

# **Annual Report to the Environmental Review Commission North Carolina General Assembly**

---

**The Status of Leaking Petroleum Underground Storage  
Tanks, the State Cleanup Funds, and the Groundwater  
Protection Loan Fund**

**September 1, 2007**



**NORTH CAROLINA DEPARTMENT OF  
ENVIRONMENT AND NATURAL RESOURCES**

UST Release Incident-Kerosene Free Product in Basin

Underground Storage Tank Section  
Division of Waste Management

**North Carolina  
Department of Environment  
and  
Natural Resources**

**Michael F. Easley  
Governor**

**William G. Ross Jr.  
Secretary  
NC Department of Environment and Natural Resources**

**Dexter R. Matthews  
Director  
Division of Waste Management**

**NCDENR  
Division of Waste Management  
UST Section  
1637 Mail Service Center  
Raleigh NC 27699-1637  
(919) 733-8486  
<http://wastenot.nc.us>**

125 copies of this document were printed on recycled paper at a cost of \$81.32 or \$.65 each.

---

## Table of Contents

---

Executive Summary.....	1
Funding for the Underground Storage Tank Cleanup Program.....	3
Petroleum UST Incidents .....	7
Receipts and Disbursements: Commercial and Noncommercial Trust Fund and Groundwater Protection Loan Fund .....	9
Claims Against the Cleanup Funds .....	12
Commercial and Noncommercial Fund Balances and Projected Needs .....	13
Pay-for-Performance.....	20
Recommendations .....	20
Appendices (available upon request - please contact Ms. Jane Comer at 919.733.1302)	
Appendix A - LUSTs reported 7/1/88-6/30/06	
Appendix B - LUSTs reported 7/1/05-6/30/06	
Appendix C - LUSTs closed out 7/1/88-6/30/06	

---

## Executive Summary

The Department of Environment and Natural Resources is required to prepare an annual report on the status of leaking petroleum underground storage tanks.

North Carolina's underground storage tank program is administered by the Division of Waste Management's UST Section in DENR. The section enforces UST regulations and manages funds used to perform cleanups of petroleum UST discharges or releases. The program was initiated in 1988 in response to growing reports of USTs leaking petroleum into soil and drinking water supplies. Funding for the program has been provided by the Commercial and Noncommercial Trust Funds, the Groundwater Protection Loan Fund, the Federal UST Regulatory Grant and the Federal Leaking UST Fund.

This is the summary of the statistics described in this report for the period July 1, 2006 through June 30, 2007.

Commercial Fund Revenues	\$27,564,837
Commercial Fund Total Expenditures	\$10,097,821
Noncommercial Fund Revenues *	\$ 6,053,993
Noncommercial Fund Total Expenditures	\$ 6,448,355
Petroleum UST Incidents – Reported	897
Petroleum UST Incidents - Closed Out	1080

\*Includes transfer of \$598,935 from commercial fund to non-commercial trust fund per G.S. 119-18(b).

This is the summary of the statistics for the entire history of the UST program (7/1/88-6/30/07).

Commercial Fund Revenues	\$479,749,593
Commercial Fund Total Expenditures	\$448,505,050
Noncommercial Fund Revenues	\$109,965,329
Noncommercial Fund Total Expenditures	\$105,121,478
Petroleum UST Incidents – Reported	22,554
Petroleum UST Incidents - Closed Out	13,839

As of June 30, 2007, the status of the Commercial and Noncommercial Funds was:

Commercial Fund Balance	\$ 31,214,205
Commercial Fund Claims Pending	\$ 3,845,244
Noncommercial Fund Balance	\$ 4,845,847
Noncommercial Fund Claims Pending	\$ 2,866,359

FY 2006-2007 experienced continued cost management and control from the implementation of Session Law 2004-124, effective October 1, 2004. As described in the prior FY 2005-2006 Annual Report, the Department is prohibited from pre-approving tasks that will be reimbursed by either Fund unless the claim(s) can be paid within 90 days of their approval. Therefore, the Department is only approving further assessment and remediation for those incidents that are judged to be emergency situations and

those incidents that pose the highest risk to human health and the environment. The combined actions continue to result in focusing available resources on those sites warranting the most urgent attention, while maintaining fiscal integrity of the State Trust Fund. The approach taken in addressing this mandate has been to establish a Risk, Rank, and Abatement (RRA) score that allows the UST program to direct work at the highest risk incidents and reimburse claims for that work in a timely manner. Every week the Department reviews balances, encumbrances, and outlays of both the Commercial and Noncommercial fund, and then adjusts the RRA score to direct as much clean up work as resources will allow. For the 12-month period from July 1, 2006 through June 30, 2007, fund balances have exceeded claims paid for both the Commercial and Noncommercial Funds, reversing the deficit trend of FY 2004-2005.

## Funding for the Underground Storage Tank Cleanup Program

Program funding is provided by revenues from the Commercial and Noncommercial Trust Funds and the Groundwater Protection Loan Fund. The Federal UST Regulatory Grant and the Federal Leaking UST Grant are provided by the Environmental Protection Agency. Of the 84.3 Full Time Equivalent (FTE) positions assigned to the UST program, state revenue funds 63.40 positions and 20.90 are supported by federal grants. In addition, the trust funds and federal grant pay for one laboratory position and four regional administrative positions which support the program.

