

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
For Fiscal Year 2009 (1 July 2008 to 30 June 2009)**

1 September 2009



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

Underground Storage Tank Section
N. C. Division of Waste Management

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Executive Summary

North Carolina's underground storage tank program is administered by the N.C. Division of Waste Management's Underground Storage Tank (UST) Section in DENR. The section enforces UST regulations and manages funds used to perform cleanups of petroleum UST discharges or releases (UST incidents). 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 Cleanup Funds, the Groundwater Protection Loan Fund, the federal UST regulatory grant and the federal Leaking UST Fund cooperative agreement.

This is the summary of the statistics described in this report for FY 2009 (1 July 2008 through 30 June 2009).

Commercial Fund Revenues	\$31,026,131
Commercial Fund Expenditures	\$18,387,732
Noncommercial Fund Revenues *	\$ 6,178,730
Noncommercial Fund Expenditures	\$ 7,203,764
Petroleum UST Incidents – Reported	778
Petroleum UST Incidents – Closed Out	974

*Includes transfers of \$2,009,790. \$1,004,895 from commercial fund to non-commercial trust fund per G.S. 119-18(b). \$1,004,895 from DOT

This is the summary of the statistics for the entire history of the UST program (1 July 1988 to 30 June 2009).

Commercial Fund Revenues	\$538,234,514
Commercial Fund Expenditures	\$481,263,586
Noncommercial Fund Revenues	\$122,174,605
Noncommercial Fund Expenditures	\$119,847,222
Petroleum UST Incidents – Reported	24,462
Petroleum UST Incidents – Closed Out	15,918

As of 30 June 2009, the statuses of the Commercial and Noncommercial Funds were:

Commercial Fund Assets	\$75,328,321
Commercial Fund Expenditures	\$18,387,732
Commercial Fund Obligations (projected)	\$42,954,597
Estimated Commercial Fund Balance	\$13,985,992
Noncommercial Fund Assets	\$ 9,533,143
Noncommercial Fund Expenditures	\$ 7,203,764
Noncommercial Obligations (projected)	\$ 4,550,532
Estimated Noncommercial Fund Balance	(\$ 2,221,153)

For FY 2009 cost management of the cleanup funds was continued in accordance with the requirements of Session Law 2004-124, effective 1 October 2004. As described in the annual reports since FY 2004, 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 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 cleanup funds. The approach taken in addressing this mandate has been to utilize a Risk, Rank, and Abatement (RRA) scoring system 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 Funds, and periodically adjusts the RRA score to direct as much cleanup work as resources will allow. At the start of FY 2009, the RRA was H200 for commercial incidents and H350 for noncommercial incidents. By the close of FY 2009, the RRA was H100 and H350 for commercial and noncommercial incidents, respectively. For the 12-month period from 1 July 2008 through 30 June 2009 as in the previous 3 fiscal years, the Commercial Fund balance exceeded obligations. As presented beginning in FY 2008, the balance for FY 2009 is considerably less than in historical fiscal years because fund obligations now include un-reimbursed costs of non-directed work. This reporting change more accurately depicts the true fund balance. The Noncommercial Fund shows a negative balance because claims exceeded revenue. As with the Commercial Fund, the obligations include un-reimbursed costs of non-directed work. Based on the eligibility application and claim request activity in FY 2009, claim reimbursements are expected to continue to deplete revenues in both the Commercial and Noncommercial Funds.

North Carolina's Regulated and Unregulated USTs

The North Carolina underground storage tank (UST) program deals with both regulated and unregulated USTs.

Regulated petroleum UST facilities are typically gasoline stations or government-owned fueling facilities. Regulated USTs, even ones in temporary closure, are required to be registered with the UST program, must comply with all aspects of leak prevention (such as leak detection, spill and overfill prevention, and corrosion protection), and receive inspections to ensure their compliance. Owners of all regulated petroleum UST facilities, with the exception of federally-owned UST facilities, pay annual operating fees and are eligible for reimbursement from the Commercial Cleanup Fund for the costs of assessing and cleaning up contamination. Regulated petroleum UST facilities must have valid operating permits to receive deliveries of fuel.

Unregulated USTs include small tanks used to store home heating oil for individual homes and larger tanks used to store heating oil for schools, hospitals, multi-family residences, manufacturing facilities, and government facilities. The smaller home heating oil USTs, which are typically about 550 gallons in capacity, are not registered or inspected, and are not required to have leak detection, corrosion protection, spill/overfill prevention, or operating permits. Heating oil USTs larger than 1100 gallons in capacity which store fuel for consumptive use on the premises where stored are registered and must have valid operating permits to receive deliveries of fuel.

Table 1 – Regulated Petroleum USTs – Active & Temporarily Closed

	Number of USTs	Number of Facilities
Privately Owned	26587	8116
Federally Owned	191	49
State Owned	340	204
Municipality/County Owned	685	323
Totals	27803	8692

In North Carolina, slightly more than 60 % of the regulated USTs are owned by about 15% of the total number of owners. Generally, these are companies that own multiple facilities, and government entities. About one-third of USTs are owned by businesses having only one UST facility.

**Table 2 – Ownership of Regulated Petroleum USTs
Active & Temporarily Closed**

	# of Owners	# of USTs	# of Facilities
Owners of Only One Facility	3580	10583	3580
Owners of Two Facilities	245	1356	476
Owners of Three Facilities	82	829	258
Owners of Four Facilities	63	794	244
Owners of Five or More Facilities	231	14241	4134
Totals	4201	27803	8692

About one out of every four USTs in North Carolina is more than 28 years old. Only about 6% of the USTs are double-walled. This percentage is rising because on 1 November 2007, North Carolina's secondary containment rules became effective. These rules require all UST systems (tanks, lines, and dispensers) installed or replaced after that date to be secondarily contained; that is, to have double-walled construction with leak detection monitoring devices in the spaces between the inner and outer walls.

