

**NORTH CAROLINA STATUTORY REQUIREMENTS APPLICABLE TO
THE
UNDERGROUND STORAGE TANK PROGRAM**

August 15, 2024

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~~§ 143-215.2. Special orders.~~

~~(a) Issuance. — The Commission may, after the effective date of classifications, standards and limitations adopted pursuant to G.S. 143-214.1 or G.S. 143-215, or a water supply watershed management requirement adopted pursuant to G.S. 143-214.5, issue, and from time to time modify or revoke, a special order, or other appropriate instrument, to any person whom it finds responsible for causing or contributing to any pollution of the waters of the State within the area for which standards have been established. The order or instrument may direct the person to take, or refrain from taking an action, or to achieve a result, within a period of time specified by the special order, as the Commission deems necessary and feasible in order to alleviate or eliminate the pollution. The Commission is authorized to enter into consent special orders, assurances of voluntary compliance or other similar documents by agreement with the person responsible for pollution of the water, subject to the provisions of subsection (a1) of this section regarding proposed orders, and the consent order, when entered into by the Commission after public review, shall have the same force and effect as a special order of the Commission issued pursuant to hearing.~~

~~(a1) Public Notice and Review of Consent Orders.~~

- ~~(1) The Commission shall give notice of a proposed consent order to the proper State, interstate, and federal agencies, to interested persons, and to the public. The Commission may also provide any other data it considers appropriate to those notified. The Commission shall prescribe the form and content of the notice. The notice shall be given at least 45 days prior to any final action regarding the consent order. Public notice shall be given by publication of the notice one time in a newspaper having general circulation within the county in which the pollution originates.~~
- ~~(2) Any person who desires a public meeting on any proposed consent order may request one in writing to the Commission within 30 days following date of the notice of the proposed consent order. The Commission shall consider all such requests for meetings. If the Commission determines that there is significant public interest in holding a meeting, the Commission shall schedule a meeting and shall give notice of such meeting at least 30 days in advance to all persons to whom notice of the proposed consent order was given and to any other person requesting notice. At least 30 days prior to the date of meeting, the Commission shall also have a copy of the notice of the meeting published at least one time in a newspaper having general circulation within the county in which the pollution originates. The Commission shall prescribe the form and content of notices under this subsection.~~
- ~~(3) The Commission shall prescribe the procedures to be followed in such meetings. If the meeting is not conducted by the Commission, detailed minutes of the meeting shall be kept and shall be submitted, along with any other written comment, exhibits or other documents presented at the meeting, to the Commission for its consideration prior to final action granting or denying the consent order.~~
- ~~(4) The Commission shall take final action on a proposed consent not later than 60 days following notice of the proposed consent order or, if a public meeting is held, within 90 days following such meeting.~~

~~(b) Procedure to Contest Certain Orders. — A special order that is issued without the consent of the person affected may be contested by that person by filing a petition for a contested case under G.S. 150B-23 within 30 days after the order is issued. If the person~~

~~affected does not file a petition within the required time, the order is final and is not subject to review.~~

~~(c) Repealed by Session Laws 1987, c. 827, s. 160.~~

~~(d) Effect of Compliance. – Any person who installs a treatment works for the purpose of alleviating or eliminating water pollution in compliance with the terms of, or as a result of the conditions specified in, a permit issued pursuant to G.S. 143-215.1, or a special order, consent special order, assurance of voluntary compliance or similar document issued pursuant to this section, or a final decision of the Commission or a court rendered pursuant to either of said sections, shall not be required to take or refrain from any further action nor be required to achieve any further results under the terms of this or any other State law relating to the control of water pollution, for a period to be fixed by the Commission or court as it shall deem fair and reasonable in the light of all the circumstances after the date when such special order, consent special order, assurance of voluntary compliance, other document, or decision, or the conditions of such permit become finally effective, if:~~

~~(1) The treatment works result in the elimination or alleviation of water pollution to the extent required by such permit, special order, consent special order, assurance of voluntary compliance or other document, or decision and complies with any other terms thereof; and~~

~~(2) Such person complies with the terms and conditions of such permit, special order, consent special order, assurance of voluntary compliance, other document, or decision within the time limit, if any, specified therein or as the same may be extended, and thereafter remains in compliance. (1951, c. 606; 1955, e. 1131, s. 2; 1967, e. 892, s. 1; 1973, e. 698, s. 3; e. 1262, s. 23; 1975, e. 19, s. 52; 1979, e. 889; 1987, c. 827, ss. 154, 160; 1989, e. 426, s. 3; e. 766, s. 1; 1995 (Reg. Sess., 1996), c. 626, s. 3.)~~

~~§ 143-215.3. General powers of Commission and Department; auxiliary powers.~~

~~(a) Additional Powers. – In addition to the specific powers prescribed elsewhere in this Article, and for the purpose of carrying out its duties, the Commission shall have the power:~~

~~(1) To make rules implementing Articles 21, 21A, 21B, or 38 of this Chapter.~~

~~(1a) To adopt fee schedules and collect fees for the following:~~

~~a. Processing of applications for permits or registrations issued under Article 21, other than Parts 1 and 1A, Articles 21A, 21B, and 38 of this Chapter;~~

~~b. Administering permits or registrations issued under Article 21, other than Parts 1 and 1A, Articles 21A, 21B, and 38 of this Chapter including monitoring compliance with the terms of those permits; and~~

~~c. Reviewing, processing, and publicizing applications for construction grant awards under the Federal Water Pollution Control Act.~~

~~No fee may be charged under this provision, however, to a farmer who submits an application that pertains to his farming operations.~~

~~(1b) The fee to be charged pursuant to G.S. 143-215.3(a)(1a) for processing an application for a permit under G.S. 143-215.108 and G.S. 143-215.109 of Article 21B of this Chapter may not exceed five hundred dollars (\$500.00). The fee to be charged pursuant to G.S. 143-215.3(a)(1a) for processing a registration under Part 2A of this Article or Article 38 of this Chapter may not exceed fifty dollars (\$50.00) for any single registration. An additional fee of twenty percent (20%) of the registration processing fee may be assessed for a late registration under Article 38 of this Chapter. The fee for administering and compliance monitoring under Article 21, other than Parts 1 and 1A, and G.S. 143-215.108 and G.S. 143-215.109 of Article 21B shall be charged on an annual basis for each year of the permit term and may not exceed one thousand five hundred dollars (\$1,500) per year. Fees for processing all permits under Article 21A and all other sections of Article 21B shall not exceed one hundred dollars (\$100.00) for any single permit. The total payment for fees that are set by the Commission under this subsection for all permits for any single facility shall not exceed seven thousand five hundred dollars (\$7,500) per year, which amount shall include all application fees and fees for administration and compliance monitoring. A single facility is defined to be any contiguous area under one ownership and in which permitted activities occur. For all permits issued under these Articles where a fee schedule is not specified in the statutes, the Commission, or other commission specified by statute shall adopt a fee schedule in a rule following the procedures established by the Administrative Procedure Act. Fee schedules shall be established to reflect the size of the emission or discharge, the potential impact on the environment, the staff costs involved, relative costs of the issuance of new permits and the reissuance of existing permits, and shall include adequate safeguards to prevent unusual fee assessments which would result in serious economic burden on an individual applicant. A system shall be considered to allow consolidated annual payments for persons with multiple permits. In its rulemaking to establish fee schedules, the Commission is also directed to consider a method of rewarding facilities which achieve full compliance with administrative and self-monitoring reporting requirements, and to~~

~~consider, in those cases where the cost of renewal or amendment of a permit is less than for the original permit, a lower fee for the renewal or amendment.~~

- (1c) ~~Moneys collected pursuant to G.S. 143-215.3(a)(1a) shall be used to:~~
- ~~a. Eliminate, insofar as possible, backlogs of permit applications awaiting agency action;~~
 - ~~b. Improve the quality of permits issued;~~
 - ~~c. Improve the rate of compliance of permitted activities with environmental standards; and~~
 - ~~d. Decrease the length of the processing period for permit applications.~~
- (1d) ~~The Commission may adopt and implement a graduated fee schedule sufficient to cover all direct and indirect costs required for the State to develop and administer a permit program which meets the requirements of Title V. The provisions of subdivision (1b) of this subsection do not apply to the adoption of a fee schedule under this subdivision. In adopting and implementing a fee schedule, the Commission shall require that the owner or operator of all air contaminant sources subject to the requirement to obtain a permit under Title V to pay an annual fee, or the equivalent over some other period, sufficient to cover costs as provided in section 502(b)(3)(A) of Title V. The fee schedule shall be adopted according to the procedures set out in Chapter 150B of the General Statutes.~~
- ~~a. The total amount of fees collected under the fee schedule adopted pursuant to this subdivision shall conform to the requirements of section 502(b)(3)(B) of Title V. No fee shall be collected for more than 4,000 tons per year of any individual regulated pollutant, as defined in section 502(b)(3)(B)(ii) of Title V, emitted by any source. Fees collected pursuant to this subdivision shall be credited to the Title V Account.~~
 - ~~b. The Commission may reduce any permit fee required under this section to take into account the financial resources of small business stationary sources as defined under Title V and regulations promulgated by the United States Environmental Protection Agency.~~
 - ~~c. When funds in the Title V Account exceed the total amount necessary to cover the cost of the Title V program for the next fiscal year, the Secretary shall reduce the amount billed for the next fiscal year so that the excess funds are used to supplement the cost of administering the Title V permit program in that fiscal year.~~
- (1e) ~~The Commission shall collect the application, annual, and project fees for processing and administering permits, certificates of coverage under general permits, and certifications issued under Parts 1 and 1A of this Article and for compliance monitoring under Parts 1 and 1A of this Article as provided in G.S. 143-215.3D and G.S. 143-215.10G.~~
- (2) ~~To direct that such investigation be conducted as it may reasonably deem necessary to carry out its duties as prescribed by this Article or Article 21A or Article 21B of this Chapter, and for this purpose to enter at reasonable times upon any property, public or private, for the purpose of investigating the condition of any waters and the discharge therein of any sewage, industrial waste, or other waste or for the purpose of investigating the condition of the air, air pollution, air contaminant sources, emissions, or the~~

~~installation and operation of any air cleaning devices, and to require written statements or the filing of reports under oath, with respect to pertinent questions relating to the operation of any air cleaning device, sewer system, disposal system, or treatment works. In the case of effluent or emission data, any records, reports, or information obtained under this Article or Article 21A or Article 21B of this Chapter shall be related to any applicable effluent or emission limitations or toxic, pretreatment, or new source performance standards. No person shall refuse entry or access to any authorized representative of the Commission or Department who requests entry for purposes of inspection, and who presents appropriate credentials, nor shall any person obstruct, hamper or interfere with any such representative while in the process of carrying out his official duties.~~

- ~~(3) To conduct public hearings and to delegate the power to conduct public hearings in accordance with the procedures prescribed by this Article or by Article 21B of this Chapter.~~
- ~~(4) To delegate such of the powers of the Commission as the Commission deems necessary to one or more of its members, to the Secretary or any other qualified employee of the Department. The Commission shall not delegate to persons other than its own members and the designated employees of the Department the power to conduct hearings with respect to the classification of waters, the assignment of classifications, air quality standards, air contaminant source classifications, emission control standards, or the issuance of any special order except in the case of an emergency under subdivision (12) of this subsection for the abatement of existing water or air pollution. Any employee of the Department to whom a delegation of power is made to conduct a hearing shall report the hearing with its evidence and record to the Commission.~~
- ~~(5) To institute such actions in the superior court of any county in which a violation of this Article, Article 21B of this Chapter, or the rules of the Commission has occurred, or, in the discretion of the Commission, in the superior court of the county in which any defendant resides, or has his or its principal place of business, as the Commission may deem necessary for the enforcement of any of the provisions of this Article, Article 21B of this Chapter, or of any official action of the Commission, including proceedings to enforce subpoenas or for the punishment of contempt of the Commission.~~
- ~~(6) To agree upon or enter into any settlements or compromises of any actions and to prosecute any appeals or other proceedings.~~
- ~~(7) To direct the investigation of any killing of fish and wildlife which, in the opinion of the Commission, is of sufficient magnitude to justify investigation and is known or believed to have resulted from the pollution of the waters or air as defined in this Article, and whenever any person, whether or not he shall have been issued a certificate of approval, permit or other document of approval authorized by this or any other State law, has negligently, or carelessly or unlawfully, or willfully and unlawfully, caused pollution of the waters or air as defined in this Article, in such quantity, concentration or manner that fish or wildlife are killed as the result thereof, the Commission, may recover, in the name of the State, damages from such person. The measure of damages shall be the amount determined by the Department and the North Carolina Wildlife Resources Commission,~~

~~whichever has jurisdiction over the fish and wildlife destroyed to be the replacement cost thereof plus the cost of all reasonable and necessary investigations made or caused to be made by the State in connection therewith. Upon receipt of the estimate of damages caused, the Department shall notify the persons responsible for the destruction of the fish or wildlife in question and may effect such settlement as the Commission may deem proper and reasonable, and if no settlement is reached within a reasonable time, the Commission shall bring a civil action to recover such damages in the superior court in the county in which the discharge took place. Upon such action being brought the superior court shall have jurisdiction to hear and determine all issues or questions of law or fact, arising on the pleadings, including issues of liability and the amount of damages. On such hearing, the estimate of the replacement costs of the fish or wildlife destroyed shall be prima facie evidence of the actual replacement costs of such fish or wildlife. In arriving at such estimate, any reasonably accurate method may be used and it shall not be necessary for any agent of the Wildlife Resources Commission or the Department to collect, handle or weigh numerous specimens of dead fish or wildlife.~~

~~The State of North Carolina shall be deemed the owner of the fish or wildlife killed and all actions for recovery shall be brought by the Commission on behalf of the State as the owner of the fish or wildlife. The fact that the person or persons alleged to be responsible for the pollution which killed the fish or wildlife holds or has held a certificate of approval, permit or other document of approval authorized by this Article or any other law of the State shall not bar any such action. The proceeds of any recovery less the cost of investigation, shall be used to replace, insofar as and as promptly as possible, the fish and wildlife killed, or in cases where replacement is not practicable, the proceeds shall be used in whatever manner the responsible agency deems proper for improving the fish and wildlife habitat in question. Any such funds received are hereby appropriated for these designated purposes. Nothing in this paragraph shall be construed in any way to limit or prevent any other action which is now authorized by this Article.~~

- (8) ~~After issuance of an appropriate order, to withhold the granting of any permit or permits pursuant to G.S. 143-215.1 or G.S. 143-215.108 for the construction or operation of any new or additional disposal system or systems or air cleaning device or devices in any area of the State. Such order may be issued only upon determination by the Commission, after public hearing, that the permitting of any new or additional source or sources of water or air pollution will result in a generalized condition of water or air pollution within the area contrary to the public interest, detrimental to the public health, safety, and welfare, and contrary to the policy and intent declared in this Article or Article 21B of this Chapter. The Commission may make reasonable distinctions among the various sources of water and air pollution and may direct that its order shall apply only to those sources which it determines will result in a generalized condition of water or air pollution.~~

~~The determination of the Commission shall be supported by detailed findings of fact and conclusions set forth in the order and based upon~~

~~competent evidence of record. The order shall describe the geographical area of the State affected thereby with particularity and shall prohibit the issuance of permits pending a determination by the Commission that the generalized condition of water or air pollution has ceased.~~

~~Notice of hearing shall be given in accordance with the provisions of G.S. 150B-21.2.~~

~~A person aggrieved by an order of the Commission under this subdivision may seek judicial review of the order under Article 4 of Chapter 150B of the General Statutes without first commencing a contested case. An order may not be stayed while it is being reviewed.~~

(9) ~~If an investigation conducted pursuant to this Article or Article 21B of this Chapter reveals a violation of any rules, standards, or limitations adopted by the Commission pursuant to this Article or Article 21B of this Chapter, or a violation of any terms or conditions of any permit issued pursuant to G.S. 143-215.1 or 143-215.108, or special order or other document issued pursuant to G.S. 143-215.2 or G.S. 143-215.110, the Commission may assess the reasonable costs of any investigation, inspection or monitoring survey which revealed the violation against the person responsible therefor. If the violation resulted in an unauthorized discharge to the waters or atmosphere of the State, the Commission may also assess the person responsible for the violation for any actual and necessary costs incurred by the State in removing, correcting or abating any adverse effects upon the water or air resulting from the unauthorized discharge. If the person responsible for the violation refuses or fails within a reasonable time to pay any sums assessed, the Commission may institute a civil action in the superior court of the county in which the violation occurred or, in the Commission's discretion, in the superior court of the county in which such person resides or has his or its principal place of business, to recover such sums.~~

