

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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SENATE BILL 1565*

Short Title: Underground Storage Tank Amendments 2006.

(Public)

Sponsors: Senator Clodfelter.

Referred to: Agriculture/Environment/Natural Resources.

May 18, 2006

A BILL TO BE ENTITLED

AN ACT (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.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-215.94B reads as rewritten:

"§ 143-215.94B. Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund.

(a) There is established under the control and direction of the Department the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund. This Commercial Fund shall be a nonreverting revolving fund consisting of any monies appropriated for such purpose by the General Assembly or available to it from grants,

1 other monies paid to it or recovered on behalf of the Commercial Fund, and fees paid
2 pursuant to this Part.

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

7 (1) For discharges or releases discovered or reported between 30 June
8 1988 and 31 December 1991 inclusive, the cleanup of environmental
9 damage as required by G.S. 143-215.94E(a) in excess of fifty thousand
10 dollars (\$50,000) per occurrence.

11 (2) For discharges or releases discovered on or after 1 January 1992 and
12 reported between 1 January 1992 and 31 December 1993 inclusive, the
13 cleanup of environmental damage as required by G.S. 143-215.94E(a)
14 in excess of twenty thousand dollars (\$20,000) per occurrence.

15 (2a) For discharges or releases discovered and reported on or after 1
16 January 1994 and prior to 1 January 1995, the cleanup of
17 environmental damage as required by G.S. 143-215.94E(a) in excess
18 of twenty thousand dollars (\$20,000) if the owner or operator (i)
19 notifies the Department prior to 1 January 1994 of its intent to
20 permanently close the tank in accordance with applicable regulations
21 or to upgrade the tank to meet the requirements that existing
22 underground storage tanks must meet by 22 December 1998, (ii)
23 commences closure or upgrade of the tank prior to 1 July 1994, and
24 (iii) completes closure or upgrade of the tank prior to 1 January 1995.

25 (3) For discharges or releases reported on or after 1 January ~~1994~~1994
26 and prior to 1 January 2017, the cleanup of environmental damage as
27 required by G.S. 143-215.94E(a) in excess of twenty thousand dollars
28 (\$20,000) if, prior to the discharge or release, the commercial
29 underground storage tank from which the discharge or release occurred
30 met the performance standards applicable to tanks installed after 22
31 December 1988 or met the requirements that existing underground
32 storage tanks must meet by 22 December 1998.

33 (4) For discharges or releases reported on or after 1 January 1994 and
34 prior to 1 January 2017 from a commercial underground storage tank
35 that does not qualify under subdivision (2a) of this subsection or does
36 not meet the standards in subdivision (3) of this subsection, sixty
37 percent (60%) of the costs per occurrence of the cleanup of
38 environmental damage as required by G.S. 143-215.94E(a) that
39 exceeds twenty thousand dollars (\$20,000) but is not more than one
40 hundred fifty-seven thousand five hundred dollars (\$157,500) and one
41 hundred percent (100%) of the costs above this amount, up to the
42 limits established in this section.

43 (5) Compensation to third parties for bodily injury and property damage in
44 excess of one hundred thousand dollars (\$100,000) per occurrence.

(6) Reimbursing the State for damages or other costs incurred as a result of a loan from the Loan Fund. The per occurrence limit does not apply to reimbursements to the State under this subdivision.

(7) Recordation of residual petroleum as required by G.S. 143B-279.11 if the Commercial Fund is responsible for the payment of costs under subdivisions (1) through (4) of this subsection.

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

(1) Each discharge or release shall be considered separately as if it were the only discharge or release, and the cost for which the owner or operator is responsible under subdivisions (1), (2), (2a), or (3) of subsection (b) of this section, whichever are applicable, shall be determined for each discharge or release. For each discharge or release for which subdivision (4) of subsection (b) of this section is applicable, the cost for which the owner or operator is responsible, for the purpose of this subsection, shall be seventy-five thousand dollars (\$75,000). For purposes of this subsection, two or more discharges or releases that result in a single plume of soil, surface water, or groundwater contamination shall be considered as a single discharge or release.

(2) The multiple discharge amount shall be the lesser of:

- a. The sum of all the costs determined as set out in subdivision (1) of this subsection; or
- b. The product of the highest of the costs determined as set out in subdivision (1) of this subsection multiplied by one and one-half (1 1/2).

