

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

H

3

HOUSE BILL 1061  
Committee Substitute Favorable 6/2/93

Short Title: Underground Storage Tanks Amends '93.

(Public)

---

Sponsors:

---

Referred to:

---

April 19, 1993

A BILL TO BE ENTITLED

1 AN ACT TO AMEND THE LEAKING PETROLEUM UNDERGROUND STORAGE  
2 TANK CLEANUP ACT OF 1988 AND TO CLARIFY THE PURPOSES OF THE  
3 OIL OR OTHER HAZARDOUS SUBSTANCES POLLUTION PROTECTION  
4 FUND.  
5

6 The General Assembly of North Carolina enacts:

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

8 "**§ 143-215.94B. Commercial Leaking Petroleum Underground Storage Tank**  
9 **Cleanup Fund.**

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

16 (b) The Commercial Fund shall be used for the payment of the following costs up  
17 to an aggregate maximum of one million dollars (\$1,000,000) per occurrence resulting  
18 from a discharge or release of a petroleum product from a commercial underground  
19 storage tank that at the time the discharge or release is discovered or reported is beneath  
20 the surface of the ground or has been removed within the preceding 120 days:

21 (1) For discharges or releases discovered ~~or~~ and reported between 30 June  
22 1988 and 31 December 1991 inclusive, the cleanup of environmental

- 1 damage as required by G.S. 143-215.94E(a) in excess of fifty thousand  
2 dollars (\$50,000) per occurrence.
- 3 (2) For discharges or releases discovered on or after 1 January 1992 and  
4 reported between 1 January 1992 and 31 December 1993 inclusive, the  
5 cleanup of environmental damage as required by G.S. 143-215.94E(a)  
6 in excess of twenty thousand dollars (\$20,000) per occurrence.
- 7 (2a) For discharges or releases discovered and reported on or after 1  
8 January 1994 and prior to 1 January 1995, the cleanup of  
9 environmental damage as required by G.S. 143-215.94E(a) in excess  
10 of twenty thousand dollars (\$20,000) if the owner or operator (i)  
11 notifies the Department prior to 1 January 1994 of its intent to  
12 permanently close the tank in accordance with applicable regulations  
13 or to upgrade the tank to meet the requirements that existing  
14 underground storage tanks must meet by 22 December 1998, (ii)  
15 commences closure or upgrade of the tank prior to 1 July 1994, and  
16 (iii) completes closure or upgrade of the tank prior to 1 January 1995.
- 17 (3) For discharges or releases discovered and reported on or after 1  
18 January 1994, the cleanup of environmental damage as required by  
19 G.S. 143-215.94E(a) in excess of twenty thousand dollars (\$20,000) if,  
20 prior to the discharge or release, the commercial underground storage  
21 tank from which the discharge or release occurred met the  
22 performance standards applicable to tanks installed after 22 December  
23 1988 or met the requirements that existing underground storage tanks  
24 must meet by 22 December 1998.
- 25 (4) For discharges or releases discovered and reported on or after 1  
26 January 1994 from a commercial underground storage tank that does  
27 not qualify under subdivision (2a) of this subsection or does not meet  
28 the standards in subdivision (3) of this subsection, sixty percent (60%)  
29 of the costs per occurrence of the cleanup of environmental damage as  
30 required by G.S. 143-215.94E(a) that exceeds twenty thousand dollars  
31 (\$20,000) but is not more than one hundred fifty-seven thousand five  
32 hundred dollars (\$157,500) and one hundred percent (100%) of the  
33 costs above this amount, up to the limits established in this section.
- 34 (5) Compensation to third parties for bodily injury and property damage in  
35 excess of one hundred thousand dollars (\$100,000) per occurrence.
- 36 (6) Reimbursing the State for damages or other costs incurred as a result  
37 of a loan from the Loan Fund. The per occurrence limit does not apply  
38 to reimbursements to the State under this subdivision.
- 39 (b1) In the case of a discharge or release of a petroleum product from a  
40 commercial underground storage tank that is discovered and reported more than 120  
41 days after the tank has been removed from the ground and prior to 1 July 1994, the  
42 Commercial Fund shall be used for the payment of costs resulting from the discharge or  
43 release in excess of the costs for which the owner or operator is responsible under  
44 subsection (b) of this section up to an aggregate of one million dollars (\$1,000,000) per

1 occurrence. For the purpose of determining the costs for which the owner or operator is  
2 responsible under subsection (b) of this section, the discharge or release shall be  
3 considered to have been discovered and reported on the date the underground storage  
4 tank was removed from the ground. Costs shall be paid under this subsection only if the  
5 owner establishes that the:

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

10 (c) The Commercial Fund is to be available on an occurrence basis, without  
11 regard to number of occurrences associated with tanks owned or operated by the same  
12 owner or operator.