(10) ~~To require a laboratory facility that performs any tests, analyses, measurements, or monitoring required under this Article or Article 21B of this Chapter to be certified annually by the Department, to establish standards that a laboratory facility and its employees must meet and maintain in order for the laboratory facility to be certified, and to charge a laboratory facility a fee for certification. Fees collected under this subdivision shall be credited to the Water and Air Account and used to administer this subdivision. These fees shall be applied to the cost of certifying commercial, industrial, and municipal laboratory facilities.~~

(11) ~~Repealed by Session Laws 1983, c. 296, s. 6.~~

(12) ~~To declare an emergency when it finds that a generalized condition of water or air pollution which is causing imminent danger to the health or safety of the public. Regardless of any other provisions of law, if the Department finds that such a condition of water or air pollution exists and that it creates an emergency requiring immediate action to protect the public health and safety or to protect fish and wildlife, the Secretary of the Department with the concurrence of the Governor, shall order persons causing or contributing to the water or air pollution in question to reduce or discontinue immediately the emission of air contaminants or the discharge of wastes. Immediately after the issuance of such order, the chairman of the Commission shall fix a~~

~~place and time for a hearing before the Commission to be held within 24 hours after issuance of such order, and within 24 hours after the commencement of such hearing, and without adjournment thereof, the Commission shall either affirm, modify or set aside the order.~~

~~In the absence of a generalized condition of air or water pollution of the type referred to above, if the Secretary finds that the emissions from one or more air contaminant sources or the discharge of wastes from one or more sources of water pollution is causing imminent danger to human health and safety or to fish and wildlife, he may with the concurrence of the Governor order the person or persons responsible for the operation or operations in question to immediately reduce or discontinue the emissions of air contaminants or the discharge of wastes or to take such other measures as are, in his judgment, necessary, without regard to any other provisions of this Article or Article 21B of this Chapter. In such event, the requirements for hearing and affirmance, modification or setting aside of such orders set forth in the preceding paragraph of this subdivision shall apply.~~

(13) ~~Repealed by Session Laws 1983, c. 296, s. 6.~~

(14) ~~To certify and approve, by appropriate delegations and conditions in permits required by G.S. 143-215.1, requests by publicly owned treatment works to implement, administer and enforce a pretreatment program for the control of pollutants which pass through or interfere with treatment processes in such treatment works; and to require such programs to be developed where necessary to comply with the Federal Water Pollution Control Act and the Resource Conservation and Recovery Act, including the addition of conditions and compliance schedules in permits required by G.S. 143-215.1. Pretreatment programs submitted by publicly owned treatment works shall include, at a minimum, the adoption of pretreatment standards, a permit or equally effective system for the control of pollutants contributed to the treatment works, and the ability to effectively enforce compliance with the program.~~

(15) ~~To adopt rules for the prevention of pollution from underground tanks containing petroleum, petroleum products, or hazardous substances. Rules adopted under this section may incorporate standards and restrictions which exceed and are more comprehensive than comparable federal regulations.~~

(16) ~~To adopt rules limiting the manufacture, storage, sale, distribution or use of cleaning agents containing phosphorus pursuant to G.S. 143-214.4(e), and to adopt rules limiting the manufacture, storage, sale, distribution or use of cleaning agents containing nitrilotriacetic acid.~~

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

(b) ~~Research Functions. – The Department shall have the power to conduct scientific experiments, research, and investigations to discover economical and practical corrective methods for air pollution and waste disposal problems. To this end, the Department may cooperate with any public or private agency or agencies in the conduct of such experiments, research, and investigations, and may, when funds permit, establish research studies in any North Carolina educational institution, with the consent of such institution. In addition, the Department shall have the power to cooperate and enter into contracts with technical divisions of State agencies, institutions and with municipalities, industries, and other persons in the execution of such surveys, studies, and research as it may deem necessary in fulfilling its~~

~~functions under this Article or Article 21B of this Chapter. All State departments shall advise with and cooperate with the Department on matters of mutual interest.~~

~~(c) Relation with the Federal Government. The Commission as official water and air pollution control agency for the State is delegated to act in local administration of all matters covered by any existing federal statutes and future legislation by Congress relating to water and air quality control. In order for the State of North Carolina to effectively participate in programs administered by federal agencies for the regulation and abatement of water and air pollution, the Department is authorized to accept and administer funds provided by federal agencies for water and air pollution programs and to enter into contracts with federal agencies regarding the use of such funds.~~

~~(d) Relations with Other States. The Commission or the Department may, with the approval of the Governor, consult with qualified representatives of adjoining states relative to the establishment of regulations for the protection of waters and air of mutual interest, but the approval of the General Assembly shall be required to make any regulations binding.~~

~~(e) Variances. Any person subject to the provisions of G.S. 143-215.1 or 143-215.108 may apply to the Commission for a variance from rules, standards, or limitations established pursuant to G.S. 143-214.1, 143-215, or 143-215.107. The Commission may grant such variance, for fixed or indefinite periods after public hearing on due notice, or where it is found that circumstances so require, for a period not to exceed 90 days without prior hearing and notice. Prior to granting a variance hereunder, the Commission shall find that:~~

- ~~(1) The discharge of waste or the emission of air contaminants occurring or proposed to occur do not endanger human health or safety; and~~
- ~~(2) Compliance with the rules, standards, or limitations from which variance is sought cannot be achieved by application of best available technology found to be economically reasonable at the time of application for such variances, and would produce serious hardship without equal or greater benefits to the public, provided that such variances shall be consistent with the provisions of the Federal Water Pollution Control Act as amended or the Clean Air Act as amended; and provided further, that any person who would otherwise be entitled to a variance or modification under the Federal Water Pollution Control Act as amended or the Clean Air Act as amended shall also be entitled to the same variance from or modification in rules, standards, or limitations established pursuant to G.S. 143-214.1, 143-215, and 143-215.107, respectively.~~

~~(f) Notification of Completed Remedial Action. The definitions set out in G.S. 130A-310.31(b) apply to this subsection. Any person may submit a written request to the Department for a determination that groundwater has been remediated to meet the standards and classifications established under this Part. A request for a determination that groundwater has been remediated to meet the standards and classifications established under this Part shall be accompanied by the fee required by G.S. 130A-310.39(a)(2). If the Department determines that groundwater has been remediated to established standards and classifications, the Department shall issue a written notification that no further remediation of the groundwater will be required. The notification shall state that no further remediation of the groundwater will be required unless the Department later determines, based on new information or information not previously provided to the Department, that the groundwater has not been remediated to established standards and classifications or that the Department was provided with false or incomplete information. Under any of those circumstances, the Department may withdraw the notification and require responsible parties to remediate the groundwater to established standards and classifications. (1951, c. 606; 1957, c. 1267, s. 3; 1959, c. 779, s. 8; 1963, c.~~

~~1086; 1967, c. 892, s. 1; 1969, c. 538; 1971, c. 1167, ss. 7, 8; 1973, c. 698, ss. 1-7, 9, 17; e. 712, s. 1; e. 1262, ss. 23, 86; e. 1331, s. 3; 1975, c. 583, ss. 5, 6; e. 655, s. 3; 1977, c. 771, s. 4; 1979, e. 633, ss. 6-8; 1979, 2nd Sess., c. 1158, ss. 1, 3, 4; 1983, c. 296, ss. 5-8; 1985, c. 551, s. 2; 1987, c. 111, s. 2; e. 767, s. 1; e. 827, ss. 1, 154, 161, 266; 1987 (Reg. Sess., 1988), c. 1035, s. 2; 1989, c. 500, s. 122; e. 652, s. 1; 1991, c. 552, ss. 2, 11; e. 712, s. 2; 1991 (Reg. Sess., 1992), e. 890, s. 16; e. 1039, ss. 14, 20.1; 1993, c. 344, s. 2; e. 400, ss. 1(c), 2, 3, 15; e. 496, s. 4; 1993 (Reg. Sess., 1994), c. 694, s. 1; 1995, c. 484, s. 5; 1997-357, s. 6; 1997-496, s. 4; 1998-212, s. 29A.11(b.)~~

~~§ 143-215.6A. Enforcement procedures: civil penalties.~~

~~(a) A civil penalty of not more than twenty-five thousand dollars (\$25,000) may be assessed by the Secretary against any person who:~~

- ~~(1) Violates any classification, standard, limitation, or management practice established pursuant to G.S. 143-214.1, 143-214.2, or 143-215.~~
- ~~(2) Is required but fails to apply for or to secure a permit required by G.S. 143-215.1, or who violates or fails to act in accordance with the terms, conditions, or requirements of such permit or any other permit or certification issued pursuant to authority conferred by this Part, including pretreatment permits issued by local governments and laboratory certifications.~~
- ~~(3) Violates or fails to act in accordance with the terms, conditions, or requirements of any special order or other appropriate document issued pursuant to G.S. 143-215.2.~~
- ~~(4) Fails to file, submit, or make available, as the case may be, any documents, data, or reports required by this Article or G.S. 143-355(k) relating to water use information.~~
- ~~(5) Refuses access to the Commission or its duly designated representative to any premises for the purpose of conducting a lawful inspection provided for in this Article.~~
- ~~(6) Violates a rule of the Commission implementing this Part, Part 2A of this Article, or G.S. 143-355(k).~~
- ~~(7) Violates or fails to act in accordance with the statewide minimum water supply watershed management requirements adopted pursuant to G.S. 143-214.5, whether enforced by the Commission or a local government.~~
- ~~(8) Violates the offenses set out in G.S. 143-215.6B.~~
- ~~(9) Is required, but fails, to apply for or to secure a certificate required by G.S. 143-215.22L, or who violates or fails to act in accordance with the terms, conditions, or requirements of the certificate.~~
- ~~(10) Violates subsections (e1) through (e5) of G.S. 143-215.1 or a rule adopted pursuant to subsections (e1) through (e5) of G.S. 143-215.1.~~
- ~~(11) Violates or fails to act in accordance with G.S. 143-214.7(d1).~~

~~(a1) For purposes of this section, the term "Part" includes Part 1A of this Article.~~

~~(b) If any action or failure to act for which a penalty may be assessed under this section is continuous, the Secretary may assess a penalty not to exceed twenty-five thousand dollars (\$25,000) per day for so long as the violation continues, unless otherwise stipulated.~~

~~(b1) The Secretary may assess a civil penalty of more than ten thousand dollars (\$10,000) or, in the case of a continuing violation, more than ten thousand dollars (\$10,000) per day, against a violator only if a civil penalty has been imposed against the violator within the five years preceding the violation. The Secretary may assess a civil penalty of more than ten thousand dollars (\$10,000) or, in the case of a continuing violation, more than ten thousand dollars (\$10,000) per day for so long as the violation continues, for a violation of subdivision (4) of subsection (a) of this section only if the Secretary determines that the violation is intentional.~~

~~(e) In determining the amount of the penalty the Secretary shall consider the factors set out in G.S. 143B-282.1(b). The procedures set out in G.S. 143B-282.1 shall apply to civil penalty assessments that are presented to the Commission for final agency decision.~~

~~(d) The Secretary shall notify any person assessed a civil penalty of the assessment and the specific reasons therefor by registered or certified mail, or by any means authorized by G.S.~~

~~1A-1, Rule 4. Contested case petitions shall be filed within 30 days of receipt of the notice of assessment.~~

~~(e) Consistent with G.S. 143B-282.1, a civil penalty of not more than ten thousand dollars (\$10,000) per month may be assessed by the Commission against any local government that fails to adopt a local water supply watershed protection program as required by G.S. 143-214.5, or willfully fails to administer or enforce the provisions of its program in substantial compliance with the minimum statewide water supply watershed management requirements. No such penalty shall be imposed against a local government until the Commission has assumed the responsibility for administering and enforcing the local water supply watershed protection program. Civil penalties shall be imposed pursuant to a uniform schedule adopted by the Commission. The schedule of civil penalties shall be based on acreage and other relevant cost factors and shall be designed to recoup the costs of administration and enforcement.~~

~~(f) Requests for remission of civil penalties shall be filed with the Secretary. Remission requests shall not be considered unless made within 30 days of receipt of the notice of assessment. Remission requests must be accompanied by a waiver of the right to a contested case hearing pursuant to Chapter 150B and a stipulation of the facts on which the assessment was based. Consistent with the limitations in G.S. 143B-282.1(c) and (d), remission requests may be resolved by the Secretary and the violator. If the Secretary and the violator are unable to resolve the request, the Secretary shall deliver remission requests and his recommended action to the Committee on Civil Penalty Remissions of the Environmental Management Commission appointed pursuant to G.S. 143B-282.1(e).~~

~~(g) If any civil penalty has not been paid within 30 days after notice of assessment has been served on the violator, the Secretary shall request the Attorney General to institute a civil action in the Superior Court of any county in which the violator resides or has his or its principal place of business to recover the amount of the assessment, unless the violator contests the assessment as provided in subsection (d) of this section, or requests remission of the assessment in whole or in part as provided in subsection (f) of this section. If any civil penalty has not been paid within 30 days after the final agency decision or court order has been served on the violator, the Secretary shall request the Attorney General to institute a civil action in the Superior Court of any county in which the violator resides or has his or its principal place of business to recover the amount of the assessment. Such civil actions must be filed within three years of the date the final agency decision or court order was served on the violator.~~

~~(h) Repealed by Session Laws 1995 (Regular Session, 1996), c. 743, s. 14.~~

~~(h1) The clear proceeds of civil penalties assessed by the Secretary or the Commission pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.~~

~~(i) As used in this subsection, "municipality" refers to any unit of local government which operates a wastewater treatment plant. As used in this subsection, "unit of local government" has the same meaning as in G.S. 130A-290. The provisions of this subsection shall apply whenever a municipality that operates a wastewater treatment plant with an influent bypass diversion structure and with a permitted discharge of 10 million gallons per day or more into any of the surface waters of the State that have been classified as nutrient sensitive waters (NSW) under rules adopted by the Commission is subject to a court order which specifies (i) a schedule of activities with respect to the treatment of wastewater by the municipality; (ii) deadlines for the completion of scheduled activities; and (iii) stipulated penalties for failure to meet such deadlines. A municipality as specified herein that violates any provision of such order for which a penalty is stipulated shall pay the full amount of such penalty as provided in the order unless such penalty is modified, remitted, or reduced by the court.~~

~~(j) Local governments certified and approved by the Commission to administer and enforce pretreatment programs pursuant to G.S. 143-215.3(a)(14), stormwater programs pursuant to G.S. 143-214.7, or riparian buffer protection programs pursuant to G.S. 143-214.23 may assess civil penalties for violations of their respective programs in accordance with the powers conferred upon the Commission and the Secretary in this section, except that actions for collection of unpaid civil penalties shall be referred to the attorney representing the assessing local government. The total of the civil penalty assessed by a local government and the civil penalty assessed by the Secretary for any violation may not exceed the maximum civil penalty for such violation under this section.~~

~~(k) A person who has been assessed a civil penalty by a local government as provided by subsection (j) of this section may request a review of the assessment by filing a request for review with the local government within 30 days of the date the notice of assessment is received. If a local ordinance provides for a local administrative hearing, the hearing shall afford minimum due process including an unbiased hearing official. The local government shall make a final decision on the request for review within 90 days of the date the request for review is filed. The final decision on a request for review shall be subject to review by the superior court pursuant to Article 27 of Chapter 1 of the General Statutes. If the local ordinance does not provide for a local administrative hearing, a person who has been assessed a civil penalty by a local government as provided by subsection (j) of this section may contest the assessment by filing a civil action in superior court within 60 days of the date the notice of assessment is received. (1951, e. 606; 1967, e. 892, s. 1; 1973, e. 698, s. 12; e. 712, s. 2; e. 1262, s. 23; e. 1331, s. 3; 1975, e. 583, s. 7; e. 842, ss. 6, 7; 1977, e. 771, s. 4; 1979, e. 633, ss. 9-11; 1981, e. 514, s. 1; e. 585, s. 13; 1987, e. 271; e. 827, ss. 154, 164; 1989, e. 426, s. 4; 1989 (Reg. Sess., 1990), e. 951, s. 1; e. 1036, s. 3; e. 1045, s. 1; e. 1075, s. 6; 1991, e. 579, s. 2; e. 725, s. 3; 1993, e. 348, s. 2; 1995 (Reg. Sess., 1996), e. 743, s. 14; 1997-458, s. 6.2; 1998-215, s. 63; 1999-329, ss. 5.1, 5.3, 5.5, 5.7; 2004-124, s. 6.29(b); 2006-250, s. 6; 2007-484, s. 43.7C; 2007-518, s. 5; 2007-536, s. 3.)~~

§ 143-215.79. Inspections and investigations; entry upon property.

