

- 1 1. The Natural Gas Pipeline Safety Act of 1968 (49 U.S.C.
- 2 1671 et seq.);
- 3 2. The Hazardous Liquid Pipeline Safety Act of 1979 (49
- 4 U.S.C. 2001 et seq.); or
- 5 3. Any intrastate pipeline facility regulated under State
- 6 laws comparable to the provisions of the Natural Gas
- 7 Pipeline Safety Act of 1968 or the Hazardous Liquid
- 8 Pipeline Safety Act of 1979;
- 9 f. Surface impoundment, pit, pond, or lagoon;
- 10 g. Stormwater or waste water collection system;
- 11 h. Flow-through process tank;
- 12 i. Liquid trap or associated gathering lines directly related to oil
- 13 or gas production and gathering operations; or
- 14 j. Storage tank situated in an underground area (such as a
- 15 basement, cellar, mineworking, drift, shaft, or tunnel) if the
- 16 storage tank is situated upon or above the surface of the floor.
- 17 (2a) 'Heating oil' means petroleum that is No. 1, No. 2, No. 4-light, No. 4-
- 18 heavy, No. 5-light, No. 5-heavy, or No. 6 technical grades of fuel oil;
- 19 other residual fuel oils, including Navy Special Fuel Oil and Bunker C;
- 20 and other fuels when used as substitutes for one of these fuel oils for
- 21 the purpose of heating.
- 22 (2b) 'In use' means any commercial underground storage tank which
- 23 contains petroleum or petroleum product during any part of the
- 24 calendar year for which fees, established under this Article, are due.
- 25 (3) 'Noncommercial Fund' means the Noncommercial Leaking Petroleum
- 26 Underground Storage Tank Cleanup Fund established pursuant to this
- 27 Part.
- 28 (4) 'Noncommercial underground storage tank' means any one or
- 29 combination of tanks (including underground pipes connected thereto)
- 30 used to contain an accumulation of petroleum products, the volume of
- 31 which (including the volume of the underground pipes connected
- 32 thereto) is ten percent (10%) or more beneath the surface of the
- 33 ground. The term 'noncommercial storage tank' does not include any:
- 34 a. Commercial underground storage tanks;
- 35 b. Septic tank;
- 36 c. Pipeline facility (including gathering lines) regulated under:
- 37 1. The Natural Gas Pipeline Safety Act of 1968 (49 U.S.C.
- 38 1671 et seq.);
- 39 2. The Hazardous Liquid Pipeline Safety Act of 1979 (49
- 40 U.S.C. 2001 et seq.); or
- 41 3. Any intrastate pipeline facility regulated under State
- 42 laws comparable to the provisions of the Natural Gas
- 43 Pipeline Safety Act of 1968 or the Hazardous Liquid
- 44 Pipeline Safety Act of 1979;

- 1 d. Surface impoundment, pit, pond, or lagoon;
2 e. Stormwater or waste water collection system;
3 f. Flow-through process tank;
4 g. Liquid trap or associated gathering lines directly related to oil
5 or gas production and gathering operations; or
6 h. Storage tank situated in an underground area (such as a
7 basement, cellar, mineworking, drift, shaft, or tunnel) if the
8 storage tank is situated upon or above the surface of the floor.

9 (4a) 'Occurrence' means an accident, including continuous or repeated
10 exposure to conditions, which results in a release from a commercial
11 or noncommercial underground storage tank. Leaks from individual
12 tanks at a common location, where such tanks are not connected in
13 manifold, are separate occurrences.

14 (5) 'Operator' means any person in control of, or having responsibility for,
15 the operation of an underground storage tank.

16 (6) 'Owner' means:

- 17 a. In the case of an underground storage tank in use on 8
18 November 1984, or brought into use after that date, any person
19 who owns an underground storage tank used for the storage,
20 use, or dispensing of petroleum products; and
21 b. In the case of an underground storage tank in use before 8
22 November 1984, but no longer in use on or after that date, any
23 person who owned such tank immediately before the
24 discontinuation of its use.

