

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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HOUSE BILL 1350*

Short Title: Underground Storage Tank Amends. '96.

(Public)

Sponsors: Representatives Weatherly, Locke; J. Brown, Culp, Dickson, McCombs, Mitchell, Nichols, Pate, Rayfield, Tolson, and Yongue.

Referred to: Health and Environment.

May 24, 1996

A BILL TO BE ENTITLED

**AN ACT TO PROVIDE FOR THE CONTINUED SOLVENCY OF THE
COMMERCIAL LEAKING PETROLEUM UNDERGROUND STORAGE TANK
CLEANUP FUND AND TO MAKE OTHER CHANGES TO THE LEAKING
PETROLEUM UNDERGROUND STORAGE TANK CLEANUP PROGRAM, AS
RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.**

The General Assembly of North Carolina enacts:

Section 1. Temporary suspension of cleanups pending adoption of risk-assessment rules – (a) The definitions set out in G.S. 143-215.94A apply to this section.

(b) The Department shall classify the impact of each known discharge or release of a petroleum product from an underground storage tank as either a Class AB impact or a Class CDE impact. The Department shall make the classification on the basis of information currently known by the Department or provided to the Department as required by law. The Department shall revise the classification as additional information is received. The impact of a discharge or release is a Class CDE impact unless and until it is classified as a Class AB impact. A discharge or release has a Class AB impact if and only if any of the following apply:

(1) A water supply well is contaminated.

(2) Petroleum vapor is present in a confined space.

1 (3) A water supply well is located within 1,500 feet of the discharge,
2 release, or known extent of contamination and there is a user of water
3 from any water supply well located within 1,500 feet of the discharge,
4 release, or known extent of contamination who is not served by an
5 existing public water supply.

6 (4) The discharge or release results in a violation of drinking water
7 standards set out in rules adopted by the Commission for Health
8 Services under G.S. 130A-315 in a treated surface water supply.

9 (5) The discharge or release poses an imminent danger to public health,
10 public safety, or the environment.

11 (c) The Department shall give notice of the classification of the impact of a
12 cleanup of a discharge or release from a petroleum underground storage tank by
13 publishing the classification in the North Carolina Register. To the maximum extent
14 practical, the Department shall give notice of the classification of the impact of a cleanup
15 of a discharge or release from a petroleum underground storage tank by first-class mail to
16 either the owner, operator, or person responsible as shown on records maintained by the
17 Department at the address on file with the Department.

18 (d) The Commission shall not require the cleanup of a discharge or release from a
19 petroleum underground storage tank having a Class CDE impact except that an owner,
20 operator, or other person responsible for the cleanup of a discharge or release from a
21 petroleum underground storage tank shall:

22 (1) Take immediate action to prevent any further release or discharge of
23 petroleum from the underground storage tank; identify and mitigate any
24 fire, explosion, or vapor hazard; and remove any free petroleum
25 product.

26 (2) Meet applicable requirements of 40 Code of Federal Regulations §
27 280.50 through § 280.53 and § 280.60 through § 280.64 (1 July 1995
28 Edition).

29 (3) Submit any information that the Department may require to classify the
30 impact of the discharge or release pursuant to this section.

31 (e) If the impact of a discharge or release is classified as having a Class CDE
32 impact, the Department shall not pay or reimburse any costs otherwise payable or
33 reimbursable under this Article from either the Commercial Fund or Noncommercial
34 Fund unless:

35 (1) The costs are incurred to comply with subsection (d) of this section.

36 (2) The payment or reimbursement is for costs that were incurred prior to
37 notification that the impact of the discharge or release has been
38 classified as Class CDE by the Department.

39 (3) The payment or reimbursement is for costs that were incurred for a
40 discharge or release the impact of which is subsequently classified as a
41 Class AB impact by the Department.

42 (4) Cleanup is ordered or damages are awarded in a finally adjudicated
43 judgment in an action against the owner, operator, or landowner.

1 (5) Cleanup is required or damages are agreed to in a consent judgment
2 approved by the Department prior to its entry by the court.

3 (6) Cleanup is required or damages are agreed to in a settlement agreement
4 approved by the Department prior to its execution by the parties.

5 (f) Except for costs incurred to comply with subsection (d) of this section, the
6 Department shall not pay or reimburse any costs otherwise payable or reimbursable under
7 this Article from either the Commercial Fund or the Noncommercial Fund for a discharge
8 or release that is discovered on or after the date this act becomes effective until the
9 impact of the release has been classified as provided in subsection (b) of this section.

10 Sec. 2. G.S. 143-215.94C(a) reads as rewritten:

11 "(a) For purposes of this subsection, each compartment of a commercial
12 underground storage tank that is designed to independently contain a petroleum product
13 is a separate petroleum commercial underground storage tank. The owner or operator of
14 a commercial petroleum underground storage tank shall pay to the Secretary for deposit
15 into the Commercial Fund an annual operating fee according to the following schedule:

16 (1) For each petroleum commercial underground storage tank of 3,500
17 gallons or less capacity ~~—one hundred fifty dollars (\$150.00).~~ two hundred
18 dollars (\$200.00).

19 (2) For each petroleum commercial underground storage tank of more than
20 3,500 gallon capacity ~~—two hundred twenty five dollars (\$225.00).~~ three
21 hundred dollars (\$300.00)."

