

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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SENATE BILL 1331*

Short Title: End CDE LUST Cleanups.

(Public)

Sponsors: Senators Horton; and Cochrane.

Referred to: Agriculture/Environment/Natural Resources.

May 27, 1998

A BILL TO BE ENTITLED

1 AN ACT TO REQUIRE THE ENVIRONMENTAL MANAGEMENT COMMISSION
2 TO CLASSIFY THE IMPACT OF LEAKING PETROLEUM UNDERGROUND
3 STORAGE TANKS AS EITHER AB OR CDE AND TO PROVIDE THAT THE
4 OWNER OR OPERATOR OF A LEAKING UNDERGROUND STORAGE TANK
5 THAT HAS A CDE IMPACT SHALL NOT BE REQUIRED TO CLEAN UP THE
6 DISCHARGE OR RELEASE, AS RECOMMENDED BY THE ENVIRONMENTAL
7 REVIEW COMMISSION.
8

9 The General Assembly of North Carolina enacts:

10 Section 1. G.S. 143-215.94V reads as rewritten:

11 "**§ 143-215.94V. Standards for petroleum underground storage tank cleanup.**

12 (a) Legislative findings and intent.

13 (1) The General Assembly finds that:

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

18 b. The sites at which discharges or releases from underground
19 storage tanks occur vary greatly in terms of complexity, soil
20 types, hydrogeology, other physical and chemical characteristics,

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

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

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

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

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

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

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

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

1 (h) The Department shall classify the impact of each known discharge or release of
2 a petroleum product from an underground storage tank as either a Class AB impact or a
3 Class CDE impact. The Department shall make the classification on the basis of
4 information currently known by the Department or provided to the Department as
5 required by law. The Department shall revise the classification as additional information
6 is received. The impact of a discharge or release is a Class CDE impact unless and until
7 it is classified as a Class AB impact. A discharge or release has a Class AB impact if and
8 only if any of the following apply:

9 (1) A water supply well is contaminated.

10 (2) Petroleum vapor is present in a confined space.

11 (3) A water supply well is located within 1,500 feet of the discharge,
12 release, or known extent of contamination and there is a user of water
13 from any water supply well located within 1,500 feet of the discharge,
14 release, or known extent of contamination who is not served by an
15 existing public water supply.

16 (4) The discharge or release results in a violation of drinking water
17 standards set out in rules adopted by the Commission for Health
18 Services under G.S. 130A-315 in a treated surface water supply.

19 (5) The discharge or release poses an imminent danger to public health,
20 public safety, or the environment.

21 (i) The Department shall give notice of the classification of the impact of a
22 cleanup of a discharge or release from a petroleum underground storage tank by
23 publishing the classification in the North Carolina Register. To the maximum extent
24 practical, the Department shall give notice of the classification of the impact of a cleanup
25 of a discharge or release from a petroleum underground storage tank by first-class mail to
26 either the owner, operator, or other person responsible for the cleanup as shown on
27 records maintained by the Department at the address on file with the Department.

28 (j) Notwithstanding the provisions of G.S. 143-215.84, G.S. 143-215.94E and the
29 rules adopted pursuant to subsection (b) of this section, the Commission shall not require
30 the cleanup of a discharge or release from a petroleum underground storage tank having a
31 Class CDE impact except that an owner, operator, or other person responsible for the
32 cleanup of a discharge or release from a petroleum underground storage tank shall:

33 (1) Take immediate action to prevent any further release or discharge of
34 petroleum from the underground storage tank; identify and mitigate any
35 fire, explosion, or vapor hazard; and remove any free petroleum
36 product.

37 (2) Meet applicable requirements of 40 Code of Federal Regulations §
38 280.50 through § 280.53 and § 280.60 through § 280.64 (1 July 1995
39 Edition).

40 (3) Submit any information that the Department may require to classify the
41 impact of the discharge or release pursuant to this section.

42 (k) If the impact of a discharge or release is classified as having a Class CDE
43 impact, the Department shall not pay or reimburse any costs otherwise payable or

1 reimbursable under this Part from either the Commercial Fund or Noncommercial Fund
2 unless:

- 3 (1) The costs are incurred to comply with subsection (j) of this section.
- 4 (2) The payment or reimbursement is for costs that were incurred prior to
5 notification that the impact of the discharge or release has been
6 classified as Class CDE by the Department.
- 7 (3) The payment or reimbursement is for costs that were incurred for a
8 discharge or release the impact of which is subsequently classified as a
9 Class AB impact by the Department.
- 10 (4) Cleanup is ordered or damages are awarded in a finally adjudicated
11 judgment in an action against the owner, operator, or landowner.
- 12 (5) Cleanup is required or damages are agreed to in a consent judgment
13 approved by the Department prior to its entry by the court.
- 14 (6) Cleanup is required or damages are agreed to in a settlement agreement
15 approved by the Department prior to its execution by the parties.
- 16 (7) The Department approves continuation of the cleanup as provided in
17 subsection (l) of this section.

18 (l) An owner, operator, or landowner who is responsible for the cleanup from a
19 discharge or release who is not eligible to have the costs of the cleanup paid or
20 reimbursed because the impact of the discharge or release has been classified as a Class
21 CDE impact may petition the Department for continued eligibility for payment or
22 reimbursement. The Department shall authorize continuation of the cleanup only if the
23 owner, operator, or landowner responsible for the cleanup establishes that:

- 24 (1) The owner, operator, or landowner responsible for cleanup has incurred
25 costs that are reimbursable under G.S. 143-215.94E(e), or that would be
26 reimbursable if those costs were in excess of the costs for which the
27 owner, operator, or landowner is responsible under G.S. 143-215.94B,
28 143-215.94D, or 143-215.94E.
- 29 (2) The owner, operator, or landowner either has paid or will pay all costs
30 for which the owner, operator, or landowner is responsible.
- 31 (3) Discontinuation of the cleanup will result in a hardship. For purposes of
32 this subdivision, a hardship exists if and only if the discontinuation of
33 the cleanup will prevent the conveyance through a bona fide sale for
34 value of the property where the discharge or release occurred. The
35 owner, operator, or landowner responsible for the cleanup shall present
36 a contract of sale executed on or before 31 December 1996 that is
37 contingent on continuation of the cleanup. If the conveyance of the
38 property does not occur within 120 days after the contract of sale is
39 executed or under the terms of the contract for any reason, the
40 Department shall discontinue eligibility under this subsection."

41 Section 2. This act is effective when it becomes law.