

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007**

**SESSION LAW 2008-195
HOUSE BILL 2498**

AN ACT (1) TO PROVIDE ADDITIONAL FUNDS FOR THE ASSESSMENT AND CLEANUP OF RELEASES AND DISCHARGES OF PETROLEUM FROM UNDERGROUND STORAGE TANKS BY INCREASING THE FEES PAID BY OWNERS AND OPERATORS OF COMMERCIAL UNDERGROUND STORAGE TANKS; (2) TO ESTABLISH LIMITATIONS ON THE TIME IN WHICH: THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES MUST MAKE AN ELIGIBILITY DETERMINATION, REQUESTS FOR PAYMENT OR REIMBURSEMENT MAY BE SUBMITTED TO THE DEPARTMENT, AND THE DEPARTMENT MAY TAKE ADMINISTRATIVE ACTION OR BRING A CIVIL ACTION TO RECOVER PAYMENTS THAT WERE NOT AUTHORIZED BY LAW, THAT WERE MADE ON THE BASIS OF FRAUDULENT INFORMATION, OR FOR OTHER REASONS; (3) TO CLARIFY FINANCIAL RESPONSIBILITY REQUIREMENTS; (4) TO REDUCE THE INCIDENCE OF LEAKS BY REQUIRING SECONDARY CONTAINMENT FOR ALL COMPONENTS OF REGULATED PETROLEUM UNDERGROUND STORAGE TANK SYSTEMS; (5) TO CLARIFY REQUIREMENTS FOR REGISTRATION OF COMMERCIAL TANKS; (6) TO PROVIDE FOR EXPEDITED ASSESSMENT AND CLEANUP OF RELEASES AND DISCHARGES FROM PETROLEUM UNDERGROUND STORAGE TANKS BY REQUIRING THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO ESTABLISH A PILOT PROGRAM TO EVALUATE THE USE OF SITE-SPECIFIC CLEANUP STANDARDS; (7) TO PROVIDE FOR RECLASSIFICATION OF A SITE TO A LOWER RISK CLASSIFICATION; AND (8) TO PROVIDE FOR VARIOUS STUDIES AND REPORTS AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-215.94C reads as rewritten:

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

(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 of four-hundred twenty dollars (\$420.00) ~~according to the following schedule:~~

- (1) ~~For for each petroleum commercial underground storage tank, tank of 3,500 gallons or less capacity — two hundred dollars (\$200.00).~~
- (2) ~~For each petroleum commercial underground storage tank of more than 3,500 gallon capacity — three hundred dollars (\$300.00).~~

(b) The annual operating fee shall be determined on a calendar year basis. For petroleum commercial underground storage tanks in use on 1 January and remaining in use on or after 1 December of that year, the annual operating fee due for that year shall be as specified in subsection (a) of this section. For a petroleum commercial underground storage tank that is first placed in ~~use~~ service 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. For a petroleum commercial underground storage tank that is permanently removed from use-service 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 in the calendar year preceding the permanent removal from use. In calculating the pro rata annual operating fee for a tank that is first placed in use or permanently removed during a calendar year under the preceding two sentences, a partial month shall count as a month, except that where a tank is permanently removed and replaced by another tank, the total of the annual operating fee for the tank that is removed and the replacement tank shall not exceed the annual operating fee for the replacement tank. 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 quarter. A person who owns or operates more than one petroleum commercial underground storage tank may request that the fee for all tanks be due at the same time. The fee for all commercial underground storage tanks located at the same facility shall 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, provided that the fee for all commercial underground storage tanks located at the same facility shall be due at the same time.

(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) Repealed by Session Laws 1991, c. 538, s. 3.1.

(e) An owner or operator of a commercial underground storage tank who fails to pay an annual operating fee due under this section within 30 days of the date that the fee is due shall pay, in addition to the fee, a late penalty of five dollars (\$5.00) per day per commercial underground storage tank, up to a maximum equal to the annual operating fee due. The Department may waive a late penalty in whole or in part if:

- (1) The late penalty was incurred because of the late payment or nonpayment of an annual operating fee by a previous owner or operator.
- (2) The late penalty was incurred because of a billing error for which the Department is responsible.
- (3) Where the late penalty was incurred because the annual operating fee was not paid by the owner or operator due to inadvertence or accident.
- (4) Where payment of the late penalty will prevent the owner or operator from complying with any substantive law, rule, or regulation applicable to underground storage tanks and intended to prevent or mitigate discharges or releases or to facilitate the early detection of discharges or releases."

