

GENERAL ASSEMBLY OF NORTH CAROLINA  
1989 SESSION

CHAPTER 652  
HOUSE BILL 957

AN ACT TO AMEND VARIOUS STATUTES RELATING TO THE CLEANUP OF  
LEAKING PETROLEUM UNDERGROUND STORAGE TANKS AND THE  
REGULATION OF UNDERGROUND STORAGE TANKS AND TO PROVIDE  
FOR COMPLIANCE WITH ENVIRONMENTAL LAWS BY FIDUCIARIES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-215.3(a)(15) reads as rewritten:

"(15) ~~To implement programs to prevent pollution from underground tanks containing oil or hazardous substances, in accordance with those requirements made mandatory upon approved State programs by federal agencies administering the Resource Conservation and Recovery Act, as amended, including the Hazardous and Solid Waste Amendments of 1984.~~ To adopt rules for the prevention of pollution from underground tanks containing petroleum, petroleum products, or hazardous substances. Rules adopted under this section may incorporate standards and restrictions which exceed and are more comprehensive than comparable federal regulations."

Sec. 2. G.S. 143B-282(2) reads as rewritten:

"(2) The Environmental Management Commission shall ~~have the power and duty to establish standards and adopt rules and regulations:~~ rules:

- a. For air quality standards, emission control standards and classifications for air contaminant sources pursuant to G.S. 143-215.107;
- b. For water quality standards and classifications pursuant to G.S. 143-214.1 and G.S. 143-215;
- c. To implement water and air quality reporting pursuant to G.S. 143-215.68;
- d. To be applied in capacity use areas pursuant to G.S. 143-215.14;
- e. To implement the issuance of permits for water use within capacity use areas pursuant to G.S. 143-215.20;
- f. Repealed by Session Laws 1983, c. 222, s. 3, effective April 25, 1983;
- g. For the protection of the land and the waters over which this State has jurisdiction from pollution by oil, oil products and oil by-products pursuant to Article 21A of Chapter 143.

- h. ~~For governing the registration, construction, installation, monitoring, repair, closure, financial responsibility, and leaks of~~ Governing underground tanks used for the storage of hazardous substances or oil pursuant to Article 21 or Article 21A of Chapter 143 of the General Statutes."

Sec. 3. G.S. 143-215.94A reads as rewritten:

**"§ 143-215.94A. Definitions.**

Unless a different meaning is required by the context, the following definitions shall apply throughout this Part:

- (1) 'Commercial Fund' means the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund established pursuant to this Part.
- (2) 'Commercial underground storage tank' means any one or combination of tanks (including underground pipes connected thereto) used to contain an accumulation of petroleum products, the volume of which (including the volume of the underground pipes connected thereto) is ten percent (10%) or more beneath the surface of the ground. The term 'commercial underground storage tank' does not include any:
  - a. Farm or residential underground storage tank of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes;
  - b. Underground storage tank of 1,100 gallons or less capacity used for storing heating oil for consumptive use on the premises where stored;
  - c. Underground storage tank of more than 1,100 gallon capacity used for storing heating oil for consumptive use on the premises where stored by four or fewer households;
  - d. Septic tank;
  - e. Pipeline facility (including gathering lines) regulated under:
    1. The Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. § 1671 **et seq.**);
    2. The Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. § 2001 **et seq.**); or
    3. Any intrastate pipeline facility regulated under State laws comparable to the provisions of the Natural Gas Pipeline Safety Act of 1968 or the Hazardous Liquid Pipeline Safety Act of 1979;
  - f. Surface impoundment, pit, pond, or lagoon;
  - g. Stormwater or wastewater collection system;
  - h. Flow-through process tank;
  - i. Liquid trap or associated gathering lines directly related to oil or gas production and gathering operations; or

