

SUBCHAPTER 2P - LEAKING PETROLEUM UNDERGROUND STORAGE TANK CLEANUP FUNDS

SECTION .0100 - GENERAL CONSIDERATIONS

15A NCAC 02P .0101 GENERAL

- (a) The purpose of this Subchapter is to establish criteria and procedures for the reimbursement of costs incurred by owners, operators, and landowners from the Leaking Petroleum Underground Storage Tank Cleanup Funds.
- (b) The Groundwater Section of the Division of Environmental Management of the Department of Environment, Health and Natural Resources shall administer the Commercial and Noncommercial Underground Storage Tank Cleanup Funds for the State of North Carolina.
- (c) As authorized by G.S. 143-215.94G, the Department may engage in cleanup work it deems appropriate and pay the costs from the Noncommercial Fund in accordance with G.S. 143-215.94D.
- (d) The Department may engage in investigations and cleanups in accordance with the severity of threat to human health and safety and to the environment, and the availability of resources, as determined by the Division.

History Note: Authority G.S. 143-215.3; 143-215.76; 143-215.94B; 143-215.94D; 143-215.94E; 143-215.94G; 143-215.94L; 143-215.94T; 143B-282; Eff. February 1, 1993; Amended Eff. September 1, 1993.

15A NCAC 02P .0102 COPIES OF RULES INCORPORATED BY REFERENCE

- (a) Copies of applicable sections of Subchapter 2N of Title 15A, North Carolina Administrative Code incorporated by reference in this Subchapter, including any subsequent amendments and editions, are available for public inspection at Department of Environment, Health, and Natural Resources Regional Offices. They are:
- (1) Asheville Regional Office, Interchange Building, 59 Woodfin Place, Asheville, North Carolina 28801;
 - (2) Winston-Salem Regional Office, Suite 100, 8025 North Point Boulevard, Winston-Salem, North Carolina 27106;
 - (3) Mooresville Regional Office, 919 North Main Street, Mooresville, North Carolina 28115;
 - (4) Raleigh Regional Office, 3800 Barrett Drive, Post Office Box 27687, Raleigh, North Carolina 27611;
 - (5) Fayetteville Regional Office, Wachovia Building, Suite 714, Fayetteville, North Carolina 28301;
 - (6) Washington Regional Office, 1424 Carolina Avenue, Farish Building, Washington, North Carolina 27889;
 - (7) Wilmington Regional Office, 127 Cardinal Drive Extension, Wilmington, North Carolina 28405.
- (b) Copies of such rules can be made at these regional offices for ten cents (\$0.10) per page.

History Note: Authority G.S. 12-3.1(c); 143-215.3; 143-215.94L; 143-215.94T; 143B-282; 150B-21.6; Eff. February 1, 1993.

15A NCAC 02P .0103 FALSE OR MISLEADING INFORMATION

Any owner or operator or authorized agent who knowingly submits any false or misleading information with regard to these Rules may be considered to be contributing to a discharge, interfering with the mitigation of a discharge, or preventing the early detection of a discharge pursuant to G.S. 143-215.94E(g)(1) if the false or misleading information results in delay of any efforts to stop the release or discharge, results in delay of detection of any portion of the discharge or release, or results in delay of investigatory or remedial activities.

History Note: Authority G.S. 143-215.3; 143-215.94E; 143-215.94L; 143-215.94T; 143B-282; Eff. February 1, 1993.

SECTION .0200 - PROGRAM SCOPE

15A NCAC 02P .0201 APPLICABILITY

(a) This Subchapter shall apply to the disbursement of funds from the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund and Noncommercial Leaking Petroleum Underground Storage Tank Cleanup Fund, and to the collection of annual operating fees.

(b) Any portions of this Subchapter which concern annual tank operating fees apply to all owners and operators of Commercial Underground Storage Tanks that have been in use in North Carolina on or after January 1, 1989.

(c) This Subchapter shall apply to discharges or releases from noncommercial or commercial underground storage tank systems, regardless of whether such systems are regulated under Subchapter 2N of Title 15A, of the North Carolina Administrative Code.

History Note: Authority G.S. 143-215.3; 143-215.94B; 143-215.94C; 143-215.94D; 143-215.94E; 143-215.94L; 143-215.94T; 143B-282; Eff. February 1, 1993.