25 (7) 'Petroleum' or 'petroleum product' means crude oil or any fraction
26 thereof which is a liquid at standard conditions of temperature and
27 pressure (60 degrees Fahrenheit and 14.7 pounds per square inch
28 absolute), including any such liquid which consists of a blend of
29 petroleum and alcohol and which is intended for use as a motor ~~fuel-~~
30 fuel, but does not include any substance defined in Section 101(14) of
31 the Comprehensive Environmental Response, Compensation and
32 Liability Act of 1980 nor any substance regulated under Subtitle C of
33 the Resources Conservation and Recovery Act."

34 Sec. 2. G.S. 143-215.94B reads as rewritten:

35 **"§ 143-215.94B. Commercial leaking petroleum underground storage tank cleanup**
36 **fund.**

37 (a) There is established under the control and direction of the Department the
38 Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund. This
39 Commercial Fund shall be a nonreverting revolving fund consisting of any monies
40 appropriated for such purpose by the General Assembly or available to it from grants,
41 other monies paid to it or recovered on behalf of the Commercial Fund, and fees paid
42 pursuant to this Part.

43 (b) The Commercial Fund shall be used for the payment of the following costs ~~in~~
44 ~~excess of one hundred thousand dollars (\$100,000)~~ up to an aggregate maximum of one

1 million dollars (\$1,000,000) per occurrence resulting from a discharge or release of a
2 petroleum product from a commercial underground storage tank:

3 (1) The cleanup of environmental damage as required by G.S. ~~143-~~
4 ~~215.94E(a); and 143-215.94E(a) in excess of fifty thousand dollars~~
5 ~~(\$50,000) per occurrence; and~~

6 (2) ~~The least expensive of the following:~~

7 a. ~~Providing potable water supplies including bottled water, well-~~
8 ~~head filtration systems or other suitable alternatives to persons~~
9 ~~whose water supply has been rendered unpotable; or~~

10 b. ~~Purchasing the property of the person whose water supply has~~
11 ~~been rendered unpotable. The State shall not purchase the~~
12 ~~property without the consent of the property owner, but if the~~
13 ~~property owner fails to consent, the amount expended to~~
14 ~~provide potable water shall not exceed the value of the property.~~
15 ~~If the property is purchased by the State, the purchase price~~
16 ~~shall be the value of the property immediately prior to the~~
17 ~~discovery of the discharge or release.~~

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

20 ~~In no event shall a property owner be paid any sum as liquidated damages from the~~
21 ~~Commercial Fund.~~

22 (c) The Commercial Fund is to be available on an occurrence basis, without
23 regard to number of occurrences associated with tanks owned or operated by the same
24 owner or operator. Up to a maximum of one hundred thousand dollars (\$100,000) per
25 year may be used from the Fund to pay for the administrative costs associated with
26 carrying out the provisions of this Part by the Department.

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

28 (1) Costs incurred as a result of a discharge or release from an
29 aboveground tank, aboveground pipe or ~~fitting, fitting not connected to~~
30 an underground storage tank, or vehicle;

31 (2) The replacement of any tank, pipe, fitting or related equipment;

32 (3) Costs incurred as a result of a discharge or release of petroleum from a
33 transmission pipeline;

34 (4) Costs intended to be paid by the Noncommercial Fund; or

35 (5) Costs associated with the administration of any underground storage
36 tank program other than the program administered pursuant to this
37 Part.

38 (e) The Commercial Fund shall be treated as a special trust fund and shall be
39 credited with interest by the State Treasurer pursuant to G.S. 147-69.2 and G.S. 147-
40 69.3."

41 Sec. 3. G.S. 143-215.94D reads as rewritten:

42 "**§ 143-215.94D. Noncommercial leaking petroleum underground storage tank**
43 **cleanup fund.**

1 (a) There is established under the control and direction of the Department the
2 Noncommercial Leaking Petroleum Underground Storage Tank Cleanup Fund. This
3 Noncommercial Fund shall be a nonreverting revolving fund consisting of any monies
4 appropriated for such purpose by the General Assembly or available to it from grants, or
5 other monies paid to it or recovered on behalf of the Noncommercial Fund.

