Community Development or their
19 designees shall adopt rules for the placement of these trucks and shall determine the
20 manner and way in which they are to be used. The Secretary of the Department of
21 Natural Resources and Community Development shall reimburse the Department of
22 Transportation for expenses incurred by the Department of Transportation during
23 cleanups as provided in G.S. 143-215.88.

24 **(e) Accounts.** – Every State agency or other State-designated local agency
25 participating in the containment, collection, dispersal, or removal of an oil or other
26 hazardous substances discharge or in restoration necessitated by such discharge, shall
27 keep a record of all expenses incurred in carrying out any such project or activity
28 including the actual services performed by the agency's personnel and the use of the
29 agency's personnel and the use of the agency's equipment and material. A copy of all
30 records shall be delivered to the Commission upon completion of the project or
31 activity."

32 Sec. 5. G.S. 143-215.87 reads as rewritten:

33 **"§ 143-215.87. Oil or Other Hazardous Substances Pollution Protection Fund.**

34 There is hereby established under the control and direction of the Department an Oil
35 or Other Hazardous Substances Pollution Protection Fund which shall be a nonlapsing,
36 revolving fund consisting of any moneys appropriated for such purpose by the General
37 Assembly or that shall be available to it from any other source. The moneys shall be
38 used to defray the expenses of any project or program for the containment, collection,
39 dispersal or removal of oil or other hazardous substances discharged to the land or
40 waters of this ~~State~~State, or discharged into waters outside the territorial limits of the
41 State which affect land and waters or related uses within the State, or for restoration
42 necessitated by the discharge. In addition to any moneys that shall be appropriated or
43 otherwise made available to it, the fund shall be maintained by fees, charges, penalties
44 or other moneys paid to or recovered by or on behalf of the Department under the

1 provisions of this Part. Any moneys paid to or recovered by or on behalf of the
2 Department as fees, charges, penalties or other payments as damages authorized by this
3 Part shall be paid to the Oil or Other Hazardous Substances Pollution Protection Fund in
4 an amount equal to the sums expended from the fund for the project or activity. Within
5 the meaning of this section, the word 'penalties' means civil penalties and does not
6 include criminal fines or penalties."

7 Sec. 6. G.S. 143-215.98 reads as rewritten:

8 **"§ 143-215.89. Multiple liability for necessary expenses.**

9 Any person liable for costs of cleanup of oil or other hazardous substances under this
10 Part shall have a cause of action to recover such costs in part or in whole from any other
11 person causing or contributing to the discharge of oil or other hazardous substances into
12 the waters of the State, including any amount recoverable by the State as necessary
13 expenses. ~~The total recovery by the State for damage to the public resources pursuant to G.S.~~
14 ~~143-215.91 and for the cost of oil or other hazardous substances cleanup, arising from any~~
15 ~~discharge, shall not exceed the applicable limits prescribed by federal law with respect to the~~
16 ~~United States government on account of such discharge."~~

17 Sec. 7. A new Part is added to Article 21A of Chapter 143 of the General
18 Statutes to read as follows:

19 **"PART 2B. OFFSHORE OIL AND GAS ACTIVITIES.**

20 **"ADVERSE ENVIRONMENTAL IMPACT PROTECTION.**

21 **"§ 143-215.94N. Declaration of public policy.**

22 The General Assembly hereby finds and declares as follows:

- 23 (1) The highest and best use of the seacoast of the State is as a source of
24 public and private recreation;
25 (2) The preservation of this use is a matter of the highest urgency and
26 priority, and such use can only be served effectively by maintaining
27 the coastal waters, estuaries, wetlands, tidal flats, beaches, and public
28 lands adjoining the seacoast in a relatively pristine condition, taking
29 into account multiple use accommodations necessary to provide the
30 broadest possible promotion of public and private interests;
31 (3) Offshore oil and natural gas exploration, production, processing,
32 recovery, and transportation pose a serious threat of damage to the
33 coastal environment of the State, to owners and users of shore front
34 property, to public and private recreation, to recreational and
35 commercial fisheries, to citizens of the State deriving livelihood from
36 marine-related activity, and to the beauty of the North Carolina coast;
37 (4) Spills, discharges, and escapes of pollutants occurring as a result of
38 procedures involving offshore oil and natural gas related activities
39 have frequently occurred in the past, are occurring now, and present
40 future threats of potentially catastrophic proportions, all of which are
41 expressly declared to be contrary to the paramount interests of the
42 State as set forth herein;
43 (5) It is inevitable that such hazards will occur with increasing frequency
44 off the North Carolina coast as a result of underseas exploration,

- 1 recovery, processing, production, and transportation of oil and natural
2 gas, or the transportation of oil or natural gas in pipelines or vessels;
3 (6) The interests and uses sought herein to be protected are expressly
4 declared to be of grave public interest and concern to the State in
5 promoting its general welfare, promoting the public health, preventing
6 diseases, and providing for the public safety, and outweigh any
7 economic burdens imposed by the General Assembly, in furthering
8 this public interest, upon those engaged in the offshore exploration,
9 production, processing, recovery, and transportation of oil and natural
10 gas.

