



North Carolina Department of Environment and Natural Resources

Pat McCrory
Governor

John E. Skvarla, III
Secretary

November 5, 2014

MEMORANDUM

TO: THE ENVIRONMENTAL REVIEW COMMISSION
The Honorable Mike Hager, Co-Chair
The Honorable Ruth Samuelson, Co-Chair
The Honorable Brent Jackson, Co-Chair

HOUSE OF REPRESENTATIVES APPROPRIATIONS SUBCOMMITTEE ON NATURAL AND
ECONOMIC RESOURCES

The Honorable Tom Murry, Co-Chair
The Honorable Roger West, Co-Chair

SENATE APPROPRIATIONS SUBCOMMITTEE ON NATURAL AND ECONOMIC RESOURCES

The Honorable Stan Bingham, Co-Chair
The Honorable Andrew C. Brock, Co-Chair

FISCAL RESEARCH DIVISION

FROM: Neal Robbins, Director of Legislative Affairs

SUBJECT: Leaking Petroleum Underground Storage Tank Cleanup Program Report

DATE: November 5, 2014

Pursuant to G.S. 143-215.94M, the Secretary shall present an annual report to the Environmental Review Commission, the Fiscal Research Division, the Senate Appropriations Subcommittee on Natural and Economic Resources, and the House Appropriations Subcommittee on Natural and Economic Resources [on the Status of Leaking Petroleum Underground Storage Tanks, the State Cleanup Funds]. Please consider the attached as the formal submission this report.

If you have any questions or need additional information, please contact me by phone at (919) 707-8618 or via e-mail at neal.robbs@ncdenr.gov.

cc: Mitch Gillespie, Assistant Secretary for Environment
Linda Culpepper, Director of Waste Management

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

**Status of Leaking Petroleum Underground Storage Tanks
The State Cleanup Funds**

Fiscal Year 2014 (July 1, 2013 to June 30, 2014)

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

November 1, 2014



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ENVIRONMENT AND NATURAL RESOURCES**

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N.C. Division of Waste Management

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Table of Contents

Executive Summary, Underground Storage Tank Cleanup Funds FY 2014	Page 4
Cleanup Fund Management	Page 7
Commercial Fund Status	Page 7
Noncommercial Fund Status	Page 8
Recommendations	Page 9
Figures and Tables	Page 10

EXECUTIVE SUMMARY – UNDERGROUND STORAGE TANK (UST) CLEANUP FUNDS FY 2014

North Carolina's underground storage tank program is administered by the Division of Waste Management's Underground Storage Tank (UST) Section in the North Carolina Department of Environment and Natural Resources (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 groundwater. Funding for the program is provided by the Commercial and Noncommercial Cleanup Funds, the federal Leaking Underground Storage Tank (LUST) prevention grant, and the federal LUST cleanup grant.

The Commercial and Noncommercial Cleanup Funds are also used to provide safe alternatives to drinking water wells that have been contaminated by petroleum releases from USTs. In FY 2014, the UST program provided alternative water supplies to replace 113 contaminated water supply wells (some private wells and others serving public water systems) serving 401 citizens.

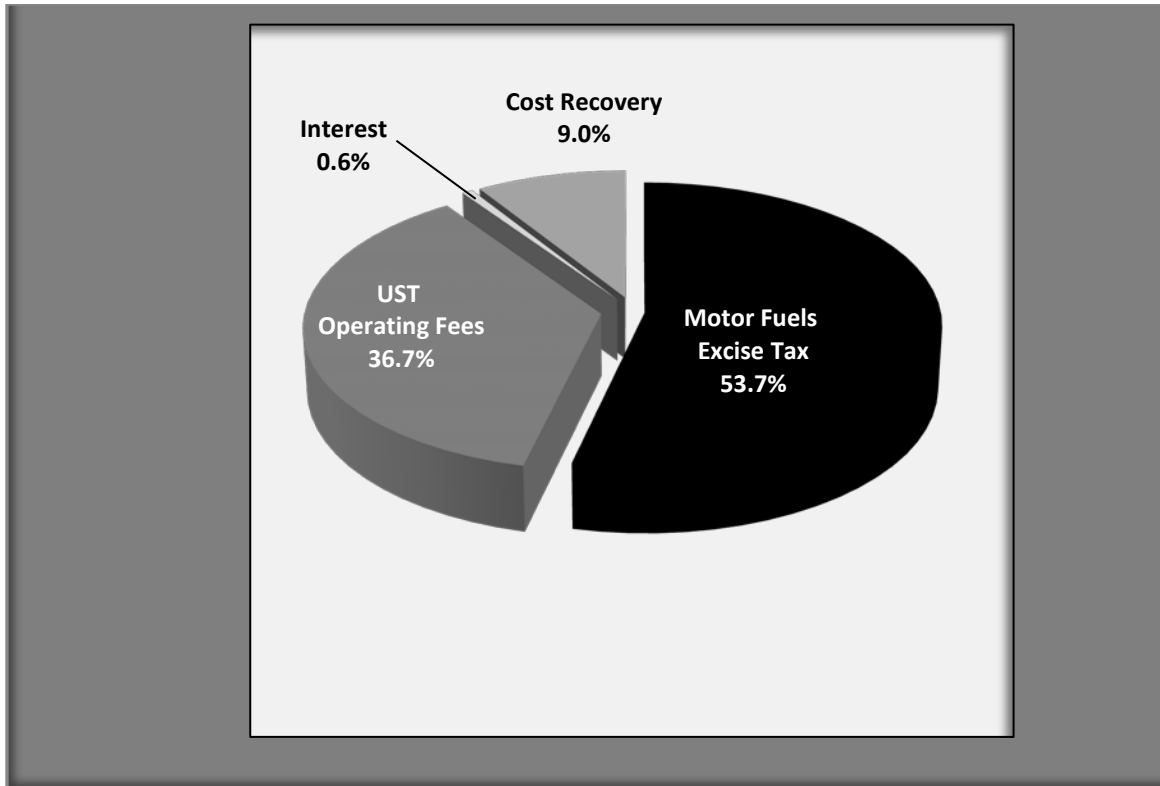
Lists of all known discharges or releases from underground storage tanks, all Responsible Party (RP) cleanups, Noncommercial Fund cleanups requiring state funding, and cleanup status updates are available from the Division of Waste Management.

