

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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SENATE BILL 1012

Short Title: Underground Storage Tank Amends.

(Public)

Sponsors: Senators Kerr, Blackmon, Parnell, East, Hartsell, and Forrester.

Referred to: Agriculture/Environment/Natural Resources

May 4, 1995

A BILL TO BE ENTITLED

1 AN ACT TO IMPROVE THE REGULATION OF PETROLEUM UNDERGROUND
2 STORAGE TANKS AND THE CLEANUP OF LEAKING PETROLEUM
3 UNDERGROUND STORAGE TANKS.
4

5 The General Assembly of North Carolina enacts:

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

8 "**§ 143-215.94V. Standards for petroleum underground storage tank cleanup.**

9 (a) Legislative findings and intent.

10 (1) The General Assembly finds that:

11 a. The goals of the underground storage tank program are to protect
12 human health and the environment. Maintaining the solvency of
13 the Commercial Fund and the Noncommercial Fund is essential
14 to these goals.

15 b. The sites at which discharges or releases from underground
16 storage tanks occur vary greatly in terms of complexity, soil
17 types, hydrogeology, other physical and chemical characteristics,
18 current and potential future uses of groundwater, and the degree
19 of risk that each site may pose to human health and the
20 environment.

- 1 c. Risk-based corrective action is a process that recognizes this
2 diversity and utilizes an approach where assessment and
3 remediation activities are specifically tailored to the conditions
4 and risks of a specific site.
- 5 d. Risk-based corrective action gives the State flexibility in
6 requiring different levels of cleanup based on scientific analysis
7 of different site characteristics, and allowing no action or no
8 further action at sites that pose little risk to human health or the
9 environment.
- 10 e. A risk-based approach to the cleanup of environmental damage
11 can adequately protect human health and the environment while
12 preventing excessive or unproductive cleanup efforts, thereby
13 assuring that limited resources are directed toward those sites that
14 pose the greatest risk to human health and the environment.

15 (2) The General Assembly intends:

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

41 (b) The Commission shall adopt rules to establish a risk-based approach for the
42 assessment, prioritization, and cleanup of discharges and releases from petroleum
43 underground storage tanks. The rules shall address, at a minimum, the circumstances

1 where site-specific information should be considered, criteria for determining acceptable
2 cleanup levels, and the acceptable level or range of levels of risk to human health and the
3 environment.

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

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

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

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

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

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

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

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

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

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

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

42 "**§ 143-215.94U. Registration of petroleum underground storage tanks; operation of**
43 **petroleum underground storage tanks; operating permit required.**

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

5 (1) Has notified the Department of the existence of all tanks as required by
6 40 Code of Federal Regulations § 280.22 (1 July 1994 Edition) or 42
7 U.S.C. § 6991a, if applicable, at the facility;

8 (2) Has paid all fees required under G.S. 143-215.94C for all commercial
9 petroleum underground storage tanks located at the facility;

10 (3) Complies with applicable release detection requirements set out in rules
11 adopted pursuant to this Chapter, notifies the Department of the method
12 or combination of methods of leak detection in use, and certifies to the
13 Department that all applicable release detection requirements are being
14 met for all petroleum underground storage tanks located at the facility;

15 (4) If applicable, complies with the Stage I vapor control requirements set
16 out in 15A North Carolina Administrative Code 2D.0928, effective 1
17 March 1991, notifies the Department of the method or combination of
18 methods of vapor control in use, and certifies to the Department that all
19 Stage I vapor control requirements are being met for all petroleum
20 underground storage tanks located at the facility; and

21 (5) Has substantially complied with the air quality, groundwater quality,
22 and underground storage tank standards applicable to any activity in
23 which the applicant has previously engaged and has been in substantial
24 compliance with federal and State laws, regulations, and rules for the
25 protection of the environment. In determining substantial compliance,
26 the compliance history of the owner or operator and any parent,
27 subsidiary, or other affiliate of the owner, operator, or parent may be
28 considered.