SECTION 2.(a) G.S. 143-215.94E is amended by adding two new subsections to read:

"(j) An owner, operator, or landowner shall request that the Department determine whether any of the costs of assessment and cleanup of a discharge or release

from a petroleum underground storage tank are eligible to be paid or reimbursed from either the Commercial Fund or the Noncommercial Fund within one year after completion of any task that is eligible to be paid or reimbursed under G.S. 143-215.94B(b), 143-215.94B(b1), or 143-215.94D(b1).

(k) An owner, operator, or landowner shall request payment or reimbursement from the Commercial Fund or the Noncommercial Fund for the cost of a task within one year after the completion of the task. The Department shall deny any request for payment or reimbursement of the cost of any task that would otherwise be eligible to be paid or reimbursed if the request is not received within 12 months after the later of the date on which the:

(1) Department determines that the cost is eligible to be paid or reimbursed.

(2) Task is completed."

SECTION 2.(b) Notwithstanding G.S. 143-215.94E(k), as enacted by subsection (a) of this section, an owner, operator, or landowner shall request payment or reimbursement of the cost of any task completed prior to 1 January 2009 that is eligible to be paid or reimbursed from the Commercial Fund or the Noncommercial Fund no later than 1 January 2010. The Department shall deny any request for payment or reimbursement of the cost of any task to which this subsection applies that is made after 1 January 2010.

SECTION 3. G.S. 143-215.94G is amended by adding four new subsections to read:

"(g) If the Department paid or reimbursed costs that are not authorized to be paid or reimbursed under G.S. 143-215.94B or G.S. 143-215.94D as a result of a misrepresentation by an agent who acted on behalf of an owner, operator, or landowner, the Department shall first seek reimbursement, pursuant to subdivision (1) of subsection (d) of this section, from the agent of monies paid to or retained by the agent.

(h) The Department shall take administrative action to recover costs or bring a civil action pursuant to subdivision (1) of subsection (d) of this section to seek reimbursement of costs in accordance with the time limits set out in this subsection.

(1) The Department shall take administrative action to recover costs or bring a civil action to seek reimbursement of costs that are not authorized to be paid from the Commercial Fund under subdivision (1), (2), or (3) of G.S. 143-215.94B(d) or from the Noncommercial Fund under subdivision (1), (2), or (3) of G.S. 143-215.94D(d) within five years after payment.

(2) The Department shall take administrative action to recover costs or bring a civil action to seek reimbursement of costs other than those described in subdivision (1) of this subsection within three years after payment.

(3) Notwithstanding the time limits set out in subdivisions (1) and (2) of this subsection, the Department may take administrative action to recover costs or bring a civil action to seek reimbursement of costs paid as a result of fraud or misrepresentation at any time.

(i) An administrative action or civil action that is not commenced within the time allowed by subsection (h) of this section is barred.

(j) Except with the consent of the claimant, the Department may not withhold payment or reimbursement of costs that are authorized to be paid from the Commercial Fund or the Noncommercial Fund in order to recover any other costs that are in dispute unless the Department is authorized to withhold payment by a final decision of the Commission pursuant to G.S. 150B-36 or an order or final decision of a court."

SECTION 4. G.S. 143-215.94H reads as rewritten:

"§ 143-215.94H. Financial responsibility.

(a) 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 that is the lesser of:~~

- (1) The full amount of the financial responsibility that an owner or operator is required to demonstrate under rules promulgated by the United States Environmental Protection Agency pursuant to 42 U.S.C. § 6991b(d).
- (2) 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(b1).~~ G.S. 143-215.94B(b1) if costs are eligible to be paid under those subsections.

(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."

