**§ 143-215.94E. Rights and obligations of the owner or operator.**

(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.

(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.

(b) In the case of a discharge or release from a commercial underground storage tank where the owner or operator has been identified and has proceeded with cleanup, the owner or operator may elect to have the Commercial Fund pay or reimburse the owner or operator for any costs described in subsection (b) or (b1) of G.S. 143-215.94B that exceed the amounts for which the owner or operator is responsible under that subsection. The sum of payments by the owner or operator and the payments from the Commercial Fund shall not exceed one million dollars ($1,000,000) per discharge or release except as provided in G.S. 143-215.94B(b2).

(b1) In the case of a discharge or release from a commercial underground storage tank where the owner and operator cannot be identified or located, or where the owner and operator fail to proceed as required by subsection (a) of this section, the following requirements apply:

(1) If the current landowner of the land in which the commercial underground storage tank is located notifies the Department in accordance with G.S. 143-215.85 and undertakes to collect and remove the discharge or release and to restore the area affected in accordance with the requirements of this Article and applicable federal and State laws, regulations, and rules, the current landowner may elect to have the Commercial Fund pay or reimburse the current landowner for any costs described in subdivisions (1), (2), (2a), (3), and (4) of G.S. 143-215.94B(b) or G.S. 143-215.94B(b1) that exceed the amounts for which the owner or operator is responsible under that subsection. The following provisions also apply:

a. The current landowner is not eligible for payment or reimbursement until the current landowner has paid the costs described in subdivisions (1), (2), (2a), (3), and (4) of G.S. 143-215.94B(b) or G.S. 143-215.94B(b1) for which the owner or operator is responsible.

b. Eligibility for reimbursement under this subsection may be transferred from a current landowner who has paid the costs described in subdivisions (1), (2), (2a), (3), and (4) of G.S. 143-215.94B(b) or G.S. 143-215.94B(b1) to a subsequent landowner.

The current landowner shall submit documentation of all expenditures as required by G.S. 143-215.94G(b).

(c), (c1) Repealed by Session Laws 2015-241, s. 14.16A(e), effective December 31, 2016.

(d) In any case where the costs described in G.S. 143-215.94B(b) or 143-215.94B(b1), exceed one million dollars ($1,000,000), or one million five hundred thousand dollars ($1,500,000) if G.S. 143-215.94B(b2) applies, the provisions of Article 21A of this Chapter or

any other applicable statute or common law principle regarding liability shall apply for the amount in excess of one million dollars ($1,000,000) or, if G.S. 143-215.94B(b2) applies, one million five hundred thousand dollars ($1,500,000). Nothing contained in this Part shall limit or modify any liability that any party may have pursuant to Article 21A of this Chapter, any other applicable statute, or at common law.

(e) An owner, operator, or landowner that pays the costs described in subsection (b) or (b1) of G.S. 143-215.94B resulting from a discharge or release of petroleum from a commercial underground storage tank may seek reimbursement from the Commercial Fund in accordance with this section.

(e1) The Department may contract for any services necessary to evaluate any claim for reimbursement or compensation from the Commercial Fund and may contract for any expert witness or consultant services necessary to defend any decision to pay or deny any claim for reimbursement. The Department may pay the cost of these services from the fund. In any fiscal year, however, the Department shall not expend 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 authorized by this subsection are considered costs under subsections (b) and (b1) of G.S. 143-215.94B.

(e2) 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 section 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.

(e3) The Department shall not pay any third party or reimburse any owner or operator who has paid any third party pursuant to any settlement agreement or consent judgment relating to a claim by or on behalf of a third party for compensation for bodily injury or property damage unless the Department has approved the settlement agreement or consent judgment prior to entry into the settlement agreement or consent judgment by the parties or entry of a consent judgment by the court. The approval or disapproval by the Department of a proposed settlement agreement or consent judgment shall be subject to challenge only in a contested case filed under Chapter 150B of the General Statutes.

(e4)(1) If the owner or operator takes initial steps to collect and remove the discharge or release as required by the Department and completes the initial assessment required to determine degree of risk, the owner or operator shall not be subject to any violation or penalty for any failure to proceed with further assessment or cleanup under G.S. 143-215.84 or this section before the owner or operator is authorized to proceed with further assessment or cleanup as provided in subsection (e5) of this section. The lack of availability of funds in the Commercial Fund shall not relieve an owner or operator of responsibility to immediately undertake to collect and remove the discharge or release or to conduct any assessment or cleanup ordered by the Department or be a defense against any violations and penalties issued to the owner or operator for failure to conduct required assessment or cleanup.

