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SENATE BILL 181
Agriculture/Environment/Natural Resources Committee Substitute Adopted 6/6/11
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Short Title: Underground Storage Tank Prgrm. Amends.

(Public)

Sponsors:

Referred to:

March 3, 2011

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE VARIOUS CHANGES TO THE LAWS GOVERNING THE STATE'S
3 UNDERGROUND STORAGE TANK PROGRAM AND PETROLEUM DISCHARGES.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** G.S. 143-215.3(a) reads as rewritten:

6 "(a) Additional Powers. – In addition to the specific powers prescribed elsewhere in this
7 Article, and for the purpose of carrying out its duties, the Commission shall have the power:

8 ...

9 (15) To adopt rules for the prevention of pollution from underground tanks
10 containing petroleum, petroleum products, or hazardous substances. Rules
11 adopted under this section may not incorporate standards and restrictions
12 which exceed ~~and~~ or are more comprehensive than comparable federal
13 regulations.

14 (16) To adopt rules limiting the manufacture, storage, sale, distribution or use of
15 cleaning agents containing phosphorus pursuant to G.S. 143-214.4(e), and to
16 adopt rules limiting the manufacture, storage, sale, distribution or use of
17 cleaning agents containing nitrilotriacetic acid.

18 (17) To adopt rules to implement Part 2A of Article 21A of Chapter 143.

19 (18) To adopt rules pertaining to the discharge or release of petroleum, from any
20 source, which provide for risk-based assessment and cleanup."

21 **SECTION 2.** G.S. 143-215.94B(b) reads as rewritten:

22 "(b) The Commercial Fund shall be used for the payment of the following costs up to an
23 aggregate maximum of one million dollars (\$1,000,000) per occurrence resulting from a
24 discharge or release of a petroleum product from a commercial underground storage tank:

25 ...

26 (8) The costs of a site investigation required by the Department for the purpose
27 of determining whether a release from a tank system has occurred, whether
28 or not the investigation confirms that a release has occurred."

29 **SECTION 3.** G.S. 143-215.94B(b1) reads as rewritten:

30 "(b1) In the event that two or more discharges or releases at any one facility, the first of
31 which was discovered or reported on or after 30 June 1988, result in more than one plume of
32 soil, surface water, or groundwater contamination, the Commercial Fund shall be used for the
33 payment of the costs of the cleanup of environmental damage as required by
34 G.S. 143-215.94E(a) in excess of the multiple discharge amount up to the applicable aggregate



1 maximum specified in subsections (b) and (b2) of this section. The multiple discharge amount
2 shall be calculated as follows:

- 3 (1) Each discharge or release shall be considered separately as if it were the only
4 discharge or release, and the cost for which the owner or operator is
5 responsible under subdivisions (1), (2), (2a), or (3) of subsection (b) of this
6 section, whichever are applicable, shall be determined for each discharge or
7 release. For each discharge or release for which subdivision (4) of subsection
8 (b) of this section is applicable, the cost for which the owner or operator is
9 responsible, for the purpose of this subsection, shall be seventy-five
10 thousand dollars (\$75,000). For purposes of this subsection, two or more
11 discharges or releases that result in a single plume of soil, surface water, or
12 groundwater contamination shall be considered as a single discharge or
13 release.
- 14 (2) The multiple discharge amount shall be the lesser of:
- 15 a. The sum of all the costs determined as set out in subdivision (1) of
16 this subsection; or
- 17 b. The product of the highest of the costs determined as set out in
18 subdivision (1) of this subsection multiplied by one and one-half
19 (1½).
- 20 (3) If in the process of investigating a discharge or release from an underground
21 storage tank system an owner or operator discovers a separate discharge or
22 release for which the owner or operator is not responsible, the responsible
23 party cannot be identified, and the releases are commingled, the owner or
24 operator may elect to clean up both releases, in which case the amount the
25 owner or operator is responsible for shall be the lesser of the applicable costs
26 under subdivision (1), (2), (2a), (3), or (4) of subsection (b) of this section,
27 whichever are applicable."

28 **SECTION 4.(a)** G.S. 143-215.94B is amended by adding a new subsection to
29 read:

30 "(b5) In the event a discharge or release of petroleum from an underground storage tank
31 results in contamination in soil or groundwater that becomes commingled with contamination
32 that is the result of a discharge or release of petroleum from another source, the Commercial
33 Fund may be used to reimburse an owner, operator, or landowner that is otherwise eligible for
34 reimbursement and proceeds with cleanup pursuant to this Part for any costs in accordance with
35 subsection (b1) of this section."