SECTION 5. G.S. 143-215.94T reads as rewritten:

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

(a) 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.~~ G.S. 143B-282(a)(2)h. These 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.
- (11) Financial responsibility.
- (12) Tank tightness testing procedures and certification of persons who conduct tank tightness tests.
- (13) Secondary containment for ~~not tank~~ all components of petroleum underground storage tank systems.

(b) Rules adopted pursuant to subsection (a) of this section that apply only to commercial underground storage tanks shall not apply to any:

- (1) Farm or residential underground storage tank of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes.
- (2) Underground storage tank of 1,100 gallons or less capacity used for storing heating oil for consumptive use on the premises where stored.
- (3) 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.

(c) Rules adopted pursuant to subdivision (13) of subsection (a) of this section shall require secondary containment for all ~~not tank~~ components of underground storage tank systems, ~~including all piping and including, but not limited to, tanks, piping, fittings, pump heads, and dispensers.~~ Secondary containment requirements shall include

standards for double wall ~~pipings tanks, piping,~~ and fittings and for sump containment for pump heads and dispensers. The rules shall provide for ~~monthly~~ monitoring of double wall interstices and sump containments. The rules shall apply to any underground storage tank system that is installed on or after the date on which the rules become effective and to the replacement of any ~~non~~ tank-component of an underground storage tank system on or after that date."

SECTION 6. G.S. 143-215.94U reads as rewritten:

"§ 143-215.94U. Registration of petroleum commercial underground storage tanks; operation of petroleum underground storage tanks; operating permit required.

(a) The owner or operator of each petroleum commercial underground storage tank shall annually obtain an operating permit from the Department for the facility at which the tank is located. The Department shall issue an operating permit only if the owner or ~~operator; operator~~ operator has done all of the following:

- (1) ~~Has notified~~ Notified the Department of the existence of all tanks as required by 40 Code of Federal Regulations § 280.22 (1 July 1994 Edition) or 42 U.S.C. § 6991a, if applicable, at the ~~facility;~~ facility.
- (2) ~~Has paid~~ Paid all fees required under G.S. 143-215.94C for all commercial petroleum underground storage tanks located at the ~~facility;~~ facility.
- (3) Complies with applicable release detection, spill and overfill protection, and corrosion protection requirements set out in rules adopted pursuant to this Chapter, notifies the Department of the method or combination of methods of leak detection, spill and overfill protection, and corrosion protection in use, and certifies to the Department that all applicable release detection, spill and overfill protection, and corrosion protection requirements are being met for all petroleum underground storage tanks located at the ~~facility;~~ facility.
- (4) If applicable, complies with the Stage I vapor control requirements set out in 15A North Carolina Administrative Code 2D.0928, effective 1 March 1991, notifies the Department of the method or combination of methods of vapor control in use, and certifies to the Department that all Stage I vapor control requirements are being met for all petroleum underground storage tanks located at the ~~facility; and~~ facility.
- (5) ~~Has substantially~~ Substantially complied with the air quality, groundwater quality, and underground storage tank standards applicable to any activity in which the applicant has previously engaged and has been in substantial compliance with federal and State laws, regulations, and rules for the protection of the environment. In determining substantial compliance, the compliance history of the owner or operator and any parent, subsidiary, or other affiliate of the owner, operator, or parent may be considered.
- (6) Demonstrated financial responsibility as required by G.S. 143-215.94H.

(b) The operating permit shall be issued at the time the commercial underground storage annual tank operating fee required under G.S. 143-215.94C(a) is paid and shall be valid from the first day of the month in which the fee is due through the last day of the last month for which the fee is paid in accordance with the schedule established by the Department under G.S. 143-215.94C(b).

(c) No person shall place a petroleum product, and no owner or operator shall cause a petroleum product to be placed, into an underground storage tank at a facility for which the owner or operator does not hold a currently valid operating permit.

(d) The Department shall issue an operating permit certificate for each facility that meets the requirements of subsection (a) of this section. The operating permit certificate shall identify the number of tanks at the facility and shall conspicuously

display the date on which the permit expires. Except for the owner or operator, no person shall be liable under subsection (c) of this section if an unexpired operating permit certificate is displayed at the facility, unless the person knows or has reason to know that the owner or operator does not hold a currently valid operating permit for the facility.

