

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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SENATE BILL 1317\*

Short Title: Underground Storage Tank Amends. '96.

(Public)

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Sponsors: Senators Blackmon, Kerr; Odom, Albertson, Horton, Plexico, Cooper, and Smith.

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Referred to: Finance.

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May 27, 1996

A BILL TO BE ENTITLED

1  
2 AN ACT TO PROVIDE FOR THE CONTINUED SOLVENCY OF THE  
3 COMMERCIAL LEAKING PETROLEUM UNDERGROUND STORAGE TANK  
4 CLEANUP FUND AND TO MAKE OTHER CHANGES TO THE LEAKING  
5 PETROLEUM UNDERGROUND STORAGE TANK CLEANUP PROGRAM, AS  
6 RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

7 The General Assembly of North Carolina enacts:

8 Section 1. Temporary suspension of cleanups pending adoption of risk-assessment  
9 rules – (a) The definitions set out in G.S. 143-215.94A apply to this section.

10 (b) The Department shall classify the impact of each known discharge or release of  
11 a petroleum product from an underground storage tank as either a Class AB impact or a  
12 Class CDE impact. The Department shall make the classification on the basis of  
13 information currently known by the Department or provided to the Department as  
14 required by law. The Department shall revise the classification as additional information  
15 is received. The impact of a discharge or release is a Class CDE impact unless and until  
16 it is classified as a Class AB impact. A discharge or release has a Class AB impact if and  
17 only if any of the following apply:

- 18 (1) A water supply well is contaminated.  
19 (2) Petroleum vapor is present in a confined space.

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

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

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

11 (c) The Department shall give notice of the classification of the impact of a  
12 cleanup of a discharge or release from a petroleum underground storage tank by  
13 publishing the classification in the North Carolina Register. To the maximum extent  
14 practical, the Department shall give notice of the classification of the impact of a cleanup  
15 of a discharge or release from a petroleum underground storage tank by first-class mail to  
16 either the owner, operator, or person responsible as shown on records maintained by the  
17 Department at the address on file with the Department.

18 (d) The Commission shall not require the cleanup of a discharge or release from a  
19 petroleum underground storage tank having a Class CDE impact except that an owner,  
20 operator, or other person responsible for the cleanup of a discharge or release from a  
21 petroleum underground storage tank shall:

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

26 (2) Meet applicable requirements of 40 Code of Federal Regulations §  
27 280.50 through § 280.53 and § 280.60 through § 280.64 (1 July 1995  
28 Edition).

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

31 (e) If the impact of a discharge or release is classified as having a Class CDE  
32 impact, the Department shall not pay or reimburse any costs otherwise payable or  
33 reimbursable under this Article from either the Commercial Fund or Noncommercial  
34 Fund unless:

35 (1) The costs are incurred to comply with subsection (d) of this section.

36 (2) The payment or reimbursement is for costs that were incurred prior to  
37 notification that the impact of the discharge or release has been  
38 classified as Class CDE by the Department.

39 (3) The payment or reimbursement is for costs that were incurred for a  
40 discharge or release the impact of which is subsequently classified as a  
41 Class AB impact by the Department.

42 (4) Cleanup is ordered or damages are awarded in a finally adjudicated  
43 judgment in an action against the owner, operator, or landowner.

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

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

5 (f) Except for costs incurred to comply with subsection (d) of this section, the  
6 Department shall not pay or reimburse any costs otherwise payable or reimbursable under  
7 this Article from either the Commercial Fund or the Noncommercial Fund for a discharge  
8 or release that is discovered on or after the date this act becomes effective until the  
9 impact of the release has been classified as provided in subsection (b) of this section.

10 Sec. 2. G.S. 143-215.94C(a) reads as rewritten:

11 "(a) For purposes of this subsection, each compartment of a commercial  
12 underground storage tank that is designed to independently contain a petroleum product  
13 is a separate petroleum commercial underground storage tank. The owner or operator of  
14 a commercial petroleum underground storage tank shall pay to the Secretary for deposit  
15 into the Commercial Fund an annual operating fee according to the following schedule:

16 (1) For each petroleum commercial underground storage tank of 3,500  
17 gallons or less capacity ~~—one hundred fifty dollars (\$150.00).~~ two hundred  
18 dollars (\$200.00).

19 (2) For each petroleum commercial underground storage tank of more than  
20 3,500 gallon capacity ~~—two hundred twenty five dollars (\$225.00).~~ three  
21 hundred dollars (\$300.00)."