11 **"§ 143-215.94O. Definitions.**

12 In addition to the definitions set out in G.S. 143-215.77, as used in this section, the
13 following definitions shall apply:

- 14 (1) 'Damages' are damages for any of the following:
- 15 a. Injury or harm to real or personal property, which includes the
16 cost of restoring, repairing, or replacing any real or personal
17 property damaged or destroyed by a discharge under this
18 section, any income lost from the time such property is
19 damaged to the time such property is restored, repaired, or
20 replaced, and any reduction in value of such property caused by
21 such discharge by comparison with its value prior thereto.
 - 22 b. Business loss, including loss of income or impairment of
23 earning capacity due to damage to real or personal property or
24 to damage or destruction of natural resources upon which such
25 income or earning capacity is reasonably dependent.
 - 26 c. Interest on loans obtained or other financial obligations incurred
27 by an injured party for the purpose of ameliorating the adverse
28 effects of a discharge pending the payment of a claim in full as
29 provided by this Article.
 - 30 d. Costs of cleanup, removal, or treatment of natural gas, oil, or
31 drilling waste discharges.
 - 32 e. Costs of restoration, rehabilitation, and, where possible,
33 replacement of wildlife or other natural resources damaged as a
34 result of a discharge.
 - 35 f. When the injured party is the State or one of its political
36 subdivisions, in addition to any injury described in
37 subparagraphs (1) to (5), inclusive, damages include all of the
38 following:
 - 39 1. Injury to natural resources or wildlife, including
40 recreational or commercial fisheries, and loss of use and
41 enjoyment of public beaches and other public resources
42 or facilities within the jurisdiction of the State or one of
43 its political subdivisions.

1 damages incurred within the territorial jurisdiction of the State by any injured party and
2 which arise out of, or are caused by, the discharge or leaking of natural gas, oil or
3 drilling waste into or onto 'coastal fishing waters' as defined in G.S. 113-129(4) or
4 offshore waters, or by any exploration in or upon coastal fishing or offshore waters,
5 from any of the following sources:

6 (1) Any offshore well or undersea site at which there is exploration for or
7 extraction or recovery of natural gas or oil.

8 (2) Any offshore facility, oil rig, or oil platform at which there is
9 exploration for, or extraction, recovery, processing, or storage of,
10 natural gas or oil.

11 (3) Any vessel offshore in which natural gas, oil or drilling waste is
12 transported, processed or stored other than for purposes of fuel for the
13 vessel carrying it.

14 (4) Any pipeline located offshore in which natural gas, oil or drilling
15 waste is transported.

16 (b) A responsible person is not liable to an injured party under this section for
17 any of the following:

18 (1) Damages, other than costs of removal incurred by the State or a local
19 government, caused solely by any act of war, hostilities, civil war, or
20 insurrection or by an unanticipated grave natural disaster or other act
21 of God of an exceptional, inevitable, and irresistible character, which
22 could not have been prevented or avoided by the exercise of due care
23 or foresight.

24 (2) Damages caused solely by the negligence or intentional malfeasance of
25 that injured party.

26 (3) Damages caused solely by the criminal act of a third party other than
27 the defendant or an agent or employee of the defendant, subject to the
28 provision relating to the burden of proof in any court action arising
29 under this section as found in G.S. 143-215.83(b)(2)d.

30 (4) Natural seepage not caused by a responsible party.

31 (5) Discharge or leaking of oil or natural gas from a private pleasure boat
32 or commercial fishing vessel.

33 (6) Damages which arise out of, or are caused by, a discharge which is
34 authorized by a State or federal permit.

35 (c) A court of suitable jurisdiction in any action under this Part may award
36 reasonable costs of the suit and attorneys' fees, and the costs of any necessary expert
37 witnesses, to any prevailing plaintiff. The court may award reasonable costs of the suit
38 and attorneys' fees to any prevailing defendant only if the court finds that the plaintiff
39 commenced or prosecuted the suit under this Part in bad faith or solely for purposes of
40 harassing the defendant.