### Commercial and Noncommercial Trust Funds

The Leaking Petroleum Underground Storage Tank Cleanup Act of 1988 (GS 143-215.94A et. seq) established two separate funds: the Commercial Trust Fund and the Noncommercial Trust Fund. Both may be used to reimburse eligible UST owners, operators and landowners for reasonable and necessary costs incurred as a result of environmental cleanup and third party liability claims. Additionally, both funds enable UST Section staff to:

- record and track UST release incidents;
- register and permit commercial USTs, manage the database and receive annual UST operating fee payments;
- identify responsible parties;
- provide technical assistance to tank owners and operators;
- inspect USTs to ensure compliance with UST regulations;
- monitor site cleanups;
- review site assessments and corrective action plans;
- evaluate innovative assessment and cleanup technologies;
- review reimbursement claim procedures;
- manage contracts for cleanups designated as "State Lead";
- inspect and monitor land applications of contaminated soil; and
- identify and evaluate abandoned petroleum USTs.

The UST Section has the authority to contract for the cleanup of petroleum UST incidents if the owner or operator cannot be identified or located, if the owner or operator is financially unable to perform cleanup or if the owner or operator refuses to perform the required cleanup. In the latter case, the section is authorized by general statute to recover costs incurred during assessment and cleanup activities.

Sources of funding for the Commercial Trust Fund include:

- a motor fuel and kerosene inspection tax (1/4 of \$0.01/gallon);
- a re-occurring excise tax (19/32 of \$0.005/gallon) on motor fuel and kerosene sales;
- annual payment of UST operating fees;
- costs recovered from UST owners and operators for State Lead sites;
- loan collection and interest for the Groundwater Protection Loan Fund; and
- interest earned on the account.

Owners and operators are required to pay annual operating fees to receive operating permits and to be eligible for the Commercial Fund. Annual fees for commercial

USTs began at a rate of \$30 for tanks with a capacity equal to or less than 3,500 gallons (small tanks) and \$60 for tanks with a capacity in excess of 3,500 gallons (large tanks). Tank fees increased annually from 1989 to 1993. From 1993 to 1997, fees were \$150 for small tanks and \$225 for large tanks. Beginning January 1, 1997, annual fees were increased to \$200 for commercial USTs with capacities equal to or less than 3,500 gallons and \$300 for commercial USTs with capacities in excess of 3,500 gallons.

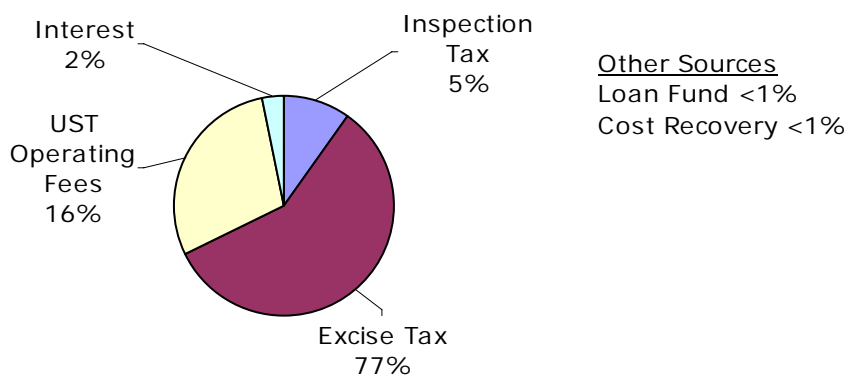
Revenues received for the Commercial Fund for the twelve-month period from July 1, 2006 to June 30, 2007 were approximately \$28 million (Table 1). The relative contributions to the Commercial Fund from each of the funding sources are illustrated in Figure 1.

**Table 1 - Commercial Trust Fund Revenues**

7/1/06- 6/30/07

Motor Fuel & Kerosene Inspection Tax	\$ 2,693,239
Motor Fuel & Gasoline Excise Tax	\$ 15,958,944
UST Operating Fees	\$ 7,937,236
State Lead Cost Recovery	\$ 58,705
Interest	\$ 905,504
Loan Fund Collection and Interest	\$ 11,209
<b>Total Commercial Revenues</b>	<b>\$ 27,564,837</b>
Transfer to Noncommercial	\$(598,935)
Transfer to Department of Agriculture	\$( 90,000)
Transfer to Federal LUST Program	\$(108,904)
<b>Net Commercial Revenues</b>	<b>\$ 26,766,998</b>

**Figure 1 - Commercial Fund Revenue Sources**



### Groundwater Protection Loan Fund

The Groundwater Protection Loan Fund Program was created in 1991.\* It provided financial assistance to owners of commercial USTs who replaced or upgraded their tanks to meet the performance standards required for all USTs by Dec. 22, 1998. Administrative rules implementing the program were adopted by DENR and became effective Dec. 1, 1992. Revenues for the fund were generated through a 0.0025 cent (one quarter of one cent) per gallon motor fuel excise tax received from Jan. 1, 1992 through Dec. 31, 1994.

\*Session Laws 1991, c. 538, s. 25 - G.S. 143-215.94P

Funding for the Noncommercial Trust Fund is provided by a motor fuel and kerosene inspection tax and excise taxes (0.047 cents per gallon) on kerosene and motor fuel sales<sup>1</sup>. Owners and operators of noncommercial USTs are not required to pay annual operating fees. Revenues received for the Noncommercial Fund for the 12-month period from July 1, 2006 to June 30, 2007 were approximately \$ 6 million (Table 2).

<sup>1</sup>House Bill # 681 of 1993

**Table 2 - Noncommercial Trust Fund Revenues**

7/1/06 - 6/30/07

Motor Fuel & Kerosene Inspection Tax	\$ 2,693,239
Motor Fuel & Gasoline Excise Tax	\$ 2,521,390
Interest	\$ 221,291
Transfer from Commercial Fund	\$ 598,535
Cost Recovery	\$ 19,138
Total Noncommercial Revenues	\$ 6,053,993

North Carolina General Statute 119-18(b) states that if the amount of revenue in the Noncommercial Fund at the end of the month is at least \$ 5 million, one-half of the motor fuel inspection tax must be credited to the Commercial Fund and one-half must be credited to the Noncommercial Fund. If the amount of revenue in the Noncommercial Fund at the end of the month is less than this threshold amount, all of the inspection tax will be credited to the Noncommercial Fund. For FY 2006-2007, the net transfer of money from the Noncommercial to the Commercial Fund was \$598,535.



