

GENERAL ASSEMBLY OF NORTH CAROLINA
1995 SESSION

CHAPTER 648
SENATE BILL 1317

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

The General Assembly of North Carolina enacts:

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

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

- (1) A water supply well is contaminated.
- (2) Petroleum vapor is present in a confined space.
- (3) A water supply well is located within 1,500 feet of the discharge, release, or known extent of contamination and there is a user of water from any water supply well located within 1,500 feet of the discharge, release, or known extent of contamination who is not served by an existing public water supply.
- (4) The discharge or release results in a violation of drinking water standards set out in rules adopted by the Commission for Health Services under G.S. 130A-315 in a treated surface water supply.
- (5) The discharge or release poses an imminent danger to public health, public safety, or the environment.

(c) The Department shall give notice of the classification of the impact of a cleanup of a discharge or release from a petroleum underground storage tank by publishing the classification in the North Carolina Register. To the maximum extent practical, the Department shall give notice of the classification of the impact of a cleanup of a discharge or release from a petroleum underground storage tank by first-class mail to either the owner, operator, or other person responsible for the cleanup as

shown on records maintained by the Department at the address on file with the Department.

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

- (1) Take immediate action to prevent any further release or discharge of petroleum from the underground storage tank; identify and mitigate any fire, explosion, or vapor hazard; and remove any free petroleum product.
- (2) Meet applicable requirements of 40 Code of Federal Regulations § 280.50 through § 280.53 and § 280.60 through § 280.64 (1 July 1995 Edition).
- (3) Submit any information that the Department may require to classify the impact of the discharge or release pursuant to this section.

(e) If the impact of a discharge or release is classified as having a Class CDE impact, the Department shall not pay or reimburse any costs otherwise payable or reimbursable under Part 2A of Article 21A of Chapter 143 of the General Statutes from either the Commercial Fund or Noncommercial Fund unless:

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

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

- (1) The owner, operator, or landowner responsible for cleanup has incurred costs that are reimbursable under G.S. 143-215.94E(e), or that would be reimbursable if those costs were in excess of the costs for

which the owner, operator, or landowner is responsible under G.S. 143-215.94B, 143-215.94D, or 143-215.94E.

- (2) The owner, operator, or landowner either has paid or will pay all costs for which the owner, operator, or landowner is responsible.
- (3) Discontinuation of the cleanup will result in a hardship. For purposes of this subdivision, a hardship exists if and only if the discontinuation of the cleanup will prevent the conveyance through a bona fide sale for value of the property where the discharge or release occurred. The owner, operator, or landowner responsible for the cleanup shall present a contract of sale executed on or before 31 December 1996 that is contingent on continuation of the cleanup. If the conveyance of the property does not occur within 120 days after the contract of sale is executed or under the terms of the contract for any reason, the Department shall discontinue eligibility under this subsection.

(g) Except for costs incurred to comply with subsection (d) of this section, the Department shall not pay or reimburse any costs otherwise payable or reimbursable under Part 2A of Article 21A of Chapter 143 of the General Statutes from either the Commercial Fund or the Noncommercial Fund for a discharge or release that is discovered on or after the date this act is ratified until the impact of the release has been classified as provided in subsection (b) of this section.

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

"(a) For purposes of this subsection, each compartment of a commercial underground storage tank that is designed to independently contain a petroleum product is a separate petroleum commercial underground storage tank. 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 of 3,500 gallons or less capacity ~~—one hundred fifty dollars (\$150.00).~~ two hundred dollars (\$200.00).
- (2) For each petroleum commercial underground storage tank of more than 3,500 gallon capacity ~~—two hundred twenty five dollars (\$225.00).~~ three hundred dollars (\$300.00)."

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

"(c1) In the case of a discharge or release from a noncommercial underground storage tank where the owner and operator cannot be identified or located, or where the owner and operator fail to proceed as required by subsection (a) of this section, if the current landowner of the land in which the noncommercial underground storage tank is located notifies the Department in accordance with G.S. 143-215.85 and undertakes to collect and remove the discharge or release and to restore the area affected in accordance with the requirements of this Article and applicable federal and State laws, regulations, and rules, the current landowner may elect to have the Noncommercial Fund pay or reimburse the current landowner for ninety percent (90%) of any costs described in subdivisions (1) and (2) of G.S. 143-215.94D(b1) that exceed five thousand dollars (\$5,000). Eligibility for reimbursement under this subsection may be transferred

to a subsequent landowner from a current landowner who has paid the costs for which the landowner is responsible under this subsection. The sum of payments from the Noncommercial Fund and from all other sources shall not exceed one million dollars (\$1,000,000) per discharge or release. This subsection shall not be construed to require a current landowner to clean up a discharge or release of petroleum from an underground storage tank for which the current landowner is not otherwise responsible. This subsection does not alter any right, duty, obligation, or liability of a current landowner, former landowner, subsequent landowner, owner, or operator under other provisions of law. This subsection shall not be construed to limit the authority of the Department to engage in a cleanup under this Article or any other provision of law. The current landowner shall submit documentation of all expenditures as required by G.S. 143-215.94G(b)."

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

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

Sec. 5. The Department of Environment, Health, and Natural Resources shall study options for privatization of the leaking petroleum underground storage cleanup

program. The Department shall pay any costs associated with this study from funds otherwise available to the Department for the implementation of Part 2A and Part 2B of Article 21A of Chapter 143 of the General Statutes. The Department shall report its findings and recommendations, including any proposed legislation, to the Environmental Review Commission on or before 1 November 1996.

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

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

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

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

In the General Assembly read three times and ratified this the 21st day of June, 1996.

Dennis A. Wicker
President of the Senate

Harold J. Brubaker
Speaker of the House of Representatives