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Short Title: Underground Storage Tank Amends.

(Public)

Sponsors:

Referred to:

May 8, 1995

A BILL TO BE ENTITLED
AN ACT TO IMPROVE THE REGULATION OF PETROLEUM UNDERGROUND
STORAGE TANKS AND THE CLEANUP OF LEAKING PETROLEUM
UNDERGROUND STORAGE TANKS.

The General Assembly of North Carolina enacts:

Section 1. Part 2B of Article 21A of Chapter 143 of the General Statutes is amended by adding a new section to read:

"§ 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

- 1 of risk that each site may pose to human health and the
2 environment.
- 3 c. Risk-based corrective action is a process that recognizes this
4 diversity and utilizes an approach where assessment and
5 remediation activities are specifically tailored to the conditions
6 and risks of a specific site.
- 7 d. Risk-based corrective action gives the State flexibility in
8 requiring different levels of cleanup based on scientific analysis
9 of different site characteristics, and allowing no action or no
10 further action at sites that pose little risk to human health or the
11 environment.
- 12 e. A risk-based approach to the cleanup of environmental damage
13 can adequately protect human health and the environment while
14 preventing excessive or unproductive cleanup efforts, thereby
15 assuring that limited resources are directed toward those sites that
16 pose the greatest risk to human health and the environment.
- 17 (2) The General Assembly intends:
- 18 a. To direct the Commission to adopt rules that will provide for
19 risk-based assessment and cleanup of discharges and releases
20 from petroleum underground storage tanks. These rules are
21 intended to combine groundwater standards that protect current
22 and potential future uses of groundwater with risk-based analysis
23 to determine the appropriate cleanup levels and actions.
- 24 b. That these rules apply to all discharges or releases that are
25 reported on or after the date the rules become effective in order
26 to ascertain whether cleanup is necessary, and if so, the
27 appropriate level of cleanup.
- 28 c. That these rules may be applied to any discharge or release that
29 has been reported at the time the rules become effective at the
30 discretion of the Commission.
- 31 d. That these rules and decisions of the Commission and the
32 Department in implementing these rules facilitate the completion
33 of more cleanups in a shorter period of time.
- 34 e. That neither the Commercial Fund nor the Noncommercial Fund
35 be used to clean up sites where the Commission has determined
36 that a discharge or release poses a degree of risk to human health
37 or the environment that is no greater than the acceptable level of
38 risk established by the Commission.
- 39 f. That until rules implementing a risk-based approach to
40 assessment and cleanup are adopted, the Commission implement
41 the foregoing principles to the maximum extent possible under
42 existing rules.

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

7 (c) The Commission may require an owner or operator or a landowner eligible for
8 reimbursement under G.S. 143-215.94E(b1) to determine the degree of risk to human
9 health and the environment that is posed by a discharge or release from a petroleum
10 underground storage tank.

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

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

23 (1) Cleanup is ordered or damages are awarded in a finally adjudicated
24 judgment in an action against the owner or landowner.

25 (2) Cleanup is required or damages are agreed to in a consent judgment
26 approved by the Department prior to its entry by the court.

27 (3) Cleanup is required or damages are agreed to in a settlement agreement
28 approved by the Department prior to its execution by the parties.

29 (4) The payment or reimbursement is for costs that were incurred prior to or
30 as a result of notification of a determination by the Commission that no
31 cleanup, no further cleanup, or no action is required.

32 (5) The payment or reimbursement is for costs that were incurred as a result
33 of a later determination by the Commission that the discharge or release
34 poses a threat or potential threat to human health or the environment as
35 provided in subsection (d) of this section.

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

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

1 Sec. 2. Part 2B of Article 21A of Chapter 143 of the General Statutes is
2 amended by adding a new section to read:

3 **"§ 143-215.94U. Registration of petroleum commercial underground storage tanks;**
4 **operation of petroleum underground storage tanks; operating permit**
5 **required.**

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

- 10 (1) Has notified the Department of the existence of all tanks as required by
11 40 Code of Federal Regulations § 280.22 (1 July 1994 Edition) or 42
12 U.S.C. § 6991a, if applicable, at the facility;
13 (2) Has paid all fees required under G.S. 143-215.94C for all commercial
14 petroleum underground storage tanks located at the facility;
15 (3) Complies with applicable release detection requirements set out in rules
16 adopted pursuant to this Chapter, notifies the Department of the method
17 or combination of methods of leak detection in use, and certifies to the
18 Department that all applicable release detection requirements are being
19 met for all petroleum underground storage tanks located at the facility;
20 (4) If applicable, complies with the Stage I vapor control requirements set
21 out in 15A North Carolina Administrative Code 2D.0928, effective 1
22 March 1991, notifies the Department of the method or combination of
23 methods of vapor control in use, and certifies to the Department that all
24 Stage I vapor control requirements are being met for all petroleum
25 underground storage tanks located at the facility; and
26 (5) Has substantially complied with the air quality, groundwater quality,
27 and underground storage tank standards applicable to any activity in
28 which the applicant has previously engaged and has been in substantial
29 compliance with federal and State laws, regulations, and rules for the
30 protection of the environment. In determining substantial compliance,
31 the compliance history of the owner or operator and any parent,
32 subsidiary, or other affiliate of the owner, operator, or parent may be
33 considered.

34 (b) The operating permit shall be issued at the time the commercial underground
35 storage annual tank operating fee required under G.S. 143-215.94C(a) is paid and shall be
36 valid from the first day of the month in which the fee is due through the last day of the
37 last month for which the fee is paid in accordance with the schedule established by the
38 Department under G.S. 143-215.94C(b).

39 (c) No person shall place a petroleum product, and no owner or operator shall
40 cause a petroleum product to be placed, into an underground storage tank at a facility for
41 which the owner or operator does not hold a currently valid operating permit.

42 (d) The Department shall issue an operating permit certificate for each facility that
43 meets the requirements of subsection (a) of this section. The operating permit certificate

1 shall identify the number of tanks at the facility and shall conspicuously display the date
2 on which the permit expires. Except for the owner or operator, no person shall be liable
3 under subsection (c) of this section if an unexpired operating permit certificate is
4 displayed at the facility, unless the person knows or has reason to know that the owner or
5 operator does not hold a currently valid operating permit for the facility.

6 (e) The Department may revoke an operating permit only if the owner or operator
7 fails to continuously meet the requirements set out in subdivisions (1) through (4) of
8 subsection (a) of this section. If the Department revokes an operating permit, the owner
9 or operator of the facility for which the operating permit was issued shall immediately
10 surrender the operating permit certificate to the Department, unless the revocation is
11 stayed pursuant to G.S. 150B-33. An owner or operator may challenge a decision by the
12 Department to deny or revoke an operating permit by filing a contested case under Article
13 3 of Chapter 150B of the General Statutes. The Secretary shall make the final agency
14 decision regarding the revocation of a permit under this section."