22 Sec. 3. G.S. 143-215.94E is amended by adding a new subsection to read:

23 "(c1) In the case of a discharge or release from a noncommercial underground  
24 storage tank where the owner and operator cannot be identified or located, or where the  
25 owner and operator fail to proceed as required by subsection (a) of this section, if the  
26 current landowner of the land in which the noncommercial underground storage tank is  
27 located notifies the Department in accordance with G.S. 143-215.85 and undertakes to  
28 collect and remove the discharge or release and to restore the area affected in accordance  
29 with the requirements of this Article and applicable federal and State laws, regulations,  
30 and rules, the current landowner may elect to have the Noncommercial Fund pay or  
31 reimburse the current landowner for ninety percent (90%) of any costs described in  
32 subdivisions (1) and (2) of G.S. 143-215.94D(b1) that exceed five thousand dollars  
33 (\$5,000). Eligibility for reimbursement under this subsection may be transferred to a  
34 subsequent landowner from a current landowner who has paid the costs for which the  
35 landowner is responsible under this subsection. The sum of payments from the  
36 Noncommercial Fund and from all other sources shall not exceed one million dollars  
37 (\$1,000,000) per discharge or release. This subsection shall not be construed to require a  
38 current landowner to cleanup a discharge or release of petroleum from an underground  
39 storage tank for which the current landowner is not otherwise responsible. This  
40 subsection does not alter any right, duty, obligation, or liability of a current landowner,  
41 former landowner, subsequent landowner, owner, or operator under other provisions of  
42 law. This subsection shall not be construed to limit the authority of the Department to  
43 engage in a cleanup under this Article or any other provision of law. The current

1 landowner shall submit documentation of all expenditures as required by G.S. 143-  
2 215.94G(b)."

3 Sec. 4. G.S. 143-215.94E(e) reads as rewritten:

4 "(e) When the owner or operator pays the costs described in G.S. 143-215.94B(b),  
5 143-215.94B(b1), or 143-215.94D(b1) resulting from a discharge or release of petroleum  
6 from an underground storage tank, the owner or operator may seek reimbursement from  
7 the appropriate fund for any costs he may elect to have either the Commercial Fund or the  
8 Noncommercial Fund pay in accordance with subsections (b) and (c) of this section. The  
9 Department shall reimburse the owner or operator for all costs he may elect to have the  
10 appropriate fund pay that the Department determines to be reasonable and necessary and  
11 for which appropriate documentation is submitted. The Department may contract for any  
12 services necessary to evaluate any claim for reimbursement or compensation from either  
13 the Commercial Fund or the Noncommercial Fund, may contract for any expert witness  
14 or consultant services necessary to defend any decision to pay or deny any claim for  
15 reimbursement, and may pay the cost of these services from the fund against which the  
16 claim is made; provided that in any fiscal year the Department shall not expend from  
17 either fund more than one percent (1%) of the unobligated balance of the fund on 30 June  
18 of the previous fiscal year. The cost of contractual services to evaluate a claim or for  
19 expert witness or consultant services to defend a decision with respect to a claim shall be  
20 included as costs under G.S. 143-215.94B(b) and G.S. 143-215.94D(b1). The  
21 Commission shall adopt rules governing reimbursement of necessary and reasonable  
22 costs. An owner or operator whose claim for reimbursement is denied may appeal a  
23 decision of the Department as provided in Article 3 of Chapter 150B of the General  
24 Statutes. If the owner or operator is eligible for reimbursement under this section and the  
25 cleanup extends beyond a period of three months, the owner or operator may apply to the  
26 Department for interim reimbursements to which he is entitled under this section on a  
27 quarterly basis. If the Department fails to notify an owner or operator of the its decision  
28 on a claim for reimbursement under this subsection within 90 days after the date the  
29 claim is received by the Department, the owner or operator may elect to consider the  
30 claim to have been denied, and may appeal the denial as provided in Article 3 of Chapter  
31 150B of the General Statutes."

32 Sec. 5. The Department of Environment, Health, and Natural Resources shall  
33 study options for privatization of the leaking petroleum underground storage cleanup  
34 program. The Department shall pay any costs associated with this study from funds  
35 otherwise available to the Department for the implementation of Part 2A and Part 2B of  
36 Article 21A of Chapter 143 of the General Statutes. The Department shall report its  
37 findings and recommendations, including any proposed legislation, to the Environmental  
38 Review Commission on or before 1 November 1996.

39 Sec. 6. The Environmental Management Commission shall publish the text of  
40 the proposed rule required by G.S. 143-215.94V(b) as soon as possible and no later than  
41 1 January 1997. The Environmental Management Commission shall adopt a rule to  
42 implement the requirements of G.S. 143-215.94V(b) as soon as possible and no later than  
43 1 October 1997.

1           Sec. 7. The Revisor of Statutes shall set out Section 1 of this act as a note to  
2 G.S. 143-215.94V.

3           Sec. 8. Nothing in this act shall be construed to waive the sovereign immunity  
4 of the State for any action or omission of the State or of any agent or employee of the  
5 State in implementing the provisions of this act. The provisions of Article 31 of Chapter  
6 143 of the General Statutes, Tort Claims against State Departments and Agencies, shall  
7 not apply to any action or omission of the State or of any agent or employee of the State  
8 in implementing the provisions of this act. There shall be no liability for negligence on  
9 the part of the State or of any agent or employee for any action or omission in  
10 implementing the provisions of this act.

11           Sec. 9. Sections 1 and 7 of this act becomes effective 30 days after the date  
12 this act is ratified and expires on the date that a temporary or permanent rule adopted  
13 under G.S. 143-215.94V(b) become effective as provided in G.S. 150B-21.3. Section 2  
14 of this act becomes effective 1 January 1997. Section 3 of this act becomes effective  
15 upon ratification, applies retroactively to any discharge or release that is discovered and  
16 reported on or after 1 January 1992 and before 1 October 1997, and expires on 1 October  
17 1997. Section 4 of this act is effective upon ratification. Sections 5, 6, 8, and 9 of this  
18 act become effective upon ratification.