

Dexter Matthews, DENR handout
ERC 11/9/11 @ 9:00a.m.

**REPORT TO THE ENVIRONMENTAL REVIEW COMMISSION
ON THE
NORTH CAROLINA UNDERGROUND STORAGE TANK PROGRAM**

November 9, 2011

UST Program Influences

***Federal Law** – In 1984, Congress amended the Resource Conservation and Recovery Act to create a regulatory program for both new and existing petroleum underground storage tanks (USTs).

***Federal Rules** – The first federal rules were adopted by EPA in 1988. The rules set standards for UST systems and also required that commercial UST owners show that they had financial resources (through an insurance policy, for example) to cover the costs of addressing a leak from the system.

***State UST Trust Funds** – Like a number of other states, North Carolina stepped in to help commercial UST Owners meet the federal financial responsibility requirements by creating the Commercial UST Trust Fund in 1988. Instead of buying private insurance, commercial UST owners meet the federal financial responsibility requirement by participating in the state Commercial Fund which pays most of the cost of assessing and cleaning up leaks from UST systems. (The tank owner generally pays a \$20,000 deductible.) The Commercial Fund currently receives approximately 60 % of its revenue from motor fuel and kerosene tax and approximately 40% from owners and operators annual operating fees. North Carolina also created a Noncommercial UST Trust Fund that pays the full cost of assessing and cleaning up petroleum releases from smaller tanks (such as home heating oil tanks). Those tank owners do not pay fees or deductibles.

***Environmental and Public Health Impacts** -- In FY 2011 the program provided alternative water supplies to replace 126 contaminated water supply wells. Since the program's inception 17,731 releases from UST systems have been cleaned up. Another 6,257 petroleum releases from regulated UST systems and 1,516 releases from unregulated systems (such as home heating oil tanks) remain to be cleaned up. Approximately 725 new releases were reported last year.

Implementation of Session Law 2011-394 (H 119)

***Tank owner/operators** are now eligible for reimbursement for actions ordered by the Department to determine if a tank system has leaked, whether or not a release has occurred from the system: Implemented July 1, 2011

*Simplifies the deductible for Tank owner/operators who have a release that has become mixed with a separate release for which the owner/operator is not responsible: Implemented retroactively to January 1, 2009

*Directs the Environmental Management Commission to adopt rules setting financial hardship criteria that would make the owner/operator eligible for additional assistance in meeting assessment and cleanup obligations. The Department may use up to \$1,000,000 from the Commercial Fund and \$100,000 from the Noncommercial Fund annually for assistance: The Department has begun drafting rules; the rulemaking process will likely take at least 6-8 months.

*A tank owner who owns more than one tank may request that tank fees owed to the state be paid quarterly instead of annually: Implemented July 1, 2011

*Underground storage tanks may be replaced and provided secondary containment without having to provide replacement and secondary containment on other non-tank components of the underground storage tank system. In addition, non-tank metallic components that are unprotected from corrosion may have corrosion protection added as an alternative to replacement if the component does not have visible corrosion and passes a tightness test: Implemented July 1, 2011

*Clarifies that the distance between a petroleum release and a water supply well should not increase the risk ranking of a UST site if the release is unlikely to affect the well because of groundwater flow direction: This is a clarification of a rule already in place and already being implemented

*Extends the deadline for upgrading existing UST systems that cannot meet required setbacks (such as a setback from a public water supply well) from January 1, 2016 to January 1, 2020: Implemented on July 1, 2011

*Directs the EMC to create a process for granting variances from the secondary containment upgrade requirement by January 1, 2014. The variance process should allow for a lesser setback based on a finding that it will not endanger public health and welfare or groundwater: The Department has begun drafting rules; the rulemaking process will take an estimated 6-8 months.

