

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1997

SESSION LAW 1998-161
HOUSE BILL 1483

AN ACT TO EXPEDITE THE CLOSURE OF LOW RISK LEAKING PETROLEUM UNDERGROUND STORAGE TANK CLEANUPS BY ALLOWING THE COST OF OBTAINING THE ADDITIONAL INFORMATION REQUIRED TO ASSESS THE RISK OF RELEASES REPORTED PRIOR TO THE EFFECTIVE DATE OF THE RISK ASSESSMENT RULES TO BE PAID FROM THE COMMERCIAL FUND OR THE NONCOMMERCIAL FUND UNDER CERTAIN CIRCUMSTANCES, TO PROVIDE THAT THE COST OF CONNECTING THIRD PARTIES TO PUBLIC WATER SYSTEMS MAY BE PAID FROM THE COMMERCIAL FUND OR THE NONCOMMERCIAL FUND UNDER CERTAIN CIRCUMSTANCES, TO MAKE LANDOWNERS ELIGIBLE FOR REIMBURSEMENT OF CLEANUP COSTS FROM THE NONCOMMERCIAL FUND UNDER CERTAIN CIRCUMSTANCES, TO AUTHORIZE THE ENVIRONMENTAL MANAGEMENT COMMISSION TO REQUIRE THAT ASSESSMENT AND CLEANUP TASKS AND COSTS BE PREAPPROVED BEFORE WORK PROCEEDS, TO MAKE PETROLEUM COMMERCIAL UNDERGROUND STORAGE TANK OPERATING PERMITS SUBJECT TO ADDITIONAL FEDERAL REQUIREMENTS APPLICABLE IN 1998, TO PROVIDE FOR ASSIGNMENT OF PAYMENTS FROM THE COMMERCIAL FUND AND THE NONCOMMERCIAL FUND, TO ESTABLISH A DE MINIMIS REPORTING REQUIREMENT FOR PETROLEUM UNDERGROUND STORAGE TANK SPILLS AND OVERFILLS OF LESS THAN TWENTY-FIVE GALLONS THAT ARE CLEANED UP WITHIN TWENTY-FOUR HOURS, TO PROVIDE THAT FEDERAL LIMITATIONS ON LENDER LIABILITY APPLY TO THE LEAKING PETROLEUM UNDERGROUND STORAGE TANK CLEANUP PROGRAM, TO PROVIDE THAT RULES APPLICABLE TO COMMERCIAL UNDERGROUND STORAGE TANKS DO NOT APPLY TO CERTAIN TANKS, AND TO MAKE RELATED CONFORMING AND TECHNICAL AMENDMENTS.

The General Assembly of North Carolina enacts:

Section 1. Cost of obtaining additional information required to assess risk of releases reported prior to effective date of risk assessment rules payable from the Commercial Fund or the Noncommercial Fund under certain circumstances. – (a) The definitions set out in G.S. 143-212 and G.S. 143-215.94A apply to this section.

(b) Subject to the requirements and limitations of this section, an owner, operator, or landowner may elect to have the Commercial Fund or the Noncommercial Fund, as appropriate, pay or reimburse the cost of obtaining the additional information needed by the Commission and the Department to assess the risk to human health and the environment posed by a discharge or release from a petroleum underground storage tank under rules adopted by the Commission pursuant to G.S. 143-215.94V without paying the costs for which the owner, operator, or landowner would otherwise be responsible under subsections (b) or (b1) of G.S. 143-215.94B or G.S. 143-215.94E(c1).