### **Federal UST Regulatory Grant Program**

This program promotes compliance with UST regulations. It provides the state's UST Section with \$186,675 per year to fund three positions in the DWM central office. The positions provide technical assistance to the owners and operators of USTs, develop materials, conduct educational activities, train regional staff and conduct UST inspections.

### **Federal Leaking UST Grant**

The Federal Leaking UST Trust Grant is used to clean up petroleum contamination from leaking USTs, provide potable water to affected third-parties, perform emergency activities, relocate residents affected by leaking USTs and conduct enforcement activities. The use of this grant is limited to regulated USTs, primarily commercial tanks used for storing motor fuels. Tanks used for heating oil and those used for farm or residential uses (1,100 gallons capacity or less) are not covered by this fund.

Individuals (i.e., owners/operators) do not have access to the grant. Only the federal government and states with cooperative agreements with the EPA can draw on the grant. It may be used in situations when: (1) the responsible party cannot be identified; (2) the responsible party is financially unable to pay for the cleanup; or (3) the responsible party is unwilling and refuses to undertake assessment and/or cleanup actions.

Since the state's UST program began in 1988, the Federal Leaking UST Grant has made 26 awards totaling \$48,064,522 to the state's UST Section. As of June 30, 2007, the state has spent \$46,503,880 of these awards. Of that amount, approximately \$21,253,435 has been spent on cleanup activities; \$4,093,627 on enforcement actions; and \$21,156,818 on program administration. Administrative costs include personnel costs, operating costs, travel costs and equipment costs. Because of limitations in program tracking capabilities, program element costs through FY 2000-2001 are estimated. However, in FY 2001-2002, program tracking capabilities were improved such that disbursements can be more accurately reconciled with grant awards.

The program is obligated to seek recovery of all costs incurred during state lead cleanups. As of June 30, 2007, the UST Section had recovered \$1,766,167 in federal cleanup money through cost recovery actions. Of this amount, \$1,021,315 came from the North Carolina Commercial Fund for sites determined eligible for Commercial Fund coverage after cleanup activities had begun.

The EPA approved \$2,041,404 for North Carolina from the Leaking UST Fund for FY 2006-2007.

## Petroleum UST Incidents

Discharges or releases from petroleum USTs are reported to DENR regional offices where they are added to an incident management database. Table 3 lists the number of incidents reported and closed out in each region during the twelve-month period from July 1, 2006 through June 30, 2007. It also shows the number of incidents reported and closed out since the UST program began in 1988.

**Table 3 Petroleum UST Incidents By Region <sup>1</sup>**

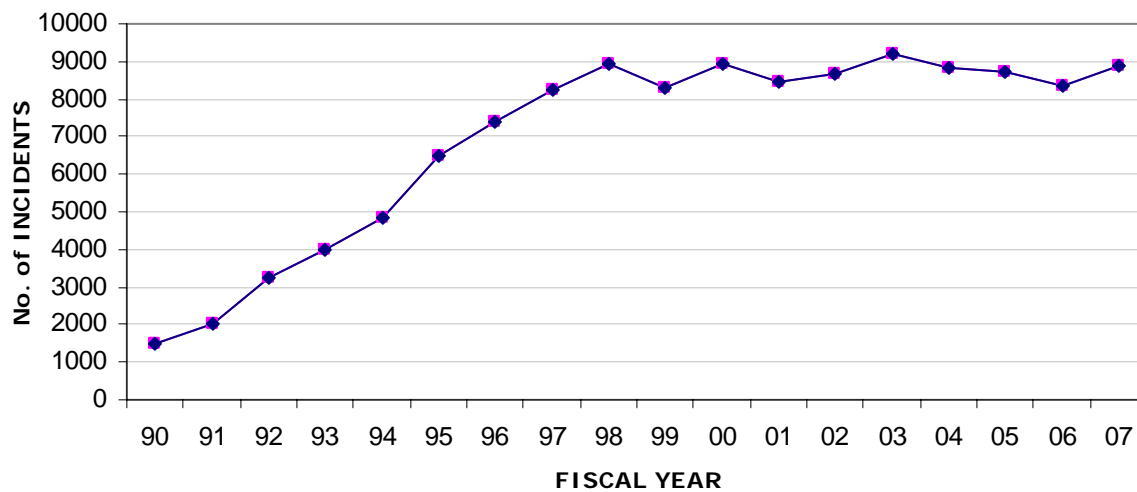
Region	7/1/06 – 6/30/07			7/1/88 – 6/30/07		
	Reported	Closed	Clean Closures	Reported	Closed	Clean Closures
Asheville	104	55	2	2,316	1,417	867
Fayetteville	41	40	11	1,690	867	1,392
Mooresville	198	268	8	4,480	2,981	2,071
Raleigh	169	216	10	4,553	2,807	697
Washington	126	122	2	2,955	1,761	1,235
Wilmington	70	61	2	1,740	947	733
Winston-Salem	189	318	11	4,820	3,059	2,470
	897	1,080	46	22,554	13,839	9,465

Total reported releases affecting groundwater that have been closed out:	4,701
Total reported releases closed out since implementation of RBCA <sup>1</sup> :	9,480
Total remaining open sites:	8,715
Open commercial sites:	6,668
Open noncommercial sites:	2,047

1. Risk-based corrective action implemented 1/2/98.

Beginning January 2, 1998, the UST Section implemented risk-based corrective action rules for petroleum UST incidents. Discharges or releases under these rules receive a risk classification of "high," "intermediate," or "low" based on the potential threat to human health and the environment. Of the total number of UST incidents closed since 1988, 67 percent were closed following implementation of Risk-Based Corrective Action. The total number of open incidents has generally increased since 1988; however, recent data indicates the trend may be leveling off (Figure 2).

