

SUBCHAPTER 02P - COMMERCIAL LEAKING PETROLEUM UNDERGROUND STORAGE TANK CLEANUP FUND

SECTION .0100 - GENERAL CONSIDERATIONS

15A NCAC 02P .0101 GENERAL

- (a) This Subchapter establishes criteria and procedures for the reimbursement of costs incurred by owners, operators, and landowners from the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund.
- (b) The Underground Storage Tank (UST) Section, hereafter referred to as "the Section," of the Division of Waste Management of the Department of Environmental Quality (DEQ), hereafter referred to as "the Department," shall administer the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund for the State of North Carolina.
- (c) The Department may engage in the activities described in G.S. 143-215.94G in accordance with 15A NCAC 02L and subject to the availability of resources, as determined by the Department.

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;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6, 2018;
Amended Eff. October 1, 2022.

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

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;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6, 2018;
Repealed Eff. October 1, 2022.

15A NCAC 02P .0103 FALSE OR MISLEADING INFORMATION

If any owner, operator, landowner, or authorized agent knowingly submits any false or misleading information with regard to the rules of this Subchapter, and if the false or misleading information results in delay of any efforts to stop the discharge or release, results in delay of detection of any portion of the discharge or release, or results in delay of investigatory or remedial activities, then that owner, operator, landowner, or authorized agent shall be considered to be contributing to a discharge or release, interfering with the mitigation of a discharge or release, or preventing the early detection of a discharge or release pursuant to G.S. 143-215.94E(g)(1).

History Note: Authority G.S. 143-215.3; 143-215.94E; 143-215.94L; 143-215.94T; 143B-282;
Eff. February 1, 1993;
Readopted Eff. October 1, 2022.

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 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 are or have been in use in North Carolina at any time on or after January 1, 1989.
- (c) This Subchapter shall apply to discharges or releases from commercial underground storage tank systems, regardless of whether such systems are regulated under 15A NCAC 02N.

History Note: Authority G.S. 143-215.3; 143-215.94B; 143-215.94C; 143-215.94E; 143-215.94L; 143-215.94T; 143B-282;

Eff. February 1, 1993;
Readopted Eff. October 1, 2022.

15A NCAC 02P .0202 DEFINITIONS

(a) The definitions in 15A NCAC 02N .0203 apply for purposes of this Subchapter, except 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" means the annual fee established in G.S. 143-215.94C that is required to be paid to the Department by the owner or operator of each commercial underground storage tank, as defined in G.S. 143-215.94A, in use on or after January 1, 1989.
- (2) "Commission" means the Environmental Management Commission as organized under Chapter 143B of the General Statutes.
- (3) "Department" means Department of Environmental Quality.
- (4) "Discovered release" means a release that 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) "Landowner" means any record fee owner of real property that contains or contained a commercial underground storage tank of which he or she does not qualify as an owner or operator pursuant to G.S. 143-215.94A.
- (6) "Notice of Residual Petroleum" means the recordation of residual petroleum from underground storage tanks in accordance with G.S. 143B-279.11.
- (7) "Reasonable and necessary expenditures" means expenditures for the assessment and remediation of environmental damage performed in accordance with applicable environmental laws, regulations, and rules that are necessary to determine the extent of contamination, remediate or respond to a release, or compensate third-parties for bodily injury and property damage resulting from the release. The Commission shall consider such expenditures reasonable and necessary to the extent that they are supported by the documentation required by Rule .0404 of this Subchapter, are performed in an efficient manner considering comparable costs for labor, equipment, and materials, and utilize cost-efficient methods.
- (8) "Reasonable Rate Document" means the schedule of costs that the Department has determined to be reasonable and necessary costs for specific tasks pursuant to G.S. 143-215.94E(e5)(3).
- (9) "Tank in operation" means an underground storage tank into which product is added or from which product is removed for purposes other than closure.
- (10) "Tank in use" means an underground storage tank intended for the containment or dispensing of petroleum product.
- (11) "Underground storage tank" means any Commercial Underground Storage Tank as defined in G.S. 143-215.94A.

History Note: Authority G.S. 143-215.3; 143-215.94A; 143-215.94B; 143-215.94C; 143-215.94E; 143-215.94L; 143-215.94T; 143B-282;
Eff. February 1, 1993;
Amended Eff. September 1, 1993;
Readopted Eff. October 1, 2022.