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

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

37 (d) The Department shall issue an operating permit certificate for each facility that
38 meets the requirements of subsection (a) of this section. The operating permit certificate
39 shall identify the number of tanks at the facility and shall conspicuously display the date
40 on which the permit expires. Except for the owner or operator, no person shall be liable
41 under subsection (c) of this section if an unexpired operating permit certificate is
42 displayed at the facility, unless the person knows or has reason to know that the owner or
43 operator does not hold a currently valid operating permit for the facility.

1 (e) The Department may revoke an operating permit only if the owner or operator
2 fails to continuously meet the requirements set out in subdivisions (1) through (4) of
3 subsection (a) of this section. If the Department revokes an operating permit, the owner
4 or operator of the facility for which the operating permit was issued shall immediately
5 surrender the operating permit certificate to the Department, unless the revocation is
6 stayed pursuant to G.S. 150B-23. An owner or operator may challenge a decision by the
7 Department to deny or revoke an operating permit by filing a contested case under Article
8 3 of Chapter 150B of the General Statutes. The Secretary shall make the final agency
9 decision regarding the revocation of a permit under this section."

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

12 **"§ 143-215.94W. Enforcement procedures: civil penalties.**

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

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

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

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

5 (d) The Secretary shall notify any person assessed a civil penalty of the assessment
6 and the specific reasons therefor by registered or certified mail, or by any means
7 authorized by G.S. 1A-1, Rule 4. Contested case petitions shall be filed pursuant to G.S.
8 150B-23 within 30 days of receipt of the notice of assessment. The Secretary shall make
9 the final decision regarding assessment of a civil penalty under this section.

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

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

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

34 **"§ 143-215.94X. Enforcement procedures: criminal penalties.**

35 (a) Any person who negligently commits any of the offenses set out in
36 subdivisions (1) through (9) of G.S. 143-215.94W(a) shall be guilty of a Class 2
37 misdemeanor which may include a fine not to exceed fifteen thousand dollars (\$15,000)
38 per day of violation, provided that such fine shall not exceed a cumulative total of two
39 hundred thousand dollars (\$200,000) for each period of 30 days during which a violation
40 continues.

41 (b) Any person who knowingly and willfully commits any of the offenses set out
42 in subdivisions (1) through (5) of G.S. 143-215.94W(a) shall be guilty of a Class I felony,
43 which may include a fine not to exceed one hundred thousand dollars (\$100,000) per day

1 of violation, provided that this fine shall not exceed a cumulative total of five hundred
2 thousand dollars (\$500,000) for each period of 30 days during which a violation
3 continues. For the purposes of this subsection, the phrase 'knowingly and willfully' shall
4 mean intentionally and consciously as the courts of this State, according to the principles
5 of common law interpret the phrase in the light of reason and experience.

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

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

- 17 a. His conduct, if he is aware of the nature of his conduct;
18 b. An existing circumstance, if he is aware or believes that the
19 circumstance exists; or
20 c. A result of his conduct, if he is aware or believes that his conduct
21 is substantially certain to cause danger of death or serious bodily
22 injury.

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

- 26 a. The person is responsible only for actual awareness or actual
27 belief that he possessed; and
28 b. Knowledge possessed by a person other than the defendant but
29 not by the defendant himself may not be attributed to the
30 defendant.

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

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

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

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

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

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

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

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

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

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

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

41 **"§ 143-215.94Y. Enforcement procedures; injunctive relief.**

42 Whenever the Department has reasonable cause to believe that any person has
43 violated or is threatening to violate any of the provisions of this Part, any of the terms of