Figure 2 - Open UST Incidents



UST Release Incident-Kerosene Free Product in Basin

## Receipts and Disbursements: Commercial and Noncommercial Trust Funds and Groundwater Protection Loan Fund

### Commercial and Noncommercial Funds

UST owners, operators and landowners may submit reimbursement claims for reasonable and necessary costs incurred during environmental assessment and cleanup activities. Claims may be submitted if the eligibility requirements for the trust funds are met. Deductibles that must be met before receiving reimbursement from the Commercial Fund range from \$20,000 to \$75,000. Noncommercial Fund deductibles are \$0 for UST owners and operators, and \$5,000 for landowners. Table 4 lists the receipts and disbursements by fiscal year for both funds for the period July 1, 1988 to June 30, 2007.

**Table 4 - Receipts & Disbursements for Cleanups**

7/1/88 - 6/30/07

FISCAL YEAR	RECEIPTS		DISBURSEMENTS <sup>1</sup>	
	Commercial	Noncommercial	Commercial	Noncommercial
FY 88-89	\$ 2,337,685	\$ 0	\$ 14,768	\$ 0
FY 89-90	5,773,632	2,905,035	79,080	0
FY 90-91	7,330,573	2,934,347	1,616,760	564,206
FY 91-92	13,484,008	3,018,344	4,409,229	2,143,155
FY 92-93	18,032,784	7,693,288	9,651,948	4,069,497
FY 93-94	24,438,966	3,404,086	22,904,802	2,012,312
FY 94-95	56,037,135 <sup>2</sup>	5,194,725	37,405,510	2,900,368
FY 95-96	28,178,768	5,215,550	44,060,639	5,029,109
FY 96-97	28,564,034	5,587,781	44,163,273	5,924,799
FY 97-98	27,291,220	5,717,592	30,267,392	3,869,091
FY 98-99	26,783,344	5,945,461	16,104,152	2,776,105
FY 99-00	27,178,623	5,636,563	22,820,069 <sup>3</sup>	5,028,505
FY 00-01	27,240,303	5,811,666	24,566,132 <sup>4</sup>	7,890,618 <sup>5</sup>
FY 01-02	27,124,210	6,620,808 <sup>6</sup>	36,872,426	9,182,320
FY 02-03	27,055,759	7,664,329 <sup>7</sup>	26,498,565	9,898,806
FY 03-04	26,934,685	8,060,151	23,514,179 <sup>8</sup>	7,756,579
FY 04-05	50,255,908 <sup>10</sup>	14,885,997 <sup>10</sup>	46,966,083 <sup>9</sup>	11,326,318
FY 05-06	28,143,119	7,615,613 <sup>11</sup>	15,474,991 <sup>11</sup>	5,005,578
FY 06-07	27,564,837	6,053,993 <sup>12</sup>	7,372,403 <sup>12</sup>	5,099,349
<b>TOTAL</b>	<b>\$479,749,593</b>	<b>\$109,965,329</b>	<b>\$414,762,401</b>	<b>\$90,486,712</b>

1 Does not include administrative costs.

2 Commercial receipts for FY 94-95 included \$31,288,889 that was transferred from the Groundwater Protection Loan Fund.

3 Adjustment due to a transfer from the Commercial Fund to the Federal Trust Fund of \$288,117 as a cleanup expenditure rather than as an administrative cost.

4 \$33,866 transferred to Federal Trust Fund as a cleanup expenditure.

5 \$2 million transferred out of Noncommercial Fund to the state's General Fund.

6 Includes transfer of \$784,382 from Circle K Settlement Fund

7 Includes transfer of \$3,418,990 of motor fuel and kerosene tax from Commercial to Noncommercial trust fund due to balance below \$5 million - General Statute 119-18(b).

8 Includes transfer of \$2,036,932 from Commercial to Noncommercial trust funds per GS 119.18(b); transfer of \$90,000 to Dept. of Agriculture; and transfer of \$52,722 to Federal trust fund as a cleanup expenditure.

9 Includes transfer of \$3,150,730 from Commercial to Noncommercial trust fund per GS119:18(b). Transfer from Agriculture Department; transfer of \$38,702 to Federal trust fund.

10 Includes additional revenue from the 1-year 1.1 cent per gallon excise tax or \$19,000,000 to the Trust Fund.

11 Includes \$1,922,601 transfer to Noncommercial Fund, \$90,000 transfer to Dept. of Agriculture, and \$30,016 transfer to repay Federal Trust Fund for State Lead program expenses.

12 Includes transfer to Noncommercial Fund of \$598,935 and disbursement from Commercial Fund to Department of Agriculture (\$90,000) and Federal LUST Grant (\$108,904).

The administrative budget for the state-funded portion of the UST program is derived from the Commercial and Noncommercial Funds. Table 5 lists past administrative expenditures since the beginning of the UST program.