(b2) In the event that the aggregate costs per occurrence described in subsection (b) or (b1) of this section exceed one million dollars ~~(\$1,000,000)~~, (\$1,000,000) for a discharge or release that is reported prior to 1 January 2017, the Commercial Fund shall be used for the payment of eighty percent (80%) of the costs in excess of one million dollars (\$1,000,000) up to a maximum of one million five hundred thousand dollars (\$1,500,000). The Department shall not pay or reimburse costs under this subsection unless the owner, operator, or landowner eligible for reimbursement under G.S. 143-215.94E(b1) submits proof that the owner, operator, or landowner eligible for reimbursement under G.S. 143-215.94E(b1) has paid at least twenty percent (20%) of the costs for which reimbursement is sought.

(b3) For purposes of subsections (b) and (b1) of this section, the cleanup of environmental damage includes connection of a third party to a public water system if the Department determines that connection of the third party to a public water system is a cost-effective measure, when compared to other available measures, to reduce risk to

human health or the environment. A payment or reimbursement under this subsection is subject to the requirements and limitations of this section. This subsection shall not be construed to limit any right or remedy available to a third party under any other provision of law. This subsection shall not be construed to require a third party to connect to a public water system. Except as provided by this subsection, connection to a public water system does not constitute cleanup under Part 2 of this Article, G.S. 143-215.94E, G.S. 143-215.94V, any other applicable statute, or at common law.

(b4) The Commercial Fund shall pay any claim made after 1 September 2001 for compensation to third parties pursuant to subdivision (5) of subsection (b) of this section only if the owner, operator, or other party responsible for the discharge or release has complied with the requirements of G.S. 143B-279.9 and G.S. 143B-279.11, unless compliance is prohibited by another provision of law.

(c) The Commercial Fund is to be available on an occurrence basis, without regard to number of occurrences associated with tanks owned or operated by the same owner or operator.

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

- (1) Costs incurred as a result of a discharge or release from an aboveground tank, aboveground pipe or fitting not connected to an underground storage tank, or vehicle.
- (2) The removal or replacement of any tank, pipe, fitting or related equipment.
- (3) Costs incurred as a result of a discharge or release of petroleum from a transmission pipeline.
- (4) Costs intended to be paid by the Noncommercial Fund.
- (5) Costs associated with the administration of any underground storage tank program other than the program administered pursuant to this Part.
- (6) Costs paid or reimbursed by or from any source other than the Commercial Fund, including but not limited to, any payment or reimbursement made under a contract of insurance.
- (7) Costs incurred as a result of the cleanup of environmental damage to groundwater to a more protective standard than the risk-based standard required by the Department unless the cleanup of environmental damage to groundwater to a more protective standard is necessary to resolve a claim for compensation by a third party for property damage.
- (8) Costs in excess of those required to achieve the most cost-effective cleanup.
- (9) Costs incurred as a result of a discharge or release from an underground storage tank first placed in service on or after 1 January 2007 if either of the following apply:
 - a. The facility of which the tank is a component is first placed in service on or after 1 January 2007.

b. The underground storage tank is a component of a facility at which all underground storage tanks are replaced on or after 1 January 2007.

(e) The Commercial Fund shall be treated as a special trust fund and shall be credited with interest by the State Treasurer pursuant to G.S. 147-69.2 and G.S. 147-69.3.

(f) During each fiscal year, the Department may use up to two million five hundred thousand dollars (\$2,500,000) of the funds in the Commercial Fund for performance-based cleanups as provided in this subsection. The Department may also use any funds that are available from any other source and that are specifically intended to be used for performance-based cleanups as provided in this section. Each performance-based cleanup shall comply with the requirements of this Part and any other provisions of law that govern the cleanup of environmental damage resulting from the discharge or release of a petroleum product from a commercial underground storage tank. The Department or any owner, operator, or landowner may contract for performance-based cleanups with environmental services firms that the Department has determined to be qualified to satisfactorily complete the work associated with a cleanup. Before the award of the contract, the environmental services firms shall secure a surety or performance bond equal to the price of the firm's services under the contract and shall demonstrate having secured the surety or performance bond to the satisfaction of the Department. The surety shall be liable on the bond obligation when the environmental services firms fail to perform as specified in the contract. A performance-based contract shall provide that cleanup will be completed within the time and for the cost stated in the contract. The Department or any owner, operator, or landowner shall select environmental services firms for performance-based cleanup through a competitive bidding process. The Commission shall adopt rules governing the competitive bidding process and any other rules necessary to implement this subsection. The rules shall establish qualifications for environmental services firms and for individuals and firms that provide engineering services as part of a contract to satisfactorily complete work associated with cleanup."

