

1 15A NCAC 02P .0101 is proposed for amendment as follows:

2
3 **SUBCHAPTER 02P - COMMERCIAL LEAKING PETROLEUM UNDERGROUND STORAGE TANK**
4 **CLEANUP FUNDS~~FUND~~**

5
6 **SECTION .0100 - GENERAL CONSIDERATIONS**

7
8 **15A NCAC 02P .0101 GENERAL**

9 (a) ~~The purpose of this~~ This Subchapter ~~is to establish~~ establishes criteria and procedures for the reimbursement of costs
10 incurred by owners, operators, and landowners from the Commercial Leaking Petroleum Underground Storage Tank
11 Cleanup Funds~~Fund~~.

12 (b) ~~The Groundwater Section~~ Underground Storage Tank (UST) Section, hereafter referred to as “the Section,” of the
13 Division of ~~Environmental Waste Management~~ of the Department of ~~Environment, Health and Natural Resources~~
14 Environmental Quality (DEQ), hereafter referred to as “the Department,” shall administer the Commercial ~~and~~
15 ~~Noncommercial Leaking~~ Underground Storage Tank Cleanup Funds~~Fund~~ for the State of North Carolina.

16 (c) ~~As authorized by G.S. 14-3215.94G, the Department may engage in cleanup work it deems appropriate and pay the~~
17 ~~costs from the Noncommercial Fund in accordance with G.S. 143215.94D.~~

18 ~~(d)~~(c) The Department may engage in ~~investigations~~ assessment and ~~cleanups~~ remedial work pursuant to the authority
19 as set forth in G.S. 143-215.94G in accordance with ~~the severity of threat to human health and safety and to the~~
20 ~~environment~~, 15A NCAC 02L and subject to the availability of resources, as determined by the ~~Division~~ Department.

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22 *History Note: Authority G.S. 143-215.3; ~~143-215.76; 143-215.94B; 143-215.94D; 143-215.94E; 143-215.94G;~~*
23 *143-215.94L; 143-215.94T; 143B-282;*

24 *Eff. February 1, 1993;*

25 *Amended Eff. September 1, 1993;*

26 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6,*
27 *~~2018, 2018;~~*

28 *Amended Eff. XXXX 1, 20XX.*

1 15A NCAC 02P .0102 is proposed for repeal as follows:

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3 **15A NCAC 02P .0102 COPIES OF RULES INCORPORATED BY REFERENCE**

4 ~~(a) Copies of applicable sections of Subchapter 2N of Title 15A, North Carolina Administrative Code incorporated by~~
 5 ~~reference in this Subchapter, including any subsequent amendments and editions, are available for public inspection at~~
 6 ~~Department of Environment, Health, and Natural Resources Regional Offices. They are:~~

7 ~~(1) Asheville Regional Office, Interchange Building, 59 Woodfin Place, Asheville, North Carolina~~
 8 ~~28801;~~

9 ~~(2) Winston Salem Regional Office, Suite 100, 8025 North Point Boulevard, Winston Salem, North~~
 10 ~~Carolina 27106;~~

11 ~~(3) Mooresville Regional Office, 919 North Main Street, Mooresville, North Carolina 28115;~~

12 ~~(4) Raleigh Regional Office, 3800 Barrett Drive, Post Office Box 27687, Raleigh, North Carolina 27611;~~

13 ~~(5) Fayetteville Regional Office, Wachovia Building, Suite 714, Fayetteville, North Carolina 28301;~~

14 ~~(6) Washington Regional Office, 1424 Carolina Avenue, Farish Building, Washington, North Carolina~~
 15 ~~27889;~~

16 ~~(7) Wilmington Regional Office, 127 Cardinal Drive Extension, Wilmington, North Carolina 28405.~~

17 ~~(b) Copies of such rules can be made at these regional offices for ten cents (\$0.10) per page.~~

18

19 *History Note: Authority G.S. 12-3.1(c); 143-215.3; 143-215.94L; 143-215.94T; 143B-282; 150B-21.6;*

20 *Eff. February 1, 1993;*

21 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6,*

22 *2018, 2018;*

23 *Repealed Eff. XXXX 1, 20XX.*

1 15A NCAC 02P .0103 is proposed for readoption with substantive changes as follows:

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3 **15A NCAC 02P .0103 FALSE OR MISLEADING INFORMATION**