6 (b) The Noncommercial Fund shall be used for the payment of the following
7 costs up to an aggregate maximum of one million dollars (\$1,000,000) per occurrence
8 resulting from a discharge or release of a petroleum product from: (i) noncommercial
9 underground storage tanks, (ii) commercial underground storage tanks where the owner
10 or operator cannot be identified or fails to proceed with the cleanup, and (iii)
11 commercial underground storage tanks which were taken out of operation prior to 1
12 January 1974 where, at the time the discharge or release is discovered, neither the owner
13 or operator owns or leases the lands on which the tank is located:

14 (1) The cleanup of environmental damage as required by G.S. 143-
15 215.94E(a); and

16 (2) The least expensive of the following:

17 a. Providing potable water supplies including bottled water, well-
18 head filtration systems or other suitable alternatives to persons
19 whose water supply has been rendered unpotable; or

20 b. Purchasing the property of the person whose water supply has
21 been rendered unpotable. The State shall not purchase the
22 property without the consent of the property owner, but if the
23 property owner fails to consent, the amount expended to
24 provide potable water shall not exceed the value of the property.
25 If the property is purchased by the State, the purchase price
26 shall be the value of the property immediately prior to the
27 discovery of the discharge or release. State purchase of the
28 property does not relieve the responsible party of the duty to
29 restore the impacted areas as required under G.S. 143-215.94E.
30 Any monies collected from the sale of the property by the State
31 shall be placed in the Noncommercial Fund.

32 In no event shall a property owner be paid any sum as liquidated damages from the
33 Noncommercial Fund.

34 (c) The Noncommercial Fund is to be available on an occurrence basis, without
35 regard to number of occurrences associated with tanks owned or operated by the same
36 owner or operator. Up to a maximum of one hundred thousand dollars (\$100,000) per year
37 may be used from the Fund to pay for the administrative costs associated with carrying out the
38 provisions of this Part by the Department.

39 (d) The Noncommercial Fund shall not be used for:

40 (1) Costs incurred as a result of a discharge or release from an
41 aboveground tank, aboveground pipe or ~~fitting~~, fitting not connected to
42 an underground storage tank, or vehicle;

43 (2) The replacement of any tank, pipe, fitting or related equipment;

- 1 (3) Costs incurred as a result of a discharge or release of petroleum from a
2 transmission pipeline;
- 3 (4) Costs intended to be paid for by the Commercial Fund; or
- 4 (5) Costs associated with the administration of any underground storage
5 tank program other than the program administered pursuant to this
6 Part.

7 (e) The Noncommercial Fund shall be treated as a special trust fund and shall be
8 credited with interest by the State Treasurer pursuant to G.S. 147-69.2 and G.S. 147-
9 69.3."

10 Sec. 4. G.S. 143-215.94E reads as rewritten:

11 "**§ 143-215.94E. Rights and obligations of the owner and operator.**

12 (a) Upon a determination that a discharge or release of petroleum from an
13 underground storage tank has occurred, the owner or operator shall notify the
14 Department pursuant to G.S. 143-215.85. The owner or operator shall immediately
15 undertake to collect and remove the discharge or release and to restore the area affected in
16 accordance with the requirements of ~~this Article.~~ G.S. 143-215.84(a).

17 (b) In the case of a discharge or release from a commercial underground storage
18 tank where the owner or operator has been identified and has proceeded with cleanup,
19 the owner or operator may elect to have the Commercial Fund pay or reimburse the owner
20 or operator for any costs described in G.S. 143-215.94B(b) which exceed ~~one hundred~~
21 ~~thousand dollars (\$100,000) up to a maximum of nine hundred thousand dollars~~
22 ~~(\$900,000).~~ fifty thousand dollars (\$50,000) for the cleanup of environmental damage and
23 one hundred thousand dollars (\$100,000) for compensating third parties for bodily injury
24 and property damage up to an aggregate maximum of one million dollars (\$1,000,000) per
25 discharge or release. The sum of payments by the owner or operator and the payments from
26 the Commercial Fund shall not exceed one million dollars (\$1,000,000) per discharge or
27 release.