- j. Storage tank situated in an underground area (such as a basement, cellar, mineworking, drift, shaft, or tunnel) if the storage tank is situated upon or above the surface of the floor.
- (2a) 'Heating oil' means petroleum that is No. 1, No. 2, No. 4-light, No. 4-heavy, No. 5-light, No. 5-heavy, or No. 6 technical grades of fuel oil; other residual fuel oils, including Navy Special Fuel Oil and Bunker C; and other fuels when used as substitutes for one of these fuel oils for the purpose of heating.
- (3) 'Noncommercial Fund' means the Noncommercial Leaking Petroleum Underground Storage Tank Cleanup Fund established pursuant to this Part.
- (4) 'Noncommercial underground storage tank' means any one or combination of tanks (including underground pipes connected thereto) used to contain an accumulation of petroleum products, the volume of which (including the volume of the underground pipes connected thereto) is ten percent (10%) or more beneath the surface of the ground. The term 'noncommercial storage tank' does not include any:
- a. Commercial underground storage tanks;
  - b. Septic tank;
  - c. Pipeline facility (including gathering lines) regulated under:
    - 1. The Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. § 1671 et seq.);
    - 2. The Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. § 2001 et seq.); or
    - 3. Any intrastate pipeline facility regulated under State laws comparable to the provisions of the Natural Gas Pipeline Safety Act of 1968 or the Hazardous Liquid Pipeline Safety Act of 1979;
  - d. Surface impoundment, pit, pond, or lagoon;
  - e. Stormwater or wastewater collection system;
  - f. Flow-through process tank;
  - g. Liquid trap or associated gathering lines directly related to oil or gas production and gathering operations; or
  - h. Storage tank situated in an underground area (such as a basement, cellar, mineworking, drift, shaft, or tunnel) if the storage tank is situated upon or above the surface of the floor.
- (5) 'Operator' means any person in control of, or having responsibility for, the operation of an underground storage tank.
- (6) 'Owner' means:
- a. In the case of an underground storage tank in use on 8 November 1984, or brought into use after that date, any person who owns an underground storage tank used for the storage, use, or dispensing of petroleum products; and

- b. In the case of an underground storage tank in use before 8 November 1984, but no longer in use on or after that date, any person who owned such tank immediately before the discontinuation of its use.
- (7) 'Petroleum' or 'petroleum product' means crude oil or any fraction thereof which is a liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), including any such liquid which consists of a blend of petroleum and alcohol and which is intended for use as a motor fuel. The terms 'petroleum' and 'petroleum product' do not include any hazardous substance as defined in Section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Pub. L. No. 96-510, 94 Stat. 2767, 42 U.S.C. § 9601(14) as amended; any substance regulated as a hazardous waste under Subtitle C of Title II of the Resource Conservation and Recovery Act of 1976, Pub. L. 94-580, 90 Stat. 2806, 42 U.S.C. § 6921 et seq., as amended; or any mixture of petroleum or a petroleum product containing any such hazardous substance or hazardous waste in greater than **de minimis** quantities."

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

**"§ 143-215.94B. Commercial leaking petroleum underground storage tank cleanup fund.**

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

(b) The Commercial Fund shall be used for the payment of the following costs ~~in excess of one hundred thousand dollars (\$100,000)~~ 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:

- (1) The cleanup of environmental damage as required by G.S. 143-215.94E(a); ~~and 143-215.94E(a) in excess of fifty thousand dollars (\$50,000) per occurrence; and~~
- (2) ~~The least expensive of the following:~~
  - a. ~~Providing potable water supplies including bottled water, well-head filtration systems or other suitable alternatives to persons whose water supply has been rendered unpotable; or~~
  - b. ~~Purchasing the property of the person whose water supply has been rendered unpotable. The State shall not purchase the property without the consent of the property owner, but if the property owner fails to consent, the amount expended to provide potable water shall not exceed the value of the property.~~

~~If the property is purchased by the State, the purchase price shall be the value of the property immediately prior to the discovery of the discharge or release.~~

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

~~In no event shall a property owner be paid any sum as liquidated damages from the Commercial Fund.~~

(c) The Commercial Fund is to be available on an occurrence basis, without regard to number of occurrences associated with tanks owned or operated by the same owner or operator. ~~Up to a maximum of one hundred thousand dollars (\$100,000) per year may be used from the Fund to pay for the administrative costs associated with carrying out the provisions of this Part by the Department.~~

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

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

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

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

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

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

- (1) For each petroleum commercial underground storage tank ~~currently in operation~~ of 3,500 gallons or less capacity – ~~thirty dollars (\$30.00)~~. forty-five dollars (\$45.00).
- (2) For each petroleum commercial underground storage tank ~~currently in operation~~ of more than 3,500 gallon capacity – ~~sixty dollars (\$60.00)~~. seventy-five dollars (\$75.00).