4 ~~Any owner or operator~~ If any owner, operator, or authorized agent ~~who~~ knowingly submits any false or misleading
5 information with regard to ~~these the Rules may~~ rules of this Subchapter, and if the false or misleading information
6 results in delay of any efforts to stop the discharge or release, results in delay of detection of any portion of the discharge
7 or release, or results in delay of investigatory or remedial activities, then that owner, operator, or authorized agent shall
8 be considered to be contributing to a ~~discharge, discharge or release,~~ interfering with the mitigation of a ~~discharge,~~
9 discharge or release, or preventing the early detection of a discharge or release pursuant to G.S. 143-215.94E(g)(1).
10 ~~143-215.94E(g)(1) if the false or misleading information results in delay of any efforts to stop the release or discharge,~~
11 ~~results in delay of detection of any portion of the discharge or release, or results in delay of investigatory or remedial~~
12 ~~activities.~~

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

15 *Eff. February 1, ~~1993-1993~~;*

16 *Readopted Eff. XXXX 1, 20XX.*

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1 15A NCAC 02P .0201 is proposed for readoption with substantive changes as follows:

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3

SECTION .0200 - PROGRAM SCOPE

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5 15A NCAC 02P .0201 APPLICABILITY

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

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

11 (c) This Subchapter shall apply to discharges or releases from ~~noncommercial or~~ commercial underground storage tank
12 systems, regardless of whether such systems are regulated under ~~Subchapter 2N of Title 15A, of the North Carolina~~
13 ~~Administrative Code.~~ 15A NCAC 02N.

14

15 *History Note: Authority G.S. 143-215.3; 143-215.94B; 143-215.94C; ~~143-215.94D; 143-215.94E;~~*

16 *143-215.94L; 143-215.94T; 143B-282;*

17 *Eff. February 1, ~~1993~~ 1993;*

18 *Readopted Eff. XXXX 1, 20XX.*

1 15A NCAC 02P .0202 is proposed for readoption with substantive changes as follows:

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3 **15A NCAC 02P .0202 DEFINITIONS**

4 (a) ~~The Definitions for "Criteria and Standards Applicable to Underground Storage Tanks" contained definitions in~~
5 ~~15A NCAC 2N02N .0203 are hereby incorporated by reference including subsequent amendments and editions, except~~
6 ~~that apply for the purposes of this Subchapter, except the definition of "Underground Storage Tank" shall be as defined~~
7 ~~in Subparagraph (b)(12) of this Rule.~~

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

9 (1) "Annual operating fee" ~~is an~~ means the annual fee established in G.S. 143-215.94C that is required to
10 be paid to the Department by the owner or operator of each commercial underground storage ~~tank~~
11 tank, as defined in G.S. 143-215.94A, in use on or after ~~1 January of the year, beginning with~~
12 ~~1989.~~ January 1, 1989.

13 (2) "Commission" means the Environmental Management Commission as organized under Chapter 143B
14 of the General Statutes.

15 (3) "Department" means Department of ~~Environment, Health, and Natural Resources.~~ Environmental
16 Quality.

17 (4) "Discovered release" means a release ~~which that~~ an owner or operator, or its employee or agent, has
18 been made aware of, has been notified of, or has a reasonable basis for knowing has occurred.

19 ~~(5) "Dual usage tank" means an underground storage tank which could be considered both a commercial~~
20 ~~underground storage tank and a noncommercial underground storage tank and for which both the~~
21 ~~commercial and the noncommercial usages are integral to the operation or existence of the tank.~~

22 ~~(6) "Household" means a permanent structure, whether freestanding or connected to other units, used~~
23 ~~primarily for living, where primary living space and primary food preparation facilities are controlled~~
24 ~~or maintained by the residents. "Household" includes single family houses, mobile homes,~~
25 ~~apartments, and single living units, whether or not the residents are related to each other and whether~~
26 ~~the units are occupied on a year round or seasonal basis. "Household" does not include dormitories,~~
27 ~~hospitals, hotels, motels, apartment buildings (as distinct from the individual apartments therein), or~~
28 ~~other multiple dwelling structures. The term "four or fewer households" shall relate to underground~~
29 ~~storage tanks serving households only.~~

30 ~~(7)(5)~~ (5) "Landowner" means any record fee owner of real property that contains or contained a commercial
31 underground storage tank of which he or she does not qualify as an owner or operator pursuant to G.S.
32 143-215.94A.