15 Sec. 3. Part 2B of Article 21A of Chapter 143 of the General Statutes is
16 amended by adding three new sections to read:

17 **"§ 143-215.94W. Enforcement procedures: civil penalties.**

18 (a) A civil penalty of not more than ten thousand dollars (\$10,000) may be
19 assessed by the Secretary against any person who:

- 20 (1) Violates any provision of this Part or rule adopted pursuant to this Part.
- 21 (2) Fails to apply for or to secure a permit required by this Part.
- 22 (3) Violates or fails to act in accordance with the terms, conditions, or
23 requirements of any permit issued pursuant to this Part.
- 24 (4) Fails to file, submit, or make available, as the case may be, any
25 documents, data, or reports required by this Part.
- 26 (5) Violates or fails to act in accordance with the terms, conditions, or
27 requirements of any special order or other appropriate document issued
28 pursuant to G.S. 143-215.2.
- 29 (6) Falsifies or tampers with any recording or monitoring device or method
30 required to be operated or maintained under this Part or rules
31 implementing this Part.
- 32 (7) Knowingly renders inaccurate any recording or monitoring device or
33 method required to be operated or maintained under this Part or rules
34 implementing this Part.
- 35 (8) Knowingly makes any false statement, representation, or certification in
36 any application, record, report, plan, or other document filed or required
37 to be maintained under this Part or a rule implementing this Part.
- 38 (9) Knowingly makes a false statement of a material fact in a rule-making
39 proceeding or contested case under this Part.
- 40 (10) Refuses access to the Commission or its duly designated representative
41 to any premises for the purpose of conducting a lawful inspection
42 provided for in this Part.

1 (b) If any action or failure to act for which a penalty may be assessed under this
2 section is continuous, the Secretary may assess a penalty not to exceed ten thousand
3 dollars (\$10,000) per day for so long as the violation continues. A penalty for a
4 continuous violation shall not exceed two hundred thousand dollars (\$200,000) for each
5 period of 30 days during which the violation continues.

6 (c) In determining the amount of the penalty, the Secretary shall consider the
7 factors set out in G.S. 143B-282.1(b). The procedures set out in G.S. 143B-282.1 shall
8 apply to civil penalty assessments that are presented to the Commission for final agency
9 decision.

10 (d) The Secretary shall notify any person assessed a civil penalty of the assessment
11 and the specific reasons therefor by registered or certified mail, or by any means
12 authorized by G.S. 1A-1, Rule 4. Contested case petitions shall be filed pursuant to G.S.
13 150B-23 within 30 days of receipt of the notice of assessment. The Secretary shall make
14 the final decision regarding assessment of a civil penalty under this section.

15 (e) Requests for remission of civil penalties shall be filed with the Secretary.
16 Remission requests shall not be considered unless made within 30 days of receipt of the
17 notice of assessment. Remission requests must be accompanied by a waiver of the right
18 to a contested case hearing pursuant to Chapter 150B and a stipulation of the facts on
19 which the assessment was based. Consistent with the limitations in G.S. 143B-282.1(c)
20 and (d), remission requests may be resolved by the Secretary and the violator. If the
21 Secretary and the violator are unable to resolve the request, the Secretary shall deliver
22 remission requests and his recommended action to the Committee on Civil Penalty
23 Remissions of the Environmental Management Commission appointed pursuant to G.S.
24 143B-282.1(c).

25 (f) If any civil penalty has not been paid within 30 days after notice of assessment
26 has been served on the violator, the Secretary shall request the Attorney General to
27 institute a civil action in the superior court of any county in which the violator resides or
28 has his or its principal place of business to recover the amount of the assessment, unless
29 the violator contests the assessment as provided in subsection (d) of this section, or
30 requests remission of the assessment in whole or in part as provided in subsection (e) of
31 this section. If any civil penalty has not been paid within 30 days after the final agency
32 decision or court order has been served on the violator, the Secretary shall request the
33 Attorney General to institute a civil action in the superior court of any county in which
34 the violator resides or has his or its principal place of business to recover the amount of
35 the assessment. Such civil actions must be filed within three years of the date the final
36 agency decision or court order was served on the violator.

37 (g) The Secretary may delegate his powers and duties under this section to the
38 Director of the Division of Environmental Management of the Department.

39 **"§ 143-215.94X. Enforcement procedures: criminal penalties.**

40 (a) Any person who negligently commits any of the offenses set out in
41 subdivisions (1) through (9) of G.S. 143-215.94W(a) shall be guilty of a Class 2
42 misdemeanor which may include a fine not to exceed fifteen thousand dollars (\$15,000)
43 per day of violation, provided that such fine shall not exceed a cumulative total of two

1 hundred thousand dollars (\$200,000) for each period of 30 days during which a violation
2 continues.

3 (b) Any person who knowingly and willfully commits any of the offenses set out
4 in subdivisions (1) through (5) of G.S. 143-215.94W(a) shall be guilty of a Class I felony,
5 which may include a fine not to exceed one hundred thousand dollars (\$100,000) per day
6 of violation, provided that this fine shall not exceed a cumulative total of five hundred
7 thousand dollars (\$500,000) for each period of 30 days during which a violation
8 continues. For the purposes of this subsection, the phrase 'knowingly and willfully' shall
9 mean intentionally and consciously as the courts of this State, according to the principles
10 of common law interpret the phrase in the light of reason and experience.

11 (c) (1) Any person who knowingly commits any of the offenses set
12 out in subdivisions (1) through (5) of G.S. 143-215.94W(a) and who
13 knows at that time that he thereby places another person in imminent
14 danger of death or serious bodily injury shall be guilty of a Class C
15 felony, which may include a fine not to exceed two hundred fifty
16 thousand dollars (\$250,000) per day of violation, provided that this
17 fine shall not exceed a cumulative total of one million dollars
18 (\$1,000,000) for each period of 30 days during which a violation
19 continues.

20 (2) For the purposes of this subsection, a person's state of mind is knowing
21 with respect to:

22 a. His conduct, if he is aware of the nature of his conduct;

23 b. An existing circumstance, if he is aware or believes that the
24 circumstance exists; or

25 c. A result of his conduct, if he is aware or believes that his conduct
26 is substantially certain to cause danger of death or serious bodily
27 injury.

28 (3) Under this subsection, in determining whether a defendant who is a
29 natural person knew that his conduct placed another person in imminent
30 danger of death or serious bodily injury:

31 a. The person is responsible only for actual awareness or actual
32 belief that he possessed; and

33 b. Knowledge possessed by a person other than the defendant but
34 not by the defendant himself may not be attributed to the
35 defendant.

36 (4) It is an affirmative defense to a prosecution under this subsection that
37 the conduct charged was conduct consented to by the person endangered
38 and that the danger and conduct charged were reasonably foreseeable
39 hazards of an occupation, a business, or a profession; or of medical
40 treatment or medical or scientific experimentation conducted by
41 professionally approved methods and such other person had been made
42 aware of the risks involved prior to giving consent. The defendant may

1 establish an affirmative defense under this subdivision by a
2 preponderance of the evidence.

3 (d) No proceeding shall be brought or continued under this section for or on
4 account of a violation by any person who has previously been convicted of a federal
5 violation based upon the same set of facts.

6 (e) In proving the defendant's possession of actual knowledge, circumstantial
7 evidence may be used, including evidence that the defendant took affirmative steps to
8 shield himself from relevant information. Consistent with the principles of common law,
9 the subjective mental state of defendants may be inferred from their conduct.

10 (f) For the purposes of the felony provisions of this section, a person's state of
11 mind shall not be found 'knowingly and willfully' or 'knowingly' if the conduct that is the
12 subject of the prosecution is the result of any of the following occurrences or
13 circumstances:

14 (1) A natural disaster or other act of God which could not have been
15 prevented or avoided by the exercise of due care or foresight.

16 (2) An act of third parties other than agents, employees, contractors, or
17 subcontractors of the defendant.

18 (3) An act done in reliance on the written advice or emergency on-site
19 direction of an employee of the Department. In emergencies, oral
20 advice may be relied upon if written confirmation is delivered to the
21 employee as soon as practicable after receiving and relying on the
22 advice.