(b) ~~The operating fee shall be due and payable on 1 January of each year for that calendar year.~~ The annual operating fee shall be determined on a calendar year basis. For petroleum commercial underground storage tanks in use on 1 January, the annual operating fee due for that year shall be as specified in subsection (a) of this section. For petroleum commercial underground storage tanks which are first placed in use in any year, the annual operating fee due for that year shall be determined by multiplying one-

twelfth (1/12) of the amount specified in subsection (a) of this section by the number of months remaining in the calendar year. The annual operating fee shall be due and payable on the first day of the month in accordance with a staggered schedule established by the Department. The Department shall implement a staggered schedule to the end that the total amount of fees to be collected by the Department is approximately the same each month. A person who owns or operates more than one commercial petroleum underground storage tank may request that the fee for all tanks be due at the same time. A person who owns or operates 12 or more commercial petroleum storage tanks may request that the total of all fees be paid in four equal payments to be due on the first day of each calendar quarter.

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

(d) If, on 1 July in any year ~~after 1990~~ the Commercial Fund balance exceeds fifteen million dollars (\$15,000,000), the requirement to pay an annual operating fee pursuant to this section shall be suspended for any calendar year thereafter until the Commercial Fund balance is five million dollars (\$5,000,000) or less, at which time the requirement to pay the annual operating fee shall be reinstated beginning with the next calendar year. ~~The duty to pay the annual operating fee shall not be suspended prior to 1 January 1991 regardless of the Commercial Fund balance. A suspension of the requirement to pay an annual operating fee for any calendar year shall not be construed to relieve any person of the obligation to pay the full amount of annual operating fees due under this section for any other year.~~

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

**"§ 143-215.94D. Noncommercial leaking petroleum underground storage tank cleanup fund.**

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

(b) The Noncommercial 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: (i) noncommercial underground storage tanks, (ii) commercial underground storage tanks where the owner or operator cannot be identified or fails to proceed with the cleanup, and (iii) commercial underground storage tanks which were taken out of operation prior to 1

January 1974 where, at the time the discharge or release is discovered, neither the owner or operator owns or leases the lands on which the tank is located:

- (1) The cleanup of environmental damage as required by G.S. 143-215.94E(a); and
- (2) ~~The least expensive of the following:~~
  - a. ~~Providing potable water supplies including bottled water, well-head filtration systems or other suitable alternatives to persons whose water supply has been rendered unpotable; or~~
  - b. ~~Purchasing the property of the person whose water supply has been rendered unpotable. The State shall not purchase the property without the consent of the property owner, but if the property owner fails to consent, the amount expended to provide potable water shall not exceed the value of the property. If the property is purchased by the State, the purchase price shall be the value of the property immediately prior to the discovery of the discharge or release.~~

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

~~In no event shall a property owner be paid any sum as liquidated damages from the Noncommercial Fund.~~

(c) The Noncommercial Fund is to be available on an occurrence basis, without regard to number of occurrences associated with tanks owned or operated by the same owner or operator. ~~Up to a maximum of one hundred thousand dollars (\$100,000) per year may be used from the Fund to pay for the administrative costs associated with carrying out the provisions of this Part by the Department.~~

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

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

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

Sec. 7. G.S. 143-215.94E(b) reads as rewritten:

"(b) In the case of a discharge or release from a commercial underground storage tank where the owner or operator has been identified and has proceeded with cleanup, the owner or operator may elect to have the Commercial Fund pay or reimburse the owner or operator for any costs described in G.S. 143-215.94B(b) which exceed ~~one~~

