



1 STUDY ISSUES RELATED TO THE LEAKING PETROLEUM  
2 UNDERGROUND STORAGE TANK CLEANUP PROGRAM IN ORDER TO  
3 PROTECT PROPERTY VALUES, ENSURE TIMELY REIMBURSEMENT OF  
4 PERSONS WHO ENGAGE IN CLEANUPS, AND PROTECT GROUNDWATER.

5 The General Assembly of North Carolina enacts:

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

8 "(2a) 'Cost-effective cleanup' means the cleanup method that meets all of the  
9 following criteria:

- 10 a. Addresses imminent threats to human health or the  
11 environment.  
12 b. Provides for the cleanup or removal of all contaminated soil  
13 except in circumstances where it is impractical to remove  
14 contaminated soil.  
15 c. Is approved by the Commission for remediation of the site.  
16 d. Is the least expensive cleanup based on total cost, including  
17 costs not eligible for reimbursement from the Commercial Fund  
18 or the Noncommercial Fund."

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

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

- 21 (1) Costs incurred as a result of a discharge or release from an  
22 aboveground tank, aboveground pipe or fitting not connected to an  
23 underground storage tank, or vehicle.  
24 (2) The removal or replacement of any tank, pipe, fitting or related  
25 equipment.  
26 (3) Costs incurred as a result of a discharge or release of petroleum from a  
27 transmission pipeline.  
28 (4) Costs intended to be paid by the Noncommercial Fund.  
29 (5) Costs associated with the administration of any underground storage  
30 tank program other than the program administered pursuant to this  
31 Part.  
32 (6) Costs paid or reimbursed by or from any source other than the  
33 Commercial Fund, including but not limited to, any payment or  
34 reimbursement made under a contract of insurance.  
35 (7) Costs incurred as a result of the cleanup of environmental damage to  
36 groundwater to a more protective standard than the risk-based standard  
37 required by the Department unless the cleanup of environmental  
38 damage to groundwater to a more protective standard is necessary to  
39 resolve a claim for compensation by a third party for property damage.  
40 (8) Costs in excess of those required to achieve the most cost-effective  
41 cleanup."

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

43 "(f) **(Effective until October 1, 2006)** ~~On the first day of~~ During each fiscal  
44 quarter, year, the Department may allocate use up to fifty percent (50%) two million

1 five hundred thousand dollars (\$2,500,000) of the funds in the Commercial Fund that  
2 are not otherwise obligated for performance-based cleanups as provided in this  
3 subsection. The Department may also use any funds that are available from any other  
4 source and that are specifically intended to be used for performance-based cleanups as  
5 provided in this section. Each performance-based cleanup shall comply with the  
6 requirements of this Part and any other provisions of law that govern the cleanup of  
7 environmental damage resulting from the discharge or release of a petroleum product  
8 from a commercial underground storage tank. The Department or any owner, operator,  
9 or landowner may contract for performance-based cleanups with environmental services  
10 firms that the Department has determined to be qualified to satisfactorily complete the  
11 work associated with a cleanup. Before the award of the contract, the environmental  
12 services firms shall secure a surety or performance bond equal to the price of the firm's  
13 services under the contract and shall demonstrate having secured the surety or  
14 performance bond to the satisfaction of the Department. The surety shall be liable on the  
15 bond obligation when the environmental services firms fail to perform as specified in  
16 the contract. A performance-based contract shall provide that cleanup will be completed  
17 within the time and for the cost stated in the contract. The Department or any owner,  
18 operator, or landowner shall select environmental services firms for performance-based  
19 cleanup through a competitive bidding process. The Commission shall adopt rules  
20 governing the competitive bidding process, process and any other rules necessary to  
21 implement this subsection. The rules shall establish qualifications for environmental  
22 services firms and for individuals and firms that provide engineering services as part of  
23 a contract to satisfactorily complete work associated with cleanup."

