

GENERAL ASSEMBLY OF NORTH CAROLINA
1987 SESSION

CHAPTER 1035
HOUSE BILL 1304

AN ACT TO PROVIDE FOR THE CLEANUP OF ENVIRONMENTAL DAMAGE
CAUSED BY LEAKING PETROLEUM UNDERGROUND STORAGE TANKS.

The General Assembly of North Carolina enacts:

Section 1. Article 21A of Chapter 143 of the General Statutes is amended by adding a new Part to read:

"Part 2A

"Leaking Petroleum Underground Storage Tank Cleanup.

"§ 143-215.94A. **Definitions.** – Unless a different meaning is required by the context, the following definitions shall apply throughout this Part:

- (1) 'Commercial Fund' means the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund established pursuant to this Part.
- (2) 'Commercial underground storage tank' means any one or combination of tanks (including underground pipes connected thereto) used to contain an accumulation of petroleum products, the volume of which (including the volume of the underground pipes connected thereto) is ten percent (10%) or more beneath the surface of the ground. The term 'commercial underground storage tank' does not include any:
 - a. Farm or residential underground storage tank of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes;
 - b. Underground storage tank of 1,100 gallons or less capacity used for storing heating oil for consumptive use on the premises where stored;
 - c. Underground storage tank of more than 1,100 gallon capacity used for storing heating oil for consumptive use on the premises where stored by four or fewer households;
 - d. Septic tank;
 - e. Pipeline facility (including gathering lines) regulated under:
 1. The Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. 1671 **et seq.**);
 2. The Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. 2001 **et seq.**); or
 3. Any intrastate pipeline facility regulated under State laws comparable to the provisions of the Natural Gas

- Pipeline Safety Act of 1968 or the Hazardous Liquid Pipeline Safety Act of 1979;
- f. Surface impoundment, pit, pond, or lagoon;
 - g. Storm water or waste water collection system;
 - h. Flow-through process tank;
 - i. Liquid trap or associated gathering lines directly related to oil or gas production and gathering operations; or
 - j. Storage tank situated in an underground area (such as a basement, cellar, mineworking, drift, shaft, or tunnel) if the storage tank is situated upon or above the surface of the floor.
- (3) 'Noncommercial Fund' means the Noncommercial Leaking Petroleum Underground Storage Tank Cleanup Fund established pursuant to this Part.
- (4) 'Noncommercial underground storage tank' means any one or combination of tanks (including underground pipes connected thereto) used to contain an accumulation of petroleum products, the volume of which (including the volume of the underground pipes connected thereto) is ten percent (10%) or more beneath the surface of the ground. The term 'noncommercial storage tank' does not include any:
- a. Commercial underground storage tanks;
 - b. Septic tank;
 - c. Pipeline facility (including gathering lines) regulated under:
 1. The Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. 1671 **et seq.**);
 2. The Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. 2001 **et seq.**); or
 3. Any intrastate pipeline facility regulated under State laws comparable to the provisions of the Natural Gas Pipeline Safety Act of 1968 or the Hazardous Liquid Pipeline Safety Act of 1979;
 - d. Surface impoundment, pit, pond, or lagoon;
 - e. Storm water or waste water collection system;
 - f. Flow-through process tank;
 - g. Liquid trap or associated gathering lines directly related to oil or gas production and gathering operations; or
 - h. Storage tank situated in an underground area (such as a basement, cellar, mineworking, drift, shaft, or tunnel) if the storage tank is situated upon or above the surface of the floor.
- (5) 'Operator' means any person in control of, or having responsibility for, the operation of an underground storage tank.
- (6) 'Owner' means:
- a. In the case of an underground storage tank in use on 8 November 1984, or brought into use after that date, any person

who owns an underground storage tank used for the storage, use, or dispensing of petroleum products; and

b. In the case of an underground storage tank in use before 8 November 1984, but no longer in use on or after that date, any person who owned such tank immediately before the discontinuation of its use.