(c) The Department shall pay on behalf of, or reimburse a cost paid by, an owner, operator, or landowner only if:

- (1) The owner, operator, or landowner meets all the requirements of Part 2A of Article 21A of the General Statutes that establish eligibility for payment or reimbursement of costs other than the requirement that the owner, operator, or landowner pay the costs for which the owner, operator, or landowner is otherwise responsible under subsections (b) or (b1) of G.S. 143-215.94B or G.S. 143-215.94E(c1).
- (2) The discharge or release was reported as required by G.S. 143-215.85 prior to 2 January 1998.
- (3) The owner, operator, or landowner has complied with 15A NCAC 2N.0704.
- (4) The Department determines that additional work is necessary under 15A NCAC 2L.0115(c)(4) to classify the risk to human health and the environment posed by the discharge or release.
- (5) The Department approves the additional work and the cost of the additional work before the owner, operator, or landowner proceeds with the additional work.
- (d) The Department shall pay or reimburse claims under this section in the order in which the claims are received. The total of all costs paid or reimbursed under this section in any calendar month shall not exceed twenty percent (20%) of the total of all monies paid to the Commercial Fund from all sources during the previous calendar month.
- (e) Costs paid or reimbursed from the Commercial Fund or the Noncommercial Fund under this section shall not be credited toward costs for which the owner, operator, or landowner is responsible under subsections (b) or (b1) of G.S. 143-215.94B or G.S. 143-215.94E(c1).

Section 2. Department may pay the cost of connecting third parties to public water system from the Commercial Fund under certain circumstances. – G.S. 143-215.94B is amended by adding a new subsection to read:

"(b3) For purposes of subsections (b) and (b1) of this section, the cleanup of environmental damage includes connection of a third party to a public water system if the Department determines that connection of the third party to a public water system is a cost-effective measure, when compared to other available measures, to reduce risk to human health or the environment. A payment or reimbursement under this subsection is subject to the requirements and limitations of this section. This subsection shall not be

construed to limit any right or remedy available to a third party under any other provision of law. This subsection shall not be construed to require a third party to connect to a public water system. Except as provided by this subsection, connection to a public water system does not constitute cleanup under Part 2 of this Article, G.S. 143-215.94E, G.S. 143-215.94V, any other applicable statute, or at common law."

Section 3. Department may pay the cost of connecting third parties to public water system from the Noncommercial Fund under certain circumstances. – G.S. 143-215.94D is amended by adding a new subsection to read:

"(b3) For purposes of subsection (b1) of this section, the cleanup of environmental damage includes connection of a third party to a public water system if the Department determines that connection of the third party to a public water system is a cost-effective measure, when compared to other available measures, to reduce risk to human health or the environment. A payment or reimbursement under this subsection is subject to the requirements and limitations of this section. This subsection shall not be construed to limit any right or remedy available to a third party under any other provision of law. This subsection shall not be construed to require a third party to connect to a public water system. Except as provided by this subsection, connection to a public water system does not constitute cleanup under Part 2 of this Article, G.S. 143-215.94E, G.S. 143-215.94V, any other applicable statute, or at common law."

Section 4. **Landowners eligible for reimbursement of cleanup cost from Noncommercial Fund under certain circumstances.** – Section 9 of Chapter 648 of the 1995 Session Laws (1996 Regular Session) reads as rewritten:

"Sec. 9. Sections 1 and 7 of this act become effective 30 days after the date this act is ratified and expires on the date that a temporary or permanent rule adopted under G.S. 143-215.94V(b) become effective as provided in G.S. 150B-21.3. Section 2 of this act becomes effective 1 January 1997. Section 3 of this act becomes effective upon ratification, applies retroactively to any discharge or release that is discovered and reported on or after 1 January 1992 and before 1 October 1997, and expires on 1 October 1997. 1992. Section 4 of this act is effective upon ratification. Sections 5, 6, 8, and 9 of this act become effective upon ratification."