23 (4) An act causing no significant harm to the environment or risk to the
24 public health, safety, or welfare and done in compliance with other
25 conflicting environmental requirements or other constraints imposed in
26 writing by environmental agencies or officials after written notice is
27 delivered to all relevant agencies that the conflict exists and will cause a
28 violation of the identified standard.

29 (5) Violations causing no significant harm to the environment or risk to the
30 public health, safety, or welfare for which no enforcement action or civil
31 penalty could have been imposed under any written civil enforcement
32 guidelines in use by the Department at the time. This subdivision shall
33 not be construed to require the Department to develop or use written
34 civil enforcement guidelines.

35 (6) Occasional, inadvertent, short-term violations causing no significant
36 harm to the environment or risk to the public health, safety, or welfare.
37 If the violation occurs within 30 days of a prior violation or lasts for
38 more than 24 hours, it is not an occasional, short-term violation.

39 (g) All general defenses, affirmative defenses, and bars to prosecution that may
40 apply with respect to other criminal offenses under State criminal offenses may apply to
41 prosecutions brought under this section or other criminal statutes that refer to this section
42 and shall be determined by the courts of this State according to the principles of common
43 law as they may be applied in the light of reason and experience. Concepts of

1 justification and excuse applicable under this section may be developed in the light of
2 reason and experience.

3 **"§ 143-215.94Y. Enforcement procedures; injunctive relief.**

4 Whenever the Department has reasonable cause to believe that any person has
5 violated or is threatening to violate any of the provisions of this Part, any of the terms of
6 any permit issued pursuant to this Part, or a rule implementing this Part, the Department
7 may, either before or after the institution of any other action or proceeding authorized by
8 this Part, request the Attorney General to institute a civil action in the name of the State
9 upon the relation of the Department for injunctive relief to restrain the violation or
10 threatened violation and for such other and further relief in the premises as the court shall
11 deem proper. The Attorney General may institute such action in the superior court of the
12 county in which the violation occurred or may occur or, in his discretion, in the superior
13 court of the county in which the person responsible for the violation or threatened
14 violation resides or has his or its principal place of business. Upon a determination by
15 the court that the alleged violation of the provisions of this Part or the regulations of the
16 Commission has occurred or is threatened, the court shall grant the relief necessary to
17 prevent or abate the violation or threatened violation. Neither the institution of the action
18 nor any of the proceedings thereon shall relieve any party to such proceedings from any
19 penalty prescribed for violation of this Part."

20 Sec. 4. G.S. 143-215.94A reads as rewritten:

21 **"§ 143-215.94A. Definitions.**

22 Unless a different meaning is required by the context, the following definitions shall
23 apply throughout this ~~Part~~-Part and Part 2B of this Article:

- 24 (0) 'Affiliate' has the same meaning as in 17 Code of Federal Regulations §
25 240.12(b)-2 (1 April 1994 Edition), which defines 'affiliate' as a person
26 that directly, or indirectly through one or more intermediaries, controls,
27 is controlled by, or is under common control of another person.
- 28 (1) 'Commercial Fund' means the Commercial Leaking Petroleum
29 Underground Storage Tank Cleanup Fund established pursuant to this
30 Part.
- 31 (2) 'Commercial underground storage tank' means any one or combination
32 of tanks (including underground pipes connected thereto) used to
33 contain an accumulation of petroleum products, the volume of which
34 (including the volume of the underground pipes connected thereto) is
35 ten percent (10%) or more beneath the surface of the ground. The term
36 'commercial underground storage tank' does not include any:
- 37 a. Farm or residential underground storage tank of 1,100 gallons or
38 less capacity used for storing motor fuel for noncommercial
39 purposes;
- 40 b. Underground storage tank of 1,100 gallons or less capacity used
41 for storing heating oil for consumptive use on the premises where
42 stored;

- 1 c. Underground storage tank of more than 1,100 gallon capacity
2 used for storing heating oil for consumptive use on the premises
3 where stored by four or fewer households;
- 4 d. Septic tank;
- 5 e. Pipeline facility (including gathering lines) regulated under:
- 6 1. The Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. §
7 1671 et seq.);
- 8 2. The Hazardous Liquid Pipeline Safety Act of 1979 (49
9 U.S.C. § 2001 et seq.); or
- 10 3. Any intrastate pipeline facility regulated under State laws
11 comparable to the provisions of the Natural Gas Pipeline
12 Safety Act of 1968 or the Hazardous Liquid Pipeline
13 Safety Act of 1979;
- 14 f. Surface impoundment, pit, pond, or lagoon;
- 15 g. Storm water or waste water collection system;
- 16 h. Flow-through process tank;
- 17 i. Liquid trap or associated gathering lines directly related to oil or
18 gas production and gathering operations; or
- 19 j. Storage tank situated in an underground area (such as a
20 basement, cellar, mineworking, drift, shaft, or tunnel) if the
21 storage tank is situated upon or above the surface of the floor.

22 (3) 'Council' means the North Carolina Petroleum Underground Storage
23 Tank Funds Council.

24 (3a) 'Facility' means an underground storage tank, or two or more
25 underground storage tanks located in close proximity to each other and
26 having the same owner or operator, that are located on a single tract of
27 land or on contiguous tracts of land that are owned or controlled by the
28 same person. As used in this subdivision, the terms 'owner', 'operator',
29 and 'person' include any affiliate, parent, and subsidiary of the owner,
30 operator, or person, respectively. The owner or person having control
31 of the land on which an underground storage tank is located, or on
32 which two or more underground storage tanks are located, need not be
33 the owner or operator of the underground storage tank or underground
34 storage tanks. The term 'facility', as defined in this subdivision, does
35 not apply to a 'pipeline facility', as that phrase is used in subdivisions (2)
36 and (7) of this section.

37 (4) 'Heating oil' means petroleum that is No. 1, No. 2, No. 4-light, No. 4-
38 heavy, No. 5-light, No. 5-heavy, or No. 6 technical grades of fuel oil;
39 other residual fuel oils, including Navy Special Fuel Oil and Bunker C;
40 and other fuels when used as substitutes for one of these fuel oils for the
41 purpose of heating.

42 (5) 'Loan Fund' means the Groundwater Protection Loan Fund.

- 1 (6) 'Noncommercial Fund' means the Noncommercial Leaking Petroleum
2 Underground Storage Tank Cleanup Fund established pursuant to this
3 Part.
- 4 (7) 'Noncommercial underground storage tank' means any one or
5 combination of tanks (including underground pipes connected thereto)
6 used to contain an accumulation of petroleum products, the volume of
7 which (including the volume of the underground pipes connected
8 thereto) is ten percent (10%) or more beneath the surface of the ground.
9 The term 'noncommercial storage tank' does not include any:
- 10 a. Commercial underground storage tanks;
11 b. Septic tank;
12 c. Pipeline facility (including gathering lines) regulated under:
13 1. The Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. §
14 1671 et seq.);
15 2. The Hazardous Liquid Pipeline Safety Act of 1979 (49
16 U.S.C. § 2001 et seq.); or
17 3. Any intrastate pipeline facility regulated under State laws
18 comparable to the provisions of the Natural Gas Pipeline
19 Safety Act of 1968 or the Hazardous Liquid Pipeline
20 Safety Act of 1979;
21 d. Surface impoundment, pit, pond, or lagoon;
22 e. Storm water or waste water collection system;
23 f. Flow-through process tank;
24 g. Liquid trap or associated gathering lines directly related to oil or
25 gas production and gathering operations; or
26 h. Storage tank situated in an underground area (such as a
27 basement, cellar, mineworking, drift, shaft, or tunnel) if the
28 storage tank is situated upon or above the surface of the floor.
- 29 (8) 'Operator' means any person in control of, or having responsibility for,
30 the operation of an underground storage tank.
- 31 (9) 'Owner' means:
32 a. In the case of an underground storage tank in use on 8 November
33 1984, or brought into use after that date, any person who owns an
34 underground storage tank used for the storage, use, or dispensing
35 of petroleum products; and
36 b. In the case of an underground storage tank in use before 8
37 November 1984, but no longer in use on or after that date, any
38 person who owned such tank immediately before the
39 discontinuation of its use.
- 40 (9a) 'Parent' has the same meaning as in 17 Code of Federal Regulations §
41 240.12(b)-2 (1 April 1994 Edition), which defines 'parent' as an affiliate
42 that directly, or indirectly through one or more intermediaries, controls
43 another person.

