

GENERAL ASSEMBLY OF NORTH CAROLINA  
1991 SESSION

CHAPTER 538  
HOUSE BILL 1222

AN ACT TO AMEND VARIOUS STATUTES RELATING TO THE CLEANUP OF LEAKING PETROLEUM UNDERGROUND STORAGE TANKS, TO INCREASE THE PER GALLON FUEL EXCISE TAX, AND TO DEDICATE THE PROCEEDS OF THE TAX INCREASE TO THE CLEANUP OF LEAKING PETROLEUM UNDERGROUND STORAGE TANKS.

The General Assembly of North Carolina enacts:

Section 1. 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.
- (3) 'Council' means the North Carolina Petroleum Underground Storage Tank Funds Council.
- ~~(2a)~~(4) '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.
- (5) 'Loan Fund' means the Groundwater Protection Loan Fund.
- ~~(3)~~(6) 'Noncommercial Fund' means the Noncommercial Leaking Petroleum Underground Storage Tank Cleanup Fund established pursuant to this Part.
- ~~(4)~~(7) '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)(8) 'Operator' means any person in control of, or having responsibility for, the operation of an underground storage tank.
- (6)(9) '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)(10) '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. 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 that 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 occurrence.
- (2) For discharges or releases discovered after 1 January 1992 and 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.
- (3) For discharges or releases reported on or after 1 January 1994, the cleanup of environmental damage as required by G.S. 143-215.94E(a) in excess of twenty thousand dollars (\$20,000) if, prior to the discharge or release, the commercial underground storage tank from which the discharge or release occurred met the performance standards applicable to tanks installed after 22 December 1988 or met the requirements that existing underground storage tanks must meet by 22 December 1998.
- (4) For discharges or releases reported after 1 January 1994 from a commercial underground storage tank that does not meet the standards in subdivision (3) of this subsection, sixty percent (60%) of the costs per occurrence of the cleanup of environmental damage as required by G.S. 143-215.94E(a) that exceeds twenty thousand dollars (\$20,000) but is not more than one hundred thirty-seven thousand five hundred dollars (\$137,500) and one hundred percent (100%) of the costs above this amount, up to the limits established in this section.
- ~~(2)~~(5) Compensation to third parties for bodily injury and property damage in excess of one hundred thousand dollars (\$100,000) per occurrence.
- (6) Reimbursing the State for damages or other costs incurred as a result of a loan from the Loan Fund. The per occurrence limit does not apply to reimbursements to the State under this subdivision."

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

- "(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 not connected to an underground storage tank, or vehicle;
  - (2) The removal or 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."

Sec. 3.1. G.S. 143-215.94C(d) is repealed.

Sec. 4. G.S. 143-215.94C, as amended by Section 3.1 of this act, reads as rewritten:

**"§ 143-215.94C. (Expires December 31, 1998) 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 of 3,500 gallons or less capacity —~~forty five dollars (\$45.00).~~ one hundred dollars (\$100.00).
- (2) For each petroleum commercial underground storage tank of more than 3,500 gallon capacity —~~seventy five dollars (\$75.00).~~ one hundred fifty dollars (\$150.00).

(b) The annual operating fee shall be determined on a calendar year basis. For petroleum commercial underground storage tanks in use on 1 January, 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.

(e) An owner or operator of a commercial underground storage tank who fails to pay a tank 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 tank fee due."

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

"(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 of 3,500 gallons or less capacity —~~one hundred dollars (\$100.00).~~ one hundred fifty dollars (\$150.00).

- (2) For each petroleum commercial underground storage tank of more than 3,500 gallon capacity ~~—one hundred fifty dollars (\$150.00)—two hundred twenty-five dollars (\$225.00).~~"

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

**"§ 143-215.94D. (Expires December 31, 1998) 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 set out in subsection (b1) of this section,~~ 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:

- (1) ~~(i) noneommercial~~ Noncommercial underground storage tanks, ~~tanks if the discharge or release meets the minimum priority criteria for corrective action established by the Department.~~
- (2) ~~(ii) commereial~~ Commercial underground storage tanks ~~where~~ if the owner or operator cannot be identified or fails to proceed with the ~~cleanup, and cleanup.~~
- (3) ~~(iii) commereial~~ Commercial underground storage tanks ~~which~~ that were taken out of operation prior to 1 January 1974 ~~where, if,~~ 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:~~ located.
- (4) Commercial underground storage tanks if the owner of the commercial underground storage tank is the owner only as a result of owning the land on which the commercial underground storage tank is located, the owner did not know or have reason to know that the underground storage tank was located on the property, and the land was not transferred to the owner to avoid liability for the commercial underground storage tank.