**Table 5 – Administrative Expenditures**

FISCAL YEAR	COMMERCIAL	NONCOMMERCIAL
FY 89-90	\$ 201,255	\$ 201,254
FY 90-91	547,595	547,595
FY 91-92	517,221	517,221
FY 92-93	601,687	601,686
FY 93-94	694,424	694,423
FY 94-95	666,270	666,270
FY 95-96	2,322,632	783,684
FY 96-97	2,623,339	801,143
FY 97-98	2,530,036	667,724
FY 98-99	2,567,668	620,574
FY 99-00	2,579,540*	570,738
FY 00-01	2,730,236	733,811
FY 01-02	2,397,264	913,755
FY 02-03	2,221,851	1,166,494
FY 03-04	2,527,451	1,244,864
FY 04-05	2,654,447	1,265,079
FY 05-06	2,636,228	1,298,441
FY 06-07	2,725,418	1,349,006
<b>TOTAL</b>	<b>\$ 33,744,562</b>	<b>\$ 14,643,762</b>

Incorporating the administrative costs into receipts and cleanup disbursements yields these Commercial and Noncommercial Fund balances:

<b>Commercial Fund Balance</b> (as of June 30, 2007)	<b>\$31,214,205</b>
<b>Noncommercial Fund Balance</b> (as of June 30, 2007)	<b>\$ 4,845,847</b>

\*Adjustment due to a transfer of \$288,117 from the Commercial Fund to the Federal Trust Fund as a cleanup expenditure rather than an administrative cost.

### Groundwater Protection Loan Fund

After the Groundwater Protection Loan Fund was created, 11 North Carolina banks agreed to administer the loan program. As of June 30, 1995, four loans totaling \$1,228,350 had been closed. After this date, remaining funds of \$31,288,889 were deposited into the Commercial Trust Fund. Loan repayments are also deposited into the Commercial Fund. During the twelve-month period ending June 30, 2007, \$ 9,893 was repaid. Total receipts for the Loan Fund since its inception in January 1992 are \$33,178,602. The program is no longer active, but loan payments continue to be received.

## Claims Against the Cleanup Funds

Claims against both the Commercial and Noncommercial Funds are processed on a "first-come, first-served" basis. The status of all claims requesting reimbursement from both funds that were received as of June 30, 2007 is presented in Table 6. These claims only include costs claimed to date, and do not represent the total costs for cleanups.

UST Section staff has supervised contract cleanups at 640 commercial and noncommercial sites (Table 6, 511 commercial and 129 noncommercial). With the close of FY 2006-2007, the second year of the three-year contract for the State Lead program has been completed.



Glenwood Avenue, Raleigh - Phytoremediation

**Table 6 – Claims Against the Cleanup Fund**

	Commercial Fund		Noncommercial Fund	
	<u>Number</u>	<u>Cost</u>	<u>Number</u>	<u>Cost</u>
Claims Paid	26,164	\$393,112,896	10,558	\$85,271,316
Incidents Denied	33	\$4,573,040	4	\$59,845
Totally <sup>1</sup>				
Claims Denied	14,970	\$80,422,978	4,647	\$11,378,149
Partially <sup>2</sup>				
Total Deductibles	-----	\$73,436,955	-----	\$852,553
Paid				
Claims Pending	321	\$3,845,244	346	\$2,866,359
Contracted	511	\$12,906,905	129	\$1,700,621
Cleanups <sup>3</sup>				

<sup>1</sup> Ineligible

<sup>2</sup> Excessive or undocumented costs

<sup>3</sup> State Lead actions undertaken or completed



## Commercial and Noncommercial Fund Balances and Projected Needs

### Commercial Fund

As of June 30, 2007, the Commercial Fund balance was \$31,214,205 with pending claims of \$3,845,244 (see Figure 3, Page 12). From fiscal year 2000 through 2004, the



Soil and Groundwater Vapor Extraction Remediation System

difference between the fund balance and the pending claim amounts steadily increased (see Figure 4, Page 12). This was largely due to the fact that the UST Section implemented an expedited review process during fiscal year 2001-2002 in an effort to reduce the time for claim review. While claim review time was reduced, the result was a delay in the reimbursement payment, since the Commercial Fund could only pay out what had been received for the month.

This trend continued up to fiscal year 2004-2005. With the passage of Session Law 2004-124, the difference decreased markedly. The present situation represents a significant change in the complexion of the commercial fund program over previous years because the UST Section now directs most of the work that can be accomplished, and only those commercial and noncommercial incidents with threshold level risks are directed to continue with assessments and remediations. This results in greater fiscal control over the program and focuses resources on those sites exhibiting the greatest risks to human health and the environment. The Trust Fund balance has remained greater than disbursements and claims pending (Table 7). With strong fiscal management, the Trust Fund has been able to periodically lower the RRA score and direct additional high risk incidents.



