

ADOPTED



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 257

AMENDMENT NO. **A49**
(to be filled in by
Principal Clerk)

S257-AMU-22 [v.4]

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Amends Title [NO]
Second Edition

Date 4/16, 2025

Senator Daniel

1 moves to amend the bill on page 31, lines 7-8, by inserting the following between the lines:

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**"DELETE OBSOLETE REFERENCES TO THE NONCOMMERCIAL LEAKING
PETROLEUM UNDERGROUND STORAGE TANK CLEANUP FUND**

SECTION 5.34.(a) All of the following provisions are repealed:

- (1) Subdivision (5) of G.S. 143-215.94A.
- (2) Subdivisions (b)(6) and (b)(12) of G.S. 143-215.94B.
- (3) G.S. 143-215.94F.
- (4) G.S. 143-215.94P.

SECTION 5.34.(b) G.S. 143-215.94A(2), (2a), and (7) read as rewritten:

- "(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:any of the following:
- 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;~~
 - e. ~~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;~~
 - c1. Noncommercial underground storage tank.
 - d. Septic tank;~~tank.~~
 - e. Pipeline facility (including gathering lines) regulated ~~under~~:under any of the following:
 - 1. The Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. § 1671 et seq.);~~seq.~~
 - 2. The Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. § 2001 et seq.);~~or seq.~~



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- 1 3. ~~Any intrastate pipeline facility regulated under State laws~~
2 comparable to the provisions of the Natural Gas Pipeline
3 Safety Act of 1968 or the Hazardous Liquid Pipeline Safety
4 Act of 1979;1979.
- 5 f. Surface impoundment, pit, pond, or ~~lagoon~~;lagoon.
6 g. Storm water or waste water collection ~~system~~;system.
7 h. Flow-through process ~~tank~~;tank.
8 i. Liquid trap or associated gathering lines directly related to oil or gas
9 production and gathering ~~operations~~;or operations.
10 j. Storage tank situated in an underground area (such as a basement,
11 cellar, mineworking, drift, shaft, or tunnel) if the storage tank is
12 situated upon or above the surface of the floor.
- 13 (2a) "Cost-effective cleanup" means the cleanup method that meets all of the
14 following criteria:
15 a. Addresses imminent threats to human health or the environment.
16 b. Provides for the cleanup or removal of all contaminated soil except in
17 circumstances where it is impractical to remove contaminated soil.
18 c. Is approved by the Commission for remediation of the site.
19 d. Is the least expensive cleanup based on total cost, including costs not
20 eligible for reimbursement from the Commercial Fund ~~or the~~
21 Noncommercial Fund.
- 22 ...
23 (7) "Noncommercial underground storage tank" means any one or combination
24 of the following tanks (including underground pipes connected thereto) used
25 to contain an accumulation of petroleum products, the volume of which
26 (including the volume of the underground pipes connected thereto) is ten
27 percent (10%) or more beneath the surface of the ~~ground~~. ~~The term~~
28 "~~noncommercial storage tank~~" ~~does not include any~~;ground:
29 a. ~~Commercial underground storage tanks;~~
30 b. ~~Septic tank;~~
31 c. ~~Pipeline facility (including gathering lines) regulated under:~~
32 1. ~~The Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. § 1671~~
33 ~~et seq.);~~
34 2. ~~The Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C.~~
35 ~~§ 2001 et seq.); or~~
36 3. ~~Any intrastate pipeline facility regulated under State laws~~
37 ~~comparable to the provisions of the Natural Gas Pipeline~~
38 ~~Safety Act of 1968 or the Hazardous Liquid Pipeline Safety~~
39 ~~Act of 1979;~~
40 d. Surface impoundment, pit, pond, or lagoon;
41 e. ~~Storm water or waste water collection system;~~
42 f. ~~Flow-through process tank;~~

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- 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.~~
- 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."

SECTION 5.34.(c) G.S. 143-215.94E reads as rewritten:

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

...
(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:]~~ The following provisions 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).

...
(e) ~~When an~~ An owner, operator, or landowner that pays the costs described in G.S. 143-215.94B(b), ~~143-215.94B(b1), or 143-215.94D(b1)~~ subsection (b) or (b1) of G.S. 143-215.94B resulting from a discharge or release of petroleum from ~~an a commercial~~ underground storage tank, the owner, operator, or landowner may seek reimbursement from

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1 ~~the appropriate fund for any costs that the owner, operator, or landowner may elect to have either~~
2 ~~the Commercial Fund or the Noncommercial Fund pay in accordance with the applicable~~
3 ~~subsections of this section.~~

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

14 ...