1 (10) 'Petroleum' or 'petroleum product' means crude oil or any fraction
2 thereof which is a liquid at standard conditions of temperature and
3 pressure (60 degrees Fahrenheit and 14.7 pounds per square inch
4 absolute), including any such liquid which consists of a blend of
5 petroleum and alcohol and which is intended for use as a motor fuel.
6 The terms 'petroleum' and 'petroleum product' do not include any
7 hazardous substance as defined in Section 101(14) of the
8 Comprehensive Environmental Response, Compensation, and Liability
9 Act of 1980, Pub. L. No. 96-510, 94 Stat. 2767, 42 U.S.C. § 9601(14) as
10 amended; any substance regulated as a hazardous waste under Subtitle
11 C of Title II of the Resource Conservation and Recovery Act of 1976,
12 Pub. L. 94-580, 90 Stat. 2806, 42 U.S.C. § 6921 et seq., as amended; or
13 any mixture of petroleum or a petroleum product containing any such
14 hazardous substance or hazardous waste in greater than de minimis
15 quantities.

16 (11) 'Subsidiary' has the same meaning as in 17 Code of Federal Regulations
17 § 240.12(b)-2 (1 April 1994 Edition), which defines 'subsidiary' as an
18 affiliate that is directly, or indirectly through one or more
19 intermediaries, controlled by another person."

20 Sec. 5. G.S. 143-215.94B reads as rewritten:

21 **"§ 143-215.94B. Commercial Leaking Petroleum Underground Storage Tank**
22 **Cleanup Fund.**

23 (a) There is established under the control and direction of the Department the
24 Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund. This
25 Commercial Fund shall be a nonreverting revolving fund consisting of any monies
26 appropriated for such purpose by the General Assembly or available to it from grants,
27 other monies paid to it or recovered on behalf of the Commercial Fund, and fees paid
28 pursuant to this Part.

29 (b) The Commercial Fund shall be used for the payment of the following costs up
30 to an aggregate maximum of one million dollars (\$1,000,000) per occurrence resulting
31 from a discharge or release of a petroleum product from a commercial underground
32 storage tank that at the time the discharge or release is discovered or reported is beneath the
33 surface of the ground or has been removed within the preceding 120 days: tank:

34 (1) For discharges or releases discovered or reported between 30 June 1988
35 and 31 December 1991 inclusive, the cleanup of environmental damage
36 as required by G.S. 143-215.94E(a) in excess of fifty thousand dollars
37 (\$50,000) per occurrence.

38 (2) For discharges or releases discovered on or after 1 January 1992 and
39 reported between 1 January 1992 and 31 December 1993 inclusive, the
40 cleanup of environmental damage as required by G.S. 143-215.94E(a)
41 in excess of twenty thousand dollars (\$20,000) per occurrence.

42 (2a) For discharges or releases discovered and reported on or after 1 January
43 1994 and prior to 1 January 1995, the cleanup of environmental damage

1 as required by G.S. 143-215.94E(a) in excess of twenty thousand dollars
2 (\$20,000) if the owner or operator (i) notifies the Department prior to 1
3 January 1994 of its intent to permanently close the tank in accordance
4 with applicable regulations or to upgrade the tank to meet the
5 requirements that existing underground storage tanks must meet by 22
6 December 1998, (ii) commences closure or upgrade of the tank prior to
7 1 July 1994, and (iii) completes closure or upgrade of the tank prior to 1
8 January 1995.

9 (3) For discharges or releases reported on or after 1 January 1994, the
10 cleanup of environmental damage as required by G.S. 143-215.94E(a)
11 in excess of twenty thousand dollars (\$20,000) if, prior to the discharge
12 or release, the commercial underground storage tank from which the
13 discharge or release occurred met the performance standards applicable
14 to tanks installed after 22 December 1988 or met the requirements that
15 existing underground storage tanks must meet by 22 December 1998.

16 (4) For discharges or releases reported on or after 1 January 1994 from a
17 commercial underground storage tank that does not qualify under
18 subdivision (2a) of this subsection or does not meet the standards in
19 subdivision (3) of this subsection, sixty percent (60%) of the costs per
20 occurrence of the cleanup of environmental damage as required by G.S.
21 143-215.94E(a) that exceeds twenty thousand dollars (\$20,000) but is
22 not more than one hundred fifty-seven thousand five hundred dollars
23 (\$157,500) and one hundred percent (100%) of the costs above this
24 amount, up to the limits established in this section.

25 (5) Compensation to third parties for bodily injury and property damage in
26 excess of one hundred thousand dollars (\$100,000) per occurrence.

27 (6) Reimbursing the State for damages or other costs incurred as a result of
28 a loan from the Loan Fund. The per occurrence limit does not apply to
29 reimbursements to the State under this subdivision.

30 ~~(b1) In the case of a discharge or release of a petroleum product from a commercial~~
31 ~~underground storage tank that is discovered and reported more than 120 days after the~~
32 ~~tank has been removed from the ground and prior to 1 July 1994, the Commercial Fund~~
33 ~~shall be used for the payment of costs resulting from the discharge or release in excess of~~
34 ~~the costs for which the owner or operator is responsible under subsection (b) of this~~
35 ~~section up to an aggregate of one million dollars (\$1,000,000) per occurrence. For the~~
36 ~~purpose of determining the costs for which the owner or operator is responsible under~~
37 ~~subsection (b) of this section, the discharge or release shall be considered to have been~~
38 ~~discovered and reported on the date the underground storage tank was removed from the~~
39 ~~ground. Costs shall be paid under this subsection only if the owner establishes that the:~~

40 ~~(1) Tank was removed from the ground on or after 22 December 1988;~~

41 ~~(2) Discharge was not discovered at the time the tank was removed; and~~

42 ~~(3) Tank was removed in compliance with all applicable federal and State~~
43 ~~laws, regulations, and rules in force at the time the tank was removed.~~

1 In the event that two or more discharges or releases at any one facility, the first of
2 which was discovered or reported on or after 30 June 1988, result in more than one plume
3 of soil, surface water, or groundwater contamination, the Commercial Fund shall be used
4 for the payment of the costs of the cleanup of environmental damage as required by G.S.
5 143-215.94E(a) in excess of the multiple discharge amount up to the applicable
6 aggregate maximum specified in subsections (b) and (b2) of this section. The multiple
7 discharge amount shall be calculated as follows:

8 (1) Each discharge or release shall be considered separately as if it were the
9 only discharge or release, and the cost for which the owner or operator
10 is responsible under subdivisions (1), (2), (2a), or (3) of subsection (b)
11 of this section, whichever are applicable, shall be determined for each
12 discharge or release. For each discharge or release for which
13 subdivision (4) of subsection (b) of this section is applicable, the cost
14 for which the owner or operator is responsible, for the purpose of this
15 subsection, shall be seventy-five thousand dollars (\$75,000). For
16 purposes of this subsection, two or more discharges or releases that
17 result in a single plume of soil, surface water, or groundwater
18 contamination shall be considered as a single discharge or release.

