

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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HOUSE BILL 1222

Short Title: Underground Storage Tank Amends.

(Public)

Sponsors: Representatives Nesbitt; and H. Hunter.

Referred to: Finance.

May 10, 1991

A BILL TO BE ENTITLED

AN ACT TO AMEND VARIOUS STATUTES RELATING TO THE CLEANUP OF LEAKING PETROLEUM UNDERGROUND STORAGE TANKS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-215.94A is amended by adding two new subdivisions to read:

"(2b) 'Loan Fund' means the Groundwater Protection Loan Fund.

(8) 'Board' means North Carolina Petroleum Underground Storage Tank Funds Board."

Sec. 2. G.S. 143-215.94B(b) reads as rewritten:

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

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

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

1 (3) For discharges or releases discovered or reported on or after 1 January
 2 1994, the cleanup of environmental damage as required by G.S. 143-
 3 215.94E(a) in excess of twenty thousand dollars (\$20,000) if, prior to
 4 the discharge or release, the commercial underground storage tank
 5 from which the discharge or release occurs met the performance
 6 standards applicable to tanks installed after 22 December 1988 or met
 7 the requirements that existing underground storage tanks must meet by
 8 22 December 1998.

9 (4) For discharges or releases discovered or reported after 1 January 1994
 10 from a commercial underground storage tank that does not meet the
 11 standards referred to in subdivision (3) of this subsection, sixty percent
 12 (60%) of the cost of the cleanup of environmental damage as required
 13 by G.S. 143-215.94E(a) in excess of twenty thousand dollars (\$20,000)
 14 up to one hundred thirty-seven thousand five hundred dollars
 15 (\$137,500) and one hundred percent (100%) of such costs above one
 16 hundred thirty-seven thousand five hundred dollars (\$137,500) per
 17 occurrence, up to the limits established in this section.

18 ~~(2)~~(5) Compensation to third parties for bodily injury and property damage in
 19 excess of one hundred thousand dollars (\$100,000) per occurrence."

20 Sec. 3. G.S. 143-215.94B(d) reads as rewritten:

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

- 22 (1) Costs incurred as a result of a discharge or release from an
 23 aboveground tank, aboveground pipe or fitting not connected to an
 24 underground storage tank, or vehicle;
 25 (2) The removal or replacement of any tank, pipe, fitting or related
 26 equipment;
 27 (3) Costs incurred as a result of a discharge or release of petroleum from a
 28 transmission pipeline;
 29 (4) Costs intended to be paid by the Noncommercial Fund; or
 30 (5) Costs associated with the administration of any underground storage
 31 tank program other than the program administered pursuant to this
 32 Part."

33 Sec. 4. G.S. 143-215.94C reads as rewritten:

34 "**§ 143-215.94C. (Expires December 31, 1998) Commercial leaking petroleum**
 35 **underground storage tank cleanup fees.**

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

- 39 (1) For each petroleum commercial underground storage tank of
 40 3,500 gallons or less capacity ~~—forty five dollars (\$45.00).~~ one
 41 hundred dollars (\$100.00).
 42 (2) For each petroleum commercial underground storage tank of more
 43 than 3,500 gallon capacity ~~—seventy five dollars (\$75.00).~~ one hundred
 44 fifty dollars (\$150.00).

1 (b) The annual operating fee shall be determined on a calendar year basis. For
2 petroleum commercial underground storage tanks in use on 1 January, the annual
3 operating fee due for that year shall be as specified in subsection (a) of this section. For
4 petroleum commercial underground storage tanks which are first placed in use in any
5 year, the annual operating fee due for that year shall be determined by multiplying one-
6 twelfth (1/12) of the amount specified in subsection (a) of this section by the number of
7 months remaining in the calendar year. The annual operating fee shall be due and
8 payable on the first day of the month in accordance with a staggered schedule
9 established by the Department. The Department shall implement a staggered schedule
10 to the end that the total amount of fees to be collected by the Department is
11 approximately the same each month. A person who owns or operates more than one
12 commercial petroleum underground storage tank may request that the fee for all tanks
13 be due at the same time. A person who owns or operates 12 or more commercial
14 petroleum storage tanks may request that the total of all fees be paid in four equal
15 payments to be due on the first day of each calendar quarter.