Figure 3 - Commercial Fund Balance and Claims Pending Amount

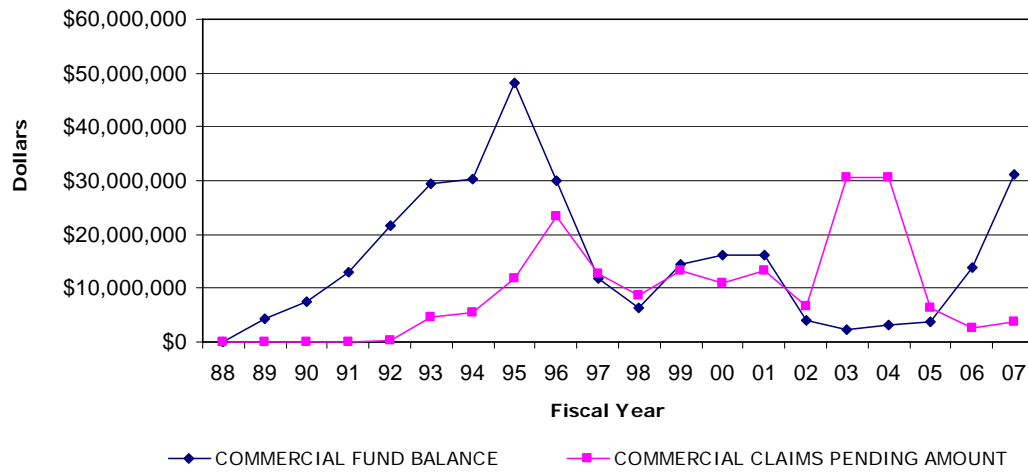
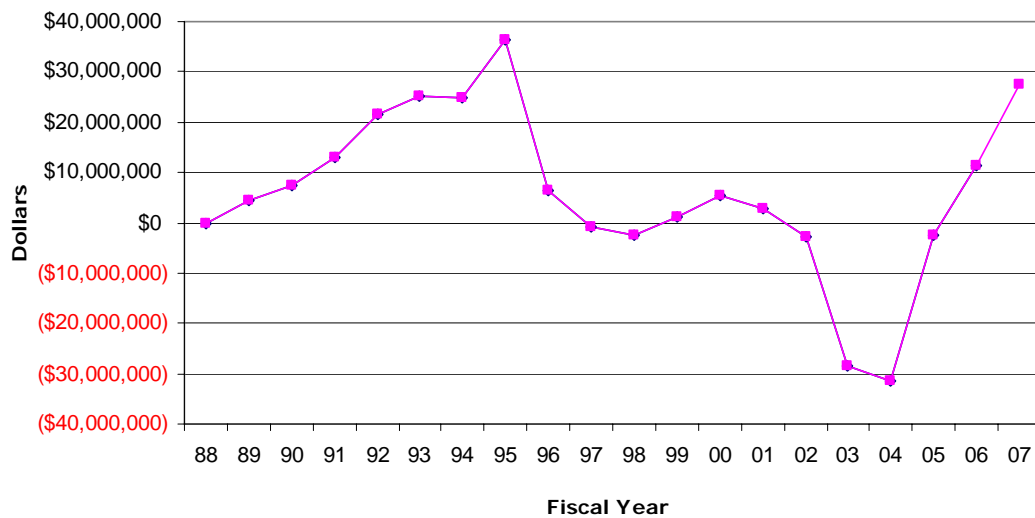


Figure 4 - Commercial Fund Balance Minus Claims Pending Amount



**Table 7 – Total Commercial Fund Revenues and Expenditures**  
**7/1/06 – 6/30/07**

<b>Total Commercial Revenues (see Table 1)</b>	<b>\$ 27,564,837</b>
Total Claims and Contracted Cleanups	\$ 5,574,555
Transfers <sup>1</sup>	\$ 598,935
Administrative Costs	\$ 2,725,418
<b>Total Commercial Expenditures</b>	<b>\$ 8,299,982</b>

1-From Table 4, footnote 12, transfer to the Noncommercial Fund for State Lead expenses.

One initiative which may affect a future demand on the Commercial Fund is pay-for-performance cleanups. On Oct. 1, 2001, the General Assembly ratified House Bill 1063, which allows responsible parties to participate in the pay-for-performance program on a voluntary basis. Pay-for-performance is a reimbursement method that requires cleanup goals to be met before payments can be made to environmental consultants. This reimbursement method requires the Trust Fund to obligate the contracted cleanup costs. Pay-for-performance obligations may initially place a higher demand on the Trust Fund, but should greatly decrease the costs of cleanups and thus result in a lesser burden to the Trust Fund.

Other factors that may affect future demands on the Commercial Fund are claims for bodily injuries and property damages brought by third parties. In FY 2006-2007, one third party claim was settled for \$304,704. Two other claims totaling \$121,000 were settled, but since neither claim exceeded the \$100,000 deductible, there were no payments made. The financial impact of third party claims, while anticipated, cannot be estimated with certainty because their financial resolution falls outside of the direct control of the Trust Fund.

After UST operating fees were raised on Jan. 1, 1997, revenue from this funding source declined through the end of FY 1998-99 (Table 8). This decrease was likely due to the reduction in the number of registered USTs that occurred as a result of the federal 1998 upgrade regulations. Overall, since 1998, the number of registered USTs has generally decreased. As in FY 2004-05, the number of registered USTs has decreased during the period from July 1, 2006 to June 30, 2007. UST operating fees have remained essentially stable.

**Table 8 – Commercial UST Population and Operating Fee Revenue**

<u>Fiscal Year</u>	<u>No. of Commercial USTs Billed</u>	<u>Operating Fee Revenue</u>
FY 1988-89	-	\$ 4,322,917
FY 1989-90	-	\$ 8,086,895
FY 1990-91	57,385	\$ 6,889,969
FY 1991-92	52,529	\$ 9,910,737
FY 1992-93	48,812	\$18,032,784
FY 1993-94	43,314	\$23,661,875
FY 1994-95	39,289	\$ 8,500,000
FY 1995-96	37,529	\$11,050,000
FY 1996-97	37,776	\$10,839,975
FY 1997-98	36,563	\$10,008,917
FY 1998-99	34,428	\$ 8,697,468
FY 1999-00	33,558	\$ 8,844,093
FY 2000-01	33,776	\$ 8,464,019
FY 2001-02	32,839	\$ 8,553,715
FY 2002-03	31,155	\$ 8,087,033
FY 2003-04	32,005	\$ 8,309,807
FY 2004-05	31,518	\$ 7,987,101
FY 2005-06	30,638	\$ 7,951,508
FY 2006-07	30,145	\$ 7,937,236

At present, there are approximately 6,668 commercial incidents that have yet to be closed out. Risk levels at these sites rank from low to high. With implementation of Session Law 2004-124, the Department now directs most work done at both Commercial and Noncommercial incidents. In addition, all high risk incidents have been assigned a relative risk, and further assessment and remediation is being directed on only those incidents with a high enough relative risk. While the statutory responsibility of the responsible party to address their incident remains, the Session Law limits the number of incidents that can be addressed and the cost of work reimbursed. This improves fiscal control and management, but it will result in a longer time necessary to address all petroleum releases.