**Table 3 – Age of Regulated Petroleum USTs
Active & Temporarily Closed**

	Active	Temporarily Closed	Total
Installed in or before 1973	2620	967	3587
Installed in 1974 to 1980	2667	360	3027
Installed in 1981 to 1990	10056	525	10581
Installed in 1991 to 2000	7685	182	7867
Installed in 2001 to 6/30/2009	2719	22	2741
Totals	25747	2056	27803

Over the last nine years, the number of installations of new UST systems has been decreasing, while the number of permanent closures has been relatively constant (except for the most recent three years). The number of permanent closures in any year has always exceeded the number of new installations.

**Table 4 – New Installations & Permanent Closures
of Regulated Petroleum USTs**

Year	# of New Installations	# of Permanent Closures
FY 2000	546	1035
FY 2001	513	742
FY 2002	450	805
FY 2003	294	712
FY 2004	328	689
FY 2005	335	754
FY 2006	396	846
FY 2007	299	550
FY 2008	263	622
FY 2009	225	484

Commercial USTs also include unregulated large heating oil USTs, which are greater than 1100 gallons in capacity and store oil for consumptive use on the premises. These USTs are typically owned by hospitals, industries, schools, and government agencies. These USTs must have valid operating permits in order to receive deliveries of fuel.

Table 5– Number of Unregulated Commercial Heating Oil Petroleum USTs

	Number of USTs	Number of Facilities
Privately Owned	765	553
Federally Owned	28	57
State Owned	134	78
Municipality/County Owned	1378	1023
Totals	2305	1711

In 1988, there were approximately 58,000 commercial tanks in North Carolina whose owners were required to pay annual operating fees (billable tanks). Each year since 1988, the number of billable tanks has almost always decreased. Currently, North Carolina has about 29,156 active regulated USTs at 9,882 facilities. Inspection data show that 59% of tank owners and operators comply with UST regulations, which is an increase of 15% from FY 2008. These regulations cover proper operation and maintenance of UST systems and emphasize leak detection.

To help the state meet the requirements of the federal Energy Policy Act of 2005, the North Carolina General Assembly (under Session Law 2008-107) authorized DENR to annually use \$791,614 in additional funds from the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund to establish and support 11 positions within the UST program, including one environmental program supervisor, nine environmental specialists, and one environmental engineer. Adding these positions to the UST program enables DENR to increase compliance inspection frequency and conduct UST operator training, actions which are required by the federal Energy Policy Act, and which will prevent releases of petroleum from USTs into the environment. The additional funds are made available from part of the increase in annual operating fees.

Petroleum UST Incidents – Regulated and Unregulated USTs

Discharges or releases from petroleum USTs, called incidents, are reported to DENR regional offices where they are added to an incident management database. Table 6 lists the number of incidents reported and closed out in each region during this fiscal year as well as the number of incidents reported and closed out since the UST program began in 1988.

Table 6 Petroleum UST Incidents By Region ¹

Region	7/1/08 – 6/30/09			7/1/88 – 6/30/09		
	Reported	Closed	Clean Closures	Reported	Closed	Clean Closures
Asheville	97	86	8	2,533	1,579	866
Fayetteville	39	73	49	1,789	976	1,414
Mooresville	137	211	12	4,870	3,479	1,278
Raleigh	123	161	22	4,944	3,190	673
Washington	90	111	2	3,169	1,967	114
Wilmington	73	69	11	1,893	1,137	468
Winston-Salem	219	263	59	5,389	3,579	1,983
	778	974	163	24,587	15,907	6,796
Total reported incidents affecting groundwater that have been closed out:						5,430
Total reported incidents closed out since implementation of RBCA ¹ :						11,714
Total remaining open incidents:						8,635
Open commercial incidents:						6,541
Open noncommercial incidents:						2,094

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

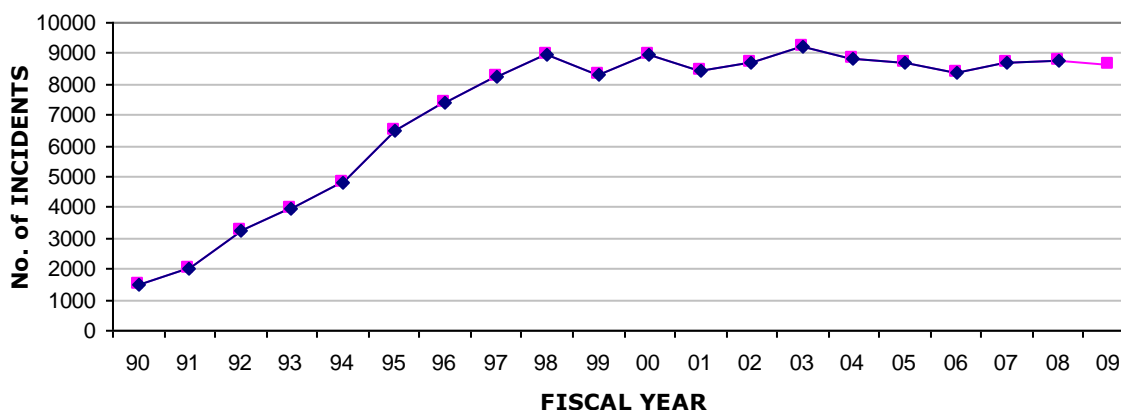
At present, there are approximately 6,541 commercial incidents, in all risk categories, that have yet to be closed out. DENR implemented the requirements of Session Law 2004-124 by developing and putting into practice a system that assigns to each incident a numerical value that represents the relative risk of that incident and its priority for being cleaned up. That system allows DENR to use the resources available in both cleanup funds to direct cleanup work first for those incidents that have the highest relative risks and the highest priorities for cleanup. Although the statutory responsibility of responsible parties to clean up their incidents remains, Session Law 2004-124 limits the amount of cleanup work that DENR can direct at any one time to the amount that can be paid for by the resources available in the funds. This procedure has eliminated the negative balance of the Commercial Fund, has reduced the negative balance of the Noncommercial Fund, and has improved the management of cleanup activities, but has resulted in a backlog of open incidents waiting to be cleaned up.

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. The number of releases reported decreased by approximately 150 from 917 in FY 2008 to 778 in FY 2009. 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. The decrease in reported releases is believed to be a function of the increase in staffing in the compliance and the effort to improve the technical expertise of the owner/operators.