SECTION .0300 - ANNUAL OPERATING FEES

15A NCAC 02P .0301 FEES AND PAYMENT

The owner or operator of each commercial underground storage tank shall pay all annual operating fees due for that commercial underground storage tank in accordance with G.S. 143-215.94C. Unpaid operating fees attach to the tanks, notwithstanding the ownership of the tanks.

History Note: Authority G.S. 143-215.3; 143-215.94C; 143-215.94E; 143-215.94L; 143-215.94T; 143B-282;
Eff. February 1, 1993;
Readopted Eff. October 1, 2022.

15A NCAC 02P .0302 NOTIFICATION

Any person acquiring ownership of an existing commercial underground storage tank shall provide written notification to the Department of this action within 30 days of the date of transfer. This notification shall 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;
- (5) proof of placement of a Notice of Residual Petroleum for any known release at the site at the time of the transfer of the property;
- (6) statement of intent of whether the new owner intends to accept eligibility of any previous release from the tank or tanks just acquired; and
- (7) copy of ownership transfer documents.

*History Note: Authority G.S. 143-215.3; 143-215.94L; 143-215.94T; 143B-282;
Eff. February 1, 1993;
Readopted Eff. October 1, 2022.*

SECTION .0400 - REIMBURSEMENT PROCEDURE

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

(a) Date of Release.

- (1) An owner, operator, or landowner of a commercial underground storage tank is not eligible for reimbursement of costs from the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund related to releases which were discovered prior to June 30, 1988.
- (2) In the case of multiple releases that commingle into one plume, the deductible is established under the date of first release.
- (3) Only the currently approved eligible party, determined in accordance with Paragraphs (b) through (d) of this Rule, may be reimbursed from the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund.
- (4) After the Department has notified the eligible party that no further action is required for a discharge or release pursuant to 15A NCAC 02L, eligibility may be reapplied for by either the current owner, operator, or landowner or former eligible party as applicable and upon receiving eligibility, said party shall be credited for all prior reimbursable cleanup costs subject to G.S. 143-215.94E(j) and G.S. 143-215.94E(k).

(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 of a release from the tank. 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 or she ceases owning or operating the underground storage tank if all fees due during his or her 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 as long as the property has not been transferred to circumvent liability in accordance with this Paragraph.

(c) An owner, operator, or landowner of a commercial underground storage tank is not eligible for reimbursement of any expenditures that are:

- (1) in excess of the amount determined reasonable in accordance with Rule .0402 of this Section;
- (2) not necessary in performing cleanup of environmental damage and in compensating third-parties for bodily injury and property damage; and
- (3) less than any deductible established for the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund.

(d) An owner, operator, or landowner of a commercial underground storage tank, who is eligible for reimbursement under the rules of this Section, may be reimbursed for eligible costs only after submittal of a written application of eligibility to the Department, on forms provided by the Department, which are located at 217 West Jones Street, Raleigh, NC 27603 and on the Department's website, and which includes information and documentation necessary to determine eligibility. An application of eligibility shall include:

- (1) contact information for the applicant, including contact name, address, phone number, and email address;

- (2) site information, including tenant information if applicable;
 - (3) inventory of all tanks ever installed on the property;
 - (4) release discovery and reporting information;
 - (5) a disclosure of any past enforcement initiated against the applicant pursuant to G.S. 143-215.94W through 143-215.94Z;
 - (6) a certification as required by G.S. 143-215.94E(f1);
 - (7) scaled site map showing location of all tanks and releases;
 - (8) tank upgrade information;
 - (9) property deeds and bills of sale that verify that the applicant was the owner, operator, or landowner at the time of the release;
 - (10) any UST Section inspection records; and
 - (11) a notarized affidavit from the applicant verifying compliance with the rules of this Subchapter and with 15A NCAC 02N and 02O, G.S. 143-215.94A, 143-215.94B, 143-215.94C, and 143-215.94E.
- (e) An owner or operator of a commercial underground storage tank shall not be eligible for reimbursement for costs related to releases if any of the conditions set forth in G.S. 143-215.94E(g)(1) apply.
- (f) The release response and corrective action requirements of any rules of the Commission and of any statute administered by the Department shall not be construed as limited by, or contingent upon, any reimbursement from the Commercial Leaking Petroleum Underground Storage Tank Cleanup 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;
 Readopted Eff. October 1, 2022.