Data tracking improvements are continuously made to the UST incident management database. These changes will enable the UST Section to better predict the number of incident closures and project Commercial Fund expenditures.

UST systems pose a substantial threat to human health and the environment. While the total number of reported incidents has decreased, down from over 1,200 a few years ago, there were over 900 releases reported last year. Maintaining the quality of North Carolina's drinking water and groundwater depends on preventing releases to the environment. Direct education and technical assistance for tank owners and operators is critical. Only education and assistance ensure responsible handling of petroleum products (including methyl tert-butyl ether) and early detection in the event of a leak.

North Carolina currently has about 30,145 active regulated USTs at 10,806 facilities. We estimate that 40 to 50 percent of the facilities are located within 500 feet of both domestic and public drinking water supplies. Our inspection data show that over 30 percent of tank owners and operators do not comply with UST regulations. These regulations cover proper operation and maintenance, with an emphasis on leak detection. If we are to preserve the quality of North Carolina's drinking water, improving compliance must be a future priority.



UST Release Incident-Tank Removal

To ensure that all UST facilities are in compliance with the rules and regulations necessary to prevent releases, the UST program presently has 16 inspectors, one support staff, and one attorney. These inspectors are responsible for all phases of facility compliance, including inspection preparation, on-site inspecting, inspection data entry, follow-up inspections, owner and operator training, and enforcement activities. Each inspector can complete approximately 250 inspections per year. This inspection rate only allows the program to inspect each facility once every four to five years. Experience has shown that more frequent inspections lead to improved compliance and fewer releases, particularly since many facilities change ownership each year and many new owners are unfamiliar with UST regulations. The preferred inspection frequency is once every two years and, in fact, the federal Energy Act mandates a three-year inspection frequency by 2010. For FY 2006-2007, considerable progress was made in FY 2006-2007 to meet the required performance requirements. However, more inspectors are anticipated to meet inspection and compliance goals. An additional nine full-time inspectors, one support staff, and one attorney are needed to get the inspection rate to the desired two-year cycle.

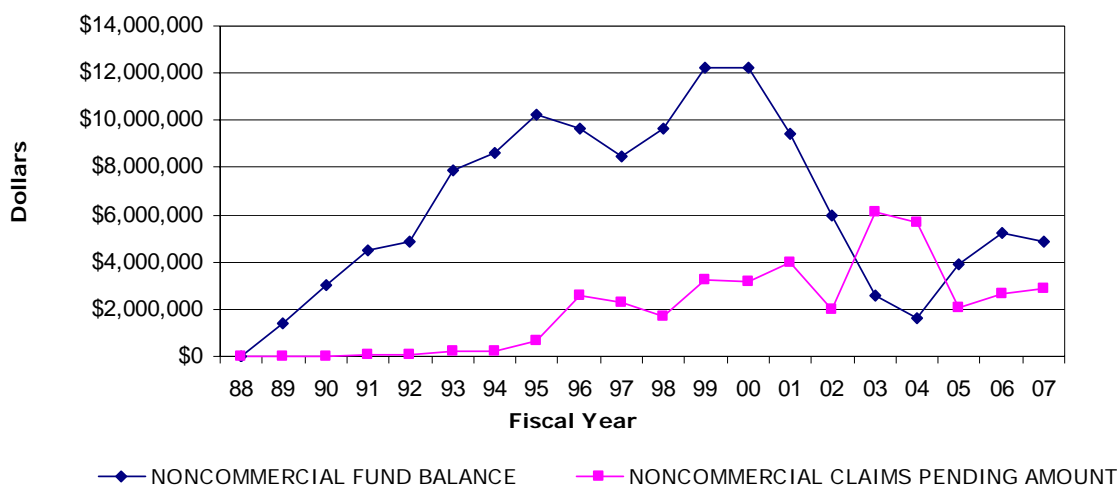
### Noncommercial Fund

As of June 30, 2007, the Noncommercial Fund balance was \$4,845,847 (Table 9). The total for pending claims stood at \$2,866,359. Based on the past 12 month period, the demands on the Fund have decreased. We anticipate that this will improve the payments being made in a timelier manner, just as in the Commercial Fund (Figures 5 and 6).

**Table 9 - Total Noncommercial Fund Revenues, Expenditures and Balance  
7/1/06-6/30/07**

<b>Noncommercial Fund Balance as of 6/30/06</b>	<b>\$5,240,209</b>
<b>Total Noncommercial Revenues</b> (see Table 2, page 3)	<b>\$6,053,993</b>
<b>Total Noncommercial Expenditures</b>	<b>(\$6,448,355)</b>
Total Claims and Contracted Cleanups	\$5,099,349
Administrative Costs	\$1,349,006
<b>Noncommercial Fund Balance as of 6/30/07</b>	<b>\$4,845,847</b>

