

GENERAL ASSEMBLY OF NORTH CAROLINA
1993 SESSION

CHAPTER 402
HOUSE BILL 1061

AN ACT TO AMEND THE LEAKING PETROLEUM UNDERGROUND STORAGE
TANK CLEANUP ACT OF 1988 AND TO CLARIFY THE PURPOSES OF THE
OIL OR OTHER HAZARDOUS SUBSTANCES POLLUTION PROTECTION
FUND.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-215.94B reads as rewritten:

**"§ 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 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 that at the time the discharge or release is discovered or reported is beneath the surface of the ground or has been removed within the preceding 120 days:

(1) For discharges or releases discovered or reported between 30 June 1988 and 31 December 1991 inclusive, the cleanup of environmental damage as required by G.S. 143-215.94E(a) in excess of fifty thousand dollars (\$50,000) per occurrence.

(2) For discharges or releases discovered on or after 1 January 1992 and reported between 1 January 1992 and 31 December 1993 inclusive, the cleanup of environmental damage as required by G.S. 143-215.94E(a) in excess of twenty thousand dollars (\$20,000) per occurrence.

(2a) For discharges or releases discovered and reported on or after 1 January 1994 and prior to 1 January 1995, the cleanup of environmental damage as required by G.S. 143-215.94E(a) in excess of twenty thousand dollars (\$20,000) if the owner or operator (i) notifies the Department prior to 1 January 1994 of its intent to permanently close the tank in accordance with applicable regulations or to upgrade the tank to meet the requirements that existing underground storage tanks must meet by 22 December 1998, (ii)

commences closure or upgrade of the tank prior to 1 July 1994, and (iii) completes closure or upgrade of the tank prior to 1 January 1995.

- (3) For discharges or releases reported on or after 1 January 1994, the cleanup of environmental damage as required by G.S. 143-215.94E(a) in excess of twenty thousand dollars (\$20,000) if, prior to the discharge or release, the commercial underground storage tank from which the discharge or release occurred met the performance standards applicable to tanks installed after 22 December 1988 or met the requirements that existing underground storage tanks must meet by 22 December 1998.
- (4) For discharges or releases reported on or after 1 January 1994 from a commercial underground storage tank that does not qualify under subdivision (2a) of this subsection or does not meet the standards in subdivision (3) of this subsection, sixty percent (60%) of the costs per occurrence of the cleanup of environmental damage as required by G.S. 143-215.94E(a) that exceeds twenty thousand dollars (\$20,000) but is not more than one hundred fifty-seven thousand five hundred dollars (\$157,500) and one hundred percent (100%) of the costs above this amount, up to the limits established in this section.
- (5) Compensation to third parties for bodily injury and property damage in excess of one hundred thousand dollars (\$100,000) per occurrence.
- (6) Reimbursing the State for damages or other costs incurred as a result of a loan from the Loan Fund. The per occurrence limit does not apply to reimbursements to the State under this subdivision.

(b1) In the case of a discharge or release of a petroleum product from a commercial underground storage tank that is discovered and reported more than 120 days after the tank has been removed from the ground and prior to 1 July 1994, the Commercial Fund shall be used for the payment of costs resulting from the discharge or release in excess of the costs for which the owner or operator is responsible under subsection (b) of this section up to an aggregate of one million dollars (\$1,000,000) per occurrence. For the purpose of determining the costs for which the owner or operator is responsible under subsection (b) of this section, the discharge or release shall be considered to have been discovered and reported on the date the underground storage tank was removed from the ground. Costs shall be paid under this subsection only if the owner establishes that the:

- (1) Tank was removed from the ground on or after 22 December 1988;
- (2) Discharge was not discovered at the time the tank was removed; and
- (3) Tank was removed in compliance with all applicable federal and State laws, regulations, and rules in force at the time the tank was removed.

(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.

(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 not connected to an underground storage tank, or vehicle;
- (2) The removal or 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."

