

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2005**

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**SENATE DRS15394-LD-182B (05/16)**

Short Title: Leaking Underground Storage Tank Funds. (Public)

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Sponsors: Senator East.

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Referred to:

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A BILL TO BE ENTITLED

1  
2 AN ACT TO REQUIRE THE DEPARTMENT OF ENVIRONMENT AND  
3 NATURAL RESOURCES TO NOTIFY AN OWNER OR OPERATOR THAT  
4 UNDERTAKES THE CLEANUP OF A DISCHARGE OR RELEASE OF  
5 PETROLEUM FROM AN UNDERGROUND STORAGE TANK OF THE  
6 ADEQUACY OF THE CLEANUP WITHIN THREE YEARS OF THE  
7 DISCHARGE OR RELEASE, TO PROHIBIT THE DEPARTMENT FROM  
8 REQUIRING THE OWNER OR OPERATOR TO TAKE FURTHER ACTION IF  
9 THE DEPARTMENT FAILS TO GIVE THE OWNER OR OPERATOR THIS  
10 NOTICE, TO REMOVE A CURRENT LIMITATION REGARDING  
11 REIMBURSEMENTS TO OWNERS OR OPERATORS FOR CLEANUP COSTS  
12 THAT MAY BE PAID FROM THE NONCOMMERCIAL LEAKING  
13 PETROLEUM UNDERGROUND STORAGE TANK FUND, TO MODIFY THE  
14 LIMITATION THAT CURRENTLY PROVIDES THAT OWNERS OR  
15 OPERATORS CANNOT BE REIMBURSED FOR FAILURE TO HAVE PAID AN  
16 ANNUAL TANK OPERATING FEE, AND TO APPROPRIATE FUNDS FOR  
17 THE DEPARTMENT'S PROGRAM COSTS.

18 The General Assembly of North Carolina enacts:

19 **SECTION 1.** G.S. 143-215.94E(a) reads as rewritten:

20 "(a) Upon a determination that a discharge or release of petroleum from an  
21 underground storage tank has occurred, the owner or operator of the underground  
22 storage tank shall notify the Department pursuant to G.S. 143-215.85. The owner or  
23 operator of the underground storage tank shall immediately undertake to collect and  
24 remove the discharge or release and to restore the area affected in accordance with the  
25 requirements of this Article. If the owner or operator of the underground storage tank  
26 notifies the Department that a discharge or release of petroleum has occurred and the  
27 owner or operator undertakes to collect and remove the discharge or release, the

1 Department shall notify the owner or operator as to the adequacy of the cleanup within  
2 three years of the date the discharge or release occurred. If the Department fails to so  
3 notify the owner or operator, the owner or operator may consider the cleanup to be  
4 complete, and the Department shall not require further action."

5 **SECTION 2.** G.S. 143-215.94D(b) reads as rewritten:

6 "(b) The Noncommercial Fund shall be used for the payment of the costs set out in  
7 subsection (b1) of this section, up to an aggregate maximum of one million dollars  
8 (\$1,000,000) per occurrence resulting from a discharge or release of a petroleum  
9 product from:

10 (1) Noncommercial underground storage tanks if the discharge or release  
11 meets the minimum priority criteria for corrective action established  
12 by the Department.

13 (2) Commercial underground storage tanks if the owner or operator cannot  
14 be identified or fails to proceed with the cleanup.

15 (3) Commercial underground storage tanks that were taken out of  
16 operation prior to 1 January 1974 ~~if, at the time the discharge or~~  
17 ~~release is discovered, neither the owner or operator owns or leases the~~  
18 ~~lands on which the tank is located.~~1974.

19 (4) Commercial underground storage tanks if the owner of the commercial  
20 underground storage tank is the owner only as a result of owning the  
21 land on which the commercial underground storage tank is located, the  
22 owner did not know or have reason to know that the underground  
23 storage tank was located on the property, and the land was not  
24 transferred to the owner to avoid liability for the commercial  
25 underground storage tank.

26 (5) Commercial underground storage tanks if the owner or operator is not  
27 notified as required under G.S. 143-215.94E(a)."

28 **SECTION 3.** G.S. 143-215.94E(g) reads as rewritten:

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

33 (1) The owner or operator has willfully violated any substantive law, rule,  
34 or regulation applicable to underground storage tanks and intended to  
35 prevent or mitigate discharges or releases or to facilitate the early  
36 detection of discharges or releases.

37 (2) The discharge or release is the result of the owner's or operator's  
38 willful or wanton misconduct.

39 (3) The owner or operator has failed to pay any annual tank operating fee  
40 due pursuant to ~~G.S. 143-215.94C~~ G.S. 143-215.94C within one year  
41 of the date the discharge or release was discovered."

42 **SECTION 4.(a)** There is appropriated from the Commercial Leaking  
43 Petroleum Underground Storage Tank Cleanup Fund to the Department of Environment  
44 and Natural Resources the sum of one hundred thousand dollars (\$100,000) for the

1 2006-2007 fiscal year to be used for the increased operating costs and the cost of any  
2 legislative salary increase under the continuing budget act for staff who administer the  
3 underground storage tank program under Parts 2 and 2A of Article 21A of Chapter 143  
4 of the General Statutes.

5       **SECTION 4.(b)** There is appropriated from the Noncommercial Leaking  
6 Petroleum Underground Storage Tank Cleanup Fund to the Department of Environment  
7 and Natural Resources the sum of one hundred thousand dollars (\$100,000) for the  
8 2006-2007 fiscal year to be used for the increased operating costs and the cost of any  
9 legislative salary increase under the continuing budget act for staff who administer the  
10 underground storage tank program under Parts 2 and 2A of Article 21A of Chapter 143  
11 of the General Statutes.

12       **SECTION 4.(c)** It is the intent of the General Assembly that funds  
13 appropriated under this section are recurring funds and that these funds are in addition  
14 to funds appropriated under Section 11.4(b) of S.L. 2003-284 and Section 30.10(b) of  
15 S.L. 2004-124.

16       **SECTION 5.** Section 4 of this act becomes effective July 1, 2006. Section 3  
17 of this act becomes effective June 30, 1988, and applies to discharges and releases of  
18 petroleum that occur on or after that date. The remaining sections of this act are  
19 effective when it becomes law and apply to discharges and releases of petroleum that  
20 occur on or after that date.