

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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SENATE BILL 181
Agriculture/Environment/Natural Resources Committee Substitute Adopted 6/6/11

Short Title: Underground Storage Tank Prgrm. Amends. (Public)

Sponsors:

Referred to:

March 3, 2011

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE VARIOUS CHANGES TO THE LAWS GOVERNING THE STATE'S
3 UNDERGROUND STORAGE TANK PROGRAM AND PETROLEUM DISCHARGES.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** G.S. 143-215.3(a) reads as rewritten:

6 "(a) Additional Powers. – In addition to the specific powers prescribed elsewhere in this
7 Article, and for the purpose of carrying out its duties, the Commission shall have the power:

8 ...

9 (15) To adopt rules for the prevention of pollution from underground tanks
10 containing petroleum, petroleum products, or hazardous substances. Rules
11 adopted under this section may not incorporate standards and restrictions
12 which exceed ~~and~~ or are more comprehensive than comparable federal
13 regulations.

14 (16) To adopt rules limiting the manufacture, storage, sale, distribution or use of
15 cleaning agents containing phosphorus pursuant to G.S. 143-214.4(e), and to
16 adopt rules limiting the manufacture, storage, sale, distribution or use of
17 cleaning agents containing nitrilotriacetic acid.

18 (17) To adopt rules to implement Part 2A of Article 21A of Chapter 143.

19 (18) To adopt rules pertaining to the discharge or release of petroleum, from any
20 source, which provide for risk-based assessment and cleanup."

21 **SECTION 2.** G.S. 143-215.94B(b) reads as rewritten:

22 "(b) The Commercial Fund shall be used for the payment of the following costs up to an
23 aggregate maximum of one million dollars (\$1,000,000) per occurrence resulting from a
24 discharge or release of a petroleum product from a commercial underground storage tank:

25 ...

26 (8) The costs of a site investigation required by the Department for the purpose
27 of determining whether a release from a tank system has occurred, whether
28 or not the investigation confirms that a release has occurred."

29 **SECTION 3.** G.S. 143-215.94B(b1) reads as rewritten:

30 "(b1) In the event that two or more discharges or releases at any one facility, the first of
31 which was discovered or reported on or after 30 June 1988, result in more than one plume of
32 soil, surface water, or groundwater contamination, the Commercial Fund shall be used for the
33 payment of the costs of the cleanup of environmental damage as required by
34 G.S. 143-215.94E(a) in excess of the multiple discharge amount up to the applicable aggregate
35 maximum specified in subsections (b) and (b2) of this section. The multiple discharge amount
36 shall be calculated as follows:



- 1 (1) Each discharge or release shall be considered separately as if it were the only
2 discharge or release, and the cost for which the owner or operator is
3 responsible under subdivisions (1), (2), (2a), or (3) of subsection (b) of this
4 section, whichever are applicable, shall be determined for each discharge or
5 release. For each discharge or release for which subdivision (4) of subsection
6 (b) of this section is applicable, the cost for which the owner or operator is
7 responsible, for the purpose of this subsection, shall be seventy-five
8 thousand dollars (\$75,000). For purposes of this subsection, two or more
9 discharges or releases that result in a single plume of soil, surface water, or
10 groundwater contamination shall be considered as a single discharge or
11 release.
- 12 (2) The multiple discharge amount shall be the lesser of:
13 a. The sum of all the costs determined as set out in subdivision (1) of
14 this subsection; or
15 b. The product of the highest of the costs determined as set out in
16 subdivision (1) of this subsection multiplied by one and one-half
17 (1½).
- 18 (3) If in the process of investigating a discharge or release from an underground
19 storage tank system an owner or operator discovers a separate discharge or
20 release for which the owner or operator is not responsible, the responsible
21 party cannot be identified, and the releases are commingled, the owner or
22 operator may elect to clean up both releases, in which case the amount the
23 owner or operator is responsible for shall be the lesser of the applicable costs
24 under subdivision (1), (2), (2a), (3), or (4) of subsection (b) of this section,
25 whichever are applicable."