15A NCAC 02P .0202 DEFINITIONS

(a) The Definitions for "Criteria and Standards Applicable to Underground Storage Tanks" contained in 15A NCAC 2N .0203 are hereby incorporated by reference including subsequent amendments and editions, except that for the purposes of this Subchapter, the definition of "Underground Storage Tank" shall be as defined in Subparagraph (b)(12) of this Rule.

(b) The following terms are defined for use in this Subchapter:

- (1) "Annual operating fee" is an annual fee required to be paid to the Department by the owner or operator of each commercial underground storage tank in use on or after 1 January of the year, beginning with 1989.
- (2) "Commission" means the Environmental Management Commission as organized under Chapter 143B of the General Statutes.
- (3) "Department" means Department of Environment, Health, and Natural Resources.
- (4) "Discovered release" means a release which an owner or operator, or its employee or agent, has been made aware of, has been notified of, or has a reasonable basis for knowing has occurred.
- (5) "Dual usage tank" means an underground storage tank which could be considered both a commercial underground storage tank and a noncommercial underground storage tank and for which both the commercial and the noncommercial usages are integral to the operation or existence of the tank.
- (6) "Household" means a permanent structure, whether free-standing or connected to other units, used primarily for living, where primary living space and primary food preparation facilities are controlled or maintained by the residents. "Household" includes single-family houses, mobile homes, apartments, and single living units, whether or not the residents are related to each other and whether the units are occupied on a year-round or seasonal basis. "Household" does not include dormitories, hospitals, hotels, motels, apartment buildings (as distinct from the individual apartments therein), or other multiple dwelling structures. The term "four or fewer households" shall relate to underground storage tanks serving households only.
- (7) "Landowner" means any record fee owner of real property that contains or contained a commercial underground storage tank of which he does not qualify as an owner or operator pursuant to G.S. 143-215.94A.
- (8) "Occurrence" means one or more release(s) that result(s) in a single plume of soil, surface water, or groundwater contamination (consisting of free product or dissolved contaminants exceeding standards specified in 15A NCAC 2L or any other applicable laws, rules or regulations) originating at a single property.
- (9) "Reasonable and necessary expenditures" means expenditures for the cleanup of environmental damage performed in accordance with applicable environmental laws and regulations and which are essential in determining the extent of contamination, in conducting release response or remediation, or which compensate third parties for resulting bodily injury and property damage. The Commission shall consider such expenditures reasonable and necessary to the extent that they are sufficiently documented, are performed in an efficient manner considering comparable costs for labor, equipment, and materials, and utilize cost-efficient methods.

- (10) "Substantive law, rule, or regulation" shall mean any law, rule, or regulation requiring an owner or operator to perform any act necessary and essential in preventing discharges or releases, in facilitating their early detection, and in mitigating the impact of discharges or releases.
- (11) "Tank in operation" means an underground storage tank into which product is added or from which product is removed for purposes other than closure.
- (12) "Tank in use" means an underground storage tank intended for the containment or dispensing of petroleum product.
- (13) "Underground storage tank", as used in this Subchapter means any Commercial or Noncommercial Underground Storage Tank as defined in G.S. 143-215.94A. A dual usage tank is considered to be a commercial underground storage tank.

History Note: Authority G.S. 143-215.3; 143-215.94A; 143-215.94B; 143-215.94C; 143-215.94D; 143-215.94E; 143-215.94L; 143-215.94T; 143B-282; Eff. February 1, 1993; Amended Eff. September 1, 1993.