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

16 ...

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

- 18 1. The nature and scope of a task is reasonable and necessary to
19 be performed under ~~G.S. 143-215.94B(b), 143-215.94B(b1),~~
20 ~~or 143-215.94D(b1)~~ subsection (b) or (b1) of
21 G.S. 143-215.94B in order to achieve the purposes of this Part.
22 2. The amount estimated for the cost of a task does not exceed the
23 amount or rate that is reasonable for that task.

24 (2) The Department may require an owner, operator, or landowner to obtain
25 preapproval before proceeding with any task. The Department shall specify
26 those tasks for which preapproval is required. The Department shall deny any
27 request for payment or reimbursement of the cost of any task for which
28 preapproval is required if the owner, operator, or landowner failed to obtain
29 preapproval of the task. Preapproval of a task by the Department does not
30 guarantee payment or reimbursement in the amount estimated for the cost of
31 the task at the time preapproval is requested. The Department shall pay or
32 reimburse the cost of a task only if all of the following apply:

- 33 a. The cost is eligible to be paid under ~~G.S. 143-215.94B(b),~~
34 ~~143-215.94B(b1), or 143-215.94D(b1).~~ subsection (b) or (b1) of
35 G.S. 143-215.94B.
36 b. Payment is in accordance with ~~G.S. 143-215.94B(d) or~~
37 ~~G.S. 143-215.94D(d).~~ G.S. 143-215.94B(d).
38 c. The Department determines that the cost is reasonable and necessary.

39 (3) The Commission may adopt rules governing payment or reimbursement of
40 reasonable and necessary costs and, consistent with any rules adopted by the
41 Commission, the Department shall develop, implement, and periodically
42 revise a schedule of costs that the Department determines to be reasonable and
43 necessary costs for specific tasks. Statements that specify tasks for which

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- 1 preapproval is required and schedules of reasonable and necessary costs for
2 specific tasks are statements within the meaning of G.S. 150B-2(8a)g. This
3 subsection ~~shall not be construed to~~ does not invalidate any rule of the
4 Commission related to preapproval of tasks that will result in a cost that is
5 eligible to be paid or reimbursed under ~~G.S. 143-215.94B(b),~~
6 ~~143-215.94B(b1), or 143-215.94D(b1),~~ provided, however, that the
7 subsection (b) or (b1) of G.S. 143-215.94B. The Department may specify
8 additional tasks for which preapproval is required. required in addition to any
9 specified by the Commission.
- 10 (4) In all cases, the Department shall require an owner, operator, or landowner to
11 submit documentation sufficient to establish that a claim is eligible to be paid
12 or reimbursed under this Part before the Department pays or reimburses the
13 claim.
- 14 (5) The Department shall authorize a task the cost of which is to be paid or
15 reimbursed from the Commercial Fund ~~or the Noncommercial Fund~~ only
16 when the task is scheduled to be performed on the basis of a priority
17 determination pursuant to subsection (e4) of this section. The Department
18 shall not pay or reimburse the cost of any task for which authorization is
19 required under this subsection until the Department has preapproved and
20 authorized the task.
- 21 (6) Except as provided in subdivisions (8) and (9) of this subsection, the
22 Department shall not authorize any task the cost of which is to be paid or
23 reimbursed from the Commercial Fund ~~or the Noncommercial Fund~~ unless
24 the Department determines, based on the scope of the work to be performed
25 and the schedule of reasonable and necessary costs, that sufficient funds will
26 be available in the Commercial Fund ~~or the Noncommercial Fund,~~ whichever
27 applies, to pay or reimburse the cost of that task within 90 days after the
28 Department determines that the owner, operator, or landowner has submitted
29 a claim with documentation sufficient to establish that the claim is eligible to
30 be paid under this Part.
- 31 ...
- 32 (8) The Department may preapprove and authorize ~~a task the cost of which is to~~
33 ~~be paid or reimbursed for~~ payment or reimbursement from the Commercial
34 Fund ~~or the Noncommercial Fund~~ a task that has not been authorized pursuant
35 to subdivisions (5) and (6) of this subsection if the owner, operator, or
36 landowner specifically requests that the task be authorized and agrees that the
37 claim for payment or reimbursement of the task's cost will not be paid until
38 after the Department has paid all claims for payment or reimbursement of
39 costs for tasks that the Department has authorized pursuant to subdivisions (5)
40 and (6) of this subsection.
- 41 (9) The Department may preapprove and authorize ~~a task the cost of which is to~~
42 ~~be paid or reimbursed for~~ payment or reimbursement from the Commercial
43 Fund ~~or the Noncommercial Fund~~ a task that has not been authorized pursuant

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1 to subdivisions (5) and (6) of this subsection if the discharge or release creates
2 an emergency situation. An emergency situation exists when a discharge or
3 release of petroleum results in an imminent threat to human health or the
4 environment. A claim for payment or reimbursement of costs for tasks ~~that are~~
5 authorized under this subdivision shall be paid or reimbursed on the same
6 basis as tasks ~~that are~~ authorized under subdivisions (5) and (6) of this
7 subsection.

