

May 22, 2008

**H 2498. UNDERGROUND STORAGE TANK PGRM AMENDS-2008.** Filed 5/21/08. (1) TO PROVIDE ADDITIONAL FUNDS FOR THE CLEANUP OF RELEASES AND DISCHARGES OF PETROLEUM FROM UNDERGROUND STORAGE TANKS BY INCREASING THE FEES PAID BY OWNERS AND OPERATORS OF COMMERCIAL UNDERGROUND STORAGE TANKS, (2) TO REDUCE THE INCIDENCE OF LEAKS BY REQUIRING SECONDARY CONTAINMENT FOR ALL COMPONENTS OF REGULATED PETROLEUM UNDERGROUND STORAGE TANK SYSTEMS, (3) TO PROVIDE FOR EXPEDITED ASSESSMENT AND CLEANUP OF RELEASES AND DISCHARGES FROM PETROLEUM UNDERGROUND STORAGE TANKS BY REQUIRING THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO ESTABLISH A PILOT PROGRAM TO EVALUATE THE USE OF SITE SPECIFIC CLEANUP STANDARDS, (4) TO PROVIDE FOR VARIOUS STUDIES AND REPORTS, AND (5) TO MAKE OTHER IMPROVEMENTS TO THE UNDERGROUND STORAGE TANK CLEANUP PROGRAM, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

Amends GS 143-215.94C, effective January 1, 2009 until January 1, 2019, by increasing the annual operating fee to \$420 for all owners or operators of commercial petroleum underground storage tanks (USTs), regardless of tank capacity (was, \$200 fee for tanks with a 3,500 gallon or less capacity and \$300 fee for tanks with greater than 3,500 gallon capacity). Makes technical changes. Allows DENR to annually use up to \$3 million of the increase in receipt of the credits to the Commercial Fund as a result of this increase in fee, solely for the removal of free petroleum from groundwater and to use the remaining balance to address federal regulatory concerns.

Amends GS 143-215.94E, effective January 1, 2009, as applied to determinations for eligibility and requests for payments made on or after that date, by adding two new subsections that (1) require an owner, operator, or landowner to request a determination by the Department of Environment and Natural Resources (DENR) on whether any costs of assessment and cleanup of a UST discharge or release are eligible for payment from either the Commercial Fund or the Noncommercial Fund within one year after completion of an eligible task, and (2) allows DENR to deny a request for payment from either fund if it has not received the request for payment from the owner, operator, or landowner within 12 months after the later date on which: (a) DENR determined that the cost of the task is eligible or (b) the task is completed. Notwithstanding this provision, an owner, operator, or landowner must request payment of a cost of any task completed prior to January 1, 2009 no later than January 1, 2010.

Amends GS 143-215.94G by adding four new subsections that (1) allows DENR to seek reimbursement for the cleanup of a UST discharge or release directly from an agent, from monies paid to or retained by the agent while acting on behalf of an owner, operator, or landowner, because of the agent misrepresenting eligibility for payment from the Funds, (2) requires DENR to take administrative action to recover costs not authorized to be paid from the Funds (a) within five years after payment from either Fund, (b) within three years after payment for reimbursement for any other costs, and (c) may recover costs paid at any time as a result of fraud or misrepresentation, (3) bars administrative action that is not commenced within the set time limits, and (4) prohibits DENR from withholding authorized payments from either Fund in order to recover costs that are in dispute, unless with the consent of the claimant or upon a final decision of the Environmental Management Commission (Commission).

Amends GS 143-215.94H by reorganizing and clarifying that a UST owner or operator must maintain evidence of financial responsibility for a discharge or release that is the lesser of what is required by the rules promulgated by the United States Environmental Protection Agency or what is required under state laws.

Amends GS 143-215.94T by requiring secondary containment for all components of an UST, including requiring double walled tanks (was, double wall piping only). Also requires rules for release detection (was, specified as detection only on a monthly basis). Makes technical changes.

Amends GS 143-215.94U by adding the requirement of owners and operators demonstrating financial responsibility before DENR may issue an operating permit for a UST. Makes technical changes.

Establishes a pilot program to evaluate the use of site-specific cleanup standards for the cleanup of discharges or releases of petroleum from a UST as an alternative to the use of risk-

based assessment and corrective actions. Applies only to discharges or releases that are classified as an intermediate risk. Provides that owner, operator, or landowner participation in the program is elective, upon submitting a site-specific risk assessment. Requires DENR to make a determination regarding the soil and groundwater contamination in comparison to the site-specific cleanup standards in order to determine the course of action. Requires DENR to annually report, with the first report submitted by September 1, 2009, to the Commission on the number of site-specific assessments and the disposition of those submissions. Includes specific report criteria. Requires inclusion of recommendations and legislative proposals in the report due on or before September 1, 2013, with the program expiration date set for September 1, 2014.

Allows an owner, operator, or landowner to file a petition for a contested case hearing if DENR denies a request that a discharge or release be reclassified as low-risk. Requires DENR to report annually, by September 1 of each year starting on September 1, 2009, the number of sites requested for reclassification and the disposition of the requests. Provision expires September 1, 2014.

Provides for DENR to establish informal notice of a proposed policy change or rule interpretation that is not a rule to interested parties. Requires consideration of comments and written notice at least 30 days prior to implementation of the interpretation to interested parties, with exception.

Allows the formation of an insurance pool to any responsible entity that requests assistance.

Effective retroactively to October 1, 2006, section 8 of SL 2001-442 (performance-based cleanups of discharges or releases of petroleum from USTs) is amended to remove the act's expiration date of October 1, 2006.