Sec. 2. G.S. 143-215.94C(b) reads as rewritten:

"(b) The annual operating fee shall be determined on a calendar year basis. For petroleum commercial underground storage tanks in use on 1 ~~January~~, January and remaining in use on or after 1 December of that year, the annual operating fee due for that year shall be as specified in subsection (a) of this section. For a petroleum commercial underground storage tank that is first placed in use in any year, the annual operating fee due for that year shall be determined by multiplying one-twelfth (1/12) of the amount specified in subsection (a) of this section by the number of months remaining in the calendar year. For a petroleum commercial underground storage tank that is permanently removed from use in any year, the annual operating fee due for that year shall be determined by multiplying one-twelfth (1/12) of the amount specified in subsection (a) of this section by the number of months in the calendar year preceding the permanent removal from use. In calculating the pro rata annual operating fee for a tank that is first placed in use or permanently removed during a calendar year under the preceding two sentences, a partial month shall count as a month, except that where a tank is permanently removed and replaced by another tank, the total of the annual operating fee for the tank that is removed and the replacement tank shall not exceed the annual operating fee for the replacement tank. The annual operating fee shall be due and payable on the first day of the month in accordance with a staggered schedule established by the Department. The Department shall implement a staggered schedule to the end that the total amount of fees to be collected by the Department is approximately the same each ~~month~~ quarter. A person who owns or operates more than one ~~commercial~~ commercial petroleum commercial underground storage tank may request that the fee for all tanks be due at the same time. A person who owns or operates 12 or more commercial petroleum storage tanks may request that the total of all fees be paid in four equal payments to be due on the first day of each calendar quarter."

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

"§ 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) that exceed the amounts for which the owner or operator is responsible under that ~~section~~-subsection. 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.

(b1) In the case of a discharge or release from a commercial underground storage tank where the owner and operator cannot be identified or located, or where the owner and operator fail to proceed as required by subsection (a) of this section, if the current landowner of the land in which the commercial underground storage tank is located notifies the Department in accordance with G.S. 143-215.85 and undertakes to collect and remove the discharge or release and to restore the area affected in accordance with the requirements of this Article and applicable federal and State laws, regulations, and rules, the current landowner may elect to have the Commercial Fund pay or reimburse the current landowner for any costs described in subdivisions (1), (2), (2a), (3), and (4) of G.S. 143-215.94B(b) that exceed the amounts for which the owner or operator is responsible under that subsection. The current landowner is not eligible for payment or reimbursement until the current landowner has paid the costs described in subdivisions (1), (2), (2a), (3), and (4) of G.S. 143-215.94B(b) for which the owner or operator is responsible. Eligibility for reimbursement under this subsection may be transferred from a current landowner who has paid the costs described in subdivisions (1), (2), (2a), (3), and (4) of G.S. 143-215.94B(b) to a subsequent landowner. The sum of payments from the Commercial Fund and from all other sources shall not exceed one million dollars (\$1,000,000) per discharge or release. This subsection shall not be construed to require a current landowner to cleanup a discharge or release of petroleum from an underground storage tank for which the current landowner is not otherwise responsible. This subsection does not alter any right, duty, obligation, or liability of a current landowner, former landowner, subsequent landowner, owner, or operator under other provisions of law. This subsection shall not be construed to limit the authority of the Department to engage in a cleanup under this Article or any other provision of law. In the event that an owner or operator is subsequently identified or located, the Secretary shall seek reimbursement as provided in G.S. 143-215.94G(d). The current landowner shall submit documentation of all expenditures as required by G.S. 143-215.94G(b).

(c) In the case of a discharge or release from a noncommercial underground storage ~~tank~~-tank or a commercial underground storage tank eligible for the Noncommercial Fund in accordance with G.S. 143-215.94D(b), 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)~~-143-215.94D(b1) 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)~~ 143-215.94D(b1) 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)~~ 143-215.94D(b1) 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 that the Department determines to be reasonable and necessary and for which appropriate documentation is submitted. The Commission shall adopt rules governing reimbursement of necessary and reasonable costs. An owner or operator whose claim for reimbursement is denied may appeal a decision of the Department as provided in Article 3 of Chapter 150B of the General Statutes. 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 or mitigate 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.

(h) Subdivision (1) of subsection (g) of this section shall not be construed to limit the right of an owner or operator to contest notices of violation or orders issued by the Department.