8 ...
9 (g) No owner or operator shall be reimbursed pursuant to this section, and the Department
10 shall seek reimbursement of the ~~appropriate fund~~ Commercial Fund or of the Department for any
11 monies disbursed from the ~~appropriate fund~~ Commercial Fund or expended by the Department
12 if any of the following apply:

- 13 (1) The owner or operator has willfully violated any substantive law, rule, or
14 regulation applicable to underground storage tanks and intended to prevent or
15 mitigate discharges or releases or to facilitate the early detection of discharges
16 or releases.
17 (2) The discharge or release is the result of the owner's or operator's willful or
18 wanton misconduct.
19 (3) The owner or operator has failed to pay any annual tank operating fee due
20 pursuant to G.S. 143-215.94C.

21 ...
22 (j) An owner, operator, or landowner shall request that the Department determine
23 whether any of the costs of assessment and cleanup of a discharge or release from a petroleum
24 underground storage tank are eligible to be paid or reimbursed from ~~either~~ the Commercial Fund
25 within one year after completion of any task that is eligible to be paid or reimbursed under
26 G.S. 143-215.94B(b) or 143-215.94B(b1).

27"

28 **SECTION 5.34.(d)** G.S. 143-215.94G, as amended by Section 5.35(*l*) of this act,
29 reads as rewritten:

30 "**§ 143-215.94G. Authority of the Department to engage in cleanups; actions for fund**
31 **reimbursement.**

32 (a) If there is a discharge or release of petroleum from any of the following, the
33 Department may use staff, equipment, or materials under its control or provided by other
34 cooperating federal, State, or local agencies and may contract with any agent or contractor it
35 deems appropriate to investigate a release, to develop and implement a cleanup plan, to provide
36 interim alternative sources of drinking water to third parties, and to pay the initial costs for
37 providing permanent alternative sources of drinking water to third parties:

- 38 (1) ~~A noncommercial underground storage tank.~~
39 (2) An underground storage tank whose owner or operator cannot be identified or
40 located.
41 (3) An underground storage tank whose owner or operator fails to proceed as
42 required by G.S. 143-215.94E(a).

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- 1 (4) A commercial underground storage tank taken out of operation prior to 1
2 January 1974 if, when the discharge or release is discovered, neither the owner
3 nor operator owns or leases the land on which the underground storage tank
4 is located.
5 ...
- 6 (d) The Secretary shall seek reimbursement through any legal means available for the
7 following:
8 ...
- 9 (6) The amounts provided for in ~~G.S. 143-215.94B(b5)~~—and
10 ~~G.S. 143-215.94D(b2)~~. G.S. 143-215.94B(b5).
- 11 (e) In the event that a civil action is commenced to secure reimbursement pursuant to
12 subdivisions (1) through (4) of subsection (d) of this section, the Secretary may recover, in
13 addition to any amount due, the costs of the action, including but not limited to reasonable
14 attorneys' fees and investigation expenses. Any monies received or recovered as reimbursement
15 shall be paid into the ~~appropriate fund~~ Commercial Fund or other source from which the
16 expenditures were made.
- 17 (f) Repealed by Session Laws 2015-241, s. 14.16A(f), effective December 31, 2016.
- 18 (g) If the Department paid or reimbursed costs that are not authorized to be paid or
19 reimbursed under G.S. 143-215.94B ~~or G.S. 143-215.94D~~ as a result of a misrepresentation by
20 an agent that acted on behalf of an owner, operator, or landowner, the Department shall first seek
21 reimbursement, pursuant to subdivision (1) of subsection (d) of this section, from the agent of
22 monies paid to or retained by the agent.
23"
- 24 **SECTION 5.34.(e) G.S. 143-215.94V reads as rewritten:**
25 **"§ 143-215.94V. Standards for petroleum underground storage tank cleanup.**
- 26 (a) Legislative findings and intent.
27 (1) The General Assembly finds that:
28 a. The goals of the underground storage tank program are to protect
29 human health and the environment. Maintaining the solvency of the
30 Commercial Fund ~~and the Noncommercial Fund~~ is essential to these
31 goals.
32 ...
- 33 (2) The General Assembly intends:
34 ...
- 35 e. That ~~neither the Commercial Fund nor the Noncommercial Fund~~ not
36 be used to clean up sites where the Commission has determined that a
37 discharge or release poses a degree of risk to human health or the
38 environment that is no greater than the acceptable level of risk
39 established by the Commission.
- 40 f. Repealed by Session Laws 1998-161, s. 11(c), effective retroactively
41 to January 1, 1998.