FY 2014 Commercial Fund Activity (July 1, 2013 through June 30, 2014)

	Amount	Totals
Fund Balance on 7/1/2013	\$41,306,116	\$41,306,116
Revenues (7/1/13 – 6/30/14)		\$28,222,762
Motor Fuel & Gasoline Excise Tax	\$15,146,593	
UST Operating Fees	\$10,354,918	
State Lead Cost Recovery	\$2,543,071	
Interest	\$178,180	
Loan Fund Collection and Interest	\$ 0	
Transfer - Bernard Allen Trust Fund	\$ 0	
Expenditures		\$30,808,385
Reimbursements	\$25,722,244	
State-Lead Contracting & Laboratory	\$1,279,525	
Program Administration	\$3,806,616	
Transfers from Fund		\$90,000
Transfer to Noncommercial Fund	\$ 0	
Transfer to Department of Agriculture	\$90,000	
Transfer to Federal LUST Program (cost recovery)	\$0	
Fund Balance on 6/30/2014		\$38,630,493
Estimated Obligations¹		\$41,658,433
RP-lead cleanup	(\$36,371,231)	
State-lead cleanup	(\$2,750,201)	
Pre-approved non-directed actions	(\$2,537,001)	
Estimated Obligated Balance 06/30/2014		(\$3,027,940)

1. Estimated 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; approved costs for claims awaiting reimbursement; unreimbursed costs for approved non-directed tasks; and remaining program expenses.