~~The Commission, through its authorized representatives, is empowered to conduct such inspections and investigations as shall be reasonably necessary to determine compliance with the provisions of this Article; to determine the person or persons responsible for violation of this Article; to determine the nature and location of any oil or other hazardous substances discharged to the land or waters of this State; and to enforce the provisions of this Article. The authorized representatives of the Commission are empowered upon presentation of their credentials to enter upon any private or public property, including boarding any vessel, for the purpose of inspection or investigation or in order to conduct any project or activity to contain, collect, disperse or remove oil or other hazardous substances discharges or to perform any restoration necessitated by an oil or other hazardous substances discharge. Neither the State nor its agencies, employees or agents shall be liable in trespass or damages arising out of the conduct of any inspection, investigation, or oil or other hazardous substances removal or restoration project or activity other than liability for damage to property or injury to persons arising out of the negligent or willful conduct of an employee or agent of the State during the course of an inspection, investigation, project or activity. (1973, c. 534, s. 1; c. 1262, s. 23; 1979, c. 535, s. 12; 1987, c. 827, s. 154.)~~

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 and Part 2B of this Article:

- (1a) "Affiliate" has the same meaning as in 17 Code of Federal Regulations § 240.12(b)-2 (1 April 1994 Edition), which defines "affiliate" as a person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control of another person.
- (1b) "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.
- (2a) "Cost-effective cleanup" means the cleanup method that meets all of the following criteria:
 - a. Addresses imminent threats to human health or the environment.
 - b. Provides for the cleanup or removal of all contaminated soil except in circumstances where it is impractical to remove contaminated soil.
 - c. Is approved by the Commission for remediation of the site.
 - d. Is the least expensive cleanup based on total cost, including costs not eligible for reimbursement from the Commercial Fund or the Noncommercial Fund.

- (3) ~~Repealed by Session Laws 2011-266, s. 1.20(b), effective July 1, 2011.~~
- (3a) "Facility" means an underground storage tank, or two or more underground storage tanks located in close proximity to each other and having the same owner or operator, that are located on a single tract of land or on contiguous tracts of land that are owned or controlled by the same person. As used in this subdivision, the terms "owner", "operator", and "person" include any affiliate, parent, and subsidiary of the owner, operator, or person, respectively. The owner or person having control of the land on which an underground storage tank is located, or on which two or more underground storage tanks are located, need not be the owner or operator of the underground storage tank or underground storage tanks. The term "facility", as defined in this subdivision, does not apply to a "pipeline facility", as that phrase is used in subdivisions (2) and (7) of this section.
- (4) "Heating oil" means petroleum that is No. 1, No. 2, No. 4-light, No. 4-heavy, No. 5-light, No. 5-heavy, or No. 6 technical grades of fuel oil; other residual fuel oils, including Navy Special Fuel Oil and Bunker C; and other fuels when used as substitutes for one of these fuel oils for the purpose of heating.
- (5) "Loan Fund" means the Groundwater Protection Loan Fund.
- (6) ~~Repealed by Session Laws 2015-241, s. 14.16A(d), effective December 31, 2016.~~
- (7) "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.
- (8) "Operator" means any person in control of, or having responsibility for, the operation of an underground storage tank.
- (9) "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.
- (9a) "Parent" has the same meaning as in 17 Code of Federal Regulations § 240.12(b)-2 (1 April 1994 Edition), which defines "parent" as an affiliate that directly, or indirectly through one or more intermediaries, controls another person.
- (10) "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. The terms "petroleum" and "petroleum product" do not include any hazardous substance as defined in Section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Pub. L. No. 96-510, 94 Stat. 2767, 42 U.S.C. § 9601(14) as amended; any substance regulated as a hazardous waste under Subtitle C of Title II of the Resource Conservation and Recovery Act of 1976, Pub. L. 94-580, 90 Stat. 2806, 42 U.S.C. § 6921 et seq., as amended; or any mixture of petroleum or a petroleum product containing any such hazardous substance or hazardous waste in greater than de minimis quantities.
- (11) "Subsidiary" has the same meaning as in 17 Code of Federal Regulations § 240.12(b)-2 (1 April 1994 Edition), which defines "subsidiary" as an affiliate that is directly, or indirectly through one or more intermediaries, controlled by another person.
- (12) "Third party" means a person other than the owner or operator of an underground storage tank from which a release has occurred or employees or agents of an owner or operator. A property owner shall not be considered a third party if the property was transferred by the owner or operator of an underground storage tank in anticipation of damage due to a release.
- (13) "Third-party bodily injury" or "bodily injury" when used in connection with "third-party" means specific physical bodily injury proximately resulting from exposure, explosion, or fire caused by the presence of a petroleum release and that is incurred by a person other than the owner or operator of an underground storage tank from which a release has occurred or employees or agents of an owner or operator.
- (14) "Third-party property damage" or "property damage" when used in connection with "third-party" means actual physical damage or damage due to specific loss of normal use that proximately resulted from exposure, explosion, or fire caused by the presence of a petroleum release and that is incurred to property owned by a person other than the owner or operator of an underground storage tank from which a release has occurred or employees or agents of an owner or operator. (1987 (Reg. Sess., 1988), c. 1035, s. 1; 1989, c. 652, s. 3; 1991, c. 538, s. 1; 1995, c. 377, s. 4; 1997-456, s. 27; 2003-352, s. 1; 2011-266, s. 1.20(b); 2015-241, s. 14.16A(d); 2015-263, s. 20(b).)

§ 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:~~

- ~~(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. Claims for third-party property damage shall be based on the rental costs of comparable property during the period of loss of use up to a maximum amount equal to the fair market value. In the case of property that is actually destroyed as a result of a petroleum release, reimbursement shall be at an amount necessary to replace or repair the destroyed property.~~

- ~~(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.~~
- ~~(7) Recordation of residual petroleum as required by G.S. 143B-279.11 if the Commercial Fund is responsible for the payment of costs under subdivisions (1) through (4) of this subsection.~~
- ~~(8) The costs of a site investigation required by the Department for the purpose of determining whether a release from a tank system has occurred, whether or not the investigation confirms that a release has occurred. This subdivision shall not be construed to allow reimbursement for costs of investigations that are part of routine leak detection procedures required by statute or rule.~~
- ~~(9) If the owner or operator cannot be identified or fails to proceed with the cleanup.~~
- ~~(10) That was taken out of operation prior to 1 January 1974 if, at the time the discharge or release is discovered, neither the owner nor operator owns or leases the lands on which the tank is located.~~
- ~~(11) Where the owner of the commercial underground storage tank is the owner only as a result of owning the land on which the commercial underground storage tank is located, the owner did not know or have reason to know that the underground storage tank was located on the property, and the land was not transferred to the owner to avoid liability for the commercial underground storage tank.~~
- ~~(12) Compensation to third parties for bodily injury and property damage in excess of one hundred thousand dollars (\$100,000) per occurrence caused by releases from noncommercial underground storage tanks reported to the Department prior to October 1, 2015, if the claim for compensation is made prior to July 1, 2016. Claims for third-party property damage shall be based on the rental costs of comparable property during the period of loss of use up to a maximum amount equal to the fair market value. In the case of property that is actually destroyed as a result of a petroleum release, reimbursement shall be at an amount necessary to replace or repair the destroyed property.~~

~~(b1) In the event that two or more discharges or releases at any one facility, the first of which was discovered or reported on or after 30 June 1988, result in more than one plume of soil, surface water, or groundwater contamination, the Commercial Fund shall be used for the payment of the costs of the cleanup of environmental damage as required by G.S. 143-215.94E(a) in excess of the multiple discharge amount up to the applicable aggregate maximum specified in subsections (b) and (b2) of this section. The multiple discharge amount shall be calculated as follows:~~

- ~~(1) Each discharge or release shall be considered separately as if it were the only discharge or release, and the cost for which the owner or operator is responsible under subdivisions (1), (2), (2a), or (3) of subsection (b) of this section, whichever are applicable, shall be determined for each discharge or release. For each discharge or release for which subdivision (4) of subsection (b) of this section is applicable, the cost for which the owner or operator is responsible, for the purpose of this subsection, shall be seventy-five thousand dollars (\$75,000). For purposes of this subsection, two or more discharges or releases that result in a single plume of soil, surface water, or groundwater contamination shall be considered as a single discharge or release.~~

- (2) ~~The multiple discharge amount shall be the lesser of:~~
- a. ~~The sum of all the costs determined as set out in subdivision (1) of this subsection; or~~
 - b. ~~The product of the highest of the costs determined as set out in subdivision (1) of this subsection multiplied by one and one-half (1 1/2).~~

- (3) ~~If an owner or operator elects to cleanup a separate discharge or release for which the owner or operator is not responsible, the responsible party for the other discharge cannot be identified, and the discharges are commingled, the owner or operator shall only be responsible for those costs applicable to the discharge for which the owner or operator is actually the responsible party.~~

~~(b2) In the event that the aggregate costs per occurrence described in subsection (b) or (b1) of this section exceed one million dollars (\$1,000,000), the Commercial Fund shall be used for the payment of eighty percent (80%) of the costs in excess of one million dollars (\$1,000,000) up to a maximum of one million five hundred thousand dollars (\$1,500,000). The Department shall not pay or reimburse costs under this subsection unless the owner, operator, or landowner eligible for reimbursement under G.S. 143-215.94E(b1) submits proof that the owner, operator, or landowner eligible for reimbursement under G.S. 143-215.94E(b1) has paid at least twenty percent (20%) of the costs for which reimbursement is sought.~~

~~(b3) For purposes of subsections (b) and (b1) of this section, the cleanup of environmental damage includes connection of a third party to a public water system if the Department determines that connection of the third party to a public water system is a cost-effective measure, when compared to other available measures, to reduce risk to human health or the environment. A payment or reimbursement under this subsection is subject to the requirements and limitations of this section. This subsection shall not be construed to limit any right or remedy available to a third party under any other provision of law. This subsection shall not be construed to require a third party to connect to a public water system. Except as provided by this subsection, connection to a public water system does not constitute cleanup under Part 2 of this Article, G.S. 143-215.94E, G.S. 143-215.94V, any other applicable statute, or at common law.~~

~~(b4) The Commercial Fund shall pay any claim made after 1 September 2001 for compensation to third parties pursuant to subdivision (5) of subsection (b) of this section only if the owner, operator, or other party responsible for the discharge or release has complied with the requirements of G.S. 143B-279.9 and G.S. 143B-279.11, unless compliance is prohibited by another provision of law.~~

~~(b5) The Commercial Fund may be used by the Department for the payment of costs necessary to render harmless any commercial underground storage tank from which a discharge or release has not occurred but which poses an imminent hazard to the environment if the owner or operator cannot be identified or located, or if the owner or operator fails to take action to render harmless the underground storage tank within 90 days of having been notified of the imminent hazard posed by the underground storage tank. The Secretary shall seek to recover the costs of the action from any owner or operator as provided in G.S. 143-215.94G.~~

~~(e) 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) Repealed by Session Laws 2015-241, s. 14.16A(d), effective December 31, 2016.~~
 - ~~(5) Costs associated with the administration of any underground storage tank program other than the program administered pursuant to this Part.~~
 - ~~(6) Costs paid or reimbursed by or from any source other than the Commercial Fund, including but not limited to, any payment or reimbursement made under a contract of insurance.~~
 - ~~(7) Costs incurred as a result of the cleanup of environmental damage to groundwater to a more protective standard than the risk-based standard required by the Department unless the cleanup of environmental damage to groundwater to a more protective standard is necessary to resolve a claim for compensation by a third party for property damage.~~
 - ~~(8) Costs in excess of those required to achieve the most cost-effective cleanup.~~
- ~~(e) The Commercial Fund shall be treated as a special trust fund pursuant to G.S. 147-69.2 and G.S. 147-69.3, except that interest and other income received on the Fund balance shall be treated as set forth in G.S. 147-69.1(d).~~
- ~~(f) Expired October 1, 2011, pursuant to Session Laws 2001-442, s. 8, as amended by Session Laws 2008-195, s. 11.~~
- ~~(g) The Commercial Fund may be used to support the administrative functions of the program for underground storage tanks under this Part and Part 2B of this Article up to the amounts allowed by law, which amounts may be changed from time to time. In the case of a legislated increase or decrease in salaries and benefits, the administrative allowance existing at the time of the increase or decrease shall be correspondingly increased or decreased an amount equal to the legislated increase or decrease in salaries and benefits.~~
- ~~(h) The Commercial Fund may be used to reimburse the owner or operator of a commercial petroleum underground storage tank for annual operating fees that were paid under protest pursuant to G.S. 143-215.94C(f) to the extent the Department has recovered the fees from the previous owner or operator from whom the annual operating fees were due. The Commercial Fund may be used only to reimburse those fees that the owner or operator paid to eliminate an unpaid annual operating fees balance that had been accrued by and was the obligation of a previous owner or operator.~~
- ~~(i) During each fiscal year, the Department shall use up to one million dollars (\$1,000,000) of the funds in the Commercial Fund to fund necessary assessment and cleanup to be conducted by the Department of discharges or releases for which a responsible party has been identified but for which the responsible party can demonstrate that undertaking the costs of assessment and cleanup will impose a severe financial hardship. Any portion of the \$1,000,000 designated each fiscal year, which is not used during that fiscal year to address situations of severe financial hardship, shall revert to the Commercial Fund for the uses otherwise provided by this section. The Commission shall adopt rules to define severe financial hardship; establish criteria for assistance due to severe financial hardship pursuant to this section; and establish a process for evaluation and determinations of eligibility with respect to applications for assistance due to severe financial hardship. The Commission shall create a subcommittee of the Commission's Committee on Civil Penalty Remissions as established by G.S. 143B-282.1 to render determinations of eligibility under this subsection. (1987 (Reg. Sess., 1988), c. 1035, s. 1; 1989, c. 652, ss. 4, 16; 1991, c. 538, ss. 2, 3; 1991 (Reg. Sess., 1992), c. 817, s. 1; 1993, c. 400, s. 15; c. 402, s. 1; 1995, c. 377, s. 5; 1998-161, s. 2; 2001-384, ss. 4, 5, 8; 2001-442, s. 1; 2003-352, ss. 2, 3; 2007-323, s. 12.1(a); 2008-195, s. 11; 2008-198,~~

~~s. 7(a); 2011-394, ss. 11.1, 11.2, 11.3(a); 2012-200, s. 13(a); 2014-100, s. 14.21(g); 2015-241, ss. 14.16A(a), (d); 2015-263, s. 20(e).~~

§ 143-215.94C. Commercial leaking petroleum underground storage tank cleanup fees.