33 ~~(6)~~ (6) "Notice of Residual Petroleum" means the recordation of residual petroleum from underground
34 storage tanks in accordance with G.S. 143B-279.11.

35 ~~(8)(7)~~ (7) "Occurrence" means ~~one or more release(s) that result(s)~~ a release or releases resulting in a single
36 plume of ~~soil, soil contamination, surface water, water contamination, or groundwater contamination~~
37 ~~(consisting contamination, consisting~~ of free product or dissolved contaminants exceeding standards

specified in 15A NCAC ~~2L-02L~~ and 15A NCAC 02T .1500 ~~or any other applicable laws, rules or regulations~~ originating at a single ~~property-facility~~ as defined by G.S. 143-215.94A(3a).

~~(9)~~(8) "Reasonable and necessary expenditures" means expenditures for the ~~cleanup-assessment and remediation~~ of environmental damage performed in accordance with applicable environmental laws and regulations and ~~which~~ laws, regulations, and rules that are essential in determining the extent of contamination, in conducting release response or remediation, or which compensate ~~third-parties~~ third-parties for resulting bodily injury and property damage. The Commission shall consider such expenditures reasonable and necessary to the extent that they are supported by documentation, ~~sufficiently documented~~, are performed in an efficient manner considering comparable costs for labor, equipment, and materials, and utilize cost-efficient methods.

(9) "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).

~~(10)~~ "~~Substantive law, rule, or regulation~~" shall mean any law, rule, or regulation requiring an owner or operator to perform any act necessary and essential in preventing discharges or releases, in facilitating their early detection, and in mitigating the impact of discharges or releases.

~~(10)~~(44) "Tank in operation" means an underground storage tank into which product is added or from which product is removed for purposes other than closure.

~~(11)~~(42) "Tank in use" means an underground storage tank intended for the containment or dispensing of petroleum product.

~~(12)~~(43) "Underground storage ~~tank~~" ~~as used in this Subchapter~~ tank" means any Commercial-~~or Noncommercial~~ Underground Storage Tank as defined in G.S. 143-215.94A. ~~A dual usage tank is considered to be a commercial underground storage tank.~~

*History Note: Authority G.S. 143-215.3; 143-215.94A; 143-215.94B; 143-215.94C; ~~143-215.94D;~~
143-215.94E; 143-215.94L; 143-215.94T; 143B-282;
Eff. February 1, 1993;
Amended Eff. September 1, ~~1993~~.1993;
Readopted Eff. XXXX 1, 20XX.*

1 15A NCAC 02P .0301 is proposed for readoption with substantive changes as follows:

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3 **SECTION .0300 - ANNUAL OPERATING FEES**

4
5 **15A NCAC 02P .0301 FEES AND PAYMENT**

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

9 ~~(b) The Division shall send an invoice, for the amount of the annual operating fees due, to the owner or operator of any~~
10 ~~commercial petroleum underground storage tank in use on January 1 of the year and which has been registered with the~~
11 ~~Department. The annual operating fee shall be due and payable 30 days following the date of the invoice and shall be~~
12 ~~submitted to the Division accordingly.~~

13 ~~(c) Any owner or operator not receiving an invoice for annual operating fees shall still pay any fees due according to~~
14 ~~the following schedule:~~

15 (1) ~~— If the owner or operator has paid annual operating fees for the subject tank in previous years, the~~
16 ~~payment will be submitted to the Division within 30 days of the anniversary of the last invoicing date~~
17 ~~for the fees.~~

18 (2) ~~— If the owner or operator has not previously paid annual operating fees for the subject tank, any annual~~
19 ~~operating fee is due on 1 January of that year and shall be submitted to the Division accordingly.~~

20 ~~(d) Any commercial underground storage tank (except commercial underground storage tanks not regulated under 15A~~
21 ~~NCAC 2N) which was in operation on or after December 22, 1988 and has not been permanently closed in accordance~~
22 ~~with 15A NCAC 2N .0800, is considered to be in use unless the provisions of G.S. 143215.94D(b)(4) are applicable.~~

