

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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HOUSE BILL 1485*

Short Title: Water Quality Fees/End CDE LUST Cleanups.

(Public)

Sponsors: Representatives Mitchell; Hill and Owens.

Referred to: Environment, if favorable, Finance.

May 25, 1998

A BILL TO BE ENTITLED

AN ACT TO REVISE AND PLACE INTO THE GENERAL STATUTES THE SCHEDULE OF FEES FOR PERMITS UNDER THE WATER QUALITY PROGRAM, AS RECOMMENDED BY THE WATER QUALITY PROGRAMS FUNDING WORKING GROUP, TO REQUIRE THE ENVIRONMENTAL MANAGEMENT COMMISSION TO CLASSIFY THE IMPACT OF LEAKING PETROLEUM UNDERGROUND STORAGE TANKS AS EITHER AB OR CDE, AND TO PROVIDE THAT THE OWNER OR OPERATOR OF A LEAKING UNDERGROUND STORAGE TANK THAT HAS A CDE IMPACT SHALL NOT BE REQUIRED TO CLEAN UP THE DISCHARGE OR RELEASE, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

PART I. WATER QUALITY FEES

Section 1.1. Part 1 of Article 21 of Chapter 143 of the General Statutes is amended by adding a new section to read:

"§ 143-215.3D. Fee schedule for water quality permits.

(a) Annual fees for discharge and nondischarge permits under G.S. 143-215.1. –

- 1 (1) Major Individual NPDES Permits. – The annual fee for an individual
2 permit for a point source discharge of 1,000,000 or more gallons per day
3 shall be two thousand eight hundred sixty-five dollars (\$2,865).
- 4 (2) Minor Individual NPDES Permits. – The annual fee for an individual
5 permit for a point source discharge of less than 1,000,000 gallons per
6 day shall be seven hundred fifteen dollars (\$715.00).
- 7 (3) Single-Family Residence. – The annual fee for a certificate of coverage
8 under a general permit for a point source discharge or an individual
9 nondischarge permit from a single-family residence shall be fifty dollars
10 (\$50.00).
- 11 (4) Stormwater and Wastewater Discharge General Permits. – The annual
12 fee for a certificate of coverage under a general permit for a point source
13 discharge of stormwater or wastewater shall be eighty dollars (\$80.00).
- 14 (5) Recycle Systems. – The annual fee for a individual permit for a recycle
15 system nondischarge permit shall be three hundred dollars (\$300.00).
- 16 (6) Major Nondischarge Permits. – The annual fee for an individual permit
17 for a nondischarge of 10,000 or more gallons per day or requiring 300
18 or more acres of land shall be one thousand ninety dollars (\$1,090).
- 19 (7) Minor Nondischarge Permits. – The annual fee for an individual permit
20 for a nondischarge of less than 10,000 gallons per day or requiring less
21 than 300 acres of land shall be six hundred seventy-five dollars
22 (\$675.00).
- 23 (8) Animal Waste Management Systems. – The annual fee for animal
24 waste management systems shall be as set out in G.S. 143-215.10G.
- 25 (b) Application fee for new discharge and nondischarge permits. – An application
26 for a new permit of the type set out in subsection (a) of this section shall be accompanied
27 by an initial application fee equal to the annual fee for that permit. If a permit is issued,
28 the application fee will be applied as the annual fee for the first year that the permit is in
29 effect. If the application is denied, the application fee shall not be refunded.
- 30 (c) Application and annual fees for consent special orders. –
- 31 (1) Major consent special orders. – If the Commission enters into a consent
32 special order, assurance of voluntary compliance, or similar document
33 pursuant to G.S. 143-215.2 for an activity subject to an annual fee under
34 subdivision (1) or (6) of subsection (a) of this section, the initial project
35 fee shall be four hundred dollars (\$400.00) and the annual fee shall be
36 five hundred dollars (\$500.00). These fees shall be in addition to the
37 annual fee due under subsection (a) of this section.
- 38 (2) Minor consent special orders. – If the Commission enters into a consent
39 special order, assurance of voluntary compliance, or similar document
40 pursuant to G.S. 143-215.2 for an activity subject to an annual fee under
41 subdivision (2) or (7) of subsection (a) of this section, the initial project
42 fee shall be four hundred dollars (\$400.00) and the annual fee shall be

1 two hundred fifty dollars (\$250.00). These fees shall be in addition to
2 the annual fee due under subsection (a) of this section.