26 **SECTION 4.(a)** G.S. 143-215.94B is amended by adding a new subsection to
27 read:

28 "**(b5)** In the event a discharge or release of petroleum from an underground storage tank
29 results in contamination in soil or groundwater that becomes commingled with contamination
30 that is the result of a discharge or release of petroleum from another source, the Commercial
31 Fund may be used to reimburse an owner, operator, or landowner that is otherwise eligible for
32 reimbursement and proceeds with cleanup pursuant to this Part for any costs in accordance with
33 subsection (b1) of this section."

34 **SECTION 4.(b)** G.S. 143-215.94B(d) reads as rewritten:

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

- 36 (1) Costs incurred as a result of a discharge or release from an aboveground
37 tank, aboveground pipe or fitting not connected to an underground storage
38 tank, or ~~vehicle~~. vehicle, unless the discharge or release becomes
39 commingled with contamination from an underground storage tank.

40"

41 **SECTION 4.(c)** G.S. 143-215.94D(d) reads as rewritten:

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

- 43 (1) Costs incurred as a result of a discharge or release from an aboveground
44 tank, aboveground pipe or fitting not connected to an underground storage
45 tank, or ~~vehicle~~. vehicle, unless the discharge or release becomes
46 commingled with contamination from an underground storage tank.

47"

48 **SECTION 5.** G.S. 143-215.94B is amended by adding a new subsection to read:

49 "(i) During each fiscal year, the Department shall use up to one million dollars
50 (\$1,000,000) of the funds in the Commercial Fund to fund necessary assessment and cleanup to
51 be conducted by the Department of discharges or releases for which a responsible party has

1 been identified but for which the responsible party can demonstrate that undertaking the costs
2 of assessment and cleanup will impose a severe financial hardship. The Commission shall
3 adopt rules to define severe financial hardship; establish criteria for assistance due to severe
4 financial hardship pursuant to this section; and establish a process for evaluation and
5 determinations of eligibility with respect to applications for assistance due to severe financial
6 hardship. The rules shall provide that the determinations of eligibility shall be made by the
7 Petroleum Underground Storage Tank Funds Council established under G.S. 143-215.94O."

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

9 **"§ 143-215.94C. Commercial leaking petroleum underground storage tank cleanup fees.**

10 (a) 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. The owner or operator of a commercial
13 petroleum underground storage tank shall pay to the Secretary for deposit into the Commercial
14 Fund an annual operating fee of four-hundred twenty dollars (\$420.00) for each petroleum
15 commercial underground storage tank.

16 (a1) Payment of a fee shall not be required for a compartment of a commercial
17 underground storage tank that has not contained a petroleum product at any point during the
18 applicable calendar year. The owner or operator of a commercial petroleum underground
19 storage tank that does not pay an annual operating fee for a compartment pursuant to this
20 subsection shall complete and submit an attestation under penalty of perjury that the
21 compartment for which a fee is not paid did not contain a petroleum product at any point during
22 the applicable calendar year. A compartment for which an annual operating fee is not paid is
23 ineligible for reimbursement of any costs associated with a discharge or release from the
24 compartment from the Commercial Leaking Petroleum Underground Storage Tank Fund.

25 (b) The annual operating fee shall be determined on a calendar year basis. For
26 petroleum commercial underground storage tanks in use on 1 January and remaining in use on
27 or after 1 December of that year, the annual operating fee due for that year shall be as specified
28 in subsection (a) of this section. For a petroleum commercial underground storage tank that is
29 first placed in service in any year, the annual operating fee due for that year shall be determined
30 by multiplying one-twelfth (1/12) of the amount specified in subsection (a) of this section by
31 the number of months remaining in the calendar year. For a petroleum commercial
32 underground storage tank that is permanently removed from service in any year, the annual
33 operating fee due for that year shall be determined by multiplying one-twelfth (1/12) of the
34 amount specified in subsection (a) of this section by the number of months in the calendar year
35 preceding the permanent removal from use. In calculating the pro rata annual operating fee for
36 a tank that is first placed in use or permanently removed during a calendar year under the
37 preceding two sentences, a partial month shall count as a month, except that where a tank is
38 permanently removed and replaced by another tank, the total of the annual operating fee for the
39 tank that is removed and the replacement tank shall not exceed the annual operating fee for the
40 replacement tank. The annual operating fee shall be due and payable in equal installments on a
41 quarterly basis on the first day of the month of each quarter in accordance with a staggered
42 schedule established by the Department. ~~The Department shall implement a staggered schedule~~
43 ~~to the end in order~~ that the total amount of fees to be collected by the Department is
44 approximately the same each quarter. A person who owns or operates more than one petroleum
45 commercial underground storage tank may request that the fee for all tanks be due at the same
46 time. The fee for all commercial underground storage tanks located at the same facility shall be
47 due at the same time. A person who owns or operates 12 or more commercial petroleum
48 storage tanks may request that the total of all fees be paid in four equal payments to be due on
49 the first day of each calendar quarter, provided that the fee for all commercial underground
50 storage tanks located at the same facility shall be due at the same time.