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1 g. That the Commercial Fund ~~and the Noncommercial Fund~~ be used to
2 perform the most cost-effective cleanup that addresses imminent
3 threats to human health and the environment.
4

5 ...
6 (c) The Commission may require an owner or operator or a landowner eligible for
7 payment or reimbursement under ~~subsections (b), (b1), (e), and (e1)~~ subsections (b) and (b1) of
8 G.S. 143-215.94E to provide information necessary to determine the degree of risk to human
9 health and the environment that is posed by a discharge or release from a petroleum underground
10 storage and to identify the most cost-effective cleanup that addresses imminent threats to human
11 health and the environment.

12 ...
13 (e) If the Commission concludes under subsection (d) of this section that no cleanup, no
14 further cleanup, or no further action will be required, the Department shall not pay or reimburse
15 any costs otherwise payable or reimbursable under this Article from ~~either the Commercial or~~
16 ~~Noncommercial~~ Fund, other than reasonable and necessary to conduct the risk assessment
17 required by this section, unless:

18 (1) Cleanup is ordered or damages are awarded in a finally adjudicated judgment
19 in an action against the owner or landowner. To be eligible for reimbursement
20 of damages arising from a third-party claim for bodily injury or property
21 damage awarded in a finally adjudicated judgment, however, an owner or
22 operator shall (i) notify the Department of any such claim; (ii) provide the
23 Department with all pleadings and other related documents if a lawsuit has
24 been filed; and (iii) provide the Department copies of any medical reports,
25 statements, investigative reports, or certifications from licensed professionals
26 necessary to determine that a claim for bodily injury or property damage is
27 reasonable and necessary. Reimbursement of claims for damages arising from
28 a third-party claim for bodily injury or property damage awarded in a finally
29 adjudicated judgment shall be subject to the limitations set forth in ~~G.S.~~
30 ~~143-215.94B(b)(5) and G.S. 143-215.94D(b1)(2), as applicable,~~
31 G.S. 143-215.94B(b)(5) and any other provision governing third-party claims
32 set forth in this Article.

33 ...
34 (e1) If the Commission concludes under subsection (d) of this section that further cleanup
35 is required and notifies the owner, operator, or landowner of the cleanup method approved by the
36 Commission as the most cost-effective cleanup method for the site, the Department shall not pay
37 or reimburse any costs otherwise payable or reimbursable under this Article from ~~either the~~
38 ~~Commercial Fund or Noncommercial~~ Fund, other than those costs that are reasonable and
39 necessary to conduct the risk assessment and to implement the cost-effective cleanup method
40 approved by the Commission. If the owner, operator, or landowner selects a cleanup method
41 other than the one identified by the Commission as the most cost-effective cleanup, the
42 Department shall not pay or reimburse for costs in excess of the cost of implementing the
43 approved cost-effective cleanup.

44 ...

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1 (h) If a discharge or release of petroleum from an underground storage tank results in
2 contamination in soil or groundwater that becomes commingled with contamination that is the
3 result of a discharge or release of petroleum from a source of contamination other than an
4 underground storage tank, the cleanup of petroleum may proceed under rules adopted pursuant
5 to this section. The Department shall not pay or reimburse from the Commercial Fund any costs
6 associated with the assessment or remediation of that portion of contamination that results from
7 a release or discharge of petroleum from a source other than an underground storage tank ~~from~~
8 ~~either the Commercial Fund or the Noncommercial Fund tank.~~"

9 **SECTION 5.34.(f)** G.S. 143B-426.40A(I) reads as rewritten:

10 "(I) ~~Assignment of Payments From the Underground Storage Tank Cleanup Funds.—~~
11 Payments from Commercial Fund. — This section does not apply to an assignment of any claim
12 for payment or reimbursement from the Commercial Leaking Petroleum Underground Storage
13 Tank Cleanup Fund established by ~~G.S. 143-215.94B or the Noncommercial Leaking Petroleum~~
14 ~~Underground Storage Tank Cleanup Fund established by G.S. 143-215.94D.~~ G.S. 143-215.94B."

