

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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SENATE BILL 1317\*  
Second Edition Engrossed 6/6/96

Short Title: Underground Storage Tank Amends. '96.

(Public)

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Sponsors: Senators Blackmon, Kerr; Odom, Albertson, Horton, Plexico, Cooper, and Smith.

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Referred to: Finance.

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May 27, 1996

A BILL TO BE ENTITLED

1 AN ACT TO PROVIDE FOR THE CONTINUED SOLVENCY OF THE  
2 COMMERCIAL LEAKING PETROLEUM UNDERGROUND STORAGE TANK  
3 CLEANUP FUND AND TO MAKE OTHER CHANGES TO THE LEAKING  
4 PETROLEUM UNDERGROUND STORAGE TANK CLEANUP PROGRAM, AS  
5 RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.  
6

7 The General Assembly of North Carolina enacts:

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

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

18 (1) A water supply well is contaminated.

- 1 (2) Petroleum vapor is present in a confined space.
- 2 (3) A water supply well is located within 1,500 feet of the discharge,  
3 release, or known extent of contamination and there is a user of water  
4 from any water supply well located within 1,500 feet of the discharge,  
5 release, or known extent of contamination who is not served by an  
6 existing public water supply.
- 7 (4) The discharge or release results in a violation of drinking water  
8 standards set out in rules adopted by the Commission for Health  
9 Services under G.S. 130A-315 in a treated surface water supply.
- 10 (5) The discharge or release poses an imminent danger to public health,  
11 public safety, or the environment.
- 12 (c) The Department shall give notice of the classification of the impact of a  
13 cleanup of a discharge or release from a petroleum underground storage tank by  
14 publishing the classification in the North Carolina Register. To the maximum extent  
15 practical, the Department shall give notice of the classification of the impact of a cleanup  
16 of a discharge or release from a petroleum underground storage tank by first-class mail to  
17 either the owner, operator, or other person responsible for the cleanup as shown on  
18 records maintained by the Department at the address on file with the Department.
- 19 (d) The Commission shall not require the cleanup of a discharge or release from a  
20 petroleum underground storage tank having a Class CDE impact except that an owner,  
21 operator, or other person responsible for the cleanup of a discharge or release from a  
22 petroleum underground storage tank shall:
- 23 (1) Take immediate action to prevent any further release or discharge of  
24 petroleum from the underground storage tank; identify and mitigate any  
25 fire, explosion, or vapor hazard; and remove any free petroleum  
26 product.
- 27 (2) Meet applicable requirements of 40 Code of Federal Regulations §  
28 280.50 through § 280.53 and § 280.60 through § 280.64 (1 July 1995  
29 Edition).
- 30 (3) Submit any information that the Department may require to classify the  
31 impact of the discharge or release pursuant to this section.
- 32 (e) If the impact of a discharge or release is classified as having a Class CDE  
33 impact, the Department shall not pay or reimburse any costs otherwise payable or  
34 reimbursable under Part 2A of Article 21A of Chapter 143 of the General Statutes from  
35 either the Commercial Fund or Noncommercial Fund unless:
- 36 (1) The costs are incurred to comply with subsection (d) of this section.
- 37 (2) The payment or reimbursement is for costs that were incurred prior to  
38 notification that the impact of the discharge or release has been  
39 classified as Class CDE by the Department.
- 40 (3) The payment or reimbursement is for costs that were incurred for a  
41 discharge or release the impact of which is subsequently classified as a  
42 Class AB impact by the Department.

1 (4) Cleanup is ordered or damages are awarded in a finally adjudicated  
2 judgment in an action against the owner, operator, or landowner.

3 (5) Cleanup is required or damages are agreed to in a consent judgment  
4 approved by the Department prior to its entry by the court.

5 (6) Cleanup is required or damages are agreed to in a settlement agreement  
6 approved by the Department prior to its execution by the parties.

7 (7) The Department approves continuation of the cleanup as provided in  
8 subsection (f) of this section.

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

15 (1) The owner, operator, or landowner responsible for cleanup has incurred  
16 costs that are reimbursable under G.S. 143-215.94E(e), or that would be  
17 reimbursable if those costs were in excess of the costs for which the  
18 owner, operator, or landowner is responsible under G.S. 143-215.94B,  
19 143-215.94D, or 143-215.94E.

20 (2) The owner, operator, or landowner either has paid or will pay all costs  
21 for which the owner, operator, or landowner is responsible.

22 (3) Discontinuation of the cleanup will result in a hardship. For purposes of  
23 this subdivision, a hardship exists if and only if the discontinuation of  
24 the cleanup will prevent the conveyance through a bona fide sale for  
25 value of the property where the discharge or release occurred. The  
26 owner, operator, or landowner responsible for the cleanup shall present  
27 a contract of sale executed on or before 31 December 1996 that is  
28 contingent on continuation of the cleanup. If the conveyance of the  
29 property does not occur within 120 days after the contract of sale is  
30 executed or under the terms of the contract for any reason, the  
31 Department shall discontinue eligibility under this subsection.

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

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

39 "(a) For purposes of this subsection, each compartment of a commercial  
40 underground storage tank that is designed to independently contain a petroleum product  
41 is a separate petroleum commercial underground storage tank. The owner or operator of  
42 a commercial petroleum underground storage tank shall pay to the Secretary for deposit  
43 into the Commercial Fund an annual operating fee according to the following schedule:

- 1 (1) For each petroleum commercial underground storage tank of 3,500  
2 gallons or less capacity —~~one hundred fifty dollars (\$150.00).~~ two hundred  
3 dollars (\$200.00).
- 4 (2) For each petroleum commercial underground storage tank of more than  
5 3,500 gallon capacity —~~two hundred twenty five dollars (\$225.00).~~ three  
6 hundred dollars (\$300.00)."

