

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2007

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SENATE BILL 1554\*

Short Title: Underground Storage Tank Prgm. Amends 2007.

(Public)

Sponsors: Senator Cowell.

Referred to: Agriculture/Environment/Natural Resources.

March 28, 2007

A BILL TO BE ENTITLED

AN ACT (1) TO PROVIDE ADDITIONAL FUNDS FOR THE CLEANUP OF RELEASES AND DISCHARGES OF PETROLEUM FROM UNDERGROUND STORAGE TANKS BY INCREASING THE FEES PAID BY OWNERS AND OPERATORS OF COMMERCIAL UNDERGROUND STORAGE TANKS, (2) TO REDUCE THE INCIDENCE OF LEAKS BY REQUIRING SECONDARY CONTAINMENT FOR ALL COMPONENTS OF REGULATED PETROLEUM UNDERGROUND STORAGE TANK SYSTEMS, (3) TO PROVIDE FOR EXPEDITED ASSESSMENT AND CLEANUP OF RELEASES AND DISCHARGES FROM PETROLEUM UNDERGROUND STORAGE TANKS BY REQUIRING THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO ESTABLISH A PILOT PROGRAM TO EVALUATE THE USE OF SITE-SPECIFIC CLEANUP STANDARDS, (4) TO PROVIDE FOR VARIOUS STUDIES AND REPORTS, AND (5) TO MAKE OTHER IMPROVEMENTS TO THE UNDERGROUND STORAGE TANK CLEANUP PROGRAM.

The General Assembly of North Carolina enacts:

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

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

(a) ~~For purposes of this subsection, each compartment of a commercial underground storage tank that is designed to independently contain a petroleum product is a separate petroleum commercial underground storage tank.~~ The owner or operator of a commercial petroleum underground storage tank facility shall pay to the Secretary for deposit into the Commercial Fund an annual operating ~~fee according to the following schedule;~~ permit fee. In addition to the operating permit fee, an owner or operator of a commercial petroleum underground storage tank facility who demonstrates financial responsibility as required by G.S. 143-215.94H on the basis of eligibility for the payment of any of the costs described in subsections (b) or (b1) of G.S. 143-215.94B

1 from the Commercial Fund shall pay to the Secretary for deposit into the Commercial  
 2 Fund an annual financial responsibility fee. The owner or operator of a commercial  
 3 underground storage tank facility is presumed to demonstrate financial responsibility as  
 4 required by G.S. 143-215.94H on the basis of eligibility for the payment of any of the  
 5 costs described in subsections (b) or (b1) of G.S. 143-215.94B from the Commercial  
 6 Fund and shall pay the annual financial responsibility fee unless the owner or operator  
 7 demonstrates financial responsibility by another method. The operating permit fee and  
 8 the financial responsibility fee, if required, shall be paid as one annual comprehensive  
 9 fee. The annual comprehensive fee shall be determined from the following schedule.  
 10 For purposes of this subsection, each compartment of a commercial underground  
 11 storage tank that is designed to independently contain a petroleum product is a separate  
 12 petroleum commercial underground storage tank.

Year	Operating Permit Fee Per Tank	Financial Responsibility Fee Per Tank	
		Tanks of 3,500 gallons capacity or less	Tanks greater than 3,500 gallons capacity
2008	\$72.00	\$336.00	\$408.00
2009	\$72.00	\$408.00	\$444.00
2010	\$72.00	\$456.00	\$468.00
2011+	\$72.00	\$480.00	\$480.00

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

24 (a1) An owner or operator who elects to demonstrate financial responsibility as  
 25 required by G.S. 143-215.94H without reliance on the Commercial Fund is not required  
 26 to pay the financial responsibility fee. Once an owner or operator of a commercial  
 27 petroleum underground storage tank facility elects to demonstrate financial  
 28 responsibility as required by G.S. 143-215.94H without reliance on the Commercial  
 29 Fund, the owner or operator must continue to demonstrate financial responsibility as  
 30 required by G.S. 143-215.94H without reliance on the Commercial Fund.