(i) An owner or operator who notifies the Department of an intention to close or upgrade a commercial underground storage tank as provided in G.S. 143-215.94B(b)(2a) shall commence the closure or upgrade prior to 1 July 1994 and shall complete the closure or upgrade prior to 1 January 1995. An owner who notifies the Department of an intention to close or upgrade a commercial underground storage tank and who fails to commence and complete the closure as specified in this subsection is subject to a civil penalty as provided in G.S. 143-215.94K. The provisions of G.S. 143-

215.94B(b)(2a) do not apply if an owner or operator who notifies the Department of an intention to close or upgrade a commercial underground storage tank fails to commence or complete the closure or upgrade within the dates specified in this subsection."

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

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

(a) The Department may use staff, equipment, or materials under its control or provided by other cooperating federal, State, or local agencies and ~~to~~may contract with any agent or contractor it deems appropriate to develop and implement a cleanup ~~plan~~ plan, to provide interim alternative sources of drinking water to third parties, and to pay the initial costs for providing permanent alternative sources of drinking water to third parties, and to ~~shall~~ pay the costs resulting from commercial underground storage tanks from the Commercial Fund and shall pay the costs resulting from noncommercial underground storage tanks authorized by G.S. 143-215.94D(b) ~~from the Noncommercial Fund Fund,~~ whenever there is a discharge or release of petroleum from any of the following:

- (1) A noncommercial underground storage tank.
- (2) An underground storage tank whose owner or operator cannot be identified or located.
- (3) An underground storage tank whose owner or operator fails to proceed as required by G.S. 143-215.94E(a).
- (4) A commercial underground storage tank taken out of operation prior to 1 January 1974 if, when the discharge or release is discovered, neither the owner nor operator owns or leases the land on which the underground storage tank is located.

(a1) 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.

(a2) The cost of any action authorized under subsection (a) of this section shall be paid, to the extent funds are available, from the following sources in the order listed:

- (1) 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, including, but not limited to, the Leaking Underground Storage Tank Trust Fund established pursuant to 26 U.S.C. § 4081 and 42 U.S.C. § 6991b(h).
- (2) The Commercial Fund or the Noncommercial Fund.

(b) Whenever the discharge or release of a petroleum product is from a commercial underground storage tank, the Department may 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), the Department shall require the owner or operator to submit documentation of all expenditures claimed for the purposes of establishing that the owner or operator has spent the amounts required to be paid by the owner or operator pursuant to and in accordance with G.S. 143-215.94E(b). The Department shall allow

credit for all expenditures that 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 the amounts specified in G.S. 143-215.94E(b).

(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 amounts provided for in G.S. 143-215.94B(b) required to be paid for by the owner or operator pursuant to G.S. 143-215.94E(b) where the owner or operator of a commercial underground storage tank is later identified or located;
- (3) The amounts provided for in G.S. 143-215.94B(b) required to be paid for by the owner or operator pursuant to G.S. 143-215.94E(b) where the owner or operator of a commercial underground storage tank failed to proceed as required by G.S. 143-215.94E(a);
- (3a) The amounts provided for by G.S. 143-215.94B(b)(5) required to be paid by the owner or operator to third parties for the cost of providing interim alternative sources of drinking water to third parties and the initial cost of providing permanent alternative sources of drinking water to third parties;
- (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 a recovery equal to or in excess of the amounts required to be paid for by the owner or operator pursuant to G.S. 143-215.94E(b) 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."

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

"§ 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 the amounts required to be paid for by the owner or operator pursuant to G.S. 143-215.94E(b) per occurrence for costs described in G.S. 143-215.94B(b) and G.S. ~~143-215.94D(b)~~. 143-215.94D(b1). 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."

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

"§ 143-215.94M. Reports.

(a) The Secretary shall present a semiannual report to the ~~Joint Legislative Commission on Governmental Operations and the Environmental Review Commission~~ 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~~; the Commercial Fund and the Noncommercial Fund;
- (5) A statement of all claims against both ~~funds~~ the Commercial Fund and the Noncommercial Fund, including claims paid, claims denied, pending claims, ~~and~~ anticipated claims, and any other obligations;
- (6) The adequacy of both ~~funds~~ the Commercial Fund and the Noncommercial Fund to carry out the purposes of this ~~Part~~; Part together with any recommendations as to measures that may be necessary to assure the continued solvency of the Commercial Fund and the Noncommercial Fund; and
- (7) A statement of the condition of the Loan Fund and a summary of all activity under the Loan Fund.