*Notwithstanding EMC rules, DENR shall not prohibit the use of tanks that are constructed of steel and cathodically protected as provided in federal rules in order to meet the external corrosion protection standards: Implemented July 1, 2011

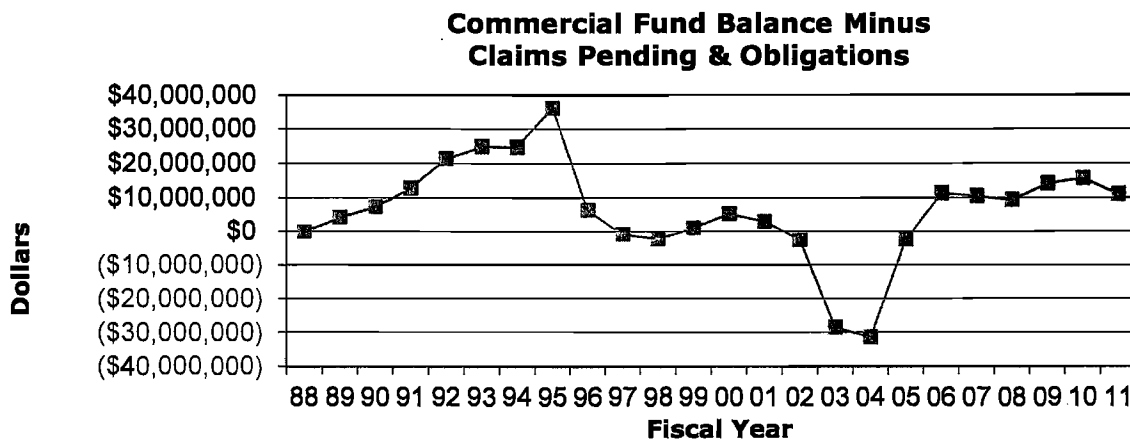
The Commercial Cleanup Fund

For FY 2011

Starting balance	\$63,445,967
Receipts	26,951,504
Disbursements for cleanups and third-party claims	31,697,736
Legislatively set program costs & other costs	3,859,161
<u>Present unpaid obligations</u>	<u>43,926,271</u>
Balance	\$10,914,303

Sources of revenue for the Commercial Fund in FY 2011

Motor Fuel & Gasoline Excise Tax	\$ 15,423,613
Operating Fees	10,680,351
Motor Fuel & Kerosene Inspection Tax	0
<u>Cost Recovery & Interest</u>	<u>847,540</u>
Total	\$ 26,951,504

