

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

S

1

SENATE BILL 962

Short Title: Underground Storage Tank Amendments.

(Public)

Sponsors: Senator Winner.

Referred to: Environment and Natural Resources.

April 19, 1989

A BILL TO BE ENTITLED

AN ACT TO AMEND VARIOUS STATUTES RELATING TO LEAKING
PETROLEUM UNDERGROUND STORAGE TANK CLEANUP.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-215.3(a)(15) reads as rewritten:

"(15) ~~To implement programs to prevent pollution from underground tanks containing oil or hazardous substances, in accordance with those requirements made mandatory upon approved State programs by federal agencies administering the Resource Conservation and Recovery Act, as amended, including the Hazardous and Solid Waste Amendments of 1984. To adopt rules and implement programs to prevent pollution from underground tanks containing petroleum, petroleum products, or hazardous substances. Rules adopted under this section may incorporate standards and restrictions which exceed and are more comprehensive than comparable federal regulations and shall be statewide in scope and application. No unit of local government shall promulgate or continue in effect any ordinance, rule, or regulation which incorporates standards or restrictions which exceed those adopted pursuant to this section.~~"

Sec. 2. G.S. 143-215.94B reads as rewritten:

"§ 143-215.94B. Commercial leaking petroleum underground storage tank cleanup fund.

(a) There is established under the control and direction of the Department the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund. This

1 Commercial Fund shall be a nonreverting revolving fund consisting of any monies
2 appropriated for such purpose by the General Assembly or available to it from grants,
3 other monies paid to it or recovered on behalf of the Commercial Fund, and fees paid
4 pursuant to this Part.

5 (b) The Commercial Fund shall be used for the payment of the following costs ~~in~~
6 ~~excess of one hundred thousand dollars (\$100,000)~~ up to an aggregate maximum of one
7 million dollars (\$1,000,000) per occurrence resulting from a discharge or release of a
8 petroleum product from a commercial underground storage tank:

9 (1) The cleanup of environmental damage as required by G.S. ~~143-~~
10 ~~215.94E(a); and 143-215.94E(a)~~ in excess of fifty thousand dollars
11 (\$50,000) per occurrence; and

12 (2) ~~The least expensive of the following:~~

13 a. ~~Providing potable water supplies including bottled water, well-~~
14 ~~head filtration systems or other suitable alternatives to persons~~
15 ~~whose water supply has been rendered unpotable; or~~

16 b. ~~Purchasing the property of the person whose water supply has~~
17 ~~been rendered unpotable. The State shall not purchase the~~
18 ~~property without the consent of the property owner, but if the~~
19 ~~property owner fails to consent, the amount expended to~~
20 ~~provide potable water shall not exceed the value of the property.~~
21 ~~If the property is purchased by the State, the purchase price~~
22 ~~shall be the value of the property immediately prior to the~~
23 ~~discovery of the discharge or release.~~

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

26 ~~In no event shall a property owner be paid any sum as liquidated damages from the~~
27 ~~Commercial Fund.~~

28 (c) The Commercial Fund is to be available on an occurrence basis, without
29 regard to number of occurrences associated with tanks owned or operated by the same
30 owner or operator. Up to a maximum of ~~one two~~ hundred thousand dollars ~~(\$100,000)~~
31 (\$200,000) per year may be used from the Fund to pay for the administrative costs
32 associated with carrying out the provisions of this Part by the Department.

33 (d) The Commercial Fund shall not be used for:

34 (1) Costs incurred as a result of a discharge or release from an
35 aboveground tank, aboveground pipe or ~~fitting,~~ fitting not connected to
36 an underground storage tank, or vehicle;

37 (2) The replacement of any tank, pipe, fitting or related equipment;

38 (3) Costs incurred as a result of a discharge or release of petroleum from a
39 transmission pipeline;

40 (4) Costs intended to be paid by the Noncommercial Fund; or

41 (5) Costs associated with the administration of any underground storage
42 tank program other than the program administered pursuant to this
43 Part.

1 (e) The Commercial Fund shall be treated as a special trust fund and shall be
2 credited with interest by the State Treasurer pursuant to G.S. 147-69.2 and G.S. 147-
3 69.3."