~~(a) For purposes of this subsection, each compartment of a commercial underground storage tank that is designed to independently contain a petroleum product is a separate petroleum commercial underground storage tank. 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 of four hundred twenty dollars (\$420.00) for each petroleum commercial underground storage tank.~~

~~(b) The annual operating fee shall be determined on a calendar year basis. For petroleum commercial underground storage tanks in use on 1 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 service 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 service 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. Except as provided in this subsection, 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 quarter. A person who owns or operates more than one petroleum commercial underground storage tank may request that the fee for all tanks be due at the same time. A person 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.~~

~~(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) Repealed by Session Laws 1991, c. 538, s. 3.1.~~

~~(e) An owner or operator of a commercial underground storage tank who fails to pay an annual operating fee due under this section within 30 days of the date that the fee is due shall pay, in addition to the fee, a late penalty of five dollars (\$5.00) per day per commercial underground storage tank, up to a maximum equal to the annual operating fee due. The Department may waive a late penalty in whole or in part if:~~

- ~~(1) The late penalty was incurred because of the late payment or nonpayment of an annual operating fee by a previous owner or operator.~~
- ~~(2) The late penalty was incurred because of a billing error for which the Department is responsible.~~

- (3) ~~Where the late penalty was incurred because the annual operating fee was not paid by the owner or operator due to inadvertence or accident.~~
- (4) ~~Where payment of the late penalty will prevent the owner or operator from complying with 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.~~

(f) ~~A person who becomes the owner or operator of a commercial petroleum underground storage tank may pay, under protest, unpaid annual operating fees that were the obligation of a previous owner or operator for the purpose of obtaining an operating permit for the underground storage tanks. An owner or operator who pays unpaid operating fees that were due from a previous owner or operator may request reimbursement of those fees as provided in G.S. 143-215.94B(h). In collecting unpaid annual operating fees, the Department shall diligently seek to collect unpaid annual operating fees from the person who was the owner or operator of the commercial petroleum underground storage tank at the time the fee first became due notwithstanding the fact that those fees were paid under protest as provided in this subsection. (1987 (Reg. Sess., 1988), c. 1035, s. 1; 1989, c. 652, ss. 5, 16; 1991, c. 538, ss. 3.1, 4, 5; 1993, c. 400, s. 15; c. 402, s. 2; 1995, c. 377, s. 6; 1995 (Reg. Sess., 1996), c. 648, s. 2; 2008-195, s. 1; 2008-198, s. 7(b); 2011-394, s. 11.3(e).)~~

~~§ 143-215.94D: Repealed by Session Laws 2015-241, s. 14.16A(d), effective December 31, 2016.~~

§ 143-215.94E. Rights and obligations of the owner or operator.

(a) Upon a determination that a discharge or release of petroleum from an underground storage tank has occurred, the owner or operator of the underground storage tank shall notify the Department pursuant to G.S. 143-215.85. The owner or operator of the underground storage tank 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.

(a1) If a spill or overflow associated with a petroleum underground storage tank results in a release of petroleum to the environment of 25 gallons or more or causes a sheen on nearby surface water, the owner or operator of the petroleum underground storage tank shall immediately clean up the spill or overflow, report the spill or overflow to the Department within 24 hours of the spill or overflow, and begin to restore the area affected in accordance with the requirements of this Article. The owner or operator of a petroleum underground storage tank shall immediately clean up a spill or overflow of less than 25 gallons of petroleum that does not cause a sheen on nearby surface water. If a spill or overflow of less than 25 gallons of petroleum cannot be cleaned up within 24 hours of the spill or overflow or causes a sheen on nearby surface water, the owner or operator of the petroleum underground storage tank shall immediately notify the Department.

~~(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 subsection (b) or (b1) of G.S. 143-215.94B that exceed the amounts for which the owner or operator is responsible under that 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 except as provided in G.S. 143-215.94B(b2).~~

~~(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, the following requirements apply:~~

~~(1) 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) or G.S. 143-215.94B(b1) that exceed the amounts for which the owner or operator is responsible under that subsection. [The following also apply:]~~

- ~~a. 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) or G.S. 143-215.94B(b1) for which the owner or operator is responsible.~~
- ~~b. 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) or G.S. 143-215.94B(b1) to a subsequent landowner.~~

~~The current landowner shall submit documentation of all expenditures as required by G.S. 143-215.94G(b).~~

- (2) ~~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 except as provided in G.S. 143-215.94B(b2).~~
- (3) ~~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.~~
- (4) ~~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).~~

(c), (e1) ~~Repealed by Session Laws 2015-241, s. 14.16A(e), effective December 31, 2016.~~

(d) ~~In any case where the costs described in G.S. 143-215.94B(b) or 143-215.94B(b1), exceed one million dollars (\$1,000,000), or one million five hundred thousand dollars (\$1,500,000) if G.S. 143-215.94B(b2) applies, the provisions of Article 21A of this Chapter or any other applicable statute or common law principle regarding liability shall apply for the amount in excess of one million dollars (\$1,000,000) or, if G.S. 143-215.94B(b2) applies, one million five hundred thousand dollars (\$1,500,000). 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 an owner, operator, or landowner pays the costs described in G.S. 143-215.94B(b), 143-215.94B(b1), or 143-215.94D(b1) resulting from a discharge or release of petroleum from an underground storage tank, the owner, operator, or landowner may seek reimbursement from the appropriate fund for any costs that the owner, operator, or landowner may elect to have either the Commercial Fund or the Noncommercial Fund pay in accordance with the applicable subsections of this section.~~

(e1) ~~The Department may contract for any services necessary to evaluate any claim for reimbursement or compensation from the Commercial Fund, may contract for any expert witness or consultant services necessary to defend any decision to pay or deny any claim for reimbursement, and may pay the cost of these services from the fund against which the claim is made; provided that in any fiscal year the Department shall not expend from either fund more than one percent (1%) of the unobligated balance of the fund on 30 June of the previous fiscal year. The cost of contractual services to evaluate a claim or for expert witness or consultant services to defend a decision with respect to a claim shall be included as costs under G.S. 143-215.94B(b) and 143-215.94B(b1).~~

(e2) ~~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. If the Department fails to notify an owner or operator of its decision on a claim for reimbursement under this section within 90 days after the date the claim is received by the Department, the owner or operator may elect to consider the claim to have been denied, and may appeal the denial as provided in Article 3 of Chapter 150B of the General Statutes.~~

(e3) ~~The Department shall not pay any third party or reimburse any owner or operator who has paid any third party pursuant to any settlement agreement or consent judgment relating~~
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~~to a claim by or on behalf of a third party for compensation for bodily injury or property damage unless the Department has approved the settlement agreement or consent judgment prior to entry into the settlement agreement or consent judgment by the parties or entry of a consent judgment by the court. The approval or disapproval by the Department of a proposed settlement agreement or consent judgment shall be subject to challenge only in a contested case filed under Chapter 150B of the General Statutes.~~

~~(e4) (1) If the owner or operator takes initial steps to collect and remove the discharge or release as required by the Department and completes the initial assessment required to determine degree of risk, the owner or operator shall not be subject to any violation or penalty for any failure to proceed with further assessment or cleanup under G.S. 143-215.84 or this section before the owner or operator is authorized to proceed with further assessment or cleanup as provided in subsection (e5) of this section. The lack of availability of funds in the Commercial Fund shall not relieve an owner or operator of responsibility to immediately undertake to collect and remove the discharge or release or to conduct any assessment or cleanup ordered by the Department or be a defense against any violations and penalties issued to the owner or operator for failure to conduct required assessment or cleanup.~~

~~(2) The Department shall establish the degree of risk to human health and the environment posed by a discharge or release of petroleum from a commercial underground storage tank and shall determine a schedule for further assessment and cleanup that is based on the degree of risk to human health and the environment posed by the discharge or release and that gives priority to the assessment and cleanup of discharges and releases that pose the greatest risk. If any of the costs of assessment and cleanup of the discharge or release from a commercial underground storage tank are eligible to be paid or reimbursed from the Commercial Fund, the Department shall also consider the availability of funds in the Commercial Fund and the order in which the discharge or release was reported in determining the schedule.~~

~~(3) Repealed by Session Laws 2015-241, s. 14.16A(e), effective December 31, 2016.~~

~~(4) The Department may revise the schedules that apply to the assessment and cleanup of any discharge or release at any time based on its reassessment of any of the foregoing factors.~~

~~(e5) (1) As used in this subsection:~~

~~a. "Authorization" means a determination by the Department that a person may proceed with one or more tasks associated with the assessment or cleanup of a discharge or release from a petroleum underground storage tank. To "authorize" means to make such a determination.~~

~~b. "Preapproval" means a determination by the Department that:~~

~~1. The nature and scope of a task is reasonable and necessary to be performed under G.S. 143-215.94B(b), 143-215.94B(b1), or 143-215.94D(b1) in order to achieve the purposes of this Part.~~

~~2. The amount estimated for the cost of a task does not exceed the amount or rate that is reasonable for that task.~~

~~(2) The Department may require an owner, operator, or landowner to obtain preapproval before proceeding with any task. The Department shall specify~~

~~those tasks for which preapproval is required. The Department shall deny any request for payment or reimbursement of the cost of any task for which preapproval is required if the owner, operator, or landowner failed to obtain preapproval of the task. Preapproval of a task by the Department does not guarantee payment or reimbursement in the amount estimated for the cost of the task at the time preapproval is requested. The Department shall pay or reimburse the cost of a task only if all of the following apply:~~

- ~~a. The cost is eligible to be paid under G.S. 143-215.94B(b), 143-215.94B(b1), or 143-215.94D(b1).~~
 - ~~b. Payment is in accordance with G.S. 143-215.94B(d) or G.S. 143-215.94D(d).~~
 - ~~e. The Department determines that the cost is reasonable and necessary.~~
- ~~(3) The Commission may adopt rules governing payment or reimbursement of reasonable and necessary costs and, consistent with any rules adopted by the Commission, the Department shall develop, implement, and periodically revise a schedule of costs that the Department determines to be reasonable and necessary costs for specific tasks. Statements that specify tasks for which preapproval is required and schedules of reasonable and necessary costs for specific tasks are statements within the meaning of G.S. 150B-2(8a)g. This subsection shall not be construed to invalidate any rule of the Commission related to preapproval of tasks that will result in a cost that is eligible to be paid or reimbursed under G.S. 143-215.94B(b), 143-215.94B(b1), or 143-215.94D(b1), provided, however, that the Department may specify additional tasks for which preapproval is required.~~
- ~~(4) In all cases, the Department shall require an owner, operator, or landowner to submit documentation sufficient to establish that a claim is eligible to be paid or reimbursed under this Part before the Department pays or reimburses the claim.~~
- ~~(5) The Department shall authorize a task the cost of which is to be paid or reimbursed from the Commercial Fund or the Noncommercial Fund only when the task is scheduled to be performed on the basis of a priority determination pursuant to subsection (c4) of this section. The Department shall not pay or reimburse the cost of any task for which authorization is required under this subsection until the Department has preapproved and authorized the task.~~
- ~~(6) Except as provided in subdivisions (8) and (9) of this subsection, the Department shall not authorize any task the cost of which is to be paid or reimbursed from the Commercial Fund or the Noncommercial Fund unless the Department determines, based on the scope of the work to be performed and the schedule of reasonable and necessary costs, that sufficient funds will be available in the Commercial Fund or the Noncommercial Fund, whichever applies, to pay or reimburse the cost of that task within 90 days after the Department determines that the owner, operator, or landowner has submitted a claim with documentation sufficient to establish that the claim is eligible to be paid under this Part.~~
- ~~(7) This subsection shall not be construed to establish a cause of action against the Commission or the Department for any failure to pay or reimburse any cost within any specific period of time. This subsection shall not be construed to establish a defense to any action to enforce the requirements of either G.S. 143-215.84 or subsection (a) of this section.~~

- ~~(8) The Department may preapprove and authorize a task the cost of which is to be paid or reimbursed from the Commercial Fund or the Noncommercial Fund that has not been authorized pursuant to subdivisions (5) and (6) of this subsection if the owner, operator, or landowner specifically requests that the task be authorized and agrees that the claim for payment or reimbursement of the cost will not be paid until after the Department has paid all claims for payment or reimbursement of costs for tasks that the Department has authorized pursuant to subdivisions (5) and (6) of this subsection.~~
- ~~(9) The Department may preapprove and authorize a task the cost of which is to be paid or reimbursed from the Commercial Fund or the Noncommercial Fund that has not been authorized pursuant to subdivisions (5) and (6) of this subsection if the discharge or release creates an emergency situation. An emergency situation exists when a discharge or release of petroleum results in an imminent threat to human health or the environment. A claim for payment or reimbursement of costs for tasks that are authorized under this subdivision shall be paid or reimbursed on the same basis as tasks that are authorized under subdivisions (5) and (6) of this subsection.~~
- ~~(10) Each fiscal year, the Department may preapprove and authorize tasks, the cost of which is to be paid or reimbursed from the Commercial Fund and the sum total of which shall not exceed five hundred thousand dollars (\$500,000), that have not been authorized pursuant to subdivisions (5) and (6) of this subsection for the purpose of completing risk-based management actions leading to no further action or closure. A claim for payment or reimbursement of costs for tasks that are authorized under this subdivision shall be paid or reimbursed on the same basis as tasks that are authorized under subdivisions (5) and (6) of this subsection.~~

~~(f) Repealed by Session Laws 2003-352, s. 6, effective July 27, 2003.~~

~~(f1) Any person seeking payment or reimbursement from the Commercial Fund shall certify to the Department that the costs to be paid or reimbursed by the Commercial Fund are not eligible to be paid or reimbursed by or from any other source, including any contract of insurance. If any cost paid or reimbursed by the Commercial Fund is eligible to be paid or reimbursed by or from another source, that cost shall not be paid from, or if paid shall be repaid to, the Commercial Fund. As used in this Part, the phrase "any other source including any contract of insurance" does not include self-insurance.~~

~~(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 any of the following apply:~~

- ~~(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.~~
- ~~(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. Subdivision (1) of subsection (g) of this section shall not apply to a payment or reimbursement~~

~~pursuant to this section if, at the time of the discharge or release, the owner or operator holds a valid operating permit as required by G.S. 143-215.94U.~~

~~(i) Repealed by Session Laws 2005-365, s. 1, effective September 8, 2005.~~

~~(j) An owner, operator, or landowner shall request that the Department determine whether any of the costs of assessment and cleanup of a discharge or release from a petroleum underground storage tank are eligible to be paid or reimbursed from either the Commercial Fund within one year after completion of any task that is eligible to be paid or reimbursed under G.S. 143-215.94B(b) or 143-215.94B(b1).~~

~~(k) An owner, operator, or landowner shall request payment or reimbursement from the Commercial Fund for the cost of a task within one year after the completion of the task. The Department shall deny any request for payment or reimbursement of the cost of any task that would otherwise be eligible to be paid or reimbursed if the request is not received within 12 months after the later of the date on which the:~~

~~(1) Department determines that the cost is eligible to be paid or reimbursed.~~

~~(2) Task is completed. (1987 (Reg. Sess., 1988), c. 1035, s. 1; 1989, c. 652, ss. 7, 16; 1991, c. 538, ss. 7, 22; 1991 (Reg. Sess., 1992), c. 817, s. 2; 1993, c. 400, s. 15; c. 402, s. 3; 1995, c. 377, s. 8; 1995 (Reg. Sess., 1996), c. 648, ss. 3, 4; 1998-161, ss. 4, 5, 8(a), (b), 11(b); 1998-215, s. 68; 2000-172, s. 7.1; 2003-352, ss. 6, 7; 2004-124, s. 30.10(d); 2005-365, ss. 1, 2; 2008-195, s. 2(a); 2010-154, ss. 5, 6; 2011-398, s. 51; 2015-241, s. 14.16A(e), (i); 2016-94, s. 14.5.)~~

§ 143-215.94F. Limited amnesty.