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

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

16 **"§ 143-215.94A. Definitions.**

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

- 19 (0) 'Affiliate' has the same meaning as in 17 Code of Federal Regulations §
20 240.12(b)-2 (1 April 1994 Edition), which defines 'affiliate' as a person
21 that directly, or indirectly through one or more intermediaries, controls,
22 is controlled by, or is under common control of another person.
- 23 (1) 'Commercial Fund' means the Commercial Leaking Petroleum
24 Underground Storage Tank Cleanup Fund established pursuant to this
25 Part.
- 26 (2) 'Commercial underground storage tank' means any one or combination
27 of tanks (including underground pipes connected thereto) used to
28 contain an accumulation of petroleum products, the volume of which
29 (including the volume of the underground pipes connected thereto) is
30 ten percent (10%) or more beneath the surface of the ground. The term
31 'commercial underground storage tank' does not include any:
- 32 a. Farm or residential underground storage tank of 1,100 gallons or
33 less capacity used for storing motor fuel for noncommercial
34 purposes;
- 35 b. Underground storage tank of 1,100 gallons or less capacity used
36 for storing heating oil for consumptive use on the premises where
37 stored;
- 38 c. Underground storage tank of more than 1,100 gallon capacity
39 used for storing heating oil for consumptive use on the premises
40 where stored by four or fewer households;
- 41 d. Septic tank;
- 42 e. Pipeline facility (including gathering lines) regulated under:

- 1 1. The Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. §
2 1671 et seq.);
- 3 2. The Hazardous Liquid Pipeline Safety Act of 1979 (49
4 U.S.C. § 2001 et seq.); or
- 5 3. Any intrastate pipeline facility regulated under State laws
6 comparable to the provisions of the Natural Gas Pipeline
7 Safety Act of 1968 or the Hazardous Liquid Pipeline
8 Safety Act of 1979;
- 9 f. Surface impoundment, pit, pond, or lagoon;
- 10 g. Storm water or waste water collection system;
- 11 h. Flow-through process tank;
- 12 i. Liquid trap or associated gathering lines directly related to oil or
13 gas production and gathering operations; or
- 14 j. Storage tank situated in an underground area (such as a
15 basement, cellar, mineworking, drift, shaft, or tunnel) if the
16 storage tank is situated upon or above the surface of the floor.
- 17 (3) 'Council' means the North Carolina Petroleum Underground Storage
18 Tank Funds Council.
- 19 (3a) 'Facility' means an underground storage tank, or two or more
20 underground storage tanks located in close proximity to each other and
21 having the same owner or operator, that are located on a single tract of
22 land or on contiguous tracts of land that are owned or controlled by the
23 same person. As used in this subdivision, the terms 'owner', 'operator',
24 and 'person' include any affiliate, parent, and subsidiary of the owner,
25 operator, or person, respectively. The owner or person having control
26 of the land on which an underground storage tank is located, or on
27 which two or more underground storage tanks are located, need not be
28 the owner or operator of the underground storage tank or underground
29 storage tanks. The term 'facility', as defined in this subdivision, does
30 not apply to a 'pipeline facility', as that phrase is used in subdivisions (2)
31 and (7) of this section.
- 32 (4) 'Heating oil' means petroleum that is No. 1, No. 2, No. 4-light, No. 4-
33 heavy, No. 5-light, No. 5-heavy, or No. 6 technical grades of fuel oil;
34 other residual fuel oils, including Navy Special Fuel Oil and Bunker C;
35 and other fuels when used as substitutes for one of these fuel oils for the
36 purpose of heating.
- 37 (5) 'Loan Fund' means the Groundwater Protection Loan Fund.
- 38 (6) 'Noncommercial Fund' means the Noncommercial Leaking Petroleum
39 Underground Storage Tank Cleanup Fund established pursuant to this
40 Part.
- 41 (7) 'Noncommercial underground storage tank' means any one or
42 combination of tanks (including underground pipes connected thereto)
43 used to contain an accumulation of petroleum products, the volume of

1 which (including the volume of the underground pipes connected
2 thereto) is ten percent (10%) or more beneath the surface of the ground.

3 The term 'noncommercial storage tank' does not include any:

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

23 (8) 'Operator' means any person in control of, or having responsibility for,
24 the operation of an underground storage tank.

25 (9) 'Owner' means:

- 26 a. In the case of an underground storage tank in use on 8 November
27 1984, or brought into use after that date, any person who owns an
28 underground storage tank used for the storage, use, or dispensing
29 of petroleum products; and
30 b. In the case of an underground storage tank in use before 8
31 November 1984, but no longer in use on or after that date, any
32 person who owned such tank immediately before the
33 discontinuation of its use.