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

- 14 (1) Costs incurred as a result of a discharge or release from an  
15 aboveground tank, aboveground pipe or fitting not connected to an  
16 underground storage tank, or vehicle;
- 17 (2) The removal or replacement of any tank, pipe, fitting or related  
18 equipment;
- 19 (3) Costs incurred as a result of a discharge or release of petroleum from a  
20 transmission pipeline;
- 21 (4) Costs intended to be paid by the Noncommercial Fund; or
- 22 (5) Costs associated with the administration of any underground storage  
23 tank program other than the program administered pursuant to this  
24 Part.

25 (e) The Commercial Fund shall be treated as a special trust fund and shall be  
26 credited with interest by the State Treasurer pursuant to G.S. 147-69.2 and G.S. 147-  
27 69.3."

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

29 "(b) The annual operating fee shall be determined on a calendar year basis. For  
30 petroleum commercial underground storage tanks in use on 1 ~~January~~, January and  
31 remaining in use on or after 1 December of that year, the annual operating fee due for  
32 that year shall be as specified in subsection (a) of this section. For a petroleum  
33 commercial underground storage tanks which are tank that is first placed in use in any  
34 year, the annual operating fee due for that year shall be determined by multiplying one-  
35 twelfth (1/12) of the amount specified in subsection (a) of this section by the number of  
36 months remaining in the calendar year. For a petroleum commercial underground  
37 storage tank that is permanently removed from use in any year, the annual operating fee  
38 due for that year shall be determined by multiplying one-twelfth (1/12) of the amount  
39 specified in subsection (a) of this section by the number of months in the calendar year  
40 preceding the permanent removal from use. In calculating the pro rata annual operating  
41 fee for a tank that is first placed in use or permanently removed during a calendar year  
42 under the preceding two sentences, a partial month shall count as a month, except that  
43 where a tank is permanently removed and replaced by another tank, the total of the  
44 annual operating fee for the tank that is removed and the replacement tank shall not

1 exceed the annual operating fee for the replacement tank. The annual operating fee  
2 shall be due and payable on the first day of the month in accordance with a staggered  
3 schedule established by the Department. The Department shall implement a staggered  
4 schedule to the end that the total amount of fees to be collected by the Department is  
5 approximately the same each ~~month~~-quarter. A person who owns or operates more than  
6 one ~~commercial~~-petroleum commercial underground storage tank may request that the  
7 fee for all tanks be due at the same time. A person who owns or operates 12 or more  
8 commercial petroleum storage tanks may request that the total of all fees be paid in four  
9 equal payments to be due on the first day of each calendar quarter."

10 Sec. 3. 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  
16 in accordance with the requirements of this Article.

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  
20 owner or operator for any costs described in G.S. 143-215.94B(b) that exceed the  
21 amounts for which the owner or operator is responsible under that ~~section~~-subsection.  
22 The sum of payments by the owner or operator and the payments from the Commercial  
23 Fund shall not exceed one million dollars (\$1,000,000) per discharge or release.