3 (d) Fee for major permit modifications. – An application for a major modification
4 of a permit of the type set out in subsection (a) of this section shall be accompanied by an
5 application fee equal to thirty percent (30%) of the annual fee applicable to that permit.
6 A major modification of a permit is any modification that would allow an increase in the
7 volume or pollutant load of the discharge or nondischarge or that would result in a
8 significant relocation of the point of discharge, as determined by the Commission. This
9 fee shall be in addition to the fees due under subsections (a) and (c) of this section. If the
10 application is denied, the application fee shall not be refunded.

11 (e) Other fees under this Article. –

12 (1) Sewer system extension permits. – The application fee for a permit for
13 the construction of a new sewer system or for the extension of an
14 existing sewer system shall be four hundred dollars (\$400.00).

15 (2) State stormwater permits. – The application fee for a permit regulating
16 stormwater runoff under G.S. 143-214.7 and G.S. 143-215.1 shall be
17 four hundred twenty dollars (\$420.00).

18 (3) Major water quality certifications. – The fee for a water quality
19 certification involving one acre or more of wetland fill or 150 feet or
20 more of stream impact shall be four hundred seventy-five dollars
21 (\$475.00).

22 (4) Minor water quality certifications. – The fee for a water quality
23 certification involving less than one acre of wetland fill or less than 150
24 feet of stream impact shall be two hundred dollars (\$200.00).

25 (5) Permit for land application of petroleum contaminated soils. – The fee
26 for a permit to apply petroleum contaminated soil to land shall be four
27 hundred dollars (\$400.00).

28 (6) Fee nonrefundable. – If an application for a permit or a certification
29 described in this subsection is denied, the application or certification fee
30 shall not be refunded."

31 Section 1.2. G.S. 143-215.3(a) reads as rewritten:

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

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

37 (1a) To ~~charge~~ adopt fee schedules and collect fees for the following:

38 a. Processing of applications for permits or registrations issued
39 under ~~Articles~~ Article 21, other than Parts 1 and 1A, Articles 21A,
40 21B, and 38 of this Chapter;

41 b. Administering permits or registrations issued under ~~Articles~~
42 Article 21, other than Parts 1 and 1A, Articles 21A, 21B, or and

1 38 of this Chapter including monitoring compliance with the
2 terms of those permits; and

- 3 c. Reviewing, processing, and publicizing applications for
4 construction grant awards under the Federal Water Pollution
5 Control Act.

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

- 8 (1b) ~~The fee to be charged pursuant to G.S. 143-215.3(a)(1a) for processing~~
9 ~~an application for a permit under G.S. 143-215.1 of Article 21 may not~~
10 ~~exceed four hundred dollars (\$400.00).~~ The fee to be charged pursuant
11 to G.S. 143-215.3(a)(1a) for processing an application for a permit
12 under G.S. 143-215.108 and G.S. 143-215.109 of Article 21B of this
13 Chapter may not exceed five hundred dollars (\$500.00). The fee to be
14 charged pursuant to G.S. 143-215.3(a)(1a) for processing a registration
15 under Part 2A of this Article or Article 38 of this Chapter may not
16 exceed fifty dollars (\$50.00) for any single registration. An additional
17 fee of twenty percent (20%) of the registration processing fee may be
18 assessed for a late registration under Article 38 of this Chapter. The fee
19 for administering and compliance monitoring under ~~G.S. 143-215.1 of~~
20 ~~Article 21~~ Article 21, other than Parts 1 and 1A, and G.S. 143-215.108
21 and G.S. 143-215.109 of Article ~~21B~~ 21B shall be charged on an annual
22 basis for each year of the permit term and may not exceed one thousand
23 five hundred dollars (\$1,500) per year. Fees for processing all permits
24 under Article 21A and all other sections of ~~Articles 21 and~~ Article 21B
25 shall not exceed one hundred dollars (\$100.00) for any single permit.
26 ~~Notwithstanding any other provision of this subdivision, the~~ The total
27 ~~payment for fees required that are set by the Commission under this~~
28 ~~subsection for all permits under this subsection~~ for any single facility
29 shall not exceed seven thousand five hundred dollars (\$7,500) per year,
30 which amount shall include all application fees and fees for
31 administration and compliance monitoring. A single facility is defined
32 to be any contiguous area under one ownership and in which permitted
33 activities occur. For all permits issued under these Articles where a fee
34 schedule is not specified in the statutes, the Commission, or other
35 commission specified by statute shall adopt a fee schedule in a rule
36 following the procedures established by the Administrative Procedure
37 Act. Fee schedules shall be established to reflect the size of the emission
38 or discharge, the potential impact on the environment, the staff costs
39 involved, relative costs of the issuance of new permits and the
40 reissuance of existing permits, and shall include adequate safeguards to
41 prevent unusual fee assessments which would result in serious economic
42 burden on an individual applicant. A system shall be considered to
43 allow consolidated annual payments for persons with multiple permits.