16 (c) Beginning no later than sixty days before the first due date of the annual
17 operating fee imposed by this section, any person who deposits a petroleum product in a
18 commercial underground storage tank that would be subject to the annual operating fee
19 shall, at least once in each calendar year during which such deposit of a petroleum
20 product is made, notify the owner or operator of the duty to pay the annual operating
21 fee. The requirement to notify pursuant to this subsection does not constitute a duty
22 owed by the person depositing a petroleum product in a commercial underground
23 storage tank to the owner or operator and the person depositing a petroleum product in
24 an underground storage tank shall not incur any liability to the owner or operator for
25 failure to give notice of the duty to pay the operating fee.

26 (d) If, on 1 ~~July~~October in any year the Commercial Fund balance exceeds ~~fifteen~~
27 thirty million dollars (~~\$15,000,000~~), (\$30,000,000), the requirement to pay an annual
28 operating fee pursuant to this section shall be suspended for any calendar year thereafter
29 until the Commercial Fund balance is ~~five~~twenty million dollars (~~\$5,000,000~~)
30 (\$20,000,000) or less, at which time the requirement to pay the annual operating fee
31 shall be reinstated beginning with the next calendar year. A suspension of the
32 requirement to pay an annual operating fee for any calendar year shall not be construed
33 to relieve any person of the obligation to pay the full amount of annual operating fees
34 due under this section for any other year.

35 (e) Any owner or operator of a commercial underground storage tank who fails
36 to pay a tank fee due under this section within 30 days of the date that the fee is first due
37 and payable shall pay, in addition to such fee, a late fee of five dollars (\$5.00) per day
38 per commercial underground storage tank, up to a maximum equal to the tank fee due."

39 Sec. 5. G.S. 143-215.94C(a), as amended by Section 4 of this act, reads as
40 rewritten:

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

- 1 (1) For each petroleum commercial underground storage tank of
2 3,500 gallons or less capacity ~~—forty five dollars (\$45.00)—~~one
3 hundred fifty dollars (\$150.00).
4 (2) For each petroleum commercial underground storage tank of more
5 than 3,500 gallon capacity ~~—seventy five dollars (\$75.00)—~~two hundred
6 twenty-five dollars (\$225.00)."

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

8 **"§ 143-215.94D. (Expires December 31, 1998) Noncommercial leaking petroleum**
9 **underground storage tank cleanup fund.**

10 (a) There is established under the control and direction of the Department the
11 Noncommercial Leaking Petroleum Underground Storage Tank Cleanup Fund. This
12 Noncommercial Fund shall be a nonreverting revolving fund consisting of any monies
13 appropriated for such purpose by the General Assembly or available to it from grants, or
14 other monies paid to it or recovered on behalf of the Noncommercial Fund.

15 (b) The Noncommercial Fund shall be used for the payment of the ~~following costs~~
16 set out in subsection (b1) of this section, up to an aggregate maximum of one million
17 dollars (\$1,000,000) per occurrence resulting from a discharge or release of a petroleum
18 product from:

- 19 (1) ~~(i) noneommereial~~Noncommercial underground storage tanks, ~~tanks if~~
20 the discharge or release meets the minimum priority criteria for
21 corrective action established by the Department.
22 (2) ~~(ii) commereial~~Commercial underground storage tanks ~~where~~if the
23 owner or operator cannot be identified or fails to proceed with the
24 ~~cleanup, and cleanup.~~
25 (3) ~~(iii) commereial~~Commercial underground storage tanks ~~which~~that were
26 taken out of operation prior to 1 January 1974 ~~where, if,~~ at the time the
27 discharge or release is discovered, neither the owner or operator owns
28 or leases the lands on which the tank is ~~located:~~located.
29 (4) Commercial underground storage tanks if the owner of the commercial
30 underground storage tank is the owner only because he is the owner of
31 the land on which the commercial underground storage tank is located,
32 the owner did not know or have reason to know that the underground
33 storage tank was located on his property, and the land was not
34 transferred to the owner to avoid liability for the commercial
35 underground storage tank.