Section 5. Environmental Management Commission may require that assessment and cleanup tasks and costs be preapproved before work proceeds. – G.S. 143-215.94E is amended by adding a new subsection to read:

"(e2) The Commission may require an owner, operator, or landowner to obtain approval from the Department before proceeding with any task that will result in a cost that is eligible to be paid or reimbursed under G.S. 143-215.94B(b), 143-215.94B(b1), or 143-215.94D(b1). The Commission shall specify by rule those tasks for which preapproval is required. The Department shall deny any request for payment or reimbursement of the cost of any task for which preapproval is required if the owner, operator, or landowner failed to obtain preapproval of the task. The Department shall pay or reimburse the cost of a task for which preapproval is not required only if the cost is eligible to be paid under G.S. 143-215.94B(b), 143-215.94B(b1), or 143-215.94D(b1) and if the Department determines that the cost is reasonable and necessary. The Commission shall adopt rules governing reimbursement of necessary and reasonable

costs. In all cases, the Department shall require an owner, operator, or landowner to submit documentation sufficient to establish that a cost is eligible to be paid or reimbursed under this Part before the Department pays or reimburses the cost."

Section 6. Petroleum commercial underground storage tank operating permits subject to additional federal requirements applicable in 1998. – G.S. 143-215.94U(a) reads as rewritten:

"(a) The owner or operator of each petroleum commercial underground storage tank shall annually obtain an operating permit from the Department for the facility at which the tank is located. The Department shall issue an operating permit only if the owner or operator:

- (1) Has notified the Department of the existence of all tanks as required by 40 Code of Federal Regulations § 280.22 (1 July 1994 Edition) or 42 U.S.C. § 6991a, if applicable, at the facility;
- (2) Has paid all fees required under G.S. 143-215.94C for all commercial petroleum underground storage tanks located at the facility;
- (3) Complies with applicable release ~~detection~~-detection, spill and overfill protection, and corrosion protection requirements set out in rules adopted pursuant to this Chapter, notifies the Department of the method or combination of methods of leak ~~detection~~-detection, spill and overfill protection, and corrosion protection in use, and certifies to the Department that all applicable release ~~detection~~-detection, spill and overfill protection, and corrosion protection requirements are being met for all petroleum underground storage tanks located at the facility;
- (4) If applicable, complies with the Stage I vapor control requirements set out in 15A North Carolina Administrative Code 2D.0928, effective 1 March 1991, notifies the Department of the method or combination of methods of vapor control in use, and certifies to the Department that all Stage I vapor control requirements are being met for all petroleum underground storage tanks located at the facility; and
- (5) Has substantially complied with the air quality, groundwater quality, and underground storage tank standards applicable to any activity in which the applicant has previously engaged and has been in substantial compliance with federal and State laws, regulations, and rules for the protection of the environment. In determining substantial compliance, the compliance history of the owner or operator and any parent, subsidiary, or other affiliate of the owner, operator, or parent may be considered."

Section 7. **Assignment of payments from the Commercial Fund and the Noncommercial Fund.** – G.S. 143-3.3 is amended by adding a new subsection to read:

"(l) Assignment of Payments From the Underground Storage Tank Cleanup Funds. – This section does not apply to an assignment of any claim for payment or reimbursement from the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund established by G.S. 143-215.94B or the Noncommercial Leaking Petroleum Underground Storage Tank Cleanup Fund established by G.S. 143-215.94D."

Section 8. De minimis reporting requirement for petroleum underground storage tanks spills and overfills of less than 25 gallons that are cleaned up within 24 hours. – (a) G.S. 143-215.94E(a) reads as rewritten:

"(a) Upon a determination that a discharge or release of petroleum from an underground storage tank has occurred, the owner or operator of the underground storage tank shall notify the Department pursuant to G.S. 143-215.85. The owner or operator of the underground storage tank shall immediately undertake to collect and remove the discharge or release and to restore the area affected in accordance with the requirements of this Article."