24 (b1) In the case of a discharge or release from a commercial underground storage  
25 tank where the owner and operator cannot be identified or located, or where the owner  
26 and operator fail to proceed as required by subsection (a) of this section, if the current  
27 landowner of the land in which the commercial underground storage tank is located  
28 notifies the Department in accordance with G.S. 143-215.85 and undertakes to collect  
29 and remove the discharge or release and to restore the area affected in accordance with  
30 the requirements of this Article and applicable federal and State laws, regulations, and  
31 rules, the current landowner may elect to have the Commercial Fund pay or reimburse  
32 the current landowner for any costs described in subdivisions (1), (2), (2a), (3), and (4)  
33 of G.S. 143-215.94B(b) that exceed the amounts for which the owner or operator is  
34 responsible under that subsection. The current landowner is not eligible for payment or  
35 reimbursement until the current landowner has paid the costs described in subdivisions  
36 (1), (2), (2a), (3), and (4) of G.S. 143-215.94B(b) for which the owner or operator is  
37 responsible. Eligibility for reimbursement under this subsection may be transferred from  
38 a current landowner who has paid the costs described in subdivisions (1), (2), (2a), (3),  
39 and (4) of G.S. 143-215.94B(b) to a subsequent landowner. The sum of payments from  
40 the Commercial Fund and from all other sources shall not exceed one million dollars  
41 (\$1,000,000) per discharge or release. This subsection shall not be construed to require a  
42 current landowner to cleanup a discharge or release of petroleum from an underground  
43 storage tank for which the current landowner is not otherwise responsible. This  
44 subsection does not alter any right, duty, obligation, or liability of a current landowner,

1 former landowner, subsequent landowner, owner, or operator under other provisions of  
2 law. This subsection shall not be construed to limit the authority of the Department to  
3 engage in a cleanup under this Article or any other provision of law. In the event that an  
4 owner or operator is subsequently identified or located, the Secretary shall seek  
5 reimbursement as provided in G.S. 143-215.94G(d). The current landowner shall submit  
6 documentation of all expenditures as required by G.S. 143-215.94G(b).

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

11 (d) In any case where the costs described in G.S. 143-215.94B(b) or G.S. 143-  
12 215.94D(b) exceed one million dollars (\$1,000,000), the provisions of Article 21A of  
13 this Chapter or any other applicable statute or common law regarding liability shall  
14 apply for the amount in excess of one million dollars (\$1,000,000). Nothing contained  
15 in this Part shall limit or modify any liability that any party may have pursuant to  
16 Article 21A of this Chapter, any other applicable statute, or at common law.

17 (e) When the owner or operator pays the costs described in G.S. 143-215.94B(b)  
18 or G.S. 143-215.94D(b) resulting from a discharge or release of petroleum from an  
19 underground storage tank, the owner or operator may seek reimbursement from the  
20 appropriate fund for any costs he may elect to have either the Commercial or the  
21 Noncommercial Fund pay in accordance with subsections (b) and (c) of this section.  
22 The Department shall reimburse the owner or operator for all costs he may elect to have  
23 the appropriate fund pay that the Department determines to be reasonable and necessary  
24 and for which appropriate documentation is submitted. The Commission shall adopt  
25 rules governing reimbursement of necessary and reasonable costs. An owner or operator  
26 whose claim for reimbursement is denied may appeal a decision of the Department as  
27 provided in Article 3 of Chapter 150B of the General Statutes. If the owner or operator  
28 is eligible for reimbursement under this section and the cleanup extends beyond a period  
29 of three months, the owner or operator may apply to the Department for interim  
30 reimbursements to which he is entitled under this section on a quarterly basis.

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

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

- 36 (1) The owner or operator has willfully violated any substantive law, rule,  
37 or regulation applicable to underground storage tanks and intended to  
38 prevent or mitigate discharges or releases or to facilitate the early  
39 detection of discharges or releases;
- 40 (2) The discharge or release is the result of the owner's or operator's  
41 willful or wanton misconduct; or
- 42 (3) The owner or operator has failed to pay any annual tank operating fee  
43 due pursuant to G.S. 143-215.94C.

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

4 (i) An owner or operator who notifies the Department of an intention to close or  
5 upgrade a commercial underground storage tank as provided in G.S. 143-  
6 215.94B(b)(2a) shall commence the closure or upgrade prior to 1 July 1994 and shall  
7 complete the closure or upgrade prior to 1 January 1995. An owner who notifies the  
8 Department of an intention to close or upgrade a commercial underground storage tank  
9 and who fails to commence and complete the closure as specified in this subsection is  
10 subject to a civil penalty as provided in G.S. 143-215.94K. The provisions of G.S. 143-  
11 215.94B(b)(2a) do not apply if an owner or operator who notifies the Department of an  
12 intention to close or upgrade a commercial underground storage tank fails to commence  
13 or complete the closure or upgrade within the dates specified in this subsection."