Commercial Fund Revenue Sources - FY2014

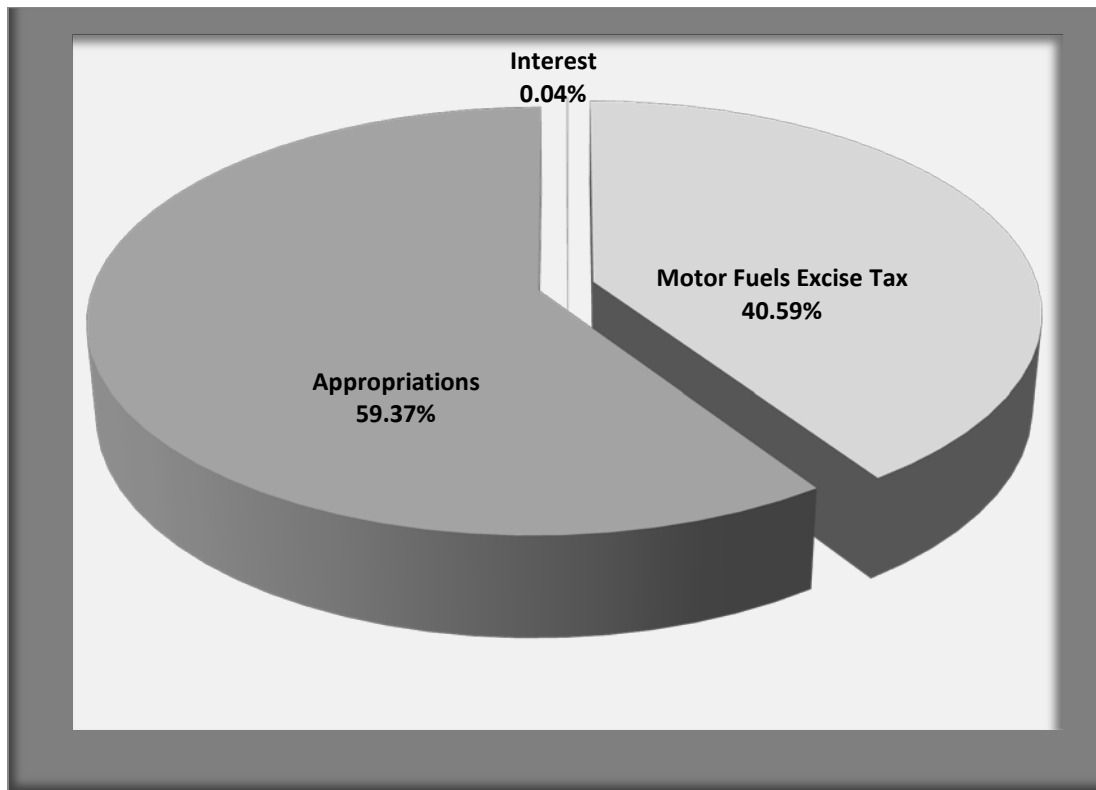


FY 2014 Noncommercial Fund Activity (July 1, 2013 through June 30, 2014)

	Amount	Totals
Fund Balance on 7/1/2013		\$285,360
Revenues		\$5,895,127
Motor Fuel & Gasoline Excise Tax	\$2,393,044	
Interest	\$2,083	
Appropriations	\$3,500,000	
Cost Recovery	\$0	
Expenditures		\$6,091,796
Total Claims and Contracted Cleanups	\$4,599,670	
Administrative Costs	\$1,492,126	
Fund Balance on 6/30/2014		\$88,691
Estimated Obligations¹		\$4,244,981
Estimated Obligated Balance 6/30/14		(\$4,156,290)

1. Estimated 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, approved costs for claims awaiting reimbursement, unreimbursed costs for approved non-directed tasks, and remaining program administration costs.

Noncommercial Fund Revenue Sources - FY2014



Summary of Key Statistics since UST Program Inception (July 1, 1988 to June 30, 2014)

Commercial Fund Revenues	\$ 674,006,258	
Commercial Fund Expenditures	\$ 635,346,676	
Noncommercial Fund Revenues	\$ 150,861,146	
Noncommercial Fund Expenditures	\$ 150,714,479	
Petroleum UST Releases – Reported		
Commercial	18,841	
Noncommercial	9,456	
Total		28,297
Petroleum UST Releases - Closed Out		
Commercial	13,027	
Noncommercial	7,365	
Total		20,392
<u>FY 2014 Activity</u>		
Petroleum UST Releases - Reported		
Commercial		525
Noncommercial		498
Petroleum UST Releases – Closed Out		
Commercial		570
Noncommercial		420

Cleanup Fund Management

The Division of Waste Management's UST Section manages two funds for cleanup of environmental contamination from petroleum underground storage tank (UST) releases. The Commercial Cleanup Fund pays the costs of cleanups of releases of petroleum from commercial USTs, which are typically regulated gasoline station tanks or heating oil tanks of greater than 1,100 gallons capacity. The owners of commercial USTs pay annual operating fees into the Commercial Cleanup Fund and also pay deductible amounts toward the costs of assessments and cleanups of petroleum releases. The Noncommercial Cleanup Fund pays the costs of cleanups of releases of petroleum from unregulated USTs such as home heating oil tanks and smaller farm tanks. The owners of noncommercial USTs do not pay fees. New legislation for FY 2014 added a \$1,000 deductible and 10 percent co-pay up to a combined maximum owner share of \$2,000 for cleanup expenses.

In FY 2014, the UST section managed the cleanup funds in accordance with the requirements of N.C.G.S 143-215.94E which directs the department to give priority to cleanup of releases in emergency situations and to those that pose the greatest risks to human health and the environment. The statute also directs the division to order non-emergency work only if the costs could be reimbursed by the appropriate cleanup fund within 90 days of claim approval. To meet these legislative requirements, the division uses a Risk, Rank and Abatement (RRA) scoring system that quantifies the relative risks of all releases, allowing the division to direct work at the highest risk incidents and reimburse the costs of that work within 90 days. Every week the division reviews balances, expenditures and obligations of both the Commercial and Noncommercial Funds, and periodically adjusts the RRA score threshold in order to direct as much cleanup work as resources will allow. By the end of FY 2013 and continuing through FY 2014, the program was able to direct cleanup activities at all high-risk commercial UST releases and at many intermediate-risk releases. Currently, the program directs cleanup activities at only about two percent of all high-risk noncommercial UST releases.

Commercial Fund Status

On June 30, 2014, the Commercial Fund balance was \$38,630,493 (which included a one-time cost recovery of \$2,450,000 from insurance proceeds settlements with one major oil company). Pending estimated obligations were \$41,658,43.