1 In its rulemaking to establish fee schedules, the Commission is also
2 directed to consider a method of rewarding facilities which achieve full
3 compliance with administrative and self-monitoring reporting
4 requirements, and to consider, in those cases where the cost of renewal
5 or amendment of a permit is less than for the original permit, a lower fee
6 for the renewal or amendment.

- 7 (1c) Moneys collected pursuant to G.S. 143-215.3(a)(1a) shall be used to:
- 8 a. Eliminate, insofar as possible, backlogs of permit applications
9 awaiting agency action;
 - 10 b. Improve the quality of permits issued;
 - 11 c. Improve the rate of compliance of permitted activities with
12 environmental standards; and
 - 13 d. Decrease the length of the processing period for permit
14 applications.

- 15 (1d) The Commission may adopt and implement a graduated fee schedule
16 sufficient to cover all direct and indirect costs required for the State to
17 develop and administer a permit program which meets the requirements
18 of Title V. The provisions of subdivision (1b) of this subsection do not
19 apply to the adoption of a fee schedule under this subdivision. In
20 adopting and implementing a fee schedule, the Commission shall
21 require that the owner or operator of all air contaminant sources subject
22 to the requirement to obtain a permit under Title V to pay an annual fee,
23 or the equivalent over some other period, sufficient to cover costs as
24 provided in section 502(b)(3)(A) of Title V. The fee schedule shall be
25 adopted according to the procedures set out in Chapter 150B of the
26 General Statutes.

- 27 a. The total amount of fees collected under the fee schedule adopted
28 pursuant to this subdivision shall conform to the requirements of
29 section 502(b)(3)(B) of Title V. No fee shall be collected for
30 more than 4,000 tons per year of any individual regulated
31 pollutant, as defined in section 502(b)(3)(B)(ii) of Title V,
32 emitted by any source. Fees collected pursuant to this subdivision
33 shall be credited to the Title V Account.
- 34 b. The Commission may reduce any permit fee required under this
35 section to take into account the financial resources of small
36 business stationary sources as defined under Title V and
37 regulations promulgated by the United States Environmental
38 Protection Agency.
- 39 c. When funds in the Title V Account exceed the total amount
40 necessary to cover the cost of the Title V program for the next
41 fiscal year, the Secretary shall reduce the amount billed for the
42 next fiscal year so that the excess funds are used to supplement

1 the cost of administering the Title V permit program in that fiscal
2 year.

3 (1e) The Commission shall collect the application, annual, and project fees
4 for processing and administering permits, certificates of coverage under
5 general permits, and certifications issued under Parts 1 and 1A of this
6 Article and for compliance monitoring under Parts 1 and 1A of this
7 Article as provided in G.S. 143-215.3D and G.S. 143-215.10G.