36 (b1) The Noncommercial Fund shall be used for the payment of the costs of:

- 37 (1) The cleanup of environmental damage as required by G.S. 143-
38 215.94E(a); and
39 (2) Compensation to third parties for bodily injury and property damage in
40 excess of one hundred thousand dollars (\$100,000) per occurrence.

41 (b2) The Noncommercial Fund may also be used by the Department for the
42 payment of costs necessary to render harmless any commercial or noncommercial
43 underground storage tank from which a discharge or release has not occurred but which
44 poses an imminent hazard to the environment if the owner or operator cannot be

1 identified or located, or if the owner or operator fails to take action to render harmless
2 the underground storage tank within 90 days after having been notified of the imminent
3 hazard posed by the underground storage tank. The Secretary may seek to recover the
4 costs of such action from the owner or operator as provided in G.S. 143-215.94G.

5 (c) The Noncommercial Fund is to be available on an occurrence basis, without
6 regard to number of occurrences associated with tanks owned or operated by the same
7 owner or operator.

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

- 9 (1) Costs incurred as a result of a discharge or release from an
10 aboveground tank, aboveground pipe or fitting not connected to an
11 underground storage tank, or vehicle;
- 12 (2) The removal or replacement of any tank, pipe, fitting or related
13 equipment;
- 14 (3) Costs incurred as a result of a discharge or release of petroleum from a
15 transmission pipeline;
- 16 (4) Costs intended to be paid for by the Commercial Fund; or
- 17 (5) Costs associated with the administration of any underground storage
18 tank program other than the program administered pursuant to this
19 Part.

20 (e) The Noncommercial Fund shall be treated as a special trust fund and shall be
21 credited with interest by the State Treasurer pursuant to G.S. 147-69.2 and G.S. 147-
22 69.3."

23 Sec. 7. G.S. 143-215.94E reads as rewritten:

24 "**§ 143-215.94E. (Expires December 31, 1998) Rights and obligations of the owner**
25 **and operator.**

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

31 (b) In the case of a discharge or release from a commercial underground storage
32 tank where the owner or operator has been identified and has proceeded with cleanup,
33 the owner or operator may elect to have the Commercial Fund pay or reimburse the
34 owner or operator for any costs described in G.S. 143-215.94B(b) ~~which exceed fifty~~
35 ~~thousand dollars (\$50,000) for the cleanup of environmental damage and one hundred thousand~~
36 ~~dollars (\$100,000) for compensating third parties for bodily injury and property damage up to~~
37 ~~an aggregate maximum of one million dollars (\$1,000,000) per discharge or release. that~~
38 exceed the amounts for which the owner or operator is responsible under that section.
39 The sum of payments by the owner or operator and the payments from the Commercial
40 Fund shall not exceed one million dollars (\$1,000,000) per discharge or release.

41 (c) In the case of a discharge or release from a noncommercial underground
42 storage tank, the owner or operator may elect to have the Noncommercial Fund pay or
43 reimburse the owner or operator for the costs described in G.S. 143-215.94D(b) up to a
44 maximum of one million dollars (\$1,000,000) per discharge or release.

1 (d) In any case where the costs described in G.S. 143-215.94B(b) or G.S. 143-
2 215.94D(b) exceed one million dollars (\$1,000,000), the provisions of Article 21A of
3 this Chapter or any other applicable statute or common law regarding liability shall
4 apply for the amount in excess of one million dollars (\$1,000,000). Nothing contained
5 in this Part shall limit or modify any liability that any party may have pursuant to
6 Article 21A of this Chapter, any other applicable statute, or at common law.