SECTION .0300 - ANNUAL OPERATING FEES

15A NCAC 02P .0301 FEES AND PAYMENT

- (a) The owner or operator of each commercial underground storage tank shall pay all annual tank operating fees due for that underground storage tank.
- (b) The Division shall send an invoice, for the amount of the annual operating fees due, to the owner or operator of any commercial petroleum underground storage tank in use on January 1 of the year and which has been registered with the Department. The annual operating fee shall be due and payable 30 days following the date of the invoice and shall be submitted to the Division accordingly.
- (c) Any owner or operator not receiving an invoice for annual operating fees shall still pay any fees due according to the following schedule:
 - (1) If the owner or operator has paid annual operating fees for the subject tank in previous years, the payment will be submitted to the Division within 30 days of the anniversary of the last invoicing date for the fees.
 - (2) If the owner or operator has not previously paid annual operating fees for the subject tank, any annual operating fee is due on 1 January of that year and shall be submitted to the Division accordingly.
- (d) Any commercial underground storage tank (except commercial underground storage tanks not regulated under 15A NCAC 2N) which was in operation on or after December 22, 1988 and has not been permanently closed in accordance with 15A NCAC 2N .0800 is considered to be in use unless the provisions of G.S. 143-215.94D(b)(4) are applicable.
- (e) Any annual operating fee due on or after January 1, 1992, that is not paid within 30 days of the due date shall be subject to a late penalty of five dollars (\$5.00) per day up to an amount equal to the original fee. The late penalty will be assessed based on the date of receipt of fee payment by the Division.
- (f) All annual operating fees due for any year are assessed in accordance with the schedule of fees in effect during that year. Payment of fees due for a prior year will be at the rate in effect during that prior year. It is the responsibility of the owner or operator to determine that all fees have been paid in accordance with Paragraph (a) of this Rule.
- (g) In the event that an annual operating fee was paid for a tank for which a fee was not required, a refund of that fee payment may be requested by the owner or operator. A refund will be granted if the owner or operator provides adequate documentation that the tank was exempt from the requirement to pay the annual operating fee.

History Note: Authority G.S. 143-215.3; 143-215.94C; 143-215.94D; 143-215.94E; 143-215.94L; 143-215.94T; 143B-282; Eff. February 1, 1993.

15A NCAC 02P .0302 NOTIFICATION

Any person acquiring ownership of an existing commercial underground storage tank shall provide written notification to the Division of this action within 30 days of the date of transfer. This notification must indicate the following:

- (1) Name and address of the previous owner and the new owner;
- (2) Name, identification number, and street address of the facility;
- (3) Date of transfer;
- (4) Signatures of the transferring owner and the new owner or their authorized representatives.

History Note: Authority G.S. 143-215.3; 143-215.94L; 143-215.94T; 143B-282; Eff. February 1, 1993.

SECTION .0400 - REIMBURSEMENT PROCEDURE

15A NCAC 02P .0401 ELIGIBILITY OF OWNER OR OPERATOR

(a) Date of Release.

- (1) An owner or operator or landowner of a commercial underground storage tank is not eligible for reimbursement of costs from the Commercial Fund related to releases which were discovered prior to June 30, 1988.
- (2) An owner or operator of a noncommercial underground storage tank is eligible for reimbursement of costs without regard to the date a release is discovered.
- (3) An owner or operator of a commercial underground storage tank which qualifies for the Noncommercial Fund pursuant to G.S. 143-215.94D(b)(3) and 143-215.94D(b)(4) is eligible for reimbursement of costs without regard to the date a release is discovered.
- (4) An owner or operator or landowner of a commercial underground storage tank, from which a release is discovered on or after July 3, 1991, is not eligible for reimbursement from the Commercial Fund if the tank had been removed from the ground more than 120 days prior to the date of discovery of the release.

(b) An owner or operator of a commercial underground storage tank is not eligible for reimbursement for costs related to releases if any annual operating fees due have not been paid in accordance with Rule .0301 of this Subchapter prior to discovery. A previous owner or operator of a commercial underground storage tank may be eligible for reimbursement of costs for cleanup of a release discovered after he ceases owning or operating the underground storage tank if all fees due during his period of ownership and operation have been paid prior to discovery of the release. A landowner is eligible for reimbursement of costs without regard to the payment of fees.

(c) An owner or operator or landowner of a commercial or noncommercial underground storage tank is not eligible for reimbursement of any expended costs which are in excess of the amount determined reasonable in accordance with Rule .0402, and which are not necessary in performing cleanup of environmental damage and in compensating third parties for bodily injury and property damage, and which are less than any deductible established for the appropriate fund.

(d) An owner or operator or landowner of a commercial or noncommercial underground storage tank may be reimbursed for eligible costs only after submittal of a written application to the Division, on forms provided by the Division, and which includes any information and documentation necessary to determine eligibility and to determine that any expended costs are reasonable and necessary.

(e) An owner or operator of a commercial or noncommercial underground storage tank shall not be eligible for reimbursement for costs related to releases if the owner or operator has willfully violated any substantive law, rule, or regulation applicable to underground storage tanks intended to prevent, mitigate, or facilitate the early detection of discharges or releases.

(f) The release response and corrective action requirements of any rules of the Commission and of any statute administered by the Department shall not in any way be construed as limited by, or contingent upon, any reimbursement from either the Noncommercial Fund or the Commercial Fund.