8 (2) To direct that such investigation be conducted as it may reasonably
9 deem necessary to carry out its duties as prescribed by this Article or
10 Article 21A or Article 21B of this Chapter, and for this purpose to enter
11 at reasonable times upon any property, public or private, for the purpose
12 of investigating the condition of any waters and the discharge therein of
13 any sewage, industrial waste, or other waste or for the purpose of
14 investigating the condition of the air, air pollution, air contaminant
15 sources, emissions, or the installation and operation of any air-cleaning
16 devices, and to require written statements or the filing of reports under
17 oath, with respect to pertinent questions relating to the operation of any
18 air-cleaning device, sewer system, disposal system, or treatment works.
19 In the case of effluent or emission data, any records, reports, or
20 information obtained under this Article or Article 21A or Article 21B of
21 this Chapter shall be related to any applicable effluent or emission
22 limitations or toxic, pretreatment, or new source performance standards.
23 No person shall refuse entry or access to any authorized representative
24 of the Commission or Department who requests entry for purposes of
25 inspection, and who presents appropriate credentials, nor shall any
26 person obstruct, hamper or interfere with any such representative while
27 in the process of carrying out his official duties.

28 (3) To conduct public hearings and to delegate the power to conduct public
29 hearings in accordance with the procedures prescribed by this Article or
30 by Article 21B of this Chapter.

31 (4) To delegate such of the powers of the Commission as the Commission
32 deems necessary to one or more of its members, to the Secretary or any
33 other qualified employee of the Department. The Commission shall not
34 delegate to persons other than its own members and the designated
35 employees of the Department the power to conduct hearings with
36 respect to the classification of waters, the assignment of classifications,
37 air quality standards, air contaminant source classifications, emission
38 control standards, or the issuance of any special order except in the case
39 of an emergency under subdivision (12) of this subsection for the
40 abatement of existing water or air pollution. Any employee of the
41 Department to whom a delegation of power is made to conduct a
42 hearing shall report the hearing with its evidence and record to the
43 Commission.

- 1 (5) To institute such actions in the superior court of any county in which a
2 violation of this Article, Article 21B of this Chapter, or the rules of the
3 Commission has occurred, or, in the discretion of the Commission, in
4 the superior court of the county in which any defendant resides, or has
5 his or its principal place of business, as the Commission may deem
6 necessary for the enforcement of any of the provisions of this Article,
7 Article 21B of this Chapter, or of any official action of the Commission,
8 including proceedings to enforce subpoenas or for the punishment of
9 contempt of the Commission.
- 10 (6) To agree upon or enter into any settlements or compromises of any
11 actions and to prosecute any appeals or other proceedings.
- 12 (7) To direct the investigation of any killing of fish and wildlife which, in
13 the opinion of the Commission, is of sufficient magnitude to justify
14 investigation and is known or believed to have resulted from the
15 pollution of the waters or air as defined in this Article, and whenever
16 any person, whether or not he shall have been issued a certificate of
17 approval, permit or other document of approval authorized by this or
18 any other State law, has negligently, or carelessly or unlawfully, or
19 willfully and unlawfully, caused pollution of the waters or air as defined
20 in this Article, in such quantity, concentration or manner that fish or
21 wildlife are killed as the result thereof, the Commission, may recover, in
22 the name of the State, damages from such person. The measure of
23 damages shall be the amount determined by the Department and the
24 North Carolina Wildlife Resources Commission, whichever has
25 jurisdiction over the fish and wildlife destroyed to be the replacement
26 cost thereof plus the cost of all reasonable and necessary investigations
27 made or caused to be made by the State in connection therewith. Upon
28 receipt of the estimate of damages caused, the Department shall notify
29 the persons responsible for the destruction of the fish or wildlife in
30 question and may effect such settlement as the Commission may deem
31 proper and reasonable, and if no settlement is reached within a
32 reasonable time, the Commission shall bring a civil action to recover
33 such damages in the superior court in the county in which the discharge
34 took place. Upon such action being brought the superior court shall have
35 jurisdiction to hear and determine all issues or questions of law or fact,
36 arising on the pleadings, including issues of liability and the amount of
37 damages. On such hearing, the estimate of the replacement costs of the
38 fish or wildlife destroyed shall be prima facie evidence of the actual
39 replacement costs of such fish or wildlife. In arriving at such estimate,
40 any reasonably accurate method may be used and it shall not be
41 necessary for any agent of the Wildlife Resources Commission or the
42 Department to collect, handle or weigh numerous specimens of dead
43 fish or wildlife.

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

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

30 The determination of the Commission shall be supported by detailed
31 findings of fact and conclusions set forth in the order and based upon
32 competent evidence of record. The order shall describe the geographical
33 area of the State affected thereby with particularity and shall prohibit the
34 issuance of permits pending a determination by the Commission that the
35 generalized condition of water or air pollution has ceased.