7 (e) When the owner or operator pays the costs described in G.S. 143-215.94B(b)
8 or G.S. 143-215.94D(b) resulting from a discharge or release of petroleum from an
9 underground storage tank, the owner or operator may seek reimbursement from the
10 appropriate fund for any costs he may elect to have either the Commercial or the
11 Noncommercial Fund pay in accordance with subsections (b) and (c) of this section.
12 The Department shall reimburse the owner or operator for all costs he may elect to have
13 the appropriate fund pay ~~for which prior approval was obtained and appropriate~~
14 ~~documentation was submitted, and any other costs which the Department determines to be~~
15 reasonable and necessary and for which appropriate documentation is submitted. The
16 Board shall establish guidelines (i) for use in determining what costs are reasonable and
17 necessary, and (ii) governing the procedures applicable to claims for reimbursement of
18 costs under this section. An owner or operator whose claim for reimbursement is
19 denied may appeal a decision of the Department as provided in Article 3 of Chapter
20 150B of the General Statutes. If the owner or operator is eligible for reimbursement
21 under this section and the cleanup extends beyond a period of three months, the owner
22 or operator may apply to the Department for interim reimbursements to which he is
23 entitled under this section on a quarterly basis.

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

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

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

37 (h) Subdivision (1) of subsection (g) of this section shall not be construed to limit
38 the right of an owner or operator to contest notices of violation or orders issued by the
39 Department."

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

41 "**§ 143-215.94G. (Expires December 31, 1998) Authority of the Department to**
42 **engage in cleanups; actions for fund reimbursement.**

43 (a) ~~Whenever a discharge or release of petroleum is from:~~

- 44 (1) ~~A noncommercial underground storage tank;~~

- 1 (2) ~~An underground storage tank where the owner or operator cannot be~~
2 ~~identified or located;~~
3 (3) ~~An underground storage tank where the owner or operator fails to~~
4 ~~proceed as required by G.S. 143-215.94E(a); or~~
5 (4) ~~A commercial underground storage tank which was taken out of~~
6 ~~operation prior to 1 January 1974 where, at the time the discharge or~~
7 ~~release is discovered, neither the owner or operator owns or leases the~~
8 ~~land on which the underground storage tank is located;~~

9 ~~the~~ The Department is authorized and empowered to use staff, equipment, or materials
10 under its control or provided by other cooperating federal, State, or local agencies and to
11 contract with any agent or contractor it deems appropriate to develop and implement a
12 cleanup plan and to pay the costs authorized by G.S. 143-215.94D(b) from the
13 Noncommercial Fund. Fund whenever there is a a discharge or release of petroleum
14 from:

- 15 (1) A noncommercial underground storage tank;
16 (2) An underground storage tank where the owner or operator cannot be
17 identified or located;
18 (3) An underground storage tank where the owner or operator fails to
19 proceed as required by G.S. 143-215.94E(a); or
20 (4) A commercial underground storage tank which was taken out of
21 operation prior to 1 January 1974 where, at the time the discharge or
22 release is discovered, neither the owner or operator owns or leases the
23 land on which the underground storage tank is located.

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

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

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

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

- 1 (1) Any costs not authorized to be paid from either the Commercial or the
2 Noncommercial Fund;
- 3 (2) The amounts provided for in G.S. 143-215.94B(b) required to be paid
4 for by the owner or operator pursuant to G.S. 143-215.94E(b) where
5 the owner or operator of a commercial underground storage tank is
6 later identified or located;
- 7 (3) The amounts provided for in G.S. 143-215.94B(b) required to be paid
8 for by the owner or operator pursuant to G.S. 143-215.94E(b) where
9 the owner or operator of a commercial underground storage tank failed
10 to proceed as required by G.S. 143-215.94E(a);
- 11 (4) Any funds due under G.S. 143-215.94E(g); and
- 12 (5) Any funds to which the State is entitled under any federal program
13 providing for the cleanup of petroleum discharges or releases from
14 underground storage tanks.

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

21 (f) In the event that a recovery equal to or in excess of the amounts required to
22 be paid for by the owner or operator pursuant to G.S. 143-215.94E(b) is recovered
23 pursuant to subdivisions (2) and (3) of subsection (d) of this section for the costs
24 described in G.S. 143-215.94B(b), the Department shall transfer funds from the
25 Commercial Fund that would have been paid from the Commercial Fund pursuant to
26 G.S. 143-215.94B(b) if the owner or operator had proceeded with the cleanup, but
27 which were paid from the Noncommercial Fund, into the Noncommercial Fund."