The division can estimate the costs of cleaning up all known commercial UST releases by multiplying the average cost to the Fund per release (\$131,641 for FY 2014) by the number of known commercial releases needing cleanup (5,699). The number of reported new releases has decreased in recent years, due to increased inspection and prevention measures implemented in 2008. In FY2012 through FY2014, an average of 284 new, fund-eligible commercial UST releases per year were discovered and reported. This trend suggests an additional \$37 million per year will potentially be added to overall obligations.

Noncommercial Fund Status

The Noncommercial Cleanup Fund had previously received a very small percentage of the motor fuels inspection tax. The 2011 budget re-directed the inspection tax to the Department of Transportation, The General Assembly made nonrecurring appropriations of \$4.88 million in FY 2013 and \$3.5 million in FY 2014 to the Noncommercial Cleanup Fund. On June 30, 2014, the Noncommercial Fund cash balance was \$88,691 with pending estimated obligations of \$4,244,981, therefore the estimated obligated Noncommercial Cleanup Fund balance at the end of FY 2014 is (- \$4,156,290).

The department can estimate the costs of cleaning up all known Noncommercial UST releases by multiplying the average cost to the Fund per release (\$12,093 for FY2014) by the number of known noncommercial releases needing cleanup (1,990). The number of reported new releases has decreased in recent years, but in FY 2014 this number did begin to increase. In FY2012 through FY2014, an average of 466 new noncommercial UST releases per year were discovered and reported. This trend suggests an additional \$5.6 million per year will potentially be added to overall obligations.

In FY 2013, the owners of noncommercial USTs paid only the costs of removing tanks and did not pay any deductible amount toward the costs of cleanups. New legislation, Session Law 2013-360, Senate Bill 402, modified N.C.G.S. 143-215.94D(b1) to add a \$1,000 deductible and 10 percent co-pay up to a combined maximum owner share of \$2,000 for cleanup expenses for releases discovered or reported to the department after August 1, 2013. The addition of the deductible and co-pay will ease on-going funding shortfalls, but the extent it will make up the short fall is not yet known.

Session Law 2013-360, Senate Bill 402 further required the department to prepare a study of the costs and benefits of the Noncommercial UST Program, exploring options for continued use and ways to improve solvency; and to submit the report of findings and recommendations to the General Assembly. The report, submitted on April 1, 2014, contained the following, specifically regarding the Noncommercial Fund:

Findings

1. The existing recurring funding source for the Noncommercial Fund is inadequate to meet current and projected future demands.
2. There is at least one process improvement to the program (requiring the receptor survey to be the first step in site assessment) that could result in additional savings to the Noncommercial Fund.
3. Continuation of the Noncommercial Fund and measures to stabilize funding are favored by the primary stakeholder groups.

Recommendations

1. The deductible enacted under Session Law 2013-360, Senate Bill 402 should be continued as is, as a method of requiring more owner participation and reducing overall costs to the Noncommercial Fund.
2. The DWM is implementing a process change through guideline revision to require the receptor survey to be completed earlier in the assessment of release incidents.

For FY 2015, the General Assembly has acted in Session Law 2014-100, Senate Bill 744 to provide \$3.4 million in recurring appropriations for ongoing operation of the Noncommercial Fund. As a result, approximately \$2.7 million of the appropriated recurring funding was immediately expended to reimburse existing, approved claims. The remaining appropriation will likely be expended no later than November 1, 2014.

Leaking Underground Storage Tank Cleanup Funds
Recommendations

- 1) Continue on-going consideration and evaluation of cost savings measures and possible revenue enhancements to enable the Commercial Fund to meet future obligations.
- 2) Continue to implement and evaluate the deductible and cost savings measures for the Noncommercial Fund.
- 3) Consider transitioning from the Commercial Cleanup Fund as the primary mechanism for owners of regulated USTs to meet federal financial responsibility requirements. In place of a state-subsidized fund, owners and operators of regulated commercial USTs should be encouraged to use other financial responsibility mechanisms, such as private insurance, bonding, letters of credit, or self-insurance.
- 4) Continue the successful programs previously implemented to prevent releases by maintaining a compliance inspection frequency of at least every three years for USTs in North Carolina.
- 5) Continue the successful programs previously implemented to prevent and minimize releases by providing release prevention and detection training to UST owners and operators.