~~Any owner or operator who reports a suspected discharge or release from an underground storage tank prior to 1 October 1989 shall not be liable for any civil penalty that might otherwise be imposed pursuant to G.S. 143-215.88A(a) for violations of G.S. 143-215.83(a) and G.S. 143-215.85. 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. (1987 (Reg. Sess., 1988), c. 1035, s. 1; 1989, c. 652, s. 8.)~~

§ 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 may contract with any agent or contractor it deems appropriate to investigate a release, to develop and implement a cleanup 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 shall pay the costs resulting from the Commercial 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.~~

~~(a3) Expired October 1, 2011, pursuant to Session Laws 2001-442, s. 8, as amended by Session Laws 2008-195, s. 11.~~

~~(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 subsection (b) or (b1) of G.S. 143-215.94B, 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 the Commercial Fund;~~
- ~~(2) The amounts provided for in G.S. 143-215.94B(b) or G.S. 143-215.94B(b1) 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) or G.S. 143-215.94B(b1) 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; [and]~~
- ~~(6) The amounts provided for in G.S. 143-215.94B(b5) and G.S. 143-215.94D(b2).~~

~~(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) Repealed by Session Laws 2015-241, s. 14.16A(f), effective December 31, 2016.~~

~~(g) If the Department paid or reimbursed costs that are not authorized to be paid or reimbursed under G.S. 143-215.94B or G.S. 143-215.94D as a result of a misrepresentation by an agent who acted on behalf of an owner, operator, or landowner, the Department shall first seek reimbursement, pursuant to subdivision (1) of subsection (d) of this section, from the agent of monies paid to or retained by the agent.~~

~~(h) The Department shall take administrative action to recover costs or bring a civil action pursuant to subdivision (1) of subsection (d) of this section to seek reimbursement of costs in accordance with the time limits set out in this subsection.~~

- ~~(1) The Department shall take administrative action to recover costs or bring a civil action to seek reimbursement of costs that are not authorized to be paid from the Commercial Fund under subdivision (1), (2), or (3) of G.S. 143-215.94B(d) within five years after payment.~~
- ~~(2) The Department shall take administrative action to recover costs or bring a civil action to seek reimbursement of costs other than those described in subdivision (1) of this subsection within three years after payment.~~
- ~~(3) Notwithstanding the time limits set out in subdivisions (1) and (2) of this subsection, the Department may take administrative action to recover costs or bring a civil action to seek reimbursement of costs paid as a result of fraud or misrepresentation at any time.~~

~~(i) An administrative action or civil action that is not commenced within the time allowed by subsection (h) of this section is barred.~~

~~(j) Except with the consent of the claimant, the Department may not withhold payment or reimbursement of costs that are authorized to be paid from the Commercial Fund in order to recover any other costs that are in dispute unless the Department is authorized to withhold payment by a final decision of the Commission pursuant to G.S. 150B-36 or an order or final decision of a court. (1987 (Reg. Sess., 1988), c. 1035, s. 1; 1989, c. 652, ss. 9, 16; 1991, c. 538, ss. 8, 23; 1993, c. 400, s. 15; c. 402, s. 4; 1995, c. 377, s. 9; 2001-442, s. 3; 2008-195, ss. 3, 11; 2012-200, s. 13(e); 2015-241, s. 14.16A(f).)~~

§ 143-215.94H. Financial responsibility.

(a) 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 that is the lesser of:

- (1) The full amount of the financial responsibility that an owner or operator is required to demonstrate under rules promulgated by the United States Environmental Protection Agency pursuant to 42 U.S.C. § 6991b(d).
- (2) 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. 143-215.94B(b1) if costs are eligible to be paid under those subsections.

(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. (1987 (Reg. Sess., 1988), c. 1035, s. 1; 1989, c. 652, s. 10; 1993, c. 402, s. 5; 2008-195, s. 4; 2009-570, s. 19.)

§ 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. 58-2-131, 58-2-132, 58-2-133, 58-2-134, 58-2-150, 58-2-155, 58-2-165, 58-2-180, 58-2-185, 58-2-190, 58-2-200, and 58-6-5 apply to each pool and to persons that administer the pools. Annual financial statements required by G.S. 58-2-165 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 48 of Chapter 58 do not apply to any risks retained by any pool.

(l) The Department of Insurance, in consultation with the Department of Environmental Quality, shall provide guidance and technical assistance for the formation of an insurance pool pursuant to G.S. 143-215.94I to any responsible entity that requests assistance. (1987 (Reg. Sess., 1988), c. 1035, s. 1; 1989, c. 652, s. 11; 1995, c. 193, s. 66; 1999-132, s. 11.11; 2008-195, s. 10; 2011-266, s. 1.20(c); 2015-241, s. 14.30(u).)

§ 143-215.94J. Limitation of liability of the State of North Carolina.

~~(a) No claim filed against the Commercial 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) Repealed by Session Laws 2015-241, s. 14.16A(g), effective December 31, 2016.~~

~~(e) If at any time the fund balance is insufficient to pay all valid claims against it, the claims shall be paid in full in the order in which they are finally determined. The Secretary may retain not more than five hundred thousand dollars (\$500,000) in the Commercial Fund as a contingency reserve and not apply the reserve to the claims. The Department may use the contingency reserve to conduct cleanups in accordance with G.S. 143-215.94G when an imminent hazard poses a threat to human health or to significant natural resources. (1987 (Reg. Sess., 1988), c. 1035, s. 1; 1989, c. 652, s. 16; 1991, c. 538, s. 9; 1993, c. 400, s. 15; 2015-241, s. 14.16A(g).)~~

§ 143-215.94K. Enforcement.

~~The provisions of G.S. 143-215.94W through G.S. 143-215.94Y shall apply to this Part. (1987 (Reg. Sess., 1988), c. 1035, s. 1; 1993, c. 400, s. 15; 1995, c. 377, s. 10.)~~

§ 143-215.94L. Definitions.

~~(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 of the General Statutes 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. The provisions of 40 Code of Federal Regulations Part 280, Subpart I Lender Liability (1 July 1997 Edition) apply to this Part and Part 2B of this Article.~~

~~(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).~~

~~(d) This Part shall be known and may be cited as the Leaking Petroleum Underground Storage Tank Cleanup Act of 1988.~~

~~(e) The Department of Environmental Quality shall establish a process to provide informal notice of any proposed policy change or rule interpretation that is not a rule, as defined in G.S. 150B-2, to interested parties. Except in a situation that requires immediate action, the Department shall receive and consider oral and written comment from interested parties before the Department implements the proposed policy change or rule interpretation. Except in a situation that requires immediate action, the Department shall provide written notice of a policy change or rule interpretation to interested parties at least 30 days prior to its implementation. (1987 (Reg. Sess., 1988), c. 1035, s. 1; 1991, c. 538, ss. 10, 16; 1993, c. 400, s. 15; 1998-161, s. 9; 2008-195, s. 9; 2015-241, s. 14.30(u).)~~

§ 143-215.94M. Reports.

~~(a) The Secretary shall present an annual report to the Environmental Review Commission, the Joint Legislative Oversight Committee on Agriculture and Natural and Economic Resources, the Fiscal Research Division, the chairs of the Senate Appropriations Committee on Agriculture, Natural, and Economic Resources, and the chairs of the House of Representatives Appropriations Committee on Agriculture and Natural and Economic Resources that shall include at least the following:~~

- ~~(1) A list of all discharges or releases of petroleum from underground storage tanks.~~
- ~~(2) Repealed by Session Laws 2015-241, s. 14.16A(h), effective December 31, 2016.~~
- ~~(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 the Commercial Fund.~~
- ~~(5) A statement of all claims against the Commercial Fund, including claims paid, claims denied, pending claims, anticipated claims, and any other obligations.~~
- ~~(6) The adequacy of the Commercial Fund to carry out the purposes of this Part together with any recommendations as to measures that may be necessary to assure the continued solvency of the Commercial Fund.~~
- ~~(7) Repealed by Session Laws 2012-200, s. 23, effective August 1, 2012.~~

~~(b) The report required by this section shall be made by the Secretary on or before November 1 of each year. (1987 (Reg. Sess., 1988), c. 1035, s. 1; 1989, c. 652, ss. 12, 16; 1991, c. 538, s. 11; 1993, c. 400, s. 15; c. 402, s. 6; 2002-148, s. 7; 2012-200, s. 23; 2015-241, s. 14.16A(h); 2017-57, s. 14.1(i).)~~

§ 143-215.94N. Applicability.

~~(a) The provisions of this Part as they relate to costs paid from the Commercial Fund apply only to discharges or releases that are discovered or reported on or after 30 June 1988 from a commercial underground storage tank.~~

~~(b) Repealed by Session Laws 2015-241, s. 14.16A(d), effective December 31, 2016. (1989, c. 652, ss. 13, 16; 1993, c. 400, s. 15; 1995, c. 377, s. 11; 2015-241, ss. 14.16A(c), (d).)~~

~~§ 143-215.94O: Repealed by Session Laws 2011-266, s. 1.20(a), effective July 1, 2011.~~

§ 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) 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. (1989, c. 652, s. 16; 1991, c. 538, ss. 13, 21; 1993, c. 400, s. 15; c. 402, s. 7; 2000-140, s. 93.1(a); 2001-424, s. 12.2(b).)~~

Part 2B. Underground Storage Tank Regulation.

§ 143-215.94T. Adoption and implementation of regulatory program.

~~(a) The Commission shall adopt, and the Department shall implement and enforce, rules relating to underground storage tanks as provided by G.S. 143-215.3(a)(15) and G.S. 143B-282(a)(2)h. These rules shall include standards and requirements applicable to both existing and new underground storage tanks and tank systems, may include different standards and requirements based on tank capacity, tank location, tank age, and other relevant factors, and shall include, at a minimum, standards and requirements for:~~

- ~~(1) Design, construction, and installation, including monitoring systems.~~
- ~~(2) Notification to the Department, inspection, and registration.~~
- ~~(3) Recordation of tank location.~~
- ~~(4) Modification, retrofitting, and upgrading.~~
- ~~(5) General operating requirements.~~
- ~~(6) Release detection.~~
- ~~(7) Release reporting, investigation, and confirmation.~~
- ~~(8) Corrective action.~~
- ~~(9) Repair.~~
- ~~(10) Closure.~~
- ~~(11) Financial responsibility.~~
- ~~(12) Tank tightness testing procedures and certification of persons who conduct tank tightness tests.~~
- ~~(13) Secondary containment for all components of petroleum underground storage tank systems.~~

~~(b) Rules adopted pursuant to subsection (a) of this section that apply only to commercial underground storage tanks shall not apply to any:~~

- ~~(1) Farm or residential underground storage tank of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes.~~
- ~~(2) Underground storage tank of 1,100 gallons or less capacity used for storing heating oil for consumptive use on the premises where stored.~~
- ~~(3) 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.~~

~~(e) Rules adopted pursuant to subdivision (13) of subsection (a) of this section shall require secondary containment for all components of underground storage tank systems, including, but not limited to, tanks, piping, fittings, pump heads, and dispensers. Secondary containment requirements shall include standards for double wall tanks, piping, and fittings and for sump containment for pump heads and dispensers. The rules shall provide for monitoring of double wall interstices and sump containments. The rules shall apply to any underground storage tank system that is installed on or after the date on which the rules become effective and to the replacement of any component of an underground storage tank system on or after that date. This section shall not be construed to limit the right of an owner or operator to repair any existing component of an underground storage tank system. If an existing underground storage tank is replaced, the secondary containment and interstitial monitoring requirements shall apply only to the replaced underground tank. Likewise, if existing piping is replaced, the secondary containment and interstitial monitoring requirements shall apply only to the replaced piping.~~

~~(d) The Department shall allow non-tank metallic components that are unprotected from corrosion, including flex connectors and other metal fittings and connectors at the ends of piping runs, to have corrosion protection added as an alternative to replacement of these~~

~~components if the component does not have visible corrosion and passes a tightness test.
(1989, c. 652, s. 14; 1998-161, s. 10; 1999-328, s. 4.12; 2003-352, s. 8; 2008-195, s. 5;
2009-570, s. 20; 2011-394, s. 11.4.)~~

§ 143-215.94U. Registration of petroleum commercial underground storage tanks; operation of petroleum underground storage tanks; operating permit required.

~~(a) The owner or operator of each petroleum commercial underground storage tank shall annually obtain an operating permit from the Department for the facility at which the tank is located. The Department shall issue an operating permit only if the owner or operator has done all of the following:~~

- ~~(1) Notified the Department of the existence of all tanks as required by 40 Code of Federal Regulations § 280.22 (1 July 1994 Edition) or 42 U.S.C. § 6991a, if applicable, at the facility.~~
- ~~(2) Paid all fees required under G.S. 143-215.94C for all commercial petroleum underground storage tanks located at the facility.~~
- ~~(3) Complies with applicable release detection, spill and overfill protection, and corrosion protection requirements set out in rules adopted pursuant to this Chapter, notifies the Department of the method or combination of methods of leak detection, spill and overfill protection, and corrosion protection in use, and certifies to the Department that all applicable release detection, spill and overfill protection, and corrosion protection requirements are being met for all petroleum underground storage tanks located at the facility.~~
- ~~(4) If applicable, complies with the Stage I vapor control requirements set out in 15A North Carolina Administrative Code 2D.0928, effective 1 March 1991, notifies the Department of the method or combination of methods of vapor control in use, and certifies to the Department that all Stage I vapor control requirements are being met for all petroleum underground storage tanks located at the facility.~~
- ~~(5) Substantially complied with the air quality, groundwater quality, and underground storage tank standards applicable to any activity in which the applicant has previously engaged and has been in substantial compliance with federal and State laws, regulations, and rules for the protection of the environment. In determining substantial compliance, the compliance history of the owner or operator and any parent, subsidiary, or other affiliate of the owner, operator, or parent may be considered.~~
- ~~(6) Demonstrated financial responsibility as required by G.S. 143-215.94H.~~

~~(b) The operating permit shall be issued at the time the commercial underground storage annual tank operating fee required under G.S. 143-215.94C(a) is paid and shall be valid from the first day of the month in which the fee is due through the last day of the last month for which the fee is paid in accordance with the schedule established by the Department under G.S. 143-215.94C(b).~~

~~(c) No person shall place a petroleum product, and no owner or operator shall cause a petroleum product to be placed, into an underground storage tank at a facility for which the owner or operator does not hold a currently valid operating permit.~~

~~(d) The Department shall issue an operating permit certificate for each facility that meets the requirements of subsection (a) of this section. The operating permit certificate shall identify the number of tanks at the facility and shall conspicuously display the date on which the permit expires. Except for the owner or operator, no person shall be liable under subsection (c) of this section if an unexpired operating permit certificate is displayed at the facility, unless the person knows or has reason to know that the owner or operator does not hold a currently valid operating permit for the facility.~~

~~(e) The Department may revoke an operating permit only if the owner or operator fails to continuously meet the requirements set out in subsection (a) of this section. If the~~

~~Department revokes an operating permit, the owner or operator of the facility for which the operating permit was issued shall immediately surrender the operating permit certificate to the Department, unless the revocation is stayed pursuant to G.S. 150B-33. An owner or operator may challenge a decision by the Department to deny or revoke an operating permit by filing a contested case under Article 3 of Chapter 150B of the General Statutes. (1995, c. 377, s. 2; 1998-161, s. 6; 2008-195, s. 6; 2011-398, s. 52.)~~

§ 143-215.94V. Standards for petroleum underground storage tank cleanup.