34 (9a) 'Parent' has the same meaning as in 17 Code of Federal Regulations §
35 240.12(b)-2 (1 April 1994 Edition), which defines 'parent' as an affiliate
36 that directly, or indirectly through one or more intermediaries, controls
37 another person.

38 (10) 'Petroleum' or 'petroleum product' means crude oil or any fraction
39 thereof which is a liquid at standard conditions of temperature and
40 pressure (60 degrees Fahrenheit and 14.7 pounds per square inch
41 absolute), including any such liquid which consists of a blend of
42 petroleum and alcohol and which is intended for use as a motor fuel.
43 The terms 'petroleum' and 'petroleum product' do not include any

1 hazardous substance as defined in Section 101(14) of the
2 Comprehensive Environmental Response, Compensation, and Liability
3 Act of 1980, Pub. L. No. 96-510, 94 Stat. 2767, 42 U.S.C. § 9601(14) as
4 amended; any substance regulated as a hazardous waste under Subtitle
5 C of Title II of the Resource Conservation and Recovery Act of 1976,
6 Pub. L. 94-580, 90 Stat. 2806, 42 U.S.C. § 6921 et seq., as amended; or
7 any mixture of petroleum or a petroleum product containing any such
8 hazardous substance or hazardous waste in greater than de minimis
9 quantities.

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

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

15 **"§ 143-215.94B. Commercial Leaking Petroleum Underground Storage Tank**
16 **Cleanup Fund.**

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

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

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

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

36 (2a) For discharges or releases discovered and reported on or after 1 January
37 1994 and prior to 1 January 1995, the cleanup of environmental damage
38 as required by G.S. 143-215.94E(a) in excess of twenty thousand dollars
39 (\$20,000) if the owner or operator (i) notifies the Department prior to 1
40 January 1994 of its intent to permanently close the tank in accordance
41 with applicable regulations or to upgrade the tank to meet the
42 requirements that existing underground storage tanks must meet by 22
43 December 1998, (ii) commences closure or upgrade of the tank prior to

1 1 July 1994, and (iii) completes closure or upgrade of the tank prior to 1
2 January 1995.

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

10 (4) For discharges or releases reported on or after 1 January 1994 from a
11 commercial underground storage tank that does not qualify under
12 subdivision (2a) of this subsection or does not meet the standards in
13 subdivision (3) of this subsection, sixty percent (60%) of the costs per
14 occurrence of the cleanup of environmental damage as required by G.S.
15 143-215.94E(a) that exceeds twenty thousand dollars (\$20,000) but is
16 not more than one hundred fifty-seven thousand five hundred dollars
17 (\$157,500) and one hundred percent (100%) of the costs above this
18 amount, up to the limits established in this section.

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

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

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

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

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

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

38 In the event that two or more discharges or releases at any one facility, the first of
39 which was discovered or reported on or after 30 June 1988, result in more than one plume
40 of soil, surface water, or groundwater contamination, the Commercial Fund shall be used
41 for the payment of the costs of the cleanup of environmental damage as required by G.S.
42 143-215.94E(a) in excess of the multiple discharge amount up to the applicable

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

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

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

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

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

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

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

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

38 (3) Costs incurred as a result of a discharge or release of petroleum from a
39 transmission ~~pipeline;~~ pipeline.

40 (4) Costs intended to be paid by the Noncommercial ~~Fund;~~ or Fund.

41 (5) Costs associated with the administration of any underground storage
42 tank program other than the program administered pursuant to this Part.

1 (6) Costs paid or reimbursed by or from any source other than the
2 Commercial Fund, including but not limited to, any payment or
3 reimbursement made under a contract of insurance.

4 (e) The Commercial Fund shall be treated as a special trust fund and shall be
5 credited with interest by the State Treasurer pursuant to G.S. 147-69.2 and G.S. 147-
6 69.3."

