

May 17, 2006

S 1565. UNDERGROUND STORAGE TANK AMENDMENTS 2006. Filed 5/17/06. (1) TO PROVIDE FOR A TRANSITION TO RELIANCE ON PRIVATE INSURANCE AND SIMILAR MECHANISMS FOR THE DEMONSTRATION OF FINANCIAL RESPONSIBILITY REQUIRED UNDER FEDERAL LAW OF OWNERS AND OPERATORS OF COMMERCIAL PETROLEUM UNDERGROUND STORAGE TANKS, (2) TO IMPLEMENT THE TRANSITION TO PRIVATE INSURANCE BY MEANS OF A MARKET-BASED APPROACH THAT UTILIZES A PROGRESSIVE SCHEDULE OF INCREASES IN TANK FEES, (3) TO REDUCE THE INCIDENCE OF LEAKS BY REQUIRING SECONDARY CONTAINMENT FOR ALL COMPONENTS OF REGULATED PETROLEUM UNDERGROUND STORAGE TANK SYSTEMS, (4) TO PROVIDE FOR EXPEDITED ASSESSMENT AND CLEANUP OF RELEASES AND DISCHARGES FROM PETROLEUM UNDERGROUND STORAGE TANKS BY REQUIRING THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO ESTABLISH A PILOT PROGRAM TO EVALUATE THE USE OF SITE-SPECIFIC CLEANUP STANDARDS, (5) TO PROVIDE FOR VARIOUS STUDIES AND REPORTS, AND (6) TO MAKE OTHER IMPROVEMENTS TO THE UNDERGROUND STORAGE TANK CLEANUP PROGRAM, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

Commercial Fund termination. Amends GS 143-215.94B, which establishes the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund, to provide that the Fund is available for payment of costs only for discharges or release reported before January 1, 2017 (currently, no sunset date). In addition, provides that the Fund may not be used to pay costs incurred as a result of discharge or release from an underground storage tank first placed in service on or after January 1, 2007, if either (a) the facility of which the tank is a component is first placed in service on or after January 1, 2007, or (b) the tank is a component of a facility at which all tanks are replaced on or after January 1, 2007.

Cleanup fees. Effective January 1, 2007, amends GS 143-215.94C, to add a new financial responsibility fee to be paid from facility owners or operators who demonstrate financial responsibility as required by GS 143-215.94H on the basis of eligibility for the payment of costs under GS 143-215.94B. The new fee increases each year from 2007 through 2016, and then is not available after that date. The beginning fee for tanks of 3500 gallons or less is \$228, increasing to \$1512; and the beginning fee for larger tanks is \$384, increasing to \$1512. Provides for proration of the new fee when a tank is placed in service or taken from service.

Timing of requests for payment from Commercial or Noncommercial Funds. Effective January 1, 2007, adds new GS 143-215.94E(j) to require inquiries about whether costs of assessment or cleanup of discharge or release are payable from Commercial or Noncommercial Funds to be made within one year after completion of any task eligible for payment or reimbursement; and to require that requests for payment or reimbursement also be made within one year after completion of task. Provides that for any task completed before January 1, 2007, request for payment or reimbursement must be made by January 1, 2008.

Department seeking reimbursement of unauthorized costs. Adds new subsections to GS 143-215.94G, to set out required procedures when Department of Environment and Natural Resources (DENR) has paid or reimbursed unauthorized costs as a result of misrepresentations of agent acting on behalf of owner, operator, or landowner. Procedures include a requirement that DENR first seek reimbursement from the agent, and that administrative or civil actions for cost recovery begin within three or five years after payment, except for cases of fraud or misrepresentation, which would not be time-barred. Disallows setoffs against cost reimbursement by DENR.

Demonstrating financial responsibility. Amends GS 143-215.94H, to direct DENR to require owners or operators who must demonstrate financial responsibility to maintain evidence of such responsibility in either the federally required amount, or the amount required under current statute, whichever is less. In addition, effective January 1, 2007, amends GS 143-215.94U, to require a demonstration of financial responsibility as a condition of receiving an operating permit under that section.

Secondary containment standards. Currently GS 143-215.94T requires rules that set standards for secondary containment of nontank components of underground storage tank systems; this bill requires standards that apply to tank components as well, with the new rules to apply to all tank

systems installed on or after January 1, 2007, or to any component replaced on or after that date. Provides that federal rules apply after that date if state rules have not yet been adopted.

Site-specific pilot program. Directs DENR to establish a pilot program to evaluate the use of site-specific cleanup standards as an alternative to the risk-based assessment and corrective action standards set out in 15A NCAC 2L.0115. Provides for voluntary participation in program by owners and operators. Directs DENR to make annual reports to the Environmental Management Commission on the pilot program.

Miscellaneous requirements. Allows owners and operators to request that a discharge or release be classified as low-risk, with possibility of appeal, and requires DENR to make annual report on such requests. Directs DENR to establish a process for providing informal notice of proposed policy changes or rule interpretations to interested parties. Directs Department of Insurance, in consultation with the Petroleum Underground Storage Tank funds Council and DENR, to provide guidance and assistance in establishing an insurance pool pursuant to GS 143-215.94I. Extends from October 1, 2006, to October 1, 2007, the expiration date of provisions enacted by SL 2001-442, dealing with performance-based cleanups of discharges and releases.

Effective when the bill becomes law, except as provided above.

Intro. by Clodfelter.

GS 143