SECTION 2. G.S. 143-215.94C reads as rewritten:

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

(a) ~~For purposes of this subsection, each compartment of a commercial underground storage tank that is designed to independently contain a petroleum product is a separate petroleum commercial underground storage tank.~~ The owner or operator of a commercial petroleum underground storage tank facility shall pay to the Secretary for deposit into the Commercial Fund an annual operating ~~fee according to the following schedule:~~ permit fee. In addition to the operating permit fee, an owner or operator of a commercial petroleum underground storage tank facility who demonstrates financial responsibility as required by G.S. 143-215.94H on the basis of eligibility for the payment of any of the costs described in subsections (b) or (b1) of G.S. 143-215.94B from the Commercial Fund shall pay to the Secretary for deposit into the Commercial Fund an annual financial responsibility fee. The operating permit fee and the financial

responsibility fee shall be paid together as one annual comprehensive fee. The annual comprehensive fee shall be determined from the following schedule. For purposes of this subsection, each compartment of a commercial underground storage tank that is designed to independently contain a petroleum product is a separate petroleum commercial underground storage tank.

Year	Operating Permit Fee Per Tank	Financial Responsibility Fee Per Tank	
		Tanks of 3,500 gallons capacity or less	Tanks greater than 3,500 gallons capacity
2007	\$72.00	\$228.00	\$384.00
2008	\$72.00	\$228.00	\$384.00
2009	\$72.00	\$252.00	\$396.00
2010	\$72.00	\$312.00	\$420.00
2011	\$72.00	\$468.00	\$468.00
2012	\$72.00	\$588.00	\$588.00
2013	\$72.00	\$732.00	\$732.00
2014	\$72.00	\$912.00	\$912.00
2015	\$72.00	\$1,152.00	\$1,152.00
2016	\$72.00	\$1,512.00	\$1,512.00
2017+	\$72.00	Not available	Not available

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

(2) ~~For each petroleum commercial underground storage tank of more than 3,500 gallon capacity—three hundred dollars (\$300.00).~~

(a1) Once an owner or operator of a commercial petroleum underground storage tank facility elects to demonstrate financial responsibility as required by G.S. 143-215.94H without reliance on the Commercial Fund, the owner or operator must continue to demonstrate financial responsibility as required by G.S. 143-215.94H without reliance on the Commercial Fund.

(b) ~~The annual operating comprehensive fee shall be determined on a calendar year basis. For petroleum commercial underground storage tanks in use on 1 January and remaining in use on or after 1 December of that year, the annual operating comprehensive fee due for that year shall be as specified in subsection (a) of this section. For a petroleum commercial underground storage tank that is first placed in service in any year, the operating permit fee due for that year shall not be prorated. For a petroleum commercial underground storage tank that is first placed in use-service in any year, the annual operating financial responsibility fee due for that year shall be determined by multiplying one-twelfth (1/12) of the amount specified in subsection (a) of this section by the number of months remaining in the calendar year. For a petroleum commercial underground storage tank that is permanently removed from use in any year, the annual operating financial responsibility fee due for that year shall be determined by multiplying one-twelfth (1/12) of the amount specified in subsection (a) of this section by the number of months in the calendar year preceding the permanent removal from use. In calculating the pro rata annual operating financial responsibility fee for a tank that is first placed in use-service or permanently removed during a calendar~~