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

8 **"§ 143-215.94C. Commercial leaking petroleum underground storage tank cleanup**
9 **fees.**

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

13 (1) For each petroleum commercial underground storage tank of
14 3,500 gallons or less capacity – one hundred fifty dollars (\$150.00).

15 (2) For each petroleum commercial underground storage tank of more than
16 3,500 gallon capacity – two hundred twenty-five dollars (\$225.00).

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

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

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

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

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

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

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

- 30 (1) Costs incurred as a result of a discharge or release from an aboveground
31 tank, aboveground pipe or fitting not connected to an underground
32 storage tank, or ~~vehicle;~~ vehicle.
33 (2) The removal or replacement of any tank, pipe, fitting or related
34 ~~equipment;~~ equipment.
35 (3) Costs incurred as a result of a discharge or release of petroleum from a
36 transmission ~~pipeline;~~ pipeline.
37 (4) Costs intended to be paid for by the Commercial ~~Fund;~~ or Fund.
38 (5) Costs associated with the administration of any underground storage
39 tank program other than the program administered pursuant to this Part.
40 (6) Costs paid or reimbursed by or from any source other than the
41 Noncommercial Fund, including, but not limited to, any payment or
42 reimbursement made under a contract of insurance."

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

1 **"§ 143-215.94E. Rights and obligations of the owner and operator.**

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

7 (b) In the case of a discharge or release from a commercial underground storage
8 tank where the owner or operator has been identified and has proceeded with cleanup, the
9 owner or operator may elect to have the Commercial Fund pay or reimburse the owner or
10 operator for any costs described in ~~G.S. 143-215.94B(b)~~ subsection (b) or (b1) of G.S. 143-
11 215.94B that exceed the amounts for which the owner or operator is responsible under
12 that subsection. The sum of payments by the owner or operator and the payments from
13 the Commercial Fund shall not exceed one million dollars (\$1,000,000) per discharge or
14 ~~release.~~ release except as provided in G.S. 143-215.94B(b2).

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

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

7 (d) In any case where the costs described in G.S. ~~143-215.94B(b)~~ 143-215.94B(b),
8 143-215.94B(b1), or G.S. 143-215.94D(b1) exceed one million dollars (\$1,000,000), or
9 one million five hundred thousand dollars (\$1,500,000) if G.S. 143-215.94B(b2) applies,
10 the provisions of Article 21A of this Chapter or any other applicable statute or common
11 law principle regarding liability shall apply for the amount in excess of one million
12 dollars (\$1,000,000). (\$1,000,000) or, if G.S. 143-215.94B(b2) applies, one million five
13 hundred thousand dollars (\$1,500,000). Nothing contained in this Part shall limit or
14 modify any liability that any party may have pursuant to Article 21A of this Chapter, any
15 other applicable statute, or at common law.

16 (e) When the owner or operator pays the costs described in G.S. ~~143-215.94B(b)~~
17 143-215.94B(b), 143-215.94B(b1), or G.S. 143-215.94D(b1) resulting from a discharge
18 or release of petroleum from an underground storage tank, the owner or operator may
19 seek reimbursement from the appropriate fund for any costs he may elect to have either
20 the Commercial Fund or the Noncommercial Fund pay in accordance with subsections
21 (b) and (c) of this section. The Department shall reimburse the owner or operator for all
22 costs he may elect to have the appropriate fund pay that the Department determines to be
23 reasonable and necessary and for which appropriate documentation is submitted. The
24 Department may contract for any services necessary to evaluate any claim for
25 reimbursement or compensation from either the Commercial Fund or the Noncommercial
26 Fund, may contract for any expert witness or consultant services necessary to defend any
27 decision to pay or deny any claim for reimbursement, and may pay the cost of these
28 services from the fund against which the claim is made; provided that in any fiscal year
29 the Department shall not expend from either fund more than one percent (1%) of the
30 unobligated balance of the fund on 30 June of the previous fiscal year. The cost of
31 contractual services to evaluate a claim or for expert witness or consultant services to
32 defend a decision with respect to a claim shall be included as costs under G.S. 143-
33 215.94B(b) and G.S. 143-215.94D(b1). The Commission shall adopt rules governing
34 reimbursement of necessary and reasonable costs. An owner or operator whose claim for
35 reimbursement is denied may appeal a decision of the Department as provided in Article
36 3 of Chapter 150B of the General Statutes. If the owner or operator is eligible for
37 reimbursement under this section and the cleanup extends beyond a period of three
38 months, the owner or operator may apply to the Department for interim reimbursements
39 to which he is entitled under this section on a quarterly basis.

