

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

SESSION LAW 2010-154
SENATE BILL 1337

AN ACT TO REQUIRE TRAINING OF OPERATORS OF UNDERGROUND STORAGE TANKS IN ORDER TO COMPLY WITH A REQUIREMENT OF THE FEDERAL ENERGY POLICY ACT OF 2005, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-215.94KK through G.S. 143-215.94MM are reserved for future codification purposes.

SECTION 2. Article 21A of Chapter 143 of the General Statutes is amended by adding a new Part to read:

"Part 2D. Training of Underground Storage Tank Operators.

"§ 143-215.94NN. Applicability.

The requirements of this Part apply to underground storage tank systems regulated under Subtitle I of the Resource Conservation and Recovery Act of 1976, Pub. L. 94-580, 90 Stat. 2795, 42 U.S.C. § 6901, et seq., as amended, except those excluded by regulation at 40 Code of Federal Regulations 280.10(b) (July 1, 2009 Edition) and those deferred by regulation at 40 Code of Federal Regulations 280.10(c) (July 1, 2009 Edition).

"§ 143-215.94OO. Definitions.

Unless a different meaning is required by the context, the definitions in G.S. 143-212 and G.S. 143-215.94A apply in this Part.

- (1) "Primary operator" means a person having primary responsibility for the daily on-site operation and maintenance of an underground storage tank system.
- (2) "Emergency response operator" means an on-site person whose responsibilities include addressing emergencies presented by a spill or release, or responding to alarms or releases from an underground storage tank system. For an unmanned facility, "emergency response operator" means the person responsible for responding to emergencies or alarms or releases at the facility.
- (3) "Underground storage tank" means: (i) any one or combination of tanks (including underground pipes connected thereto) that is used to contain an accumulation of regulated substances, and the volume of which (including the volume of the underground pipes connected thereto) is ten percent (10%) or more beneath the surface of the ground; and (ii) to which this Part applies pursuant to G.S. 143-215.94NN.
- (4) "Underground storage tank system" or "tank system" means an underground storage tank, connected underground piping, underground ancillary equipment, dispenser, and containment system, if any.

"§ 143-215.94PP. Designation of operators to be trained.

(a) The owner of an underground storage tank system shall designate the primary operator of the underground storage tank system. The person designated shall be the



underground storage tank operator, as defined in 40 Code of Federal Regulations Part 280 (July 1, 2009 Edition), or an employee or agent of the underground storage tank operator. There shall be a designated primary operator of the underground storage tank system at all times, until the underground storage tank system has been permanently closed. If the owner fails to designate a primary operator, the owner shall be deemed to be the primary operator of the underground storage tank system for purposes of this Part.

(b) The primary operator shall designate one or more emergency response operators who are employees or agents of the primary operator and shall be on call to respond to emergencies or alarms at the facility. If an emergency response operator is not present at the facility at all times during which a regulated substance is being withdrawn from, or is capable of being withdrawn from, the underground storage tank system, the facility shall have an automated notification system in place that will alert the emergency response operator of an emergency or activated alarm at the facility. If the primary operator fails to designate one or more emergency response operators, the primary operator shall be deemed to be the emergency response operator of the underground storage tank system.

(c) A person may act as both the primary operator and the emergency response operator of the underground storage tank system.

"§ 143-215.940Q. Training requirements for primary operators.

(a) The Department shall develop and implement a training program for primary operators. The training program shall provide instruction on the proper operation and maintenance of the underground storage tank system at the facility, principles of construction and safety, and all regulatory requirements associated with the underground storage tank system. The training may consist of a combination of on-site instruction and on-site testing, as well as online instruction and online testing. In order to satisfactorily complete the training, a primary operator shall, at a minimum, demonstrate all of the following:

- (1) Knowledge of the requirements for spill prevention, overfill prevention, release detection, corrosion protection, emergency response, and product compatibility.
- (2) Site-specific knowledge of the equipment used at the facility and the components of the underground storage tank system, and the methods of release detection and release prevention associated with the underground storage tank components.
- (3) Knowledge of the requirements for demonstrating financial responsibility.
- (4) Understanding of notification requirements associated with the underground storage tank system, including requirements for reporting releases and suspected releases.
- (5) Understanding of the requirements for the temporary and permanent closure of underground storage tank systems.
- (6) Knowledge of the emergency response operator training requirements, and the actions to be taken in response to emergencies and alarms.