14 Sec. 4. G.S. 143-215.94E(c) reads as rewritten:

15 "(c) In the case of a discharge or release from a noncommercial underground  
16 storage tank, ~~tank~~ or a commercial underground storage tank eligible for the  
17 Noncommercial Fund in accordance with G.S. 143-215.94D(b), the owner or operator  
18 may elect to have the Noncommercial Fund pay or reimburse the owner or operator for  
19 the costs described in G.S. ~~143-215.94D(b)~~ 143-215.94D(b1) up to a maximum of one  
20 million dollars (\$1,000,000) per discharge or release."

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

22 "**§ 143-215.94G. Authority of the Department to engage in cleanups; actions for**  
23 **fund reimbursement.**

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

- 34 (1) A noncommercial underground storage tank.
- 35 (2) An underground storage tank whose owner or operator cannot be  
36 identified or located.
- 37 (3) An underground storage tank whose owner or operator fails to proceed  
38 as required by G.S. 143-215.94E(a).
- 39 (4) A commercial underground storage tank taken out of operation prior to  
40 1 January 1974 if, when the discharge or release is discovered, neither  
41 the owner nor operator owns or leases the land on which the  
42 underground storage tank is located.

1 (a1) Every State agency shall provide to the Department to the maximum extent  
2 feasible such staff, equipment, and materials as may be available and useful to the  
3 development and implementation of a cleanup program.

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

6 (1) Any funds to which the State is entitled under any federal program  
7 providing for the cleanup of petroleum discharges or releases from  
8 underground storage tanks, including, but not limited to, the Leaking  
9 Underground Storage Tank Trust Fund established pursuant to 26  
10 U.S.C. § 4081 and 42 U.S.C. § 6991b(h).

11 (2) The Commercial Fund or the Noncommercial Fund.

12 (b) Whenever the discharge or release of a petroleum product is from a  
13 commercial underground storage tank, the Department may supervise the cleanup of  
14 environmental damage required by G.S. 143-215.94E(a). If the owner or operator elects  
15 to have the Commercial Fund reimburse or pay for any costs allowed under G.S. 143-  
16 215.94B(b), the Department shall require the owner or operator to submit  
17 documentation of all expenditures claimed for the purposes of establishing that the  
18 owner or operator has spent the amounts required to be paid by the owner or operator  
19 pursuant to and in accordance with G.S. 143-215.94E(b). The Department shall allow  
20 credit for all expenditures that the Department determines to be reasonable and  
21 necessary. The Department may not pay for any costs for which the Commercial Fund  
22 was established until the owner or operator has paid the amounts specified in G.S. 143-  
23 215.94E(b).

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

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

28 (1) Any costs not authorized to be paid from either the Commercial or the  
29 Noncommercial Fund;

30 (2) The amounts provided for in G.S. 143-215.94B(b) required to be paid  
31 for by the owner or operator pursuant to G.S. 143-215.94E(b) where  
32 the owner or operator of a commercial underground storage tank is  
33 later identified or located;

34 (3) The amounts provided for in G.S. 143-215.94B(b) required to be paid  
35 for by the owner or operator pursuant to G.S. 143-215.94E(b) where  
36 the owner or operator of a commercial underground storage tank failed  
37 to proceed as required by G.S. 143-215.94E(a);

38 (3a) The amounts provided for by G.S. 143-215.94B(b)(5) required to be  
39 paid by the owner or operator to third parties for the cost of providing  
40 interim alternative sources of drinking water to third parties and the  
41 initial cost of providing permanent alternative sources of drinking  
42 water to third parties;

43 (4) Any funds due under G.S. 143-215.94E(g); and

1 (5) Any funds to which the State is entitled under any federal program  
2 providing for the cleanup of petroleum discharges or releases from  
3 underground storage tanks.