1 year under the preceding two sentences, a partial month shall count as a month, except
2 that where a tank is permanently removed and replaced by another tank, the total of the
3 ~~annual operating~~financial responsibility fee for the tank that is removed and the
4 replacement tank shall not exceed the ~~annual operating~~financial responsibility fee for
5 the replacement tank. The annual ~~operating~~comprehensive fee shall be due and payable
6 on the first day of the month in accordance with a staggered schedule established by the
7 Department. The Department shall implement a staggered schedule to the end that the
8 total amount of fees to be collected by the Department is approximately the same each
9 quarter. A person who owns or operates more than one petroleum commercial
10 underground storage tank may request that the fee for all tanks be due at the same time.
11 The fee for all commercial underground storage tanks located at the same facility shall
12 be due at the same time. A person who owns or operates 12 or more commercial
13 petroleum storage tanks may request that the total of all fees be paid in four equal
14 payments to be due on the first day of each calendar quarter, provided that the fee for all
15 commercial underground storage tanks located at the same facility shall be due at the
16 same time.

17 (c) Beginning no later than sixty days before the first due date of the annual
18 ~~operating~~comprehensive fee imposed by this section, any person who deposits a
19 petroleum product in a commercial underground storage tank that would be subject to
20 the annual ~~operating~~comprehensive fee shall, at least once in each calendar year during
21 which such deposit of a petroleum product is made, notify the owner or operator of the
22 duty to pay the annual ~~operating~~comprehensive fee. The requirement to notify pursuant
23 to this subsection does not constitute a duty owed by the person depositing a petroleum
24 product in a commercial underground storage tank to the owner or operator and the
25 person depositing a petroleum product in an underground storage tank shall not incur
26 any liability to the owner or operator for failure to give notice of the duty to pay the
27 ~~operating~~annual comprehensive fee.

28 (d) Repealed by Session Laws 1991, c. 538, s. 3.1.

29 (e) An owner or operator of a commercial underground storage tank who fails to
30 pay an annual ~~operating~~comprehensive fee due under this section within 30 days of the
31 date that the fee is due shall pay, in addition to the fee, a late penalty of five dollars
32 (\$5.00) per day per commercial underground storage tank, up to a maximum equal to
33 the annual ~~operating~~comprehensive fee due. The Department may waive a late penalty
34 in whole or in part if:

- 35 (1) The late penalty was incurred because of the late payment or
36 nonpayment of an annual ~~operating~~comprehensive fee by a previous
37 owner or operator.
- 38 (2) The late penalty was incurred because of a billing error for which the
39 Department is responsible.
- 40 (3) Where the late penalty was incurred because the annual ~~operating~~
41 comprehensive fee was not paid by the owner or operator due to
42 inadvertence or accident.
- 43 (4) Where payment of the late penalty will prevent the owner or operator
44 from complying with any substantive law, rule, or regulation

1 applicable to underground storage tanks and intended to prevent or
2 mitigate discharges or releases or to facilitate the early detection of
3 discharges or releases."

4 **SECTION 3.(a)** G.S. 143-215.94E is amended by adding two new
5 subsections to read:

6 "(j) An owner, operator, or landowner shall request that the Department
7 determine whether any of the costs of assessment and cleanup of a discharge or release
8 from a petroleum underground storage tank are eligible to be paid or reimbursed from
9 either the Commercial Fund or the Noncommercial Fund within one year after
10 completion of any task that is eligible to be paid or reimbursed under
11 G.S. 143-215.94B(b), 143-215.94B(b1), or 143-215.94D(b1).

12 (k) An owner, operator, or landowner shall request payment or reimbursement
13 from the Commercial Fund or the Noncommercial Fund for the cost of a task within one
14 year after the completion of the task. The Department shall deny any request for
15 payment or reimbursement of the cost of any task that would otherwise be eligible to be
16 paid or reimbursed if the request is not received within 12 months after the later of the
17 date on which the:

18 (1) Department determines that the cost is eligible to be paid or
19 reimbursed.

20 (2) Task is completed."

21 **SECTION 3.(b)** Notwithstanding G.S. 143-215.94E(k), as enacted by
22 subsection (a) of this section, an owner, operator, or landowner shall request payment or
23 reimbursement of the cost of any task completed prior to 1 January 2007 that is eligible
24 to be paid or reimbursed from the Commercial Fund or the Noncommercial Fund no
25 later than 1 January 2008. The Department shall deny any request for payment or
26 reimbursement of the cost of any task to which this subsection applies that is made after
27 1 January 2008.