4 Sec. 3. G.S. 143-215.94C reads as rewritten:

5 "**§ 143-215.94C. Commercial leaking petroleum underground storage tank cleanup**
6 **fees.**

7 (a) The owner or operator of a commercial petroleum underground storage tank
8 shall pay to the Secretary for deposit into the Commercial Fund an annual operating fee
9 ~~according to the following schedule:~~ of one hundred dollars (\$100.00).

10 - (1) ~~For each petroleum commercial underground storage tank~~
11 ~~currently in operation of 3,500 gallons or less capacity — thirty~~
12 ~~dollars (\$30.00).~~

13 (2) ~~For each petroleum commercial underground storage tank currently in~~
14 ~~operation of more than 3,500 gallon capacity — sixty dollars (\$60.00).~~

15 (b) ~~The operating fee shall be due and payable on 1 January of each year for that~~
16 ~~calendar year. payable annually and shall be due on the first day of the month in~~
17 ~~accordance with a staggered schedule established by the Department. The Department~~
18 ~~shall implement a staggered schedule to the end that the total amount of fees to be~~
19 ~~collected by the Department is approximately the same each month. A person who~~
20 ~~owns or operates more than one commercial petroleum underground storage tank may~~
21 ~~request that the fee for all tanks be due at the same time. A person who owns or~~
22 ~~operates 12 or more commercial petroleum storage tanks may request that the total of all~~
23 ~~fees be paid in four equal payments to be due on the first day of each calendar quarter.~~

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

34 (d) ~~If, on 1 July in any year after 1990 the Commercial Fund balance exceeds~~
35 ~~fifteen million dollars (\$15,000,000), the requirement to pay an annual operating fee~~
36 ~~pursuant to this section shall be suspended for any calendar year thereafter until the~~
37 ~~Commercial Fund balance is five million dollars (\$5,000,000) or less, at which time the~~
38 ~~requirement to pay the annual operating fee shall be reinstated beginning with the next~~
39 ~~calendar year. The duty to pay the annual operating fee shall not be suspended prior to 1~~
40 ~~January 1991 regardless of the Commercial Fund balance."~~

41 Sec. 4. G.S. 143-215.94D reads as rewritten:

42 "**§ 143-215.94D. Noncommercial leaking petroleum underground storage tank**
43 **cleanup fund.**

1 (a) There is established under the control and direction of the Department the
2 Noncommercial Leaking Petroleum Underground Storage Tank Cleanup Fund. This
3 Noncommercial Fund shall be a nonreverting revolving fund consisting of any monies
4 appropriated for such purpose by the General Assembly or available to it from grants, or
5 other monies paid to it or recovered on behalf of the Noncommercial Fund.

6 (b) The Noncommercial Fund shall be used for the payment of the following
7 costs up to an aggregate maximum of one million dollars (\$1,000,000) per occurrence
8 resulting from a discharge or release of a petroleum product from: (i) noncommercial
9 underground storage tanks, (ii) commercial underground storage tanks where the owner
10 or operator cannot be identified or fails to proceed with the cleanup, and (iii)
11 commercial underground storage tanks which were taken out of operation prior to 1
12 January 1974 where, at the time the discharge or release is discovered, neither the owner
13 or operator owns or leases the lands on which the tank is located:

14 (1) The cleanup of environmental damage as required by G.S. 143-
15 215.94E(a); and

16 (2) ~~The least expensive of the following:~~

17 a. ~~Providing potable water supplies including bottled water, well-~~
18 ~~head filtration systems or other suitable alternatives to persons~~
19 ~~whose water supply has been rendered unpotable; or~~

20 b. ~~Purchasing the property of the person whose water supply has~~
21 ~~been rendered unpotable. The State shall not purchase the~~
22 ~~property without the consent of the property owner, but if the~~
23 ~~property owner fails to consent, the amount expended to~~
24 ~~provide potable water shall not exceed the value of the property.~~
25 ~~If the property is purchased by the State, the purchase price~~
26 ~~shall be the value of the property immediately prior to the~~
27 ~~discovery of the discharge or release.~~

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

30 ~~In no event shall a property owner be paid any sum as liquidated damages from the~~
31 ~~Noncommercial Fund.~~

32 (c) The Noncommercial Fund is to be available on an occurrence basis, without
33 regard to number of occurrences associated with tanks owned or operated by the same
34 owner or operator. Up to a maximum of ~~one two~~ hundred thousand dollars ~~(\$100,000)~~
35 (\$200,000) per year may be used from the Fund to pay for the administrative costs
36 associated with carrying out the provisions of this Part by the Department.