36 **SECTION 4.(b)** G.S. 143-215.94B(d) reads as rewritten:

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 storage
40 tank, or ~~vehicle~~vehicle, unless the discharge or release becomes
41 commingled with contamination from an underground storage tank.

42 "...."

43 **SECTION 4.(c)** G.S. 143-215.94D(d) reads as rewritten:

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

- 45 (1) Costs incurred as a result of a discharge or release from an aboveground
46 tank, aboveground pipe or fitting not connected to an underground storage
47 tank, or ~~vehicle~~vehicle, unless the discharge or release becomes
48 commingled with contamination from an underground storage tank.

49 "...."

50 **SECTION 5.** G.S. 143-215.94B is amended by adding a new subsection to read:

1 "(i) During each fiscal year, the Department shall use up to one million dollars
2 (\$1,000,000) of the funds in the Commercial Fund to fund necessary assessment and cleanup to
3 be conducted by the Department of discharges or releases for which a responsible party has
4 been identified but for which the responsible party can demonstrate that undertaking the costs
5 of assessment and cleanup will impose a severe financial hardship. The Commission shall
6 adopt rules to define severe financial hardship; establish criteria for assistance due to severe
7 financial hardship pursuant to this section; and establish a process for evaluation and
8 determinations of eligibility with respect to applications for assistance due to severe financial
9 hardship. The rules shall provide that the determinations of eligibility shall be made by the
10 Petroleum Underground Storage Tank Funds Council established under G.S. 143-215.94O."

11 **SECTION 6.** G.S. 143-215.94C reads as rewritten:

12 "**§ 143-215.94C. Commercial leaking petroleum underground storage tank cleanup fees.**

13 (a) For purposes of this subsection, each compartment of a commercial underground
14 storage tank that is designed to independently contain a petroleum product is a separate
15 petroleum commercial underground storage tank. The owner or operator of a commercial
16 petroleum underground storage tank shall pay to the Secretary for deposit into the Commercial
17 Fund an annual operating fee of four-hundred twenty dollars (\$420.00) for each petroleum
18 commercial underground storage tank.

19 (a1) Payment of a fee shall not be required for a compartment of a commercial
20 underground storage tank that has not contained a petroleum product at any point during the
21 applicable calendar year. The owner or operator of a commercial petroleum underground
22 storage tank that does not pay an annual operating fee for a compartment pursuant to this
23 subsection shall complete and submit an attestation under penalty of perjury that the
24 compartment for which a fee is not paid did not contain a petroleum product at any point during
25 the applicable calendar year. A compartment for which an annual operating fee is not paid is
26 ineligible for reimbursement of any costs associated with a discharge or release from the
27 compartment from the Commercial Leaking Petroleum Underground Storage Tank Fund.

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

1 each calendar ~~quarter~~~~quarter~~, provided that the fee for all commercial underground storage
2 tanks located at the same facility shall be due at the same time.

3"

4 **SECTION 7.** G.S. 143-215.94T reads as rewritten:

5 "**§ 143-215.94T. Adoption and implementation of regulatory program.**

6 ...

7 (c) Rules adopted pursuant to subdivision (13) of subsection (a) of this section shall
8 require secondary containment for all components of underground storage tank systems,
9 including, but not limited to, tanks, piping, fittings, pump heads, and dispensers. Secondary
10 containment requirements shall include standards for double wall tanks, piping, and fittings and
11 for sump containment for pump heads and dispensers. The rules shall provide for monitoring of
12 double wall interstices and sump containments. The rules shall apply to any underground
13 storage tank system that is installed on or after the date on which the rules become effective
14 and to the replacement of any component of an underground storage tank system on or after
15 that date. This section shall not be construed to limit the right of an owner or operator to repair
16 any existing component of an underground storage tank system. If an existing underground
17 storage tank is replaced, the secondary containment and interstitial monitoring requirements
18 shall apply only to the replaced underground tank. Likewise, if existing piping is replaced, the
19 secondary containment and interstitial monitoring requirements shall apply only to the replaced
20 piping.

21 (d) The Department shall allow non-tank unprotected metallic components that are
22 visible or can be accessed for visual inspection, including flex connectors and other metal
23 fittings and connectors at the ends of piping runs, to have corrosion protection added as an
24 alternative to replacement of these components if the component does not have visible
25 corrosion and passes a tightness test."