(7) 'Petroleum' or 'petroleum product' means crude oil or any fraction thereof which is a liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), including any such liquid which consists of a blend of petroleum and alcohol and which is intended for use as a motor fuel.

"§ 143-215.94B. Commercial leaking petroleum underground storage tank cleanup fund. – (a) There is established under the control and direction of the Department the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund. This Commercial Fund shall be a nonreverting revolving fund consisting of any monies appropriated for such purpose by the General Assembly or available to it from grants, other monies paid to it or recovered on behalf of the Commercial Fund, and fees paid pursuant to this Part.

(b) The Commercial Fund shall be used for the payment of the following costs in excess of one hundred thousand dollars (\$100,000) up to an aggregate maximum of one million dollars (\$1,000,000) per occurrence resulting from a discharge or release of a petroleum product from a commercial underground storage tank:

- (1) The cleanup of environmental damage as required by G.S. 143-215.94E(a); and
- (2) The least expensive of the following:
 - a. Providing potable water supplies including bottled water, well-head filtration systems or other suitable alternatives to persons whose water supply has been rendered unpotable; or
 - b. Purchasing the property of the person whose water supply has been rendered unpotable. The State shall not purchase the property without the consent of the property owner, but if the property owner fails to consent, the amount expended to provide potable water shall not exceed the value of the property. If the property is purchased by the State, the purchase price shall be the value of the property immediately prior to the discovery of the discharge or release.

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

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

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

- (1) Costs incurred as a result of a discharge or release from an aboveground tank, aboveground pipe or fitting, or vehicle;
- (2) The replacement of any tank, pipe, fitting or related equipment;
- (3) Costs incurred as a result of a discharge or release of petroleum from a transmission pipeline;
- (4) Costs intended to be paid by the Noncommercial Fund; or
- (5) Costs associated with the administration of any underground storage tank program other than the program administered pursuant to this Part.

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

"§ 143-215.94C. Commercial leaking petroleum underground storage tank cleanup fees. – (a) The owner or operator of a commercial petroleum underground storage tank shall pay to the Secretary for deposit into the Commercial Fund an annual operating fee according to the following schedule:

- (1) For each petroleum commercial underground storage tank currently in operation of 3,500 gallons or less capacity – thirty dollars (\$30.00).
- (2) For each petroleum commercial underground storage tank currently in operation of more than 3,500 gallon capacity – sixty dollars (\$60.00).

(b) The operating fee shall be due and payable on 1 January of each year for that calendar year.

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

(d) If, on 1 July in any year after 1990 the Commercial Fund balance exceeds fifteen million dollars (\$15,000,000), the requirement to pay an annual operating fee pursuant to this section shall be suspended for any calendar year thereafter until the Commercial Fund balance is five million dollars (\$5,000,000) or less, at which time the requirement to pay the annual operating fee shall be reinstated beginning with the next calendar year. The duty to pay the annual operating fee shall not be suspended prior to 1 January 1991 regardless of the Commercial Fund balance.

"§ 143-215.94D. Noncommercial leaking petroleum underground storage tank cleanup fund. – (a) There is established under the control and direction of the Department the Noncommercial Leaking Petroleum Underground Storage Tank Cleanup Fund. This Noncommercial Fund shall be a nonreverting revolving fund consisting of any monies appropriated for such purpose by the General Assembly or

available to it from grants, or other monies paid to it or recovered on behalf of the Noncommercial Fund.

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

- (1) The cleanup of environmental damage as required by G.S. 143-215.94E(a); and
- (2) The least expensive of the following:
 - a. Providing potable water supplies including bottled water, well-head filtration systems or other suitable alternatives to persons whose water supply has been rendered unpotable; or
 - b. Purchasing the property of the person whose water supply has been rendered unpotable. The State shall not purchase the property without the consent of the property owner, but if the property owner fails to consent, the amount expended to provide potable water shall not exceed the value of the property. If the property is purchased by the State, the purchase price shall be the value of the property immediately prior to the discovery of the discharge or release.