19 (2) The multiple discharge amount shall be the lesser of:

20 a. The sum of all the costs determined as set out in
21 subdivision (1) of this subsection; or

22 b. The product of the highest of the costs determined as set
23 out in subdivision (1) of this subsection multiplied by one
24 and one-half (1½).

25 (b2) In the event that the aggregate costs per occurrence described in subsection (b)
26 or (b1) of this section exceed one million dollars (\$1,000,000), the Commercial Fund
27 shall be used for the payment of eighty percent (80%) of the costs in excess of one
28 million dollars (\$1,000,000) up to a maximum of one million five hundred thousand
29 dollars (\$1,500,000). The Department shall not pay or reimburse costs under this
30 subsection unless the owner, operator, or landowner eligible for reimbursement under
31 G.S. 143-215.94E(b1) submits proof that the owner, operator, or landowner eligible for
32 reimbursement under G.S. 143-215.94E(b1) has paid at least twenty percent (20%) of the
33 costs for which reimbursement is sought.

34 (c) The Commercial Fund is to be available on an occurrence basis, without regard
35 to number of occurrences associated with tanks owned or operated by the same owner or
36 operator.

37 (d) The Commercial Fund shall not be used for:

38 (1) Costs incurred as a result of a discharge or release from an aboveground
39 tank, aboveground pipe or fitting not connected to an underground
40 storage tank, or ~~vehicle~~; ~~vehicle~~.

41 (2) The removal or replacement of any tank, pipe, fitting or related
42 equipment; ~~equipment~~.

- 1 (3) Costs incurred as a result of a discharge or release of petroleum from a
2 transmission ~~pipeline~~, pipeline.
- 3 (4) Costs intended to be paid by the Noncommercial ~~Fund~~, or Fund.
- 4 (5) Costs associated with the administration of any underground storage
5 tank program other than the program administered pursuant to this Part.
- 6 (6) Costs paid or reimbursed by or from any source other than the
7 Commercial Fund, including but not limited to, any payment or
8 reimbursement made under a contract of insurance.

9 (e) The Commercial Fund shall be treated as a special trust fund and shall be
10 credited with interest by the State Treasurer pursuant to G.S. 147-69.2 and G.S. 147-
11 69.3."

12 Sec. 6. G.S. 143-215.94C reads as rewritten:

13 "**§ 143-215.94C. Commercial leaking petroleum underground storage tank cleanup**
14 **fees.**

15 (a) The owner or operator of a commercial petroleum underground storage tank
16 shall pay to the Secretary for deposit into the Commercial Fund an annual operating fee
17 according to the following schedule:

18 (1) For each petroleum commercial underground storage tank of
19 3,500 gallons or less capacity – one hundred fifty dollars (\$150.00).

20 (2) For each petroleum commercial underground storage tank of more than
21 3,500 gallon capacity – two hundred twenty-five dollars (\$225.00).

22 (b) The annual operating fee shall be determined on a calendar year basis. For
23 petroleum commercial underground storage tanks in use on 1 January and remaining in
24 use on or after 1 December of that year, the annual operating fee due for that year shall be
25 as specified in subsection (a) of this section. For a petroleum commercial underground
26 storage tank that is first placed in use in any year, the annual operating fee due for that
27 year shall be determined by multiplying one-twelfth (1/12) of the amount specified in
28 subsection (a) of this section by the number of months remaining in the calendar year.
29 For a petroleum commercial underground storage tank that is permanently removed from
30 use in any year, the annual operating fee due for that year shall be determined by
31 multiplying one-twelfth (1/12) of the amount specified in subsection (a) of this section by
32 the number of months in the calendar year preceding the permanent removal from use. In
33 calculating the pro rata annual operating fee for a tank that is first placed in use or
34 permanently removed during a calendar year under the preceding two sentences, a partial
35 month shall count as a month, except that where a tank is permanently removed and
36 replaced by another tank, the total of the annual operating fee for the tank that is removed
37 and the replacement tank shall not exceed the annual operating fee for the replacement
38 tank. The annual operating fee shall be due and payable on the first day of the month in
39 accordance with a staggered schedule established by the Department. The Department
40 shall implement a staggered schedule to the end that the total amount of fees to be
41 collected by the Department is approximately the same each quarter. A person who owns
42 or operates more than one petroleum commercial underground storage tank may request
43 that the fee for all tanks be due at the same time. The fee for all commercial underground

1 storage tanks located at the same facility shall be due at the same time. A person who
2 owns or operates 12 or more commercial petroleum storage tanks may request that the
3 total of all fees be paid in four equal payments to be due on the first day of each calendar
4 quarter. quarter, provided that the fee for all commercial underground storage tanks
5 located at the same facility shall be due at the same time.

6 (c) Beginning no later than sixty days before the first due date of the annual
7 operating fee imposed by this section, any person who deposits a petroleum product in a
8 commercial underground storage tank that would be subject to the annual operating fee
9 shall, at least once in each calendar year during which such deposit of a petroleum
10 product is made, notify the owner or operator of the duty to pay the annual operating fee.
11 The requirement to notify pursuant to this subsection does not constitute a duty owed by
12 the person depositing a petroleum product in a commercial underground storage tank to
13 the owner or operator and the person depositing a petroleum product in an underground
14 storage tank shall not incur any liability to the owner or operator for failure to give notice
15 of the duty to pay the operating fee.

16 (d) Repealed by Session Laws 1991, c. 538, s. 3.1.

17 (e) An owner or operator of a commercial underground storage tank who fails to
18 pay ~~a tank~~ an annual operating fee due under this section within 30 days of the date that
19 the fee is due shall pay, in addition to the fee, a late penalty of five dollars (\$5.00) per day
20 per commercial underground storage tank, up to a maximum equal to the ~~tank~~ annual
21 operating fee due. The Department may waive a late penalty in whole or in part if:

- 22 (1) The late penalty was incurred because of the late payment or
23 nonpayment of an annual operating fee by a previous owner or operator.
- 24 (2) The late penalty was incurred because of a billing error for which the
25 Department is responsible.
- 26 (3) Where the late penalty was incurred because the annual operating fee
27 was not paid by the owner or operator due to inadvertence or accident.
- 28 (4) Where payment of the late penalty will prevent the owner or operator
29 from complying with any substantive law, rule, or regulation applicable
30 to underground storage tanks and intended to prevent or mitigate
31 discharges or releases or to facilitate the early detection of discharges or
32 releases."

33 Sec. 7. G.S. 143-215.94D(d) reads as rewritten:

34 "(d) The Noncommercial Fund shall not be used for:

- 35 (1) Costs incurred as a result of a discharge or release from an aboveground
36 tank, aboveground pipe or fitting not connected to an underground
37 storage tank, or ~~vehicle;~~ vehicle.
- 38 (2) The removal or replacement of any tank, pipe, fitting or related
39 ~~equipment;~~ equipment.
- 40 (3) Costs incurred as a result of a discharge or release of petroleum from a
41 transmission ~~pipeline;~~ pipeline.
- 42 (4) Costs intended to be paid for by the Commercial ~~Fund;~~ or Fund.