41 **"§ 143-215.94Q. Joint and several liability; damages; personal injury.**

42 (a) Liability under this Part shall be joint and several. However, this section does
43 not bar a cause of action that a responsible party has or would have, by reason of
44 subrogation or otherwise, against any person.

1 (b) This section does not prohibit any person from bringing an action for
2 damages caused by natural gas, oil or drilling waste, or by exploration, under any other
3 provisions or principle of law, including, but not limited to, common law. However,
4 damages shall not be awarded pursuant to this section to an injured party for any loss or
5 injury for which the party is or has been awarded damages under any other provisions or
6 principles of law. G.S. 143-215.94P(b) does not create any defense not otherwise
7 available regarding any action brought under any other provision or principle of law,
8 including, but not limited to, common law.

9 (c) This section shall not apply to claims for damages for personal injury or
10 wrongful death, and does not limit the right of any person to bring such an action under
11 any provision or theory of law.

12 **"§ 143-215.94R. Removal of prohibited discharges.**

13 (a) The Department shall be authorized and empowered to proceed with the
14 cleanup of discharges covered under this Part pursuant to the authority granted to the
15 Department in G.S. 143-215.84(b) and G.S. 143-215.94W(b)(2).

16 (b) Any unexplained discharge of oil, natural gas or drilling wastes occurring in
17 waters beyond the jurisdiction of the State that for any reason penetrates within State
18 jurisdiction shall be removed by or under the direction of the Department. Except for
19 any expenses incurred by the responsible party, should such party become known, all
20 expenses incurred in the removal of such discharges shall be paid promptly by the State
21 from the 'Oil and Other Hazardous Substances Pollution Protection Fund' established
22 pursuant to G.S. 143-215.87 or from any other available sources. In the case of
23 unexplained discharges, the matter shall be referred by the Secretary to the North
24 Carolina Attorney General for collection of damages pursuant to G.S. 143-215.94U of
25 this Part. At his discretion, the Attorney General may refer the matter to the State
26 Bureau of Investigation or other appropriate State or federal authority to determine the
27 identity of the responsible person.

28 (c) Nothing in this Section is intended to preclude cleanup and removal by any
29 person threatened by such discharges, who, as soon as is reasonably possible,
30 coordinates and obtains approval for such actions with ongoing State or federal
31 operations and appropriate State and federal authorities.

32 (d) No action taken by any person to contain or remove an unlawful discharge
33 shall be construed as an admission of liability for said discharge.

34 **"§ 143-215.94S. Authorization of the Attorney General.**

35 (a) For any violation of this Part, the Attorney General may, on behalf of the
36 State and on behalf of affected citizens of the State as a class, bring a civil action in the
37 Superior Court of Wake County against the alleged responsible party. The action may
38 seek:

- 39 (1) Injunctive relief; or
- 40 (2) Damages caused by the violation; or
- 41 (3) Both damages and injunctive relief; or
- 42 (4) Such other and further relief in the premises as the Court shall deem
43 proper.

1 (b) Any injured person under this Part may bring a civil action for damages
2 against the alleged responsible party. Civil actions under this subsection shall be
3 brought in the superior court of the county in which the alleged injury occurred or in
4 which the alleged damaged property is located, or in the county in which the injured
5 person resided.

6 (c) Nothing in this section shall restrict any right which any person (or class of
7 persons) may have under any statute or common law to seek injunctive or other relief.

8 **"§ 143-215.94T. Notification by persons responsible for discharge.**

9 (a) Any person responsible for a discharge under this Part shall immediately
10 notify the Department pursuant to rules established by the Secretary, if any, but in no
11 case later than two hours after the discharge. Failure to so notify the Department shall
12 make the responsible person liable to the penalties set out in subsection (b) of this
13 section. No penalty shall be imposed under this section when the owner or operator has
14 promptly reported the discharge to federal authorities designated pursuant to 33 U.S.C.
15 § 1321.

16 (b) The civil penalty for failure to immediately report a discharge under this Part
17 shall be determined by the Commission. In determining the amount of a penalty for
18 failure to report under this section, the Commission shall take into consideration such
19 circumstances as the gravity of the violation, the previous record of the responsible
20 person in complying with the terms of this Article, whether the violator reported the
21 discharge and if so after what period of time following the spill, the size of the business
22 of the responsible person and the effect of the penalty on the violator's ability to
23 continue in business, and other relevant factors; provided that the penalty assessed
24 under this section shall not exceed the following daily maximum amounts, based upon
25 the quantity of oil spilled:

26	(1)	<u>Up to 1,000 gallons</u>	<u>\$ 1,000</u>
27	(2)	<u>1001 to 5000 gallons</u>	<u>10,000</u>
28	(3)	<u>5001 to 10,000 gallons</u>	<u>25,000</u>
29	(4)	<u>10,000 to 50,000 gallons</u>	<u>50,000</u>
30	(5)	<u>50,001 to 100,000 gallons</u>	<u>100,000</u>
31	(6)	<u>More than 100,000 gallons.</u>	<u>250,000</u>

32 For purposes of this section, each day or any part thereof during which a discharge goes
33 unreported by the responsible person shall constitute a separate offense.