(b) The semiannual reports required by this section shall be made by the Secretary on 1 March and 1 September of each year beginning 1 March 1992."

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

"§ 143-215.94P. Groundwater Protection Loan Fund.

(a) There is established under the control and direction of the Department the Groundwater Protection Loan Fund. This Loan Fund shall be a nonreverting revolving fund consisting of any monies appropriated to it by the General Assembly or available to it from grants, and other monies paid to it or recovered on behalf of the Loan Fund. The Loan Fund shall be credited with interest on the Loan Fund by the State Treasurer pursuant to G.S. 147-69.2 and G.S. 147-69.3.

(b) The Loan Fund shall be used to provide loans to the owners of commercial petroleum underground storage tanks who are creditworthy but may be unable to secure conventional loans to upgrade or replace commercial underground storage tanks in use on 1 July 1991 so as to meet the performance standards applicable to tanks installed after 22 December 1988 or the requirements that existing underground storage tanks must meet by 22 December 1998. All applications for loans under this section must be received by the Department prior to 1 January 1995.

(c) ~~Using generally accepted standards prevailing among commercial lending institutions, the~~ The Department shall adopt rules for use in managing the Loan Fund. Rules for managing the Loan Fund shall be based on generally accepted standards prevailing among commercial lending institutions with such modifications as may be necessary to achieve the purpose of this section to make loans available to creditworthy applicants. The Department shall administer the loan program through existing commercial lending institutions. In the event that the Department is unable to arrange for the administration of the loan program through existing commercial institutions in all or any part of the State, the Department may administer the loan program through the Office of State Budget and Management. Each commercial institution or agency that administers any part of the loan program shall collect all charges for securing and administering each loan, including but not limited to application fees, recording costs, collection costs, and attorneys' fees from the borrower. Receipt of a loan from the Loan Fund is not a right, duty, or privilege; therefore, Article 3 of Chapter 150B of the General Statutes does not apply to the grant or denial of a loan from the Loan Fund.

(d) Funds received in repayment of loans made from the Loan Fund shall be deposited into the Loan Fund until the proceeds of all approved loans are disbursed to the borrowers. Thereafter, funds received in repayment of loans made from the Loan Fund and any other funds remaining in the Loan Fund shall be deposited in the Commercial Fund.

(e) In the event of a default on a loan from the Loan Fund or a violation of a loan agreement, the Secretary may request the Attorney General to bring a civil action for collection of the amount owed or other appropriate relief. An action shall be filed in the superior court of the county where the loan recipient resides, where the loan recipient does business, or where the tanks replaced or upgraded by the loan are located. In an action, the Attorney General may recover all costs of litigation, including attorneys' fees.

(f) If the State incurs liability in extending credit from the Loan Fund and, as a result of the liability, the State is ordered to pay or, as part of a settlement agreement, agrees to pay damages or other costs, the State shall seek reimbursement for the amount of the damages or other costs from the following sources in the order listed:

- (1) 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, including but not limited to the Leaking Underground Storage Tank Trust Fund established pursuant to 26 U.S.C. § 4081 and 42 U.S.C. § 6991b(h).
- (2) The Noncommercial Fund.

(3) The Commercial Fund."

Sec. 8. G.S. 119-18 reads as rewritten:

"§ 119-18. Inspection fee; allotments for administration expenses. tax and distribution of the tax proceeds.

(a) ~~For the purpose of defraying the expenses of enforcing the provisions of this Article there shall be paid to the Secretary of Revenue a charge Tax. – An inspection tax of one fourth of one cent (1/4 of 1¢) per gallon is levied upon all kerosene and motor fuel. The inspection tax on motor fuel is due and payable to the Secretary of Revenue at the same time that the per gallon excise tax on motor fuel is due and payable under Articles 36 and 36A of Chapter 105 of the General Statutes. The inspection tax on kerosene is payable monthly to the Secretary by a distributor required to be licensed under G.S. 119-16.2. A monthly report by a distributor required to be licensed under G.S. 119-16.2 is due by the 20th of each month and applies to kerosene received by the distributor during the preceding month.~~