(2) The Department shall establish the degree of risk to human health and the environment posed by a discharge or release of petroleum from a commercial underground storage tank and shall determine a schedule for further assessment and cleanup that is based on the degree of risk to human health and the environment posed by the discharge or release and that gives priority to the assessment and cleanup of discharges and releases that pose the greatest risk.

If any of the costs of assessment and cleanup of the discharge or release from a commercial underground storage tank are eligible to be paid or reimbursed from the Commercial Fund, the Department shall also consider the availability of funds in the Commercial Fund and the order in which the discharge or release was reported in determining the schedule.

(3) Repealed by Session Laws 2015-241, s. 14.16A(e), effective December 31, 2016.

(4) The Department may revise the schedules that apply to the assessment and cleanup of any discharge or release at any time based on its reassessment of any of the foregoing factors.

(e5) (1) As used in this subsection:

a. "Authorization" means a determination by the Department that a person may proceed with one or more tasks associated with the assessment or cleanup of a discharge or release from a petroleum underground storage tank. To "authorize" means to make such a determination.

b. "Preapproval" means a determination by the Department that:

1. The nature and scope of a task is reasonable and necessary to be performed under subsection (b) or (b1) of G.S. 143-215.94B in order to achieve the purposes of this Part.

2. The amount estimated for the cost of a task does not exceed the amount or rate that is reasonable for that task.

(2) The Department may require an owner, operator, or landowner to obtain preapproval before proceeding with any task. The Department shall specify 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. Preapproval of a task by the Department does not guarantee payment or reimbursement in the amount estimated for the cost of the task at the time preapproval is requested. The Department shall pay or reimburse the cost of a task only if all of the following apply:

a. The cost is eligible to be paid under subsection (b) or (b1) of G.S. 143-215.94B.

b. Payment is in accordance with G.S. 143-215.94B(d).

c. The Department determines that the cost is reasonable and necessary.

(3) The Commission may adopt rules governing payment or reimbursement of reasonable and necessary costs and, consistent with any rules adopted by the Commission, the Department shall develop, implement, and periodically revise a schedule of costs that the Department determines to be reasonable and necessary costs for specific tasks. Statements that specify tasks for which preapproval is required and schedules of reasonable and necessary costs for specific tasks are statements within the meaning of G.S. 150B-2(8a)g. This subsection does not invalidate any rule of the Commission related to preapproval of tasks that will result in a cost that is eligible to be paid or reimbursed under subsection (b) or (b1) of G.S. 143-215.94B. The Department may specify tasks for which preapproval is required in addition to any specified by the Commission.

(4) In all cases, the Department shall require an owner, operator, or landowner to submit documentation sufficient to establish that a claim is eligible to be paid

or reimbursed under this Part before the Department pays or reimburses the claim.

(5) The Department shall authorize a task the cost of which is to be paid or reimbursed from the Commercial Fund only when the task is scheduled to be performed on the basis of a priority determination pursuant to subsection (e4) of this section. The Department shall not pay or reimburse the cost of any task for which authorization is required under this subsection until the Department has preapproved and authorized the task.

(6) Except as provided in subdivisions (8) and (9) of this subsection, the Department shall not authorize any task the cost of which is to be paid or reimbursed from the Commercial Fund unless the Department determines, based on the scope of the work to be performed and the schedule of reasonable and necessary costs, that sufficient funds will be available in the Commercial Fund to pay or reimburse the cost of that task within 90 days after the Department determines that the owner, operator, or landowner has submitted a claim with documentation sufficient to establish that the claim is eligible to be paid under this Part.

(7) This subsection shall not be construed to establish a cause of action against the Commission or the Department for any failure to pay or reimburse any cost within any specific period of time. This subsection shall not be construed to establish a defense to any action to enforce the requirements of either G.S. 143-215.84 or subsection (a) of this section.

(8) The Department may preapprove and authorize for payment or reimbursement from the Commercial Fund a task that has not been authorized pursuant to subdivisions (5) and (6) of this subsection if the owner, operator, or landowner specifically requests that the task be authorized and agrees that the claim for payment or reimbursement of the task's cost will not be paid until after the Department has paid all claims for payment or reimbursement of costs for tasks the Department has authorized pursuant to subdivisions (5) and (6) of this subsection.