15
16 **UPDATE OBSOLETE REFERENCES AND OTHER CONFORMING CHANGES IN**
17 **ADMINISTRATIVE LAW**

18 **SECTION 5.35.(a)** G.S. 150B-37(c) is recodified as the last sentence of
19 G.S. 150B-34(a).

20 **SECTION 5.35.(b)** G.S. 150B-34, as amended by subsection (a) of this section,
21 reads as rewritten:

22 "**§ 150B-34. Final decision or order.**

23 (a) In each contested case the administrative law judge shall make a final decision or
24 order that contains findings of fact and conclusions of law. The administrative law judge shall
25 decide the case based upon the preponderance of the evidence, giving due regard to the
26 demonstrated knowledge and expertise of the agency with respect to facts and inferences within
27 the specialized knowledge of the agency. The Office of Administrative Hearings shall forward a
28 copy of the administrative law judge's final decision or order to each party.

29 (b) Repealed by Session Laws 1991, c. 35, s. 6.

30 (c) Repealed by Session Laws 2011-398, s. 18. For effective date and applicability, see
31 editor's note.

32 (d) Except for the exemptions contained in G.S. 150B-1, the provisions of this section
33 regarding the decision of the administrative law judge shall apply only to agencies subject to
34 Article 3 of this Chapter, notwithstanding any other provisions to the contrary relating to
35 recommended decisions by administrative law judges.

36"

37 **SECTION 5.35.(c)** G.S. 90A-30 reads as rewritten:

38 "**§ 90A-30. Penalties; remedies; contested cases.**

39 (a) Upon the recommendation of the Board of Certification, the Secretary of
40 Environmental Quality or a delegated representative may impose an administrative, civil penalty
41 on any person, corporation, company, association, partnership, unit of local government, State
42 agency, federal agency, or other legal entity ~~who that~~ violates G.S. 90A-29(a). Each day of a
43 continued violation ~~shall constitute~~ constitutes a separate violation. The penalty shall not exceed

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1 one hundred dollars (\$100.00) for each day ~~such~~ the violation continues. No penalty shall be
2 assessed until the person alleged to be in violation has been notified of the violation.

3 The clear proceeds of penalties imposed pursuant to this section shall be remitted to the Civil
4 Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

5 (b) Any person wishing to contest a penalty issued under this section ~~shall be~~ is entitled
6 to an administrative hearing and judicial review conducted according to the procedures outlined
7 in Articles 3 and 4 of Chapter 150B of the General Statutes.

8 (c) The Secretary may bring a civil action in the superior court of the county in which the
9 violation is alleged to have occurred to recover the amount of the administrative penalty
10 ~~whenever if~~ either of the following applies to an owner or person in control of a water treatment
11 ~~facility~~ facility:

12 (1) ~~Who~~ The owner or person has not requested an administrative hearing and
13 fails to pay the penalty within 60 days after being notified of ~~such penalty,~~
14 ~~or the penalty.~~

15 (2) ~~Who~~ The owner or person has requested an administrative hearing and fails
16 to pay the penalty within 60 days after ~~service of the Office of Administrative~~
17 Hearings forwards a written copy of the decision as provided in ~~G.S.~~
18 ~~150B-36.~~ G.S. 150B-34.

19 (d) Notwithstanding any other provision of law, this section imposes the only penalty or
20 sanction, civil or criminal, for violations of G.S. 90A-29(a) or for the failure to meet any other
21 legal requirement for a water system to have a certified operator in responsible charge."

22 **SECTION 5.35.(d)** G.S. 104E-24 reads as rewritten:

23 "**§ 104E-24. Administrative penalties.**

24 (a) The Department may impose an administrative penalty on ~~any person~~ a person that
25 does either of the following:

26 (1) ~~Who fails~~ Fails to comply with this Chapter, any order issued hereunder, under
27 it, or any rules adopted pursuant to this Chapter; it.

28 (2) ~~Who refuses~~ Refuses to allow an authorized representative of the Radiation
29 Protection Commission or the Department of Health and Human Services a
30 right of entry as provided for in G.S. 104E-11 or impounding materials as
31 provided for in G.S. 104E-14.

32 (b) Each day of a continuing violation ~~shall constitute~~ constitutes a separate violation.
33 ~~Such~~ The penalty shall not exceed ten thousand dollars (\$10,000) per day. In determining the
34 amount of the penalty, the Department shall consider the degree and extent of the harm caused
35 by the violation. Any person assessed a penalty shall be notified of the assessment by registered
36 or certified mail, and the notice shall specify the reasons for the assessment.