22 Sec. 3. G.S. 143-215.94E is amended by adding a new subsection to read:

23 "(c1) In the case of a discharge or release from a noncommercial underground
24 storage tank where the owner and operator cannot be identified or located, or where the
25 owner and operator fail to proceed as required by subsection (a) of this section, if the
26 current landowner of the land in which the noncommercial underground storage tank is
27 located notifies the Department in accordance with G.S. 143-215.85 and undertakes to
28 collect and remove the discharge or release and to restore the area affected in accordance
29 with the requirements of this Article and applicable federal and State laws, regulations,
30 and rules, the current landowner may elect to have the Noncommercial Fund pay or
31 reimburse the current landowner for ninety percent (90%) of any costs described in
32 subdivisions (1) and (2) of G.S. 143-215.94D(b1) that exceed five thousand dollars
33 (\$5,000). Eligibility for reimbursement under this subsection may be transferred to a
34 subsequent landowner from a current landowner who has paid the costs for which the
35 landowner is responsible under this subsection. The sum of payments from the
36 Noncommercial Fund and from all other sources shall not exceed one million dollars
37 (\$1,000,000) per discharge or release. This subsection shall not be construed to require a
38 current landowner to cleanup a discharge or release of petroleum from an underground
39 storage tank for which the current landowner is not otherwise responsible. This
40 subsection does not alter any right, duty, obligation, or liability of a current landowner,
41 former landowner, subsequent landowner, owner, or operator under other provisions of
42 law. This subsection shall not be construed to limit the authority of the Department to
43 engage in a cleanup under this Article or any other provision of law. The current

1 landowner shall submit documentation of all expenditures as required by G.S. 143-
2 215.94G(b)."

3 Sec. 4. G.S. 143-215.94E(e) reads as rewritten:

4 "(e) When the owner or operator pays the costs described in G.S. 143-215.94B(b),
5 143-215.94B(b1), or 143-215.94D(b1) resulting from a discharge or release of petroleum
6 from an underground storage tank, the owner or operator may seek reimbursement from
7 the appropriate fund for any costs he may elect to have either the Commercial Fund or the
8 Noncommercial Fund pay in accordance with subsections (b) and (c) of this section. The
9 Department shall reimburse the owner or operator for all costs he may elect to have the
10 appropriate fund pay that the Department determines to be reasonable and necessary and
11 for which appropriate documentation is submitted. The Department may contract for any
12 services necessary to evaluate any claim for reimbursement or compensation from either
13 the Commercial Fund or the Noncommercial Fund, may contract for any expert witness
14 or consultant services necessary to defend any decision to pay or deny any claim for
15 reimbursement, and may pay the cost of these services from the fund against which the
16 claim is made; provided that in any fiscal year the Department shall not expend from
17 either fund more than one percent (1%) of the unobligated balance of the fund on 30 June
18 of the previous fiscal year. The cost of contractual services to evaluate a claim or for
19 expert witness or consultant services to defend a decision with respect to a claim shall be
20 included as costs under G.S. 143-215.94B(b) and G.S. 143-215.94D(b1). The
21 Commission shall adopt rules governing reimbursement of necessary and reasonable
22 costs. An owner or operator whose claim for reimbursement is denied may appeal a
23 decision of the Department as provided in Article 3 of Chapter 150B of the General
24 Statutes. If the owner or operator is eligible for reimbursement under this section and the
25 cleanup extends beyond a period of three months, the owner or operator may apply to the
26 Department for interim reimbursements to which he is entitled under this section on a
27 quarterly basis. If the Department fails to notify an owner or operator of the its decision
28 on a claim for reimbursement under this subsection within 90 days after the date the
29 claim is received by the Department, the owner or operator may elect to consider the
30 claim to have been denied, and may appeal the denial as provided in Article 3 of Chapter
31 150B of the General Statutes."

32 Sec. 5. The Department of Environment, Health, and Natural Resources shall
33 study options for privatization of the leaking petroleum underground storage cleanup
34 program. The Department shall pay any costs associated with this study from funds
35 otherwise available to the Department for the implementation of Part 2A and Part 2B of
36 Article 21A of Chapter 143 of the General Statutes. The Department shall report its
37 findings and recommendations, including any proposed legislation, to the Environmental
38 Review Commission on or before 1 November 1996.

39 Sec. 6. The Environmental Management Commission shall publish the text of
40 the proposed rule required by G.S. 143-215.94V(b) as soon as possible and no later than
41 1 January 1997. The Environmental Management Commission shall adopt a rule to
42 implement the requirements of G.S. 143-215.94V(b) as soon as possible and no later than
43 1 October 1997.

1 Sec. 7. The Revisor of Statutes shall set out Section 1 of this act as a note to
2 G.S. 143-215.94V.

3 Sec. 8. Nothing in this act shall be construed to waive the sovereign immunity
4 of the State for any action or omission of the State or of any agent or employee of the
5 State in implementing the provisions of this act. The provisions of Article 31 of Chapter
6 143 of the General Statutes, Tort Claims against State Departments and Agencies, shall
7 not apply to any action or omission of the State or of any agent or employee of the State
8 in implementing the provisions of this act. There shall be no liability for negligence on
9 the part of the State or of any agent or employee for any action or omission in
10 implementing the provisions of this act.

11 Sec. 9. Sections 1 and 7 of this act becomes effective 30 days after the date
12 this act is ratified and expires on the date that a temporary or permanent rule adopted
13 under G.S. 143-215.94V(b) become effective as provided in G.S. 150B-21.3. Section 2
14 of this act becomes effective 1 January 1997. Section 3 of this act becomes effective
15 upon ratification, applies retroactively to any discharge or release that is discovered and
16 reported on or after 1 January 1992 and before 1 October 1997, and expires on 1 October
17 1997. Section 4 of this act is effective upon ratification. Sections 5, 6, 8, and 9 of this
18 act become effective upon ratification.