51"

1 **SECTION 7.** G.S. 143-215.94T reads as rewritten:

2 "**§ 143-215.94T. Adoption and implementation of regulatory program.**

3 ...

4 (c) Rules adopted pursuant to subdivision (13) of subsection (a) of this section shall
5 require secondary containment for all components of underground storage tank systems,
6 including, but not limited to, tanks, piping, fittings, pump heads, and dispensers. Secondary
7 containment requirements shall include standards for double wall tanks, piping, and fittings and
8 for sump containment for pump heads and dispensers. The rules shall provide for monitoring of
9 double wall interstices and sump containments. The rules shall apply to any underground
10 storage tank system that is installed on or after the date on which the rules become effective
11 and to the replacement of any component of an underground storage tank system on or after
12 that date. This section shall not be construed to limit the right of an owner or operator to repair
13 any existing component of an underground storage tank system. If an existing underground
14 storage tank is replaced, the secondary containment and interstitial monitoring requirements
15 shall apply only to the replaced underground tank. Likewise, if existing piping is replaced, the
16 secondary containment and interstitial monitoring requirements shall apply only to the replaced
17 piping.

18 (d) The Department shall allow non-tank unprotected metallic components that are
19 visible or can be accessed for visual inspection, including flex connectors and other metal
20 fittings and connectors at the ends of piping runs, to have corrosion protection added as an
21 alternative to replacement of these components if the component does not have visible
22 corrosion and passes a tightness test."

23 **SECTION 8.(a)** Notwithstanding 15A NCAC 02N .0304(a)(5) (Implementation
24 Schedule for Performance Standards for New UST Systems and Upgrading Requirements for
25 Existing UST Systems Located in Areas Defined in Rule .0301(d)), all UST systems installed
26 after January 1, 1991, shall not be required to provide secondary containment until January 1,
27 2020.

28 **SECTION 8.(b)** Notwithstanding 15A NCAC 02N .0304(a)(5) (Implementation
29 Schedule for Performance Standards for New UST Systems and Upgrading Requirements for
30 Existing UST Systems Located in Areas Defined in Rule .0301(d)), the Commission shall
31 establish a process for the grant of variances from the setbacks required for UST systems from
32 certain public water supply wells, particularly those that serve only a single facility which are
33 not community water systems, if the Commission finds facts to demonstrate that such variance
34 will not endanger human health and welfare or groundwater.

35 **SECTION 8.(c)** No later than January 1, 2012, the Environmental Management
36 Commission shall adopt rules consistent with the provisions of Section 8(a) and Section 8(b) of
37 this act. Notwithstanding G.S. 150B-19(4), the rules adopted by the Commission pursuant to
38 this section shall be substantively identical to the provisions of Section 8(a) and Section 8(b) of
39 this act.

40 **SECTION 9.** G.S. 143-215.94V reads as rewritten:

41 "**§ 143-215.94V. Standards for petroleum underground storage tank cleanup.**

42 (a) Legislative findings and intent.