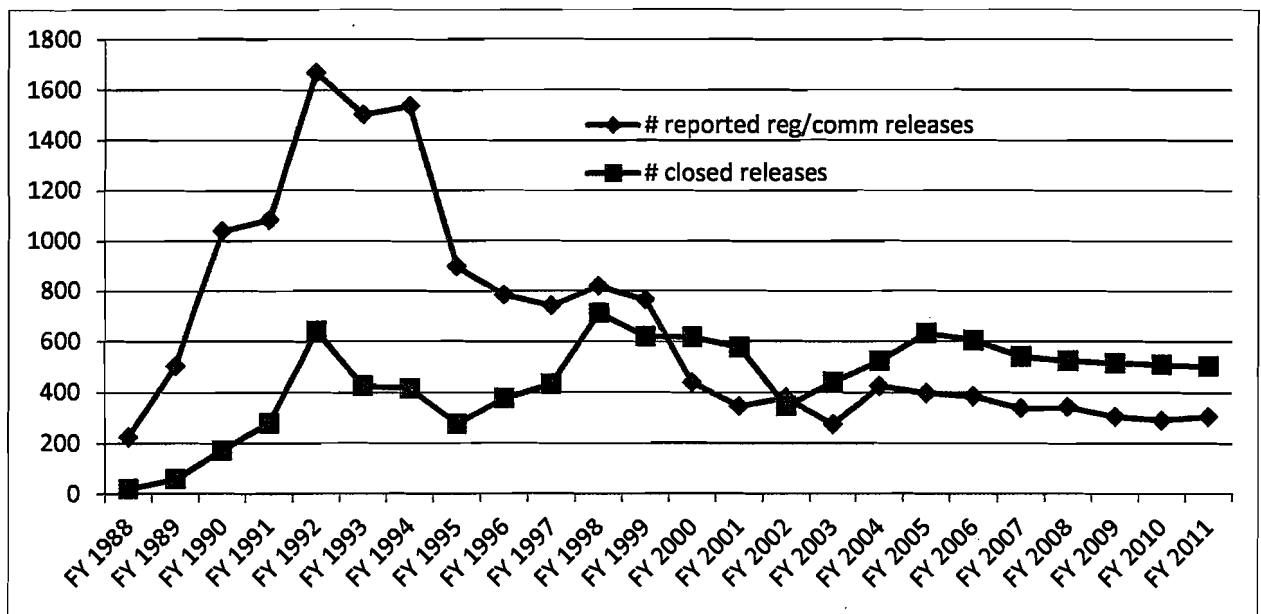


The Future of the Commercial Cleanup Fund

Session Law 2004-124 prohibited the Department from ordering cleanup of a UST petroleum release unless the Commercial UST Trust Fund could reimburse the tank owner for those expenses within 90 days. (The law responded to a cash flow problem in the UST Commercial Trust Fund that had led to long delays in providing reimbursement.) Although Session Law 2004-124 enabled the department to maintain a positive cash balance in the Commercial Cleanup Fund during the past five years, the long-term fiscal condition of the Fund remains uncertain because of the backlog of known releases waiting to be cleaned up and the addition of new releases every year that will need cleanup. The department can estimate the costs of cleaning up all known commercial UST releases by multiplying the average cost to the Fund per release (\$82,000) by the

number of known commercial releases needing cleanup (6,257) for a total future obligation of about \$513 million, an amount that includes about \$44 million obligated for cleanups already underway. With a present balance of about \$55 million, the Fund will need an additional \$458 million to clean up all presently known commercial UST releases. At the present rate revenue comes into the Fund (\$28 million per year on average), it will take 17 years to generate the cash to pay for this obligation. This estimate does not account for the costs of cleaning up releases not yet reported (future releases). Since approximately 300 new commercial UST releases are discovered and reported each year, an additional \$25 million per year can be added to the total obligation.

Regulated UST Releases Reported Versus Closed by Fiscal Year



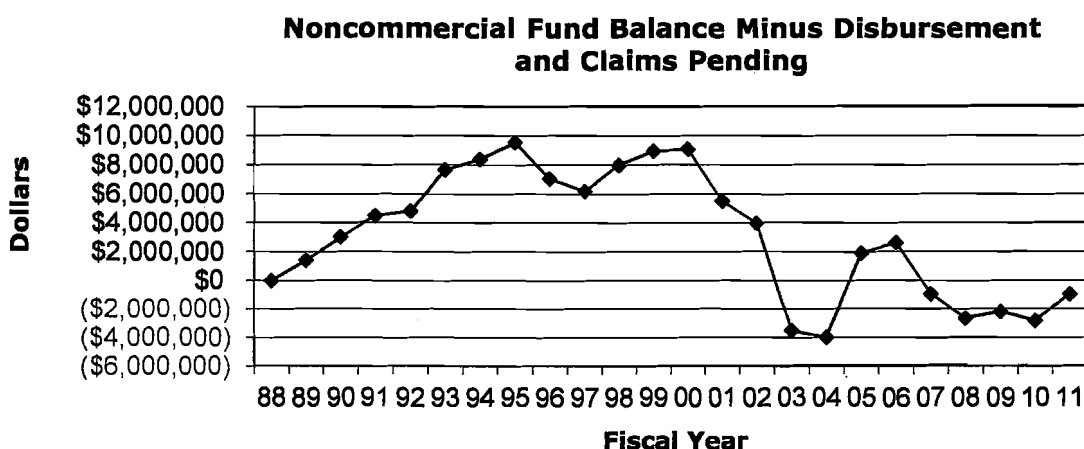
The Non-Commercial Cleanup Fund

For FY 2011

Starting balance	\$3,233,230
Receipts	6,388,636
Disbursement for cleanups and third-party claims	5,922,935
Legislatively set program costs & other costs	1,518,243
<u>Present unpaid obligations</u>	<u>3,163,402</u>
Balance	\$ (982,714)