23 ~~(e) Any annual operating fee due on or after January 1, 1992, that is not paid within 30 days of the due date shall be~~
24 ~~subject to a late penalty of five dollars (\$5.00) per day up to an amount equal to the original fee. The late penalty will~~
25 ~~be assessed based on the date of receipt of fee payment by the Division.~~

26 ~~(f) All annual operating fees due for any year are assessed in accordance with the schedule of fees in effect during that~~
27 ~~year. Payment of fees due for a prior year will be at the rate in effect during that prior year. It is the responsibility of~~
28 ~~the owner or operator to determine that all fees have been paid in accordance with Paragraph (a) of this Rule.~~

29 ~~(g) In the event that an annual operating fee was paid for a tank for which a fee was not required, a refund of that fee~~
30 ~~payment may be requested by the owner or operator. A refund will be granted if the owner or operator provides adequate~~
31 ~~documentation that the tank was exempt from the requirement to pay the annual operating fee.~~

32
33 *History Note: Authority G.S. 143-215.3; 143-215.94C; ~~143-215.94D~~; 143-215.94E; 143-215.94L;*
34 *143-215.94T; 143B-282;*
35 *Eff. February 1, ~~1993~~1993;*
36 *Readopted Eff. XXXX 1, 20XX.*
37

1 15A NCAC 02P .0302 is proposed for readoption with substantive changes as follows:

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3 **15A NCAC 02P .0302 NOTIFICATION**

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

7 (1) ~~Name~~ name and address of the previous owner and the new owner;

8 (2) ~~Name, name,~~ identification number, and street address of the facility;

9 (3) ~~Date~~ date of transfer;

10 (4) ~~Signatures~~ signatures of the transferring owner and the new owner or their authorized ~~representatives.~~
11 representatives;

12 (5) proof of placement of a Notice of Residual Petroleum for any known release at the site at the time of
13 the transfer of the property;

14 (6) statement of intent of whether the new owner intends to accept eligibility of any previous release from
15 the tank or tanks just acquired; and

16 (7) copy of ownership transfer documents.

17

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

19 *Eff. February 1, ~~1993~~ 1993;*

20 *Readopted Eff. XXXX 1, 20XX.*

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1 15A NCAC 02P .0401 is proposed for readoption with substantive changes as follows:

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3 **SECTION .0400 - REIMBURSEMENT PROCEDURE**

4
5 **15A NCAC 02P .0401 ELIGIBILITY OF OWNER OR OPERATOR**

6 (a) Date of Release.

- 7 (1) ~~An owner or operator~~owner, operator, or landowner of a commercial underground storage tank is not
8 eligible for reimbursement of costs from the Commercial Leaking Petroleum Underground Storage
9 Tank Cleanup Fund related to releases which were discovered prior to June 30, 1988.
- 10 (2) ~~An owner or operator of a noncommercial underground storage tank is eligible for reimbursement of~~
11 ~~costs without regard to the date a release is discovered.~~In the case of multiple releases that commingle
12 into one plume, the deductible is established under the first date of release.
- 13 (3) ~~An owner or operator of a commercial underground storage tank which qualifies for the~~
14 ~~Noncommercial Fund pursuant to G.S. 143-215.94D(b)(3) and 143-215.94D(b)(4) is eligible for~~
15 ~~reimbursement of costs without regard to the date a release is discovered.~~Only the currently approved
16 eligible party, determined in accordance with Paragraphs (b) through (d) of this Rule, may be
17 reimbursed from the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund.
- 18 (4) ~~An owner or operator or landowner of a commercial underground storage tank, from which a release~~
19 ~~is discovered on or after July 3, 1991, is not eligible for reimbursement from the Commercial Fund if~~
20 ~~the tank had been removed from the ground more than 120 days prior to the date of discovery of the~~
21 ~~release.~~After such time that the Department has notified the responsible party that no further action
22 is required for a discharge or release pursuant to 15A NCAC 02L, eligibility may be reapplied for by
23 either the current or former responsible party as applicable and upon receiving eligibility, said party
24 shall be credited for all prior reimbursed amounts subject to G.S. 143-215.94E(j) and G.S. 143-
25 215.94E(k).