Tables and Figures

Table 1 - UST Releases Since Program Inception (FY 1989 - FY 2014)

Commercial UST Releases		Noncommercial UST Releases	
Releases Reported	18,841	Releases Reported	9,456
RP-Lead	17,282	RP-Lead	9,213
State-Lead	1,559	State-Lead	243
Cleaned Up to No Further Action	13,027	Cleaned Up to No Further Action	7,365
RP-Lead	12,374	RP-Lead	7,229
State-Lead	653	State-Lead	136
Ongoing Cleanups	3,442	Ongoing Cleanups	323
RP-Lead	2,636	RP-Lead	297
State-Lead	806	State-Lead	26
No Action Currently Being Taken	2,257	No Action Currently Being Taken	1,667
RP-Lead	2,184	RP-Lead	1,604
State-Lead	73	State-Lead	73

Figure 1 - UST Incidents & UST Incidents Closed (Cumulative)

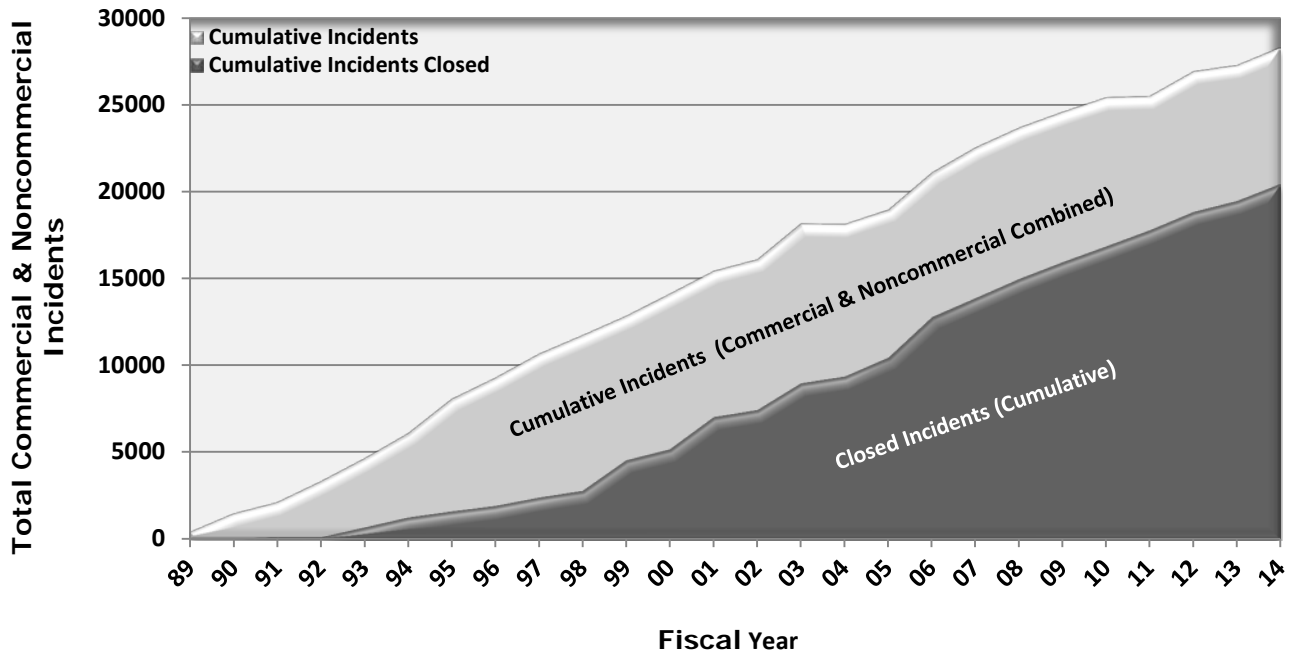


Figure 2 - Open UST Incidents

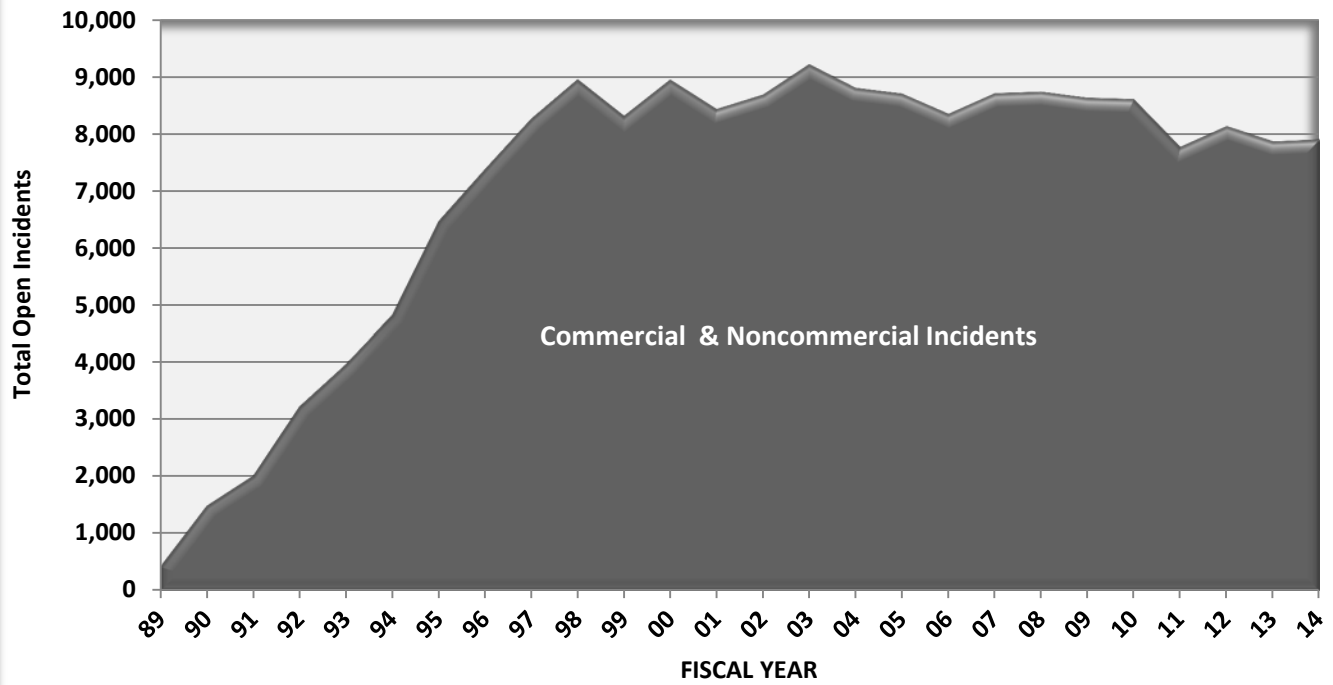


Table 2
Receipts, Disbursements and Program Expenses for the Commercial Fund
7/1/88 – 6/30/14

Fiscal Year	Receipts	Disbursements¹	Legislatively Allowed Program Expenses
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
FY 2010	27,969,400	17,760,225 ¹²	3,703,143
FY 2011	26,951,504	31,697,736 ¹³	3,859,161
FY 2012	26,311,956	29,132,749 ¹⁴	3,881,825
FY 2013	26,316,112	29,187,009 ¹⁴	3,960,943
FY 2014	28,222,762	27,091,769 ¹⁴	3,806,616
TOTAL	\$674,006,258	\$576,150,823	\$ 59,195,853

1. Does not include program expenses.
2. Commercial receipts for FY 1995 included \$31,288,889 that was transferred from the Groundwater Protection Loan Fund.
3. Adjustment due to a transfer from the Commercial Fund to the Federal Trust Fund of \$288,117 as a clean-up expenditure rather than as a program expense.
4. Includes \$33,866 transferred to the Federal Trust Fund for clean-up expenditure.