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

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

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

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

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

"§ 143-215.94E. Rights and obligations of the owner and operator. – (a) Upon a determination that a discharge or release of petroleum from an underground storage tank has occurred, the owner or operator shall notify the Department pursuant to G.S. 143-215.85. The owner or operator shall immediately undertake to collect and remove the discharge or release and to restore the area affected in accordance with the requirements of this Article.

(b) In the case of a discharge or release from a commercial underground storage tank where the owner or operator has been identified and has proceeded with cleanup, the owner or operator may elect to have the Commercial Fund pay or reimburse the owner or operator for any costs described in G.S. 143-215.94B(b) which exceed one hundred thousand dollars (\$100,000) up to a maximum of nine hundred thousand dollars (\$900,000). The sum of payments by the owner or operator and the payments from the Commercial Fund shall not exceed one million dollars (\$1,000,000) per discharge or release.

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

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

(e) When the owner or operator pays the costs described in G.S. 143-215.94B(b) or G.S. 143-215.94D(b) resulting from a discharge or release of petroleum from an underground storage tank, the owner or operator may seek reimbursement from the appropriate fund for any costs he may elect to have either the Commercial or the Noncommercial Fund pay in accordance with subsections (b) and (c) of this section. The Department shall reimburse the owner or operator for all costs he may elect to have the appropriate fund pay for which prior approval was obtained and appropriate documentation was submitted, and any other costs which the Department determines to be reasonable and necessary and for which appropriate documentation is submitted. If the owner or operator is eligible for reimbursement under this section and the cleanup extends beyond a period of three months, the owner or operator may apply to the Department for interim reimbursements to which he is entitled under this section on a quarterly basis.

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

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

- (1) The owner or operator has willfully violated any substantive law, rule, or regulation applicable to underground storage tanks and intended to

prevent discharges or releases or to facilitate the early detection of discharges or releases;

- (2) The discharge or release is the result of the owner's or operator's willful or wanton misconduct; or
- (3) The owner or operator has failed to pay any annual tank operating fee due pursuant to G.S. 143-215.94C.

"§ 143-215.94F. Limited amnesty. – Any owner or operator who reports a suspected discharge or release from an underground storage tank within 15 months of the effective date of this Part shall not be liable for any civil penalty that might otherwise be imposed pursuant to G.S. 143-215.91(a). The limited amnesty provided by this section shall not apply upon a finding by the Commission that the discharge or release was the result of gross negligence or an intentional act.

"§ 143-215.94G. Authority of the Department to engage in cleanups; actions for fund reimbursement. – (a) Whenever a discharge or release of petroleum is from:

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

the Department is authorized and empowered to use staff, equipment, or materials under its control or provided by other cooperating federal, State, or local agencies and to contract with any agent or contractor it deems appropriate to develop and implement a cleanup plan and to pay the costs authorized by G.S. 143-215.94D(b) from the Noncommercial Fund. Every State agency shall provide to the Department to the maximum extent feasible such staff, equipment, and materials as may be available and useful to the development and implementation of a cleanup program.

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

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

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

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

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

(f) In the event that one hundred thousand dollars (\$100,000) or more is recovered pursuant to subdivisions (2) and (3) of subsection (d) of this section for the costs described in G.S. 143-215.94B(b), the Department shall transfer funds from the Commercial Fund that would have been paid from the Commercial Fund pursuant to G.S. 143-215.94B(b) if the owner or operator had proceeded with the cleanup, but which were paid from the Noncommercial Fund, into the Noncommercial Fund.

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

"§ 143-215.94I. Insurance pools authorized; requirements. – (a) As used in this section, 'Commissioner' means the Commissioner of Insurance of the State of North Carolina.