37 (d) The Noncommercial Fund shall not be used for:

38 (1) Costs incurred as a result of a discharge or release from an
39 aboveground tank, aboveground pipe or ~~fitting~~, fitting not connected to
40 an underground storage tank, or vehicle;

41 (2) The replacement of any tank, pipe, fitting or related equipment;

42 (3) Costs incurred as a result of a discharge or release of petroleum from a
43 transmission pipeline;

44 (4) Costs intended to be paid for by the Commercial Fund; or

1 (5) Costs associated with the administration of any underground storage
2 tank program other than the program administered pursuant to this
3 Part.

4 (e) The Noncommercial Fund shall be treated as a special trust fund and shall be
5 credited with interest by the State Treasurer pursuant to G.S. 147-69.2 and G.S. 147-
6 69.3."

7 Sec. 5. G.S. 143-215.94E(b) reads as rewritten:

8 "(b) In the case of a discharge or release from a commercial underground storage
9 tank where the owner or operator has been identified and has proceeded with cleanup,
10 the owner or operator may elect to have the Commercial Fund pay or reimburse the
11 owner or operator for any costs described in G.S. 143-215.94B(b) which exceed ~~one~~
12 ~~hundred thousand dollars (\$100,000)~~ up to a maximum of ~~nine hundred thousand dollars~~
13 ~~(\$900,000)~~ fifty thousand dollars (\$50,000) for the cleanup of environmental damage
14 and one hundred thousand dollars (\$100,000) for compensating third parties for bodily
15 injury and property damage up to an aggregate maximum of one million dollars
16 (\$1,000,000) per discharge or release. The sum of payments by the owner or operator
17 and the payments from the Commercial Fund shall not exceed one million dollars
18 (\$1,000,000) per discharge or release."

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

20 "**§ 143-215.94F. Limited amnesty.**

21 Any owner or operator who reports a suspected discharge or release from an
22 underground storage tank ~~within 15 months of the effective date of this Part~~ prior to 1
23 October 1989 shall not be liable for any civil penalty that might otherwise be imposed
24 pursuant to ~~G.S. 143-215.91(a)~~ this Article. The limited amnesty provided by this
25 section shall not apply upon a finding by the Commission that the discharge or release
26 was the result of gross negligence or an intentional act."

27 Sec. 7. G.S. 143-215.94G reads as rewritten:

28 "**§ 143-215.94G. Authority of the Department to engage in cleanups; actions for**
29 **fund reimbursement.**

30 (a) Whenever a discharge or release of petroleum is from:

- 31 (1) A noncommercial underground storage tank;
32 (2) An underground storage tank where the owner or operator cannot be
33 identified or located;
34 (3) An underground storage tank where the owner or operator fails to
35 proceed as required by G.S. 143-215.94E(a); or
36 (4) A commercial underground storage tank which was taken out of
37 operation prior to 1 January 1974 where, at the time the discharge or
38 release is discovered, neither the owner or operator owns or leases the
39 land on which the underground storage tank is located;

40 the Department is authorized and empowered to use staff, equipment, or materials under
41 its control or provided by other cooperating federal, State, or local agencies and to
42 contract with any agent or contractor it deems appropriate to develop and implement a
43 cleanup plan and to pay the costs authorized by G.S. 143-215.94D(b) from the
44 Noncommercial Fund. Every State agency shall provide to the Department to the

1 maximum extent feasible such staff, equipment, and materials as may be available and
2 useful to the development and implementation of a cleanup program.