31 ~~(b) The annual operating comprehensive fee shall be determined on a calendar~~  
 32 ~~year basis. For petroleum commercial underground storage tanks in use on 1 January~~  
 33 ~~and remaining in use on or after 1 December of that year, the annual operating~~  
 34 ~~comprehensive fee due for that year shall be as specified in subsection (a) of this~~  
 35 ~~section. For a petroleum commercial underground storage tank that is first placed in~~  
 36 ~~service in any year, the operating permit fee due for that year shall not be prorated. For~~  
 37 ~~a petroleum commercial underground storage tank that is first placed in use-service in~~  
 38 ~~any year, the annual operating financial responsibility fee due for that year shall be~~  
 39 ~~determined by multiplying one-twelfth (1/12) of the amount specified in subsection (a)~~  
 40 ~~of this section by the number of months remaining in the calendar year. For a petroleum~~  
 41 ~~commercial underground storage tank that is permanently removed from use in any~~  
 42 ~~year, the annual operating financial responsibility fee due for that year shall be~~  
 43 ~~determined by multiplying one-twelfth (1/12) of the amount specified in subsection (a)~~  
 44 ~~of this section by the number of months in the calendar year preceding the permanent~~

1 removal from use. In calculating the pro rata ~~annual operating~~ financial responsibility fee  
2 for a tank that is first placed in ~~use-service~~ or permanently removed during a calendar  
3 year under the preceding two sentences, a partial month shall count as a month, except  
4 that where a tank is permanently removed and replaced by another tank, the total of the  
5 ~~annual operating~~ financial responsibility fee for the tank that is removed and the  
6 replacement tank shall not exceed the ~~annual operating~~ financial responsibility fee for  
7 the replacement tank. The annual ~~operating-comprehensive~~ fee shall be due and payable  
8 on the first day of the month in accordance with a staggered schedule established by the  
9 Department. The Department shall implement a staggered schedule to the end that the  
10 total amount of fees to be collected by the Department is approximately the same each  
11 quarter. A person who owns or operates more than one petroleum commercial  
12 underground storage tank may request that the fee for all tanks be due at the same time.  
13 The fee for all commercial underground storage tanks located at the same facility shall  
14 be due at the same time. A person who owns or operates 12 or more commercial  
15 petroleum storage tanks may request that the total of all fees be paid in four equal  
16 payments to be due on the first day of each calendar quarter, provided that the fee for all  
17 commercial underground storage tanks located at the same facility shall be due at the  
18 same time.

19 (c) Beginning no later than sixty days before the first due date of the annual  
20 ~~operating-comprehensive~~ fee imposed by this section, any person who deposits a  
21 petroleum product in a commercial underground storage tank that would be subject to  
22 the annual ~~operating-comprehensive~~ fee shall, at least once in each calendar year during  
23 which such deposit of a petroleum product is made, notify the owner or operator of the  
24 duty to pay the annual ~~operating-comprehensive~~ fee. The requirement to notify pursuant  
25 to this subsection does not constitute a duty owed by the person depositing a petroleum  
26 product in a commercial underground storage tank to the owner or operator and the  
27 person depositing a petroleum product in an underground storage tank shall not incur  
28 any liability to the owner or operator for failure to give notice of the duty to pay the  
29 ~~operating-annual comprehensive~~ fee.

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

31 (e) An owner or operator of a commercial underground storage tank who fails to  
32 pay an annual ~~operating-comprehensive~~ fee due under this section within 30 days of the  
33 date that the fee is due shall pay, in addition to the fee, a late penalty of five dollars  
34 (\$5.00) per day per commercial underground storage tank, up to a maximum equal to  
35 the annual ~~operating-comprehensive~~ fee due. The Department may waive a late penalty  
36 in whole or in part if:

- 37 (1) The late penalty was incurred because of the late payment or  
38 nonpayment of an annual ~~operating-comprehensive~~ fee by a previous  
39 owner or operator.
- 40 (2) The late penalty was incurred because of a billing error for which the  
41 Department is responsible.
- 42 (3) Where the late penalty was incurred because the annual ~~operating~~  
43 comprehensive fee was not paid by the owner or operator due to  
44 inadvertence or accident.

- 1 (4) Where payment of the late penalty will prevent the owner or operator  
2 from complying with any substantive law, rule, or regulation  
3 applicable to underground storage tanks and intended to prevent or  
4 mitigate discharges or releases or to facilitate the early detection of  
5 discharges or releases."

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

8 "(j) An owner, operator, or landowner shall request that the Department  
9 determine whether any of the costs of assessment and cleanup of a discharge or release  
10 from a petroleum underground storage tank are eligible to be paid or reimbursed from  
11 either the Commercial Fund or the Noncommercial Fund within one year after  
12 completion of any task that is eligible to be paid or reimbursed under  
13 G.S. 143-215.94B(b), 143-215.94B(b1), or 143-215.94D(b1).

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

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

22 (2) Task is completed."

23 **SECTION 2.(b)** Notwithstanding G.S. 143-215.94E(k), as enacted by  
24 subsection (a) of this section, an owner, operator, or landowner shall request payment or  
25 reimbursement of the cost of any task completed prior to 1 January 2008 that is eligible  
26 to be paid or reimbursed from the Commercial Fund or the Noncommercial Fund no  
27 later than 1 January 2009. The Department shall deny any request for payment or  
28 reimbursement of the cost of any task to which this subsection applies that is made after  
29 1 January 2009.

