

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 1991

CHAPTER 817  
SENATE BILL 1169

AN ACT TO CLARIFY CERTAIN DEDUCTIBLES APPLICABLE TO THE COMMERCIAL LEAKING PETROLEUM UNDERGROUND STORAGE TANK CLEANUP FUND, TO MAKE CURRENT LANDOWNERS WHO ENGAGE IN CLEANUPS ELIGIBLE FOR REIMBURSEMENT FROM THE COMMERCIAL FUND, AND TO ADD TWO MEMBERS TO THE PETROLEUM UNDERGROUND STORAGE TANK FUNDS COUNCIL.

The General Assembly of North Carolina enacts:

Section 1. 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 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) 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.
- (2) For discharges or releases discovered on or 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 on or 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~~fifty-seven thousand five

hundred dollars ~~(\$137,500)~~ (\$157,500) and one hundred percent (100%) of the costs above this amount, up to the limits established in this section.

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

"(b1) In the case of a discharge or release from a commercial 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 commercial 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 Commercial Fund pay or reimburse the current landowner for any costs described in subdivisions (1), (2), (3), and (4) of G.S. 143-215.94B(b) that exceed the amounts for which the owner or operator is responsible under that subsection. The current landowner is not eligible for payment or reimbursement until the current landowner has paid the costs described in subdivisions (1), (2), (3), and (4) of G.S. 143-215.94B(b) for which the owner or operator is responsible. Eligibility for reimbursement under this subsection may be transferred from a current landowner who has paid the costs described in subdivisions (1), (2), (3), and (4) of G.S. 143-215.94B(b) to a subsequent landowner. The sum of payments from the Commercial 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 cleanup 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. In the event that an owner or operator is subsequently identified or located, the Secretary shall seek reimbursement as provided in G.S. 143-215.94G(d). The current landowner shall submit documentation of all expenditures as required by G.S. 143-215.94G(b)."

Sec. 3. G.S. 143-215.94O(a) reads as rewritten:

"(a) The North Carolina Petroleum Underground Storage Tank Funds Council is created. The Council shall be composed of ~~nine~~ 11 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~~ Five 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.
  - e. One who shall, at the time of appointment, be actively engaged in farming and the owner of a noncommercial petroleum underground storage tank or actively connected with an organization representing farmers.
- (3) ~~Four~~ Five 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.
  - e. One who shall, at the time of appointment, be the owner of a noncommercial petroleum underground storage tank and not eligible for appointment under subdivisions (1), (2)a. through (2)d., or (3)a. through (3)d. of this subsection."

Sec. 4. Initial appointments to the North Carolina Petroleum Underground Storage Tank Funds Council to fill positions that are added by this act shall be for one-year terms expiring 30 June 1993.

Sec. 5. Sections 1 and 5 of this act are effective on and after 1 January 1992. Sections 2, 3, and 4 of this act become effective 1 July 1992.

1992. In the General Assembly read three times and ratified this the 1st day of July,

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James C. Gardner  
President of the Senate

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Daniel Blue, Jr.  
Speaker of the House of Representatives