5. Includes transfer of \$2,036,932 from Commercial to Noncommercial Trust Funds per GS 119.18(b); transfer of \$90,000 to Department of Agriculture and Consumer Services; and transfer of \$452,722 to the Federal Trust Fund for clean-up expenditure.
6. Includes transfer of \$43,150,730 from Commercial to Noncommercial Trust Fund per GS 119.18(b). Transfer from Department of Agriculture and Consumer Services of \$38,702 to Federal Trust Fund.
7. Includes additional revenue from the 1-year 1.1 cent per gallon excise tax or \$19 million to the Trust Fund.
8. Includes \$1,922,601 transfer to Noncommercial Fund, \$90,000 transfer to Department of Agriculture and Consumer Services, and \$30,016 transfer to repay Federal Trust Fund for State Lead program expenses.
9. Includes transfer to Noncommercial Fund of \$598,935 and disbursement from the Commercial Fund to the Department of Agriculture and Consumer Services (\$90,000) and Federal LUST Grant (\$108,904).
10. Includes transfer to Noncommercial Fund of \$1,381,848, and disbursement from the Commercial Fund to the Department of Agriculture and Consumer Services (\$90,000), and Federal LUST Grant (\$53,752).
11. Includes transfer to Noncommercial Fund of \$1,004,895, and disbursement from the Commercial Fund to the Department of Agriculture and Consumer Services (\$90,000).
12. Includes disbursement to Department of Agriculture and Consumer Services of \$90,000.
13. Includes disbursements to Department of Agriculture and Consumer Services (\$90,000) and legislatively mandated transfer of interest (\$614,239.29).
14. Includes disbursements to Department of Agriculture and Consumer Services (\$90,000).