37 (c) Any person wishing to contest a penalty or order issued under this section ~~shall be~~ is
38 entitled to an administrative hearing and judicial review in accordance with the procedures
39 outlined in Articles ~~3, 3A, 3~~ and 4 of Chapter 150B of the General Statutes.

40 (d) The Secretary may bring a civil action in the superior court of the county in which
41 ~~such~~ the violation is alleged to have occurred to recover the amount of the administrative penalty
42 ~~whenever a person~~ if either of the following applies:

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- 1 (1) ~~Who~~ The person has not requested an administrative hearing and fails to pay
2 the penalty within 60 days after being notified of ~~such penalty, or the penalty.~~
3 (2) ~~Who~~ The person has requested an administrative hearing and fails to pay the
4 penalty within 60 days after ~~service of the Office of Administrative Hearings~~
5 forwards a written copy of the decision as provided in ~~G.S.~~
6 ~~150B-36.~~ G.S. 150B-34.
- 7 (e) The clear proceeds of penalties imposed pursuant to this section shall be remitted to
8 the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."
- 9 **SECTION 5.35.(e)** G.S. 108A-70.9A(f) reads as rewritten:
10 "(f) Final Decision. – After a hearing before an administrative law judge, ~~the judge~~ OAH
11 shall return forward a written copy of the administrative law judge's decision to the Department
12 and the recipient in accordance with ~~G.S. 150B-37.~~ G.S. 150B-34. ~~The Department decision shall~~
13 notify the Department and the recipient of the final decision and of the right to judicial review of
14 the decision pursuant to Article 4 of Chapter 150B of the General Statutes."
- 15 **SECTION 5.35.(f)** G.S. 108A-70.9B(g) reads as rewritten:
16 "(g) Decision. – The administrative law judge assigned to a contested Medicaid case shall
17 hear and decide the case without unnecessary delay. The judge shall prepare a written decision
18 and ~~send~~ shall forward a copy of it to the parties in accordance with
19 ~~G.S. 150B-37.~~ G.S. 150B-34."
- 20 **SECTION 5.35.(g)** G.S. 108D-16 reads as rewritten:
21 **"§ 108D-16. Notice of final decision and right to seek judicial review.**
22 The administrative law judge assigned to conduct a contested case hearing under
23 G.S. 108D-15 shall hear and decide the case without unnecessary delay. The judge shall prepare
24 a written decision that includes findings of fact and conclusions of law and ~~send~~ shall forward a
25 copy of it to the parties in accordance with ~~G.S. 150B-37.~~ G.S. 150B-34. The written decision
26 shall notify the parties ~~of the final decision and of the right of the enrollee and the managed care~~
27 entity to seek judicial review of the decision under Article 4 of Chapter 150B of the General
28 Statutes."
- 29 **SECTION 5.35.(h)** G.S. 122C-24 reads as rewritten:
30 **"§ 122C-24. Adverse action on a license.**
31 (a) The Secretary may deny, suspend, amend, or revoke a license in any case in which
32 the Secretary finds that there has been a substantial failure to comply with any provision of this
33 Article or other applicable statutes or any applicable rule adopted pursuant to these statutes.
34 ~~Action[s]~~ Actions under this section and appeals of those actions shall be in accordance with
35 rules of the Commission and Chapter 150B of the General Statutes.
36 (b) ~~When an appeal is filed concerning the denial, suspension, amendment, or revocation~~
37 ~~of a license, a copy of the proposal for decision shall be sent to the Chairman of the Commission~~
38 ~~in addition to the parties specified in G.S. 150B-34. The Chairman or members of the~~
39 ~~Commission designated by the Chairman may submit for the Secretary's consideration written or~~
40 ~~oral comments concerning the proposal prior to the issuance of a final agency decision in~~
41 ~~accordance with G.S. 150B-36."~~
42 **SECTION 5.35.(i)** G.S. 122C-24.1 reads as rewritten:
43 **"§ 122C-24.1. Penalties; remedies.**