26 (b) An owner or operator of a commercial underground storage tank is not eligible for reimbursement for costs related
27 to releases if any annual operating fees due have not been paid in accordance with Rule .0301 of this Subchapter prior
28 to ~~discovery.~~discovery of a release from the tank. A previous owner or operator of a commercial underground storage
29 tank may be eligible for reimbursement of costs for cleanup of a release discovered after he or she ceases owning or
30 operating the underground storage tank if all fees due during his or her period of ownership and operation have been
31 paid prior to discovery of the release. A landowner is eligible for reimbursement of costs without regard to the payment
32 of ~~fees.~~fees as long as the property has not been transferred to circumvent liability in accordance with this Paragraph.

33 (c) An ~~owner or operator~~owner, operator, or landowner of a commercial ~~or noncommercial~~ underground storage tank
34 is not eligible for reimbursement of any expenditures expended~~costs~~ which are in excess of the amount determined
35 reasonable in accordance with Rule ~~.0402,~~0402 of this Section and which are not necessary in performing cleanup of
36 environmental damage and in compensating ~~third parties~~third-parties for bodily injury and property damage, and ~~which~~

1 ~~that~~ are less than any deductible established for the ~~appropriate fund.~~ Commercial Leaking Petroleum Underground
 2 Storage Tank Cleanup Fund.

3 (d) An ~~owner or operator~~ owner, operator, or landowner of a commercial ~~or noncommercial~~ underground storage tank
 4 tank, who is eligible for reimbursement under the rules of this Section, may be reimbursed for eligible costs only after
 5 submittal of a written application of eligibility to the ~~Division,~~ Department, on forms provided by the ~~Division,~~
 6 Department, which are located at 217 West Jones Street, Raleigh, NC 27699 and on the Department's website, and
 7 which includes ~~any~~ information and documentation necessary to determine ~~eligibility and to determine that any~~
 8 ~~expended costs are reasonable and necessary.~~ eligibility. An application of eligibility shall include:

9 (1) contact information for the applicant;

10 (2) site information, including tenant information if applicable;

11 (3) inventory of all tanks ever installed on the property;

12 (4) release discovery and reporting information;

13 (5) tank compliance history;

14 (6) disclosure of the existence of environmental liability insurance or any other potential sources of
 15 funding information for the release;

16 (7) scaled site map showing location of all tanks and releases;

17 (8) tank upgrade information;

18 (9) property deeds and bills of sale to confirm ownership history;

19 (10) any UST Section inspection records; and

20 (11) a notarized affidavit from the applicant.

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

25 (f) The release response and corrective action requirements of any rules of the Commission and of any statute
 26 administered by the Department shall not ~~in any way~~ be construed as limited by, or contingent upon, any reimbursement
 27 from ~~either the Noncommercial Fund or the Commercial~~ Leaking Petroleum Underground Storage Tank Cleanup Fund.

28
 29 *History Note: Authority G.S. 143-215.3; 143-215.94B; 143-215.94E; 143-215.94L; 143-215.94N; 143-215.94T;*
 30 *143B-282;*

31 *Eff. February 1, 1993;*

32 *Amended Eff. September 1, 1993-1993;*

33 *Readopted Eff. XXXX 1, 20XX.*

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1 15A NCAC 02P .0402 is proposed for readoption with substantive changes as follows:

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3 **15A NCAC 02P .0402 CLEANUP COSTS**

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

- 6 (1) ~~Adequacy~~ adequacy and cost-effectiveness of any work performed, and technical activity utilized by
7 the ~~owner or operator~~ owner, operator, or landowner in performing release response, site ~~assessment~~
8 assessment, and corrective ~~action~~ action;
- 9 (2) ~~Typical billing~~ industry rates of engineering, geological, or other environmental consulting firms
10 providing similar services in the State as determined by the ~~Division~~ Department;
- 11 (3) ~~Typical rental~~ industry rental rates for any ~~necessary equipment~~ equipment, not to exceed the purchase
12 price, as determined by the Department. ~~Division.~~ The mount reimbursed for equipment rental shall
13 not exceed the typical purchase price of such equipment.
- 14 (4) ~~Typical costs or~~ industry rates of any other ~~necessary~~ service, labor labor, or ~~expense as determined~~
15 by the Division. ~~expense;~~ and
- 16 (5) ~~Whether~~ whether costs expended for corrective action were required by 15A NCAC ~~2L-02L.~~