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

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

- 26 (1) Costs incurred as a result of a discharge or release from an  
27 aboveground tank, aboveground pipe or fitting not connected to an  
28 underground storage tank, or vehicle.
- 29 (2) The removal or replacement of any tank, pipe, fitting or related  
30 equipment.
- 31 (3) Costs incurred as a result of a discharge or release of petroleum from a  
32 transmission pipeline.
- 33 (4) Costs intended to be paid for by the Commercial Fund.
- 34 (5) Costs associated with the administration of any underground storage  
35 tank program other than the program administered pursuant to this  
36 Part.
- 37 (6) Costs paid or reimbursed by or from any source other than the  
38 Noncommercial Fund, including, but not limited to, any payment or  
39 reimbursement made under a contract of insurance.
- 40 (7) Costs incurred as a result of the cleanup of environmental damage to  
41 groundwater to a more protective standard than the risk-based standard  
42 required by the Department unless the cleanup of environmental  
43 damage to groundwater to a more protective standard is necessary to  
44 resolve a claim for compensation by a third party for property damage.

1           (8) Costs in excess of those required to achieve the most cost-effective  
2           cleanup."

3           **SECTION 5.** G.S. 143-215.94D(f) reads as rewritten:

4           "(f) **(Effective until October 1, 2006)** ~~On the first day of~~During each fiscal  
5 ~~quarter, year~~ the Department may ~~allocate~~use up to ~~fifty percent (50%) two hundred~~  
6 fifty thousand dollars (\$250,000) of the funds in the Noncommercial Fund ~~that are not~~  
7 ~~otherwise obligated~~ for performance-based cleanups as provided in this subsection. The  
8 Department may also use any funds that are available from any other source and that are  
9 specifically intended to be used for performance-based cleanups as provided in this  
10 section. Each performance-based cleanup shall comply with the requirements of this  
11 Part and any other provisions of law that govern the cleanup of environmental damage  
12 resulting from the discharge or release of a petroleum product from a noncommercial  
13 underground storage tank. The Department or any owner, operator, or landowner may  
14 contract for performance-based cleanups with environmental services firms that the  
15 Department has determined to be qualified to satisfactorily complete the work  
16 associated with a cleanup. Before the award of the contract, the environmental services  
17 firms shall secure a surety or performance bond equal to the price of the firm's services  
18 under the contract and shall demonstrate having secured the surety or performance bond  
19 to the satisfaction of the Department. The surety shall be liable on the bond obligation  
20 when the environmental services firms fail to perform as specified in the contract. A  
21 performance-based contract shall provide that cleanup will be completed within the time  
22 and for the cost stated in the contract. The Department or any owner, operator, or  
23 landowner shall select environmental services firms for performance-based cleanup  
24 through a competitive bidding ~~process.~~process and any other rules necessary to  
25 implement this subsection."

26           **SECTION 6.** G.S. 143-215.94E(f) is repealed.

27           **SECTION 7.** G.S. 143-215.94E(g) reads as rewritten:

28           "(g) No owner or operator shall be reimbursed pursuant to this section, and the  
29 Department shall seek reimbursement of the appropriate fund or of the Department for  
30 any monies disbursed from the appropriate fund or expended by the Department ~~if~~if  
31 any of the following apply:

- 32           (1) The owner or operator has willfully violated any substantive law, rule,  
33           or regulation applicable to underground storage tanks and intended to  
34           prevent or mitigate discharges or releases or to facilitate the early  
35           detection of discharges or ~~releases;~~releases.
- 36           (2) The discharge or release is the result of the owner's or operator's  
37           willful or wanton ~~misconduct;~~misconduct.
- 38           (3) The owner or operator has failed to pay any annual tank operating fee  
39           due pursuant to G.S. 143-215.94C."

40           **SECTION 8.** G.S. 143-215.94T reads as rewritten:

41           "**§ 143-215.94T. Adoption and implementation of regulatory program.**

42           (a) The Commission shall adopt, and the Department shall implement and  
43           enforce, rules relating to underground storage tanks as provided by G.S.  
44           143-215.3(a)(15) and G.S. 143B-282(2)h. These rules shall include standards and

1 requirements applicable to both existing and new underground storage tanks and tank  
2 systems, may include different standards and requirements based on tank capacity, tank  
3 location, tank age, and other relevant factors, and shall include, at a minimum, standards  
4 and requirements for:

- 5 (1) Design, construction, and installation, including monitoring systems.
- 6 (2) Notification to the Department, inspection, and registration.
- 7 (3) Recordation of tank location.
- 8 (4) Modification, retrofitting, and upgrading.
- 9 (5) General operating requirements.
- 10 (6) Release detection.
- 11 (7) Release reporting, investigation, and confirmation.
- 12 (8) Corrective action.
- 13 (9) Repair.
- 14 (10) Closure.
- 15 (11) Financial responsibility.
- 16 (12) Tank tightness testing procedures and certification of persons who  
17 conduct tank tightness tests.
- 18 (13) Secondary containment for nontank components of petroleum  
19 underground storage tank systems.