(b) Proceeds. – The proceeds of the inspection tax levied by this section shall be applied first to the costs of administering this Article and Subchapter V of Chapter 105 of the General Statutes. The remainder of the proceeds shall be credited on a monthly basis to the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund and the Noncommercial Leaking Petroleum Underground Storage Tank Cleanup Fund. If the amount of revenue in the Noncommercial Fund at the end of a month is at least five million dollars (\$5,000,000), one-half of the remainder of the proceeds shall be credited to the Noncommercial Fund and one-half of the remainder of the proceeds shall be credited to the Commercial Fund. If the amount of revenue in the Noncommercial Fund at the end of a month is less than this threshold amount, all of the remainder of the proceeds shall be credited to the Noncommercial Fund. There shall, from time to time, be allotted by the Office of State Budget and Management, from the inspection fees collected under authority of the inspection laws of this State, such sums as may be necessary to administer and effectively enforce the provisions of the inspection laws.

(c) No Local Tax. – No county, city, or town shall impose any inspection charge, tax, or fee, in the nature of the charge prescribed by this section, upon kerosene and motor fuel. Distributors of kerosene licensed under G.S. 119-16.2 shall file reports as required by the Secretary of Revenue, by not later than the twentieth of each month, and remit to the Secretary of Revenue one quarter of a cent (1/4 of 1¢) inspection fee per gallon on all kerosene received during the preceding month."

Sec. 9. Section 17 of Chapter 652 of the 1989 Session Laws, as rewritten by Section 31 of Chapter 799 of the 1989 Session Laws, is repealed.

Sec. 10. G.S. 143-215.87 reads as rewritten:

"§ 143-215.87. Oil or Other Hazardous Substances Pollution Protection Fund.

There is hereby established under the control and direction of the Department an Oil or Other Hazardous Substances Pollution Protection Fund which shall be a nonlapsing, revolving fund consisting of any moneys appropriated for such purpose by the General Assembly or that shall be available to it from any other source. The moneys shall be used to defray the expenses of any project or program for the containment, collection, dispersal or removal of oil or other hazardous substances discharged to the land or

waters of this State, or discharged into waters outside the territorial limits of the State which affect land and waters or related uses within the State, ~~or for restoration necessitated by the discharge.~~ State; to assess damages for injury to, destruction of, or loss of use of natural resources; and to develop and implement plans for restoration, rehabilitation, replacement, or acquisition of the equivalent of the natural resources injured by the discharge. In addition to any moneys that shall be appropriated or otherwise made available to it, the fund shall be maintained by fees, charges, penalties or other moneys paid to or recovered by or on behalf of the Department under the provisions of this Part. Any moneys paid to or recovered by or on behalf of the Department as fees, charges, penalties or other payments as damages authorized by this Part shall be paid to the Oil or Other Hazardous Substances Pollution Protection Fund in an amount equal to the sums expended from the fund for the project or activity. Within the meaning of this section, the word 'penalties' means civil penalties and does not include criminal fines or penalties."

Sec. 11. The Secretary of Environment, Health, and Natural Resources may waive reimbursement under subdivisions (1), (3), (3a), and (5) of G.S. 143-215.94G, as amended by Section 5 of this act, of all or any part of the costs of developing and implementing a cleanup plan for a discharge or release of petroleum from an underground storage tank that is owned or operated by a public hospital, as defined by G.S. 131E-48. With respect to a discharge or release from a commercial underground storage tank owned or operated by a public hospital that was discovered and reported prior to 1 January 1993, the Secretary may grant a waiver under this section without regard to whether the annual operating fee imposed by G.S. 143-215.94C was paid. In order to request a waiver under this section, a public hospital shall make a specific written request to the Secretary setting out the reasons for the requested waiver. The public hospital shall provide the Secretary with all financial and other information necessary to determine whether a waiver should be granted. The Secretary shall grant a waiver under this section only if the Secretary finds that the public hospital has cooperated fully with the Department in developing and implementing the cleanup plan and that reimbursement of cleanup costs would render the public hospital insolvent or would otherwise result in an extreme hardship to the hospital.

Sec. 12. Section 1 through Section 7 and Sections 10 and 12 of this act are effective upon ratification. Sections 8 and 9 of this act become effective 1 July 1993. Section 11 of this act is effective upon ratification and expires 30 June 1995.

In the General Assembly read three times and ratified this the 19th day of July, 1993.

Dennis A. Wicker
President of the Senate

Daniel Blue, Jr.
Speaker of the House of Representatives