40 (e1) The Department shall not pay any third party or reimburse any owner or
41 operator who has paid any third party pursuant to any settlement agreement or consent
42 judgment relating to a claim by or on behalf of a third party for compensation for bodily
43 injury or property damage unless the Department has approved the settlement agreement

1 or consent judgment prior to entry into the settlement agreement or consent judgment by
2 the parties or entry of a consent judgment by the court. The approval or disapproval by
3 the Department of a proposed settlement agreement or consent judgment shall be subject
4 to challenge only in a contested case filed under Chapter 150B of the General Statutes.
5 The Secretary shall make the final agency decision in a contested case proceeding under
6 this subsection.

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

9 (f1) Any person seeking payment or reimbursement from either the Commercial
10 Fund or the Noncommercial Fund shall certify to the Department that the costs to be paid
11 or reimbursed by the Commercial Fund or the Noncommercial Fund are not eligible to be
12 paid or reimbursed by or from any other source, including any contract of insurance. If
13 any cost paid or reimbursed by the Commercial Fund or the Noncommercial Fund is
14 eligible to be paid or reimbursed by or from another source, that cost shall not be paid
15 from, or if paid shall be repaid to, the Commercial Fund or the Noncommercial Fund.

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

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

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

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

27 (h) Subdivision (1) of subsection (g) of this section shall not be construed to limit
28 the right of an owner or operator to contest notices of violation or orders issued by the
29 Department. Subdivision (1) of subsection (g) of this section shall not apply to a
30 payment or reimbursement pursuant to this section if, at the time of the discharge or
31 release, the owner or operator holds a valid operating permit as required by G.S. 143-
32 215.94U.

33 (i) An owner or operator who notifies the Department of an intention to close or
34 upgrade a commercial underground storage tank as provided in G.S. 143-215.94B(b)(2a)
35 shall commence the closure or upgrade prior to 1 July 1994 and shall complete the
36 closure or upgrade prior to 1 January 1995. An owner who notifies the Department of an
37 intention to close or upgrade a commercial underground storage tank and who fails to
38 commence and complete the closure as specified in this subsection is subject to a civil
39 penalty as provided in G.S. 143-215.94K. The provisions of G.S. 143-215.94B(b)(2a) do
40 not apply if an owner or operator who notifies the Department of an intention to close or
41 upgrade a commercial underground storage tank fails to commence or complete the
42 closure or upgrade within the dates specified in this subsection."

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

1 **"§ 143-215.94G. Authority of the Department to engage in cleanups; actions for**
2 **fund reimbursement.**

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

12 (1) A noncommercial underground storage tank.

13 (2) An underground storage tank whose owner or operator cannot be
14 identified or located.

15 (3) An underground storage tank whose owner or operator fails to proceed
16 as required by G.S. 143-215.94E(a).

17 (4) A commercial underground storage tank taken out of operation prior to
18 1 January 1974 if, when the discharge or release is discovered, neither
19 the owner nor operator owns or leases the land on which the
20 underground storage tank is located.

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

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

26 (1) Any funds to which the State is entitled under any federal program
27 providing for the cleanup of petroleum discharges or releases from
28 underground storage tanks, including, but not limited to, the Leaking
29 Underground Storage Tank Trust Fund established pursuant to 26
30 U.S.C. § 4081 and 42 U.S.C. § 6991b(h).

31 (2) The Commercial Fund or the Noncommercial Fund.