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

8 "(c1) In the case of a discharge or release from a noncommercial underground  
9 storage tank where the owner and operator cannot be identified or located, or where the  
10 owner and operator fail to proceed as required by subsection (a) of this section, if the  
11 current landowner of the land in which the noncommercial underground storage tank is  
12 located notifies the Department in accordance with G.S. 143-215.85 and undertakes to  
13 collect and remove the discharge or release and to restore the area affected in accordance  
14 with the requirements of this Article and applicable federal and State laws, regulations,  
15 and rules, the current landowner may elect to have the Noncommercial Fund pay or  
16 reimburse the current landowner for ninety percent (90%) of any costs described in  
17 subdivisions (1) and (2) of G.S. 143-215.94D(b1) that exceed five thousand dollars  
18 (\$5,000). Eligibility for reimbursement under this subsection may be transferred to a  
19 subsequent landowner from a current landowner who has paid the costs for which the  
20 landowner is responsible under this subsection. The sum of payments from the  
21 Noncommercial Fund and from all other sources shall not exceed one million dollars  
22 (\$1,000,000) per discharge or release. This subsection shall not be construed to require a  
23 current landowner to clean up a discharge or release of petroleum from an underground  
24 storage tank for which the current landowner is not otherwise responsible. This  
25 subsection does not alter any right, duty, obligation, or liability of a current landowner,  
26 former landowner, subsequent landowner, owner, or operator under other provisions of  
27 law. This subsection shall not be construed to limit the authority of the Department to  
28 engage in a cleanup under this Article or any other provision of law. The current  
29 landowner shall submit documentation of all expenditures as required by G.S. 143-  
30 215.94G(b)."

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

32 "(e) When the owner or operator pays the costs described in G.S. 143-215.94B(b),  
33 143-215.94B(b1), or 143-215.94D(b1) resulting from a discharge or release of petroleum  
34 from an underground storage tank, the owner or operator may seek reimbursement from  
35 the appropriate fund for any costs he may elect to have either the Commercial Fund or the  
36 Noncommercial Fund pay in accordance with subsections (b) and (c) of this section. The  
37 Department shall reimburse the owner or operator for all costs he may elect to have the  
38 appropriate fund pay that the Department determines to be reasonable and necessary and  
39 for which appropriate documentation is submitted. The Department may contract for any  
40 services necessary to evaluate any claim for reimbursement or compensation from either  
41 the Commercial Fund or the Noncommercial Fund, may contract for any expert witness  
42 or consultant services necessary to defend any decision to pay or deny any claim for  
43 reimbursement, and may pay the cost of these services from the fund against which the

1 claim is made; provided that in any fiscal year the Department shall not expend from  
2 either fund more than one percent (1%) of the unobligated balance of the fund on 30 June  
3 of the previous fiscal year. The cost of contractual services to evaluate a claim or for  
4 expert witness or consultant services to defend a decision with respect to a claim shall be  
5 included as costs under G.S. 143-215.94B(b) and G.S. 143-215.94D(b1). The  
6 Commission shall adopt rules governing reimbursement of necessary and reasonable  
7 costs. An owner or operator whose claim for reimbursement is denied may appeal a  
8 decision of the Department as provided in Article 3 of Chapter 150B of the General  
9 Statutes. If the owner or operator is eligible for reimbursement under this section and the  
10 cleanup extends beyond a period of three months, the owner or operator may apply to the  
11 Department for interim reimbursements to which he is entitled under this section on a  
12 quarterly basis. If the Department fails to notify an owner or operator of its decision on a  
13 claim for reimbursement under this subsection within 90 days after the date the claim is  
14 received by the Department, the owner or operator may elect to consider the claim to  
15 have been denied, and may appeal the denial as provided in Article 3 of Chapter 150B of  
16 the General Statutes."

17 Sec. 5. The Department of Environment, Health, and Natural Resources shall  
18 study options for privatization of the leaking petroleum underground storage cleanup  
19 program. The Department shall pay any costs associated with this study from funds  
20 otherwise available to the Department for the implementation of Part 2A and Part 2B of  
21 Article 21A of Chapter 143 of the General Statutes. The Department shall report its  
22 findings and recommendations, including any proposed legislation, to the Environmental  
23 Review Commission on or before 1 November 1996.

24 Sec. 6. The Environmental Management Commission shall publish the text of  
25 the proposed rule required by G.S. 143-215.94V(b) as soon as possible and no later than  
26 1 January 1997. The Environmental Management Commission shall adopt a rule to  
27 implement the requirements of G.S. 143-215.94V(b) as soon as possible and no later than  
28 1 October 1997.

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

31 Sec. 8. Nothing in this act shall be construed to waive the sovereign immunity  
32 of the State for any action or omission of the State or of any agent or employee of the  
33 State in implementing the provisions of this act. The provisions of Article 31 of Chapter  
34 143 of the General Statutes, Tort Claims against State Departments and Agencies, shall  
35 not apply to any action or omission of the State or of any agent or employee of the State  
36 in implementing the provisions of this act. There shall be no liability for negligence on  
37 the part of the State or of any agent or employee for any action or omission in  
38 implementing the provisions of this act.

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

1 reported on or after 1 January 1992 and before 1 October 1997, and expires on 1 October  
2 1997. Section 4 of this act is effective upon ratification. Sections 5, 6, 8, and 9 of this  
3 act become effective upon ratification.