Beginning 2 January 1998, DENR implemented risk-based corrective action rules for petroleum UST incidents. Under these rules, each incident receives a risk classification of "high," "intermediate," or "low" based on its potential threat to human health and the environment. The rules allow intermediate and low risk incidents to be cleaned up to less stringent standards than high risk incidents, since, by rule, lower risk incidents have much less chance of contaminating water supplies used by people than high risk incidents. Of the total number of UST incidents closed since 1988, approximately 50% were closed following implementation of risk-based corrective action. As indicated in Figure 1, the number of open incidents increased from FY 1990 through FY 1998, remained fairly constant from FY 1998 until FY 2003, and has slightly declined from FY 2003 until the present.

Figure 1 - Open UST Incidents



Funding for the Underground Storage Tank Cleanup Program

The funds to administer all aspects of the UST program (about \$8.4 million per year) are provided (1) about 64% by legislative allowances to use specific amounts of the receipts in the Commercial and Noncommercial Cleanup Funds; (2) about 23% by a federal UST regulatory grant and a federal Leaking UST cooperative agreement, both provided by the US Environmental Protection Agency; and (3) about 13% by monies appropriated by the NC General Assembly. Of the 98.3 Full Time Equivalent (FTE) positions assigned to the UST program, 62.5 positions are supported by receipts, 29.9 by federal grants, and 5.9 by state appropriations. In addition, the cleanup funds and federal grant monies pay for four regional administrative positions which support the program.

Commercial and Noncommercial Leaking UST Cleanup Funds

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

- record and track UST release incidents;
- register and permit regulated USTs, manage tracking databases, and collect annual UST operating fees;
- identify parties responsible for releases;
- provide technical assistance and training to tank owners and operators;
- inspect UST systems to ensure compliance with leak prevention and detection regulations;
- monitor cleanups or releases;
- 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, evaluate, and remove abandoned petroleum USTs.

DENR 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, DENR is authorized by general statute to recover costs incurred during assessment and cleanup activities.

Commercial Fund Receipts and Disbursements

Revenue into the Commercial Cleanup Fund

The sources of funding for the Commercial Fund include:

- one-half of approximately 30% of the motor fuel and kerosene inspection tax of 1/4 of one cent per gallon;
- 19/32 of the excise tax of 1/2 cent per gallon on motor fuel and kerosene;
- annual UST operating fees;

- costs recovered from UST owners and operators for work performed by state contractors;
- loan collection and interest for the Groundwater Protection Loan Fund; and
- interest earned on the account.

Owners and operators of commercial petroleum USTs are required to pay annual operating fees to receive operating permits and to be eligible for reimbursement from the Commercial Fund. Annual operating fees for commercial USTs were first set at \$30 for tanks with capacities equal to or less than 3,500 gallons (small tanks) and \$60 for tanks with capacities in excess of 3,500 gallons (large tanks). Annual operating fees increased almost annually from 1989, reaching \$150 for small tanks and \$225 for large tanks by 1993. On 1 January 1997, fees increased to \$200 for small tanks and \$300 for large tanks. On 1 January 2009 annual operating fees were increased to \$420 per tank, regardless of capacity by House Bill 2498.

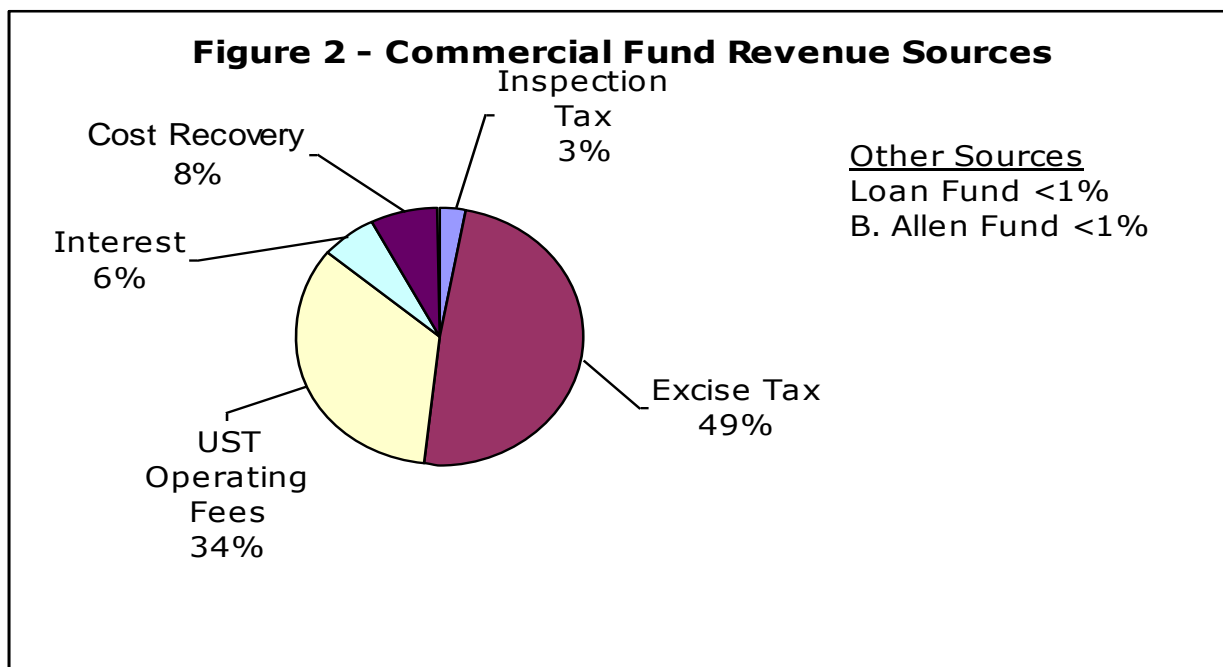
Revenues received for the Commercial Fund for the 12-month period from 1 July 2008 to 30 June 2009 were approximately \$29.9 million (Table 7). The relative contributions to the Commercial Fund from each of the funding sources are illustrated in Figure 2.