~~hundred thousand dollars (\$100,000) up to a maximum of nine hundred thousand dollars (\$900,000). fifty thousand dollars (\$50,000) for the cleanup of environmental damage and one hundred thousand dollars (\$100,000) for compensating third parties for bodily injury and property damage up to an aggregate maximum of one million dollars (\$1,000,000) per discharge or release. The sum of payments by the owner or operator and the payments from the Commercial Fund shall not exceed one million dollars (\$1,000,000) per discharge or release."~~

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

**"§ 143-215.94F. Limited amnesty.**

Any owner or operator who reports a suspected discharge or release from an underground storage tank ~~within 15 months of the effective date of this Part~~ prior to 1 October 1989 shall not be liable for any civil penalty that might otherwise be imposed pursuant to ~~G.S. 143-215.91(a).~~ G.S. 143-215.91(a) for violations of G.S. 143-215.83(a) and G.S. 143-215.85. The limited amnesty provided by this section shall not apply upon a finding by the Commission that the discharge or release was the result of gross negligence or an intentional act."

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

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

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

the Department is authorized and empowered to use staff, equipment, or materials under its control or provided by other cooperating federal, State, or local agencies and to contract with any agent or contractor it deems appropriate to develop and implement a cleanup plan and to pay the costs authorized by G.S. 143-215.94D(b) from the Noncommercial Fund. Every State agency shall provide to the Department to the maximum extent feasible such staff, equipment, and materials as may be available and useful to the development and implementation of a cleanup program.

(b) Whenever the discharge or release of a petroleum product is from a commercial underground storage tank, the Department is authorized and empowered to supervise the cleanup of environmental damage required by G.S. 143-215.94E(a). If the owner or operator elects to have the Commercial Fund reimburse or pay for any costs allowed under ~~G.S. 143-215.94B(b) in excess of one hundred thousand dollars (\$100,000).~~ G.S. 143-215.94B(b), the Department shall require the owner or operator to submit documentation of all expenditures which are claimed for the purposes of establishing that the owner or operator has spent ~~an initial one hundred thousand dollars~~



~~(\$100,000). the amounts required to be paid by the owner or operator pursuant to and in accordance with G.S. 143-215.94E(b).~~ The Department shall allow credit for all expenditures for which prior approval was obtained from the Department and any other expenditures which the Department determines to be reasonable and necessary. The Department may not pay for any costs for which the Commercial Fund was established until the owner or operator has paid ~~an initial one hundred thousand dollars (\$100,000).~~ the amounts specified in G.S. 143-215.94E(b).

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

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

- (1) Any costs not authorized to be paid from either the Commercial or the Noncommercial Fund;
- (2) The initial one hundred thousand dollars (\$100,000) of the costs amounts provided for in G.S. 143-215.94B(b) required to be paid for by the owner or operator pursuant to G.S. 143-215.94E(b) where the owner or operator of a commercial underground storage tank is later identified or located;
- (3) The initial one hundred thousand dollars (\$100,000) of the costs amounts provided for in G.S. 143-215.94B(b) required to be paid for by the owner or operator pursuant to G.S. 143-215.94E(b) where the owner or operator of a commercial underground storage tank failed to proceed as required by G.S. 143-215.94E(a);
- (4) Any funds due under G.S. 143-215.94E(g); and
- (5) Any funds to which the State is entitled under any federal program providing for the cleanup of petroleum discharges or releases from underground storage tanks.

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

(f) In the event that ~~one hundred thousand dollars (\$100,000) or more~~ a recovery equal to or in excess of the amounts required to be paid for by the owner or operator pursuant to G.S. 143-215.94E(b) is recovered pursuant to subdivisions (2) and (3) of subsection (d) of this section for the costs described in G.S. 143-215.94B(b), the Department shall transfer funds from the Commercial Fund that would have been paid from the Commercial Fund pursuant to G.S. 143-215.94B(b) if the owner or operator had proceeded with the cleanup, but which were paid from the Noncommercial Fund, into the Noncommercial Fund."