**Table 3 – Claims Processed for the Commercial Cleanup Fund
7/1/88 – 6/30/14**

Claim Action	Number
Claims Paid	38,723
Incidents Denied Totally ¹	33
Claims Denied Partially ²	16,728
Claims Pending	83
Contracted Cleanups ³	1602

- 1 Ineligible (operating fees not paid; release discovery pre-dates program)
2 Claims contain excessive or undocumented costs
3 State lead actions undertaken/completed

Figure 3 - Commercial Fund Balance and Claims Pending & Obligations

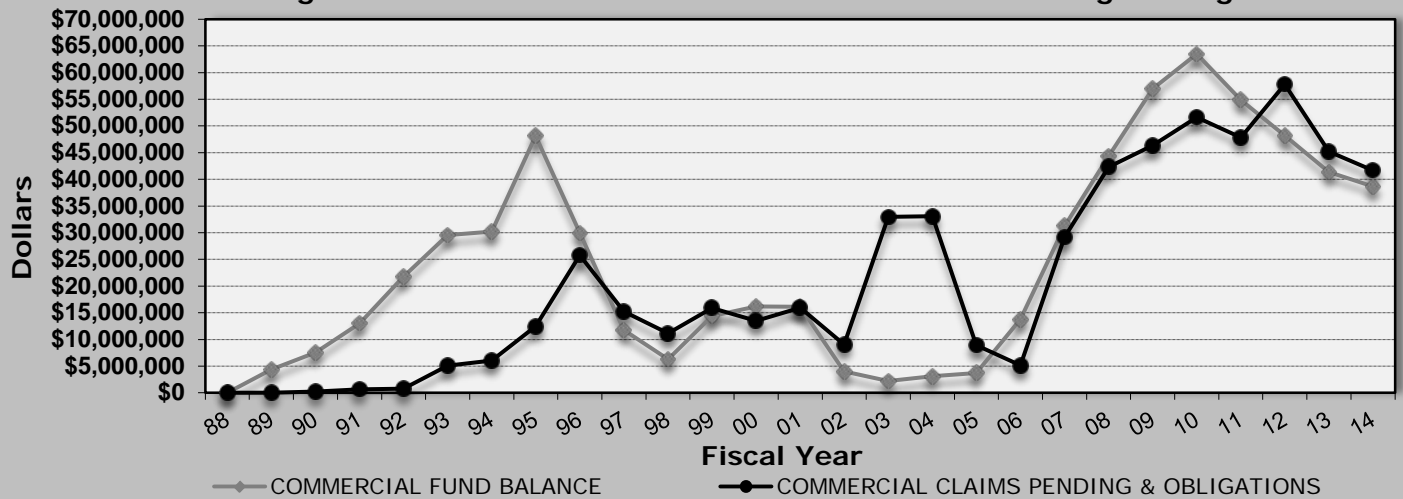
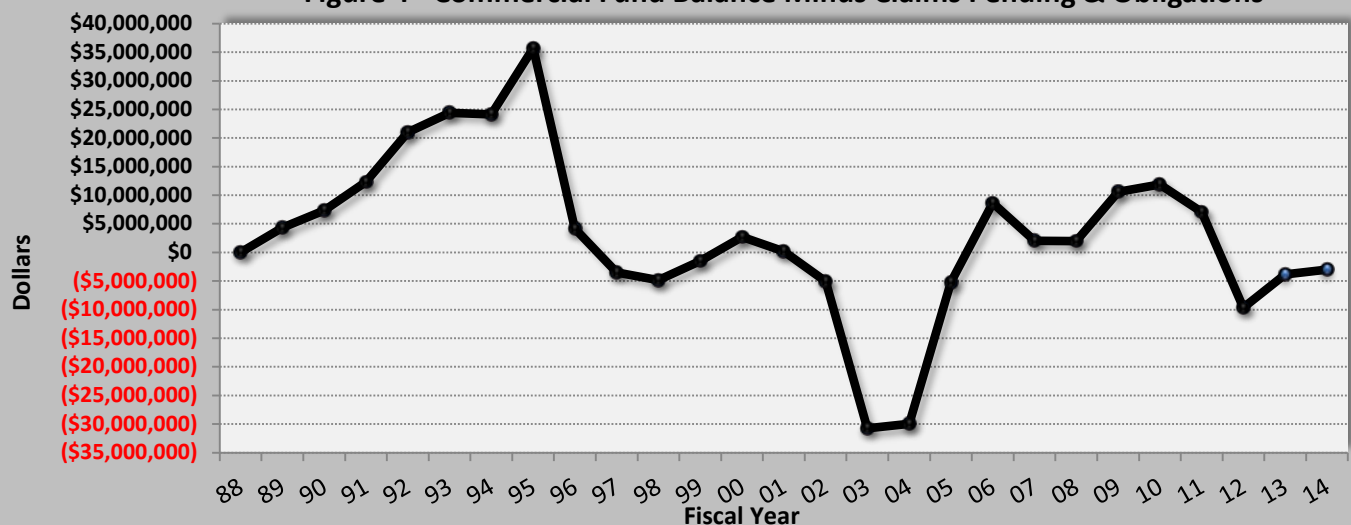