(b) G.S. 143-215.94E is amended by adding a new subsection to read:

"(a1) If a spill or overfill associated with a petroleum underground storage tank results in a release of petroleum to the environment of 25 gallons or more or causes a sheen on nearby surface water, the owner or operator of the petroleum underground storage tank shall immediately clean up the spill or overfill, report the spill or overfill to the Department within 24 hours of the spill or overfill, and begin to restore the area affected in accordance with the requirements of this Article. The owner or operator of a petroleum underground storage tank shall immediately clean up a spill or overfill of less than 25 gallons of petroleum that does not cause a sheen on nearby surface water. If a spill or overfill of less than 25 gallons of petroleum cannot be cleaned up within 24 hours of the spill or overfill or causes a sheen on nearby surface water, the owner or operator of the petroleum underground storage tank shall immediately notify the Department."

Section 9. **Federal limitations on lender liability apply.** – G.S. 143-215.94L(b) reads as rewritten:

"(b) This Part shall be administered by the Department consistent with the provisions of Title VI, § 601 of the Hazardous and Solid Waste Amendments of 1984, Pub. L. No. 98-616, 42 U.S.C. § 6991 ~~et seq., et seq.,~~ as amended. The provisions of 40 Code of Federal Regulations Part 280, Subpart I – Lender Liability (1 July 1997 Edition) apply to this Part and Part 2B of this Article."

Section 10. Rules applicable to commercial underground storage tanks do not apply to certain tanks. – G.S. 143-215.94T reads as rewritten:

"§ 143-215.94T. Adoption and implementation of regulatory program.

(a) The Commission shall adopt, and the Department shall implement and enforce, rules relating to underground storage tanks as provided by G.S. 143-215.3(a)(15) and G.S. 143B-282(2)h. ~~Such~~ These rules shall include standards and requirements applicable to both existing and new underground storage tanks and tank systems, may include different standards and requirements based on tank capacity, tank location, tank age, and other relevant factors, and shall include, at a minimum, standards and requirements for:

- (1) Design, construction, and installation, including monitoring ~~systems;~~ systems.
- (2) Notification to the Department, inspection, and ~~registration;~~ registration.
- (3) Recordation of tank ~~location;~~ location.

- (4) Modification, retrofitting, and ~~upgrading~~; upgrading.
- (5) General operating ~~requirements~~; requirements.
- (6) Release ~~detection~~; detection.
- (7) Release reporting, investigation, and ~~confirmation~~; confirmation.
- (8) Corrective ~~action~~; action.
- (9) ~~Repair~~; Repair.
- (10) ~~Closure~~; and Closure.
- (11) Financial responsibility.

(b) Rules adopted pursuant to subsection (a) of this section that apply only to commercial underground storage tanks shall not apply to any:

- (1) Farm or residential underground storage tank of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes.
- (2) Underground storage tank of 1,100 gallons or less capacity used for storing heating oil for consumptive use on the premises where stored.
- (3) Underground storage tank of more than 1,100 gallon capacity used for storing heating oil for consumptive use on the premises where stored by four or fewer households."

Section 11. **Conforming and technical changes.** – (a) G.S. 143-215.94D(b1) reads as rewritten:

"(b1) The Noncommercial Fund shall be used for the payment of the costs of:

- (1) The cleanup of environmental damage as required by G.S. ~~143-215.94E(a); and 143-215.94E(a).~~
- (2) Compensation to third parties for bodily injury and property damage in excess of one hundred thousand dollars (\$100,000) per occurrence.
- (3) Reimbursing the State for damages or other costs incurred as a result of a loan from the Loan Fund. The per occurrence limit does not apply to reimbursements to the State under this subdivision."