History Note: Authority G.S. 143-215.3; 143-215.94B; 143-215.94E; 143-215.94L; 143-215.94N; 143-215.94T; 143B-282; Eff. February 1, 1993; Amended Eff. September 1, 1993.

15A NCAC 02P .0402 CLEANUP COSTS

(a) In determining whether costs expended by an owner or operator or landowner are reasonable and necessary, the Division shall consider the following:

- (1) Adequacy and cost-effectiveness of any work performed and technical activity utilized by the owner or operator or landowner in performing release response, site assessment and corrective action.
- (2) Typical billing rates of engineering, geological, or other environmental consulting firms providing similar services in the State as determined by the Division.
- (3) Typical rental rates for any necessary equipment as determined by the Division. The amount reimbursed for equipment rental shall not exceed the typical purchase price of such equipment.
- (4) Typical costs or rates of any other necessary service, labor or expense as determined by the Division.
- (5) Whether costs expended for corrective action were required by 15A NCAC 2L.

(b) Expenditures not eligible for reimbursement shall include the following:

- (1) Costs of the removal and disposal of noncommercial underground storage tanks and contents removed on or after July 3, 1991, and of commercial underground storage tanks and contents removed on or after January 1, 1992;
- (2) Costs of the replacement of any underground storage tank, piping, fitting, or ancillary equipment;
- (3) Costs incurred in preparation of any proposals or bid by a provider of service for the purpose of soliciting or bidding for the opportunity to perform an environmental investigation or cleanup, even if that provider is ultimately selected to provide the service solicited;
- (4) Interest on any accounts, loans, etc.;
- (5) Expenses charged by the owner or operator or landowner in the processing and management of a reimbursement application or subsequent claims;
- (6) Attorney's fees;
- (7) Penalties, fees, and fines assessed by any court or agency;
- (8) Loss of profits, fees, and wages incurred by the owner or operator or landowner;
- (9) Costs incurred during cleanup if preapproval of the cleanup tasks and associated costs was not obtained from the Division. Preapproval is not required for assessment activities or for costs determined by the Division to be related to emergency response actions;
- (10) Any other expenses not specifically related to environmental cleanup, or implementation of a cost effective environmental cleanup, or third party bodily injury or property damage.

History Note: Authority G.S. 143-215.3; 143-215.94B; 143-215.94D; 143-215.94E; 143-215.94L; 143-215.94T; 143-215.94V; 143B-282; Eff. February 1, 1993; Amended Eff. September 1, 1993; Temporary Amendment Eff. January 2, 1998; January 2, 1996; Amended Eff. October 29, 1998 (SB 1598); Temporary Amendment Eff. October 1, 1999; Amended Eff. August 1, 2000.

15A NCAC 02P .0403 THIRD PARTY CLAIMS

(a) An owner or operator seeking reimbursement from the appropriate fund for any third party claim for bodily injury or property damage must notify the Division of any such claim. The owner or operator must provide the Division with all pleadings and other related documents if a lawsuit has been filed. The owner or operator shall provide to the Division 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.

(b) The term third party bodily injury means specific physical bodily injury proximately resulting from exposure, explosion, or fire caused by the presence of a petroleum release and which is incurred by a person other than the owner or operator, or employees or agents of an owner or operator.

(c) The term third party property damage means actual physical damage or damage due to specific loss of normal use of property owned by a person other than the owner or operator of an underground storage tank from which a release has occurred. 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. Third party property damage shall be reimbursed from the appropriate fund 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.

History Note: Authority G.S. 143-215.3; 143-215.94B; 143-215.94D; 143-215.94E; 143-215.94L; 143-215.94T; 143B-282; Eff. February 1, 1993.

15A NCAC 02P .0404 REQUESTS FOR REIMBURSEMENT

- (a) An application for reimbursement must be made on a form provided by the Division. The application form must accompany the initial reimbursement request.
- (b) A request for reimbursement shall include copies of any documentation required by the Division to determine that expended costs are reasonable and necessary. Proof of payment must accompany any request for reimbursement, except when reimbursement will be made jointly to the owner or operator or landowner and either a provider of service or a third party claimant. The Division may require the owner or operator or landowner to submit any information required for the purpose of substantiating any claim for reimbursement on forms provided by the Division.
- (c) A request for reimbursement may be returned or additional information requested by the Division, if it is found to be incomplete.
- (d) The Division shall reimburse an owner or operator or landowner for expenses following completion of any significant phase of cleanup work or in accordance with the schedule allowed by G.S. 143-215.94E(e).
- (e) If any amount approved for reimbursement is less than the amount of reimbursement requested, the Division shall issue a written explanation of why the amount requested was not approved.