Table 7 - Commercial Fund Revenues

7/1/08- 6/30/09

Motor Fuel & Kerosene Inspection Tax	\$ 1,004,895
Motor Fuel & Gasoline Excise Tax	\$ 15,044,580
Operating Fees	\$ 10,686,223
State Lead Cost Recovery	\$ 2,412,056
Interest	\$ 1,862,140
Loan Fund Collection and Interest	\$ 9,688
Transfer from Bernard Allen Fund*	\$ 6,549
Total Commercial Revenues	\$ 31,026,131
Transfer to Noncommercial Fund	\$(1,004,895)
Transfer to Department of Agriculture	\$(90,000)
Transfer to Federal LUST Program (cost recovery)	\$(0)
Net Commercial Revenues	\$ 29,931,236

*One-time repayment of non-UST remediation expenses for the Rim Road incident in Fayetteville, NC.



Disbursements from the Commercial Trust Fund

UST owners, operators and landowners may request reimbursement of reasonable and necessary costs incurred for environmental assessment and cleanup activities. Claims may be submitted if the eligibility requirements for the cleanup funds are met. Deductibles that must be met before receiving reimbursement from the Commercial Fund are generally \$20,000, \$50,000 or \$75,000. In some cases, variations of the standard eligibility deductibles do occur because of compliance related issues or multiple releases on one property. Table 8 lists the receipts, disbursements and administrative expenses by fiscal year for the commercial fund for the period 1 July 1988 to 30 June 2009.

Table 8
Receipts, Disbursements & Administrative Expenses
for the Commercial Fund

Fiscal Year	Receipts	Disbursements ¹	Administrative Expenditures
FY 1989	\$ 2,337,685	\$ 14,768	
FY 1990	5,773,632	79,080	\$ 201,255
FY 1991	7,330,573	1,616,760	547,595
FY 1992	13,484,008	4,409,229	517,221
FY 1993	18,032,784	9,651,948	601,687
FY 1994	24,438,966	22,904,802	694,424
FY 1995	56,037,135 ²	37,405,510	666,270
FY 1996	28,178,768	44,060,639	2,322,632
FY 1997	28,564,034	44,163,273	2,623,339
FY 1998	27,291,220	30,267,392	2,530,036
FY 1999	26,783,344	16,104,152	2,567,668
FY 2000	27,178,623	22,820,069 ³	2,579,540
FY 2001	27,240,303	24,566,132 ⁴	2,730,236
FY 2002	27,124,210	36,872,426	2,397,264
FY 2003	27,055,759	26,498,565	2,221,851
FY 2004	26,934,685	23,514,179 ⁵	2,527,451
FY 2005	50,255,908 ⁷	46,966,083 ⁶	2,654,447
FY 2006	28,143,119	15,474,991 ⁸	2,636,228
FY 2007	27,564,837	7,372,403 ⁹	2,725,418
FY 2008	27,458,790	11,511,344 ¹⁰	2,859,460
FY 2009	31,026,131	15,007,590 ¹¹	3,380,143
TOTAL	\$538,234,514	\$441,281,335	\$ 39,894,165

- Does not include administrative costs.
- Commercial receipts for FY 1995 include \$31,288,889 that was transferred from the Groundwater Protection Loan Fund.
- 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.
- \$33,866 transferred to Federal Trust Fund as a cleanup expenditure.
- Includes transfer of \$2,036,932 from Commercial Fund to Noncommercial Fund per GS 119-18(b); transfer of \$90,000 to Department of Agriculture; and transfer of 452,722 to Federal Trust Fund as a cleanup expenditure.
- Includes transfer of \$3,150,730 from Commercial Fund to Noncommercial Fund per GS 119-18(b). Transfer from Department of Agriculture of \$38,702 to Federal Trust Fund.
- Includes additional revenue from the 1-year 1.1cent per gallon excise tax or \$19,000,000 to the Cleanup Fund.
- 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.
- Includes transfer to Noncommercial Fund of \$598,935 and disbursement from the Commercial Fund to the Department of Agriculture (\$90,000) and Federal LUST Grant (\$108,904).
- Includes transfer to Noncommercial Fund of \$1,381,848, and disbursement from the Commercial Fund to the Department of Agriculture (\$90,000), and Federal LUST Grant (\$53,752).
- Includes transfer to Noncommercial Fund of \$1,004,895, and disbursement from the Commercial Fund to the Department of Agriculture (\$90,000).

Claims Against the Commercial Cleanup Fund

Claims against the Commercial Cleanup Fund are processed on a "first-come, first-serve" basis. The status of all claims requesting reimbursement from the Commercial Fund that were received as of 30 June 2009 is presented in Table 9. These claims only include costs claimed to date, and do not represent the total costs for cleanups.

This year, UST Section staff supervised contract cleanups at 697 commercial UST releases. The next three-year contract period (2009-2012) was initiated. However, it was not started until the beginning of the calendar year of 2009 due to a delay in completing the selection of the contractors. The program has also subdivided the state into three regions, hiring three contractors per region to provide environmental cleanup. A total of five contractors were selected to fill these nine contracts and provide assessment and remediation of the state-lead incidents.

Table 9 – Claims Against the Commercial Cleanup Fund

	<u>Number</u>	<u>Cost</u>
Claims Paid	27,903	\$414,232,100
Incidents Denied Totally ¹	33	\$4,573,040
Claims Denied Partially ²	15,487	\$85,235,920
Total Deductibles Paid	-----	\$74,744,761
Claims Pending	426	\$4,880,771
Contracted Cleanups ³	697	\$16,622,237
¹ Ineligible		
² Excessive or undocumented costs		
³ State Lead actions undertaken or completed		

Commercial Fund Balance and Projected Needs

As of 30 June 2009, the Commercial Fund balance was \$56,940,589 with pending claims of \$42,954,597 (see Figure 3). The estimated/projected Commercial Fund balance for FY 2009 is \$13,985,992 (See Figure 4). From FY 2000 through FY 2004, the difference between the fund balance and the pending claim amounts steadily increased (see Figure 3). This was largely due to the fact that the UST Section implemented an expedited review process during FY 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 FY 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 over previous years because the UST Section now directs most of the work that is done, and only the owners of those commercial and noncommercial incidents with threshold level risks are directed to continue with assessments and remediation. This results in greater fiscal control over the fund and focuses resources on those incidents exhibiting the greatest risks to human health and the environment. Nevertheless, the fund balance has remained greater than disbursements and claims pending (Table 10) and DENR has been able to periodically direct cleanups of more high risk incidents.