28 (c) In the case of a discharge or release from a noncommercial underground
29 storage tank, the owner or operator may elect to have the Noncommercial Fund pay or
30 reimburse the owner or operator for the costs described in G.S. 143-215.94D(b) up to a
31 maximum of one million dollars (\$1,000,000) per discharge or release.

32 (d) In any case where the costs described in G.S. 143-215.94B(b) or G.S.
33 143-215.94D(b) exceed one million dollars (\$1,000,000), the provisions of Article 21A
34 of this Chapter or any other applicable statute or common law regarding liability shall
35 apply for the amount in excess of one million dollars (\$1,000,000). Nothing contained
36 in this Part shall limit or modify any liability that any party may have pursuant to
37 Article 21A of this Chapter, any other applicable statute, or at common law.

38 (e) When the owner or operator pays the costs described in G.S. 143-215.94B(b)
39 or G.S. 143-215.94D(b) resulting from a discharge or release of petroleum from an
40 underground storage tank, the owner or operator may seek reimbursement from the
41 appropriate fund for any costs he may elect to have either the Commercial or the
42 Noncommercial Fund pay in accordance with subsections (b) and (c) of this section.
43 The Department shall reimburse the owner or operator for all costs he may elect to have
44 the appropriate fund pay for which prior approval was obtained and appropriate
45 documentation was submitted, and any other costs which the Department determines to

1 be reasonable and necessary and for which appropriate documentation is submitted. If
2 the owner or operator is eligible for reimbursement under this section and the cleanup
3 extends beyond a period of three months, the owner or operator may apply to the
4 Department for interim reimbursements to which he is entitled under this section on a
5 quarterly basis.

6 (f) The Department shall not reimburse any owner or operator until the fund
7 from which reimbursement will be made reaches one million dollars (\$1,000,000).

8 (g) No owner or operator shall be reimbursed pursuant to this section, and the
9 Department shall seek reimbursement of the appropriate fund or of the Department for
10 any monies disbursed from the appropriate fund or expended by the Department if:

- 11 (1) The owner or operator has willfully violated any substantive law, rule,
12 or regulation applicable to underground storage tanks and intended to
13 prevent discharges or releases or to facilitate the early detection of
14 discharges or releases;
- 15 (2) The discharge or release is the result of the owner's or operator's
16 willful or wanton misconduct; or
- 17 (3) The owner or operator has failed to pay any annual tank operating fee
18 due pursuant to G.S. 143-215.94C."

19 Sec. 5. G.S. 143-215.94F reads as rewritten:

20 **"§ 143-215.94F. Limited amnesty.**

21 Any owner or operator who reports a suspected discharge or release from an
22 underground storage tank within 15 months ~~of following~~ the effective date of this Part
23 shall not be liable for any civil penalty that might otherwise be imposed pursuant to
24 G.S. 143-215.91(a). The limited amnesty provided by this section shall not apply upon a
25 finding by the Commission that the discharge or release was the result of gross
26 negligence or an intentional act."

27 Sec. 6. G.S. 143-215.94G reads as rewritten:

28 **"§ 143-215.94G. Authority of the Department to engage in cleanups; actions for
29 fund reimbursement.**

- 30 (a) Whenever a discharge or release of petroleum is from:
- 31 (1) A noncommercial underground storage tank;
 - 32 (2) An underground storage tank where the owner or operator cannot be
33 identified or located;
 - 34 (3) An underground storage tank where the owner or operator fails to
35 proceed as required by G.S. 143-215.94E(a); or
 - 36 (4) A commercial underground storage tank which was taken out of
37 operation prior to 1 January 1974 where, at the time the discharge or
38 release is discovered, neither the owner or operator owns or leases the
39 land on which the underground storage tank is located;

40 the Department is authorized and empowered to use staff, equipment, or materials under
41 its control or provided by other cooperating federal, State, or local agencies and to
42 contract with any agent or contractor it deems appropriate to develop and implement a
43 cleanup plan and to pay the costs authorized by G.S. 143-215.94D(b) from the
44 Noncommercial Fund. Every State agency shall provide to the Department to the

1 maximum extent feasible such staff, equipment, and materials as may be available and
2 useful to the development and implementation of a cleanup program.