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- 1 ...
- 2 (h) The Secretary may bring a civil action in the superior court of the county ~~wherein~~
3 where the violation occurred to recover the amount of the administrative penalty ~~whenever if~~
4 either of the following applies to a facility:
- 5 (1) ~~Which~~ The facility has not requested an administrative hearing and fails to
6 pay the penalty within 60 days after being notified of the ~~penalty, or penalty.~~
- 7 (2) ~~Which~~ The facility has requested an administrative hearing and fails to pay
8 the penalty within 60 days after ~~receipt of the Office of Administrative~~
9 Hearings forwards a written copy of the decision as provided in
10 G.S. 150B-37, G.S. 150B-34.
- 11 ...
- 12 (j) The clear proceeds of civil penalties provided for in this section shall be remitted to
13 the ~~State Treasurer for deposit~~ Civil Penalty and Forfeiture Fund in accordance with State
14 ~~law, G.S. 115C-457.2.~~
- 15 "
- 16 **SECTION 5.35.(j)** G.S. 131D-34 reads as rewritten:
17 **"§ 131D-34. Penalties; remedies.**
- 18 ...
- 19 (g) The Secretary may bring a civil action in the superior court of the county ~~wherein~~
20 where the violation occurred to recover the amount of the administrative penalty ~~whenever if~~
21 either of the following applies to a facility:
- 22 (1) ~~Which~~ The facility has not requested an administrative hearing and fails to
23 pay the penalty within 60 days after being notified of the ~~penalty, or penalty.~~
- 24 (2) ~~Which~~ The facility has requested an administrative hearing and fails to pay
25 the penalty within 60 days after ~~receipt of the Office of Administrative~~
26 Hearings forwards a written copy of the decision as provided in
27 G.S. 150B-36, G.S. 150B-34.
- 28 ...
- 29 (i) The clear proceeds of civil penalties provided for in this section shall be remitted to
30 the ~~State Treasurer for deposit~~ Civil Penalty and Forfeiture Fund in accordance with State
31 ~~law, G.S. 115C-457.2."~~
- 32 **SECTION 5.35.(k)** G.S. 131E-129(f) reads as rewritten:
33 "(f) The Secretary may bring a civil action in the superior court of the county ~~wherein~~
34 where the violation occurred to recover the amount of the administrative penalty ~~whenever if~~
35 either of the following applies to a facility:
- 36 (1) ~~Which~~ The facility has not requested an administrative hearing and fails to
37 pay the penalty within 60 days after being notified of the ~~penalty, or penalty.~~
- 38 (2) ~~Which~~ The facility has requested an administrative hearing and fails to pay
39 the penalty within 60 days after ~~receipt of the Office of Administrative~~
40 Hearings forwards a written copy of the decision as provided in
41 G.S. 150B-36, G.S. 150B-34."
- 42 **SECTION 5.35.(l)** G.S. 143-215.94G reads as rewritten:

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1 **"§ 143-215.94G. Authority of the Department to engage in cleanups; actions for fund**
2 **reimbursement.**

3 (a) ~~The~~ If there is a discharge or release of petroleum from any of the following, the
4 Department may use staff, equipment, or materials under its control or provided by other
5 cooperating federal, State, or local agencies and may contract with any agent or contractor it
6 deems appropriate to investigate a release, to develop and implement a cleanup plan, to provide
7 interim alternative sources of drinking water to third parties, and to pay the initial costs for
8 providing permanent alternative sources of drinking water to third parties, ~~and shall pay the costs~~
9 ~~resulting from the Commercial Fund whenever there is a discharge or release of petroleum from~~
10 ~~any of the following parties:~~

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

20 (a1) Every State agency shall provide to the Department to the maximum extent feasible
21 ~~such any~~ staff, equipment, and materials as ~~may be~~ that are available and useful to the
22 development and implementation of a cleanup program.

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

- 25 (1) Any funds to which the State is entitled under any federal program providing
26 for the cleanup of petroleum discharges or releases from underground storage
27 tanks, including, but not limited to, the Leaking Underground Storage Tank
28 Trust Fund established pursuant to 26 U.S.C. § 4081 and 42 U.S.C. §
29 6991b(h).
30 (2) The Commercial Fund.

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

33 (b) Whenever the discharge or release of a petroleum product is from a commercial
34 underground storage tank, the Department may supervise the cleanup of environmental damage
35 required by G.S. 143-215.94E(a). If the owner or operator elects to have the Commercial Fund
36 reimburse or pay for any costs allowed under subsection (b) or (b1) of G.S. 143-215.94B, the
37 Department shall require the owner or operator to submit documentation of all expenditures
38 claimed for the purposes of establishing that the owner or operator has spent the amounts required
39 to be paid by the owner or operator pursuant to and in accordance with G.S. 143-215.94E(b). The
40 Department shall allow credit for all expenditures that the Department determines to be
41 reasonable and necessary. The Department ~~may~~ shall not pay for any costs for which the
42 Commercial Fund was established until the owner or operator has paid the amounts specified in
43 G.S. 143-215.94E(b).