28 **SECTION 4.** G.S. 143-215.94G is amended by adding four new subsections
29 to read:

30 "(g) If the Department paid or reimbursed costs that are not authorized to be paid
31 or reimbursed under G.S. 143-215.94B or G.S. 143-215.94D as a result of a
32 misrepresentation by an agent who acted on behalf of an owner, operator, or landowner,
33 the Department shall first seek reimbursement, pursuant to subdivision (1) of subsection
34 (d) of this section, from the agent of monies paid to or retained by the agent.

35 (h) The Department shall take administrative action to recover costs or bring a
36 civil action pursuant to subdivision (1) of subsection (d) of this section to seek
37 reimbursement of costs in accordance with the time limits set out in this subsection.

38 (1) The Department shall take administrative action to recover costs or
39 bring a civil action to seek reimbursement of costs that are not
40 authorized to be paid from the Commercial Fund under subdivisions
41 (1), (2), (3), or (9) of G.S. 143-215.94B(d) or from the Noncommercial
42 Fund under subdivisions (1), (2), or (3) of G.S. 143-215.94D(d) within
43 five years after payment.

(2) The Department shall take administrative action to recover costs or bring a civil action to seek reimbursement of costs other than those described in subdivision (1) of this subsection within three years after payment.

(3) Notwithstanding the time limits set out in subdivisions (1) and (2) of this subsection, the Department may take administrative action to recover costs or bring a civil action to seek reimbursement of costs paid as a result of fraud or misrepresentation at any time.

(i) An administrative action or civil action that is not commenced within the time allowed by subsection (h) of this section is barred.

(j) Except with the consent of the claimant, the Department may not withhold payment or reimbursement of costs that are authorized to be paid from the Commercial Fund or the Noncommercial Fund in order to recover any other costs that are in dispute unless the Department is authorized to withhold payment by a final decision of the Commission pursuant to G.S. 150B-36 or an order or final decision of a court."

SECTION 5. G.S. 143-215.94H reads as rewritten:

"§ 143-215.94H. Financial responsibility.

(a) The Department shall require each owner and operator of a petroleum underground storage tank who is required to demonstrate financial responsibility under rules promulgated by the United States Environmental Protection Agency pursuant to 42 U.S.C. § 6991b(d) to maintain evidence of financial responsibility ~~of not less than~~ that is the lesser of:

(1) The full amount of the financial responsibility that an owner or operator is required to demonstrate under rules promulgated by the United States Environmental Protection Agency pursuant to 42 U.S.C. § 6991b(d).

(2) The amounts required to be paid for by the owner or operator pursuant to G.S. 143-215.94E(b) per occurrence for costs described in G.S. 143-215.94B(b) and ~~G.S. 143-215.94D(b1).~~ G.S. 143-215.94B(b1) if costs are eligible to be paid under those subsections.

(b) Financial responsibility may be established in accordance with rules adopted by the Commission which shall provide that financial responsibility may be established by either insurance, guarantee, surety bond, letter of credit, qualification as a self-insurer, or any combination thereof. The compliance date schedule for demonstrating financial responsibility shall conform to the schedule adopted by the Environmental Protection Agency."

SECTION 6. G.S. 143-215.94T reads as rewritten:

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

(a) The Commission shall adopt, and the Department shall implement and enforce, rules relating to underground storage tanks as provided by G.S. 143-215.3(a)(15) and G.S. 143B-282(2)h. These rules shall include standards and requirements applicable to both existing and new underground storage tanks and tank systems, may include different standards and requirements based on tank capacity, tank

location, tank age, and other relevant factors, and shall include, at a minimum, standards and requirements for:

- (1) Design, construction, and installation, including monitoring systems.
- (2) Notification to the Department, inspection, and registration.
- (3) Recordation of tank location.
- (4) Modification, retrofitting, and upgrading.
- (5) General operating requirements.
- (6) Release detection.
- (7) Release reporting, investigation, and confirmation.
- (8) Corrective action.
- (9) Repair.
- (10) Closure.
- (11) Financial responsibility.
- (12) Tank tightness testing procedures and certification of persons who conduct tank tightness tests.
- (13) Secondary containment for ~~not tank~~ all components of petroleum underground storage tank systems.