(a) ~~Legislative findings and intent.~~

(1) ~~The General Assembly finds that:~~

- a. ~~The goals of the underground storage tank program are to protect human health and the environment. Maintaining the solvency of the Commercial Fund and the Noncommercial Fund is essential to these goals.~~
- b. ~~The sites at which discharges or releases from underground storage tanks occur vary greatly in terms of complexity, soil types, hydrogeology, other physical and chemical characteristics, current and potential future uses of groundwater, and the degree of risk that each site may pose to human health and the environment.~~
- e. ~~Risk-based corrective action is a process that recognizes this diversity and utilizes an approach where assessment and remediation activities are specifically tailored to the conditions and risks of a specific site.~~
- d. ~~Risk-based corrective action gives the State flexibility in requiring different levels of cleanup based on scientific analysis of different site characteristics, and allowing no action or no further action at sites that pose little risk to human health or the environment.~~
- e. ~~A risk-based approach to the cleanup of environmental damage can adequately protect human health and the environment while preventing excessive or unproductive cleanup efforts, thereby assuring that limited resources are directed toward those sites that pose the greatest risk to human health and the environment.~~

(2) ~~The General Assembly intends:~~

- a. ~~To direct the Commission to adopt rules that will provide for risk-based assessment and cleanup of discharges and releases from petroleum underground storage tanks. These rules are intended to combine groundwater standards that protect current and potential future uses of groundwater with risk-based analysis to determine the appropriate cleanup levels and actions.~~
- b. ~~That these rules apply to all discharges or releases that are reported on or after the date the rules become effective in order to ascertain whether cleanup is necessary, and if so, the appropriate level of cleanup.~~
- e. ~~That these rules may be applied to any discharge or release that has been reported at the time the rules become effective at the discretion of the Commission.~~
- d. ~~That these rules and decisions of the Commission and the Department in implementing these rules facilitate the completion of more cleanups in a shorter period of time.~~
- e. ~~That neither the Commercial Fund nor the Noncommercial Fund be used to clean up sites where the Commission has determined that a discharge or release poses a degree of risk to human health or the environment that is no greater than the acceptable level of risk established by the Commission.~~
- f. ~~Repealed by Session Laws 1998-161, s. 11(e), effective retroactively to January 1, 1998.~~

~~g. That the Commercial Fund and the Noncommercial Fund be used to perform the most cost-effective cleanup that addresses imminent threats to human health and the environment.~~

~~(b) The Commission shall adopt rules to establish a risk-based approach for the assessment, prioritization, and cleanup of discharges and releases from petroleum underground storage tanks. The rules shall address, at a minimum, the circumstances where site-specific information should be considered, criteria for determining acceptable cleanup levels, and the acceptable level or range of levels of risk to human health and the environment. Rules that use the distance between a source area of a confirmed discharge or release to a water supply well or a private drinking water well, as those terms are defined under G.S. 87-85, shall include a determination whether a nearby well is likely to be affected by the discharge or release as a factor in determining levels of risk.~~

~~(c) The Commission may require an owner or operator or a landowner eligible for payment or reimbursement under subsections (b), (b1), (c), and (c1) of G.S. 143-215.94E to provide information necessary to determine the degree of risk to human health and the environment that is posed by a discharge or release from a petroleum underground storage and to identify the most cost-effective cleanup that addresses imminent threats to human health and the environment.~~

~~(d) If the Commission concludes that a discharge or release poses a degree of risk to human health or the environment that is no greater than the acceptable level of risk established by the Commission, the Commission shall notify an owner, operator, or landowner who provides the information required by subsection (c) of this section that no cleanup, further cleanup, or further action will be required unless the Commission later determines that the discharge or release poses an unacceptable level of risk or a potentially unacceptable level of risk to human health or the environment. If the Commission concludes that a discharge or release poses a degree of risk to human health or the environment that requires further cleanup, the Commission shall notify the owner, operator, or landowner who provides the information required by subsection (c) of this section of the cleanup method approved by the Commission as the most cost-effective cleanup method for the site. This section shall not be construed to prohibit an owner, operator, or landowner from selecting a cleanup method other than the cost-effective cleanup method approved by the Commission so long as the Commission determines that the alternative cleanup method will address imminent threats to human health and the environment.~~

~~(e) If the Commission concludes under subsection (d) of this section that no cleanup, no further cleanup, or no further action will be required, the Department shall not pay or reimburse any costs otherwise payable or reimbursable under this Article from either the Commercial or Noncommercial Fund, other than reasonable and necessary to conduct the risk assessment required by this section, unless:~~

~~(1) Cleanup is ordered or damages are awarded in a finally adjudicated judgment in an action against the owner or landowner. To be eligible for reimbursement of damages arising from a third-party claim for bodily injury or property damage awarded in a finally adjudicated judgment, however, an owner or operator shall (i) notify the Department of any such claim; (ii) provide the Department with all pleadings and other related documents if a lawsuit has been filed; and (iii) provide the Department copies of any medical reports, statements, investigative reports, or certifications from licensed professionals necessary to determine that a claim for bodily injury or property damage is reasonable and necessary. Reimbursement of claims for damages arising from a third-party claim for bodily injury or property damage awarded in a finally adjudicated judgment shall be subject to the~~

~~limitations set forth in G.S. 143-215.94B(b)(5) and G.S. 143-215.94D(b1)(2), as applicable, and any other provision governing third-party claims set forth in this Article.~~

- ~~(2) Cleanup is required or damages are agreed to in a consent judgment approved by the Department prior to its entry by the court.~~
- ~~(3) Cleanup is required or damages are agreed to in a settlement agreement approved by the Department prior to its execution by the parties.~~
- ~~(4) The payment or reimbursement is for costs that were incurred prior to or as a result of notification of a determination by the Commission that no cleanup, no further cleanup, or no action is required.~~
- ~~(5) The payment or reimbursement is for costs that were incurred as a result of a later determination by the Commission that the discharge or release poses a threat or potential threat to human health or the environment as provided in subsection (d) of this section.~~

~~(e1) If the Commission concludes under subsection (d) of this section that further cleanup is required and notifies the owner, operator, or landowner of the cleanup method approved by the Commission as the most cost-effective cleanup method for the site, the Department shall not pay or reimburse any costs otherwise payable or reimbursable under this Article from either the Commercial Fund or Noncommercial Fund, other than those costs that are reasonable and necessary to conduct the risk assessment and to implement the cost-effective cleanup method approved by the Commission. If the owner, operator, or landowner selects a cleanup method other than the one identified by the Commission as the most cost-effective cleanup, the Department shall not pay or reimburse for costs in excess of the cost of implementing the approved cost-effective cleanup.~~

~~(f) This section shall not be construed to limit the authority of the Commission to require investigation, initial response, and abatement of a discharge or release pending a determination by the Commission under subsection (d) of this section as to whether cleanup, further cleanup, or further action will be required.~~

~~(g) Subsections (c) through (e1) of this section apply only to assessments and cleanups in progress or begun on or after 2 January 1998.~~

~~(h) If a discharge or release of petroleum from an underground storage tank results in contamination in soil or groundwater that becomes commingled with contamination that is the result of a discharge or release of petroleum from a source of contamination other than an underground storage tank, the cleanup of petroleum may proceed under rules adopted pursuant to this section. The Department shall not pay or reimburse any costs associated with the assessment or remediation of that portion of contamination that results from a release or discharge of petroleum from a source other than an underground storage tank from either the Commercial Fund or the Noncommercial Fund. (1995, c. 377, s. 1; 1998-161, s. 11(c); 2003-352, s. 9; 2011-394, s. 11.5; 2015-263, s. 20(a).)~~

§ 143-215.94W. Enforcement procedures: civil penalties.

~~(a) A civil penalty of not more than ten thousand dollars (\$10,000) may be assessed by the Secretary against any person who:~~

- ~~(1) Violates any provision of this Part or rule adopted pursuant to this Part.~~
- ~~(2) Fails to apply for or to secure a permit required by this Part.~~
- ~~(3) Violates or fails to act in accordance with the terms, conditions, or requirements of any permit issued pursuant to this Part.~~
- ~~(4) Fails to file, submit, or make available, as the case may be, any documents, data, or reports required by this Part.~~
- ~~(5) Violates or fails to act in accordance with the terms, conditions, or requirements of any special order or other appropriate document issued pursuant to G.S. 143-215.2 or fails to comply with the requirements of G.S. 143B-279.9 through G.S. 143B-279.11.~~
- ~~(6) Falsifies or tampers with any recording or monitoring device or method required to be operated or maintained under this Part or rules implementing this Part.~~
- ~~(7) Knowingly renders inaccurate any recording or monitoring device or method required to be operated or maintained under this Part or rules implementing this Part.~~
- ~~(8) Knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this Part or a rule implementing this Part.~~
- ~~(9) Knowingly makes a false statement of a material fact in a rule-making proceeding or contested case under this Part.~~
- ~~(10) Refuses access to the Commission or its duly designated representative to any premises for the purpose of conducting a lawful inspection provided for in this Part.~~

~~(b) If any action or failure to act for which a penalty may be assessed under this section is continuous, the Secretary may assess a penalty not to exceed ten thousand dollars (\$10,000) per day for so long as the violation continues. A penalty for a continuous violation shall not exceed two hundred thousand dollars (\$200,000) for each period of 30 days during which the violation continues.~~

~~(c) In determining the amount of the penalty, the Secretary shall consider the factors set out in G.S. 143B-282.1(b). The procedures set out in G.S. 143B-282.1 shall apply to civil penalty assessments that are presented to the Commission for final agency decision.~~

~~(d) The Secretary shall notify any person assessed a civil penalty of the assessment and the specific reasons therefor by registered or certified mail, or by any means authorized by G.S. 1A-1, Rule 4. Contested case petitions shall be filed pursuant to G.S. 150B-23 within 30 days of receipt of the notice of assessment. The Secretary shall make the final decision regarding assessment of a civil penalty under this section.~~

~~(e) Requests for remission of civil penalties shall be filed with the Secretary. Remission requests shall not be considered unless made within 30 days of receipt of the notice of assessment. Remission requests must be accompanied by a waiver of the right to a contested case hearing pursuant to Chapter 150B and a stipulation of the facts on which the assessment was based. Consistent with the limitations in G.S. 143B-282.1(e) and (d), remission requests may be resolved by the Secretary and the violator. If the Secretary and the violator are unable to resolve the request, the Secretary shall deliver remission requests and his recommended action to the Committee on Civil Penalty Remissions of the Environmental Management Commission appointed pursuant to G.S. 143B-282.1(e).~~

~~(f) If any civil penalty has not been paid within 30 days after notice of assessment has been served on the violator, the Secretary shall request the Attorney General to institute a civil action in the superior court of any county in which the violator resides or has his or its principal place of business to recover the amount of the assessment, unless the violator contests the assessment as provided in subsection (d) of this section, or requests remission of the assessment in whole or in part as provided in subsection (c) of this section. If any civil penalty has not been paid within 30 days after the final agency decision or court order has been served on the violator, the Secretary shall request the Attorney General to institute a civil action in the superior court of any county in which the violator resides or has his or its principal place of business to recover the amount of the assessment. Such civil actions must be filed within three years of the date the final agency decision or court order was served on the violator.~~

~~(g) Repealed by Session Laws 1995 (Regular Session, 1996), c. 743, s. 17.~~

~~(h) The clear proceeds of civil penalties assessed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. (1995, c. 377, s. 3; 1995 (Reg. Sess., 1996), c. 743, s. 17; 1998-215, s. 69; 2002-90, s. 6.)~~

§ 143-215.94X. Enforcement procedures: criminal penalties.

~~(a) Any person who negligently commits any of the offenses set out in subdivisions (1) through (9) of G.S. 143-215.94W(a) shall be guilty of a Class 2 misdemeanor which may include a fine not to exceed fifteen thousand dollars (\$15,000) per day of violation, provided that such fine shall not exceed a cumulative total of two hundred thousand dollars (\$200,000) for each period of 30 days during which a violation continues.~~

~~(b) Any person who knowingly and willfully commits any of the offenses set out in subdivisions (1) through (5) of G.S. 143-215.94W(a) shall be guilty of a Class I felony, which may include a fine not to exceed one hundred thousand dollars (\$100,000) per day of violation, provided that this fine shall not exceed a cumulative total of five hundred thousand dollars (\$500,000) for each period of 30 days during which a violation continues. For the purposes of this subsection, the phrase "knowingly and willfully" shall mean intentionally and consciously as the courts of this State, according to the principles of common law interpret the phrase in the light of reason and experience.~~

~~(c) (1) Any person who knowingly commits any of the offenses set out in subdivisions (1) through (5) of G.S. 143-215.94W(a) and who knows at that time that he thereby places another person in imminent danger of death or serious bodily injury shall be guilty of a Class C felony, which may include a fine not to exceed two hundred fifty thousand dollars (\$250,000) per day of violation, provided that this fine shall not exceed a cumulative total of one million dollars (\$1,000,000) for each period of 30 days during which a violation continues.~~

~~(2) For the purposes of this subsection, a person's state of mind is knowing with respect to:~~

~~a. His conduct, if he is aware of the nature of his conduct;~~

~~b. An existing circumstance, if he is aware or believes that the circumstance exists; or~~

~~e. A result of his conduct, if he is aware or believes that his conduct is substantially certain to cause danger of death or serious bodily injury.~~

~~(3) Under this subsection, in determining whether a defendant who is a natural person knew that his conduct placed another person in imminent danger of death or serious bodily injury:~~

~~a. The person is responsible only for actual awareness or actual belief that he possessed; and~~

~~b. Knowledge possessed by a person other than the defendant but not by the defendant himself may not be attributed to the defendant.~~

~~(4) It is an affirmative defense to a prosecution under this subsection that the conduct charged was conduct consented to by the person endangered and that the danger and conduct charged were reasonably foreseeable hazards of an occupation, a business, or a profession; or of medical treatment or medical or scientific experimentation conducted by professionally approved methods and such other person had been made aware of the risks involved prior to giving consent. The defendant may establish an affirmative defense under this subdivision by a preponderance of the evidence.~~

~~(d) No proceeding shall be brought or continued under this section for or on account of a violation by any person who has previously been convicted of a federal violation based upon the same set of facts.~~

~~(e) In proving the defendant's possession of actual knowledge, circumstantial evidence may be used, including evidence that the defendant took affirmative steps to shield himself~~

~~from relevant information. Consistent with the principles of common law, the subjective mental state of defendants may be inferred from their conduct.~~

~~(f) For the purposes of the felony provisions of this section, a person's state of mind shall not be found "knowingly and willfully" or "knowingly" if the conduct that is the subject of the prosecution is the result of any of the following occurrences or circumstances:~~

- ~~(1) A natural disaster or other act of God which could not have been prevented or avoided by the exercise of due care or foresight.~~
- ~~(2) An act of third parties other than agents, employees, contractors, or subcontractors of the defendant.~~
- ~~(3) An act done in reliance on the written advice or emergency on-site direction of an employee of the Department. In emergencies, oral advice may be relied upon if written confirmation is delivered to the employee as soon as practicable after receiving and relying on the advice.~~
- ~~(4) An act causing no significant harm to the environment or risk to the public health, safety, or welfare and done in compliance with other conflicting environmental requirements or other constraints imposed in writing by environmental agencies or officials after written notice is delivered to all relevant agencies that the conflict exists and will cause a violation of the identified standard.~~
- ~~(5) Violations causing no significant harm to the environment or risk to the public health, safety, or welfare for which no enforcement action or civil penalty could have been imposed under any written civil enforcement guidelines in use by the Department at the time. This subdivision shall not be construed to require the Department to develop or use written civil enforcement guidelines.~~
- ~~(6) Occasional, inadvertent, short-term violations causing no significant harm to the environment or risk to the public health, safety, or welfare. If the violation occurs within 30 days of a prior violation or lasts for more than 24 hours, it is not an occasional, short-term violation.~~

~~(g) All general defenses, affirmative defenses, and bars to prosecution that may apply with respect to other criminal offenses under State criminal offenses may apply to prosecutions brought under this section or other criminal statutes that refer to this section and shall be determined by the courts of this State according to the principles of common law as they may be applied in the light of reason and experience. Concepts of justification and excuse applicable under this section may be developed in the light of reason and experience. (1995, c. 377, s. 3.)~~

§ 143-215.94Y. Enforcement procedures; injunctive relief.

~~Whenever the Department has reasonable cause to believe that any person has violated or is threatening to violate any of the provisions of this Part, any of the terms of any permit issued pursuant to this Part, or a rule implementing this Part or has failed to comply with the requirements of G.S. 143B-279.9 through G.S. 143B-279.11, the Department may, either before or after the institution of any other action or proceeding authorized by this Part, request the Attorney General to institute a civil action in the name of the State upon the relation of the Department for injunctive relief to restrain the violation or threatened violation and for such other and further relief in the premises as the court shall deem proper. The Attorney General may institute such action in the superior court of the county in which the violation occurred or may occur or, in his discretion, in the superior court of the county in which the person responsible for the violation or threatened violation resides or has his or its principal place of business. Upon a determination by the court that the alleged violation of the provisions of this Part, the rules of the Commission, or the failure to comply with the requirements of G.S. 143B-279.9 through G.S. 143B-279.11 has occurred or is threatened, the court shall grant the relief necessary to prevent or abate the violation or threatened violation. Neither the institution of the action nor any of the proceedings thereon shall relieve any party to such proceedings from any penalty prescribed for violation of this Part or for failure to comply with the requirements of G.S. 143B-279.9 through G.S. 143B-279.11. (1995, c. 377, s. 3; 2002-90, s. 7.)~~

Part 2D. Training of Underground Storage Tank Operators.

§ 143-215.94NN. Applicability.

The requirements of this Part apply to underground storage tank systems regulated under Subtitle I of the Resource Conservation and Recovery Act of 1976, Pub. L. 94-580, 90 Stat. 2795, 42 U.S.C. § 6901, et seq., as amended, except those excluded by regulation at 40 Code of Federal Regulations 280.10(b) (July 1, 2009 Edition) and those deferred by regulation at 40 Code of Federal Regulations 280.10(c) (July 1, 2009 Edition). (2010-154, s. 2.)

§ 143-215.9400. Definitions.

Unless a different meaning is required by the context, the definitions in G.S. 143-212 and G.S. 143-215.94A apply in this Part.