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

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

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

40 (1) The Department shall take administrative action to recover costs or  
41 bring a civil action to seek reimbursement of costs that are not  
42 authorized to be paid from the Commercial Fund under subdivisions  
43 (1), (2), (3), or (9) of G.S. 143-215.94B(d) or from the Noncommercial

1 Fund under subdivisions (1), (2), or (3) of G.S. 143-215.94D(d) within  
2 five years after payment.

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

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

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

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

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

19 **"§ 143-215.94H. Financial responsibility.**

20 (a) The Department shall require each owner and operator of a petroleum  
21 underground storage tank who is required to demonstrate financial responsibility under  
22 rules promulgated by the United States Environmental Protection Agency pursuant to  
23 42 U.S.C. § 6991b(d) to maintain evidence of financial responsibility of not less than  
24 that is the lesser of:

25 (1) The full amount of the financial responsibility that an owner or  
26 operator is required to demonstrate under rules promulgated by the  
27 United States Environmental Protection Agency pursuant to 42 U.S.C.  
28 § 6991b(d).

29 (2) The amounts required to be paid for by the owner or operator pursuant  
30 to G.S. 143-215.94E(b) per occurrence for costs described in  
31 G.S. 143-215.94B(b) and ~~G.S. 143-215.94D(b1).~~  
32 G.S. 143-215.94B(b1) if costs are eligible to be paid under those  
33 subsections.

34 (b) Financial responsibility may be established in accordance with rules adopted  
35 by the Commission which shall provide that financial responsibility may be established  
36 by either insurance, guarantee, surety bond, letter of credit, qualification as a  
37 self-insurer, or any combination thereof. The compliance date schedule for  
38 demonstrating financial responsibility shall conform to the schedule adopted by the  
39 Environmental Protection Agency."

40 **SECTION 5.(a)** G.S. 143-215.94T reads as rewritten:

41 **"§ 143-215.94T. Adoption and implementation of regulatory program.**

42 (a) The Commission shall adopt, and the Department shall implement and  
43 enforce, rules relating to underground storage tanks as provided by  
44 G.S. 143-215.3(a)(15) and G.S. 143B-282(2)h. These rules shall include standards and

1 requirements applicable to both existing and new underground storage tanks and tank  
2 systems, may include different standards and requirements based on tank capacity, tank  
3 location, tank age, and other relevant factors, and shall include, at a minimum, standards  
4 and requirements for:

- 5 (1) Design, construction, and installation, including monitoring systems.
- 6 (2) Notification to the Department, inspection, and registration.
- 7 (3) Recordation of tank location.
- 8 (4) Modification, retrofitting, and upgrading.
- 9 (5) General operating requirements.
- 10 (6) Release detection.
- 11 (7) Release reporting, investigation, and confirmation.
- 12 (8) Corrective action.
- 13 (9) Repair.
- 14 (10) Closure.
- 15 (11) Financial responsibility.
- 16 (12) Tank tightness testing procedures and certification of persons who  
17 conduct tank tightness tests.
- 18 (13) Secondary containment for ~~non~~all components of petroleum  
19 underground storage tank systems.

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

- 22 (1) Farm or residential underground storage tank of 1,100 gallons or less  
23 capacity used for storing motor fuel for noncommercial purposes.
- 24 (2) Underground storage tank of 1,100 gallons or less capacity used for  
25 storing heating oil for consumptive use on the premises where stored.
- 26 (3) Underground storage tank of more than 1,100 gallon capacity used for  
27 storing heating oil for consumptive use on the premises where stored  
28 by four or fewer households.

29 (c) Rules adopted pursuant to subdivision (13) of subsection (a) of this section  
30 shall require secondary containment for all ~~non~~ components of underground storage  
31 tank systems, ~~including all piping and including, but not limited to, tanks, piping,~~  
32 fittings, pump heads, and dispensers. Secondary containment requirements shall include  
33 standards for double wall ~~piping tanks, piping, and fittings~~ and for sump containment  
34 for pump heads and dispensers. The rules shall provide for ~~monthly release detection~~  
35 monitoring of double wall interstices and sump containments. The rules shall apply to  
36 any underground storage tank system that is installed on or after the date on which the  
37 rules become effective and to the replacement of any ~~non~~ component of an  
38 underground storage tank system on or after that date."