(b) Owners and operators of underground storage tanks may demonstrate financial responsibility by establishing insurance pools which provide insurance coverage to pool members in at least the minimum amounts specified in G.S. 143-215.94H. Each such pool shall be operated by a board of trustees consisting of at least five persons who are elected or appointed officials of pool members. The board of trustees of each pool shall:

- (1) Establish terms and conditions of coverage within the pool, including underwriting criteria, applicable deductible levels, the maximum level of claims that the pool will self-insure, and exclusions of coverage;
- (2) Ensure that all valid claims are paid promptly;
- (3) Take all necessary precautions to safeguard the assets of the pool;
- (4) Maintain minutes of its meetings and make those minutes available to the Commissioner;
- (5) Designate an administrator to carry out the policies established by the board of trustees and to provide continual management of the pool, and delineate in written minutes of its meetings the areas of authority it delegates to the pool's administrator;
- (6) Establish the amount of insurance to be purchased by the pool to provide coverage over and above the claims that are not to be satisfied directly from the pool's resources;
- (7) Establish the amount, if any, of aggregate excess insurance coverage to be purchased and maintained in the event that the pool's resources are exhausted in a given fiscal period; and
- (8) Establish guidelines for membership in the pool, including the amount of money to be collected from each pool member to form and fund the pool.

(c) The board of trustees may not:

- (1) Extend credit to individual members for payment of a premium, except pursuant to payment plans approved by the Commissioner; or
- (2) Borrow any monies from the pool or in the name of the pool, except in the ordinary course of business, without first advising the Commissioner of the nature and purpose of the loan and obtaining prior approval from the Commissioner.

(d) A contract or agreement made pursuant to this section must contain provisions:

- (1) For a system or program of loss control;
- (2) For termination of membership including both:
 - a. Cancellation of individual membership in the pool by the pool; and
 - b. Election by an individual member of the pool to terminate its participation;
- (3) That a pool or a terminating member must provide at least 90 days' written notice of cancellation or termination;

- (4) Requiring the pool to pay all claims for which each member incurs liability during each member's period of membership, except:
 - a. Where a member has individually retained the risk;
 - b. Where the risk is not covered; or
 - c. For amounts of claims above the coverage provided by the pool;
- (5) For the maintenance of claim reserves equal to known incurred losses and loss adjustment expenses and to an estimate of incurred but not reported losses;
- (6) For compliance with any applicable federal requirements regarding financial responsibility for underground storage tanks;
- (7) For a final accounting and settlement of the obligations of or refunds to a terminating member to occur when all incurred claims are concluded, settled, or paid;
- (8) That the pool may establish offices where necessary in this State and employ necessary staff to carry out the purposes of the pool;
- (9) That the pool may retain legal counsel, actuaries, claims adjusters, auditors, engineers, private consultants, and advisors, and other persons as the board of trustees or the administrator deems to be necessary;
- (10) That the pool may make and alter bylaws and rules pertaining to the exercise of its purpose and powers;
- (11) That the pool may purchase, lease, or rent real and personal property it deems to be necessary; and
- (12) That the pool may enter into financial services agreements with financial institutions and that it may issue checks in its own name.

(e) In the event that either the pool or an individual pool member gives notice of an intent to cancel or terminate participation in the pool as provided by subdivision (4) of subsection (d) of this section, the pool shall so notify both the Commissioner and the Secretary within five business days of the issuance or receipt of such notice by the pool. In addition, the pool shall notify both the Commissioner and the Secretary within five business days of the date such cancellation or termination becomes effective, unless notice of cancellation or termination is rescinded.