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

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

(c) Rules adopted pursuant to subdivision (13) of subsection (a) of this section shall require secondary containment for all ~~not tank~~ components of underground storage tank systems, ~~including all piping and~~ including, but not limited to, tanks, piping, fittings, pump heads, and dispensers. Secondary containment requirements shall include standards for double wall ~~piping tanks, piping,~~ piping, and fittings and for sump containment for pump heads and dispensers. The rules shall provide for ~~monthly release detection~~ monitoring of double wall interstices and sump containments. The rules shall apply to any underground storage tank system that is installed on or after the date on which the rules become effective and to the replacement of any ~~not tank~~ component of an underground storage tank system on or after that date."

SECTION 7. The Environmental Management Commission shall adopt rules to require and set standards for secondary containment for all components of underground storage tank systems pursuant to G.S. 143-215.94T, as amended by Section 4 of this act. The rules shall apply to any underground storage tank system that is installed on or after 1 January 2007 and to the replacement of any component of an underground storage tank system on or after 1 January 2007. To the extent that the rules that are required to be adopted by this section are not effective on or after 1 January 2007, the provisions of 40 Code of Federal Regulations § 280.42(b)(1) through

§ 280.42(b)(4) (1 July 2004 Edition) shall govern any component of an underground storage tank system that is installed on or after 1 January 2007 and to the replacement of any component of an underground storage tank system on or after 1 January 2007.

SECTION 8. G.S. 143-215.94U reads as rewritten:

"§ 143-215.94U. Registration of petroleum commercial underground storage tanks; operation of petroleum underground storage tanks; operating permit required.

(a) The owner or operator of each petroleum commercial underground storage tank shall annually obtain an operating permit from the Department for the facility at which the tank is located. The Department shall issue an operating permit only if the owner or ~~operator~~ operator has done all of the following:

- (1) ~~Has notified~~ Notified the Department of the existence of all tanks as required by 40 Code of Federal Regulations § 280.22 (1 July 1994 Edition) or 42 U.S.C. § 6991a, if applicable, at the ~~facility~~ facility.
- (2) ~~Has paid~~ Paid all fees required under G.S. 143-215.94C for all commercial petroleum underground storage tanks located at the ~~facility~~ facility.
- (3) Complies with applicable release detection, spill and overfill protection, and corrosion protection requirements set out in rules adopted pursuant to this Chapter, notifies the Department of the method or combination of methods of leak detection, spill and overfill protection, and corrosion protection in use, and certifies to the Department that all applicable release detection, spill and overfill protection, and corrosion protection requirements are being met for all petroleum underground storage tanks located at the ~~facility~~ facility.
- (4) If applicable, complies with the Stage I vapor control requirements set out in 15A North Carolina Administrative Code 2D.0928, effective 1 March 1991, notifies the Department of the method or combination of methods of vapor control in use, and certifies to the Department that all Stage I vapor control requirements are being met for all petroleum underground storage tanks located at the ~~facility~~ and facility.
- (5) ~~Has substantially~~ Substantially complied with the air quality, groundwater quality, and underground storage tank standards applicable to any activity in which the applicant has previously engaged and has been in substantial compliance with federal and State laws, regulations, and rules for the protection of the environment. In determining substantial compliance, the compliance history of the owner or operator and any parent, subsidiary, or other affiliate of the owner, operator, or parent may be considered.
- (6) Demonstrated financial responsibility as required by G.S. 143-215.94H.

(b) The operating permit shall be issued at the time the commercial underground storage annual ~~tank operating comprehensive~~ fee required under G.S. 143-215.94C(a) is paid and shall be valid from the first day of the month in which the fee is due through

1 the last day of the last month for which the fee is paid in accordance with the schedule
2 established by the Department under G.S. 143-215.94C(b).

3 (c) No person shall place a petroleum product, and no owner or operator shall
4 cause a petroleum product to be placed, into an underground storage tank at a facility
5 for which the owner or operator does not hold a currently valid operating permit.