39 **SECTION 5.(b)** The Environmental Management Commission shall adopt  
40 rules to require and set standards for secondary containment for all components of  
41 underground storage tank systems pursuant to G.S. 143-215.94T, as amended by  
42 Section 3 of this act. The rules shall apply to any underground storage tank system that  
43 is installed on or after 1 January 2008 and to the replacement of any component of an  
44 underground storage tank system on or after 1 January 2008. To the extent that the

1 rules that are required to be adopted by this section are not effective on or after 1  
2 January 2008, the provisions of 40 Code of Federal Regulations § 280.42(b)(1) through  
3 § 280.42(b)(4) (1 July 2006 Edition) shall govern any component of an underground  
4 storage tank system that is installed on or after 1 January 2008 and to the replacement of  
5 any component of an underground storage tank system on or after 1 January 2008.

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

7 "**§ 143-215.94U. Registration of petroleum commercial underground storage**  
8 **tanks; operation of petroleum underground storage tanks; operating**  
9 **permit required.**

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

14 (1) ~~Has notified~~Notified the Department of the existence of all tanks as  
15 required by 40 Code of Federal Regulations § 280.22 (1 July 1994  
16 Edition) or 42 U.S.C. § 6991a, if applicable, at the ~~facility~~facility.

17 (2) ~~Has paid~~Paid all fees required under G.S. 143-215.94C for all  
18 commercial petroleum underground storage tanks located at the  
19 ~~facility~~facility.

20 (3) Complies with applicable release detection, spill and overfill  
21 protection, and corrosion protection requirements set out in rules  
22 adopted pursuant to this Chapter, notifies the Department of the  
23 method or combination of methods of leak detection, spill and overfill  
24 protection, and corrosion protection in use, and certifies to the  
25 Department that all applicable release detection, spill and overfill  
26 protection, and corrosion protection requirements are being met for all  
27 petroleum underground storage tanks located at the ~~facility~~facility.

28 (4) If applicable, complies with the Stage I vapor control requirements set  
29 out in 15A North Carolina Administrative Code 2D.0928, effective 1  
30 March 1991, notifies the Department of the method or combination of  
31 methods of vapor control in use, and certifies to the Department that  
32 all Stage I vapor control requirements are being met for all petroleum  
33 underground storage tanks located at the ~~facility~~and facility.

34 (5) ~~Has substantially~~Substantially complied with the air quality,  
35 groundwater quality, and underground storage tank standards  
36 applicable to any activity in which the applicant has previously  
37 engaged and has been in substantial compliance with federal and State  
38 laws, regulations, and rules for the protection of the environment. In  
39 determining substantial compliance, the compliance history of the  
40 owner or operator and any parent, subsidiary, or other affiliate of the  
41 owner, operator, or parent may be considered.

42 (6) Demonstrated financial responsibility as required by  
43 G.S. 143-215.94H.

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

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

9 (d) The Department shall issue an operating permit certificate for each facility  
10 that meets the requirements of subsection (a) of this section. The operating permit  
11 certificate shall identify the number of tanks at the facility and shall conspicuously  
12 display the date on which the permit expires. Except for the owner or operator, no  
13 person shall be liable under subsection (c) of this section if an unexpired operating  
14 permit certificate is displayed at the facility, unless the person knows or has reason to  
15 know that the owner or operator does not hold a currently valid operating permit for the  
16 facility.

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

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

35 **SECTION 7.(b)** The Department shall establish a pilot program to evaluate  
36 the use of site-specific cleanup standards for the cleanup of discharges or releases of  
37 petroleum from underground storage tanks as an alternative to the use of the risk-based  
38 assessment and corrective action standards set out in 15A NCAC 2L.0115. The purpose  
39 of the pilot program is to determine the extent to which the use of site-specific standards  
40 would provide effective protection of public health, safety, and the environment in a  
41 cost-effective manner and at a lower overall cost as compared with the use of the  
42 risk-based standards set out in 15A NCAC 2L.0115. The pilot program shall apply only  
43 to discharges or releases that are classified as intermediate risk under 15A NCAC  
44 2L.0115(d). The pilot program shall evaluate the use of site-specific standards in the



1 cleanup of contamination that results from a discharge or release of petroleum from: (i)  
2 an underground storage tank; and (ii) an underground storage tank that is commingled  
3 with petroleum contamination from a source of contamination other than an  
4 underground storage tank, as provided in G.S. 143-215.94V(h).

5 **SECTION 7.(c)** Participation in the pilot program shall be at the election of  
6 the owner, operator, or landowner. To participate in the pilot program, an owner,  
7 operator, or landowner shall perform a site-specific risk assessment and submit the  
8 assessment to the Department. If the Department determines that the use of site-specific  
9 cleanup standards will provide effective protection of public health, safety, and the  
10 environment, the Department shall set site-specific soil and groundwater cleanup  
11 standards for the discharge or release. These site-specific standards shall apply in lieu of  
12 the risk-based assessment and corrective action standards set out in 15A NCAC  
13 2L.0115.