34 **"§ 143-215.94U. Oil spill contingency plan.**

35 (a) The Secretary of the Department of Administration or his designee shall
36 develop a State oil spill contingency plan relating solely to the undersea exploration,
37 extraction, production and transport of oil or natural gas in the marine environment off
38 the North Carolina coast, including any such development on the Outer Continental
39 Shelf seaward of the State's jurisdiction over its territorial waters.

40 (b) The Secretary of the Department of Administration or his designee shall
41 establish, pursuant to such a plan, an emergency oil spill control network which shall be
42 comprised of available equipment from appropriate State, county and municipal
43 governmental agencies. Such network shall be employed to provide an immediate
44 response to an oil discharge into the offshore marine environment which is reasonably

1 likely to affect the State's coastal waters. Furthermore, such network shall be employed
2 in conjunction with the cleanup operations under this Article or any applicable federal
3 law, required of the owner or operator of the discharging operation, vessel, or facility,
4 the Department of Natural Resources and Community Development, and any federal
5 agency.

6 (1) The Secretary of the Department of Administration or his designee
7 shall make an inventory, including its location and condition, of all
8 equipment owned by the State, its counties and municipalities, and
9 private equipment that is available to the State for leasing in the case
10 of an oil spill including costs of leasing, that would be capable of
11 participating in discharge cleanup operations.

12 (2) The Secretary of the Department of Administration or his designee
13 shall coordinate offshore spill contingency planning with the Secretary
14 of Natural Resources and Community Development, who shall at his
15 discretion have the power to deploy such equipment in participating in
16 a discharge cleanup operation and to reimburse such State agencies,
17 counties, and municipalities for use of such equipment with such funds
18 as may be available from the 'Oil or Other Hazardous Substance
19 Pollution Protection Fund' created pursuant to G.S. 143-215.87 or any
20 other sources.

21 (3) The Secretary of the Department of Administration or his designee
22 may request and shall receive from any other State agency such
23 assistance and data as will enable him to carry out his responsibilities
24 pursuant to this section.

25 (4) The oil spill contingency plan and oil spill response network
26 developed pursuant to this section shall be reviewed and evaluated for
27 adequacy and continued feasibility every five years, or more often if
28 deemed appropriate by the Secretary of the Department of
29 Administration, by designated representatives of the Commission, the
30 Outer Continental Shelf Lands Office, the Division of Marine
31 Fisheries, the Wildlife Resources Commission, the Board of
32 Transportation and any other State agency or agencies which the
33 Secretary of the Department of Administration or his designee shall
34 deem necessary and appropriate.

35 (c) The Secretary of the Department of Administration or his designee shall carry
36 out his duties under this section with such funds as may be available from the 'Oil or
37 other Hazardous Substances Pollution Protection Fund' created pursuant to G.S. 143-
38 215.87, legislative grants, or any other available sources of funding.

39 **"§ 143-215.94V. Emergency proclamation; Governor's powers.**

40 (a) Whenever any emergency exists or appears imminent, arising from the
41 discharge of oil or other pollutants within the marine environment, the governor shall by
42 proclamation declare the fact and that a state of emergency exists in the appropriate
43 sections of the State. Upon such proclamation, the Governor shall have all powers
44 enumerated in G.S. 14-288.15, subject to the provisions of G.S. 14-288.16.

1 **(b)** If the Governor is unavailable, the Lieutenant Governor shall, by
2 proclamation, declare the fact and that a state of emergency exists in the appropriate
3 sections of the State.

4 **(c)** In performing his duties under this section, the Governor is authorized and
5 directed to cooperate with all departments and agencies of the federal government, the
6 offices and agencies of other states and foreign countries and the political subdivisions
7 thereof, and private agencies in all matters pertaining to an emergency described herein.

8 **(d)** In addition to the powers enumerated in G.S. 14-288.15, in the case of such
9 an emergency described in subsection (a) of this section, the Governor is further
10 authorized and empowered to transfer any funds available to him by statute for
11 emergency use into the 'Oil and Other Hazardous Substances Pollution Protection Fund'
12 created pursuant to G.S. 143-215.87, to be utilized for the purposes specified therein."

13 Sec. 8. This act is effective upon ratification.