(b) G.S. 143-215.94E(e) reads as rewritten:

"(e) ~~When the owner or operator an owner, operator, or landowner~~ pays the costs described in G.S. 143-215.94B(b), 143-215.94B(b1), or 143-215.94D(b1) resulting from a discharge or release of petroleum from an underground storage tank, the ~~owner or operator~~ owner, operator, or landowner may seek reimbursement from the appropriate fund for any costs ~~he~~ that the owner, operator, or landowner may elect to have either the Commercial Fund or the Noncommercial Fund pay in accordance with subsections ~~(b) and (c)~~ (b), (b1), (c), and (c1) of this section. ~~The Department shall reimburse the owner or operator for all costs he may elect to have the appropriate fund pay that the Department determines to be reasonable and necessary and for which appropriate documentation is submitted.~~ The Department may contract for any services necessary to evaluate any claim for reimbursement or compensation from either the Commercial Fund or the Noncommercial Fund, may contract for any expert witness or consultant services necessary to defend any decision to pay or deny any claim for reimbursement, and may pay the cost of these services from the fund against which the claim is made; provided that in any fiscal year the Department shall not expend from either fund more than one percent (1%) of the unobligated balance of the fund on 30

June of the previous fiscal year. The cost of contractual services to evaluate a claim or for expert witness or consultant services to defend a decision with respect to a claim shall be included as costs under G.S. ~~143-215.94B(b) and G.S. 143-215.94D(b1).~~ 143-215.94B(b), 143-215.94B(b1), and 143-215.94D(b1). ~~The Commission shall adopt rules governing reimbursement of necessary and reasonable costs.~~—An owner or operator whose claim for reimbursement is denied may appeal a decision of the Department as provided in Article 3 of Chapter 150B of the General Statutes. If the owner or operator is eligible for reimbursement under this section and the cleanup extends beyond a period of three months, the owner or operator may apply to the Department for interim reimbursements to which he is entitled under this section on a quarterly basis. If the Department fails to notify an owner or operator of its decision on a claim for reimbursement under this subsection within 90 days after the date the claim is received by the Department, the owner or operator may elect to consider the claim to have been denied, and may appeal the denial as provided in Article 3 of Chapter 150B of the General Statutes."

(c) G.S. 143-215.94V reads as rewritten:

"§ 143-215.94V. Standards for petroleum underground storage tank cleanup.

(a) Legislative findings and intent.

(1) The General Assembly finds that:

- a. The goals of the underground storage tank program are to protect human health and the environment. Maintaining the solvency of the Commercial Fund and the Noncommercial Fund is essential to these goals.
- b. The sites at which discharges or releases from underground storage tanks occur vary greatly in terms of complexity, soil types, hydrogeology, other physical and chemical characteristics, current and potential future uses of groundwater, and the degree of risk that each site may pose to human health and the environment.
- c. Risk-based corrective action is a process that recognizes this diversity and utilizes an approach where assessment and remediation activities are specifically tailored to the conditions and risks of a specific site.
- d. Risk-based corrective action gives the State flexibility in requiring different levels of cleanup based on scientific analysis of different site characteristics, and allowing no action or no further action at sites that pose little risk to human health or the environment.
- e. A risk-based approach to the cleanup of environmental damage can adequately protect human health and the environment while preventing excessive or unproductive cleanup efforts, thereby assuring that limited resources are directed toward those sites that pose the greatest risk to human health and the environment.

(2) The General Assembly intends:

- a. To direct the Commission to adopt rules that will provide for risk-based assessment and cleanup of discharges and releases from petroleum underground storage tanks. These rules are intended to combine groundwater standards that protect current and potential future uses of groundwater with risk-based analysis to determine the appropriate cleanup levels and actions.
- b. That these rules apply to all discharges or releases that are reported on or after the date the rules become effective in order to ascertain whether cleanup is necessary, and if so, the appropriate level of cleanup.
- c. That these rules may be applied to any discharge or release that has been reported at the time the rules become effective at the discretion of the Commission.
- d. That these rules and decisions of the Commission and the Department in implementing these rules facilitate the completion of more cleanups in a shorter period of time.
- e. That neither the Commercial Fund nor the Noncommercial Fund be used to clean up sites where the Commission has determined that a discharge or release poses a degree of risk to human health or the environment that is no greater than the acceptable level of risk established by the Commission.
- f. ~~That until rules implementing a risk-based approach to assessment and cleanup are adopted, the Commission implement the foregoing principles to the maximum extent possible under existing rules.~~

(b) The Commission shall adopt rules to establish a risk-based approach for the assessment, prioritization, and cleanup of discharges and releases from petroleum underground storage tanks. The rules shall address, at a minimum, the circumstances where site-specific information should be considered, criteria for determining acceptable cleanup levels, and the acceptable level or range of levels of risk to human health and the environment.

