

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2001**

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**HOUSE BILL 1063\***

Short Title: Pay for Performance/LUST Cleanups.

(Public)

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Sponsors: Representative Gibson.

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Referred to: Environment and Natural Resources.

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April 10, 2001

A BILL TO BE ENTITLED

1  
2 AN ACT TO PROVIDE FOR PERFORMANCE-BASED CLEANUPS OF  
3 DISCHARGES OR RELEASES OF PETROLEUM FROM UNDERGROUND  
4 STORAGE TANKS.

5 The General Assembly of North Carolina enacts:

6 **SECTION 1.** G.S. 143-215.94B is amended by adding a new subsection to  
7 read:

8 "(f) On the first day of each fiscal quarter, the Department may allocate up to fifty  
9 percent (50%) of the funds in the Commercial Fund that are not otherwise obligated for  
10 performance-based cleanups as provided in this subsection. The Department may also  
11 use any funds that are available from any other source and that are specifically intended  
12 to be used for performance-based cleanups as provided in this section. Each  
13 performance-based cleanup shall comply with the requirements of this Part and any  
14 other provisions of law that govern the cleanup of environmental damage resulting from  
15 the discharge or release of a petroleum product from a commercial underground storage  
16 tank. The Department may contact for performance-based cleanups with licensed  
17 professionals, including Professional Engineers, Professional Geologists, Registered  
18 Environmental Consultants, and other professional consultants that the Department has  
19 determined to be qualified to satisfactorily complete the work associated with a cleanup.  
20 A performance-based contract shall provide that cleanup will be completed within the  
21 time and for the cost stated in the contract. The Department shall select contractors for  
22 performance-based cleanup through a competitive bidding process that is open to all  
23 qualified professionals. The Department shall award a performance-based contract to  
24 the qualified contractor who submits the lowest responsible bid."

25 **SECTION 2.** G.S. 143-215.94D is amended by adding a new subsection to  
26 read:

27 "(f) On the first day of each fiscal quarter, the Department may allocate up to fifty  
28 percent (50%) of the funds in the Noncommercial Fund that are not otherwise obligated

1 for performance-based cleanups as provided in this subsection. The Department may  
2 also use any funds that are available from any other source and that are specifically  
3 intended to be used for performance-based cleanups as provided in this section. Each  
4 performance-based cleanup shall comply with the requirements of this Part and any  
5 other provisions of law that govern the cleanup of environmental damage resulting from  
6 the discharge or release of a petroleum product from a noncommercial underground  
7 storage tank. The Department may contact for performance-based cleanups with  
8 licensed professionals, including Professional Engineers, Professional Geologists,  
9 Registered Environmental Consultants, and other professional consultants that the  
10 Department has determined to be qualified to satisfactorily complete the work  
11 associated with a cleanup. A performance-based contract shall provide that cleanup will  
12 be completed within the time and for the cost stated in the contract. The Department  
13 shall select contractors for performance-based cleanup through a competitive bidding  
14 process that is open to all qualified professionals. The Department shall award a  
15 performance-based contract to the qualified contractor who submits the lowest  
16 responsible bid."

17         **SECTION 3.** G.S. 143-215.94G is amended by adding a new subsection to  
18 read:

19         "(a3) The Department may implement the provisions of subsection (a) of this  
20 section as provided in G.S. 143-215.95B(f) and G.S. 143-215.94D(f)."

21         **SECTION 4.** This act constitutes a recent act of the General Assembly  
22 within the meaning of G.S. 150B-21.1. Notwithstanding G.S. 150B-21.1(a)(2) and 26  
23 NCAC 2C.0102(11), the Environmental Management Commission may adopt  
24 temporary rules to implement this act until 1 July 2002. Prior to the adoption of a  
25 temporary rule under this section, the Secretary shall publish a notice of intent to adopt  
26 a temporary rule in the North Carolina Register. The notice shall set out the text of the  
27 proposed temporary rule and include the name of the person to whom questions and  
28 written comment on the proposed temporary rule may be submitted. The Secretary shall  
29 accept written comment on the proposed temporary rule for at least 30 days after the  
30 notice of intent to adopt a temporary rule is published in the North Carolina Register.

31         **SECTION 5.** This act becomes effective 1 July 2001.