(f) The formation and operation of an insurance pool under this section shall be subject to approval by the Commissioner who shall, after notice and hearing, establish reasonable requirements and rules for the approval and monitoring of such pools, including prior approval of pool administrators and provisions for periodic examinations of financial condition. The Commissioner may disapprove an application for the formation of an insurance pool, and may suspend or withdraw such approval whenever he finds that such applicant or pool:

- (1) Has refused to submit its books, papers, accounts, or affairs to the reasonable inspection of the Commissioner or his representative;

- (2) Has refused, or its officers, agents, or administrators have refused, to furnish satisfactory evidence of its financial and business standing or solvency;
- (3) Is insolvent, or is in such condition that its further transaction of business in this State is hazardous to its members and creditors in this State and to the public;
- (4) Has refused or neglected to pay a valid final judgment against it within 60 days after its rendition;
- (5) Has violated any law of this State or has violated or exceeded the powers granted by its members;
- (6) Has failed to pay any taxes, fees, or charges imposed in this State within 60 days after they are due and payable, or within 60 days after final disposition or any legal contest with respect to liability therefor; or
- (7) Has been found insolvent by a court of any other state, by the insurance regulator or other proper officer or agency of any other state, and has been prohibited from doing business in such state.

(g) Each pool shall be audited annually at the expense of the pool by a certified public accounting firm, with a copy of the report available to the governing body or chief executive officer of each member of the pool and to the Commissioner. The board of trustees of the pool shall obtain an appropriate actuarial evaluation of the loss and loss adjustment expense reserves of the pool, including an estimate of losses and loss adjustment expenses incurred but not reported. The provisions of G.S. 58-16, 58-17, 58-18, 58-21, 58-22, 58-25, 58-25.1, 58-27, and 58-63 apply to each pool and to persons that administer such pools. Annual financial statements required by G.S. 58-21 shall be filed by each pool within 60 days after the end of the pool's fiscal year. All financial statements required by this section shall be prepared in accordance with generally accepted statutory accounting principles.

(h) If, as a result of the annual audit or an examination by the Commissioner, it appears that the assets of a pool are insufficient to enable the pool to discharge its legal liabilities and other obligations, the Commissioner shall notify the administrator and the board of trustees of the pool of the deficiency and his list of recommendations to abate the deficiency, including a recommendation not to add any new members until the deficiency is abated. If the pool fails to comply with the recommendations within 30 days after the date of the notice, the Commissioner may apply to the Superior Court of Wake County for an order requiring the pool to abate the deficiency and authorizing the Commissioner to appoint one or more special deputy commissioners, counsel, clerks, or assistants to oversee the implementation of the Court's order. The Commissioner has all of the powers granted to him under Article 17A of General Statute Chapter 58 relating to rehabilitation and liquidation of insurers; and the provisions of that Article apply to this section to the extent they are not in conflict with this section. The compensation and expenses of such persons shall be fixed by the Commissioner, subject to the approval of the Court, and shall be paid out of the funds or assets of the pool.

(i) Each pool contract shall provide that the members of the pool shall be assessed on a pro rata basis as calculated by the amount of each member's average annual contribution in order to satisfy the amount of any deficiency where a pool is determined to be insolvent, financially impaired, or is otherwise found to be unable to discharge its legal liabilities and other obligations.

(j) In the event that the Commissioner finds that a pool is insolvent, financially impaired, or otherwise, unable to discharge its legal liabilities or obligations, or if the Commissioner at any time has reason to believe that any owner or operator is unable to demonstrate financial responsibility as required by G.S. 143-215.94H and rules adopted by the Commission as a result of the financial condition of the pool or for any other reason, the Commissioner shall so notify the Secretary.

(k) The provisions of Article 17B of Chapter 58 do not apply to any risks retained by any pool.

"§ 143-215.94J. Limitation of liability of the State of North Carolina. – (a) No claim filed against either the Commercial Fund or the Noncommercial Fund shall be paid except from assets of the respective fund as provided for in this Part or as may otherwise be authorized by law.

(b) This Part shall not be construed to obligate the General Assembly to make any appropriation to implement the provisions of this Part; nor shall it be construed to obligate the Secretary to take any action pursuant to this Part for which funds are not available from appropriations or otherwise.