Figure 3 - Commercial Fund Balance and Claims Pending & Obligations

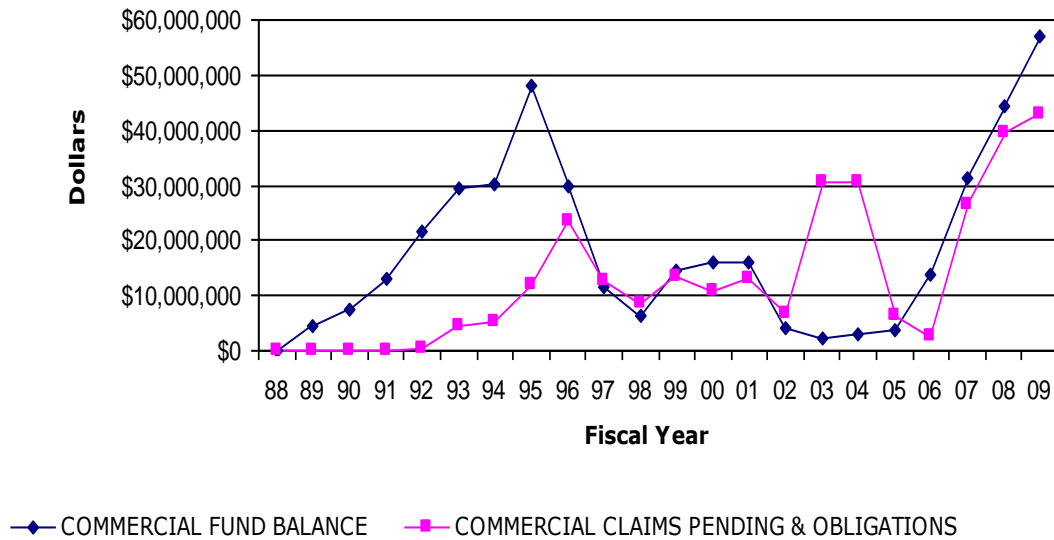
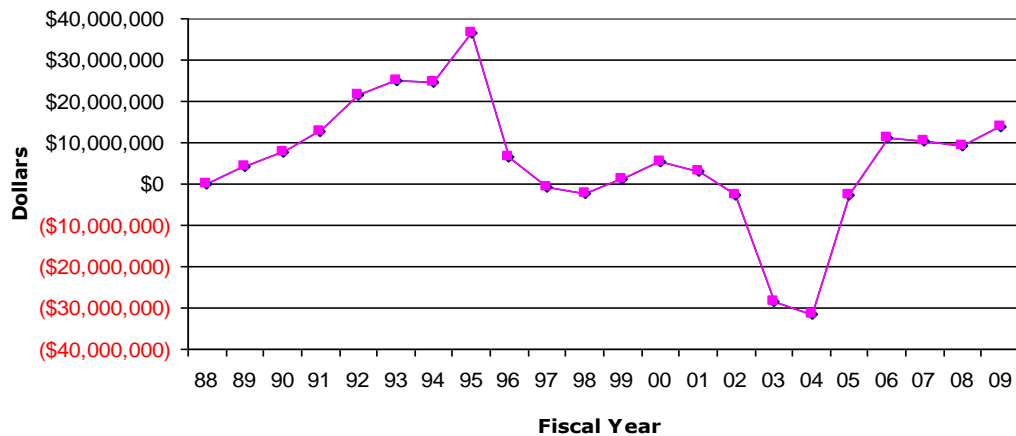


Figure 4 - Commercial Fund Balance Minus Claims Pending & Obligations



**Table 10 – Total Commercial Fund Revenues and Expenditures
7/1/08 – 6/30/09**

Commercial Fund Balance as of 6/30/08	\$ 44,302,190
Total Commercial Revenues (see Table 3)	\$ 31,026,131
Total Commercial Expenditures	(\$18,387,732)
Total Claims and Contracted Cleanups -	\$13,912,694
Transfers ¹	- \$ 1,094,085
Administrative Costs	- \$ 3,380,143
Commercial Fund Balance as of 6/30/09	\$ 56,940,589
Total Projected Estimated Obligations²	(\$42,954,597)
Estimated Commercial Fund Balance as of 6/30/09	\$ 13,985,992

1. From Table 8, footnote 12, transfer to the Noncommercial Fund for State Lead expenses.
2. Obligations are an estimated cost to the Fund not previously developed for the annual report. Obligations include estimates of un-reimbursed costs for tasks not requiring pre-approval that were incurred prior to implementation of Session Law 2004-124, outstanding un-reimbursed costs for pre-approved directed tasks, requested reimbursement costs for claims under review, and approved claim costs awaiting reimbursement.

One initiative which may affect future demand on the Commercial Fund is pay-for-performance (PFP) cleanups. On 1 October 2001, the General Assembly ratified House Bill 1063, which allows responsible parties to participate in the pay-for-performance program on a voluntary basis. PFP requires cleanup goals to be met before payments can be made to environmental consultants. This reimbursement method requires the Commercial Fund to obligate the contracted cleanup costs. PFP obligations may initially place a higher demand on the Commercial Fund, but should decrease the costs of cleanups. PFP was re-authorized by House Bill 2498 in 2008.

Another factor that may increase future demands on the Commercial Fund is the increase in claims for bodily injuries and property damages brought by third parties. In FY 2009, there were seven on-going and/or new third party claim actions. One of the actions was completed in which the third-party claim was denied. At the close of FY 2009, there were six third-party claims in progress. The financial impact of third party claims cannot be estimated with certainty because the Commercial Fund does not directly control award amounts resulting from legal actions due to third-party claims.