14 **SECTION 7.(d)** If soil and groundwater contamination from a discharge or  
15 release is no greater than the site-specific soil and groundwater cleanup standards set by  
16 the Department, the Department shall notify an owner, operator, or landowner that no  
17 cleanup, further cleanup, or further action will be required. If soil and groundwater  
18 contamination from a discharge or release is greater than the site-specific soil and  
19 groundwater cleanup standards set by the Department, the owner, operator, or  
20 landowner shall submit a corrective action plan to achieve the standards. The  
21 Department may require the owner, operator, or landowner to evaluate the impact of the  
22 site-specific cleanup standards on public health, safety, and the environment through  
23 use of an appropriate model. The Department shall not set site-specific soil and  
24 groundwater cleanup standards for the discharge or release that allow for contamination  
25 in excess of unrestricted use standards, as defined in G.S. 143B-279.9, on any real  
26 property that is not subject to land-use restrictions under G.S. 143B-279.9 and  
27 recordation under G.S. 143B-279.11.

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

30 **SECTION 7.(f)** The Department shall annually report to the Environmental  
31 Review Commission on the number of site-specific risk assessments submitted to the  
32 Department under the pilot program, the disposition of those submissions, and, for any  
33 submissions for which site-specific soil and groundwater cleanup standards are not set,  
34 the basis for the decision not to set site-specific cleanup standards. The report shall  
35 include a comparison of assessment and corrective action of discharges or releases  
36 under the pilot program to assessment and corrective action of intermediate risk  
37 discharges or releases pursuant to the risk-based assessment and corrective action  
38 standards set out in 15A NCAC 2L.0115. The comparison shall include all of the  
39 following:

- 40 (1) The costs associated with investigation, assessment, initial response,  
41 abatement, analysis of risk, and development and implementation of a  
42 corrective action plan.
- 43 (2) The immediate and long-term impacts on public health, safety, and the  
44 environment.

1 (3) The need for and use of land-use restrictions as part of the corrective  
2 action plan.

3 (4) The extent to which corrective action addresses vapor intrusion.

4 **SECTION 7.(g)** The Department shall submit the first report required by  
5 subsection (f) of this section on or before 1 September 2008. The Department shall  
6 include in the report due on or before 1 September 2012 any recommendations,  
7 including legislative proposals, based on the findings of the pilot program.

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

18 **SECTION 8.(b)** The Department shall report on or before 1 September of  
19 each year to the Environmental Review Commission on the number of sites for which  
20 reclassification was requested based on site-specific information and the disposition of  
21 each request. The Department shall submit the first report required by this section on or  
22 before 1 September 2008.

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

31 **SECTION 10.** The Department of Insurance, in consultation with the  
32 Petroleum Underground Storage Tank Funds Council and the Department of  
33 Environment and Natural Resources, shall provide guidance and technical assistance for  
34 the formation of an insurance pool pursuant to G.S. 143-215.94I to any responsible  
35 entity that requests assistance.

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

37 "**SECTION 8.** Sections 1 through 5 of this act become effective 1 October 2001.  
38 Sections 6, 7, and 8 of this act are effective when this act becomes law. Sections 1, 2, 3,  
39 4, 5, and 7 of this act expire 1 October ~~2006~~2008."

40 **SECTION 12.** This act shall not be construed to amend Section 11.4 of S.L.  
41 2003-284 as modified by subsection (b) of Section 30.10 of S.L. 2004-124 and Section  
42 1 of S.L. 2006-200. The designation of a portion of the commercial leaking petroleum  
43 underground storage tank cleanup fees due under G.S. 143-215.94C(a), as amended by  
44 Section 1 of this act, as an annual operating permit fee shall not be construed to alter the

1 amount available to the Department of Environment and Natural Resources from the  
2 Commercial Fund for the administration of Parts 2A and 2B of Article 21A of Chapter  
3 143 of the General Statutes.

4           **SECTION 13.** Sections 3, 4, 5, 9, 10, and 13 of this act are effective when it  
5 becomes law. Sections 1, 6, and 12 of this act become effective 1 January 2008.  
6 Section 2 of this act becomes effective 1 January 2008 and applies to determinations of  
7 eligibility and requests for payments made on or after that date. Sections 7 and 8 of this  
8 act are effective when it becomes law and expire 1 September 2013. Section 11 of this  
9 act is effective retroactively to 1 October 2006.