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

**"§ 143-215.94H. Financial responsibility.**

The Department shall require each owner and operator of a petroleum underground storage tank who is required to demonstrate financial responsibility under rules promulgated by the United States Environmental Protection Agency pursuant to 42 U.S.C. § 6991b(d) to maintain evidence of financial responsibility of not less than ~~one hundred thousand dollars (\$100,000)~~ the amounts required to be paid for by the owner or operator pursuant to G.S. 143-215.94E(b) per occurrence for costs described in G.S. 143-215.94B(b) and G.S. 143-215.94D(b). Financial responsibility may be established in accordance with rules adopted by the Commission which shall provide that financial responsibility may be established by either insurance, guarantee, surety bond, letter of credit, qualification as a self-insurer, or any combination thereof. The compliance date schedule for demonstrating financial responsibility shall conform to the schedule adopted by the Environmental Protection Agency."

Sec. 11. G.S. 143-215.94I(j) reads as rewritten:

"(j) In the event that the Commissioner finds that a pool is insolvent, financially impaired, or otherwise, unable to discharge its legal liabilities or obligations, ~~of it or if~~ the Commissioner at any time has reason to believe that any owner or operator is unable to demonstrate financial responsibility as required by G.S. 143-215.94H and rules adopted by the Commission as a result of the financial condition of the pool or for any other reason, the Commissioner shall so notify the Secretary."

Sec. 12. G.S.143-215.94M(b) reads as rewritten:

"(b) The annual reports required by this section shall be made by the Secretary ~~beginning with the next legislative session following the effective date of this Part.~~ on 1 January of each year beginning 1 January 1990."

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

**"§ 143-215.94N. Applicability.**

(a) The provisions of this Part as they relate to costs paid for by the Commercial Fund apply only to discharges or releases which are discovered or reported on or after 30 June 1988.

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

Sec. 14. Article 21A of Chapter 143 of the General Statutes is amended by adding a new Part to read:

"Part 2B. Underground Storage Tank Regulation.

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

The Commission shall adopt, and the Department shall implement and enforce, rules relating to underground storage tanks as provided by G.S. 143-215.3(a)(15) and G.S. 143B-282(2)h. Such rules shall include standards and requirements applicable to both existing and new underground storage tanks and tank systems, may include different

standards and requirements based on tank capacity, tank location, tank age, and other relevant factors, and shall include, at a minimum, standards and requirements for:

- (1) Design, construction, and installation, including monitoring systems;
- (2) Notification to the Department, inspection, and registration;
- (3) Recordation of tank location;
- (4) Modification, retrofitting, and upgrading;
- (5) General operating requirements;
- (6) Release detection;
- (7) Release reporting, investigation, and confirmation;
- (8) Corrective action;
- (9) Repair;
- (10) Closure; and
- (11) Financial responsibility."

Sec. 15. Section 4 of Chapter 1035 of the 1987 Session Laws (1988 Regular Session) is repealed.

Sec. 16. Section 5 of Chapter 1035 of the 1987 Session Laws reads as rewritten:

"Sec. 5. G.S. 143-215.94B through G.S. 143-215.94E, G.S. 143-215.94G, and G.S. 143-215.94J through G.S. ~~143-215.94M-143-215.94N~~ as enacted by Section 1 of this act and Section 2 of this act expire 31 December ~~1989-1998~~. References to expired sections in unexpired sections shall be read to give effect to the unexpired sections. If either fund created by Section 1 of this act would be obligated under the provisions of this act with respect to any discharge or release reported to the Department of Natural Resources and Community Development or any successor department prior to the expiration of this act, the respective fund may continue to pay any costs incurred in accordance with this act to the extent that funds remain. In the event that funds remain in either fund after the expiration of this act and after all claims and other obligations of both funds have been paid, such remaining funds shall revert to the General Fund."