(9) The Department may preapprove and authorize for payment or reimbursement from the Commercial Fund a task that has not been authorized pursuant to subdivisions (5) and (6) of this subsection if the discharge or release creates an emergency situation. An emergency situation exists when a discharge or release of petroleum results in an imminent threat to human health or the environment. A claim for payment or reimbursement of costs for tasks authorized under this subdivision shall be paid or reimbursed on the same basis as tasks authorized under subdivisions (5) and (6) of this subsection.

(10) Each fiscal year, the Department may preapprove and authorize tasks, the cost of which is to be paid or reimbursed from the Commercial Fund and the sum total of which shall not exceed five hundred thousand dollars ($500,000), that have not been authorized pursuant to subdivisions (5) and (6) of this subsection for the purpose of completing risk-based management actions leading to no further action or closure. A claim for payment or reimbursement of costs for tasks that are authorized under this subdivision shall be paid or reimbursed on the same basis as tasks that are authorized under subdivisions (5) and (6) of this subsection.

(f) Repealed by Session Laws 2003-352, s. 6, effective July 27, 2003.

(f1) Any person seeking payment or reimbursement from the Commercial Fund shall certify to the Department that the costs to be paid or reimbursed by the Commercial Fund are not

eligible to be paid or reimbursed by or from any other source, including any contract of insurance. If any cost paid or reimbursed by the Commercial Fund is eligible to be paid or reimbursed by or from another source, that cost shall not be paid from, or if paid shall be repaid to, the Commercial Fund. As used in this Part, the phrase "any other source including any contract of insurance" does not include self-insurance.

(g) No owner or operator shall be reimbursed pursuant to this section, and the Department shall seek reimbursement of the Commercial Fund or of the Department for any monies disbursed from the Commercial Fund or expended by the Department if any of the following apply:

(1) The owner or operator has willfully violated any substantive law, rule, or regulation applicable to underground storage tanks and intended to prevent or mitigate discharges or releases or to facilitate the early detection of discharges or releases.

(2) The discharge or release is the result of the owner's or operator's willful or wanton misconduct.

(3) The owner or operator has failed to pay any annual tank operating fee due pursuant to G.S. 143-215.94C.

(h) Subdivision (1) of subsection (g) of this section shall not be construed to limit the right of an owner or operator to contest notices of violation or orders issued by the Department. Subdivision (1) of subsection (g) of this section shall not apply to a payment or reimbursement pursuant to this section if, at the time of the discharge or release, the owner or operator holds a valid operating permit as required by G.S. 143-215.94U.

(i) Repealed by Session Laws 2005-365, s. 1, effective September 8, 2005.

(j) An owner, operator, or landowner shall request that the Department determine whether any of the costs of assessment and cleanup of a discharge or release from a petroleum underground storage tank are eligible to be paid or reimbursed from the Commercial Fund within one year after completion of any task that is eligible to be paid or reimbursed under G.S. 143-215.94B(b) or 143-215.94B(b1).

(k) An owner, operator, or landowner shall request payment or reimbursement from the Commercial Fund for the cost of a task within one year after the completion of the task. The Department shall deny any request for payment or reimbursement of the cost of any task that would otherwise be eligible to be paid or reimbursed if the request is not received within 12 months after the later of the date on which the:

(1) Department determines that the cost is eligible to be paid or reimbursed.

(2) Task is completed.

If the Department determines after review of the request that additional information is required in order to determine payment eligibility, the Department may allow the applicant up to 30 days to respond to the request for additional information, and this additional response time shall not be included in determining whether a request met the 12-month deadline imposed by this section. (1987 (Reg. Sess., 1988), c. 1035, s. 1; 1989, c. 652, ss. 7, 16; 1991, c. 538, ss. 7, 22; 1991 (Reg. Sess., 1992), c. 817, s. 2; 1993, c. 400, s. 15; c. 402, s. 3; 1995, c. 377, s. 8; 1995 (Reg. Sess., 1996), c. 648, ss. 3, 4; 1998-161, ss. 4, 5, 8(a), (b), 11(b); 1998-215, s. 68; 2000-172, s. 7.1; 2003-352, ss. 6, 7; 2004-124, s. 30.10(d); 2005-365, ss. 1, 2; 2008-195, s. 2(a); 2010-154, ss. 5, 6; 2011- 398, s. 51; 2015-241, s. 14.16A(e), (i); 2016-94, s. 14.5; 2021-158, s. 6; 2025-25, s. 21(c).)