After UST operating fees were increased on 1 January 1997, revenue from this funding source declined through the end of FY 1999 (Table 11). This decline was likely due to a reduction in the number of registered USTs which occurred after implementation of the 1998 federal upgrade requirements for USTs. Many tank owners chose to close their USTs rather than bring them into compliance with the new standards. Since 1 January 1997 annual operating fees remained unchanged, at \$200 to \$300 per tank, until 1 January 2009 when House Bill 2498 increased the annual operating fee to \$420 per tank, regardless of tank capacity. This legislation was enacted in order to bring sufficient additional revenue into the Commercial Fund to help the state meet two requirements of the federal Energy Policy Act of 2005 – removing free product petroleum at all releases and conducting compliance inspections at every UST facility at least once every three years.

Table 11 – Commercial UST Population and Operating Fee Revenue

<u>Fiscal Year</u>	<u>No. of Commercial USTs Billed</u>	<u>Operating Fee Revenue</u>
FY 1989	-	\$ 4,322,917
FY 1990	-	\$ 8,086,895
FY 1991	57,385	\$ 6,889,969
FY 1992	52,529	\$ 9,910,737
FY 1993	48,812	\$18,032,784
FY 1994	43,314	\$23,661,875
FY 1995	39,289	\$ 8,500,000
FY 1996	37,529	\$11,050,000
FY 1997	37,776	\$10,839,975
FY 1998	36,563	\$10,008,917
FY 1999	34,428	\$ 8,697,468
FY 2000	33,558	\$ 8,844,093
FY 2001	33,776	\$ 8,464,019
FY 2002	32,839	\$ 8,553,715
FY 2003	31,155	\$ 8,087,033
FY 2004	32,005	\$ 8,309,807
FY 2005	31,518	\$ 7,987,101
FY 2006	30,638	\$ 7,951,508
FY 2007	30,145	\$ 7,937,236
FY 2008	28,477	\$ 7,686,324
FY 2009	29,156	\$ 10,686,223

Noncommercial Fund Receipts and Disbursements

Revenue into the Noncommercial Cleanup Fund

The sources of funding for the Noncommercial Fund include:

- one-half of approximately 30% of the motor fuel and kerosene inspection tax of 1/4 of one cent per gallon;
- 3/32 of the excise tax of 1/2 cent per gallon on motor fuel and kerosene; and
- interest earned on the account.

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 1 July 2008 to 30 June 2009 were slightly greater than \$ 6 million (Table 12).

Table 12 - Noncommercial Fund Revenues

7/1/08 – 6/30/09

Motor Fuel & Kerosene Inspection Tax	\$ 1,692,306
Motor Fuel & Gasoline Excise Tax	\$ 2,376,927
Interest	\$ 99,707
Transfer from Comm.Fund & DOT	\$ 2,009,790
Cost Recovery	\$ 0
Total Noncommercial Revenues	\$ 6,178,730

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 2009, the net transfer of money from the Commercial to the Noncommercial Fund was \$1,004,895.

Disbursements from the Noncommercial Cleanup Fund

Noncommercial Fund deductibles are \$0 for UST owners and operators, and \$5,000 for landowners. Table 13 lists the receipts and disbursements by fiscal year for both funds for the period from 1 July 1988 to 30 June 2009.

Table 13 - Receipts & Disbursements for Noncommercial Cleanups

7/1/88 - 6/30/09

Fiscal Year	Receipts	Disbursements ¹	Admin Expenses
FY 1989	\$ 0	\$ 0	\$ 0
FY 1990	2,905,035	0	201,254
FY 1991	2,934,347	564,206	547,595
FY 1992	3,018,344	2,143,155	517,221
FY 1993	7,693,288	4,069,497	601,686
FY 1994	3,404,086	2,012,312	694,423
FY 1995	5,194,725	2,900,368	666,270
FY 1996	5,215,550	5,029,109	783,684
FY 1997	5,587,781	5,924,799	801,143
FY 1998	5,717,592	3,869,091	667,724
FY 1999	5,945,461	2,776,105	620,574
FY 2000	5,636,563	5,028,505	570,738
FY 2001	5,811,666	7,890,618 ²	733,811
FY 2002	6,620,808 ³	9,182,320	913,755
FY 2003	7,664,329 ⁴	9,898,806	1,166,494
FY 2004	8,060,151	7,756,579	1,244,864
FY 2005	14,885,997 ⁵	11,326,318	1,265,079
FY 2006	7,615,613 ⁶	5,005,578	1,298,441
FY 2007	6,053,993 ⁷	5,099,349	1,349,006
FY 2008	6,030,546 ⁸	6,105,295	1,416,685
FY 2009	6,178,730 ⁹	5,878,808	1,324,956
TOTAL	\$122,174,605	\$102,470,815	\$ 17,385,403

1. Does not include administrative costs.
2. \$2 million transferred out of Noncommercial Fund to the State's General Fund.
3. Includes transfer of \$784,382 from Circle K Settlement Fund.
4. Includes transfer of \$3,418,990 of motor fuel and kerosene tax from Commercial Fund to Noncommercial Fund due to balance below \$5 million as per GS 119-18(b).
5. Includes additional revenue from the 1-year 1.1 cent per gallon excise tax or \$19,000,000 to the Cleanup Fund.
6. Includes \$1,922,601 transfer to Noncommercial Fund, \$90,000 transfer to the Dept. of Agriculture, and \$30,016 transfer to repay Federal Trust Fund for State Lead program expenses.
7. Includes transfer to Noncommercial Fund of \$598,935 and disbursement from Commercial Fund to Dept. of Agriculture (\$90,000) and Federal LUST Grant (\$108,904).
8. Includes transfer to Noncommercial Fund of \$1,381,848, and disbursement from the Commercial Fund to the Dept. of Agriculture (\$90,000), and Federal LUST Grant (\$53,752).
9. Includes transfer to Noncommercial Fund of \$1,004,895, and disburse from the Comm. fund to Dept. of Agriculture. (\$90,000).