6 (d) The Department shall issue an operating permit certificate for each facility
7 that meets the requirements of subsection (a) of this section. The operating permit
8 certificate shall identify the number of tanks at the facility and shall conspicuously
9 display the date on which the permit expires. Except for the owner or operator, no
10 person shall be liable under subsection (c) of this section if an unexpired operating
11 permit certificate is displayed at the facility, unless the person knows or has reason to
12 know that the owner or operator does not hold a currently valid operating permit for the
13 facility.

14 (e) The Department may revoke an operating permit only if the owner or
15 operator fails to continuously meet the requirements set out in subdivisions (1) through
16 (4) of subsection (a) of this section. If the Department revokes an operating permit, the
17 owner or operator of the facility for which the operating permit was issued shall
18 immediately surrender the operating permit certificate to the Department, unless the
19 revocation is stayed pursuant to G.S. 150B-33. An owner or operator may challenge a
20 decision by the Department to deny or revoke an operating permit by filing a contested
21 case under Article 3 of Chapter 150B of the General Statutes. The Secretary shall make
22 the final agency decision regarding the revocation of a permit under this section."

23 **SECTION 9.(a)** The definitions set out in G.S. 143-215.94A apply to this
24 section. As used in this section, "Department" means the Department of Environment
25 and Natural Resources and, with respect to any power or duty assigned to the
26 Environmental Management Commission under Article 21A of Chapter 143 of the
27 General Statutes, includes the Environmental Management Commission. As used in
28 this section, "site-specific cleanup standards" means standards developed using the
29 methodology described in the Standard Guide for Risk-Based Corrective Action
30 Applied at Petroleum Release Sites adopted by the American Society for Testing and
31 Materials (ASTM) as E1739-95(2002).

32 **SECTION 9.(b)** The Department shall establish a pilot program to evaluate
33 the use of site-specific cleanup standards for the cleanup of discharges or releases of
34 petroleum from underground storage tanks as an alternative to the use of the risk-based
35 assessment and corrective action standards set out in 15A NCAC 2L.0115. The purpose
36 of the pilot program is to determine the extent to which the use of site-specific standards
37 would provide effective protection of public health, safety, and the environment in a
38 cost-effective manner and at a lower overall cost as compared with the use of the
39 risk-based standards set out in 15A NCAC 2L.0115. The pilot program shall apply only
40 to discharges or releases that are classified as intermediate risk under 15A NCAC
41 2L.0115(d). The pilot program shall evaluate the use of site-specific standards in the
42 cleanup of contamination that results from a discharge or release of petroleum from: (i)
43 an underground storage tank; and (ii) an underground storage tank that is commingled

1 with petroleum contamination from a source of contamination other than an
2 underground storage tank, as provided in G.S. 143-215.94V(h).

3 **SECTION 9.(c)** Participation in the pilot program shall be at the election of
4 the owner, operator, or landowner. To participate in the pilot program, an owner,
5 operator, or landowner shall perform a site-specific risk assessment and submit the
6 assessment to the Department. If the Department determines that the use of site-specific
7 cleanup standards will provide effective protection of public health, safety, and the
8 environment, the Department shall set site-specific soil and groundwater cleanup
9 standards for the discharge or release. These site-specific standards shall apply in lieu of
10 the risk-based assessment and corrective action standards set out in 15A NCAC
11 2L.0115.

12 **SECTION 9.(d)** If soil and groundwater contamination from a discharge or
13 release is no greater than the site-specific soil and groundwater cleanup standards set by
14 the Department, the Department shall notify an owner, operator, or landowner that no
15 cleanup, further cleanup, or further action will be required. If soil and groundwater
16 contamination from a discharge or release is greater than the site-specific soil and
17 groundwater cleanup standards set by the Department, the owner, operator, or
18 landowner shall submit a corrective action plan to achieve the standards. The
19 Department may require the owner, operator, or landowner to evaluate the impact of the
20 site-specific cleanup standards on public health, safety, and the environment through
21 use of an appropriate model. The Department shall not set site-specific soil and
22 groundwater cleanup standards for the discharge or release that allow for contamination
23 in excess of unrestricted use standards, as defined in G.S. 143B-279.9, on any real
24 property that is not subject to land-use restrictions under G.S. 143B-279.9 and
25 recordation under G.S. 143B-279.11.

26 **SECTION 9.(e)** Except as provided in this section, the provisions of Part 2A
27 and Part 2B of Article 21A of Chapter 143 of the General Statutes apply to this section.