- 1 (5) Costs associated with the administration of any underground storage
2 tank program other than the program administered pursuant to this Part.
- 3 (6) Costs paid or reimbursed by or from any source other than the
4 Noncommercial Fund, including, but not limited to, any payment or
5 reimbursement made under a contract of insurance."

6 Sec. 8. G.S. 143-215.94E reads as rewritten:

7 "**§ 143-215.94E. Rights and obligations of the owner and operator.**

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

13 (b) In the case of a discharge or release from a commercial underground storage
14 tank where the owner or operator has been identified and has proceeded with cleanup, the
15 owner or operator may elect to have the Commercial Fund pay or reimburse the owner or
16 operator for any costs described in ~~G.S. 143-215.94B(b)~~ subsection (b) or (b1) of G.S. 143-
17 215.94B that exceed the amounts for which the owner or operator is responsible under
18 that subsection. The sum of payments by the owner or operator and the payments from
19 the Commercial Fund shall not exceed one million dollars (\$1,000,000) per discharge or
20 ~~release.~~ release except as provided in G.S. 143-215.94B(b2).

21 (b1) In the case of a discharge or release from a commercial underground storage
22 tank where the owner and operator cannot be identified or located, or where the owner
23 and operator fail to proceed as required by subsection (a) of this section, if the current
24 landowner of the land in which the commercial underground storage tank is located
25 notifies the Department in accordance with G.S. 143-215.85 and undertakes to collect
26 and remove the discharge or release and to restore the area affected in accordance with
27 the requirements of this Article and applicable federal and State laws, regulations, and
28 rules, the current landowner may elect to have the Commercial Fund pay or reimburse the
29 current landowner for any costs described in subdivisions (1), (2), (2a), (3), and (4) of
30 G.S. 143-215.94B(b) or G.S. 143-215.94B(b1) that exceed the amounts for which the
31 owner or operator is responsible under that subsection. The current landowner is not
32 eligible for payment or reimbursement until the current landowner has paid the costs
33 described in subdivisions (1), (2), (2a), (3), and (4) of G.S. 143-215.94B(b) or G.S. 143-
34 215.94B(b1) for which the owner or operator is responsible. Eligibility for
35 reimbursement under this subsection may be transferred from a current landowner who
36 has paid the costs described in subdivisions (1), (2), (2a), (3), and (4) of G.S. 143-
37 215.94B(b) or G.S. 143-215.94B(b1) to a subsequent landowner. The sum of payments
38 from the Commercial Fund and from all other sources shall not exceed one million
39 dollars (\$1,000,000) per discharge or ~~release.~~ release except as provided in G.S. 143-
40 215.94B(b2). This subsection shall not be construed to require a current landowner to
41 cleanup a discharge or release of petroleum from an underground storage tank for which
42 the current landowner is not otherwise responsible. This subsection does not alter any
43 right, duty, obligation, or liability of a current landowner, former landowner, subsequent

1 landowner, owner, or operator under other provisions of law. This subsection shall not
2 be construed to limit the authority of the Department to engage in a cleanup under this
3 Article or any other provision of law. In the event that an owner or operator is
4 subsequently identified or located, the Secretary shall seek reimbursement as provided in
5 G.S. 143-215.94G(d). The current landowner shall submit documentation of all
6 expenditures as required by G.S. 143-215.94G(b).

7 (c) In the case of a discharge or release from a noncommercial underground
8 storage tank or a commercial underground storage tank eligible for the Noncommercial
9 Fund in accordance with G.S. 143-215.94D(b), the owner or operator may elect to have
10 the Noncommercial Fund pay or reimburse the owner or operator for the costs described
11 in G.S. 143-215.94D(b1) up to a maximum of one million dollars (\$1,000,000) per
12 discharge or release.

13 (d) In any case where the costs described in G.S. ~~143-215.94B(b)~~ 143-215.94B(b),
14 143-215.94B(b1), or G.S. 143-215.94D(b1) exceed one million dollars (\$1,000,000), or
15 one million five hundred thousand dollars (\$1,500,000) if G.S. 143-215.94B(b2) applies,
16 the provisions of Article 21A of this Chapter or any other applicable statute or common
17 law principle regarding liability shall apply for the amount in excess of one million
18 dollars (\$1,000,000) or, if G.S. 143-215.94B(b2) applies, one million five
19 hundred thousand dollars (\$1,500,000). Nothing contained in this Part shall limit or
20 modify any liability that any party may have pursuant to Article 21A of this Chapter, any
21 other applicable statute, or at common law.

22 (e) When the owner or operator pays the costs described in G.S. ~~143-215.94B(b)~~
23 143-215.94B(b), 143-215.94B(b1), or G.S. 143-215.94D(b1) resulting from a discharge
24 or release of petroleum from an underground storage tank, the owner or operator may
25 seek reimbursement from the appropriate fund for any costs he may elect to have either
26 the Commercial Fund or the Noncommercial Fund pay in accordance with subsections
27 (b) and (c) of this section. The Department shall reimburse the owner or operator for all
28 costs he may elect to have the appropriate fund pay that the Department determines to be
29 reasonable and necessary and for which appropriate documentation is submitted. The
30 Department may contract for any services necessary to evaluate any claim for
31 reimbursement or compensation from either the Commercial Fund or the Noncommercial
32 Fund, may contract for any expert witness or consultant services necessary to defend any
33 decision to pay or deny any claim for reimbursement, and may pay the cost of these
34 services from the fund against which the claim is made; provided that in any fiscal year
35 the Department shall not expend from either fund more than one percent (1%) of the
36 unobligated balance of the fund on 30 June of the previous fiscal year. The cost of
37 contractual services to evaluate a claim or for expert witness or consultant services to
38 defend a decision with respect to a claim shall be included as costs under G.S. 143-
39 215.94B(b) and G.S. 143-215.94D(b1). The Commission shall adopt rules governing
40 reimbursement of necessary and reasonable costs. An owner or operator whose claim for
41 reimbursement is denied may appeal a decision of the Department as provided in Article
42 3 of Chapter 150B of the General Statutes. If the owner or operator is eligible for
43 reimbursement under this section and the cleanup extends beyond a period of three

1 months, the owner or operator may apply to the Department for interim reimbursements
2 to which he is entitled under this section on a quarterly basis.

3 (e1) The Department shall not pay any third party or reimburse any owner or
4 operator who has paid any third party pursuant to any settlement agreement or consent
5 judgment relating to a claim by or on behalf of a third party for compensation for bodily
6 injury or property damage unless the Department has approved the settlement agreement
7 or consent judgment prior to entry into the settlement agreement or consent judgment by
8 the parties or entry of a consent judgment by the court. The approval or disapproval by
9 the Department of a proposed settlement agreement or consent judgment shall be subject
10 to challenge only in a contested case filed under Chapter 150B of the General Statutes.
11 The Secretary shall make the final agency decision in a contested case proceeding under
12 this subsection.

13 (f) The Department shall not reimburse any owner or operator until the fund from
14 which reimbursement will be made reaches one million dollars (\$1,000,000).