(c) The Commission may require an owner or operator or a landowner eligible for payment or reimbursement under G.S. 143-215.94E(b1) subsections (b), (b1), (c), and (c1) of G.S. 143-215.94E to provide information necessary to determine the degree of risk to human health and the environment that is posed by a discharge or release from a petroleum underground storage tank.

(d) If the Commission concludes that a discharge or release poses a degree of risk to human health or the environment that is no greater than the acceptable level of risk established by the Commission, the Commission shall notify ~~the~~ an owner, operator, or landowner who ~~makes the determination provides the information~~ required by subsection (c) of this section that no cleanup, further cleanup, or further action will be required unless the Commission later determines that the discharge or release poses an unacceptable level of risk or a potentially unacceptable level of risk to human health or the environment.

(e) If the Commission concludes under subsection (d) of this section that no cleanup, no further cleanup, or no further action will be required, the Department shall not pay or reimburse any costs otherwise payable or reimbursable under this Article from either the Commercial or Noncommercial Fund, other than reasonable and necessary to conduct the risk assessment required by this section, unless:

- (1) Cleanup is ordered or damages are awarded in a finally adjudicated judgment in an action against the owner or landowner.
- (2) Cleanup is required or damages are agreed to in a consent judgment approved by the Department prior to its entry by the court.
- (3) Cleanup is required or damages are agreed to in a settlement agreement approved by the Department prior to its execution by the parties.
- (4) The payment or reimbursement is for costs that were incurred prior to or as a result of notification of a determination by the Commission that no cleanup, no further cleanup, or no action is required.
- (5) The payment or reimbursement is for costs that were incurred as a result of a later determination by the Commission that the discharge or release poses a threat or potential threat to human health or the environment as provided in subsection (d) of this section.

(f) This section shall not be construed to limit the authority of the Commission to require investigation, initial response, and abatement of a discharge or release pending a determination by the Commission under subsection (d) of this section as to whether cleanup, further cleanup, or further action will be required.

(g) Subsections (c) through (e) of this section apply only to assessments and cleanups in progress or begun on or after ~~the date on which the rules adopted by the Commission pursuant to subsection (b) of this section become effective. 2 January 1998.~~"

Section 12. Temporary rules authorized. – Notwithstanding G.S. 150B-21.1(a)(2) and 26 NCAC 2C.0102(11), the Environmental Management Commission may adopt temporary rules to implement this act until 1 October 1999.

Section 13. Headings for convenience only. – The headings to the sections of this act are intended as a convenience to the reader and are for reference only. The headings do not expand, limit, or define the text of this act.

Section 14. Effective dates. – Sections 1, 2, and 3 and subsection (c) of Section 11 of this act are effective retroactively to 2 January 1998 except that subdivision (5) of subsection (c) of Section 1 of this act is effective when this act becomes law. Section 1 of this act expires 1 October 1999. Section 4 of this act is effective retroactively to 1 October 1997. Section 5 and subsection (b) of Section 11 of this act become effective 1 January 1999. Section 6 of this act becomes effective 22 December 1998. Section 7 of this act is effective retroactively to 30 June 1988. Sections 8, 9, 10, 12, 13, 14 and subsection (a) of Section 11 of this act are effective when this act becomes law.

In the General Assembly read three times and ratified this the 17th day of September, 1998.

s/ Dennis A. Wicker
President of the Senate

s/ Harold J. Brubaker
Speaker of the House of Representatives

s/ James B. Hunt, Jr.
Governor

Approved 5:29 p.m. this 28th day of September, 1998