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

10 (f) In the event that a recovery equal to or in excess of the amounts required to  
11 be paid for by the owner or operator pursuant to G.S. 143-215.94E(b) is recovered  
12 pursuant to subdivisions (2) and (3) of subsection (d) of this section for the costs  
13 described in G.S. 143-215.94B(b), the Department shall transfer funds from the  
14 Commercial Fund that would have been paid from the Commercial Fund pursuant to  
15 G.S. 143-215.94B(b) if the owner or operator had proceeded with the cleanup, but  
16 which were paid from the Noncommercial Fund, into the Noncommercial Fund."

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

18 **"§ 143-215.94M. Reports.**

19 (a) The Secretary shall present a semiannual report to the ~~Joint Legislative~~  
20 ~~Commission on Governmental Operations and the Environmental Review Commission~~  
21 which shall include at least the following:

- 22 (1) A list of all discharges or releases of petroleum from underground  
23 storage tanks;
- 24 (2) A list of all cleanups requiring State funding through the  
25 Noncommercial Fund and a comprehensive budget to complete such  
26 cleanups;
- 27 (3) A list of all cleanups undertaken by tank owners or operators and the  
28 status of these cleanups;
- 29 (4) A statement of receipts and disbursements for both ~~funds;—the~~  
30 Commercial Fund and the Noncommercial Fund;
- 31 (5) A statement of all claims against both ~~funds—the Commercial Fund and~~  
32 the Noncommercial Fund, including claims paid, claims denied,  
33 pending claims, ~~and~~ anticipated claims, and any other obligations;
- 34 (6) The adequacy of both ~~funds—the Commercial Fund and the~~  
35 Noncommercial Fund to carry out the purposes of this ~~Part;—Part~~  
36 together with any recommendations as to measures that may be  
37 necessary to assure the continued solvency of the Commercial Fund  
38 and the Noncommercial Fund; and
- 39 (7) A statement of the condition of the Loan Fund and a summary of all  
40 activity under the Loan Fund.

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

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

44 **"§ 143-215.94P. Groundwater Protection Loan Fund.**



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

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

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

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

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

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

1 (1) Any funds to which the State is entitled under any federal program  
2 providing for the cleanup of petroleum discharges or releases from  
3 underground storage tanks, including but not limited to the Leaking  
4 Underground Storage Tank Trust Fund established pursuant to 26  
5 U.S.C. § 4081 and 42 U.S.C. § 6991b(h).

6 (2) The Noncommercial Fund.

7 (3) The Commercial Fund."

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

9 **"§ 119-18. ~~Inspection fee; allotments for administration expenses.~~ tax and distribution**  
10 **of the tax proceeds.**

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

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

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

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

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

44 **"§ 143-215.87. Oil or Other Hazardous Substances Pollution Protection Fund.**

1       There is hereby established under the control and direction of the Department an Oil  
2 or Other Hazardous Substances Pollution Protection Fund which shall be a nonlapsing,  
3 revolving fund consisting of any moneys appropriated for such purpose by the General  
4 Assembly or that shall be available to it from any other source. The moneys shall be  
5 used to defray the expenses of any project or program for the containment, collection,  
6 dispersal or removal of oil or other hazardous substances discharged to the land or  
7 waters of this State, or discharged into waters outside the territorial limits of the State  
8 which affect land and waters or related uses within the State, ~~or for restoration necessitated~~  
9 ~~by the discharge.~~ State; to assess damages for injury to, destruction of, or loss of use of  
10 natural resources; and to develop and implement plans for restoration, rehabilitation,  
11 replacement, or acquisition of the equivalent of the natural resources injured by the  
12 discharge. In addition to any moneys that shall be appropriated or otherwise made  
13 available to it, the fund shall be maintained by fees, charges, penalties or other moneys  
14 paid to or recovered by or on behalf of the Department under the provisions of this Part.  
15 Any moneys paid to or recovered by or on behalf of the Department as fees, charges,  
16 penalties or other payments as damages authorized by this Part shall be paid to the Oil  
17 or Other Hazardous Substances Pollution Protection Fund in an amount equal to the  
18 sums expended from the fund for the project or activity. Within the meaning of this  
19 section, the word 'penalties' means civil penalties and does not include criminal fines or  
20 penalties."

21               Sec. 11. Section 1 through Section 7 and Sections 10 and 11 of this act are  
22 effective upon ratification. Sections 8 and 9 of this act become effective 1 July 1993.