Claims Against the Noncommercial Cleanup Fund

Claims against the Noncommercial Fund are processed on a "first-come, first-serve" basis. The status of all claims requesting reimbursement from the fund that were received as of 30 June 2009 is presented in Table 14. These claims only include costs claimed to date, and do not represent the total costs for cleanups. This year, UST Section staff supervised contract cleanups at 151 noncommercial UST releases.

Table 14 – Claims Against the Noncommercial Cleanup Fund

	<u>Number</u>	<u>Cost</u>
Claims Paid	12,117	\$97,140,845
Incidents Denied Totally ¹	4	\$59,845
Claims Denied Partially ²	5,166	\$12,332,756
Total Deductibles Paid	-----	\$936,708
Claims Pending	162	\$1,286,690
Contracted Cleanups ³	151	\$1,855,471

¹ Ineligible

² Excessive or undocumented costs

³ State Lead actions undertaken or completed

Noncommercial Fund Balance and Projected Needs

As of 30 June 2009, the Noncommercial Fund balance was \$2,329,380 (Table 15). The total for pending claims stood at \$1,286,690 (Table 14). Compared to the previous fiscal year, claims against the Noncommercial Fund and reimbursements from the Noncommercial Fund have increased. This trend is most likely the result of increased environmental awareness on the part of buyers and lenders during sales of residential property where most unregulated tanks (heating oil USTs) are located. Many of the releases from unregulated USTs are discovered during property transfers. The department expects this trend will continue for the foreseeable future (see Figures 5 and 6).

**Table 15 - Total Noncommercial Fund Revenues, Expenditures and Balance
7/1/08-6/30/09**

Noncommercial Fund Balance as of 6/30/08	\$3,354,414
Total Noncommercial Revenues (see Table 2, page 3)	\$6,178,730
Total Noncommercial Expenditures	(\$7,203,764)
Total Claims and Contracted Cleanups - \$5,878,808	
Administrative Costs - \$1,324,956	
Noncommercial Fund Balance as of 6/30/09	\$2,329,380
Projected Noncommercial Fund Obligations¹	(\$4,550,532)
Estimated Noncommercial Fund Balance as of 6/30/09	(\$2,221,152)

- Obligations are an estimated cost to the Fund not previously developed for the annual report. Obligations include estimates of un-reimbursed costs for tasks not requiring pre-approval that were incurred prior to implementation of Session Law 2004-124, outstanding un-reimbursed costs for pre-approved directed tasks, requested reimbursement costs for claims under review, and approved claim costs awaiting reimbursement.

Figure 5 - Noncommercial Fund Balance and Claims Pending & Obligations

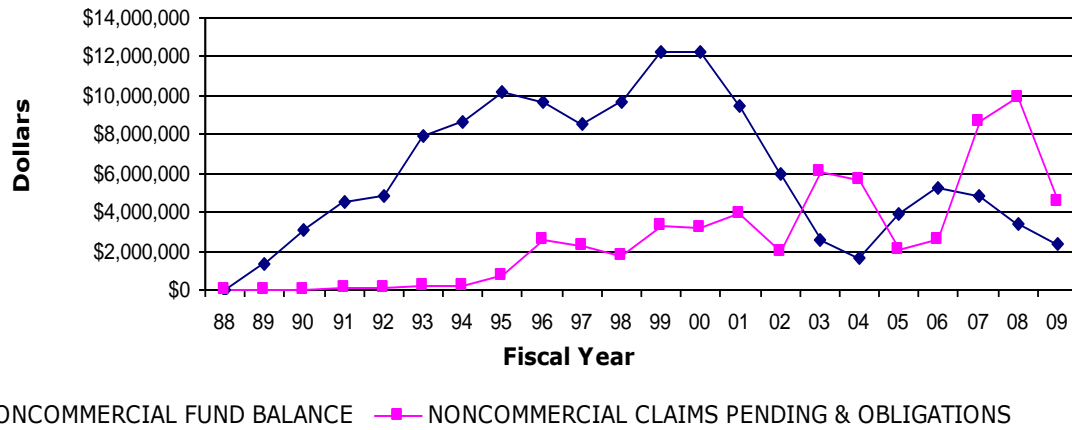


Figure 6 - Noncommercial Fund Balance Minus Claims Pending & Obligations

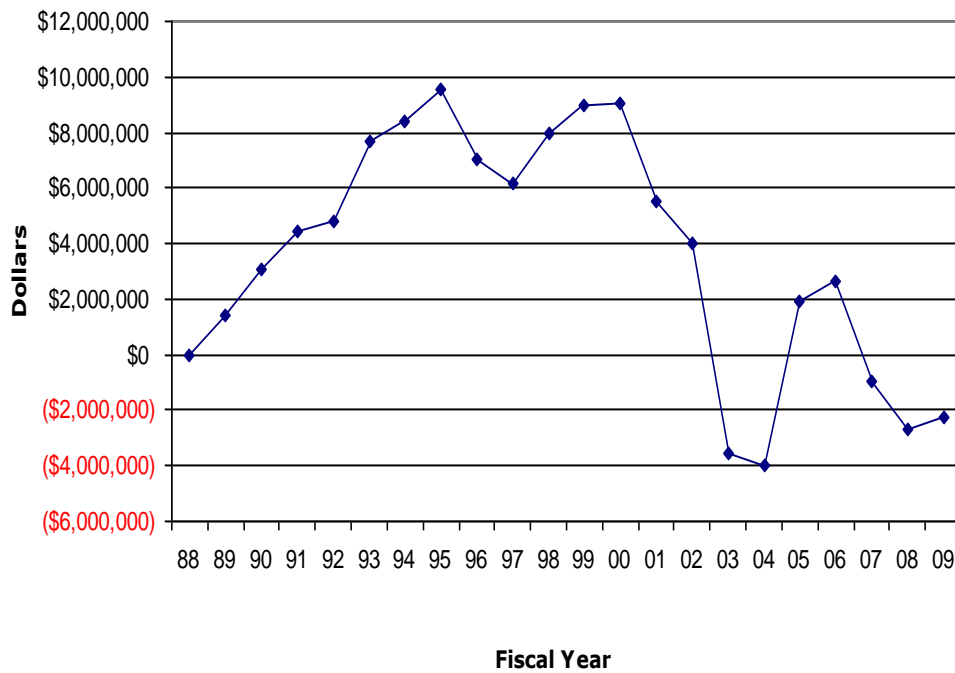


Table 16 shows the estimated cost to complete cleanups for noncommercial incidents reported from 1 July 2008 to 30 June 2009. It should be noted, however, that cleanups can easily extend over several years and costs may vary greatly. In addition, these figures do not include remedial costs for reported releases from past fiscal years.