28 **SECTION 9.(f)** The Department shall annually report to the Environmental
29 Review Commission on the number of site-specific risk assessments submitted to the
30 Department under the pilot program, the disposition of those submissions, and, for any
31 submissions for which site-specific soil and groundwater cleanup standards are not set,
32 the basis for the decision not to set site-specific cleanup standards. The report shall
33 include a comparison of assessment and corrective action of discharges or releases
34 under the pilot program to assessment and corrective action of intermediate risk
35 discharges or releases pursuant to the risk-based assessment and corrective action
36 standards set out in 15A NCAC 2L.0115. The comparison shall include all of the
37 following:

- 38 (1) The costs associated with investigation, assessment, initial response,
39 abatement, analysis of risk, and development and implementation of a
40 corrective action plan.
- 41 (2) The immediate and long-term impacts on public health, safety, and the
42 environment.
- 43 (3) The need for and use of land-use restrictions as part of the corrective
44 action plan.

(4) The extent to which corrective action addresses vapor intrusion.

SECTION 9.(g) The Department shall submit the first report required by subsection (f) of this section on or before 1 September 2007. The Department shall include in the report due on or before 1 September 2011 any recommendations, including legislative proposals, based on the findings of the pilot program.

SECTION 10.(a) The definitions set out in Section 9(a) of this act apply to this section. It is the policy of the State that a discharge or release be reclassified as low-risk if, based on site-specific cleanup standards, investigation, assessment, initial response, abatement, risk-based corrective action, or other corrective action, the Department determines that the discharge or release poses no significant risk to human health or the environment. An owner, operator, or landowner may request that a discharge or release be reclassified to a lower risk classification. If the Department denies a request to reclassify a discharge or release to a lower risk classification, the owner, operator, or landowner may file a petition for a contested case hearing as provided in Article 3 of Chapter 150B of the General Statutes.

SECTION 10.(b) The Department shall report on or before 1 September of each year to the Environmental Review Commission on the number of sites for which reclassification was requested based on site-specific information and the disposition of each request. The Department shall submit the first report required by this section on or before 1 September 2007.

SECTION 11. The Department of Environment and Natural Resources shall establish a process to provide informal notice of any proposed policy change or rule interpretation that is not a rule, as defined in G.S. 150B-2, to interested parties. Except in a situation that requires immediate action, the Department shall receive and consider oral and written comment from interested parties before the Department implements the proposed policy change or rule interpretation. Except in a situation that requires immediate action, the Department shall provide written notice of a policy change or rule interpretation to interested parties at least 30 days prior to its implementation.

SECTION 12. The Department of Insurance, in consultation with the Petroleum Underground Storage Tank Funds Council and the Department of Environment and Natural Resources, shall provide guidance and technical assistance for the formation of an insurance pool pursuant to G.S. 143-215.94I to any responsible entity that requests assistance.

SECTION 13. Section 8 of S.L. 2001-442 reads as rewritten:

"SECTION 8. Sections 1 through 5 of this act become effective 1 October 2001. Sections 6, 7, and 8 of this act are effective when this act becomes law. Sections 1, 2, 3, 4, 5, and 7 of this act expire 1 October ~~2006~~2007."

SECTION 14. This act shall not be construed to amend Section 11.4 of S.L. 2003-284 as modified by subsection (b) of Section 30.10 of S.L. 2004-124. The designation of a portion of the commercial leaking petroleum underground storage tank cleanup fees due under G.S. 143-215.94C(a), as amended by Section 2 of this act, as an annual operating permit fee shall not be construed to alter the amount available to the Department of Environment and Natural Resources from the Commercial Fund for the

1 administration of Parts 2A and 2B of Article 21A of Chapter 143 of the General
2 Statutes.

3 **SECTION 15.** Sections 1, 4, 5, 6, 7, 11, 12, 13, and 15 of this act are
4 effective when it becomes law. Sections 2, 8, and 14 of this act become effective 1
5 January 2007. Section 3 of this act becomes effective 1 January 2007 and applies to
6 determinations of eligibility and requests for payments made on or after that date.
7 Sections 9 and 10 of this act are effective when it becomes law and expire 1 September
8 2012.