20 (b) Rules adopted pursuant to subsection (a) of this section that apply only to  
21 commercial underground storage tanks shall not apply to any:

- 22 (1) Farm or residential underground storage tank of 1,100 gallons or less  
23 capacity used for storing motor fuel for noncommercial purposes.
- 24 (2) Underground storage tank of 1,100 gallons or less capacity used for  
25 storing heating oil for consumptive use on the premises where stored.
- 26 (3) Underground storage tank of more than 1,100 gallon capacity used for  
27 storing heating oil for consumptive use on the premises where stored  
28 by four or fewer households.

29 (c) Rules adopted pursuant to subdivision (13) of subsection (a) of this section  
30 shall require secondary containment for all nontank components of underground storage  
31 tank systems, including all piping and fittings, pump heads, and dispensers. Secondary  
32 containment requirements shall include standards for double wall piping and fittings and  
33 sump containment for pump heads and dispensers. The rules shall provide for monthly  
34 monitoring of double wall interstices and sump containments. The rules shall apply to  
35 any underground storage tank system that is installed on or after the date on which the  
36 rules become effective and to the replacement of any nontank component of an  
37 underground storage tank system on or after that date."

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

39 **"§ 143-215.94V. Standards for petroleum underground storage tank cleanup.**

40 (a) Legislative findings and intent.

41 (1) The General Assembly finds that:

- 42 a. The goals of the underground storage tank program are to  
43 protect human health and the environment. Maintaining the

- 1 solvency of the Commercial Fund and the Noncommercial  
2 Fund is essential to these goals.
- 3 b. The sites at which discharges or releases from underground  
4 storage tanks occur vary greatly in terms of complexity, soil  
5 types, hydrogeology, other physical and chemical  
6 characteristics, current and potential future uses of groundwater,  
7 and the degree of risk that each site may pose to human health  
8 and the environment.
- 9 c. Risk-based corrective action is a process that recognizes this  
10 diversity and utilizes an approach where assessment and  
11 remediation activities are specifically tailored to the conditions  
12 and risks of a specific site.
- 13 d. Risk-based corrective action gives the State flexibility in  
14 requiring different levels of cleanup based on scientific analysis  
15 of different site characteristics, and allowing no action or no  
16 further action at sites that pose little risk to human health or the  
17 environment.
- 18 e. A risk-based approach to the cleanup of environmental damage  
19 can adequately protect human health and the environment while  
20 preventing excessive or unproductive cleanup efforts, thereby  
21 assuring that limited resources are directed toward those sites  
22 that pose the greatest risk to human health and the environment.
- 23 (2) The General Assembly intends:
- 24 a. To direct the Commission to adopt rules that will provide for  
25 risk-based assessment and cleanup of discharges and releases  
26 from petroleum underground storage tanks. These rules are  
27 intended to combine groundwater standards that protect current  
28 and potential future uses of groundwater with risk-based  
29 analysis to determine the appropriate cleanup levels and actions.
- 30 b. That these rules apply to all discharges or releases that are  
31 reported on or after the date the rules become effective in order  
32 to ascertain whether cleanup is necessary, and if so, the  
33 appropriate level of cleanup.
- 34 c. That these rules may be applied to any discharge or release that  
35 has been reported at the time the rules become effective at the  
36 discretion of the Commission.
- 37 d. That these rules and decisions of the Commission and the  
38 Department in implementing these rules facilitate the  
39 completion of more cleanups in a shorter period of time.
- 40 e. That neither the Commercial Fund nor the Noncommercial  
41 Fund be used to clean up sites where the Commission has  
42 determined that a discharge or release poses a degree of risk to  
43 human health or the environment that is no greater than the  
44 acceptable level of risk established by the Commission.

1 f. Repealed by Session Laws 1998-161, s. 11(c).

2 g. That the Commercial Fund and the Noncommercial Fund be  
3 used to perform the most cost-effective cleanup that addresses  
4 imminent threats to human health and the environment.