**Table 16 – Estimate of Cleanup Costs for Noncommercial Incidents
Reported 1 July 2008 – 30 June 2009**

<u>Region</u>	<u>Incidents*</u>	<u>Total Estimated Cleanup Cost**</u>
Asheville	28	\$ 279,440
Fayetteville	8	\$ 79,840
Mooreville	78	\$ 778,440
Raleigh	79	\$ 788,420
Washington	56	\$ 558,880
Wilmington	58	\$ 578,840
Winston-Salem	<u>153</u>	<u>\$ 1,526,940</u>
Total	460	\$4,590,800

*In evaluating the last 12-month period, approximately 59% of reported new releases are from noncommercial sites

**An average cost of \$ 9,980 is used as an estimate of total cleanup costs for noncommercial sites

Federal UST Regulatory Program Grant

The UST Section receives grant money from the federal government to promote compliance with federal and state UST regulations. The UST Section received \$1,006,500 for three years (1 July 2008 through 30 September 2010) to fund these activities as well as activities related to implementing provisions of the Federal Energy Policy Act of 2005. The provisions of the Energy Policy Act include inspecting UST facilities at least every three years, implementing secondary containment requirements for all new and replacement UST systems, prohibiting delivery of fuel to non-compliant UST systems, training UST operators and maintaining and publishing information about sources and causes of releases from UST systems. The grant funds two permanent technical positions and two time-limited UST inspector positions. The grant will also fund contracts to upgrade the existing permitting and inspection database.

Federal Leaking UST Trust Fund Program Cooperative Agreement

The Federal Leaking UST Trust Fund Program Cooperative Agreement is used to clean up petroleum contamination from leaking USTs, provide alternative water supplies to affected third-parties, perform emergency activities, temporarily relocate residents affected by leaking USTs and conduct enforcement activities. The use of this cooperative agreement is limited to regulated USTs, primarily commercial tanks used for storing motor fuels. Releases from USTs used for heating oil and those used for farm or residential uses (1,100 gallons capacity or less) are not eligible for resources from this cooperative agreement.

Individuals (i.e., owners/operators) do not have access to the federal LUST Trust Fund. Only the federal government and states with cooperative agreements with the EPA can draw on the Trust Fund. 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 Trust Fund Program Cooperative Agreement has made 29 awards totaling \$51,364,279. This fiscal year's award did not change the total monetary value reported because the grant was not awarded until 26 June 2009. The funds were not available for use by the UST Section until after 1 July 2009. As of 30 June 2009, the state has spent \$50,852,094 of these awards. Of that amount, approximately \$22,549,671 has been spent on cleanup activities; \$4,452,461 on enforcement actions; and \$24,386,321 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 2001 are estimated. However, in FY 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. For FY 2009, the UST Section recovered \$32,003 and since the programs implementation a total of \$1,868,168 has been recovered in federal cleanup money. Of the total amount recovered, \$1,075,067 has come from the North Carolina Commercial Fund for sites determined eligible for Commercial Fund reimbursement after cleanup activities had begun. For this fiscal year there were no funds transferred from the Commercial Fund to cost recovery.

The EPA approved \$2,069,000 for North Carolina from the federal Leaking UST Trust Fund for FY 2009. However, almost all of the approved monies were not available until after 1 July 2009.

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 22 December 1998. Administrative rules implementing the program were adopted by DENR and became effective 1 December 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 1 January 1992 through 31 December 1994.

Once the usefulness of the Groundwater Protection Loan Fund was completed, the balance of the fund (\$31,288,899) was transferred into the Commercial Cleanup Fund.

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

Pay for Performance

On 15 October 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 voluntary performance-based cleanups of discharges or releases of petroleum from underground storage tanks. Two petroleum release incidents were ultimately selected for the initial 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. Cleanup continues in accordance with the awarded contracts at both incidents with both incidents having reached the 75% cleanup milestones ahead of the projected schedule.

House Bill 2498 extended the voluntary pilot program retroactively back to 1 October 2001 with a new expiration date of 1 October 2011. The UST Section will continue to notify applicants to the UST Program of the availability of pay-for-performance and encourage responsible parties of UST releases to consider pay-for-performance cleanups of their incidents.

Recommendations

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

- Transition from (and ultimately terminate) providing required financial responsibility (FR) for owners and operators of regulated, commercial USTs from the Commercial Cleanup Fund to other FR mechanisms, such as private insurance, bonding, letters of credit, self-insurance, and others. This action will initially reduce and ultimately end the use of fund resources to clean up new releases from UST systems that have responsible owners and operators. Fund resources will continue to be used to clean up existing releases at UST systems for which the fund is now providing financial responsibility, and new releases from UST systems owned or operated by non-viable parties. Transitioning to other approved FR mechanisms will also help to reduce the number and severity of releases by giving tank owners and operators additional economic incentives to prevent releases and clean up releases before contamination reaches the state's soil and ground water.
- Prevent releases by maintaining the triennial compliance inspection frequency for UST systems in North Carolina. Triennial inspections will help keep UST systems in compliance with all release prevention and detection requirements, detect and correct out-of-compliance equipment and operating procedures that could allow a release, and detect some undiscovered releases before extensive contamination of the soil and ground water occurs.
- Prevent releases by enacting legislation requiring UST owners and operators to receive training in UST system operation, including release prevention and detection. Base the amount and degree of owner/operator training necessary on the compliance of UST systems. Owner/operator training is required by the federal Energy Policy Act of 2005. It is also particularly important in North Carolina due to

the large number of UST facilities being bought and operated each year by new and inexperienced owners and operators.

- 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.
- 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.