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

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

- 42 (9) If an investigation conducted pursuant to this Article or Article 21B of
43 this Chapter reveals a violation of any rules, standards, or limitations

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

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

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

29 (12) To declare an emergency when it finds that a generalized condition of
30 water or air pollution which is causing imminent danger to the health or
31 safety of the public. Regardless of any other provisions of law, if the
32 Department finds that such a condition of water or air pollution exists
33 and that it creates an emergency requiring immediate action to protect
34 the public health and safety or to protect fish and wildlife, the Secretary
35 of the Department with the concurrence of the Governor, shall order
36 persons causing or contributing to the water or air pollution in question
37 to reduce or discontinue immediately the emission of air contaminants
38 or the discharge of wastes. Immediately after the issuance of such order,
39 the chairman of the Commission shall fix a place and time for a hearing
40 before the Commission to be held within 24 hours after issuance of such
41 order, and within 24 hours after the commencement of such hearing, and
42 without adjournment thereof, the Commission shall either affirm,
43 modify or set aside the order.

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

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

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

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

34 (16) To adopt rules limiting the manufacture, storage, sale, distribution or
35 use of cleaning agents containing phosphorus pursuant to G.S. 143-
36 214.4(e), and to adopt rules limiting the manufacture, storage, sale,
37 distribution or use of cleaning agents containing nitrilotriacetic acid.

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

39 Section 1.3. G.S. 143-215.3A reads as rewritten.

40 **"§ 143-215.3A. Water and Air Quality Account; use of application and permit fees;**
41 **Title V Account; I & M Air Pollution Control Account; reports.**

42 (a) The Water and Air Quality Account is established as a nonreverting account
43 within the Department. Revenue in the Account shall be applied to the costs of

1 administering the programs for which the fees were collected. Revenue credited to the
2 Account pursuant to G.S. 105-449.125, 105-449.134, and 105-449.43 shall be used to
3 administer the air quality program. Except for the following fees, all application fees and
4 permit administration fees collected by the State for permits issued under Articles 21,
5 21A, 21B, and 38 of this Chapter shall be credited to the Account:

- 6 (1) Fees collected under Part 2 of Article 21A and credited to the Oil or
7 Other Hazardous Substances Pollution Protection Fund.
- 8 (2) Fees credited to the Title V Account.
- 9 (3) Fees credited to the Wastewater Treatment Works Emergency
10 Maintenance, Operation and Repair Fund under G.S. 143-215.3B.
- 11 (4) Fees collected under G.S. 143-215.28A.
- 12 (5) Fees collected under G.S. 143-215.94C shall be credited to the
13 Commercial Leaking Petroleum Underground Storage Tank Cleanup
14 Fund.

15 (a1) ~~The~~ It is the intent of the General Assembly that the total monies collected per
16 year from fees for permits under G.S. 143-215.3(a)(1a), after deducting those monies
17 collected under G.S. 143-215.3(A)(1d), shall not exceed thirty percent (30%) of the total
18 budgets from all sources of environmental permitting and compliance programs within
19 the Department. This subsection shall not be construed to relieve any person of the
20 obligation to pay a fee established under this Article or Articles 21A, 21B, or 38 of this
21 Chapter.

22 (b) The Title V Account is established as a nonreverting account within the
23 Department. Revenue in the Account shall be used for developing and implementing a
24 permit program that meets the requirements of Title V. The Title V Account shall consist
25 of fees collected pursuant to G.S. 143-215.3(a)(1d) and G.S. 143-215.106A. Fees
26 collected under G.S. 143-215.3(a)(1d) shall be used only to cover the direct and indirect
27 costs required to develop and administer the Title V permit program, and fees collected
28 under G.S. 143-215.106A shall be used only for the eligible expenses of the Title V
29 program. Expenses of the Air Quality Compliance Advisory Panel, the ombudsman for
30 the Small Business Stationary Source Technical and Environmental Compliance
31 Assistance Program, support staff, equipment, legal services provided by the Attorney
32 General, and contracts with consultants and program expenses listed in section
33 502(b)(3)(A) of Title V shall be included among Title V program expenses.