- (1) "Emergency response operator" means an on-site person whose responsibilities include addressing emergencies presented by a spill or release, or responding to alarms or releases from an underground storage tank system. For an unmanned facility, "emergency response operator" means the person responsible for responding to emergencies or alarms or releases at the facility.
- (2) "Primary operator" means a person having primary responsibility for the daily on-site operation and maintenance of an underground storage tank system.
- (3) "Underground storage tank" means: (i) any one or combination of tanks (including underground pipes connected thereto) that is used to contain an accumulation of regulated substances, and 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; and (ii) to which this Part applies pursuant to G.S. 143-215.94NN.
- (4) "Underground storage tank system" or "tank system" means an underground storage tank, connected underground piping, underground ancillary equipment, ~~dispenser~~, and containment system, if any. (2010-154, s. 2.)

§ 143-215.94PP. Designation of operators to be trained.

(a) The owner of an underground storage tank system shall designate the primary operator of the underground storage tank system. The person designated shall be the underground storage tank operator, as defined in 40 Code of Federal Regulations Part 280 (July 1, 2009 Edition), or an employee or agent of the underground storage tank operator. There shall be a designated primary operator of the underground storage tank system at all times, until the underground storage tank system has been permanently closed. If the owner fails to designate a primary operator, the owner shall be deemed to be the primary operator of the underground storage tank system for purposes of this Part.

(b) The primary operator shall designate one or more emergency response operators who are employees or agents of the primary operator and shall be on call to respond to emergencies or alarms at the facility. If an emergency response operator is not present at the facility at all times during which a regulated substance is being withdrawn from, or is capable of being withdrawn from, the underground storage tank system, the facility shall have an automated notification system in place that will alert the emergency response operator of an emergency or activated alarm at the facility. If the primary operator fails to designate one or more emergency response operators, the primary operator shall be deemed to be the emergency response operator of the underground storage tank system.

(c) A person may act as both the primary operator and the emergency response operator of the underground storage tank system. (2010-154, s. 2.)

§ 143-215.94QQ. Training requirements for primary operators.

(a) The Department shall develop and implement a training program for primary operators. The training program shall provide instruction on the proper operation and maintenance of the underground storage tank system at the facility, principles of construction and safety, and all regulatory requirements associated with the underground storage tank system. The training may consist of a combination of on-site instruction and on-site testing, as well as online instruction and online testing. In order to satisfactorily complete the training, a primary operator shall, at a minimum, demonstrate all of the following:

- (1) Knowledge of the requirements for spill prevention, overflow prevention, release detection, corrosion protection, emergency response, and product compatibility.
- (2) Site-specific knowledge of the equipment used at the facility and the components of the underground storage tank system, and the methods of release detection and release prevention associated with the underground storage tank components.
- (3) Knowledge of the requirements for demonstrating financial responsibility.
- (4) Understanding of notification requirements associated with the underground storage tank system, including requirements for reporting releases and suspected releases.
- (5) Understanding of the requirements for the temporary and permanent closure of underground storage tank systems.
- (6) Knowledge of the emergency response operator training requirements, and the actions to be taken in response to emergencies and alarms.

(b) A primary operator shall be retrained if an inspection at the facility reveals that the underground storage tank system is not in substantial compliance with the requirements for: release detection, release prevention, financial responsibility, emergency response, suspected release reporting and investigation, the proximity of the underground storage tank system to water supply wells and surface water, and permitting. A primary operator who is required to be retrained shall complete the retraining within a reasonable time as determined by the Department. The retraining shall include training in the areas for which the underground storage tank system was not in compliance. The retraining may consist of a combination of on-site instruction and on-site testing, as well as in-class instruction and in-class testing, and, if available, the Department shall offer online instruction and online testing in lieu of in-class instruction and in-class testing. In-class instruction shall be provided by the Department at least once each quarter in each one of the regional offices of the Department. An operator required to be retrained pursuant to this subsection shall only be required to attend in-class instruction and in-class testing at the regional office closest to the facility for which the operator is designated.

(c) The primary operator shall maintain documentation to show that the operator has satisfactorily completed all training required by this section. (2010-154, s. 2.)

§ 143-215.94RR. Training requirements for emergency response operators.

(a) The Department shall develop a training program for emergency response operators. In order to satisfactorily complete the training, an emergency response operator shall, at a minimum, demonstrate all of the following:

- (1) General understanding of the underground storage tank system at the facility, and knowledge of the location and proper operation of the safety and emergency response equipment.
- (2) Understanding of the actions to be taken in response to an emergency, including situations posing an immediate danger or threat to the public or to the environment and requiring immediate action.
- (3) Understanding of leak detection alarms and preparations needed to respond to alarms before a release has occurred.
- (4) Recognition of unusual operating conditions, equipment failures, or environmental conditions that may indicate a release, and knowledge of the steps to take in response to a suspected release.
- (5) Knowledge of immediate steps to take in response to a confirmed release to stop further release and to contain spills before they reach the environment.

(b) The primary operator is responsible for implementing the training program developed by the Department for emergency response operators. The primary operator shall train each emergency response operator of the underground storage tank system at the facility. Prior to training an emergency response operator, the primary operator shall have satisfactorily completed all training required by this section. The primary operator shall maintain documentation of training provided to emergency response operators. (2010-154, s. 2.)

§ 143-215.94SS. Tank systems for emergency power generators.

This section applies only to a facility that utilizes an underground storage tank system to store fuel solely for use by emergency power generators. A primary operator that has satisfactorily completed the training required by G.S. 143-215.94QQ at a facility shall be deemed trained as the primary operator at another facility that has identical spill prevention, overfill prevention, release detection, corrosion protection, emergency response, and product compatibility requirements as the facility for which the primary operator has satisfactorily completed training. (2010-154, s. 2.)

§ 143-215.94TT. Enforcement.

~~This Part may be enforced as provided in G.S. 143-215.94W, 143-215.94X, and 143-215.94Y. (2010-154, s. 2.)~~

§ 143-215.94UU. Effect on other laws.

The requirements of this Part are in addition to, and not in lieu of, any other requirements applicable to underground storage tank owners or operators, as defined in 40 Code of Federal Regulations Part 280 (July 1, 2009 Edition), under law. (2010-154, s. 2.)

§ 143B-279.9. Land-use restrictions may be imposed to reduce danger to public health at contaminated sites.

(a) In order to reduce or eliminate the danger to public health or the environment posed by the presence of contamination at a site, an owner, operator, or other responsible party may impose restrictions on the current or future use of the real property comprising any part of the site where the contamination is located if the restrictions meet the requirements of this section. The restrictions must be agreed to by the owner of the real property, included in a remedial action plan for the site that has been approved by the Secretary, and implemented as a part of the remedial action program for the site. The Secretary may approve restrictions included in a remedial action plan in accordance with standards that the Secretary determines to be applicable to the site. Except as provided in subsection (b) of this section, if the remedial action is risk-based or will not require that the site meet unrestricted use standards, the remedial action plan must include an agreement by the owner, operator, or other responsible party to record approved land-use restrictions that meet the requirements of this section as provided in G.S. 143B-279.10 or G.S. 143B-279.11, whichever applies. Restrictions may apply to activities on, over, or under the land, including, but not limited to, use of groundwater, building, filling, grading, excavating, and mining. Any approved restriction shall be enforced by any owner of the land, operator of the facility, or other party responsible for the contaminated site. Any land-use restriction may also be enforced by the Department through the remedies provided by any provision of law that is implemented or enforced by the Department or by means of a civil action. The Department may enforce any land-use restriction without first having exhausted any available administrative remedies. A land-use restriction may also be enforced by any unit of local government having jurisdiction over any part of the site. A land-use restriction shall not be declared unenforceable due to lack of privity of estate or contract, due to lack of benefit to particular land, or due to lack of any property interest in particular land. Any person who owns or leases a property subject to a land-use restriction under this Part shall abide by the land-use restriction.

(b) The definitions set out in G.S. 143-215.94A apply to this subsection. A remedial action plan for the cleanup of environmental damage resulting from a discharge or release of petroleum from an underground storage tank pursuant to Part 2A of Article 21A of Chapter 143 of the General Statutes, other petroleum sources, or from an aboveground storage tank pursuant to Part 7 of Article 21A of Chapter 143 of the General Statutes must include an agreement by the owner, operator, or other party responsible for the discharge or release of petroleum to record a notice of any applicable land-use restrictions that meet the requirements of this subsection as provided in G.S. 143B-279.11. All of the provisions of this section shall apply except as specifically modified by this subsection and G.S. 143B-279.11. Any restriction on the current or future use of real property pursuant to this subsection shall be enforceable only with respect to: (i) real property on which the source of contamination is located and (ii) any real property on which contamination is located at the time the remedial action plan is approved and that was owned or controlled by any owner or operator of the underground storage tank or other responsible party at the time the discharge or release of petroleum is discovered or reported or at any time thereafter. No restriction on the current or future use of real property shall apply to any portion of any parcel or tract of land on which contamination is not located. This subsection shall not be construed to require any person to record any notice of restriction on the current or future use of real property other than the real property described in this subsection. For purposes of this subsection and G.S. 143B-279.11, the Secretary may restrict current or future use of real property only as set out in any one or more of the following subdivisions:

- (1) Where soil contamination will remain in excess of unrestricted use standards, the property may be used for a primary or secondary residence,

- school, daycare center, nursing home, playground, park, recreation area, or other similar use only with the approval of the Department.
- (2) Where soil contamination will remain in excess of unrestricted use standards and the property is used for a primary or secondary residence that was constructed before the release of petroleum that resulted in the contamination is discovered or reported, the Secretary may approve alternative restrictions that are sufficient to reduce the risk of exposure to contaminated soils to an acceptable level while allowing the real property to continue to be used for a residence.
 - (3) Where groundwater contamination will remain in excess of unrestricted use standards, installation or operation of any well usable as a source of water shall be prohibited.
 - (4) Any restriction on the current or future use of the real property that is agreed upon by both the owner of the real property and the Department.

~~Except with respect to land contaminated from a discharge or release of petroleum from an underground storage tank, the imposition of restrictions on the current or future use of real property on sites contaminated by the discharge or release of petroleum from an aboveground storage tank, or another petroleum source, from which contamination has migrated to off-site properties, as that term is defined under G.S. 130A-310.65(3a), shall only be allowed as provided in G.S. 143-215.104AA or G.S. 130A-310.73A, as applicable.~~

(c) This section does not alter any right, duty, obligation, or liability of any owner, operator, or other responsible party under any other provision of law.

(d) As used in this section:

- (1) "Unrestricted use standards" means generally applicable standards, guidance, or established methods governing contaminants that are established by statute or adopted, published, or implemented by the Environmental Management Commission, the Commission for Public Health, or the Department. Cleanup or remediation of real property to unrestricted use standards means that the property is restored to a condition such that the property and any use that is made of the property does not pose a danger or risk to public health, the environment, or users of the property that is significantly greater than that posed by use of the property prior to its having been contaminated.
- (2) "Risk-based", when used in connection with cleanup, remediation, or similar terms, means cleanup or remediation of contamination of real property to a level that, although not in compliance with unrestricted use standards, does not pose a significant danger or risk to public health, the environment, or users of the real property so long as the property remains in the condition and is used in a manner that is consistent with the assumptions as to the condition and use of the property on which the determination that the level of risk is acceptable is based. (1999-198, s. 1; 2000-51, s. 1; 2001-384, ss. 1, 12; 2002-90, s. 1; 2007-182, s. 2; 2017-209, s. 3(a).)

§ 143B-279.11. Recordation of residual petroleum from underground or aboveground storage tanks or other sources.

(a) The definitions set out in G.S. 143-215.94A and G.S. 143B-279.9 apply to this section. This section applies only to a cleanup pursuant to a remedial action plan that addresses environmental damage resulting from a discharge or release of petroleum from an underground storage tank pursuant to Part 2A of Article 21A of Chapter 143 of the General Statutes ~~or from an aboveground storage tank or other petroleum source pursuant to Part 7 of Article 21A of Chapter 143 of the General Statutes.~~

(b) The owner, operator, or other person responsible for a discharge or release of petroleum from an underground storage tank, aboveground storage tank, or other petroleum source shall prepare and submit to the Department a proposed Notice that meets the requirements of this section. The proposed Notice shall be submitted to the Department (i) before the property is conveyed, or (ii) when the owner, operator, or other person responsible for the discharge or release requests that the Department issue a determination that no further action is required under the remedial action plan, whichever first occurs. The Notice shall be entitled "NOTICE OF RESIDUAL PETROLEUM". The Notice shall include a description that would be sufficient as a description in an instrument of conveyance of the (i) real property on which the source of contamination is located and (ii) any real property on which contamination is located at the time the remedial action plan is approved and that was owned or controlled by any owner or operator of the underground storage tank, ~~aboveground storage tank, or other petroleum source,~~ or other responsible party at the time the discharge or release of petroleum is discovered or reported or at any time thereafter. The Notice shall identify the location of any residual petroleum known to exist on the real property at the time the Notice is prepared. The Notice shall also identify the location of any residual petroleum known, at the time the Notice is prepared, to exist on other real property that is a result of the discharge or release. The Notice shall set out any restrictions on the current or future use of the real property that are imposed by the Secretary pursuant to G.S. 143B-279.9(b) to protect public health, the environment, or users of the property.

(c) If the contamination is located on more than one parcel or tract of land, the Department may require that the owner, operator, or other person responsible for the discharge or release prepare a composite map or plat that shows all parcels or tracts. If the contamination is located on one parcel or tract of land, the owner, operator, or other person responsible for the discharge or release may prepare a map or plat that shows the parcel but is not required to do so. A map or plat shall be prepared and certified by a professional land surveyor, shall meet the requirements of G.S. 47-30, and shall be submitted to the Department for approval. When the Department has approved a map or plat, it shall be recorded in the office of the register of deeds and shall be incorporated into the Notice by reference.

(d) The Department shall review the proposed Notice to determine whether the Notice meets the requirements of this section and rules adopted to implement this section and shall provide the owner, operator, or other person responsible for the discharge or release of petroleum from an underground storage tank, ~~aboveground storage tank, or other petroleum source~~ with a notarized copy of the approved Notice. After the Department approves the Notice, the owner, operator, or other person responsible for the discharge or release of petroleum from an underground storage tank, ~~aboveground storage tank, or other petroleum source~~ shall file a notarized copy of the approved Notice in the register of deeds office in the county or counties in which the real property is located (i) before the property is conveyed or (ii) within 30 days after the owner, operator, or other person responsible for the discharge or release receives notice from the Department that no further action is required under the remedial action plan, whichever first occurs. If the owner, operator, or other person responsible for the discharge or release fails to file the Notice as required by this section, any determination

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by the Department that no further action is required is void. The owner, operator, or other person responsible for the discharge or release, may record the Notice required by this section without the agreement of the owner of the real property. The owner, operator, or other person responsible for the discharge or release shall submit a certified copy of the Notice as filed in the register of deeds office to the Department.

~~(e) Repealed by Session Laws 2012-18, s. 1.23, effective July 1, 2012.~~

(f) In the event that the owner, operator, ~~or other person responsible~~ for the discharge or release fails to submit and file the Notice required by this section within the time specified, the Secretary may prepare and file the Notice. The costs thereof may be recovered by the Secretary from any responsible party. In the event that an owner of the real property who is not a responsible party submits and files the Notice required by this section, the owner may recover the reasonable costs thereof from any responsible party.

(g) A Notice filed pursuant to this section shall, at the request of the owner of the real property, be cancelled by the Secretary after the residual petroleum has been eliminated or remediated to unrestricted use standards. If requested in writing by the owner of the land, the Secretary shall send to the register of deeds of each county where the Notice is recorded a statement that the residual petroleum has been eliminated, or that the residual petroleum has been remediated to unrestricted use standards, and request that the Notice be cancelled of record. The Secretary's statement shall contain the names of the owners of the land as shown in the Notice and reference the plat book and page where the Notice is recorded.