History Note: Authority G.S. 143-215.3; 143-215.94B; 143-215.94E; 143-215.94G; 143-215.94L; 143-215.94T; 143B-282; Eff. February 1, 1993; Amended Eff. September 1, 1993.

15A NCAC 02P .0405 METHOD OF REIMBURSEMENT

- (a) Reimbursement for cleanup costs shall be made only to an owner or operator or landowner of a petroleum underground storage tank, or jointly to an owner or operator or landowner and a provider of service.
- (b) Reimbursement of cleanup costs to the owner or operator or landowner shall be made only after proof of payment for such costs has been received by the Division.
- (c) Joint reimbursement of cleanup costs shall be made to an owner or operator or landowner and a provider of service only upon receipt of a written agreement acknowledged by both parties. Any reimbursement check shall be sent directly to the owner or operator or landowner.
- (d) Payment of third party claims shall be made to the owner or operator, or jointly to the owner or operator and the third party claimant.

History Note: Authority G.S. 143-215.3; 143-215.94B; 143-215.94E; 143-215.94L; 143-215.94T; 143B-282; Eff. February 1, 1993; Amended Eff. September 1, 1993.

15A NCAC 02P .0406 REIMBURSEMENT APPORTIONMENT

- (a) Where multiple occurrences are addressed in a single cleanup action, expenses will be reimbursed based on apportionment among the occurrences. The method of apportionment will be as follows:
 - (1) Expenses related directly to a particular occurrence shall be applied only to that occurrence;
 - (2) Expenses that are related to more than one occurrence will be apportioned equally among the occurrences.

(b) Where not all underground storage tanks contributing to an occurrence are eligible for reimbursement, reimbursement will be made at a rate equal to the number of tanks contributing to the occurrence which are eligible for reimbursement divided by the total number of tanks contributing to the occurrence.

(c) If multiple underground storage tanks at a single property are contributing to a single occurrence and the tanks are owned or operated by different persons, reimbursement may be made to any of the owners or operators as if the occurrence were caused solely by that person's underground storage tanks.

History Note: Authority G.S. 143-215.3; 143-215.94E; 143-215.94L; 143-215.94T; 143B-282;
Eff. February 1, 1993.

15A NCAC 02P .0407 FINAL ACTION

(a) The Director, or his delegate, shall make the agency decision on a written application for eligibility for reimbursement from the appropriate fund. The Director, or his delegate, shall make the agency decision on any written request for reimbursement made subsequent to an initial application.

(b) An owner or operator or landowner who has been denied eligibility for reimbursement from the appropriate fund after submittal of a written application in accordance with the procedures of this Subchapter, or who has had any written reimbursement request denied after submittal in accordance with the procedures of this Subchapter, shall be notified of the right to petition for a contested case in the Office of Administrative Hearings in accordance with the procedure set out in G.S. 150B-23. The Secretary of the Department of Environment, Health, and Natural Resources shall make the final agency decision in any contested case pursuant to G.S. 150B-36.

History Note: Authority G.S. 143-215.3; 143-215.94B; 143-215.94D; 143-215.94E; 143-215.94L; 143-215.94T;
143B-282; 150B-23; 150B-36;
Eff. February 1, 1993;
Amended Eff. September 1, 1993.

15A NCAC 02P .0408 PERFORMANCE-BASED CLEANUPS

(a) The Division shall solicit competitive bids and award contracts for performance-based cleanups in accordance with G.S. 143, Article 3 and 1 NCAC 05B.

(b) To be considered by the Division for performance-based cleanups, an environmental services firm shall provide documentation that the firm and any subcontracted individuals and firms it utilizes can perform the necessary services described in the solicitation documents. Any professional engineering firm selected by an environmental services firm to perform engineering services for a performance-based cleanup must comply with G.S. 89C.

History Note: Authority G.S. 143-215.94B(f); 143-215.94D(f); S.L. 2001, c. 442, s. 6b;
Temporary Adoption Eff. July 1, 2002;
Eff. July 1, 2004.