26 **SECTION 8.(a)** Notwithstanding 15A NCAC 02N .0304(a)(5) (Implementation
27 Schedule for Performance Standards for New UST Systems and Upgrading Requirements for
28 Existing UST Systems Located in Areas Defined in Rule .0301(d)), all UST systems installed
29 after January 1, 1991, shall not be required to provide secondary containment until January 1,
30 2020.

31 **SECTION 8.(b)** Notwithstanding 15A NCAC 02N .0304(a)(5) (Implementation
32 Schedule for Performance Standards for New UST Systems and Upgrading Requirements for
33 Existing UST Systems Located in Areas Defined in Rule .0301(d)), the Commission shall
34 establish a process for the grant of variances from the setbacks required for UST systems from
35 certain public water supply wells, particularly those that serve only a single facility which are
36 not community water systems, if the Commission finds facts to demonstrate that such variance
37 will not endanger human health and welfare or groundwater.

38 **SECTION 8.(c)** No later than January 1, 2012, the Environmental Management
39 Commission shall adopt rules consistent with the provisions of Section 8(a) and Section 8(b) of
40 this act. Notwithstanding G.S. 150B-19(4), the rules adopted by the Commission pursuant to
41 this section shall be substantively identical to the provisions of Section 8(a) and Section 8(b) of
42 this act.

43 **SECTION 9.** G.S. 143-215.94V reads as rewritten:

44 "**§ 143-215.94V. Standards for petroleum underground storage tank cleanup.**

45 (a) Legislative findings and intent.

46 (1) The General Assembly finds that:

47 a. The goals of the underground storage tank program are to protect
48 human health and the environment. Maintaining the solvency of the
49 Commercial Fund and the Noncommercial Fund is essential to these
50 goals.

- 1 b. The sites at which discharges or releases from underground storage
2 tanks occur vary greatly in terms of complexity, soil types,
3 hydrogeology, other physical and chemical characteristics, current
4 and potential future uses of groundwater, and the degree of risk that
5 each site may pose to human health and the environment.
- 6 c. Risk-based corrective action is a process that recognizes this
7 diversity and utilizes an approach where assessment and remediation
8 activities are specifically tailored to the conditions and risks of a
9 specific site.
- 10 d. Risk-based corrective action gives the State flexibility in requiring
11 different levels of cleanup based on scientific analysis of different
12 site characteristics, and allowing no action or no further action at
13 sites that pose little risk to human health or the environment.
- 14 e. A risk-based approach to the cleanup of environmental damage can
15 adequately protect human health and the environment while
16 preventing excessive or unproductive cleanup efforts, thereby
17 assuring that limited resources are directed toward those sites that
18 pose the greatest risk to human health and the environment.

19 (2) The General Assembly intends:

- 20 a. To direct the Commission to adopt rules that will provide for
21 risk-based assessment and cleanup of discharges and releases ~~from~~
22 ~~petroleum underground storage tanks of petroleum~~. These rules are
23 intended to combine groundwater standards that protect current and
24 potential future uses of groundwater with risk-based analysis to
25 determine the appropriate cleanup levels and actions.
- 26 b. That these rules apply to all discharges or releases that are reported
27 on or after the date the rules become effective in order to ascertain
28 whether cleanup is necessary, and if so, the appropriate level of
29 cleanup.
- 30 c. That these rules may be applied to any discharge or release that has
31 been reported at the time the rules become effective at the discretion
32 of the Commission.
- 33 d. That these rules and decisions of the Commission and the
34 Department in implementing these rules facilitate the completion of
35 more cleanups in a shorter period of time.
- 36 e. That neither the Commercial Fund nor the Noncommercial Fund be
37 used to clean up sites where the Commission has determined that a
38 discharge or release poses a degree of risk to human health or the
39 environment that is no greater than the acceptable level of risk
40 established by the Commission.
- 41 f. Repealed by Session Laws 1998-161, s. 11(c), effective retroactively
42 to January 1, 1998.
- 43 g. That the Commercial Fund and the Noncommercial Fund be used to
44 perform the most cost-effective cleanup that addresses imminent
45 threats to human health and the environment.