32 (b) Whenever the discharge or release of a petroleum product is from a
33 commercial underground storage tank, the Department may supervise the cleanup of
34 environmental damage required by G.S. 143-215.94E(a). If the owner or operator elects
35 to have the Commercial Fund reimburse or pay for any costs allowed under ~~G.S. 143-~~
36 ~~215.94B(b),~~ subsection (b) or (b1) of G.S. 143-215.94B, the Department shall require the
37 owner or operator to submit documentation of all expenditures claimed for the purposes
38 of establishing that the owner or operator has spent the amounts required to be paid by
39 the owner or operator pursuant to and in accordance with G.S. 143-215.94E(b). The
40 Department shall allow credit for all expenditures that the Department determines to be
41 reasonable and necessary. The Department may not pay for any costs for which the
42 Commercial Fund was established until the owner or operator has paid the amounts
43 specified in G.S. 143-215.94E(b).

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

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

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

7 (2) The amounts provided for in G.S. 143-215.94B(b) or G.S. 143-
8 215.94B(b1) required to be paid for by the owner or operator pursuant
9 to G.S. 143-215.94E(b) where the owner or operator of a commercial
10 underground storage tank is later identified or located;

11 (3) The amounts provided for in G.S. 143-215.94B(b) or G.S. 143-
12 215.94B(b1) required to be paid for by the owner or operator pursuant
13 to G.S. 143-215.94E(b) where the owner or operator of a commercial
14 underground storage tank failed to proceed as required by G.S. 143-
15 215.94E(a);

16 (3a) The amounts provided for by G.S. 143-215.94B(b)(5) required to be
17 paid by the owner or operator to third parties for the cost of providing
18 interim alternative sources of drinking water to third parties and the
19 initial cost of providing permanent alternative sources of drinking water
20 to third parties;

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

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

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

31 (f) In the event that a recovery equal to or in excess of the amounts required to be
32 paid for by the owner or operator pursuant to G.S. 143-215.94E(b) is recovered pursuant
33 to subdivisions (2) and (3) of subsection (d) of this section for the costs described in G.S.
34 ~~143-215.94B(b)~~, 143-215.94B(b) or G.S. 143-215.94B(b1), the Department shall transfer
35 funds from the Commercial Fund that would have been paid from the Commercial Fund
36 pursuant to ~~G.S. 143-215.94B(b)~~ subsection (b) or (b2) of G.S. 143-215.94B if the owner
37 or operator had proceeded with the cleanup, but which were paid from the
38 Noncommercial Fund, into the Noncommercial Fund."

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

40 "**§ 143-215.94K. Penalties-Enforcement.**

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

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

2 **"§ 143-215.94N. Applicability.**

3 (a) The provisions of this Part as they relate to costs paid ~~for by~~ from the
4 Commercial Fund apply only to discharges or releases ~~which that~~ are discovered or
5 reported on or after 30 June 1988-1988 from a commercial underground storage tank that,
6 at the time the discharge or release is discovered or reported, is beneath the surface of the
7 ground or is removed on or after 30 June 1988."

8 (b) The provisions of this Part as they relate to costs paid ~~for by~~ from the
9 Noncommercial Fund apply to discharges or releases without regard to the date
10 discovered or reported; however, ~~costs sought pursuant to reimbursement of costs under~~
11 G.S. 143-215.94G(d)(1), (2), (3), (3a), and (4) shall be for the full amount of the costs
12 paid for from the Noncommercial Fund and shall not be limited pursuant to G.S. 143-
13 215.94E(b) for discharges or releases from commercial underground storage tanks
14 discovered or reported on or before 30 June 1988."

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

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

- 25 a. The person knows or has reason to know that a discharge is
26 occurring from the petroleum underground storage tank at the
27 time of supply or delivery;
28 b. The person's negligence is a proximate cause of the discharge; or
29 c. The person supplies or delivers oil at a facility that requires an
30 operating permit under G.S. 143-215.94U and a currently valid
31 operating permit certificate is not held or displayed at the time of
32 the supply or delivery."

