

LEAKING PETROLEUM UNDERGROUND STORAGE TANK CLEANUP FUNDS SOLVENCY

SECTION 30.10.(a) Notwithstanding G.S. 105-449.125, the Secretary of Revenue shall allocate the amount of revenue collected under Article 36C of Chapter 105 from an excise tax of one and one-tenth cent (1.1¢) a gallon to the following funds and accounts in the fraction indicated:

<u>Fund or Account</u>	<u>Amount</u>
Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund	Five sevenths
Noncommercial Leaking Petroleum Underground Storage Tank Cleanup Fund	One seventh
Water and Air Quality Account	One seventh.

The Secretary of Revenue shall allocate seventy-five percent (75%) of the remaining excise tax revenue collected under Article 36C of Chapter 105 to the Highway Fund and shall allocate twenty-five percent (25%) to the Highway Trust Fund.

The Secretary of Revenue shall charge a proportionate share of a refund allowed under this Article to each fund or account to which revenue collected under this Article is credited. The Secretary of Revenue shall credit revenue or charge refunds to the appropriate funds or accounts on a monthly basis except that the Secretary of Revenue shall credit nineteen million dollars (\$19,000,000) to the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund, the Noncommercial Leaking Petroleum Underground Storage Tank Cleanup Fund, and the Water and Air Quality Account in September 2004 in the fractional amounts required by this section. The Secretary of Revenue shall credit the difference between nineteen million dollars (\$19,000,000) and the amount calculated for September as allocated to those Funds to the Highway Fund and the Highway Trust Fund, in the amounts allocated to the Highway Fund and the Highway Trust Fund under this section, over the remaining months of fiscal year 2004-2005 such that the fractional distributions required by this section are met for the fiscal year.

SECTION 30.10.(b) There is appropriated from the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund to the Department of Environment and Natural Resources the sum of fifty-two thousand dollars (\$52,000) for the 2004-2005 fiscal year to establish and support an Accounting Tech IV position to expedite the processing of claims under G.S. 143-215.94E. There is appropriated from the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund to the Department of Environment and Natural Resources up to seventy-six thousand dollars (\$76,000) for the 2004-2005 fiscal year as needed to cover the cost of any legislative salary increase for personnel who administer the underground storage tank program under Parts 2A and 2B of Article 21A of Chapter 143 of the General Statutes. It is the intent of the General Assembly that funds appropriated under this section are recurring funds and that these funds are in addition to funds appropriated under subsection 11.4(b) of S. L. 2003-284.

SECTION 30.10.(c) Subsection 11.4(e) of S.L. 2003-284 reads as rewritten:

"SECTION 11.4.(e) It is the intent of the General Assembly that the funds under subsection (d) of this section are recurring funds."

SECTION 30.10.(d) G.S. 143-215.94E(e2) reads as rewritten:

- "(e2) (1) The Department may require an owner, operator, or landowner to obtain approval from the Department before proceeding with any task 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). 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. The Department shall pay or reimburse the cost of a task only if the cost is

eligible to be paid under G.S. 143-215.94B(b), 143-215.94B(b1), or 143-215.94D(b1) and if the Department determines that the cost is reasonable and necessary. The Commission may adopt rules governing 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. In all cases, the Department shall require an owner, operator, or landowner to submit documentation sufficient to establish that a cost is eligible to be paid or reimbursed under this Part before the Department pays or reimburses the cost.

- (2) Except as provided in subdivisions (3) and (4) of this subsection, the Department shall not preapprove any task the cost of which is to be paid or reimbursed from the Commercial 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 to pay a claim for payment or reimbursement of 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 owner, operator, or landowner is eligible to have the claim paid under this Part. Except as provided in subdivisions (3) and (4) of this subsection, the Department shall not preapprove any task the cost of which is to be paid or reimbursed from 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 Noncommercial Fund to pay a claim for payment or reimbursement of 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 owner, operator, or landowner is eligible to have the claim paid under this Part. 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. 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 as provided in this subsection.
- (3) The Department may preapprove a task the cost of which is to be paid or reimbursed from the Commercial Fund or the Noncommercial Fund when sufficient funds will not be available to pay a claim for payment or reimbursement of the cost of that task within the 90-day period described in subdivision (2) of this subsection if the owner, operator, or landowner specifically requests that the task be preapproved 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 preapproved pursuant to subdivision (2) of this subsection.

- (4) The Department may preapprove a task the cost of which is to be paid or reimbursed from the Commercial Fund or the Noncommercial Fund when sufficient funds will not be available to pay a claim for payment or reimbursement of the cost of that task within the 90-day period described in subdivision (2) 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 preapproved under this subdivision shall be paid or reimbursed on the same basis as tasks that are preapproved under subdivision (2) of this subsection."