**Figure 5 - Noncommercial Fund Balance and Claims Pending Amount**



**Figure 6 - Noncommercial Fund Balance Minus Claims Pending Amount**

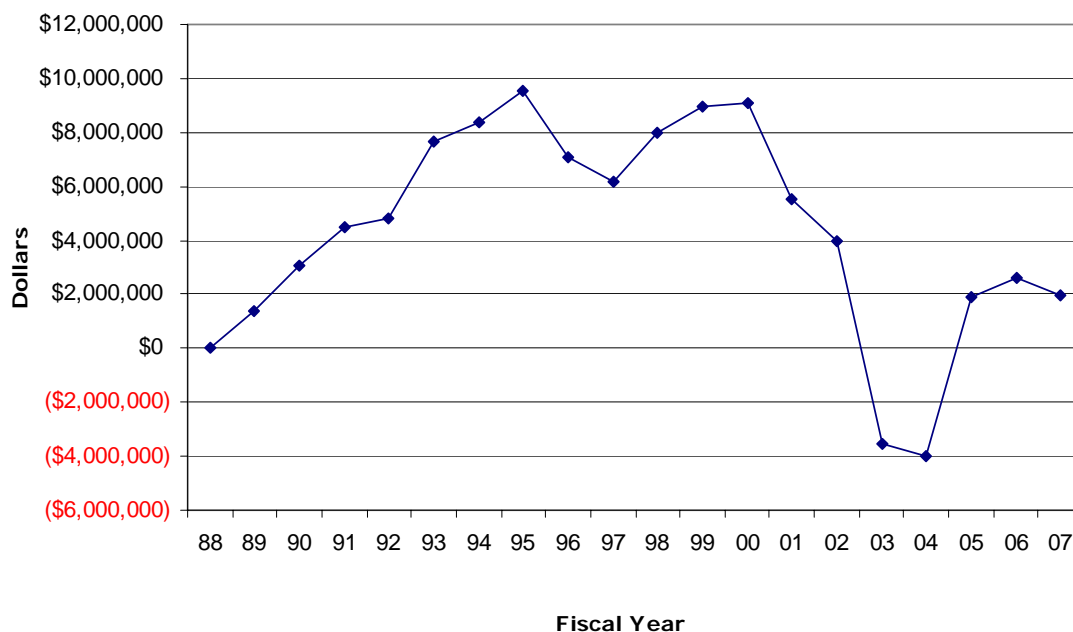


Table 10 shows the estimated cost to complete cleanups for noncommercial incidents reported from July 1, 2006 to June 30, 2007. It should be noted, however, that cleanups can easily extend over several years and costs may vary greatly. In addition, these figures do not include remedial costs for reported releases from past fiscal years.

**Table 10 – Estimate of Cleanup Costs for Noncommercial Incidents  
Reported July 1, 2006 – June 30, 2007**

<u>Region</u>	<u>Incidents*</u>	<u>Total Estimated Cleanup Cost**</u>
Asheville	57	\$ 1,407,900
Fayetteville	5	\$ 123,500
Mooreville	106	\$ 2,618,200
Raleigh	115	\$ 2,840,500
Washington	97	\$ 2,395,900
Wilmington	46	\$ 1,136,200
Winston-Salem	119	\$ 2,939,300
<b>Total</b>	<b>545</b>	<b>\$13,461,500</b>

\*In evaluating the last 12-month period, approximately 61% of reported new releases are from noncommercial sites

\*\*An average cost of \$ 24,700 is used as an estimate of total cleanup costs for noncommercial sites

## Pay for Performance

On October 15, 2001, House Bill 1063 was enacted by the North Carolina General Assembly. This bill gives the Division of Waste Management's Underground Storage Tank program the authority to allow performance-based cleanups of discharges or releases of petroleum from underground storage tanks. Two petroleum release incidents were ultimately selected for the pilot program and performance-based contracts were awarded to two qualified environmental service providers to cleanup the releases for set costs and in specified time periods. In both cases, specified milestones (generally percentage reductions in contaminate levels in the soil and groundwater) must be achieved before reimbursements for costs are made to the environmental service providers from the Commercial Trust Fund.

A full report of the pilot study is attached to this annual report.

## Recommendations

The UST Section makes the following recommendations for the Commercial and Noncommercial Trust Funds and the UST program:

- Transition (and ultimately terminate) the providing of required financial responsibility (FR) for owners and operators of regulated, commercial USTs from the trust fund to other mechanisms, such as private insurance and self-insurance. Ending the use of the trust fund as a provider of FR will eventually greatly reduce the need to use trust fund resources to clean up new releases from responsible owners and operators. Transitioning to private insurance, self-insurance, or other non-trust fund mechanisms of FR will also tend to reduce the number and severity of releases by giving tank owners and operators real incentives to be vigilant in preventing releases before contamination reaches the state's soil and ground water.
- Increase annual operating fees to increase the amount of money coming into the trust funds in order to address free product at every occurrence and to clean up more existing UST releases.
- Increase release prevention by implementing a phase in of secondary containment requirements for existing, non-secondarily contained UST systems. For instance, a phased approach could be implemented by secondarily containing the oldest tanks first.
- Increase release prevention by increasing the inspection frequency for USTs in North Carolina. More frequent inspections will have the following positive effects: ensure UST systems are in compliance with all release prevention and detection requirements, detect and correct more out-of-compliance equipment and operating procedures that could allow a release, and detect some undiscovered releases before contamination of the soil and ground water occurs.
- Increase release prevention by providing more frequent release prevention and detection training to UST owners and operators. This last benefit is particularly important due to the large number of UST facilities being bought and operated by new and inexperienced owner/operators each year.

- Continue to find and implement better and more cost-effective methods for assessing and cleaning up petroleum releases, including reviewing existing rules and regulations and reducing or eliminating requirements whenever practical while maintaining a sufficient level of protection for public health and the environment.
- Implement technical changes to existing law, such as setting time limits on filing claims and seeking eligibility determination, in order to lessen the logistics of the process and to determine the trust fund's total liability for cleaning up releases.
- Continue to encourage responsible parties of UST releases to consider pay-for-performance cleanups of their incidents. Pay-for-performance (PFP) is a reimbursement method that requires cleanup goals to be met before payments can be made to environmental consultants. The PFP pilot program indicates that cost savings are realized in cleaning up the pilot program sites selected.