15A NCAC 02P .0402 CLEANUP COSTS

- (a) In determining whether costs expended by an owner, operator, or landowner are reasonable and necessary, the Department shall consider the following:
- (1) adequacy and cost-effectiveness of any work performed, and technical activity utilized by the owner, operator, or landowner in performing release response, site assessment, and corrective action;
 - (2) industry rates of engineering, geological, or other environmental consulting firms providing similar services in the State as determined by the Department;
 - (3) industry rental rates for any equipment, not to exceed the purchase price, as determined by the Department;
 - (4) industry rates of any other service, labor, or expense; and
 - (5) whether costs expended for corrective action were required by 15A NCAC 02L.
- (b) Expenditures not eligible for reimbursement shall include the following:
- (1) costs that are not eligible to be reimbursed pursuant to G.S. 143-215.94B, and any costs associated with noncommercial underground storage tanks;
 - (2) costs of the replacement of any underground storage tank, piping, fitting, or ancillary equipment required to operate and maintain a UST system;
 - (3) costs incurred in preparation of any proposals 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 selected to provide the service solicited;
 - (4) interest of any kind;
 - (5) expenses charged by the owner, 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, operator, or landowner;
 - (9) costs for which pre-approval is required as set forth in G.S. 143-215.94E(e5)(1) and (2), and was not obtained;
 - (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; and

- (11) for any task for which a maximum rate is established in the Reasonable Rate Document, costs in excess of that maximum rate shall not be eligible for reimbursement without prior written preapproval by the Department.
- (c) When preapproval of costs is required and is obtained from the Department, the preapproval is valid for one year from the date fully executed.

History Note: Authority G.S. 143-215.3; 143-215.94B; 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;
Readopted Eff. October 1, 2022.

15A NCAC 02P .0403 THIRD-PARTY CLAIMS

- (a) An owner, operator, or landowner seeking reimbursement from the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund for any third-party claim for bodily injury or property damage shall notify the Department of any such claim in accordance with G.S. 143-215.94E(e3). The owner, operator, or landowner shall provide the Department with all pleadings and other documents filed in support of a claim for third-party bodily injury or property damage, if a lawsuit for third-party bodily injury or property damage has been filed. Prior to entry into any settlement agreement or consent judgement, Departmental approval is required pursuant to G.S. 143-215.94E(e3). The owner, operator, or landowner shall provide to the Department copies of any medical reports, statements, investigative reports, or certifications from licensed professionals necessary to prove that third-party bodily injury or property damage costs are reimbursable pursuant to G.S. 143-215.94A and 143-215.94B.
- (b) The terms "third-party," "third-party bodily injury," and "third-party property damage" mean the terms as defined in G.S. 143-215.94A.
- (c) Third-party property damage shall be reimbursed from the Commercial Leaking Petroleum Underground Storage Tank Cleanup 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 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; 143-215.94E; 143-215.94L; 143-215.94T; 143B-282;
Eff. February 1, 1993;
Readopted Eff. October 1, 2022.

15A NCAC 02P .0404 REQUESTS FOR REIMBURSEMENT

- (a) An owner, operator, or landowner may make a request for reimbursement only after the Department has determined that they are eligible for reimbursement. The reimbursement request shall include the following information, submitted on templates found on the Department's website at <https://deq.nc.gov/about/divisions/waste-management/ust/trust-fund>:
- (1) notarized certification of the costs;
 - (2) notarized certification of payment to subcontractors, if applicable;
 - (3) summary of work performed;
 - (4) reimbursement payment information;
 - (5) certification of remediation system installation, if applicable;
 - (6) itemized breakdown of the requested reimbursement; and
 - (7) supporting documentation of the itemized costs, such as the following:
 - (A) subcontractor invoices;
 - (B) correspondence from regulatory agencies;
 - (C) invoices;
 - (D) bills of lading;
 - (E) per diem receipts;
 - (F) field logs; and
 - (G) reports.

- (b) Proof of completion of work and payment shall accompany any request for reimbursement, except when reimbursement is made jointly to the owner, operator, or landowner and either a provider of service or a third-party claimant.
- (c) A request for reimbursement may be returned or additional information requested by the Department, if it is found to be incomplete.
- (d) The Department shall reimburse an eligible owner, operator, or landowner for expenses following completion of any phase of cleanup work in accordance with the schedule allowed by G.S. 143-215.94E(e2).
- (e) If any amount approved for reimbursement is less than the amount of reimbursement requested, the Department 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;
Readopted Eff. October 1, 2022.