15 (f1) Any person seeking payment or reimbursement from either the Commercial
16 Fund or the Noncommercial Fund shall certify to the Department that the costs to be paid
17 or reimbursed by the Commercial Fund or the Noncommercial Fund are not eligible to be
18 paid or reimbursed by or from any other source, including any contract of insurance. If
19 any cost paid or reimbursed by the Commercial Fund or the Noncommercial Fund is
20 eligible to be paid or reimbursed by or from another source, that cost shall not be paid
21 from, or if paid shall be repaid to, the Commercial Fund or the Noncommercial Fund. As
22 used in this Part, the phrase 'any other source including any contract of insurance' does
23 not include self-insurance.

24 (g) No owner or operator shall be reimbursed pursuant to this section, and the
25 Department shall seek reimbursement of the appropriate fund or of the Department for
26 any monies disbursed from the appropriate fund or expended by the Department if:

- 27 (1) The owner or operator has willfully violated any substantive law, rule,
28 or regulation applicable to underground storage tanks and intended to
29 prevent or mitigate discharges or releases or to facilitate the early
30 detection of discharges or releases;
- 31 (2) The discharge or release is the result of the owner's or operator's willful
32 or wanton misconduct; or
- 33 (3) The owner or operator has failed to pay any annual tank operating fee
34 due pursuant to G.S. 143-215.94C.

35 (h) Subdivision (1) of subsection (g) of this section shall not be construed to limit
36 the right of an owner or operator to contest notices of violation or orders issued by the
37 Department. Subdivision (1) of subsection (g) of this section shall not apply to a
38 payment or reimbursement pursuant to this section if, at the time of the discharge or
39 release, the owner or operator holds a valid operating permit as required by G.S. 143-
40 215.94U.

41 (i) An owner or operator who notifies the Department of an intention to close or
42 upgrade a commercial underground storage tank as provided in G.S. 143-215.94B(b)(2a)
43 shall commence the closure or upgrade prior to 1 July 1994 and shall complete the

1 closure or upgrade prior to 1 January 1995. An owner who notifies the Department of an
2 intention to close or upgrade a commercial underground storage tank and who fails to
3 commence and complete the closure as specified in this subsection is subject to a civil
4 penalty as provided in G.S. 143-215.94K. The provisions of G.S. 143-215.94B(b)(2a) do
5 not apply if an owner or operator who notifies the Department of an intention to close or
6 upgrade a commercial underground storage tank fails to commence or complete the
7 closure or upgrade within the dates specified in this subsection."

8 Sec. 9. G.S. 143-215.94G reads as rewritten:

9 **"§ 143-215.94G. Authority of the Department to engage in cleanups; actions for**
10 **fund reimbursement.**

11 (a) The Department may use staff, equipment, or materials under its control or
12 provided by other cooperating federal, State, or local agencies and may contract with any
13 agent or contractor it deems appropriate to investigate a release, to develop and
14 implement a cleanup plan, to provide interim alternative sources of drinking water to
15 third parties, and to pay the initial costs for providing permanent alternative sources of
16 drinking water to third parties, and shall pay the costs resulting from commercial
17 underground storage tanks from the Commercial Fund and shall pay the costs resulting
18 from noncommercial underground storage tanks from the Noncommercial Fund,
19 whenever there is a discharge or release of petroleum from any of the following:

- 20 (1) A noncommercial underground storage tank.
- 21 (2) An underground storage tank whose owner or operator cannot be
22 identified or located.
- 23 (3) An underground storage tank whose owner or operator fails to proceed
24 as required by G.S. 143-215.94E(a).
- 25 (4) A commercial underground storage tank taken out of operation prior to
26 1 January 1974 if, when the discharge or release is discovered, neither
27 the owner nor operator owns or leases the land on which the
28 underground storage tank is located.

29 (a1) Every State agency shall provide to the Department to the maximum extent
30 feasible such staff, equipment, and materials as may be available and useful to the
31 development and implementation of a cleanup program.

32 (a2) The cost of any action authorized under subsection (a) of this section shall be
33 paid, to the extent funds are available, from the following sources in the order listed:

- 34 (1) Any funds to which the State is entitled under any federal program
35 providing for the cleanup of petroleum discharges or releases from
36 underground storage tanks, including, but not limited to, the Leaking
37 Underground Storage Tank Trust Fund established pursuant to 26
38 U.S.C. § 4081 and 42 U.S.C. § 6991b(h).
- 39 (2) The Commercial Fund or the Noncommercial Fund.

40 (b) Whenever the discharge or release of a petroleum product is from a
41 commercial underground storage tank, the Department may supervise the cleanup of
42 environmental damage required by G.S. 143-215.94E(a). If the owner or operator elects
43 to have the Commercial Fund reimburse or pay for any costs allowed under ~~G.S. 143-~~

1 ~~215.94B(b)~~, subsection (b) or (b1) of G.S. 143-215.94B, the Department shall require the
2 owner or operator to submit documentation of all expenditures claimed for the purposes
3 of establishing that the owner or operator has spent the amounts required to be paid by
4 the owner or operator pursuant to and in accordance with G.S. 143-215.94E(b). The
5 Department shall allow credit for all expenditures that the Department determines to be
6 reasonable and necessary. The Department may not pay for any costs for which the
7 Commercial Fund was established until the owner or operator has paid the amounts
8 specified in G.S. 143-215.94E(b).

9 (c) The Secretary shall keep a record of all expenses incurred for the services of
10 State personnel and for the use of the State's equipment and material.

11 (d) The Secretary shall seek reimbursement through any legal means available,
12 for:

13 (1) Any costs not authorized to be paid from either the Commercial or the
14 Noncommercial Fund;

15 (2) The amounts provided for in G.S. 143-215.94B(b) or G.S. 143-
16 215.94B(b1) required to be paid for by the owner or operator pursuant
17 to G.S. 143-215.94E(b) where the owner or operator of a commercial
18 underground storage tank is later identified or located;

19 (3) The amounts provided for in G.S. 143-215.94B(b) or G.S. 143-
20 215.94B(b1) required to be paid for by the owner or operator pursuant
21 to G.S. 143-215.94E(b) where the owner or operator of a commercial
22 underground storage tank failed to proceed as required by G.S. 143-
23 215.94E(a);

24 (3a) The amounts provided for by G.S. 143-215.94B(b)(5) required to be
25 paid by the owner or operator to third parties for the cost of providing
26 interim alternative sources of drinking water to third parties and the
27 initial cost of providing permanent alternative sources of drinking water
28 to third parties;

29 (4) Any funds due under G.S. 143-215.94E(g); and

30 (5) Any funds to which the State is entitled under any federal program
31 providing for the cleanup of petroleum discharges or releases from
32 underground storage tanks.

33 (e) In the event that a civil action is commenced to secure reimbursement pursuant
34 to subdivisions (1) through (4) of subsection (d) of this section, the Secretary may
35 recover, in addition to any amount due, the costs of the action, including but not limited
36 to reasonable attorney's fees and investigation expenses. Any monies received or
37 recovered as reimbursement shall be paid into the appropriate fund or other source from
38 which the expenditures were made.

39 (f) In the event that a recovery equal to or in excess of the amounts required to be
40 paid for by the owner or operator pursuant to G.S. 143-215.94E(b) is recovered pursuant
41 to subdivisions (2) and (3) of subsection (d) of this section for the costs described in G.S.
42 ~~143-215.94B(b)~~, 143-215.94B(b) or G.S. 143-215.94B(b1), the Department shall transfer
43 funds from the Commercial Fund that would have been paid from the Commercial Fund

1 pursuant to ~~G.S. 143-215.94B(b)~~ subsection (b) or (b2) of G.S. 143-215.94B if the owner
2 or operator had proceeded with the cleanup, but which were paid from the
3 Noncommercial Fund, into the Noncommercial Fund."