(e) The Department may revoke an operating permit only if the owner or operator fails to continuously meet the requirements set out in ~~subdivisions (1) through (4)~~ of subsection (a) of this section. If the Department revokes an operating permit, the owner or operator of the facility for which the operating permit was issued shall immediately surrender the operating permit certificate to the Department, unless the revocation is stayed pursuant to G.S. 150B-33. An owner or operator may challenge a decision by the Department to deny or revoke an operating permit by filing a contested case under Article 3 of Chapter 150B of the General Statutes. The Secretary shall make the final agency decision regarding the revocation of a permit under this section."

SECTION 7.(a) The definitions set out in G.S. 143-215.94A apply to this section. As used in this section, "Department" means the Department of Environment and Natural Resources and, with respect to any power or duty assigned to the Environmental Management Commission under Article 21A of Chapter 143 of the General Statutes, includes the Environmental Management Commission. As used in this section, "site-specific cleanup standards" means standards developed using the methodology described in the Standard Guide for Risk-Based Corrective Action Applied at Petroleum Release Sites adopted by the American Society for Testing and Materials (ASTM) as E1739-95(2002).

SECTION 7.(b) The Department shall establish a pilot program to evaluate the use of site-specific cleanup standards for the cleanup of discharges or releases of petroleum from underground storage tanks as an alternative to the use of the risk-based assessment and corrective action standards set out in 15A NCAC 2L.0400. The purpose of the pilot program is to determine the extent to which the use of site-specific standards would provide effective protection of public health, safety, and the environment in a cost-effective manner and at a lower overall cost as compared with the use of the risk-based standards set out in 15A NCAC 2L.0400. The pilot program shall apply only to discharges or releases that are classified as intermediate risk under 15A NCAC 2L.0400(d). The pilot program shall evaluate the use of site-specific standards in the cleanup of contamination that results from a discharge or release of petroleum from: (i) an underground storage tank; and (ii) an underground storage tank that is commingled with petroleum contamination from a source of contamination other than an underground storage tank, as provided in G.S. 143-215.94V(h).

SECTION 7.(c) Participation in the pilot program shall be at the election of the owner, operator, or landowner. To participate in the pilot program, an owner, operator, or landowner shall perform a site-specific risk assessment and submit the assessment to the Department. If the Department determines that the use of site-specific cleanup standards will provide effective protection of public health, safety, and the environment, the Department shall set site-specific soil and groundwater cleanup standards for the discharge or release. These site-specific standards shall apply in lieu of the risk-based assessment and corrective action standards set out in 15A NCAC 2L.0400.

SECTION 7.(d) If soil and groundwater contamination from a discharge or release is no greater than the site-specific soil and groundwater cleanup standards set by the Department, the Department shall notify an owner, operator, or landowner that no cleanup, further cleanup, or further action will be required. If soil and groundwater contamination from a discharge or release is greater than the site-specific soil and groundwater cleanup standards set by the Department, the owner, operator, or landowner shall submit a corrective action plan to achieve the standards. The Department may require the owner, operator, or landowner to evaluate the impact of the site-specific cleanup standards on public health, safety, and the environment through

use of an appropriate model. The Department shall not set site-specific soil and groundwater cleanup standards for the discharge or release that allow for contamination in excess of unrestricted use standards, as defined in G.S. 143B-279.9, on any real property that is not subject to land-use restrictions under G.S. 143B-279.9 and recordation under G.S. 143B-279.11.

SECTION 7.(e) Except as provided in this section, the provisions of Part 2A and Part 2B of Article 21A of Chapter 143 of the General Statutes apply to this section.