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

- (1) The cleanup of environmental damage as required by G.S. 143-215.94E(a); and
- (2) Compensation to third parties for bodily injury and property damage in excess of one hundred thousand dollars (\$100,000) per occurrence.
- (3) Reimbursing the State for damages or other costs incurred as a result of a loan from the Loan Fund. The per occurrence limit does not apply to reimbursements to the State under this subdivision.

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

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

(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.

(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 not connected to an underground storage tank, or vehicle;
- (2) The removal or 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 reads as rewritten:

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

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

(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 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.~~ that exceed the amounts for which the owner or operator is responsible under that section. 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.

(c) In the case of a discharge or release from a noncommercial underground storage tank, the owner or operator may elect to have the Noncommercial Fund pay or

reimburse the owner or operator for the costs described in G.S. 143-215.94D(b) up to a maximum of one million dollars (\$1,000,000) per discharge or release.

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

(e) When the owner or operator pays the costs described in G.S. 143-215.94B(b) or G.S. 143-215.94D(b) 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 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 for which prior approval was obtained and appropriate documentation was submitted, and any other costs ~~which~~ that the Department determines to be reasonable and necessary and for which appropriate documentation is submitted. 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.

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

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

- (1) The owner or operator has willfully violated 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;
- (2) The discharge or release is the result of the owner's or operator's willful or wanton misconduct; or
- (3) The owner or operator has failed to pay any annual tank operating fee due pursuant to G.S. 143-215.94C.

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

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

**"§ 143-215.94G. (Expires December 31, 1998) 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~~ The Department is authorized and empowered to may 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. Fund whenever there is a discharge or release of petroleum from any of the following:

- (1) A noncommercial underground storage tank.
- (2) An underground storage tank whose owner or operator cannot be identified or located.
- (3) An underground storage tank whose owner or operator fails to proceed as required by G.S. 143-215.94E(a).
- (4) A commercial underground storage tank taken out of operation prior to 1 January 1974 if, when the discharge or release is discovered, neither the owner nor operator owns or leases the land on which the underground storage tank is located.

(a1) 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~~ may 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), 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 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 that~~ 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 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 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 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 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. 9. G.S. 143-215.94J(e) reads as rewritten:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- a. One who shall, at the time of appointment, be actively connected with a petroleum refining company or an organization representing petroleum refining companies.
- b. One who shall, at the time of appointment, be actively connected with a petroleum marketer or an organization representing petroleum marketers.
- c. One who shall, at the time of appointment, be actively connected with an environmental insurance carrier or an organization representing environmental insurance carriers.
- d. One who shall, at the time of appointment, be actively connected with a commercial lending institution or an organization representing commercial lending institutions.

(3) Four members appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives as follows:

- a. One who shall, at the time of appointment, be an owner or operator of a convenience store that markets petroleum products or is actively connected with an organization representing convenience store owners or operators.
- b. One who shall, at the time of appointment, be a motor fuel service station dealer or actively connected with an organization representing motor fuel service station dealers.
- c. One who shall, at the time of appointment, be actively connected with an environmental advocacy organization.
- d. One who shall, at the time of appointment, have special training and experience in the remediation of groundwater contamination resulting from leaking petroleum underground storage tanks.

(b) The members of the Council shall elect a chairman and a vice-chairman.

(c) All appointments made by the General Assembly shall be for a term of two years. Terms shall expire on 30 June except that members shall serve until their successors are appointed and duly qualified as provided in G.S. 128-7. The General Assembly shall have the power to remove, in accordance with G.S. 143B-13, any member appointed by the General Assembly.

(d) The Secretary shall provide staff assistance to the Council from the agency responsible for administration of the underground storage tank cleanup program.

(e) Members of the Council who are not State employees shall be reimbursed for their expenses in accordance with G.S. 138-5. Members of the Council who are State employees shall be reimbursed for their expenses in accordance with G.S. 138-6.

(f) The Council shall meet upon the call of the Chairman or a majority of its members. A majority of its members shall constitute a quorum for the transaction of business.