3 (b) Whenever the discharge or release of a petroleum product is from a
4 commercial underground storage tank, the Department is authorized and empowered to
5 supervise the cleanup of environmental damage required by G.S. 143-215.94E(a). If the
6 owner or operator elects to have the Commercial Fund reimburse or pay for any costs
7 allowed under ~~G.S. 143-215.94B(b) in excess of one hundred thousand dollars (\$100,000),~~
8 G.S. 143-215.94B(b), the Department shall require the owner or operator to submit
9 documentation of all expenditures which are claimed for the purposes of establishing
10 that the owner or operator has spent ~~an initial one hundred thousand dollars (\$100,000).~~ the
11 amounts required to be paid by the owner or operator pursuant to and in accordance
12 with G.S. 143-215.94E(b). The Department shall allow credit for all expenditures for
13 which prior approval was obtained from the Department and any other expenditures
14 which the Department determines to be reasonable and necessary. The Department may
15 not pay for any costs for which the Commercial Fund was established until the owner or
16 operator has paid ~~an initial one hundred thousand dollars (\$100,000).~~ the amounts specified
17 in G.S. 143-215.94E(b).

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

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

- 22 (1) Any costs not authorized to be paid from either the Commercial or the
23 Noncommercial Fund;
- 24 (2) The ~~initial one hundred thousand dollars (\$100,000) amounts~~ of the costs
25 provided for in G.S. 143-215.94B(b) required to be paid for by the
26 owner or operator pursuant to G.S. 143-215.94E(b) where the owner or
27 operator of a commercial underground storage tank is later identified
28 or located;
- 29 (3) The ~~initial one hundred thousand dollars (\$100,000) amounts~~ of the costs
30 provided for in G.S. 143-215.94B(b) required to be paid for by the
31 owner or operator pursuant to G.S. 143-215.94E(b) where the owner or
32 operator of a commercial underground storage tank failed to proceed
33 as required by G.S. 143-215.94E(a);
- 34 (4) Any funds due under G.S. 143-215.94E(g); and
- 35 (5) Any funds to which the State is entitled under any federal program
36 providing for the cleanup of petroleum discharges or releases from
37 underground storage tanks.

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

1 (f) In the event that ~~one hundred thousand dollars (\$100,000) or more~~ a recovery
2 equal to or in excess of the amounts required to be paid for by the owner or operator
3 pursuant to G.S. 143-215.94E(b) is recovered pursuant to subdivisions (2) and (3) of
4 subsection (d) of this section for the costs described in G.S. 143-215.94B(b), the
5 Department shall transfer funds from the Commercial Fund that would have been paid
6 from the Commercial Fund pursuant to G.S. 143-215.94B(b) if the owner or operator
7 had proceeded with the cleanup, but which were paid from the Noncommercial Fund,
8 into the Noncommercial Fund."

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

10 **"§ 143-215.94H. Financial responsibility.**

11 The Department shall require each owner and operator of a petroleum underground
12 storage tank who is required to demonstrate financial responsibility under rules
13 promulgated by the United States Environmental Protection Agency pursuant to 42
14 U.S.C. § 6991b(d) to maintain evidence of financial responsibility of not less than ~~one~~
15 ~~hundred thousand dollars (\$100,000)~~ the amounts required to be paid for by the owner or
16 operator pursuant to G.S. 143-215.94E(b) per occurrence for costs described in G.S.
17 143-215.94B(b) and G.S. 143-215.94D(b). Financial responsibility may be established
18 in accordance with rules adopted by the Commission which shall provide that financial
19 responsibility may be established by either insurance, guarantee, surety bond, letter of
20 credit, qualification as a self-insurer, or any combination thereof. The compliance date
21 schedule for demonstrating financial responsibility shall conform to the schedule
22 adopted by the Environmental Protection Agency."

23 Sec. 9. G.S. 143-215.94I(j) reads as rewritten:

24 "(j) In the event that the Commissioner finds that a pool is insolvent, financially
25 impaired, or otherwise, unable to discharge its legal liabilities or obligations, ~~of it or~~ if
26 the Commissioner at any time has reason to believe that any owner or operator is unable
27 to demonstrate financial responsibility as required by G.S. 143-215.94H and rules
28 adopted by the Commission as a result of the financial condition of the pool or for any
29 other reason, the Commissioner shall so notify the Secretary."

