

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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HOUSE BILL 1061

Short Title: Underground Storage Tanks Amends '93.

(Public)

Sponsors: Representative DeVane.

Referred to: Environment.

April 19, 1993

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LEAKING PETROLEUM UNDERGROUND STORAGE
TANK CLEANUP ACT OF 1988.

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.

(2a) For discharges or releases discovered and reported on or after 1 January 1994 and prior to 1 January 1995, 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 1 January 1994, the owner or operator notifies the Department of its intent to either permanently close the tank in accordance with applicable regulations

1 or upgrade the tank to meet the requirements that existing underground
2 storage tanks must meet by 22 December 1998, and the closure or
3 upgrade is commenced prior to 1 July 1994 and completed prior to 1
4 January 1995.

5 (3) For discharges or releases discovered and reported on or after 1
6 January 1994, the cleanup of environmental damage as required by
7 G.S. 143-215.94E(a) in excess of twenty thousand dollars (\$20,000) if,
8 prior to the discharge or release, the commercial underground storage
9 tank from which the discharge or release occurred met the
10 performance standards applicable to tanks installed after 22 December
11 1988 or met the requirements that existing underground storage tanks
12 must meet by 22 December 1998.

13 (4) For discharges or releases discovered and reported on or after 1
14 January 1994 from a commercial underground storage tank that does
15 not qualify under subdivision (2a) of this subsection or does not meet
16 the standards in subdivision (3) of this subsection, sixty percent (60%)
17 of the costs per occurrence of the cleanup of environmental damage as
18 required by G.S. 143-215.94E(a) that exceeds twenty thousand dollars
19 (\$20,000) but is not more than one hundred fifty-seven thousand five
20 hundred dollars (\$157,500) and one hundred percent (100%) of the
21 costs above this amount, up to the limits established in this section.

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

24 (6) Reimbursing the State for damages or other costs incurred as a result
25 of a loan from the Loan Fund. The per occurrence limit does not apply
26 to reimbursements to the State under this subdivision."

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

28 "(b) The annual operating fee shall be determined on a calendar year basis. For
29 petroleum commercial underground storage tanks in use on 1 ~~January~~, January and
30 remaining in use on or after 1 December of that year, the annual operating fee due for
31 that year shall be as specified in subsection (a) of this section. For a petroleum
32 commercial underground storage tanks which are tank that is first placed in use in any
33 year, the annual operating fee due for that year shall be determined by multiplying one-
34 twelfth (1/12) of the amount specified in subsection (a) of this section by the number of
35 months remaining in the calendar year. For a petroleum commercial underground
36 storage tank that is permanently removed from use in any year, the annual operating fee
37 due for that year shall be determined by multiplying one-twelfth (1/12) of the amount
38 specified in subsection (a) of this section by the number of months in the calendar year
39 preceding the permanent removal from use. In calculating the pro rata annual operating
40 fee for a tank that is first placed in use or permanently removed during a calendar year
41 under the preceding two sentences, a partial month shall count as a month, except that
42 where a tank is permanently removed and replaced by another tank, the total of the
43 annual operating fee for the tank that is removed and the replacement tank shall not
44 exceed the annual operating fee for the replacement tank. The annual operating fee

1 shall be due and payable on the first day of the month in accordance with a staggered
 2 schedule established by the Department. The Department shall implement a staggered
 3 schedule to the end that the total amount of fees to be collected by the Department is
 4 approximately the same each ~~month~~-quarter. A person who owns or operates more than
 5 one ~~commercial~~-petroleum commercial underground storage tank may request that the
 6 fee for all tanks be due at the same time. A person who owns or operates 12 or more
 7 commercial petroleum storage tanks may request that the total of all fees be paid in four
 8 equal payments to be due on the first day of each calendar quarter."

9 Sec. 3. G.S. 143-215.94E is amended by adding two new subsections to read:

10 "(a1) Subsection (a) of this section does not apply to a person who:

- 11 (1) Holds **indicia** of ownership in an underground storage tank solely to
 12 protect a security interest and is not an operator or otherwise an owner
 13 of the underground tank;
- 14 (2) Is not otherwise engaged in the production, refining, or marketing of
 15 petroleum; and
- 16 (3) After obtaining title by foreclosure, empties the underground storage
 17 tank and either temporarily or permanently closes the underground
 18 storage tank in accordance with applicable rules within 45 days of the
 19 date that a final report of the sale of the property by foreclosure is
 20 required to be filed.

21 (i) An owner or operator who notifies the Department of an intention to close or
 22 upgrade a commercial underground storage tank as provided in G.S. 143-
 23 215.94B(b)(2a) shall commence the closure or upgrade prior to 1 July 1994 and shall
 24 complete the closure or upgrade prior to 1 January 1995. An owner who notifies the
 25 Department of an intention to close or upgrade a commercial underground storage tank
 26 and who fails to commence and complete the closure as specified in this subsection is
 27 subject to a civil penalty as provided in G.S. 143-215.94K. The provisions of G.S. 143-
 28 215.94B(b)(2a) do not apply if an owner or operator who notifies the Department of an
 29 intention to close or upgrade a commercial underground storage tank fails to commence
 30 or complete the closure or upgrade within the dates specified in this subsection."