~~(h) Except with respect to land contaminated from a discharge or release of petroleum from an underground storage tank, the provisions of this section shall only apply to sites contaminated by the discharge or release of petroleum from an aboveground storage tank, or another petroleum source, from which contamination has migrated to off-site properties, as that term is defined under G.S. 130A-310.65(3a), in compliance with the requirements of G.S. 143-215.104AA or G.S. 130A-310.73A, as applicable. (2001-384, s. 3; 2002-90, ss. 3-5; 2012-18, s. 1.23; 2017-209, s. 3(b).)~~

Part 4. Environmental Management Commission.

§ 143B-282. Environmental Management Commission – creation; powers and duties.

~~(a) There is hereby created the Environmental Management Commission of the Department of Environmental Quality with the power and duty to promulgate rules to be followed in the protection, preservation, and enhancement of the water and air resources of the State.~~

~~(1) Within the limitations of G.S. 143-215.9 concerning industrial health and safety, the Environmental Management Commission shall have all of the following powers and duties:~~

- ~~a. To grant a permit or temporary permit, to modify or revoke a permit, and to refuse to grant permits pursuant to G.S. 143-215.1 and G.S. 143-215.108 with regard to controlling sources of air and water pollution.~~
- ~~b. To issue a special order pursuant to G.S. 143-215.2(b) and G.S. 143-215.110 to any person whom the Commission finds responsible for causing or contributing to any pollution of water within such watershed or pollution of the air within the area for which standards have been established.~~
- ~~c. To conduct and direct that investigations be conducted pursuant to G.S. 143-215.3 and G.S. 143-215.108(e)(5).~~
- ~~d. To conduct public hearings, institute actions in superior court, and agree upon or enter into settlements, all pursuant to G.S. 143-215.3.~~
- ~~e. To direct the investigation of any killing of fish and wildlife pursuant to G.S. 143-215.3.~~
- ~~f. To consult with any person proposing to construct, install, or acquire an air or water pollution source pursuant to G.S. 143-215.3 and G.S. 143-215.111.~~
- ~~g. To encourage local government units to handle air pollution problems and to provide technical and consultative assistance pursuant to G.S. 143-215.3 and G.S. 143-215.112.~~
- ~~h. To review and have general oversight and supervision over local air pollution control programs pursuant to G.S. 143-215.3 and G.S. 143-215.112.~~
- ~~i. To declare an emergency when it finds a generalized dangerous condition of water or air pollution pursuant to G.S. 143-215.3.~~
- ~~j. To render advice and assistance to local government regarding floodways pursuant to G.S. 143-215.56.~~
- ~~k. To declare and delineate and modify capacity use areas pursuant to G.S. 143-215.13.~~
- ~~l. To grant permits for water use within capacity use areas pursuant to G.S. 143-215.15.~~
- ~~m. To direct that investigations be conducted when necessary to carry out duties regarding capacity use areas pursuant to G.S. 143-215.19.~~
- ~~n. To approve, disapprove and approve subject to conditions all applications for dam construction pursuant to G.S. 143-215.28; to require construction progress reports pursuant to G.S. 143-215.29.~~
- ~~o. To halt dam construction pursuant to G.S. 143-215.29.~~
- ~~p. To grant final approval of dam construction work pursuant to G.S. 143-215.30.~~

- ~~q. To have jurisdiction and supervision over the maintenance and operation of dams pursuant to G.S. 143-215.31.~~
- ~~r. To direct the inspection of dams pursuant to G.S. 143-215.32.~~
- ~~s. To modify or revoke any final action previously taken by the Commission pursuant to G.S. 143-214.1 and G.S. 143-215.107.~~
- ~~t. To have jurisdiction and supervision over oil pollution and dry cleaning solvent use, contamination, and remediation pursuant to Article 21A of Chapter 143 of the General Statutes.~~
- ~~u. To administer the State's authority under 33 U.S.C. § 1341 of the federal Clean Water Act.~~
- ~~v. To approve Coastal Habitat Protection Plans as provided in G.S. 143B-279.8.~~
- ~~w. To identify, review, and assess reports prepared by the Department of Environmental Quality that are required by an act of the General Assembly and that the Commission finds would have a significant public interest and to include that assessment in its report to the Environmental Review Commission under subsection (b) of this section.~~

- (2) ~~The Environmental Management Commission shall adopt rules:~~
 - ~~a. For air quality standards, emission control standards and classifications for air contaminant sources pursuant to G.S. 143-215.107.~~
 - ~~b. For water quality standards and classifications pursuant to G.S. 143-214.1 and G.S. 143-215.~~
 - ~~c. To implement water and air quality reporting pursuant to Part 7 of Article 21 of Chapter 143 of the General Statutes.~~
 - ~~d. To be applied in capacity use areas pursuant to G.S. 143-215.14.~~
 - ~~e. To implement the issuance of permits for water use within capacity use areas pursuant to G.S. 143-215.15 and G.S. 143-215.16.~~
 - ~~f. Repealed by Session Laws 1983, c. 222, s. 3.~~
 - ~~g. For the protection of the land and the waters over which this State has jurisdiction from pollution by oil, oil products and oil by-products pursuant to Article 21A of Chapter 143.~~
 - ~~h. Governing underground tanks used for the storage of oil or hazardous substances pursuant to Articles 21, 21A, or 21B of Chapter 143 of the General Statutes, including inspection and testing of these tanks and certification of persons who inspect and test tanks.~~
 - ~~i. To implement the provisions of Part 2A of Article 21 of Chapter 143 of the General Statutes.~~
 - ~~j. To implement the provisions of Part 6 of Article 21A of Chapter 143 of the General Statutes.~~
 - ~~k. To implement basinwide water quality management plans developed pursuant to G.S. 143-215.8B.~~
 - ~~l. For matters within its jurisdiction that allow for and regulate horizontal drilling and hydraulic fracturing for the purpose of oil and gas exploration and development.~~

- (3) ~~The Commission is authorized to make such rules, not inconsistent with the laws of this State, as may be required by the federal government for grants-in-aid for water and air resources purposes which may be made available to the State by the federal government. This section is to be~~

~~liberally construed in order that the State and its citizens may benefit from such grants-in-aid.~~

(4) ~~The Commission shall make rules consistent with the provisions of this Chapter. All rules adopted by the Commission shall be enforced by the Department of Environmental Quality.~~

(5) ~~The Environmental Management Commission shall have the power to adopt rules with respect to any State laws administered under its jurisdiction so as to accept evidence of compliance with corresponding federal law or regulation in lieu of a State permit, or otherwise modify a requirement for a State permit, upon findings by the Commission, and after public hearings, that there are:~~

a. ~~Similar and corresponding or more restrictive federal laws or regulations which also require an applicant to obtain a federal permit based upon the same general standards or more restrictive standards as the State laws and rules require; and~~

b. ~~That the enforcement of the State laws and rules would require the applicant to also obtain a State permit in addition to the required federal permit; and~~

e. ~~That the enforcement of the State laws and rules would be a duplication of effort on the part of the applicant; and~~

d. ~~Such duplication of State and federal permit requirements would result in an unreasonable burden not only on the applicant, but also on the citizens and resources of the State.~~

(6) ~~The Commission may establish a procedure for evaluating renewable energy technologies that are, or are proposed to be, employed as part of a renewable energy facility, as defined in G.S. 62-133.8; establish standards to ensure that renewable energy technologies do not harm the environment, natural resources, cultural resources, or public health, safety, or welfare of the State; and, to the extent that there is not an environmental regulatory program, establish an environmental regulatory program to implement these protective standards.~~

(b) ~~The Environmental Management Commission shall submit written reports as to its operation, activities, programs, and progress to the Environmental Review Commission by January 1 of each year. The Environmental Management Commission shall supplement the written reports required by this subsection with additional written and oral reports as may be requested by the Environmental Review Commission.~~

(e) ~~The Environmental Management Commission shall implement the provisions of subsections (d) and (e) of 33 U.S.C. § 1313 by identifying and prioritizing impaired waters and by developing appropriate total maximum daily loads of pollutants for those impaired waters. The Commission shall incorporate those total maximum daily loads approved by the United States Environmental Protection Agency into its continuing basinwide water quality planning process.~~

(d) ~~The Environmental Management Commission may adopt rules setting out strategies necessary for assuring that water quality standards are met by any point or nonpoint source or by any category of point or nonpoint sources that is determined by the Commission to be contributing to the water quality impairment. These strategies may include, but are not limited to, additional monitoring, effluent limitations, supplemental standards or classifications, best management practices, protective buffers, schedules of compliance, and the establishment of and delegations to intergovernmental basinwide groups.~~

~~(e) In appointing the members of the Commission, the appointing authorities shall make every effort to ensure fair geographic representation of the Commission. (1973, c. 1262, s. 19; 1975, c. 512; 1977, c. 771, s. 4; 1983, c. 222, s. 3; 1985, c. 551, s. 1; 1989, c. 652, s. 2; c. 727, s. 218(128); 1989 (Reg. Sess., 1990), c. 1036, s. 1; 1991 (Reg. Sess., 1992), c. 990, s. 1; 1993, c. 348, s. 3; 1996, 2nd Ex. Sess., c. 18, s. 27.4(b); 1997-392, s. 2(a), (b); 1997-400, s. 3.2; 1997-443, s. 11A.119(a); 1997-458, ss. 8.4, 8.5; 1997-496, s. 16; 1998-212, s. 14.9H(f); 1999-328, s. 4.13; 2001-424, s. 19.13(a); 2002-165, s. 1.9; 2007-397, s. 2(c); 2012-143, s. 2(h); 2015-241, s. 14.30(u); 2017-10, s. 4.13(a); 2017-211, s. 3.)~~

§ 150B-23. Commencement; assignment of administrative law judge; hearing required; notice; intervention.

~~(a) A contested case shall be commenced by paying a fee in an amount established in G.S. 150B-23.2 and by filing a petition with the Office of Administrative Hearings and, except as provided in Article 3A of this Chapter, shall be conducted by that Office. The party who files the petition shall serve a copy of the petition on all other parties and, if the dispute concerns a license, the person who holds the license. A party who files a petition shall file a certificate of service together with the petition. A petition shall be signed by a party, an attorney representing a party, or other representative of the party as may specifically be authorized by law, and, if filed by a party other than an agency, shall state facts tending to establish that the agency named as the respondent has deprived the petitioner of property, has ordered the petitioner to pay a fine or civil penalty, or has otherwise substantially prejudiced the petitioner's rights and that the agency:~~

- ~~(1) Exceeded its authority or jurisdiction;~~
- ~~(2) Acted erroneously;~~
- ~~(3) Failed to use proper procedure;~~
- ~~(4) Acted arbitrarily or capriciously; or~~
- ~~(5) Failed to act as required by law or rule.~~

~~The parties in a contested case shall be given an opportunity for a hearing without undue delay. Any person aggrieved may commence a contested case hereunder.~~

~~A local government employee, applicant for employment, or former employee to whom Chapter 126 of the General Statutes applies may commence a contested case under this Article in the same manner as any other petitioner. The case shall be conducted in the same manner as other contested cases under this Article.~~

~~A business entity may represent itself using a nonattorney representative who is one or more of the following of the business entity: (i) officer, (ii) manager or member-manager, if the business entity is a limited liability company, (iii) employee whose income is reported on IRS Form W-2, if the business entity authorizes the representation in writing, or (iv) owner of the business entity, if the business entity authorizes the representation in writing and if the owner's interest in the business entity is at least twenty-five percent (25%). Authority for and prior notice of nonattorney representation shall be made in writing, under penalty of perjury, to the Office on a form provided by the Office.~~

~~(a1) Repealed by Session Laws 1985 (Regular Session, 1986), c. 1022, s. 1(9).~~

~~(a2) An administrative law judge assigned to a contested case may require a party to the case to file a prehearing statement. A party's prehearing statement must be served on all other parties to the contested case.~~

~~(a3) A Medicaid enrollee, or network provider authorized in writing to act on behalf of the enrollee, who appeals a notice of resolution issued by an LME/MCO under Chapter 108D of the General Statutes may commence a contested case under this Article in the same manner as any other petitioner. The case shall be conducted in the same manner as other contested cases under this Article. Solely and only for the purposes of contested cases commenced as Medicaid managed care enrollee appeals under Chapter 108D of the General Statutes, an LME/MCO is considered an agency as defined in G.S. 150B-2(1a). The LME/MCO shall not be considered an agency for any other purpose.~~

~~(a4) If an agency fails to take any required action within the time period specified by law, any person whose rights are substantially prejudiced by the agency's failure to act may commence a contested case in accordance with this section seeking an order that the agency act as required by law. If the administrative law judge finds that the agency has failed to act as required by law, the administrative law judge may order that the agency take the required action within a specified time period.~~

~~(a5) A county that appeals a decision of the Department of Health and Human Services to temporarily assume Medicaid eligibility administration in accordance with G.S. 108A-70.42 or G.S. 108A-70.50 may commence a contested case under this Article in the same manner as any other petitioner. The case shall be conducted in the same manner as other contested cases under this Article.~~

~~(b) The parties to a contested case shall be given a notice of hearing not less than 15 days before the hearing by the Office of Administrative Hearings. If prehearing statements have been filed in the case, the notice shall state the date, hour, and place of the hearing. If prehearing statements have not been filed in the case, the notice shall state the date, hour, place, and nature of the hearing, shall list the particular sections of the statutes and rules involved, and shall give a short and plain statement of the factual allegations.~~

~~(c) Notice shall be given by one of the methods for service of process under G.S. 1A-1, Rule 4(j) or Rule 4(j3). If given by registered or certified mail, by signature confirmation as provided by the United States Postal Service, or by designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) with delivery receipt, notice shall be deemed to have been given on the delivery date appearing on the return receipt, copy of the proof of delivery provided by the United States Postal Service, or delivery receipt. If giving of notice cannot be accomplished by a method under G.S. 1A-1, Rule 4(j) or Rule 4(j3), notice shall then be given in the manner provided in G.S. 1A-1, Rule 4(j1).~~

~~(d) Any person may petition to become a party by filing a motion to intervene in the manner provided in G.S. 1A-1, Rule 24. In addition, any person interested in a contested case may intervene and participate in that proceeding to the extent deemed appropriate by the administrative law judge.~~

~~(e) All hearings under this Chapter shall be open to the public. Hearings shall be conducted in an impartial manner. Hearings shall be conducted according to the procedures set out in this Article, except to the extent and in the particulars that specific hearing procedures and time standards are governed by another statute.~~

~~(f) Unless another statute or a federal statute or regulation sets a time limitation for the filing of a petition in contested cases against a specified agency, the general limitation for the filing of a petition in a contested case is 60 days. The time limitation, whether established by another statute, federal statute, or federal regulation, or this section, shall commence when notice is given of the agency decision to all persons aggrieved who are known to the agency by personal delivery or by the placing of the notice in an official depository of the United States Postal Service wrapped in a wrapper addressed to the person at the latest address given by the person to the agency. The notice shall be in writing, and shall set forth the agency action, and shall inform the persons of the right, the procedure, and the time limit to file a contested case petition. When no informal settlement request has been received by the agency prior to issuance of the notice, any subsequent informal settlement request shall not suspend the time limitation for the filing of a petition for a contested case hearing.~~

~~(g) Where multiple licenses are required from an agency for a single activity, the Secretary or chief administrative officer of the agency may issue a written determination that the administrative decision reviewable under Article 3 of this Chapter occurs on the date the last license for the activity is issued, denied, or otherwise disposed of. The written determination of the administrative decision is not reviewable under this Article. Any licenses issued for the activity prior to the date of the last license identified in the written determination are not reviewable under this Article until the last license for the activity is issued, denied, or otherwise disposed of. A contested case challenging the last license decision for the activity may include challenges to agency decisions on any of the previous licenses required for the activity. (1973, c. 1331, s. 1; 1975, 2nd Sess., c. 983, s. 65; 1985, c. 746, s. 1; 1985 (Reg. Sess., 1986), c. 1022, ss. 1(9), (10), 6(2), (3); 1987, c. 878, ss. 3-5; c. 879, s. 6.1; 1987 (Reg.~~

~~Sess., 1988), c. 1111, s. 5; 1991, c. 35, s. 1; 1993 (Reg. Sess., 1994), c. 572, s. 2; 2009-451, s. 21A.1(a); 2011-332, s. 2.1; 2011-398, s. 16; 2012-187, s. 6; 2013-397, s. 4; 2014-120, ss. 7(a), 48, 59(a); 2016-94, s. 12H.17(c); 2017-57, s. 11H.22(d.)~~