43 (1) The General Assembly finds that:

- 44 a. The goals of the underground storage tank program are to protect
45 human health and the environment. Maintaining the solvency of the
46 Commercial Fund and the Noncommercial Fund is essential to these
47 goals.
- 48 b. The sites at which discharges or releases from underground storage
49 tanks occur vary greatly in terms of complexity, soil types,
50 hydrogeology, other physical and chemical characteristics, current

- 1 and potential future uses of groundwater, and the degree of risk that
2 each site may pose to human health and the environment.
- 3 c. Risk-based corrective action is a process that recognizes this
4 diversity and utilizes an approach where assessment and remediation
5 activities are specifically tailored to the conditions and risks of a
6 specific site.
- 7 d. Risk-based corrective action gives the State flexibility in requiring
8 different levels of cleanup based on scientific analysis of different
9 site characteristics, and allowing no action or no further action at
10 sites that pose little risk to human health or the environment.
- 11 e. A risk-based approach to the cleanup of environmental damage can
12 adequately protect human health and the environment while
13 preventing excessive or unproductive cleanup efforts, thereby
14 assuring that limited resources are directed toward those sites that
15 pose the greatest risk to human health and the environment.
- 16 (2) The General Assembly intends:
- 17 a. To direct the Commission to adopt rules that will provide for
18 risk-based assessment and cleanup of discharges and releases ~~from~~
19 ~~petroleum underground storage tanks of petroleum~~. These rules are
20 intended to combine groundwater standards that protect current and
21 potential future uses of groundwater with risk-based analysis to
22 determine the appropriate cleanup levels and actions.
- 23 b. That these rules apply to all discharges or releases that are reported
24 on or after the date the rules become effective in order to ascertain
25 whether cleanup is necessary, and if so, the appropriate level of
26 cleanup.
- 27 c. That these rules may be applied to any discharge or release that has
28 been reported at the time the rules become effective at the discretion
29 of the Commission.
- 30 d. That these rules and decisions of the Commission and the
31 Department in implementing these rules facilitate the completion of
32 more cleanups in a shorter period of time.
- 33 e. That neither the Commercial Fund nor the Noncommercial Fund be
34 used to clean up sites where the Commission has determined that a
35 discharge or release poses a degree of risk to human health or the
36 environment that is no greater than the acceptable level of risk
37 established by the Commission.
- 38 f. Repealed by Session Laws 1998-161, s. 11(c), effective retroactively
39 to January 1, 1998.
- 40 g. That the Commercial Fund and the Noncommercial Fund be used to
41 perform the most cost-effective cleanup that addresses imminent
42 threats to human health and the environment.
- 43 (b) The Commission shall adopt rules to establish a risk-based approach for the
44 assessment, prioritization, and cleanup of discharges and releases ~~from petroleum underground~~
45 ~~storage tanks of petroleum~~. The rules shall address, at a minimum, the circumstances where
46 site-specific information should be considered, criteria for determining acceptable cleanup
47 levels, and the acceptable level or range of levels of risk to human health and the environment.
48 Rules that use the distance between a source area of a confirmed discharge or release to a water
49 supply well or a private drinking water well, as those terms are defined under G.S. 87-85, shall
50 include a determination whether a nearby well is likely to be affected by the discharge or
51 release as a factor in determining levels of risk.

1 (c) The Commission may require an owner or operator or a landowner eligible for
2 payment or reimbursement under subsections (b), (b1), (c), and (c1) of G.S. 143-215.94E to
3 provide information necessary to determine the degree of risk to human health and the
4 environment that is posed by a discharge or release from a petroleum underground storage and
5 to identify the most cost-effective cleanup that addresses imminent threats to human health and
6 the environment.

7 (d) If the Commission concludes that a discharge or release poses a degree of risk to
8 human health or the environment that is no greater than the acceptable level of risk established
9 by the Commission, the Commission shall notify an owner, operator, or landowner who
10 provides the information required by subsection (c) of this section that no cleanup, further
11 cleanup, or further action will be required unless the Commission later determines that the
12 discharge or release poses an unacceptable level of risk or a potentially unacceptable level of
13 risk to human health or the environment. If the Commission concludes that a discharge or
14 release poses a degree of risk to human health or the environment that requires further cleanup,
15 the Commission shall notify the owner, operator, or landowner who provides the information
16 required by subsection (c) of this section of the cleanup method approved by the Commission
17 as the most cost-effective cleanup method for the site. This section shall not be construed to
18 prohibit an owner, operator, or landowner from selecting a cleanup method other than the
19 cost-effective cleanup method approved by the Commission so long as the Commission
20 determines that the alternative cleanup method will address imminent threats to human health
21 and the environment.