(g) The Council shall:

- (1) Review the administration of the Commercial Fund, the Noncommercial Fund, and the Loan Fund.
- (2) Advise the Secretary and the Commission on any matter relating to the effective and efficient implementation of this Part.
- (3) Advise the Secretary on the adequacy of the funds to carry out the purposes of this Part.
- (4) Recommend rules, in accordance with generally accepted standards prevailing among commercial lending institutions, for use by the Department in determining eligibility for loans, interest rates, terms, and conditions applicable to loans, and in managing the Loan Fund.
- (5) Recommend rules and comment on proposed rules governing reimbursement of necessary and reasonable costs under G.S. 143-215.94E(e)."

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

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

(a) There is established under the control and direction of the Department the Groundwater Protection Loan Fund. This Loan Fund shall be a nonreverting revolving fund consisting of any monies appropriated to it by the General Assembly or available to it from grants, and other monies paid to it or recovered on behalf of the Loan Fund. The Loan Fund shall be credited with interest on the Loan Fund by the State Treasurer pursuant to G.S. 147-69.2 and G.S. 147-69.3.

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

(c) Using generally accepted standards prevailing among commercial lending institutions, the Department shall adopt rules for use in managing the Loan Fund. The Department shall administer the loan program through existing commercial lending institutions. In the event that the Department is unable to arrange for the administration of the loan program through existing commercial institutions in all or any part of the State, the Department may administer the loan program through the Office of State Budget and Management. Each commercial institution or agency that administers any part of the loan program shall collect all charges for securing and administering each loan, including but not limited to application fees, recording costs, collection costs, and attorneys' fees from the borrower. Receipt of a loan from the Loan Fund is not a right, duty, or privilege; therefore, Article 3 of Chapter 150B of the General Statutes does not apply to the grant or denial of a loan from the Loan Fund.

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

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

(e) In the event of a default on a loan from the Loan Fund or a violation of a loan agreement, the Secretary may request the Attorney General to bring a civil action for collection of the amount owed or other appropriate relief. An action shall be filed in the superior court of the county where the loan recipient resides, where the loan recipient does business, or where the tanks replaced or upgraded by the loan are located. In an action, the Attorney General may recover all costs of litigation, including attorneys' fees.

(f) If the State incurs liability in extending credit from the Loan Fund and, as a result of the liability, the State is ordered to pay or, as part of a settlement agreement, agrees to pay damages or other costs, the State shall seek reimbursement for the amount of the damages or other costs from the following sources in the order listed:

- (1) 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, including but not limited to the Leaking Underground Storage Tank Trust Fund established pursuant to 26 U.S.C. § 4081 and 42 U.S.C. § 6991b(h).
- (2) The Noncommercial Fund.
- (3) The Commercial Fund."

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

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

Sec. 15. G.S. 105-434(a) reads as rewritten:

"(a) Tax. – An excise tax is levied on motor fuel sold, distributed, or used by a distributor within this State at a flat rate of ~~seventeen cents (17¢)~~ seventeen and one-half cents (17 1/2¢) per gallon, plus a variable rate of either three and one-half cents (3 1/2¢) per gallon or seven percent (7%) of the average wholesale price of motor fuel for the applicable base period, whichever is greater. The Secretary of Revenue shall semiannually determine the average wholesale price of motor fuel using information on refiner and gas plant operator sales prices of finished motor gasoline and No. 2 diesel fuel for resale, published by the United States Department of Energy in the 'Monthly

Energy Review,' or equivalent data. The Secretary shall determine the average wholesale price of motor fuel by computing the average sales price of finished motor gasoline for the base period, computing the average sales price for No. 2 diesel fuel for the base period, and then computing a weighted average of the results of the first two computations based on the proportion of tax collected under this Article on motor fuel and Article 36A on fuel for the base period. The Secretary shall notify affected taxpayers of the tax rate to be in effect for each six-month period beginning January 1 and July 1.

To facilitate administration of the motor fuel tax, the Secretary shall convert the wholesale percentage component to a cents-per-gallon rate. The rate for the six-month period beginning January 1 shall be computed from data published for the six-month base period ending on the preceding September 30, and the rate for the six-month period beginning July 1 shall be computed from data published for the six-month base period ending on the preceding March 31. The cents-per-gallon rate computed by the Secretary shall be rounded to the nearest one-tenth of a cent (1/10¢). If the cents-per-gallon rate computed by the Secretary is exactly between two tenths of a cent, the rate shall be rounded up to the higher of the two."