SECTION 7.(f) The Department shall annually report to the Environmental Review Commission on the number of site-specific risk assessments submitted to the Department under the pilot program, the disposition of those submissions, and, for any submissions for which site-specific soil and groundwater cleanup standards are not set, the basis for the decision not to set site-specific cleanup standards. The report shall include a comparison of assessment and corrective action of discharges or releases under the pilot program to assessment and corrective action of intermediate risk discharges or releases pursuant to the risk-based assessment and corrective action standards set out in 15A NCAC 2L.0400. The comparison shall include all of the following:

- (1) The costs associated with investigation, assessment, initial response, abatement, analysis of risk, and development and implementation of a corrective action plan.
- (2) The immediate and long-term impacts on public health, safety, and the environment.
- (3) The need for and use of land-use restrictions as part of the corrective action plan.
- (4) The extent to which corrective action addresses vapor intrusion.

SECTION 7.(g) The Department shall submit the first report required by subsection (f) of this section on or before 1 September 2009. The Department shall include in the report due on or before 1 September 2013 any recommendations, including legislative proposals, based on the findings of the pilot program.

SECTION 8.(a) The definitions set out in subsection (a) of Section 7 of this act apply to this section. It is the policy of the State that a discharge or release be reclassified as low risk if, based on site-specific cleanup standards, investigation, assessment, initial response, abatement, risk-based corrective action, or other corrective action, the Department determines that the discharge or release poses no significant risk to human health or the environment. An owner, operator, or landowner may request that a discharge or release be reclassified to a lower risk classification. If the Department denies a request to reclassify a discharge or release to a lower risk classification, the owner, operator, or landowner may file a petition for a contested case hearing as provided in Article 3 of Chapter 150B of the General Statutes.

SECTION 8.(b) The Department shall report on or before 1 September of each year to the Environmental Review Commission on the number of sites for which reclassification was requested based on site-specific information and the disposition of each request. The Department shall submit the first report required by this section on or before 1 September 2009.

SECTION 9. The Department of Environment and Natural Resources shall establish a process to provide informal notice of any proposed policy change or rule interpretation that is not a rule, as defined in G.S. 150B-2, to interested parties. Except in a situation that requires immediate action, the Department shall receive and consider oral and written comment from interested parties before the Department implements the proposed policy change or rule interpretation. Except in a situation that requires immediate action, the Department shall provide written notice of a policy change or rule interpretation to interested parties at least 30 days prior to its implementation.

SECTION 10. The Department of Insurance, in consultation with the Petroleum Underground Storage Tank Funds Council and the Department of Environment and Natural Resources, shall provide guidance and technical assistance for

the formation of an insurance pool pursuant to G.S. 143-215.94I to any responsible entity that requests assistance.

SECTION 11. Section 8 of S.L. 2001-442 reads as rewritten:

"**SECTION 8.** Sections 1 through 5 of this act become effective 1 October 2001. Sections 6, 7, and 8 of this act are effective when this act becomes law. Sections 1, 2, 3, 4, 5, and 7 of this act expire 1 October ~~2006~~, 2011."

SECTION 12. Notwithstanding any provision of Part 2A of Article 21A of Chapter 143 of the General Statutes, the Department of Environment and Natural Resources shall annually use up to three million dollars (\$3,000,000) of the increase in receipts credited to the Commercial Fund as a result of the increase in the annual operating fee set out in G.S. 143-215.94C(a), as amended by Section 1 of this act, solely for the removal of free petroleum from groundwater as a first priority and shall use the balance of these receipts to address the other concerns raised in the letter from the United States Environmental Protection Agency Region 4 Administrator to the Secretary of Environment and Natural Resources dated 19 September 2006.

SECTION 13. Sections 4, 5, 9, 10, and 13 of this act are effective when this act becomes law. Sections 1, 3, 6, and 12 of this act become effective 1 January 2009. Section 2 of this act becomes effective 1 January 2009 and applies to determinations of eligibility and requests for payments made on or after that date. Sections 7 and 8 of this act are effective when it becomes law and expire 1 September 2014. Section 11 of this act is effective retroactively to 1 October 2006.

In the General Assembly read three times and ratified this the 17th day of July, 2008.

s/ Beverly E. Perdue
President of the Senate

s/ Joe Hackney
Speaker of the House of Representatives

s/ Michael F. Easley
Governor

Approved 8:40 a.m. this 8th day of August, 2008