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

- 18 (1) ~~Costs of the removal and disposal of noncommercial underground storage tanks and contents removed~~
19 ~~on or after July 3, 1991, and of commercial underground storage tanks and contents removed on or~~
20 ~~after January 1, 1992; costs that are not eligible to be reimbursed pursuant to G.S. 143-215.94B, and~~
21 any costs associated with noncommercial underground storage tanks;
- 22 (2) ~~Costs~~ costs of the replacement of any underground storage tank, piping, fitting, or ancillary
23 ~~equipment;~~ equipment required to operate and maintain a UST system;
- 24 (3) ~~Costs~~ costs incurred in preparation of any proposals or bid by a provider of service for the purpose of
25 soliciting or bidding for the opportunity to perform an environmental investigation or cleanup, even
26 if that provider is ~~ultimately~~ selected to provide the service solicited;
- 27 (4) ~~Interest on any accounts, loans, etc.;~~ interest of any kind;
- 28 (5) ~~Expenses~~ expenses charged by the ~~owner or operator~~ owner, operator, or landowner in the processing
29 and management of a reimbursement application or subsequent claims;
- 30 (6) ~~Attorney's~~ attorney's fees;
- 31 (7) ~~Penalties,~~ penalties, fees, and fines assessed by any court or agency;
- 32 (8) ~~Loss~~ loss of profits, fees, and wages incurred by the ~~owner or operator~~ owner, operator, or landowner;
- 33 (9) ~~Costs incurred during cleanup if preapproval of the cleanup tasks and associated costs was not~~
34 ~~obtained from the Division. Preapproval is not required for assessment activities or for costs~~
35 ~~determined by the Division to be related to emergency response actions; costs for which pre-approval~~
36 is required as set forth in G.S. 143-215.94E(e5)(1-2), and was not obtained;

1 (10) ~~Any any~~ other expenses not specifically related to environmental cleanup, or implementation of a ~~cost~~
2 ~~effective-cost-effective~~ environmental cleanup, or ~~third party-third-party~~ bodily injury or property
3 ~~damage-damage~~; and

4 (11) for any task for which a maximum rate is established in the Reasonable Rate Document, costs in
5 excess of that maximum rate shall not be eligible for reimbursement without prior written pre-
6 approval by the Department.

7
8 *History Note: Authority G.S. 143-215.3; 143-215.94B; ~~143-215.94D~~; 143-215.94E; 143-215.94L; 143-215.94T;*
9 *143-215.94V; 143B-282;*
10 *Eff. February 1, 1993;*
11 *Amended Eff. September 1, 1993;*
12 *Temporary Amendment Eff. January 2, 1998; January 2, 1996;*
13 *Amended Eff. October 29, 1998 (SB 1598);*
14 *Temporary Amendment Eff. October 1, 1999;*
15 *Amended Eff. August 1, ~~2000-2000~~;*
16 *Readopted Eff. XXXX 1, 20XX.*
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1 15A NCAC 02P .0403 is proposed for reoption with substantive changes as follows:

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3 **15A NCAC 02P .0403 ~~THIRD-PARTY~~THIRD-PARTY CLAIMS**

4 (a) An owner or operator seeking reimbursement from the ~~appropriate fund~~Commercial Leaking Underground Storage
 5 Tank Cleanup Fund for any ~~third-party~~third-party claim for bodily injury or property damage ~~must~~shall notify the
 6 ~~Division~~Department of any such ~~claim~~claim in accordance with G.S. 143-215.94E(e)(3). The owner or operator ~~must~~
 7 shall provide the ~~Division~~Department with all pleadings and other related documents ~~if of a third-party damage lawsuit~~
 8 that has been filed~~filed~~ prior to entry into settlement agreement or consent judgement for Departmental approval. The
 9 owner or operator shall provide to the ~~Division~~Department copies of any medical reports, statements, investigative
 10 reports, or certifications from licensed professionals necessary to ~~determine~~prove that a claim for bodily injury or
 11 property damage is reasonable and necessary.

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

15 (c) The term ~~third-party~~third-party property damage means actual physical damage or damage due to specific loss of
 16 normal use of property owned by a person other than the owner or operator of an underground storage tank from which
 17 a release has occurred. A property owner shall not be considered a ~~third-party~~third-party if the property was transferred
 18 by the owner or operator of an underground storage tank in anticipation of damage due to a release. ~~Third-party~~Third-
 19 party property damage shall be reimbursed from the ~~appropriate fund~~Commercial Leaking Petroleum Underground
 20 Storage Tank Fund based on the rental costs of comparable property during the period of loss of use up to a maximum
 21 amount equal to the fair market value. In the case of property that is ~~actually~~ destroyed as a result of a petroleum release,
 22 reimbursement shall be at an amount necessary to replace or repair the destroyed property.