5 (b) The Commission shall adopt rules to establish a risk-based approach for the  
6 assessment, prioritization, and cleanup of discharges and releases from petroleum  
7 underground storage tanks. The rules shall address, at a minimum, the circumstances  
8 where site-specific information should be considered, criteria for determining  
9 acceptable cleanup levels, and the acceptable level or range of levels of risk to human  
10 health and the environment.

11 (c) The Commission may require an owner or operator or a landowner eligible  
12 for payment or reimbursement under subsections (b), (b1), (c), and (c1) of G.S.  
13 143-215.94E to provide information necessary to determine the degree of risk to human  
14 health and the environment that is posed by a discharge or release from a petroleum  
15 underground storage ~~tank~~, and to identify the most cost-effective cleanup that addresses  
16 imminent threats to human health and the environment.

17 (d) If the Commission concludes that a discharge or release poses a degree of risk  
18 to human health or the environment that is no greater than the acceptable level of risk  
19 established by the Commission, the Commission shall notify an owner, operator, or  
20 landowner who provides the information required by subsection (c) of this section that  
21 no cleanup, further cleanup, or further action will be required unless the Commission  
22 later determines that the discharge or release poses an unacceptable level of risk or a  
23 potentially unacceptable level of risk to human health or the environment. If the  
24 Commission concludes that a discharge or release poses a degree of risk to human  
25 health or the environment that requires further cleanup, the Commission shall notify the  
26 owner, operator, or landowner who provides the information required by subsection (c)  
27 of this section of the cleanup method approved by the Commission as the most  
28 cost-effective cleanup method for the site. This section shall not be construed to prohibit  
29 an owner, operator, or landowner from selecting a cleanup method other than the  
30 cost-effective cleanup method approved by the Commission so long as the Commission  
31 determines that the alternative cleanup method will address imminent threats to human  
32 health and the environment.

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

- 38 (1) Cleanup is ordered or damages are awarded in a finally adjudicated  
39 judgment in an action against the owner or landowner.
- 40 (2) Cleanup is required or damages are agreed to in a consent judgment  
41 approved by the Department prior to its entry by the court.
- 42 (3) Cleanup is required or damages are agreed to in a settlement  
43 agreement approved by the Department prior to its execution by the  
44 parties.

1 (4) The payment or reimbursement is for costs that were incurred prior to  
2 or as a result of notification of a determination by the Commission that  
3 no cleanup, no further cleanup, or no action is required.

4 (5) The payment or reimbursement is for costs that were incurred as a  
5 result of a later determination by the Commission that the discharge or  
6 release poses a threat or potential threat to human health or the  
7 environment as provided in subsection (d) of this section.

8 (e1) If the Commission concludes under subsection (d) of this section that further  
9 cleanup is required and notifies the owner, operator, or landowner of the cleanup  
10 method approved by the Commission as the most cost-effective cleanup method for the  
11 site, the Department shall not pay or reimburse any costs otherwise payable or  
12 reimbursable under this Article from either the Commercial Fund or Noncommercial  
13 Fund, other than those costs that are reasonable and necessary to conduct the risk  
14 assessment and to implement the cost-effective cleanup method approved by the  
15 Commission. If the owner, operator, or landowner selects a cleanup method other than  
16 the one identified by the Commission as the most cost-effective cleanup, the  
17 Department shall not pay or reimburse for costs in excess of the cost of implementing  
18 the approved cost-effective cleanup.

19 (f) This section shall not be construed to limit the authority of the Commission to  
20 require investigation, initial response, and abatement of a discharge or release pending a  
21 determination by the Commission under subsection (d) of this section as to whether  
22 cleanup, further cleanup, or further action will be required.

23 (g) Subsections (c) through ~~(e)~~(e1) of this section apply only to assessments and  
24 cleanups in progress or begun on or after 2 January 2, 1998.

25 (h) If a discharge or release of petroleum from an underground storage tank  
26 results in contamination in soil or groundwater that becomes commingled with  
27 contamination that is the result of a discharge or release of petroleum from a source of  
28 contamination other than an underground storage tank, the cleanup of petroleum may  
29 proceed under rules adopted pursuant to this section. The Department shall not pay or  
30 reimburse any costs associated with the assessment or remediation of that portion of  
31 contamination that results from a release or discharge of petroleum from a source other  
32 than an underground storage tank from either the Commercial Fund or the  
33 Noncommercial Fund."