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

34 "(a1) The Commission shall not require collection or removal of a discharge or
35 restoration of an affected area under subsection (a) of this section if the person having
36 control over oil or other hazardous substances discharged in violation of this Article
37 complies with rules governing the collection and removal of a discharge and the
38 restoration of an affected area adopted by the Commission pursuant to G.S. 143-214.1 or
39 G.S. 143-215.94V. This subsection shall not be construed to affect the rights of any
40 person under this Article or any other provision of law."

41 Sec. 14. In order to uniformly implement the operating permit program on 1
42 July 1996, the Department of Environment, Health, and Natural Resources shall begin
43 issuing operating permits and operating permit certificates required under G.S. 143-

1 215.94U, as enacted by Section 6 of this act, not later than 1 January 1996. The
2 Department shall issue an operating permit and an operating permit certificate for every
3 facility that meets the requirements of G.S. 143-215.94U(a) by 1 July 1996. Operating
4 permits and operating permit certificates issued prior to 1 July 1996 shall be effective on
5 1 July 1996 and shall expire as provided in G.S. 143-215.94U(b).

6 Sec. 15. (a) There is appropriated from the Commercial Leaking Petroleum
7 Underground Storage Tank Cleanup Fund to the Department of Environment, Health, and
8 Natural Resources the sum of two million seven hundred seventy-five thousand dollars
9 (\$2,775,000) for the 1995-96 fiscal year and the sum of two million six hundred twenty-
10 five thousand dollars (\$2,625,000) for the 1996-97 fiscal year to implement the
11 provisions of Part 2A and Part 2B of Article 21A of Chapter 143 of the General Statutes.

12 (b) There is appropriated from the Noncommercial Leaking Petroleum
13 Underground Storage Tank Cleanup Fund to the Department of Environment, Health, and
14 Natural Resources the sum of eight hundred thousand dollars (\$800,000) for the 1995-96
15 fiscal year and the sum of eight hundred thousand dollars (\$800,000) for the 1996-97
16 fiscal year to implement the provisions of Part 2A and Part 2B of Article 21A of Chapter
17 143 of the General Statutes.

18 (c) There is appropriated from the Commercial Leaking Petroleum Underground
19 Storage Tank Cleanup Fund to the Department of Agriculture the sum of one hundred
20 thirty-five thousand dollars (\$135,000) for the 1995-96 fiscal year and the sum of ninety
21 thousand dollars (\$90,000) for the 1996-97 fiscal year to implement the provisions of Part
22 2A and Part 2B of Article 21A of Chapter 143 of the General Statutes.

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

32 Sec. 16. The provisions of G.S. 143-215.94V, as enacted by Section 1 of this
33 act, shall constitute a recent act of the General Assembly within the meaning of G.S.
34 150B-21.1(a)(2). The provisions of G.S. 150B-21.1(b) shall not apply to temporary rules
35 implementing G.S. 143-215.94V, as enacted by Section 1 of this act. Notwithstanding
36 G.S. 150B-21.1(d), temporary rules adopted to implement G.S. 143-215.94V, as enacted
37 by Section 1 of this act, may remain in effect until the Environmental Management
38 Commission adopts permanent rules.

39 Sec. 17. Sections 1, 4, 12, 13, 14, 16, and 17 are effective upon ratification.
40 Section 2 of this act becomes effective 1 July 1996. Sections 3 and 10 of this act become
41 effective 1 January 1996 and apply to offenses occurring or continuing on or after that
42 date. Sections 5, 7, 8, 9, and 11 of this act are effective upon ratification, apply to any
43 pending claim for reimbursement, and apply retroactively to any discharge or release that

1 was discovered or reported on or after 30 June 1988, except that G.S. 143-215.94E(f1), as
2 enacted by Section 8 of this act, applies only to payments and reimbursements made on
3 or after the date this act becomes effective. Section 6 of this act becomes effective 1
4 January 1996. Section 15 of this act is effective on and after 1 July 1995.