28 Sec. 9. G.S. 143-215.94J(e) reads as rewritten:

29 "(e) If at any time either fund balance is insufficient to pay all valid claims against
30 it, such claims shall be paid in full in the order in which they ~~were finally determined~~ are
31 finally determined, provided that the Secretary may retain not more than five hundred
32 thousand dollars (\$500,000) in the Noncommercial Fund as a contingency reserve.
33 Such contingency reserve may be used by the Department to conduct cleanups in
34 accordance with G.S. 143-215.94G where there is an imminent hazard which poses a
35 threat to human health or to significant natural resources."

36 Sec. 10. G.S. 143-215.94L reads as rewritten:

37 "**§ 143-215.94L. (Expires December 31, 1998) Adoption of rules; administrative**
38 **procedure; short title; miscellaneous provisions.**

39 (a) The Commission may adopt rules necessary to implement the provisions of
40 this Part. Except as may be otherwise specifically provided, the provisions of Chapter
41 150B of the General Statutes apply to this Part.

42 (b) This Part shall be administered by the Department consistent with the
43 provisions of Title VI, § 601 of the Hazardous and Solid Waste Amendments of 1984,
44 Pub. L. No. 98-616, 42 U.S.C. 6991 **et seq.**, as amended.

1 (c) The provisions of this Part and of Part 2 of this Article are intended to be
 2 complementary. This Part shall not be construed to limit the liability under G.S. 143-
 3 215.84(a) of any person or to limit the authority of the Department to take any action
 4 pursuant to G.S. 143-215.84(b).

5 (d) This Part shall be known and may be cited as the Leaking Petroleum
 6 Underground Storage Tank Cleanup Act of 1988."

7 Sec. 11. G.S. 143-215.94M reads as rewritten:

8 "**§ 143-215.94M. (Expires December 31, 1998) Annual reports.**

9 (a) The Secretary shall present ~~an annual~~ a semiannual report to the ~~General~~
 10 ~~Assembly—~~Joint Legislative Commission on Governmental Operations and the
 11 Environmental Review Commission which shall include at least the following:

- 12 (1) A list of all discharges or releases of petroleum from underground
 13 storage tanks;
- 14 (2) A list of all cleanups requiring State funding through the
 15 Noncommercial Fund and a comprehensive budget to complete such
 16 cleanups;
- 17 (3) A list of all cleanups undertaken by tank owners or operators and the
 18 status of these cleanups;
- 19 (4) A statement of receipts and disbursements for both funds;
- 20 (5) A statement of all claims against both funds including claims paid,
 21 claims denied, pending claims, and anticipated claims, and any other
 22 obligations; ~~and~~
- 23 (6) The adequacy of both funds to carry out the purposes of this ~~Part~~ Part;
 24 and
- 25 (7) A statement of the condition of the Loan Fund and a summary of all
 26 activity under the Loan Fund.

27 (b) The ~~annual~~ semiannual reports required by this section shall be made by the
 28 Secretary on ~~1 January~~ 1 March and 1 September of each year beginning ~~1 January 1990.~~
 29 1 March 1992."

30 Sec. 12. Part 2A of Article 21A of Chapter 143 of the General Statutes is
 31 amended by adding a new section to read:

32 "**§ 143-215.94O. Petroleum Underground Storage Tank Funds Board.**

33 (a) The North Carolina Petroleum Underground Storage Tank Funds Board is
 34 hereby created. The Board shall be composed of nine members as follows:

- 35 (1) An employee of the Department who is not employed by the section of
 36 the Division of Environmental Management responsible for the
 37 administration of the underground storage tank cleanup program who
 38 shall be appointed by the Secretary and who shall serve at the pleasure
 39 of the Secretary.
- 40 (2) Four members appointed by the General Assembly upon the
 41 recommendation of the President Pro Tempore of the Senate as
 42 follows:

- 1 a. One who shall, at the time of appointment, be actively
2 connected with a petroleum refining company or an
3 organization representing petroleum refining companies.
4 b. One who shall, at the time of appointment, be actively
5 connected with a petroleum marketer or an organization
6 representing petroleum marketers.
7 c. One who shall, at the time of appointment, be actively
8 connected with an environmental advocacy organization.
9 d. One who shall, at the time of appointment, be actively
10 connected with a commercial lending institution or an
11 organization representing commercial lending institutions.
12 (3) Four members appointed by the General Assembly upon the
13 recommendation of the Speaker of the House of Representatives as
14 follows:
15 a. One who shall, at the time of appointment, be an owner or
16 operator of a convenience store that markets petroleum products
17 or is actively connected with an organization representing
18 convenience store owners or operators.
19 b. One who shall, at the time of appointment, be a motor fuel
20 service station dealer or actively connected with an organization
21 representing motor fuel service station dealers.
22 c. One who shall, at the time of appointment, be actively
23 connected with an environmental insurance carrier or an
24 organization representing environmental insurance carriers.
25 d. One who shall, at the time of appointment, have special training
26 and experience in the remediation of groundwater
27 contamination resulting from leaking petroleum underground
28 storage tanks.
29 (b) The members of the Board shall elect a chairman and a vice-chairman.
30 (c) All appointments made by the General Assembly shall be for a term of two
31 years. Terms shall expire on 30 June except that members shall serve until their
32 successors are appointed and duly qualified as provided in G.S. 128-7. The General
33 Assembly shall have the power to remove, in accordance with G.S. 143B-13, any
34 member appointed by the General Assembly.
35 (d) The Secretary shall provide staff assistance to the Board from the agency
36 responsible for administration of the underground storage tank cleanup program.
37 (e) Members of the Board who are not State employees shall be reimbursed for
38 their expenses in accordance with G.S. 138-5. Members of the Board who are State
39 employees shall be reimbursed for their expenses in accordance with G.S. 138-6.
40 (f) The Board shall meet upon the call of the Chairman or a majority of its
41 members. A majority of its members shall constitute a quorum for the transaction of
42 business.
43 (g) The Board shall:

- 1 (1) Review the administration of the Commercial Fund, the
2 Noncommercial Fund, and the Loan Fund.
- 3 (2) Advise the Secretary and the Commission on any matter relating to the
4 effective and efficient implementation of this Part.
- 5 (3) Advise the Secretary on the adequacy of the funds to carry out the
6 purposes of this Part.
- 7 (4) Establish guidelines, in accordance with generally accepted standards
8 prevailing among commercial lending institutions, for use in
9 determining eligibility for loans, interest rates, terms, and conditions
10 applicable to loans, and in managing the Loan Fund.
- 11 (5) Serve as the loan committee to review applications for loans from the
12 Loan Fund.
- 13 (6) Establish guidelines governing reimbursement of necessary and
14 reasonable costs under G.S. 143-215.94E(e).

15 (h) The provisions of Chapter 150B of the General Statutes shall apply to
16 subsection (g) of this section except that:

- 17 (1) Article 2 of Chapter 150B of the General Statutes shall not apply to
18 subdivisions (4) and (6) of subsection (g) of this section.
- 19 (2) Articles 3 and 3A of Chapter 150B of the General Statutes shall not
20 apply to subdivision (5) of subsection (g) of this section."

21 Sec. 13. Part 2A of Article 21A of Chapter 143 of the General Statutes is
22 amended by adding a new section to read:

23 **"§ 143-215.94P. Groundwater Protection Loan Fund.**

24 (a) There is established under the control and direction of the Department the
25 Groundwater Protection Loan Fund. This Loan Fund shall be a nonreverting revolving
26 fund consisting of any monies appropriated for such purpose by the General Assembly
27 or available to it from grants, and other monies paid to it or recovered on behalf of the
28 Loan Fund.

29 (b) The Loan Fund shall be used to provide loans to the owners of commercial
30 petroleum underground storage tanks who are unable to secure conventional loans to
31 upgrade or replace commercial underground storage tanks in use on 1 July 1991 so as to
32 meet the performance standards applicable to tanks installed after 22 December 1988 or
33 the requirements that existing underground storage tanks must meet by 22 December
34 1998. All applications for loans under this section must be received by the Department
35 prior to 1 January 1995.

36 (c) The Department shall use generally accepted standards prevailing among
37 commercial lending institutions, as established by the Board, in managing the Loan
38 Fund.

39 (d) The Department may administer the loan program through existing
40 commercial lending institutions. All charges for securing loans, including the payment
41 of application fees, attorneys' fees, and recording costs shall be paid by the borrower.