SECTION 30.10.(e) Section 10 of S.L. 2003-352 reads as rewritten:

"SECTION 10. The definitions set out in G.S. 143-212 and G.S. 143-215.94A apply to this section. The rights and obligations of an owner, an operator, or a landowner to whom either G.S. 143-215.94E(b1) or G.S. 143-215.94E(c1) apply who is eligible to have costs paid or reimbursed under G.S. 143-215.94B or G.S. 143-215.94D shall be governed by G.S. 143-215.94E as modified by this section. 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 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. The Department shall establish the degree of risk to human health and the environment posed by a discharge or release of petroleum from a noncommercial 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 or cleanup of the discharge or release from a noncommercial underground storage tank are eligible to be paid from the Noncommercial Fund, the Department shall also consider the availability of funds in the Noncommercial Fund and the order in which the discharge or release was reported in determining the schedule. 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. The lack of availability of funds in the Commercial Fund or the Noncommercial 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. If the owner or operator takes initial steps to collect and remove the discharge or release as required by the Department and completes 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 G.S. 143-215.94E before the owner or operator is authorized to proceed with further assessment or cleanup pursuant to the schedule set by the Department. Once the Department has determined a schedule for the assessment and cleanup of a discharge or release from a commercial underground storage tank or a noncommercial underground storage tank, an owner, operator, or other person responsible for the assessment and cleanup is not eligible to have the costs of the assessment or cleanup paid or reimbursed from the Commercial Fund or the Noncommercial Fund until such time as further assessment or cleanup is authorized by the Department pursuant to the schedule. An

owner, operator, or other person may undertake further assessment or cleanup before receiving authorization from the Department. An owner, operator, or other person who undertakes further assessment or cleanup before receiving authorization from the Department shall be reimbursed only after the Department has paid or reimbursed the costs for all assessments and cleanups that the Department has authorized."

SECTION 30.10.(f) The Environmental Review Commission and the Joint Legislative Transportation Oversight Committee shall jointly study the desirability and feasibility of altering or eliminating the role of the State of North Carolina and the Department of Environment and Natural Resources in the implementation of Part 2A of Article 21A of Chapter 143 of the General Statutes. In conducting this study, the Commission shall consider:

- (1) The requirements of applicable federal law.
- (2) What role the State should play in assisting owners and operators of underground storage tanks in meeting applicable financial responsibility requirements and the availability and adequacy of private insurance for that purpose.
- (3) The adequacy of current and projected revenue available to the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund and the Noncommercial Leaking Petroleum Underground Storage Tank Cleanup Fund under existing law to achieve the purposes for which those funds were established.
- (4) The desirability and feasibility of privatizing the administration of Part 2A of Article 21A of Chapter 143 of the General Statutes by transferring control and direction of the Commercial Fund and the Noncommercial Fund to a private entity or, in the alternative, of abolishing or narrowing the purposes for which those funds are used.
- (5) What role the State should play in the cleanup of discharges and releases from petroleum underground storage tanks when no owner or operator can be identified or located or when the owner or operator fails to proceed with assessment or cleanup due to insolvency, inadequate resources, or other reasons.
- (6) The extent to which current regulatory oversight and inspection of underground storage tanks, including enforcement, under Part 2B of Article 21A of Chapter 143 of the General Statutes is adequate and effective in preventing discharges and releases of petroleum from underground storage tanks.
- (7) The impact of privatization and of any other options identified during the course of the study on the solvency of the Commercial Fund and the Noncommercial Fund.
- (8) The impact of privatization and of any other options identified during the course of the study, including abolishing the Commercial Fund or the Noncommercial Fund or narrowing the purposes for which those funds are used, on the cleanup of discharges and releases of petroleum to standards established by federal or State law, the long-term public health and safety, and protection of the environment.

SECTION 30.10.(g) The Environmental Review Commission and the Joint Legislative Transportation Oversight Committee shall report their findings and recommendations as to the matters to be studied pursuant to subsection (f) of this section, including any legislative proposals, to the 2005 General Assembly no later than 31 January 2005.

SECTION 30.10.(h) Subsection (a) of this section becomes effective 1 July 2004 and expires on 30 June 2005. Subsection (b) of this section becomes effective 1 July 2004. Subsection (c) of this section is effective retroactively to 1 July 2003. Subsections (d) and (e) of this section become effective 1 October 2004. Subsections (f) through (h) of this section are effective when this act becomes law.