Sources of revenue for the Noncommercial Fund in FY 2011

Motor Fuel & Gasoline Excise Tax	\$ 2,436,811
Motor Fuel & Kerosene Inspection Tax	3,946,303
Cost Recovery & Interest	5,522
Total	\$ 6,388,636



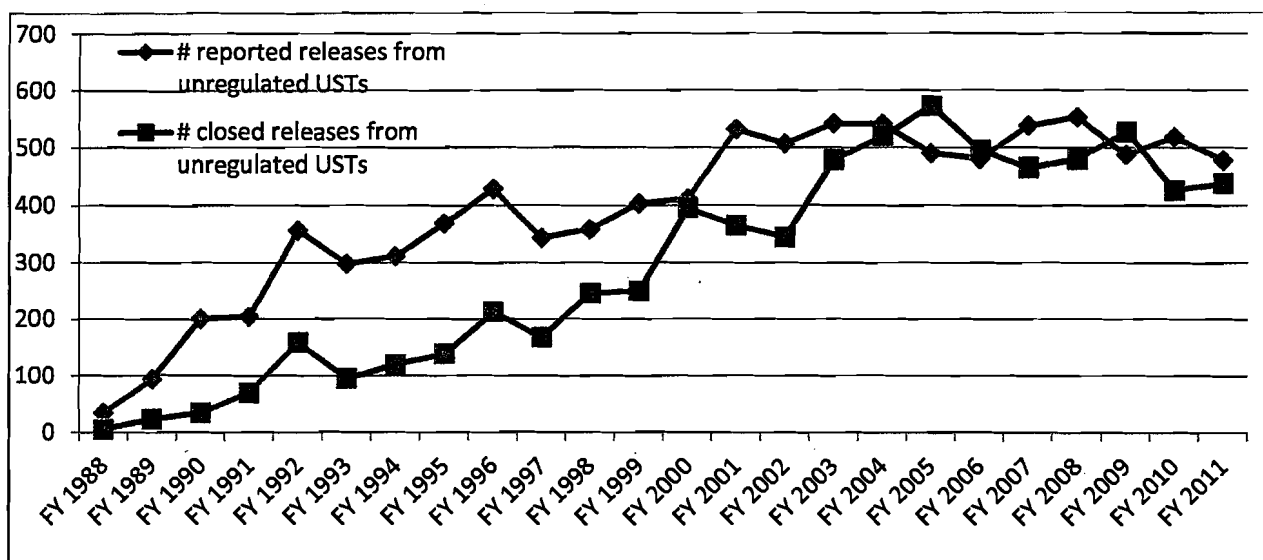
The future of the Noncommercial Cleanup Fund

Compared to the previous fiscal year, both claims against 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 properties, 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 to continue. In addition, the allocation of a portion of the motor fuels inspection tax into the Noncommercial Fund ended in July 2011. That allocation provided about 62 % of the Funds revenue. The increase in claims against the Fund and the decrease in revenues into the Fund will eventually cause a stoppage of directed cleanups of releases from home heating oil tanks, increasing the backlog of known releases needing cleanups, and lengthen the times homeowners must wait for reimbursements of the costs of initial response and abatement activities.

The department can estimate the costs of cleaning up all known noncommercial UST releases by multiplying the average cost to the Fund per release (\$12,804) by the number of known noncommercial releases needing cleanup (1,516) for a total future obligation of about \$19.4 million, an amount that includes about \$2.9 million obligated for cleanups already underway. With a present balance of about \$171,600, the Fund will need an additional \$19.2 million to clean up all presently known noncommercial UST releases. At the present rate revenue comes into the Fund (down from \$6.4 million per year to \$2.5 million per year on average after the end of the inspection tax allocation), it will take

about 7.5 years to generate the cash to pay for this obligation. This estimate does not account for the costs of cleaning up releases not yet reported (future releases). Since approximately 425 new noncommercial UST releases are discovered and reported each year, an additional \$5.4 million per year can be added to the total obligation.