34 **SECTION 10.** The definitions set out in G.S. 143-212 and G.S.  
35 143-215.94A apply to this section. The rights and obligations of an owner, operator, or  
36 a landowner to whom G.S. 143-215.94E(b1) applies who is eligible to have costs paid  
37 or reimbursed under G.S. 143-215.94B shall be governed by G.S. 143-215.94E as  
38 modified by this section. The Department shall establish the degree of risk to human  
39 health and the environment posed by a discharge or release of petroleum from a  
40 commercial underground storage tank and shall determine a schedule for further  
41 assessment and cleanup based on the degree of risk to human health and the  
42 environment posed by the discharge or release. If any of the costs of assessment and  
43 cleanup of the discharge or release from a commercial underground storage tank are  
44 eligible to be paid from the Commercial Fund, the Department shall also consider the



1 availability of funds in the Commercial Fund and the order in which the discharge or  
2 release was reported in determining the schedule. The Department may revise the  
3 schedule that applies to the assessment and cleanup of any discharge or release at any  
4 time based on its reassessment of any of the foregoing factors. The lack of availability  
5 of funds in the Commercial Fund shall not relieve an owner or operator of responsibility  
6 to immediately undertake to collect and remove the discharge or release or to conduct  
7 any assessment or cleanup ordered by the Department or be a defense against any  
8 violations and penalties issued to the owner or operator for failure to conduct required  
9 assessment or cleanup. If the owner or operator takes initial steps to collect and remove  
10 the discharge or release as required by the Department and completes initial assessment  
11 required to determine degree of risk, the owner or operator shall not be subject to any  
12 violation or penalty for any failure to proceed with further assessment or cleanup under  
13 G.S.143-215.84 or G.S. 143-215.94E before the owner or operator is authorized to  
14 proceed with further assessment or cleanup pursuant to the schedule set by the  
15 Department. Once the Department has determined a schedule for the assessment and  
16 cleanup of a discharge or release from a commercial underground storage tank, an  
17 owner, operator, or other person responsible for the assessment and cleanup is not  
18 eligible to have the costs of the assessment or cleanup paid or reimbursed from the  
19 Commercial Fund until such time as further assessment or cleanup is authorized by the  
20 Department pursuant to the schedule. An owner, operator, or other person may  
21 undertake further assessment or cleanup before receiving authorization from the  
22 Department. An owner, operator, or other person who undertakes further assessment or  
23 cleanup before receiving authorization from the Department shall be reimbursed only  
24 after the Department has paid or reimbursed the costs for all assessments and cleanups  
25 that the Department has authorized.

26 **SECTION 11.** In order to reduce costs associated with the assessment and  
27 cleanup of discharges and releases of petroleum from petroleum underground storage  
28 tanks, the Environmental Management Commission may adopt temporary and  
29 permanent rules to modify the testing requirements set out in 15A NCAC 2L.0115  
30 (Risk-Based Assessment and Corrective Action for Petroleum Underground Storage  
31 Tanks). Reference to this section shall satisfy the requirement for a statement of finding  
32 of need for a temporary rule.

33 **SECTION 12.(a)** The Environmental Review Commission may study issues  
34 related to the Leaking Petroleum Underground Storage Tank Cleanup Program. The  
35 Commission may evaluate any of the following:

- 36 (1) The adequacy of program funding.
- 37 (2) Options for management of available funds, including prioritization of  
38 cleanups and preapproval of cleanups.
- 39 (3) Changes in deductible and co-payment requirements.
- 40 (4) Options to increase program funding.
- 41 (5) The availability and use of private insurance to pay or reimburse the  
42 costs of the assessment and cleanup of releases and discharges of  
43 petroleum from petroleum underground storage tanks and of any  
44 liability of owners and operators of those tanks to third parties.

1           (6)    Issues related to the inclusion of aboveground storage tanks in the  
2                    program, including registration, fees and other funding issues, cleanup  
3                    standards, and regulation of these tanks.

4           (7)    Issues related to the provision of liability protection to a bona fide  
5                    purchaser of a petroleum-contaminated property who has knowledge  
6                    of, but did not cause or contribute to, the contamination of the  
7                    property.

8           **SECTION 12.(b)**    The Commission may report its findings and  
9                    recommendations, including any proposed legislation, to the 2004 Regular Session of  
10                   the 2003 General Assembly, or to the 2005 General Assembly.

11           **SECTION 13.**   This act is effective when it becomes law. Section 10 of this  
12                   act expires 1 October 2005.