34 (b1) The I & M Air Pollution Control Account is established as a nonreverting
35 account within the Department. Fees transferred to the Division of Air Quality of the
36 Department pursuant to G.S. 20-183.7(c)(2) shall be credited to the I & M Air Pollution
37 Control Account and shall be applied to the costs of developing and implementing an air
38 pollution control program for mobile sources.

39 (c) The Department shall make an annual report to the General Assembly and its
40 Fiscal Research Division on the cost of the State's environmental permitting programs
41 contained within such Department. In addition, the Department shall make an annual
42 report to the General Assembly and its Fiscal Research Division on the cost of the Title V
43 program. The reports shall include, but are not limited to, fees set and established under

1 this Article, fees collected under this Article, revenues received from other sources for
2 environmental permitting and compliance programs, changes made in the fee schedule
3 since the last report, anticipated revenues from all other sources, interest earned and any
4 other information requested by the General Assembly."

5 Section 1.4. G.S. 143-215.10G reads as rewritten:

6 **"§ 143-215.10G. Fees for animal waste management systems.**

7 (a) Department shall charge an annual permit fee of all animal operations that are
8 subject to a permit under G.S. 143-215.10C for animal waste management systems
9 according to the following schedule:

10 (1) For a system with a design capacity of 38,500 or more and less than
11 100,000 pounds steady state live weight, fifty dollars (\$50.00).

12 (2) For a system with a design capacity of 100,000 or more and less than
13 800,000 pounds steady state live weight, one hundred fifty dollars
14 ~~(\$100.00)-(\$150.00).~~

15 (3) For a system with a design capacity of 800,000 pounds or more steady
16 state live weight, ~~two-three~~ hundred dollars ~~(\$200.00)-(\$300.00).~~

17 (b) An application for a new permit under this section shall be accompanied by an
18 initial application fee equal to the annual fee for that permit. If a permit is issued, the
19 application fee will be applied as the annual fee for the first year that the permit is in
20 effect. If the application is denied, the application fee shall not be refunded.

21 (c) Fees collected under this section shall be credited to the Water and Air Quality
22 Account. The Department shall use fees collected pursuant to this section to cover the
23 costs of administering this Part."

24 Section 1.5. Subsection (d) of Section 27.13 of Chapter 18 of the 1995 Session
25 Laws (1996 Second Extra Session) is repealed.

26 Section 1.6. This act shall not be construed to relieve any person of the
27 obligation to pay any fees due for any activity described in this act under the schedule of
28 fees in effect prior to the date this act becomes effective.

29 Section 1.7. Part I of this act becomes effective 1 January 1999.

30
31 PART II. CLASSIFICATION OF THE IMPACTS OF LEAKING PETROLEUM
32 UNDERGROUND STORAGE TANKS; CLEANUP OF CDE IMPACTS NOT
33 REQUIRED

34
35 Section 2.1. G.S. 143-215.94V reads as rewritten:

36 **"§ 143-215.94V. Standards for petroleum underground storage tank cleanup.**

37 (a) Legislative findings and intent.

38 (1) The General Assembly finds that:

39 a. The goals of the underground storage tank program are to protect
40 human health and the environment. Maintaining the solvency of
41 the Commercial Fund and the Noncommercial Fund is essential
42 to these goals.