30 Sec. 10. G.S. 143-215.94M(b) reads as rewritten:

31 "(b) The annual reports required by this section shall be made by the Secretary
32 ~~beginning with the next legislative session following the effective date of this Part. on 1~~
33 January of each year beginning 1 January 1990."

34 Sec. 11. Part 2A of Article 21A of Chapter 143 of the General Statutes is
35 amended by adding a new section to read:

36 **"§ 143-215.94N. Applicability.**

37 (a) The provisions of this Part as they relate to costs paid for by the Commercial
38 Fund apply only to discharges or releases which are discovered or reported on or after
39 30 June 1988.

40 (b) The provisions of this Part as they relate to costs paid for by the
41 Noncommercial Fund apply to discharges or releases without regard to the date
42 discovered or reported; however, costs sought pursuant to G.S. 143-215.94G(d) (1), (2),
43 (3), and (4) shall be for the full amount of the costs paid for from the Noncommercial
44 Fund and shall not be limited pursuant to G.S. 143-215.94E(b) for discharges or releases

1 from commercial underground storage tanks discovered or reported on or before 30
2 June 1988."

3 Sec. 12. Section 4 of Chapter 1035 of the 1987 Session Laws (1988 Regular
4 Session) is repealed.

5 Sec. 13. Section 5 of Chapter 1035 of the 1987 Session Laws reads as
6 rewritten:

7 "Sec. 5. G.S. 143-215.94B through G.S. 143-215.94E, G.S. 143-215.94G, and G.S.
8 143-215.94J through G.S. 143-215.94M as enacted by Section 1 of this act and Section
9 2 of this act expire 31 December ~~1989~~—1998. References to expired sections in
10 unexpired sections shall be read to give effect to the unexpired sections. If either fund
11 created by Section 1 of this act would be obligated under the provisions of this act with
12 respect to any discharge or release reported to the Department of Natural Resources and
13 Community Development or any successor department prior to the expiration of this
14 act, the respective fund may continue to pay any costs incurred in accordance with this
15 act to the extent that funds remain. In the event that funds remain in either fund after
16 the expiration of this act and after all claims and other obligations of both funds have
17 been paid, such remaining funds shall revert to the General Fund."

18 Sec. 14. Section 6 of Chapter 1035 of the 1987 Session Laws reads as
19 rewritten:

20 "Sec. 6. There is appropriated from the Highway Fund to the Department of Natural
21 Resources and Community Development the sum of four million dollars (\$4,000,000)
22 for fiscal year 1988-89 to be credited to the Noncommercial Leaking Petroleum
23 Underground Storage Tank Cleanup Fund. All sums collected on kerosene and motor
24 fuel pursuant to G.S. 119-18 that are not allotted by the Budget Bureau to administer
25 and effectively enforce the provisions of Chapter 119 of the General Statutes shall be
26 credited to the Commercial Leaking Petroleum Underground Storage Tank Cleanup
27 Fund and the Noncommercial Leaking Underground Petroleum Storage Tank Cleanup
28 Fund as certified on a monthly basis as follows: one-third shall be credited to the
29 Commercial Fund and two-thirds shall be credited to the Noncommercial Fund unless
30 the balance in the Commercial Fund exceeds fifteen million dollars (\$15,000,000), and
31 in that event, all such funds shall be credited to the Noncommercial Fund until the
32 balance of the Commercial Fund falls below five million dollars (\$5,000,000), at which
33 time credits to the Commercial Fund shall resume. Five hundred thousand dollars
34 (\$500,000) of the sums credited to the Commercial Fund pursuant to this section shall
35 be transferred to the Department of Natural Resources and Community Development to
36 administer and effectively enforce the provisions of G.S. 143B-282(h) and G.S. 143-
37 215.3(a)(15)."

38 Sec. 15. This act is effective upon ratification.