3 (b) Whenever the discharge or release of a petroleum product is from a commercial
4 underground storage tank, the Department is authorized and empowered to supervise the
5 cleanup of environmental damage required by G.S. 143-215.94E(a). If the owner or
6 operator elects to have the Commercial Fund reimburse or pay for any costs allowed
7 under ~~G.S. 143-215.94B(b) in excess of one hundred thousand dollars (\$100,000)~~, G.S. 143-
8 215.94B(b), the Department shall require the owner or operator to submit
9 documentation of all expenditures which are claimed for the purposes of establishing
10 that the owner or operator has spent ~~an initial one hundred thousand dollars (\$100,000)~~. the
11 amounts required to be paid by the owner or operator pursuant to and in accordance
12 with G.S. 143-215.94E(b). The Department shall allow credit for all expenditures for
13 which prior approval was obtained from the Department and any other expenditures
14 which the Department determines to be reasonable and necessary. The Department may
15 not pay for any costs for which the Commercial Fund was established until the owner or
16 operator has paid ~~an initial one hundred thousand dollars (\$100,000)~~. the amounts specified
17 in G.S. 143-215.94E(b).

18 (c) The Secretary shall keep a record of all expenses incurred for the services of
19 State personnel and for the use of the State's equipment and material.

20 (d) The Secretary shall seek reimbursement through any legal means available,
21 for:

- 22 (1) Any costs not authorized to be paid from either the Commercial or the
23 Noncommercial Fund;
- 24 (2) The ~~initial one hundred thousand dollars (\$100,000)~~ amounts of the costs
25 provided for in G.S. 143-215.94B(b) required to be paid for by the
26 owner or operator pursuant to G.S. 143-215.94E(b) where the owner or
27 operator of a commercial underground storage tank is later identified
28 or located;
- 29 (3) The ~~initial one hundred thousand dollars (\$100,000)~~ amounts of the costs
30 provided for in G.S. 143-215.94B(b) required to be paid for by the
31 owner or operator pursuant to G.S. 143-215.94E(b) where the owner or
32 operator of a commercial underground storage tank failed to proceed
33 as required by G.S. 143-215.94E(a);
- 34 (4) Any funds due under G.S. 143-215.94E(g); and
- 35 (5) Any funds to which the State is entitled under any federal program
36 providing for the cleanup of petroleum discharges or releases from
37 underground storage tanks.

38 (e) In the event that a civil action is commenced to secure reimbursement
39 pursuant to subdivisions (1) through (4) of subsection (d) of this section, the Secretary
40 may recover, in addition to any amount due, the costs of the action, including but not
41 limited to reasonable attorney's fees and investigation expenses. Any monies received
42 or recovered as reimbursement shall be paid into the appropriate fund or other source
43 from which the expenditures were made.

1 (f) In the event that ~~one hundred thousand dollars (\$100,000) or more~~ a recovery
2 equal to or in excess of the amounts required to be paid for by the owner or operator
3 pursuant to G.S. 143-215.94E(b) is recovered pursuant to subdivisions (2) and (3) of
4 subsection (d) of this section for the costs described in G.S. 143-215.94B(b), the
5 Department shall transfer funds from the Commercial Fund that would have been paid
6 from the Commercial Fund pursuant to G.S. 143-215.94B(b) if the owner or operator
7 had proceeded with the cleanup, but which were paid from the Noncommercial Fund,
8 into the Noncommercial Fund."