- 1 b. The sites at which discharges or releases from underground
2 storage tanks occur vary greatly in terms of complexity, soil
3 types, hydrogeology, other physical and chemical characteristics,
4 current and potential future uses of groundwater, and the degree
5 of risk that each site may pose to human health and the
6 environment.
- 7 c. Risk-based corrective action is a process that recognizes this
8 diversity and utilizes an approach where assessment and
9 remediation activities are specifically tailored to the conditions
10 and risks of a specific site.
- 11 d. Risk-based corrective action gives the State flexibility in
12 requiring different levels of cleanup based on scientific analysis
13 of different site characteristics, and allowing no action or no
14 further action at sites that pose little risk to human health or the
15 environment.
- 16 e. A risk-based approach to the cleanup of environmental damage
17 can adequately protect human health and the environment while
18 preventing excessive or unproductive cleanup efforts, thereby
19 assuring that limited resources are directed toward those sites that
20 pose the greatest risk to human health and the environment.
- 21 (2) The General Assembly intends:
- 22 a. To direct the Commission to adopt rules that will provide for
23 risk-based assessment and cleanup of discharges and releases
24 from petroleum underground storage tanks. These rules are
25 intended to combine groundwater standards that protect current
26 and potential future uses of groundwater with risk-based analysis
27 to determine the appropriate cleanup levels and actions.
- 28 b. That these rules apply to all discharges or releases that are
29 reported on or after the date the rules become effective in order
30 to ascertain whether cleanup is necessary, and if so, the
31 appropriate level of cleanup.
- 32 c. That these rules may be applied to any discharge or release that
33 has been reported at the time the rules become effective at the
34 discretion of the Commission.
- 35 d. That these rules and decisions of the Commission and the
36 Department in implementing these rules facilitate the completion
37 of more cleanups in a shorter period of time.
- 38 e. That neither the Commercial Fund nor the Noncommercial Fund
39 be used to clean up sites where the Commission has determined
40 that a discharge or release poses a degree of risk to human health
41 or the environment that is no greater than the acceptable level of
42 risk established by the Commission.

1 ~~f. That until rules implementing a risk-based approach to~~
2 ~~assessment and cleanup are adopted, the Commission implement~~
3 ~~the foregoing principles to the maximum extent possible under~~
4 ~~existing rules.~~

5 (b) The Commission shall adopt rules to establish a risk-based approach for the
6 assessment, prioritization, and cleanup of discharges and releases from petroleum
7 underground storage tanks. The rules shall address, at a minimum, the circumstances
8 where site-specific information should be considered, criteria for determining acceptable
9 cleanup levels, and the acceptable level or range of levels of risk to human health and the
10 environment.

11 (c) The Commission may require an owner or operator or a landowner eligible for
12 reimbursement under G.S. 143-215.94E(b1) to determine the degree of risk to human
13 health and the environment that is posed by a discharge or release from a petroleum
14 underground storage tank.

15 (d) If the Commission concludes that a discharge or release poses a degree of risk
16 to human health or the environment that is no greater than the acceptable level of risk
17 established by the Commission, the Commission shall notify the owner, operator, or
18 landowner who makes the determination required by subsection (c) of this section that no
19 cleanup, further cleanup, or further action will be required unless the Commission later
20 determines that the discharge or release poses an unacceptable level of risk or a
21 potentially unacceptable level of risk to human health or the environment.

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

- 27 (1) Cleanup is ordered or damages are awarded in a finally adjudicated
28 judgment in an action against the owner or landowner.
- 29 (2) Cleanup is required or damages are agreed to in a consent judgment
30 approved by the Department prior to its entry by the court.
- 31 (3) Cleanup is required or damages are agreed to in a settlement agreement
32 approved by the Department prior to its execution by the parties.
- 33 (4) The payment or reimbursement is for costs that were incurred prior to or
34 as a result of notification of a determination by the Commission that no
35 cleanup, no further cleanup, or no action is required.
- 36 (5) The payment or reimbursement is for costs that were incurred as a result
37 of a later determination by the Commission that the discharge or release
38 poses a threat or potential threat to human health or the environment as
39 provided in subsection (d) of this section.

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

1 ~~(g) Subsections (c) through (e) of this section apply only to assessments and~~
2 ~~cleanups in progress or begun on or after the date on which the rules adopted by the~~
3 ~~Commission pursuant to subsection (b) of this section become effective.~~

4 (h) The Department shall classify the impact of each known discharge or release of
5 a petroleum product from an underground storage tank as either a Class AB impact or a
6 Class CDE impact. The Department shall make the classification on the basis of
7 information currently known by the Department or provided to the Department as
8 required by law. The Department shall revise the classification as additional information
9 is received. The impact of a discharge or release is a Class CDE impact unless and until
10 it is classified as a Class AB impact. A discharge or release has a Class AB impact if and
11 only if any of the following apply:

12 (1) A water supply well is contaminated.

13 (2) Petroleum vapor is present in a confined space.

14 (3) A water supply well is located within 1,500 feet of the discharge,
15 release, or known extent of contamination and there is a user of water
16 from any water supply well located within 1,500 feet of the discharge,
17 release, or known extent of contamination who is not served by an
18 existing public water supply.