23

24 *History Note: Authority G.S. 143-215.3; 143-215.94B; ~~143-215.94D~~; 143-215.94E; 143-215.94L; 143-215.94T;*
 25 *143B-282;*

26 *Eff. February 1, ~~1993~~-1993;*

27 *Readopted Eff. XXXX 1, 20XX.*

28

1 15A NCAC 02P .0404 is proposed for readoption with substantive changes as follows:

2
3 **15A NCAC 02P .0404 REQUESTS FOR REIMBURSEMENT**

4 (a) ~~After a determination of eligibility, the owner, operator, or landowner may make a request for reimbursement. An~~
5 ~~application~~ A request for reimbursement must shall be made on ~~a form~~ forms located at 217 West Jones Street, Raleigh,
6 NC 27699 or on the Department's website provided by the ~~Division~~ Department only after the determination of
7 eligibility has been issued. ~~The application form must accompany the initial reimbursement request. request shall~~
8 include the following:

- 9 (1) notarized certification of the costs form;
10 (2) notarized certification of payment to subcontractors form, if applicable;
11 (3) summary of work performed form;
12 (4) reimbursement payment information form;
13 (5) certification of remediation system installation form, if applicable;
14 (6) itemized breakdown of the requested reimbursement, primary and secondary claim forms; and
15 (7) supporting documentation of the itemized costs, such as the following:
16 (A) subcontractor invoices;
17 (B) correspondence from regulatory agencies;
18 (C) invoices;
19 (D) bills of lading;
20 (E) per diem receipts;
21 (F) field logs; and
22 (G) reports.

23 (b) ~~A request for reimbursement shall include copies of any documentation required by the Division to determine that~~
24 ~~expended costs are reasonable and necessary. Proof of completion of work and payment must shall~~ accompany any
25 request for reimbursement, except when reimbursement ~~will be is~~ made jointly to the ~~owner or operator~~ owner, operator,
26 or landowner and either a provider of service or a ~~third party~~ third-party claimant. ~~The Division may require the owner~~
27 ~~or operator or landowner to submit any information required for the purpose of substantiating any claim for~~
28 ~~reimbursement on forms provided by the Division.~~

29 (c) A request for reimbursement may be returned or additional information requested by the ~~Division~~ Department, if
30 it is found to be incomplete.

31 (d) The ~~Division~~ Department shall reimburse an ~~owner or operator~~ eligible owner, operator, or landowner for expenses
32 following completion of any ~~significant~~ phase of cleanup work ~~or~~ in accordance with the schedule allowed by G.S.
33 ~~143-215.94E(e).~~ 143-215.94E(e2).

34 (e) If any amount approved for reimbursement is less than the amount of reimbursement requested, the ~~Division~~
35 Department shall issue a written explanation of why the amount requested was not approved.

36

1 *History Note: Authority G.S. 143-215.3; 143-215.94B; 143-215.94E; 143-215.94G; 143-215.94L; 143-215.94T;*
2 *143B-282;*
3 *Eff. February 1, 1993;*
4 *Amended Eff. September 1, ~~1993~~1993;*
5 *Readopted Eff. XXXX 1, 20XX.*
6

1 15A NCAC 02P .0405 is proposed for readoption with substantive changes as follows:

2

3 **15A NCAC 02P .0405 METHOD OF REIMBURSEMENT**

4 (a) Reimbursement for cleanup costs shall be made only to an ~~owner or operator~~ eligible owner, operator, or landowner
5 of a petroleum underground storage tank, or jointly to an ~~owner or operator~~ owner, operator, or landowner and a provider
6 of service.

7 (b) Reimbursement of cleanup costs to the ~~owner or operator~~ owner, operator, or landowner shall be made only after
8 proof of completion of work and payment for such costs has been received by the ~~Division~~ Department.