4 Sec. 10. G.S. 143-215.94K reads as rewritten:

5 "**§ 143-215.94K. Penalties. Enforcement.**

6 The penalties provided in ~~G.S. 143-215.102~~ provisions of G.S. 143-215.94W through
7 G.S. 143-215.94Y shall apply to this Part, ~~provided that no penalty imposed under this~~
8 ~~Part shall exceed five thousand dollars (\$5,000).~~ Part."

9 Sec. 11. G.S. 143-215.94N reads as rewritten:

10 "**§ 143-215.94N. Applicability.**

11 (a) The provisions of this Part as they relate to costs paid ~~for by~~ from the
12 Commercial Fund apply only to discharges or releases ~~which~~ that are discovered or
13 reported on or after 30 June ~~1988.~~ 1988 from a commercial underground storage tank.

14 (b) The provisions of this Part as they relate to costs paid ~~for by~~ from the
15 Noncommercial Fund apply to discharges or releases without regard to the date
16 discovered or reported; however, ~~costs sought pursuant to reimbursement of costs under~~
17 G.S. 143-215.94G(d)(1), (2), (3), (3a), and (4) shall be for the full amount of the costs
18 paid for from the Noncommercial Fund and shall not be limited pursuant to G.S. 143-
19 215.94E(b) for discharges or releases from commercial underground storage tanks
20 discovered or reported on or before 30 June 1988."

21 Sec. 12. G.S. 143-215.77(5) reads as rewritten:

22 "(5) 'Having control over oil or other hazardous substances' shall mean, but
23 shall not be limited to, any person, using, transferring, storing, or
24 transporting oil or other hazardous substances immediately prior to a
25 discharge of such oil or other hazardous substances onto the land or into
26 the waters of the State, and specifically shall include carriers and bailees
27 of such oil or other hazardous substances. This definition shall not
28 include any person supplying or delivering oil into a petroleum
29 underground storage tank that is not owned or operated by the person,
30 unless:

31 a. The person knows or has reason to know that a discharge is
32 occurring from the petroleum underground storage tank at the
33 time of supply or delivery;

34 b. The person's negligence is a proximate cause of the discharge; or
35 c. The person supplies or delivers oil at a facility that requires an
36 operating permit under G.S. 143-215.94U and a currently valid
37 operating permit certificate is not held or displayed at the time of
38 the supply or delivery."

39 Sec. 13. G.S. 143-215.84 is amended by adding a new subsection to read:

40 "(a1) The Commission shall not require collection or removal of a discharge or
41 restoration of an affected area under subsection (a) of this section if the person having
42 control over oil or other hazardous substances discharged in violation of this Article
43 complies with rules governing the collection and removal of a discharge and the

1 restoration of an affected area adopted by the Commission pursuant to G.S. 143-214.1 or
2 G.S. 143-215.94V. This subsection shall not be construed to affect the rights of any
3 person under this Article or any other provision of law."

4 Sec. 14. In order to uniformly implement the operating permit program on 1
5 July 1996, the Department of Environment, Health, and Natural Resources shall begin
6 issuing operating permits and operating permit certificates required under G.S. 143-
7 215.94U, as enacted by Section 6 of this act, not later than 1 January 1996. The
8 Department shall issue an operating permit and an operating permit certificate for every
9 facility that meets the requirements of G.S. 143-215.94U(a) by 1 July 1996. Operating
10 permits and operating permit certificates issued prior to 1 July 1996 shall be effective on
11 1 July 1996 and shall expire as provided in G.S. 143-215.94U(b).

12 Sec. 15. (a) There is appropriated from the Commercial Leaking Petroleum
13 Underground Storage Tank Cleanup Fund to the Department of Environment, Health, and
14 Natural Resources the sum of two million one hundred thousand dollars (\$2,100,000) for
15 the 1995-96 fiscal year and the sum of one million nine hundred fifty thousand dollars
16 (\$1,950,000) for the 1996-97 fiscal year to implement the provisions of Part 2A and Part
17 2B of Article 21A of Chapter 143 of the General Statutes.

18 (b) There is appropriated from the Noncommercial Leaking Petroleum
19 Underground Storage Tank Cleanup Fund to the Department of Environment, Health, and
20 Natural Resources the sum of one hundred twenty-five thousand dollars (\$125,000) for
21 the 1995-96 fiscal year and the sum of one hundred twenty-five thousand dollars
22 (\$125,000) for the 1996-97 fiscal year to implement the provisions of Part 2A and Part
23 2B of Article 21A of Chapter 143 of the General Statutes.

24 (c) There is appropriated from the Commercial Leaking Petroleum Underground
25 Storage Tank Cleanup Fund to the Department of Agriculture the sum of one hundred
26 thirty-five thousand dollars (\$135,000) for the 1995-96 fiscal year and the sum of ninety
27 thousand dollars (\$90,000) for the 1996-97 fiscal year to implement the provisions of Part
28 2A and Part 2B of Article 21A of Chapter 143 of the General Statutes.

29 (d) Of the funds appropriated by subsections (a) and (b) of this section, the
30 Department of Environment, Health, and Natural Resources may allocate up to two
31 hundred fifty thousand dollars (\$250,000) in equal amounts from the Commercial Fund
32 and the Noncommercial Fund to identify and evaluate abandoned petroleum underground
33 storage tanks. The Department shall report its findings regarding the extent to which
34 abandoned petroleum underground storage tanks pose a risk to human health or the
35 environment and any recommendations that the Department may have regarding
36 abandoned petroleum underground storage tanks to the Environmental Review
37 Commission by 1 January 1997.

38 Sec. 16. The provisions of G.S. 143-215.94V, as enacted by Section 1 of this
39 act, shall constitute a recent act of the General Assembly within the meaning of G.S.
40 150B-21.1(a)(2). The provisions of G.S. 150B-21.1(b) shall not apply to temporary rules
41 implementing G.S. 143-215.94V, as enacted by Section 1 of this act. Notwithstanding
42 G.S. 150B-21.1(d), temporary rules adopted to implement G.S. 143-215.94V, as enacted

1 by Section 1 of this act, may remain in effect until the Environmental Management
2 Commission adopts permanent rules.

3 Sec. 17. Sections 1, 4, 12, 13, 14, 16, and 17 of this act are effective upon
4 ratification. Section 2 of this act becomes effective 1 July 1996. Sections 3 and 10 of
5 this act become effective 1 January 1996 and apply to offenses occurring or continuing
6 on or after that date. Sections 5, 7, 8, 9, and 11 of this act are effective upon ratification,
7 apply to any pending claim for reimbursement, and apply retroactively to any discharge
8 or release that was discovered or reported on or after 30 June 1988, except that G.S. 143-
9 215.94B(d)(6), as enacted by Section 5 of this act, and G.S. 143-215.94D(d)(6), as
10 enacted by Section 7 of this act, apply only to a discharge or release that was discovered
11 or reported on or after 30 March 1990, and except that G.S. 143-215.94E(f1), as enacted
12 by Section 8 of this act, applies only to payments and reimbursements made on or after
13 the date this act becomes effective and only to costs that are eligible to be paid or
14 reimbursed from either the Commercial Fund or the Noncommercial Fund for a discharge
15 or release that was discovered or reported on or after 30 March 1990. Section 6 of this
16 act becomes effective 1 January 1996. Section 15 of this act is effective on and after 1
17 July 1995.