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

32 "(c) In the case of a discharge or release from a noncommercial underground
 33 storage ~~tank,~~ ~~tank~~ or a commercial underground storage tank eligible for the
 34 Noncommercial Fund in accordance with G.S. 143-215.94D(b), the owner or operator
 35 may elect to have the Noncommercial Fund pay or reimburse the owner or operator for
 36 the costs described in G.S. ~~143-215.94D(b)~~-143-215.94D(b1) up to a maximum of one
 37 million dollars (\$1,000,000) per discharge or release."

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

39 "**§ 143-215.94G. (Expires December 31, 1998) Authority of the Department to**
 40 **engage in cleanups; actions for fund reimbursement.**

41 (a) The Department may use staff, equipment, or materials under its control or
 42 provided by other cooperating federal, State, or local agencies and ~~to~~-may contract with
 43 any agent or contractor it deems appropriate to develop and implement a cleanup ~~plan~~
 44 plan, to provide interim alternative sources of drinking water to third parties, and to pay

1 the initial costs for providing permanent alternative sources of drinking water to third
2 parties, and to shall pay the costs resulting from commercial underground storage tanks
3 from the Commercial Fund and shall pay the costs resulting from noncommercial
4 underground storage tanks authorized by G.S. 143-215.94D(b) from the Noncommercial
5 Fund Fund, whenever there is a discharge or release of petroleum from any of the
6 following:

7 (1) A noncommercial underground storage tank.

8 (2) An underground storage tank whose owner or operator cannot be
9 identified or located.

10 (3) An underground storage tank whose owner or operator fails to proceed
11 as required by G.S. 143-215.94E(a).

12 (4) A commercial underground storage tank taken out of operation prior to
13 1 January 1974 if, when the discharge or release is discovered, neither
14 the owner nor operator owns or leases the land on which the
15 underground storage tank is located.

16 (a1) Every State agency shall provide to the Department to the maximum extent
17 feasible such staff, equipment, and materials as may be available and useful to the
18 development and implementation of a cleanup program.

19 (a2) The cost of any action authorized under subsection (a) of this section shall be
20 paid, to the extent funds are available, from the following sources in the order listed:

21 (1) Any funds to which the State is entitled under any federal program
22 providing for the cleanup of petroleum discharges or releases from
23 underground storage tanks, including, but not limited to, the Leaking
24 Underground Storage Tank Trust Fund established pursuant to 26
25 U.S.C. § 4081 and 42 U.S.C. § 6991b(h).

26 (2) The Commercial Fund or the Noncommercial Fund.

27 (b) Whenever the discharge or release of a petroleum product is from a
28 commercial underground storage tank, the Department may supervise the cleanup of
29 environmental damage required by G.S. 143-215.94E(a). If the owner or operator elects
30 to have the Commercial Fund reimburse or pay for any costs allowed under G.S. 143-
31 215.94B(b), the Department shall require the owner or operator to submit
32 documentation of all expenditures claimed for the purposes of establishing that the
33 owner or operator has spent the amounts required to be paid by the owner or operator
34 pursuant to and in accordance with G.S. 143-215.94E(b). The Department shall allow
35 credit for all expenditures that the Department determines to be reasonable and
36 necessary. The Department may not pay for any costs for which the Commercial Fund
37 was established until the owner or operator has paid the amounts specified in G.S. 143-
38 215.94E(b).

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

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

43 (1) Any costs not authorized to be paid from either the Commercial or the
44 Noncommercial Fund;

1 (2) The amounts provided for in G.S. 143-215.94B(b) required to be paid
2 for by the owner or operator pursuant to G.S. 143-215.94E(b) where
3 the owner or operator of a commercial underground storage tank is
4 later identified or located;

5 (3) The amounts provided for in G.S. 143-215.94B(b) required to be paid
6 for by the owner or operator pursuant to G.S. 143-215.94E(b) where
7 the owner or operator of a commercial underground storage tank failed
8 to proceed as required by G.S. 143-215.94E(a);

9 (3a) The amounts provided for by G.S. 143-215.94B(b)(5) required to be
10 paid by the owner or operator to third parties for the cost of providing
11 interim alternative sources of drinking water to third parties and the
12 initial cost of providing permanent alternative sources of drinking
13 water to third parties;

14 (4) Any funds due under G.S. 143-215.94E(g); and

15 (5) Any funds to which the State is entitled under any federal program
16 providing for the cleanup of petroleum discharges or releases from
17 underground storage tanks.