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- 1 (c) The Secretary shall keep a record of all expenses incurred for the services of State
2 personnel and for the use of the State's equipment and material.
- 3 (d) The Secretary shall seek reimbursement through any legal means available,
4 ~~for~~ available for the following:
- 5 (1) Any costs not authorized to be paid from the Commercial ~~Fund~~; Fund.
- 6 (2) The amounts provided for in G.S. 143-215.94B(b) or G.S. 143-215.94B(b1)
7 required to be paid for by the owner or operator pursuant to
8 G.S. 143-215.94E(b) ~~where~~ if the owner or operator of a commercial
9 underground storage tank is later identified or ~~located~~; located.
- 10 (3) The amounts provided for in G.S. 143-215.94B(b) or G.S. 143-215.94B(b1)
11 required to be paid for by the owner or operator pursuant to
12 G.S. 143-215.94E(b) ~~where~~ if the owner or operator of a commercial
13 underground storage tank failed to proceed as required by ~~G.S.~~
14 ~~143-215.94E(a)~~; G.S. 143-215.94E(a).
- 15 (3a) The amounts provided for by G.S. 143-215.94B(b)(5) required to be paid by
16 the owner or operator to third parties for the cost of providing interim
17 alternative sources of drinking water to third parties and the initial cost of
18 providing permanent alternative sources of drinking water to third
19 ~~parties~~; parties.
- 20 (4) Any funds due under ~~G.S. 143-215.94E(g)~~; and G.S. 143-215.94E(g).
- 21 (5) Any funds to which the State is entitled under any federal program providing
22 for the cleanup of petroleum discharges or releases from underground storage
23 ~~tanks~~; ~~and~~ tanks.
- 24 (6) The amounts provided for in G.S. 143-215.94B(b5) and
25 G.S. 143-215.94D(b2).
- 26 (e) In the event that a civil action is commenced to secure reimbursement pursuant to
27 subdivisions (1) through (4) of subsection (d) of this section, the Secretary may recover, in
28 addition to any amount due, the costs of the action, including but not limited to reasonable
29 ~~attorney's~~ attorneys' fees and investigation expenses. Any monies received or recovered as
30 reimbursement shall be paid into the appropriate fund or other source from which the
31 expenditures were made.
- 32 (f) Repealed by Session Laws 2015-241, s. 14.16A(f), effective December 31, 2016.
- 33 (g) If the Department paid or reimbursed costs that are not authorized to be paid or
34 reimbursed under G.S. 143-215.94B or G.S. 143-215.94D as a result of a misrepresentation by
35 an agent ~~who~~ that acted on behalf of an owner, operator, or landowner, the Department shall first
36 seek reimbursement, pursuant to subdivision (1) of subsection (d) of this section, from the agent
37 of monies paid to or retained by the agent.
- 38 (h) The Department shall take administrative action to recover costs or bring a civil action
39 pursuant to subdivision (1) of subsection (d) of this section to seek reimbursement of costs in
40 accordance with the ~~time limits set out in this subsection~~ following time limits:
- 41 (1) The Department shall take administrative action to recover costs or bring a
42 civil action to seek reimbursement of costs that are not authorized to be paid

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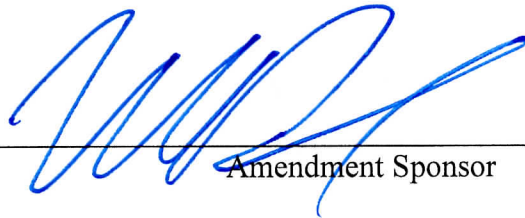
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- 1 from the Commercial Fund under subdivision (1), (2), or (3) of
 2 G.S. 143-215.94B(d) within five years after payment.
 3 (2) The Department shall take administrative action to recover costs or bring a
 4 civil action to seek reimbursement of costs other than those described in
 5 subdivision (1) of this subsection within three years after payment.
 6 (3) Notwithstanding the time limits set out in subdivisions (1) and (2) of this
 7 subsection, the Department may take administrative action to recover costs or
 8 bring a civil action to seek reimbursement of costs paid as a result of fraud or
 9 misrepresentation at any time.
 10 (i) An administrative action or civil action that is not commenced within the time allowed
 11 by subsection (h) of this section is barred.
 12 (j) Except with the consent of the claimant, the Department ~~may~~shall not withhold
 13 payment or reimbursement of costs that are authorized to be paid from the Commercial Fund in
 14 order to recover any other costs that are in dispute unless the Department is authorized to
 15 withhold payment by a final decision of the Commission pursuant to G.S. 150B-36 in a contested
 16 case under Article 3 of Chapter 150B of the General Statutes or by an order or final decision of
 17 a court."".

SIGNED


Amendment Sponsor

SIGNED

Committee Chair if Senate Committee Amendment

ADOPTED _____

FAILED _____

TABLED _____

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