46 (b) The Commission shall adopt rules to establish a risk-based approach for the
47 assessment, prioritization, and cleanup of discharges and releases ~~from petroleum underground~~
48 ~~storage tanks of petroleum~~. The rules shall address, at a minimum, the circumstances where
49 site-specific information should be considered, criteria for determining acceptable cleanup
50 levels, and the acceptable level or range of levels of risk to human health and the environment.
51 Rules that use the distance between a source area of a confirmed discharge or release to a water

1 supply well or a private drinking water well, as those terms are defined under G.S. 87-85, shall
2 include a determination whether a nearby well is likely to be affected by the discharge or
3 release as a factor in determining levels of risk.

4 (c) The Commission may require an owner or operator or a landowner eligible for
5 payment or reimbursement under subsections (b), (b1), (c), and (c1) of G.S. 143-215.94E to
6 provide information necessary to determine the degree of risk to human health and the
7 environment that is posed by a discharge or release from a petroleum underground storage and
8 to identify the most cost-effective cleanup that addresses imminent threats to human health and
9 the environment.

10 (d) If the Commission concludes that a discharge or release poses a degree of risk to
11 human health or the environment that is no greater than the acceptable level of risk established
12 by the Commission, the Commission shall notify an owner, operator, or landowner who
13 provides the information required by subsection (c) of this section that no cleanup, further
14 cleanup, or further action will be required unless the Commission later determines that the
15 discharge or release poses an unacceptable level of risk or a potentially unacceptable level of
16 risk to human health or the environment. If the Commission concludes that a discharge or
17 release poses a degree of risk to human health or the environment that requires further cleanup,
18 the Commission shall notify the owner, operator, or landowner who provides the information
19 required by subsection (c) of this section of the cleanup method approved by the Commission
20 as the most cost-effective cleanup method for the site. This section shall not be construed to
21 prohibit an owner, operator, or landowner from selecting a cleanup method other than the
22 cost-effective cleanup method approved by the Commission so long as the Commission
23 determines that the alternative cleanup method will address imminent threats to human health
24 and the environment.

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

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

43 (e1) If the Commission concludes under subsection (d) of this section that further
44 cleanup is required and notifies the owner, operator, or landowner of the cleanup method
45 approved by the Commission as the most cost-effective cleanup method for the site, the
46 Department shall not pay or reimburse any costs otherwise payable or reimbursable under this
47 Article from either the Commercial Fund or Noncommercial Fund, other than those costs that
48 are reasonable and necessary to conduct the risk assessment and to implement the cost-effective
49 cleanup method approved by the Commission. If the owner, operator, or landowner selects a
50 cleanup method other than the one identified by the Commission as the most cost-effective

1 cleanup, the Department shall not pay or reimburse for costs in excess of the cost of
2 implementing the approved cost-effective cleanup.

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

7 (g) Subsections (c) through (e1) of this section apply only to assessments and cleanups
8 in progress or begun on or after 2 January 1998.

9 (h) If a discharge or release of petroleum from an underground storage tank results in
10 contamination in soil or groundwater that becomes commingled with contamination that is the
11 result of a discharge or release of petroleum from a source of contamination other than an
12 underground storage tank, the cleanup of petroleum may proceed under rules adopted pursuant
13 to this section. ~~The Department shall not pay or reimburse any costs associated with the~~
14 ~~assessment or remediation of that portion of contamination that results from a release or~~
15 ~~discharge of petroleum from a source other than an underground storage tank from either the~~
16 ~~Commercial Fund or the Noncommercial Fund."~~

17 **SECTION 10.(a)** Notwithstanding subsection (a) of 15A NCAC 02N .0903
18 (Underground Storage Tanks: Tanks), from the effective date of this act the Department of
19 Environment and Natural Resources shall not prohibit the use of tanks that are constructed of
20 steel and cathodically protected as provided in 40 Code of Federal Regulations § 280.20(a)(2)
21 (July 1, 2010 Edition) in order to meet the external corrosion protection standards of that rule.

22 **SECTION 10.(b)** No later than January 1, 2012, the Environmental Management
23 Commission shall adopt rules consistent with the provisions of Section 10(a) of this act.
24 Notwithstanding G.S. 150B-19(4), the rules adopted by the Commission pursuant to this
25 section shall be substantively identical to the provisions of Section 10(a) of this act.

26 **SECTION 11.** The Department of Environment and Natural Resources is
27 prohibited from creating any new receipt-supported or General Fund positions related to the
28 requirements of this act.

29 **SECTION 12.** This act is effective when it becomes law and applies to
30 assessments that are initiated on or after that date, except that Section 3 applies to discharges or
31 releases discovered or reported on or after January 1, 2009.