9 Sec. 7. G.S. 143-215.94H reads as rewritten:

10 **"§ 143-215.94H. Financial responsibility.**

11 The Department shall require each owner and operator of a petroleum underground
12 storage tank who is required to demonstrate financial responsibility under rules
13 promulgated by the United States Environmental Protection Agency pursuant to 42
14 U.S.C. § 6991b(d) to maintain evidence of financial responsibility of not less than ~~one~~
15 ~~hundred thousand dollars (\$100,000)~~ the amounts required to be paid for by the owner or
16 operator pursuant to G.S. 143-215.94E(b) per occurrence for costs described in G.S.
17 143-215.94B(b) and G.S. 143-215.94D(b). Financial responsibility may be established
18 in accordance with rules adopted by the Commission which shall provide that financial
19 responsibility may be established by either insurance, guarantee, surety bond, letter of
20 credit, qualification as a self-insurer, or any combination thereof. The compliance date
21 schedule for demonstrating financial responsibility shall conform to the schedule
22 adopted by the Environmental Protection Agency."

23 Sec. 8. Section 4 of Chapter 1035 of the 1987 Session Laws, reads as
24 rewritten:

25 "Sec. 4. The provisions of this act as they relate to ~~any discharge or release of~~
26 ~~petroleum from an underground storage tank apply only to discharges or releases which~~
27 ~~are discovered or reported on or after the effective date of this act.~~ costs paid for by the:

28 (1) Commercial Fund apply only to discharges or releases which are
29 discovered or reported on or after June 30, 1988.

30 (2) Noncommercial Fund apply to discharges or releases without regard to
31 the date discovered or reported; however, costs sought pursuant to G.S.
32 143-215.94G(d) (1), (2), (3), and (4) shall be for the full amount of the
33 costs paid for from the Noncommercial Fund and shall not be limited
34 pursuant to G.S. 143-215.94E(b) for discharges or releases from
35 commercial underground storage tanks discovered or reported on or
36 before June 30, 1988."

37 Sec. 9. Section 5 of Chapter 1035 of the 1987 Session Laws reads as
38 rewritten:

39 "Sec. 5. G.S. 143-215.94B through G.S. 143-215.94E, G.S. 143-215.94G, and G.S.
40 143-215.94J through G.S. 143-215.94M as enacted by Section 1 of this act and Section
41 2 of this act expire 31 December ~~1989-1998~~. References to expired sections in
42 unexpired sections shall be read to give effect to the unexpired sections. If either fund
43 created by Section 1 of this act would be obligated under the provisions of this act with
44 respect to any discharge or release reported to the Department of Natural Resources and

1 Community Development or any successor department prior to the expiration of this
2 act, the respective fund may continue to pay any costs incurred in accordance with this
3 act to the extent that funds remain. In the event that funds remain in either fund after
4 the expiration of this act and after all claims and other obligations of both funds have
5 been paid, such remaining funds shall revert to the General Fund."

6 Sec. 10. Section 6 of Chapter 1035 of the 1987 Session Laws reads as
7 rewritten:

8 "~~Sec. 6. There is appropriated from the Highway Fund to the Department of Natural~~
9 ~~Resources and Community Development the sum of four million dollars (\$4,000,000)~~
10 ~~for fiscal year 1988-89 to be credited to the Noncommercial Leaking Petroleum~~
11 ~~Underground Storage Tank Cleanup Fund. All sums collected on kerosene and motor~~
12 ~~fuel pursuant to G.S. 119-18 that are not allotted by the Budget Bureau to administer~~
13 ~~and effectively enforce the provisions of Chapter 119 of the General Statutes shall be~~
14 ~~credited to the Commercial Fund as certified on a monthly basis. Five hundred thousand~~
15 ~~dollars (\$500,000) of the sums credited to the Commercial Fund pursuant to this section~~
16 ~~shall be transferred to the Department of Natural Resources and Community~~
17 ~~Development to administer and effectively enforce the provisions of G.S. 143B-282(h)~~
18 ~~and G.S. 143-215.3(a)(15)."~~

19 Sec. 11. This act is effective upon ratification.