(b) A primary operator shall be retrained if an inspection at the facility reveals that the underground storage tank system is not in substantial compliance with the requirements for: release detection, release prevention, financial responsibility, emergency response, suspected release reporting and investigation, the proximity of the underground storage tank system to water supply wells and surface water, and permitting. A primary operator who is required to be retrained shall complete the retraining within a reasonable time as determined by the Department. The retraining shall include training in the areas for which the underground storage tank system was not in compliance. The retraining may consist of a combination of on-site instruction and on-site testing, as well as in-class instruction and in-class testing, and, if available, the Department shall offer online instruction and online testing in lieu of in-class instruction and in-class testing. In-class instruction shall be provided by the Department at least

once each quarter in each one of the regional offices of the Department. An operator required to be retrained pursuant to this subsection shall only be required to attend in-class instruction and in-class testing at the regional office closest to the facility for which the operator is designated.

(c) The primary operator shall maintain documentation to show that the operator has satisfactorily completed all training required by this section.

"§ 143-215.94RR. Training requirements for emergency response operators.

(a) The Department shall develop a training program for emergency response operators. In order to satisfactorily complete the training, an emergency response operator shall, at a minimum, demonstrate all of the following:

- (1) General understanding of the underground storage tank system at the facility, and knowledge of the location and proper operation of the safety and emergency response equipment.
- (2) Understanding of the actions to be taken in response to an emergency, including situations posing an immediate danger or threat to the public or to the environment and requiring immediate action.
- (3) Understanding of leak detection alarms and preparations needed to respond to alarms before a release has occurred.
- (4) Recognition of unusual operating conditions, equipment failures, or environmental conditions that may indicate a release, and knowledge of the steps to take in response to a suspected release.
- (5) Knowledge of immediate steps to take in response to a confirmed release to stop further release and to contain spills before they reach the environment.

(b) The primary operator is responsible for implementing the training program developed by the Department for emergency response operators. The primary operator shall train each emergency response operator of the underground storage tank system at the facility. Prior to training an emergency response operator, the primary operator shall have satisfactorily completed all training required by this section. The primary operator shall maintain documentation of training provided to emergency response operators.

"§ 143-215.94SS. Tank systems for emergency power generators.

This section applies only to a facility that utilizes an underground storage tank system to store fuel solely for use by emergency power generators. A primary operator that has satisfactorily completed the training required by G.S. 143-215.94QQ at a facility shall be deemed trained as the primary operator at another facility that has identical spill prevention, overfill prevention, release detection, corrosion protection, emergency response, and product compatibility requirements as the facility for which the primary operator has satisfactorily completed training.

"§ 143-215.94TT. Enforcement.

This Part may be enforced as provided in G.S. 143-215.94W, 143-215.94X, and 143-215.94Y.

"§ 143-215.94UU. Effect on other laws.

The requirements of this Part are in addition to, and not in lieu of, any other requirements applicable to underground storage tank owners or operators, as defined in 40 Code of Federal Regulations Part 280 (July 1, 2009 Edition), under law."

SECTION 3. On or before August 1, 2012, the Department shall develop an online instruction and online testing module for the retraining requirement set forth in G.S. 143-215.94QQ(b), as enacted by Section 2 of this act. Once developed, the Department shall offer the online instruction and online testing module in lieu of in-class instruction and in-class testing to satisfy the requirement.

SECTION 4. Notwithstanding G.S. 143-215.94PP, as enacted by Section 2 of this act, each owner of an underground storage tank system shall designate a primary operator or emergency response operator no later than August 1, 2010, or the owner shall be deemed to be

the primary operator and emergency response operator of the underground storage tank system. Each designated primary operator and emergency response operator shall complete the training required by this section no later than August 8, 2012. For primary operators designated after August 8, 2012, the owner shall notify the Department of the designation, and the primary operator shall be trained within 30 days after assuming operation and maintenance responsibilities for the underground storage tank system. After August 8, 2012, no person may assume the responsibilities of emergency response operator without having first satisfactorily completed emergency response operator training, and the primary operator shall ensure that no person assumes the responsibilities of emergency response operator unless the person has satisfactorily completed emergency response operator training.

SECTION 5. G.S. 143-215.94E(c) reads as rewritten:

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

SECTION 6. G.S. 143-215.94E(c1) reads as rewritten:

"(c1) In the case of a discharge or release from a noncommercial 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 noncommercial 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 Noncommercial Fund pay or reimburse the current landowner for ~~ninety percent (90%) of any costs described in subdivisions (1) and (2) of G.S. 143-215.94D(b1) that exceed five thousand dollars (\$5,000).~~ G.S. 143-215.94D(b1). Eligibility for reimbursement under this subsection may be transferred to a subsequent landowner from a current ~~landowner who has paid the costs for which the landowner is responsible under this subsection.~~ landowner. The sum of payments from the Noncommercial 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 clean up 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. The current landowner shall submit documentation of all expenditures as required by G.S. 143-215.94G(b)."

SECTION 7. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 7th day of July, 2010.

s/ Walter H. Dalton
President of the Senate

s/ Joe Hackney
Speaker of the House of Representatives

s/ Beverly E. Perdue
Governor

Approved 3:09 p.m. this 22nd day of July, 2010