All provisions effective upon enactment unless otherwise noted.

**Intro. by Allen, Gibson.**

GS 143

June 24, 2008

**H 2498. UNDERGROUND STORAGE TANK PGRM AMENDS-2008.** Filed 5/21/08. House committee substitute made the following changes to 1st edition. Deletes requirement in proposed revised GS 143-215.94T that requires that rules providing monitoring of secondary containment specifically target release detection. Changes the citations to the rule regarding risk-based assessment and corrective action standards from 15A NCAC 2L.0115 to 15A NCAC 2L.0400 throughout. Amends section 8 of SL 2001-442 by changing the expiration date of sections 1, 2, 3, 4, 5, and 7 of that act to October 1, 2011 (was, October 1, 2006). Makes technical and conforming changes throughout the act.

Adds an effective date of January 1, 2009, for amendments to GS 143-215.94G. Deletes the January 1, 2019, expiration date for amendments to GS 143-215.94C(a).

*Changes title to AN ACT (1) TO PROVIDE ADDITIONAL FUNDS FOR THE ASSESSMENT AND CLEANUP OF RELEASES AND DISCHARGES OF PETROLEUM FROM UNDERGROUND STORAGE TANKS BY INCREASING FEES PAID BY OWNERS AND OPERATORS OF COMMERCIAL UNDERGROUND STORAGE TANKS; (2) TO ESTABLISH LIMITATIONS ON THE TIME IN WHICH: THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES MUST MAKE AN ELIGIBILITY DETERMINATION, REQUESTS FOR PAYMENT OR REIMBURSEMENT MAY BE SUBMITTED TO THE DEPARTMENT, AND THE DEPARTMENT MAY TAKE ADMINISTRATIVE ACTION OR BRING A CIVIL ACTION TO RECOVER PAYMENTS THAT WERE NOT AUTHORIZED BY LAW, THAT WERE MADE ON THE BASIS OF FRAUDULENT INFORMATION, OR FOR OTHER REASONS; (3) TO CLARIFY FINANCIAL RESPONSIBILITY REQUIREMENTS; (4) TO REDUCE THE INCIDENCE OF LEAKS BY REQUIRING SECONDARY CONTAINMENT FOR ALL COMPONENTS OF REGULATED PETROLEUM UNDERGROUND STORAGE TANK SYSTEMS; (5) TO CLARIFY REQUIREMENTS FOR REGISTRATION OF COMMERCIAL TANKS; (6) TO PROVIDE FOR EXPEDITED ASSESSMENT AND CLEANUP OF RELEASES AND DISCHARGES FROM PETROLEUM UNDERGROUND STORAGE TANKS BY REQUIRING THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO ESTABLISH A PILOT PROGRAM TO EVALUATE THE USE OF SITE-SPECIFIC CLEANUP STANDARDS; (7) TO PROVIDE FOR RECLASSIFICATION OF A SITE TO A LOWER RISK CLASSIFICATION; AND (8) TO PROVIDE*

FOR VARIOUS STUDIES AND REPORTS AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

August 8, 2008

**SL 2008-195 (H 2498). UNDERGROUND STORAGE TANK PROGRAM AMENDMENTS—2008.** AN ACT (1) TO PROVIDE ADDITIONAL FUNDS FOR THE ASSESSMENT AND CLEANUP OF RELEASES AND DISCHARGES OF PETROLEUM FROM UNDERGROUND STORAGE TANKS BY INCREASING THE FEES PAID BY OWNERS AND OPERATORS OF COMMERCIAL UNDERGROUND STORAGE TANKS; (2) TO ESTABLISH LIMITATIONS ON THE TIME IN WHICH: THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES MUST MAKE AN ELIGIBILITY DETERMINATION, REQUESTS FOR PAYMENT OR REIMBURSEMENT MAY BE SUBMITTED TO THE DEPARTMENT, AND THE DEPARTMENT MAY TAKE ADMINISTRATIVE ACTION OR BRING A CIVIL ACTION TO RECOVER PAYMENTS THAT WERE NOT AUTHORIZED BY LAW, THAT WERE MADE ON THE BASIS OF FRAUDULENT INFORMATION, OR FOR OTHER REASONS; (3) TO CLARIFY FINANCIAL RESPONSIBILITY REQUIREMENTS; (4) TO REDUCE THE INCIDENCE OF LEAKS BY REQUIRING SECONDARY CONTAINMENT FOR ALL COMPONENTS OF REGULATED PETROLEUM UNDERGROUND STORAGE TANK SYSTEMS; (5) TO CLARIFY REQUIREMENTS FOR REGISTRATION OF COMMERCIAL TANKS; (6) TO PROVIDE FOR EXPEDITED ASSESSMENT AND CLEANUP OF RELEASES AND DISCHARGES FROM PETROLEUM UNDERGROUND STORAGE TANKS BY REQUIRING THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO ESTABLISH A PILOT PROGRAM TO EVALUATE THE USE OF SITE-SPECIFIC CLEANUP STANDARDS; (7) TO PROVIDE FOR RECLASSIFICATION OF A SITE TO A LOWER RISK CLASSIFICATION; AND (8) TO PROVIDE FOR VARIOUS STUDIES AND REPORTS AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION. Summarized in *Daily Bulletin* 5/22/08 and 6/24/08. Enacted August 8, 2008. Sections 4, 5, 7–10, and 13 are effective August 8, 2008. Sections 1–3, 6, and 12 are effective January 1, 2009. Section 11 is effective retroactively to October 1, 2006.