Sec. 16. G.S. 105-445 reads as rewritten:

**"§ 105-445. Application of proceeds of gasoline tax.**

The amount of revenue collected under this Article attributable to a per gallon excise tax of one-half cent (1/2¢) a gallon shall be credited in equal amounts to the Commercial Leaking Petroleum Underground Storage Tank Fund and the Groundwater Protection Loan Fund. Of the remaining revenue collected under this Article, ~~Seventy-five~~ ~~seventy-five~~ percent (75%) of the revenue collected under this Article shall be credited to the Highway Fund and the remaining twenty-five percent (25%) shall be credited to the Highway Trust Fund. A proportionate share of a refund allowed under this Article shall be charged to the Commercial Leaking Petroleum Underground Storage Tank Fund, the Groundwater Protection Loan Fund, the Highway Fund Fund, and the Highway Trust Fund so that ~~seventy five percent (75%) of the amount of a refund is charged to the Highway Fund and twenty five percent (25%) is charged to the Highway Trust Fund.~~ The Secretary shall credit revenue or charge refunds to the appropriate Funds on a monthly basis."

Sec. 17. G.S. 105-434(a), as amended by Section 15 of this act, reads as rewritten:

"(a) Tax. – An excise tax is levied on motor fuel sold, distributed, or used by a distributor within this State at a flat rate of seventeen and ~~one-half~~ one-quarter cents (~~17 1/2¢~~) (17 1/4¢) per gallon, plus a variable rate of either three and one-half cents (3 1/2¢) per gallon or seven percent (7%) of the average wholesale price of motor fuel for the applicable base period, whichever is greater. The Secretary of Revenue shall semiannually determine the average wholesale price of motor fuel using information on refiner and gas plant operator sales prices of finished motor gasoline and No. 2 diesel fuel for resale, published by the United States Department of Energy in the 'Monthly Energy Review,' or equivalent data. The Secretary shall determine the average wholesale price of motor fuel by computing the average sales price of finished motor

gasoline for the base period, computing the average sales price for No. 2 diesel fuel for the base period, and then computing a weighted average of the results of the first two computations based on the proportion of tax collected under this Article on motor fuel and Article 36A on fuel for the base period. The Secretary shall notify affected taxpayers of the tax rate to be in effect for each six-month period beginning January 1 and July 1.

To facilitate administration of the motor fuel tax, the Secretary shall convert the wholesale percentage component to a cents-per-gallon rate. The rate for the six-month period beginning January 1 shall be computed from data published for the six-month base period ending on the preceding September 30, and the rate for the six-month period beginning July 1 shall be computed from data published for the six-month base period ending on the preceding March 31. The cents-per-gallon rate computed by the Secretary shall be rounded to the nearest one-tenth of a cent ( $1/10\text{¢}$ ). If the cents-per-gallon rate computed by the Secretary is exactly between two tenths of a cent, the rate shall be rounded up to the higher of the two."

Sec. 18. G.S. 105-445, as amended by Section 16 of this act, reads as rewritten:

**"§ 105-445. Application of proceeds of gasoline tax.**

The amount of revenue collected under this Article attributable to a per gallon excise tax of ~~one half cent ( $1/2\text{¢}$ )~~ one-quarter cent ( $1/4\text{¢}$ ) a gallon shall be credited ~~in equal amounts to the Commercial Leaking Petroleum Underground Storage Tank Fund and the Groundwater Protection Loan Fund.~~ Of the remaining revenue collected under this Article, seventy-five percent (75%) shall be credited to the Highway Fund and the remaining twenty-five percent (25%) shall be credited to the Highway Trust Fund. A proportionate share of a refund allowed under this Article shall be charged to the Commercial Leaking Petroleum Underground Storage Tank Fund, ~~the Groundwater Protection Loan Fund,~~ the Highway Fund, and the Highway Trust Fund. The Secretary shall credit revenue or charge refunds to the appropriate Funds on a monthly basis."