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

24 (f) In the event that a recovery equal to or in excess of the amounts required to
25 be paid for by the owner or operator pursuant to G.S. 143-215.94E(b) is recovered
26 pursuant to subdivisions (2) and (3) of subsection (d) of this section for the costs
27 described in G.S. 143-215.94B(b), the Department shall transfer funds from the
28 Commercial Fund that would have been paid from the Commercial Fund pursuant to
29 G.S. 143-215.94B(b) if the owner or operator had proceeded with the cleanup, but
30 which were paid from the Noncommercial Fund, into the Noncommercial Fund."

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

32 "**§ 143-215.94P. Groundwater Protection Loan Fund.**

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

39 (b) The Loan Fund shall be used to provide loans to the owners of commercial
40 petroleum underground storage tanks who are creditworthy but may be unable to secure
41 conventional loans to upgrade or replace commercial underground storage tanks in use
42 on 1 July 1991 so as to meet the performance standards applicable to tanks installed
43 after 22 December 1988 or the requirements that existing underground storage tanks

1 must meet by 22 December 1998. All applications for loans under this section must be
2 received by the Department prior to 1 January 1995.

3 (c) ~~Using generally accepted standards prevailing among commercial lending~~
4 ~~institutions, the~~ The Department shall adopt rules for use in managing the Loan Fund.
5 Rules for managing the Loan Fund shall be based on generally accepted standards
6 prevailing among commercial lending institutions with such modifications as may be
7 necessary to achieve the purpose of this section to make loans available to creditworthy
8 applicants. The Department shall administer the loan program through existing
9 commercial lending institutions. In the event that the Department is unable to arrange
10 for the administration of the loan program through existing commercial institutions in
11 all or any part of the State, the Department may administer the loan program through the
12 Office of State Budget and Management. Each commercial institution or agency that
13 administers any part of the loan program shall collect all charges for securing and
14 administering each loan, including but not limited to application fees, recording costs,
15 collection costs, and attorneys' fees from the borrower. Receipt of a loan from the Loan
16 Fund is not a right, duty, or privilege; therefore, Article 3 of Chapter 150B of the
17 General Statutes does not apply to the grant or denial of a loan from the Loan Fund.

18 (d) Funds received in repayment of loans made from the Loan Fund shall be
19 deposited into the Loan Fund until the proceeds of all approved loans are disbursed to
20 the borrowers. Thereafter, funds received in repayment of loans made from the Loan
21 Fund and any other funds remaining in the Loan Fund shall be deposited in the
22 Commercial Fund.

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

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

- 34 (1) Any funds to which the State is entitled under any federal program
35 providing for the cleanup of petroleum discharges or releases from
36 underground storage tanks, including but not limited to the Leaking
37 Underground Storage Tank Trust Fund established pursuant to 26
38 U.S.C. § 4081 and 42 U.S.C. § 6991b(h).
- 39 (2) The Noncommercial Fund.
- 40 (3) The Commercial Fund."

41 Sec. 7. The catch line to G.S. 143-215.94L reads as rewritten:

42 "**§ 143-215.94L. (Expires December 31, 1998) Adoption of rules; administrative**
43 **procedure; ~~short title; miscellaneous provisions. provisions; short title;~~**
44 **allocation of funds.**"

1 Sec. 8. Section 17 of Chapter 652 of the 1989 Session Laws is codified as
2 G.S. 143-215.94L(e) and reads as rewritten:

3 "~~Sec. 17. (e)~~ All sums collected on kerosene and motor fuel pursuant to G.S.
4 119-18 that are not allotted by the Office of State Budget and Management to
5 administer and enforce the provisions of Chapter 119 of the General Statutes shall be
6 credited to the Commercial ~~Leaking Petroleum Underground Storage Tank Cleanup~~ Fund
7 and the Noncommercial ~~Leaking Petroleum Underground Storage Tank Cleanup~~ Fund as
8 certified on a monthly basis as follows: ~~one-half (1/2) shall be credited to the Commercial~~
9 ~~Fund and one-half (1/2) shall be credited to the Noncommercial Fund~~ all such funds shall be
10 credited to the Noncommercial Fund unless the balance in the ~~Commercial~~
11 ~~Noncommercial~~ Fund exceeds ~~fifteen-five million dollars (\$15,000,000), (\$5,000,000),~~
12 and in that event, ~~all such funds~~ one-half (1/2) shall be credited to the Noncommercial
13 Fund and one-half (1/2) shall be credited to the Commercial Fund. ~~until the balance of the~~
14 ~~Commercial Fund falls below five million dollars (\$5,000,000), at which time credits to the~~
15 ~~Commercial Fund shall resume."~~

16 Sec. 9. Section 1 through Section 6 and Section 9 of this act are effective
17 upon ratification. Sections 7 and 8 of this act become effective 1 July 1993.