Unregulated UST Releases Reported Versus Closed by Fiscal Year



The Universe of Underground Storage Tanks (as of 30 June 2011)

*In North Carolina, there are 26,916 regulated USTs at 8,387 facilities. Owners of these Tanks are eligible for reimbursements from the Commercial Cleanup Fund.

*Approximately one out of every four regulated USTs in NC is more than 29 years old.

*Approximately 6% of the regulated USTs are double walled.

*There are also 2,152 unregulated commercial heating oil USTs at 1,618 facilities in North Carolina. Owners of these tanks are eligible for reimbursements from the Commercial Fund.

*There are an estimated 250,000 home heating oil tanks in the state. Owners of these tanks are eligible for reimbursements from the Noncommercial Cleanup Fund.

*The number of regulated USTs and UST facilities continues to decline.

The UST Program's Compliance Progress

*The UST program has 20 inspectors to assure compliance at 8,387 UST facilities, or an average of 419 facilities per inspector.

*The federal Energy Policy Act of 2005 requires a compliance inspection of each facility at least once every three years and training/testing for UST operators. Compliance rate is now about 62%.

The UST Program's Corrective Action Progress (as of 30 June 2011)

*Since the program's inception, there have been 25,504 incidents of leaking tank systems reported.

*Of those reported, 17,731 of these incidents have been cleaned up. There remain 6,257 releases from regulated USTs and 1,516 releases from unregulated USTs to clean up.

*During the last five years, on average, about 751 new releases were reported each year. The majority of these new releases (about 60%) were from home heating oil tanks.

*In addition, there have been 6,955 tank systems closed without evidence of petroleum releases (clean closures).

*The UST program is currently closing out slightly more releases than have been reported annually, decreasing the backlog of open releases.

Pay For Performance (PFP)

On October 15, 2001, House Bill 1063 gave DENR the authority to allow performance-based cleanups of UST releases whose owners volunteered for the program. Implementation was slow because sufficient unobligated funds were not available and because the program was voluntary. HB 897 corrected the funding issue but volunteers for the pilot were still not forthcoming. Eventually, two releases were cleaned up using the PFP concept and the data show some cost savings. However, no other UST owners have volunteered to use the PFP concept for their cleanup. HB 2498 (Session Law 2008-195) set an expiration date for the program and it expired on October 1, 2011.

Recommendations

*Transition from (and ultimately terminate) the Commercial UST Trust Fund. In place of a state-subsidized fund, owners and operators of regulated, commercial USTs should use other financial responsibility mechanisms (such as private insurance, bonding, letters of credit, or self-insurance). This action will initially reduce and ultimately end the use of public funds to clean up most new releases. A state fund will continue to be needed to clean up the legacy of existing petroleum releases; to clean up new releases from UST systems owned or operated by parties

that lack financial resources; and to cleanup sites where a responsible party cannot be identified. Transitioning to other approved financial responsibility 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 groundwater.

*Identify additional funding sources for the Noncommercial Leaking Underground Storage Tank Cleanup Fund such as establishing a deductible amount applicable to all noncommercial tank owners or landowners accessing the fund. Session Law 2011-145 Section 28.25A(b) amended G.S. 119-18(b) by eliminating the allocation of a portion of the inspection tax to the Leaking Underground Storage Tank Cleanup Funds. Before the recent amendment, this allocation supplied approximately 60% funds available to reimburse homeowners and land owners for the costs of cleaning up contamination from home heating USTs. The Noncommercial Fund already had a negative unobligated balance of approximately \$1 million as of July 1, 2011. Without this allocation, DENR projects that no funds will remain available for reimbursement to homeowners or landowners by the end of calendar year 2011 for remediation beyond initial abatement.

*Consideration should be given to changing the UST annual report due date. Generally, budget information only becomes available in mid-August (after budget year close-out) which makes it difficult to collect budget information and complete the report by the current due date of September 1.