

**Overview: NC State Tort Claims Act and Defense of Local Environmental Health Specialists
(G.S. Chapter 143, Articles 31 & 31A)**

Jill Moore, UNC School of Government
April 2014

When a private individual behaves in a manner that causes harm to another individual's person or property, the injured person might file a lawsuit seeking monetary compensation for the harm. This basic action in civil law may not be possible, however, when the party that causes the harm is the state government or its agents or employees. Because of a concept called "sovereign immunity," the state is immune from liability for damages caused by tortious conduct, unless the state expressly consents to be sued. One way to consent to be sued is by enacting legislation that authorizes lawsuits against the state for certain claims. By enacting the State Tort Claims Act (STCA), the state of North Carolina has consented to be sued and potentially held liable for damages caused when persons acting on behalf of the state are negligent. If the state is found to be liable, the Act authorizes the payment of up to \$1 million in damages for a claim.

Lawsuits against environmental health specialists (EHS) in local health departments usually involve claims of negligence. When an authorized EHS enforces state public health rules, the EHS is acting as an agent of the state. If a person believes the EHS failed to exercise reasonable care in carrying out his or her duties under the state rules and decides to sue the EHS for negligence, the claim would be brought under the STCA. This document addresses questions local health directors and their attorneys may have about the STCA, with a focus on practical matters associated with the representation of environmental health specialists who are sued for negligence.

What types of claims may be brought under the STCA?

The STCA allows individuals to bring lawsuits alleging damages caused by the negligence of a state officer, employee, or agent, while acting in the scope of the person's office, employment, or agency. The STCA does not extend to claims for damages resulting from intentional torts, such as battery or defamation.¹ A claim for negligence requires the plaintiff to show that the state officer, employee or agent owed a duty of care to the plaintiff, failed to exercise reasonable care in carrying out that duty, and that the plaintiff suffered harm as a result of the defendant's failure to exercise reasonable care. Claims under the STCA are heard by the North Carolina Industrial Commission, a state agency that was created to act as an administrative court for workers' compensation claims and certain other matters.²

¹ G.S. 143-291; *see, e.g.*, *White v. Trew*, 336 N.C. 360 (2013) (intentional torts are not compensable under the NC Tort Claims Act).

² For more information, see the Commission's website: <http://www.ic.nc.gov/>.

How does this apply to local environmental health specialists?

A claim for negligence against a local EHS may be brought under the STCA if:

- The EHS is authorized to enforce state environmental health program rules;³
- The action or omission leading to the claim of negligence arises out of the EHS's enforcement of those state rules; and
- The EHS was acting within the scope of his or her role as a state agent when the alleged negligence occurred.

A claim for negligence against a local EHS may not be brought under the STCA if the EHS is enforcing local rules rather than the statewide rules. The STCA applies only when the EHS is acting as a state agent, which is not the case when the rules being enforced are not state rules. A claim also falls outside the scope of the STCA if the EHS was not authorized to enforce the rules in question, or if the EHS's actions or omissions were outside the scope of his or her role as a state agent.

If a local EHS is sued for negligence, will the state defend the EHS?

The North Carolina Attorney General (AG) is charged with defending a local EHS who is enforcing the rules of the Commission for Public Health under the supervision of the Department of Health and Human Services.⁴ However, the state may refuse to provide for the defense if any of the following circumstances apply:

- The act or omission on which the lawsuit is based was not within the scope and course of the EHS's role as an agent of the state; or
- The EHS's action or omission resulted from fraud, corruption, or malice by the EHS; or
- Defending the proceeding would create a conflict of interest between the state and the EHS; or
- The AG determines that defending the proceeding would not be in the best interest of the state.⁵

If the EHS is liable for damages, who pays?

When a local EHS is acting as an agent of the state in a claim brought under the STCA, the state is responsible for paying any judgment or settlement that results from the claim.⁶ In this case, the "state" means the NC Division of Public Health. There is no designated budget line item for paying claims. The state agency may use lapsed salary funds if those are available; otherwise the agency must identify another source of funds. Federal funds may not be used. State law does not require a local government to share in the costs. However, the state typically asks local governments to share the costs of the claim.

³ An EHS is authorized to enforce state environmental health program rules pursuant to state administrative rules regarding delegation of state authority to local personnel. 15A NCAC 01O .0101 - .0109. To be authorized, the EHS must be a current employee of a local health department or the North Carolina Alliance of Public Health Agencies, be a Registered Environmental Health Specialist (REHS) or an Environmental Health Specialist Intern, and receive certain training.

⁴ G.S. 143-300.8.

⁵ G.S. 143-300.4.

⁶ G.S. 143-300.6.