Sec. 19. G.S. 105-434(a), as amended by Sections 15 and 17 of this act, reads as rewritten:

"(a) Tax. – An excise tax is levied on motor fuel sold, distributed, or used by a distributor within this State at a flat rate of seventeen ~~and one-quarter cents ( $17\ 1/4\text{¢}$ )~~ ( $17\text{¢}$ ) per gallon, plus a variable rate of either three and one-half cents ( $3\ 1/2\text{¢}$ ) per gallon or seven percent (7%) of the average wholesale price of motor fuel for the applicable base period, whichever is greater. The Secretary of Revenue shall semiannually determine the average wholesale price of motor fuel using information on refiner and gas plant operator sales prices of finished motor gasoline and No. 2 diesel fuel for resale, published by the United States Department of Energy in the 'Monthly Energy Review,' or equivalent data. The Secretary shall determine the average wholesale price of motor fuel by computing the average sales price of finished motor gasoline for the base period, computing the average sales price for No. 2 diesel fuel for the base period, and then computing a weighted average of the results of the first two computations based on the proportion of tax collected under this Article on motor fuel and Article 36A on fuel for the base period. The Secretary shall notify affected



taxpayers of the tax rate to be in effect for each six-month period beginning January 1 and July 1.

To facilitate administration of the motor fuel tax, the Secretary shall convert the wholesale percentage component to a cents-per-gallon rate. The rate for the six-month period beginning January 1 shall be computed from data published for the six-month base period ending on the preceding September 30, and the rate for the six-month period beginning July 1 shall be computed from data published for the six-month base period ending on the preceding March 31. The cents-per-gallon rate computed by the Secretary shall be rounded to the nearest one-tenth of a cent (1/10¢). If the cents-per-gallon rate computed by the Secretary is exactly between two tenths of a cent, the rate shall be rounded up to the higher of the two."

Sec. 20. G.S. 105-445, as amended by Sections 16 and 18 of this act, reads as rewritten:

**"§ 105-445. Application of proceeds of gasoline tax.**

~~The amount of revenue collected under this Article attributable to a per gallon excise tax of one quarter cent (1/4¢) a gallon shall be credited to the Commercial Leaking Petroleum Underground Storage Tank Fund.~~ Of the remaining revenue collected under this Article, seventy-five percent (75%) shall be credited to the Highway Fund and the remaining twenty-five percent (25%) shall be credited to the Highway Trust Fund. A proportionate share of a refund allowed under this Article shall be charged to the ~~Commercial Leaking Petroleum Underground Storage Tank Fund,~~ the Highway Fund, ~~Fund~~ and the Highway Trust Fund. The Secretary shall credit revenue or charge refunds to the appropriate Funds on a monthly basis."

Sec. 21. Section 5 of Chapter 1035 of the 1987 Session Laws, as amended by Section 16 of Chapter 652 of the 1989 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. ~~143-215.94N-143-215.94P~~ as enacted by Section 1 of this act as amended, and Section 2 of this act expire 31 December 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. 22. G.S. 143-215.94E(e), as amended by Section 7 of this act, reads as rewritten:

"(e) When the owner or operator pays the costs described in G.S. 143-215.94B(b) or G.S. 143-215.94D(b) 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 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 for ~~which prior approval was obtained and appropriate documentation was submitted, and any other costs~~ that the Department determines to be reasonable and necessary and for which appropriate documentation is submitted. 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."

Sec. 23. G.S. 143-215.94G(b), as amended by Section 8 of this act, reads as rewritten:

"(b) Whenever the discharge or release of a petroleum product is from a commercial underground storage tank, the Department may 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), the Department shall require the owner or operator to submit documentation of all expenditures claimed for the purposes of establishing that the owner or operator has spent 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~~ that 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 the amounts specified in G.S. 143-215.94E(b)."

Sec. 24. The Environmental Management Commission shall adopt rules governing reimbursement of necessary and reasonable costs as required by G.S. 143-215.94E(e) as amended by Section 7 of this act. Rules governing reimbursement of necessary and reasonable costs shall become effective on or before 1 July 1992. To implement G.S. 143-215.94P as enacted by Section 13 of this act, the Department of Environment, Health, and Natural Resources shall adopt temporary or permanent rules that are effective on or before 1 March 1992.

Sec. 25. Section 3.1 of this act becomes effective 30 June 1991. Sections 3, 4, 15, and 16 of this act become effective 1 January 1992. Section 5 of this act becomes effective 1 January 1993. Sections 17 and 18 of this act become effective 1 January 1995. Sections 19 and 20 of this act become effective 1 January 1999. Sections 22 and 23 of this act become effective 1 July 1992. Sections 1, 2, 6 through 14, 21, 24, and 25 of this act are effective upon ratification.

In the General Assembly read three times and ratified this the 3rd day of July, 1991.

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James C. Gardner  
President of the Senate

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Daniel Blue, Jr.  
Speaker of the House of Representatives