19 (4) The discharge or release results in a violation of drinking water
20 standards set out in rules adopted by the Commission for Health
21 Services under G.S. 130A-315 in a treated surface water supply.

22 (5) The discharge or release poses an imminent danger to public health,
23 public safety, or the environment.

24 (i) The Department shall give notice of the classification of the impact of a
25 cleanup of a discharge or release from a petroleum underground storage tank by
26 publishing the classification in the North Carolina Register. To the maximum extent
27 practical, the Department shall give notice of the classification of the impact of a cleanup
28 of a discharge or release from a petroleum underground storage tank by first-class mail to
29 either the owner, operator, or other person responsible for the cleanup as shown on
30 records maintained by the Department at the address on file with the Department.

31 (j) Notwithstanding the provisions of G.S. 143-215.84, G.S. 143-215.94E and the
32 rules adopted pursuant to subsection (b) of this section, the Commission shall not require
33 the cleanup of a discharge or release from a petroleum underground storage tank having a
34 Class CDE impact except that an owner, operator, or other person responsible for the
35 cleanup of a discharge or release from a petroleum underground storage tank shall:

36 (1) Take immediate action to prevent any further release or discharge of
37 petroleum from the underground storage tank; identify and mitigate any
38 fire, explosion, or vapor hazard; and remove any free petroleum
39 product.

40 (2) Meet applicable requirements of 40 Code of Federal Regulations §
41 280.50 through § 280.53 and § 280.60 through § 280.64 (1 July 1995
42 Edition).

1 (3) Submit any information that the Department may require to classify the
2 impact of the discharge or release pursuant to this section.

3 (k) If the impact of a discharge or release is classified as having a Class CDE
4 impact, the Department shall not pay or reimburse any costs otherwise payable or
5 reimbursable under this Part from either the Commercial Fund or Noncommercial Fund
6 unless:

7 (1) The costs are incurred to comply with subsection (j) of this section.

8 (2) The payment or reimbursement is for costs that were incurred prior to
9 notification that the impact of the discharge or release has been
10 classified as Class CDE by the Department.

11 (3) The payment or reimbursement is for costs that were incurred for a
12 discharge or release the impact of which is subsequently classified as a
13 Class AB impact by the Department.

14 (4) Cleanup is ordered or damages are awarded in a finally adjudicated
15 judgment in an action against the owner, operator, or landowner.

16 (5) Cleanup is required or damages are agreed to in a consent judgment
17 approved by the Department prior to its entry by the court.

18 (6) Cleanup is required or damages are agreed to in a settlement agreement
19 approved by the Department prior to its execution by the parties.

20 (7) The Department approves continuation of the cleanup as provided in
21 subsection (l) of this section.

22 (l) An owner, operator, or landowner who is responsible for the cleanup from a
23 discharge or release who is not eligible to have the costs of the cleanup paid or
24 reimbursed because the impact of the discharge or release has been classified as a Class
25 CDE impact may petition the Department for continued eligibility for payment or
26 reimbursement. The Department shall authorize continuation of the cleanup only if the
27 owner, operator, or landowner responsible for the cleanup establishes that:

28 (1) The owner, operator, or landowner responsible for cleanup has incurred
29 costs that are reimbursable under G.S. 143-215.94E(e), or that would be
30 reimbursable if those costs were in excess of the costs for which the
31 owner, operator, or landowner is responsible under G.S. 143-215.94B,
32 143-215.94D, or 143-215.94E.

33 (2) The owner, operator, or landowner either has paid or will pay all costs
34 for which the owner, operator, or landowner is responsible.

35 (3) Discontinuation of the cleanup will result in a hardship. For purposes of
36 this subdivision, a hardship exists if and only if the discontinuation of
37 the cleanup will prevent the conveyance through a bona fide sale for
38 value of the property where the discharge or release occurred. The
39 owner, operator, or landowner responsible for the cleanup shall present
40 a contract of sale executed on or before 31 December 1996 that is
41 contingent on continuation of the cleanup. If the conveyance of the
42 property does not occur within 120 days after the contract of sale is

1 executed or under the terms of the contract for any reason, the
2 Department shall discontinue eligibility under this subsection."
3 Section 2.2. Part II of this act is effective when it becomes law.