Sec. 17. All sums collected on kerosene and motor fuel pursuant to G.S. 119-18 that are not allotted by the Office of State Budget and Management to administer and enforce the provisions of Chapter 119 of the General Statutes shall be credited to the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund and the Noncommercial Leaking Underground Petroleum Storage Tank Cleanup Fund as certified on a monthly basis as follows: one-half (½) shall be credited to the Commercial Fund and one-half (½) shall be credited to the Noncommercial Fund unless the balance in the Commercial Fund exceeds fifteen million dollars (\$15,000,000), and in that event, all such funds shall be credited to the Noncommercial Fund until the balance of the Commercial Fund falls below five million dollars (\$5,000,000), at which time credits to the Commercial Fund shall resume.

Sec. 18. The requirement to pay the annual operating fee under G.S. 143-215.94C shall not be suspended prior to 1 January 1991 regardless of the Commercial Fund balance.

Sec. 19. There is appropriated from the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund to the Department of Natural Resources and

Community Development the sum of \$600,000 for the 1989-90 fiscal year and \$600,000 for the 1990-91 fiscal year to implement the provisions of Parts 2A and 2B of Chapter 143 of the General Statutes. There is appropriated from the Noncommercial Leaking Petroleum Underground Storage Tank Cleanup Fund to the Department of Natural Resources and Community Development the sum of \$600,000 for the 1989-90 fiscal year and \$600,000 for the 1990-91 fiscal year to implement the provisions of Parts 2A and 2B of Chapter 143 of the General Statutes.

Sec. 20. G.S. 32-27 is amended by adding a new subsection to read:

"(8.1) Comply with environmental law.

- a. To inspect property held by the fiduciary, including interests in sole proprietorships, partnerships, or corporations and any assets owned by any such business enterprise, for the purpose of determining compliance with environmental law affecting such property and to respond to any actual or threatened violation of any environmental law affecting property held by the fiduciary;
- b. To take, on behalf of the estate or trust, any action necessary to prevent, abate, or otherwise remedy any actual or threatened violation of any environmental law affecting property held by the fiduciary, either before or after the initiation of an enforcement action by any governmental body;
- c. To refuse to accept property in trust if the fiduciary determines that any property to be donated to the trust either is contaminated by any hazardous substance or is being used or has been used for any activity directly or indirectly involving hazardous substance which could result in liability to the trust or otherwise impair the value of the assets held therein;
- d. To settle or compromise at any time any and all claims against the trust or estate which may be asserted by any governmental body or private party involving the alleged violation of any environmental law affecting property held in trust or in an estate;
- e. To disclaim any power granted by any document, statute, or rule of law which, in the sole discretion of the fiduciary, may cause the fiduciary to incur personal liability under any environmental law;
- f. To decline to serve as a fiduciary if the fiduciary reasonably believes that there is or may be a conflict of interest between it in its fiduciary capacity and in its individual capacity because of potential claims or liabilities which may be asserted against it on behalf of the trust or estate because of the type or condition of assets held therein.
- g. For purposes of this subsection 'environmental law' means any federal, state, or local law, rule, regulation, or ordinance relating to protection of the environment or human health. For

purposes of this subsection, 'hazardous substances' means any substance defined as hazardous or toxic or otherwise regulated by any environmental law. The fiduciary shall be entitled to charge the cost of any inspection, review, abatement, response, cleanup, or remedial action authorized herein against the income or principal of the trust or estate. A fiduciary shall not be personally liable to any beneficiary or other party for any decrease in value of assets in trust or in an estate by reason of the fiduciary's compliance with any environmental law, specifically including any reporting requirement under such law. Neither the acceptance by the fiduciary of property or a failure by the fiduciary to inspect property shall be deemed to create any inference as to whether or not there is or may be any liability under any environmental law with respect to such property."

Sec. 21. Section 5 of this act shall become effective 1 January 1990. Section 19 of this act shall become effective 1 July 1989. Sections 1 through 4, Sections 6 through 18, and Sections 20 and 21 of this act are effective upon ratification.

In the General Assembly read three times and ratified this the 15th day of July, 1989.