42 (e) Funds received in repayment of loans made from the Loan Fund shall be
43 deposited into the Loan Fund until the proceeds of all approved loans are disbursed to
44 the borrowers. Thereafter, funds received in repayment of loans made from the Loan

1 Fund and any other funds remaining in the Loan Fund shall be deposited in the
2 Commercial Fund.

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

5 Sec. 14. G.S. 143-215.84(a) reads as rewritten:

6 "(a) Person Discharging. – Any person having control over oil or other hazardous
7 substances discharged in violation of this Article shall immediately undertake to collect
8 and remove the discharge and to restore the area affected by the discharge as nearly as
9 may be to the condition existing prior to the discharge. If it is not feasible to collect and
10 remove the discharge, the person responsible shall take all practicable actions to
11 contain, treat and disperse the discharge; but no chemicals or other dispersants or
12 treatment materials which will be detrimental to the environment or natural resources
13 shall be used for such purposes unless they shall have been previously approved by the
14 Commission. The owner of an underground storage tank who is the owner of the tank
15 only because he is the owner of the land on which the underground storage tank
16 located, who did not know or have reason to know that the underground storage tank
17 was located on his property, and who did not become the owner of the land as the result
18 of a transfer or transfers to avoid liability for the underground storage tank shall not be
19 deemed to be responsible for a release or discharge from the underground storage tank."

20 Sec. 15. Part 2A of Article 21A of Chapter 143 of the General Statutes is
21 amended by adding a new section to read:

22 "**§ 143-215.94Q. Groundwater protection fee.**

23 (a) A fee of one-half cent ($\frac{1}{2}\text{¢}$) per gallon is levied on motor fuel sold,
24 distributed, or used by a distributor within the State. The fee shall be collected in
25 accordance with Article 36 of Chapter 105 of the General Statutes.

26 (b) The Secretary of Revenue shall distribute one-half of the monies collected
27 pursuant to subsection (a) of this section to the Commercial Fund and one-half to the
28 Loan Fund."

29 Sec. 16. G.S. 143-215.94Q, as enacted by Section 15 of this act, reads as
30 rewritten:

31 "**§ 143-215.94Q. Groundwater protection fee.**

32 (a) A fee of ~~one-half cent ($\frac{1}{2}\text{¢}$)~~ one-quarter cent ($\frac{1}{4}\text{¢}$) per gallon is levied on motor
33 fuel sold, distributed, or used by a distributor within the State. The fee shall be
34 collected in accordance with Article 36 of Chapter 105 of the General Statutes.

35 (b) The Secretary of Revenue shall distribute ~~one-half of the monies collected~~
36 ~~pursuant to subsection (a) of this section to the Commercial Fund and one-half to the Loan~~
37 ~~Fund."~~

38 Sec. 17. Section 5 of Chapter 1035 of the 1987 Session Laws, as amended
39 by Section 16 of Chapter 652 of the 1989 Session Laws, reads as rewritten:

40 "Sec. 5. G.S. 143-215.94B through G.S. 143-215.94E, G.S. 143-215.94G, and G.S.
41 143-215.94J through G.S. ~~143-215.94N-143-215.94Q~~ as enacted by Section 1 of this act
42 as amended, and Section 2 of this act expire 31 December 1998. References to expired
43 sections in unexpired sections shall be read to give effect to the unexpired sections. If
44 either fund created by Section 1 of this act would be obligated under the provisions of

1 this act with respect to any discharge or release reported to the Department of Natural
2 Resources and Community Development or any successor department prior to the
3 expiration of this act, the respective fund may continue to pay any costs incurred in
4 accordance with this act to the extent that funds remain. In the event that funds remain
5 in either fund after the expiration of this act and after all claims and other obligations of
6 both funds have been paid, such remaining funds shall revert to the General Fund."

7 Sec. 18. Sections 3 and 4 of this act become effective 1 January 1992.
8 Section 5 of this act becomes effective on 1 January 1993. Section 15 of this act
9 becomes effective 1 October 1991. Section 16 of this act becomes effective 1 January
10 1995. Sections 1, 2, 6 through 14, and 17 through 18 of this act are effective upon
11 ratification.