22 (e) If the Commission concludes under subsection (d) of this section that no cleanup, no
23 further cleanup, or no further action will be required, the Department shall not pay or reimburse
24 any costs otherwise payable or reimbursable under this Article from either the Commercial or
25 Noncommercial Fund, other than reasonable and necessary to conduct the risk assessment
26 required by this section, unless:

- 27 (1) Cleanup is ordered or damages are awarded in a finally adjudicated
28 judgment in an action against the owner or landowner.
- 29 (2) Cleanup is required or damages are agreed to in a consent judgment
30 approved by the Department prior to its entry by the court.
- 31 (3) Cleanup is required or damages are agreed to in a settlement agreement
32 approved by the Department prior to its execution by the parties.
- 33 (4) The payment or reimbursement is for costs that were incurred prior to or as a
34 result of notification of a determination by the Commission that no cleanup,
35 no further cleanup, or no action is required.
- 36 (5) The payment or reimbursement is for costs that were incurred as a result of a
37 later determination by the Commission that the discharge or release poses a
38 threat or potential threat to human health or the environment as provided in
39 subsection (d) of this section.

40 (e1) If the Commission concludes under subsection (d) of this section that further
41 cleanup is required and notifies the owner, operator, or landowner of the cleanup method
42 approved by the Commission as the most cost-effective cleanup method for the site, the
43 Department shall not pay or reimburse any costs otherwise payable or reimbursable under this
44 Article from either the Commercial Fund or Noncommercial Fund, other than those costs that
45 are reasonable and necessary to conduct the risk assessment and to implement the cost-effective
46 cleanup method approved by the Commission. If the owner, operator, or landowner selects a
47 cleanup method other than the one identified by the Commission as the most cost-effective
48 cleanup, the Department shall not pay or reimburse for costs in excess of the cost of
49 implementing the approved cost-effective cleanup.

50 (f) This section shall not be construed to limit the authority of the Commission to
51 require investigation, initial response, and abatement of a discharge or release pending a

1 determination by the Commission under subsection (d) of this section as to whether cleanup,
2 further cleanup, or further action will be required.

3 (g) Subsections (c) through (e1) of this section apply only to assessments and cleanups
4 in progress or begun on or after 2 January 1998.

5 (h) If a discharge or release of petroleum from an underground storage tank results in
6 contamination in soil or groundwater that becomes commingled with contamination that is the
7 result of a discharge or release of petroleum from a source of contamination other than an
8 underground storage tank, the cleanup of petroleum may proceed under rules adopted pursuant
9 to this section. ~~The Department shall not pay or reimburse any costs associated with the
10 assessment or remediation of that portion of contamination that results from a release or
11 discharge of petroleum from a source other than an underground storage tank from either the
12 Commercial Fund or the Noncommercial Fund."~~

13 **SECTION 10.(a)** Notwithstanding subsection (a) of 15A NCAC 02N .0903
14 (Underground Storage Tanks: Tanks), from the effective date of this act the Department of
15 Environment and Natural Resources shall not prohibit the use of tanks that are constructed of
16 steel and cathodically protected as provided in 40 Code of Federal Regulations § 280.20(a)(2)
17 (July 1, 2010 Edition) in order to meet the external corrosion protection standards of that rule.

18 **SECTION 10.(b)** No later than January 1, 2012, the Environmental Management
19 Commission shall adopt rules consistent with the provisions of Section 10(a) of this act.
20 Notwithstanding G.S. 150B-19(4), the rules adopted by the Commission pursuant to this
21 section shall be substantively identical to the provisions of Section 10(a) of this act.

22 **SECTION 11.** This act is effective when it becomes law and applies to
23 assessments that are initiated on or after that date, except that (i) Section 3 applies to discharges
24 or releases discovered or reported on or after January 1, 2009, and (ii) G.S. 143-215.94V(c1),
25 as enacted by Section 9 of this act, applies to discharges or releases reported on or before
26 January 2, 1998.