15A NCAC 02P .0405 METHOD OF REIMBURSEMENT

- (a) Reimbursement for cleanup costs shall be made only to an eligible owner, operator, or landowner of a petroleum underground storage tank, or jointly to an owner, operator, or landowner and a provider of service.
- (b) Reimbursement of cleanup costs to the owner, operator, or landowner shall be made only after proof of completion of work and payment for such costs has been received by the Department.
- (c) Joint reimbursement of cleanup costs shall be made to an owner, 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, 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.
- (e) Any request for reimbursement that has not been returned to the owner, operator, or landowner, or reimbursed to the owner, operator, or landowner within 90 days of submittal of such a request may be considered by the owner, operator, or landowner as having been denied by the Department in accordance with G.S. 143-215.94E(e2).

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;
Readopted Eff. October 1, 2022.

15A NCAC 02P .0406 APPORTIONMENT

- (a) If any of the underground storage tanks at a single facility contributing to a discharge or release which resulted in a single plume of soil, surface water, or groundwater contamination pursuant to G.S. 143-215.94B(b1) are not eligible for reimbursement, reimbursement shall be made at a rate equal to the number of tanks contributing to the discharge or release that are eligible for reimbursement divided by the total number of tanks contributing to the discharge or release.
- (b) If multiple underground storage tanks at a single facility are contributing to a single discharge or release which resulted in a single plume of soil, surface water, or groundwater contamination, and the tanks are owned or operated by different persons, reimbursement may be made to any of the owners or operators as if the discharge or release were caused entirely by that person's underground storage tanks.
- (c) If above ground and underground storage tanks at a single facility are both contributing to a single discharge or release which resulted in a single plume of soil, surface water, or groundwater contamination, reimbursement shall be apportioned based upon the volume of eligible tanks divided by the total volume of all tanks contributing to the release.
- (d) Where multiple discharges or releases at a single facility which resulted in separate plume of soil, surface water, or groundwater contamination pursuant to G.S. 143-215.94B(b1) are addressed in a single cleanup action, expenses shall be reimbursed based on apportionment among the discharges or releases. The method of apportionment shall be as follows:
 - (1) expenses related to a particular discharge or release shall be applied only to that discharge or release; or

- (2) expenses that are related to more than one discharge or release shall be apportioned on a pro rata basis among the discharges or releases.

History Note: Authority G.S. 143-215.3; 143-215.94E; 143-215.94L; 143-215.94T; 143B-282;
Eff. February 1, 1993;
Readopted Eff. October 1, 2022.

15A NCAC 02P .0407 APPEAL RIGHTS

(a) The Director, Underground Storage Tank Section Chief, or Trust Fund Branch Head of the Division of Waste Management shall make the agency decision on a written application for eligibility for reimbursement from the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund. The Director, Underground Storage Tank Section Chief, or Trust Fund Branch Head shall make the agency decision on any written claim for reimbursement once an applicant has been granted eligibility.

(b) An owner, operator, or landowner who has not received a written notification of decision of eligibility to or for reimbursement from the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund within 90 days of submittal of a written application in accordance with the rules of this Subchapter may elect to consider the application to have been denied and may file an appeal in accordance with G.S. 143-215.94E(e2).

(c) An owner, operator, or landowner who has received a written notification of eligibility to or for reimbursement from the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund after submittal of a written application in accordance with the rules of this Subchapter and disagrees with the notification may elect to file an informal appeal supplying additional information. Following review of the additional information, the Director, Underground Storage Tank Section Chief, or Trust Fund Branch Head shall issue a written agency decision. If the written decision by the Director, Underground Storage Tank Section Chief, or Trust Fund Branch Head does not change the original decision of eligibility to or for reimbursement from the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund, the Department shall notify the owner, operator, or landowner of the right to petition for a contested case in the Office of Administrative Hearings in accordance with G.S. 150B-23.

(d) An owner, operator, or landowner who has received a written notification of eligibility to or for reimbursement from the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund after submittal of a written application in accordance with the rules of this Subchapter and disagrees with the notification may elect to file a petition for a contested case in the Office of Administrative Hearings in accordance with G.S. 150B-23 without providing any additional information.

History Note: Authority G.S. 143-215.3; 143-215.94B; 143-215.94E; 143-215.94L; 143-215.94T; 143B-282;
150B-23;
Eff. February 1, 1993;
Amended Eff. September 1, 1993;
Readopted Eff. October 1, 2022.

15A NCAC 02P .0408 PERFORMANCE-BASED CLEANUPS

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;
Expired Eff. April 1, 2018 pursuant to G.S. 150B-21.3A.