9 (c) Joint reimbursement of cleanup costs shall be made to an ~~owner or operator~~ owner, operator, or landowner and a
10 provider of service only upon receipt of a written agreement acknowledged by both parties. Any reimbursement check
11 shall be sent directly to the ~~owner or operator~~ owner, operator, or landowner.

12 (d) Payment of ~~third party~~ third-party claims shall be made to the owner or operator, or jointly to the owner or operator
13 and the ~~third party~~ third-party claimant.

14 (e) Any request for reimbursement that has not been returned to the owner, operator, or landowner, or reimbursed to
15 the owner, operator, or landowner within 90 days of submittal of such a request may be considered by the owner,
16 operator, or landowner as having been denied by the Department.

17

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

19 *Eff. February 1, 1993;*

20 *Amended Eff. September 1, ~~1993~~ 1993;*

21 *Readopted Eff. XXXX 1, 20XX.*

22

1 15A NCAC 02P .0406 is proposed for readoption with substantive changes as follows:

2
3 **15A NCAC 02P .0406 REIMBURSEMENT APPORTIONMENT**

4 ~~(a) Where multiple occurrences are addressed in a single cleanup action, expenses will be reimbursed based on~~
5 ~~apportionment among the occurrences. The method of apportionment will be as follows:~~

6 ~~(1) Expenses related directly to a particular occurrence shall be applied only to that occurrence;~~

7 ~~(2) Expenses that are related to more than one occurrence will be apportioned equally among the~~
8 ~~occurrences.~~

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

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

15 (c) If multiple storage tanks, either above ground or underground, at a single facility are contributing to a single
16 occurrence, reimbursement shall be apportioned based upon the volume of eligible tanks divided by the total volume of
17 all tanks contributing to the release.

18 (d) Where multiple occurrences are addressed in a single cleanup action, expenses shall be reimbursed based on
19 apportionment among the occurrences. The method of apportionment shall be as follows:

20 (1) expenses related to a particular occurrence shall be applied only to that occurrence; or

21 (2) expenses that are related to more than one occurrence shall be apportioned on a pro rata basis among
22 the occurrences.

23
24 *History Note: Authority G.S. 143-215.3; 143-215.94E; 143-215.94L; 143-215.94T; 143B-282;*

25 *Eff. February 1, ~~1993~~ 1993;*

26 *Readopted Eff. XXXX 1, 20XX.*

27

1 15A NCAC 02P .0407 is proposed for readoption with substantive changes as follows:

2
3 **15A NCAC 02P .0407 ~~FINAL ACTION~~ APPEAL RIGHTS**

4 (a) The Director, ~~or his delegate~~, Underground Storage Tank Section Chief, or Trust Fund Branch Head of the Division
5 of Waste Management shall make the agency decision on a written application for eligibility for reimbursement from
6 the appropriate fund—Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund. The Director, ~~or his~~
7 ~~delegate~~, Underground Storage Tank Section Chief, or Trust Fund Branch Head shall make the agency decision on any
8 written request—claim for reimbursement ~~made subsequent to an initial application—once an applicant has been granted~~
9 eligibility.

10 (b) An ~~owner or operator—owner, operator,~~ or landowner who has not received a written notification of decision ~~been~~
11 ~~denied of~~ eligibility to or for reimbursement from the appropriate fund—Commercial Leaking Petroleum Underground
12 Storage Tank Cleanup Fund within ninety (90) days of after-submittal of a written application in accordance with the
13 ~~procedures—rules~~ of this Subchapter, ~~or who has had any written reimbursement request denied after submittal in~~
14 accordance with the procedures of this Subchapter, shall be notified of the right to petition for a contested case in the
15 Office of Administrative Hearings in accordance with the procedure set out in G.S. 150B-23. The Secretary of the
16 Department of Environment, Health, and Natural Resources shall make the final agency decision in any contested case
17 pursuant to G.S. 150B-36, may elect to consider the application to have been denied and may file an appeal as provided
18 in Article 3 of Chapter 150B of the General Statutes.

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

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

33
34 *History Note:* Authority *G.S. 143-215.3; 143-215.94B; ~~143-215.94D;~~ 143-215.94E; 143-215.94L; 143-215.94T;*
35 *143B-282; 150B-23; ~~150B-36;~~*
36 *Eff. February 1, 1993;*
37 *Amended Eff. September 1, ~~1993.~~1993;*

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Readopted Eff. XXXX 1, 20XX.