Figure 4 - Commercial Fund Balance Minus Claims Pending & Obligations



4 – Receipts & Disbursements for Noncommercial Cleanups
7/1/88 – 6/30/14

Fiscal Year	Receipts	Disbursements¹	Program 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
FY 2010	6,726,977 ¹⁰	4,371,297	1,451,830
FY 2011	6,388,636	5,922,935	1,518,243 ¹¹
FY 2012	2,402,783	4,522,671	1,521,606
FY 2013	7,272,018 ¹²	5,494,840	1,552,619
FY 2014	5,895,127 ¹³	4,599,607	1,492,126
TOTAL	\$143,588,128	\$121,877,328	\$ 23,369,208

1. Does not include program expenses.
2. \$2 million was transferred from the 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 to Noncommercial trust funds due to balance below \$5 million – GS 119.18(b).
5. Includes additional revenue from the 1-year 1.1 cent per gallon excise tax or \$19 million to the Trust Fund.
6. Includes \$1,922,601 transfer to Noncommercial Fund, \$90,000 transfer to the Department of Agriculture and Consumer Services 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 Department of Agriculture and Consumer Services (\$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 Department of Agriculture and Consumer Services (\$90,000), and Federal LUST Grant (\$53,752).
9. Includes transfer to Noncommercial Fund of \$1,004,895, and disbursement from the Comm. fund to Department of Agriculture and Consumer Services (\$90,000).
10. Includes transfer from NC DOT of \$4,283,393.
11. Includes legislatively mandated transfer of interest from the Fund - \$614,239.29.
12. Includes legislative appropriation of funds and interest transfer to the receipts for the Fund - \$4,880,000.
13. Includes legislative appropriation of funds and interest transfer to the receipts for the Fund - \$3,500,000.

**Table 5 – Claims Processed for the Noncommercial Cleanup Fund
7/1/88– 6/30/14**

Claim Action	Number
Claims Paid	14,811
Incidents Denied Totally ¹	4
Claims Denied Partially ²	5,588
Total Deductibles Paid	-----
Claims Pending	267
Contracted Cleanups ³	236

1 Ineligible (operating fees not paid; release discovery pre-dates program)

2 Claims contain excessive or undocumented costs

3 State lead actions undertaken/completed

Figure 5 - Noncommercial Fund Balance and Claims Pending & Obligations

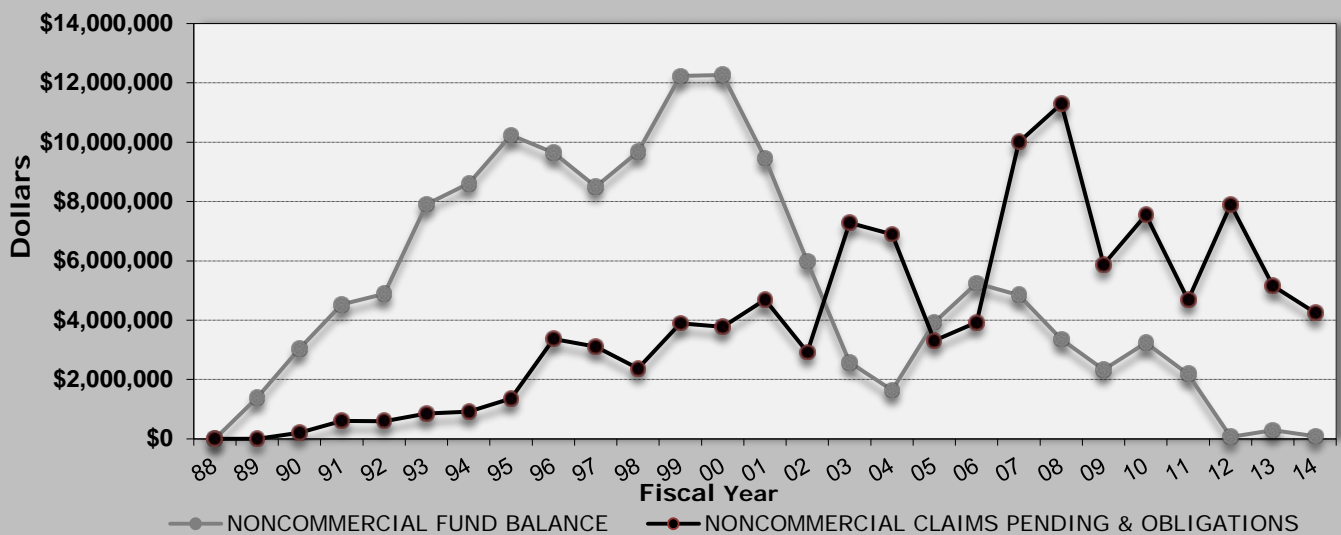


Figure 6 - Noncommercial Fund Balance Minus Claims Pending & Obligations