(c) The Secretary may budget anticipated receipts as needed to implement this Part.

(d) Should the Secretary find that the Noncommercial Fund balance is insufficient to satisfy all claims and other obligations of the Noncommercial Fund incurred pursuant to this Part, the Secretary may transfer funds which would otherwise revert to the General Fund to the Noncommercial Fund in order to meet such claims and obligations.

(e) If at any time either fund balance is insufficient to pay all valid claims against it, such claims shall be paid in full in the order in which they were finally determined.

"§ 143-215.94K. Penalties. – The penalties provided in G.S. 143-215.102 shall apply to this Part, provided that no penalty imposed under this Part shall exceed five thousand dollars (\$5,000).

"§ 143-215.94L. Adoption of rules; administrative procedure; miscellaneous provisions. – (a) The Commission may adopt rules necessary to implement the provisions of this Part. Except as may be otherwise specifically provided, the provisions of Chapter 150B apply to this Part.

(b) This Part shall be administered by the Department consistent with the provisions of Title VI, § 601 of the Hazardous and Solid Waste Amendments of 1984, Pub. L. No. 98-616, 42 U.S.C. 6991 **et seq.**, as amended.

(c) The provisions of this Part and of Part 2 of this Article are intended to be complementary. This Part shall not be construed to limit the liability under G.S. 143-215.84(a) of any person or to limit the authority of the Department to take any action pursuant to G.S. 143-215.84(b).

"§ 143-215.94M. **Annual reports.** – (a) The Secretary shall present an annual report to the General Assembly which shall include at least the following:

- (1) A list of all discharges or releases of petroleum from underground storage tanks;
- (2) A list of all cleanups requiring State funding through the Noncommercial Fund and a comprehensive budget to complete such cleanups;
- (3) A list of all cleanups undertaken by tank owners or operators and the status of these cleanups;
- (4) A statement of receipts and disbursements for both funds;
- (5) A statement of all claims against both funds including claims paid, claims denied, pending claims, and anticipated claims, and any other obligations; and
- (6) The adequacy of both funds to carry out the purposes of this Part.

(b) The annual reports required by this section shall be made by the Secretary beginning with the next legislative session following the effective date of this Part."

Sec. 2. G.S. 143-215.3(a) is amended by adding a new subdivision to read:

"(17) To adopt rules to implement Part 2A of Article 21A of Chapter 143."

Sec. 3. The provisions of this act are severable. In the event that any provision of this act is held invalid by a court of competent jurisdiction, the invalidity shall not affect other provisions of this act which can be given effect without the invalid provision.

Sec. 4. The provisions of this act as they relate to any discharge or release of petroleum from an underground storage tank apply only to discharges or releases which are discovered or reported on or after the effective date of this act.

Sec. 5. G.S. 143-215.94B through G.S. 143-215.94E, G.S. 143-215.94G, and G.S. 143-215.94J through G.S. 143-215.94M as enacted by Section 1 of this act and Section 2 of this act expire 31 December 1989. References to expired sections in unexpired sections shall be read to give effect to the unexpired sections. If either fund created by Section 1 of this act would be obligated under the provisions of this act with respect to any discharge or release reported to the Department of Natural Resources and Community Development or any successor department prior to the expiration of this act, the respective fund may continue to pay any costs incurred in accordance with this act to the extent that funds remain. In the event that funds remain in either fund after the expiration of this act and after all claims and other obligations of both funds have been paid, such remaining funds shall revert to the General Fund.

Sec. 6. There is appropriated from the Highway Fund to the Department of Natural Resources and Community Development the sum of four million dollars (\$4,000,000) for fiscal year 1988-89 to be credited to the Noncommercial Leaking Petroleum Underground Storage Tank Cleanup Fund.

Sec. 7. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 30th day of June, 1988.