

TITLE 15A – DEPARTMENT OF ENVIRONMENTAL QUALITY

Notice is hereby given in accordance with G.S. 150B-21.2 and G.S. 150B-21.3A(c)(2)g. that the Environmental Management Commission intends to amend the rule cited as 15A NCAC 02P .0101, repeal the rule cited as 15A NCAC 02P .0102, and readopt with substantive changes the rules cited as 15A NCAC 02P .0103, .0201, .0202, .0301, .0302 and .0401-.0407.

Pursuant to G.S. 150B-21.17, the Codifier has determined it impractical to publish the text of rules proposed for repeal unless the agency requests otherwise. The text of the rule(s) are available on the OAH website at <http://reports.oah.state.nc.us/ncac.asp>.

Link to agency website pursuant to G.S. 150B-19.1(c): <https://deq.nc.gov/permits-rules/rules-regulations/deq-proposed-rules/proposed-rules>

Proposed Effective Date: September 1, 2022

Public Hearing:

Date: May 9, 2022

Time: 4:00 p.m.

Location: A virtual public hearing will be held by webinar as follows:

WebEx Event Attendee Meeting Link:

<https://ncdenrits.webex.com/ncdenrits/onstage/g.php?MTID=e85981e6eaa7fc4eecd48bb8672ab94>

Event number: 2431 989 5266

Event password: 1234

To join by phone: Call +1-415-655-0003 US TOLL, enter access code 2431 989 5266

If you wish to attend the hearing, you must register before 5:00 p.m. on Friday, May 6, 2022.

The registration form can be found at the following link: <https://forms.office.com/g/v93CK6c3zz>.

Reason for Proposed Action:

Rule .0101 is proposed for amendment to make technical corrections and updates.

Rule .0102 is proposed for repeal because it is no longer necessary.

The remaining rules are proposed for re-adoption in accordance with G.S. 150B-21.3A. The amendments to the rules proposed for re-adoption are intended to make technical corrections and updates, to be consistent with current practice, to provide clarification, and to provide applicants with an informal appeal process for Departmental decisions. The amendments are also proposed to remove references to the phased-out noncommercial leaking petroleum UST cleanup fund, to be consistent with the changes made by S.L. 2015-241.

Comments may be submitted to: Brion Byers, 1646 Mail Service Center, Raleigh, NC 27699-1646; email dwm.publiccomments@ncdenr.gov

Comment period ends: June 17, 2022

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 984-236-1850.

Fiscal impact. Does any rule or combination of rules in this notice create an economic impact? Check all that apply.

- State funds affected
- Local funds affected
- Substantial economic impact (\geq \$1,000,000)
- Approved by OSBM
- No fiscal note required

CHAPTER 02 - ENVIRONMENTAL MANAGEMENT

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

SECTION .0100 - GENERAL CONSIDERATIONS

15A NCAC 02P .0101 GENERAL

- (a) ~~The purpose of this~~ This Subchapter ~~is to establish~~ 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. ~~Funds. Fund.~~
- (b) ~~The Groundwater Section~~ Underground Storage Tank (UST) Section, hereafter referred to as "the Section," of the Division of Environmental Waste Management of the Department of Environment, Health and Natural Resources Environmental Quality (DEQ), hereafter referred to as "the Department," shall administer the Commercial and Noncommercial Leaking Petroleum Underground Storage Tank Cleanup Funds Fund for the State of North Carolina.
- (c) ~~As authorized by G.S. 14-3215.94G, the Department may engage in cleanup work it deems appropriate and pay the costs from the Noncommercial Fund in accordance with G.S. 143215.94D.~~
- (d)(c) ~~The Department may engage in investigations assessment and cleanups remedial work pursuant to the authority as set forth in G.S. 143-215.94G in accordance with the severity of threat to human health and safety and to the environment, 15A NCAC 02L and subject to the availability of resources, as determined by the Division.~~ Department.

History Note: Authority G.S. 143-215.3; ~~143-215.76;~~ 143-215.94B; ~~143-215.94D;~~ 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;~~ 2018;
 Amended Eff. September 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;~~ 2018;
 Repealed Eff. September 1, 2022.

15A NCAC 02P .0103 FALSE OR MISLEADING INFORMATION

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

History Note: Authority G.S. 143-215.3; 143-215.94E; 143-215.94L; 143-215.94T; 143B-282;
 Eff. February 1, ~~1993;~~ 1993;
 Readopted Eff. September 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 ~~Noncommercial 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 have been in use in North Carolina on or after January 1, 1989.
- (c) This Subchapter shall apply to discharges or releases from ~~noncommercial or~~ commercial underground storage tank systems, regardless of whether such systems are regulated under ~~Subchapter 2N of Title 15A, of the North Carolina Administrative Code.~~ 15A NCAC 02N.

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

15A NCAC 02P .0202 DEFINITIONS

- (a) ~~The Definitions for "Criteria and Standards Applicable to Underground Storage Tanks" contained definitions in 15A NCAC 2N 02N .0203 are hereby incorporated by reference including subsequent amendments and editions, except that apply for the 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" ~~is an~~ 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 tank~~, as defined in G.S. 143-215.94A, in use on or after ~~January of the year, beginning with 1989.~~ January 1, 1989.

- (2) "Commission" means the Environmental Management Commission as organized under Chapter 143B of the General Statutes.
- (3) "Department" means Department of ~~Environment, Health, and Natural Resources.~~ Environmental Quality.
- (4) "Discovered release" means a release ~~which~~ 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) "~~Dual usage tank~~" means ~~an underground storage tank which could be considered both a commercial underground storage tank and a noncommercial underground storage tank and for which both the commercial and the noncommercial usages are integral to the operation or existence of the tank.~~
- (6) "Household" means a permanent structure, whether freestanding or connected to other units, used primarily for living, where primary living space and primary food preparation facilities are controlled or maintained by the residents. ~~"Household" includes single family houses, mobile homes, apartments, and single living units, whether or not the residents are related to each other and whether the units are occupied on a year round or seasonal basis. "Household" does not include dormitories, hospitals, hotels, motels, apartment buildings (as distinct from the individual apartments therein), or other multiple dwelling structures. The term "four or fewer households" shall relate to underground storage tanks serving households only.~~
- (5)(7) "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)(8) "Occurrence" means ~~one or more release(s) that result(s) a release or releases resulting in a single plume of soil, soil contamination, surface water, water contamination, or groundwater contamination (consisting contamination, consisting of free product or dissolved contaminants exceeding standards specified in 15A NCAC 21.02L 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).
- (8)(9) "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)(11) "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)(12) "Tank in use" means an underground storage tank intended for the containment or dispensing of petroleum product.
- (12)(13) "~~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. September 1, 2022.

SECTION .0300 - ANNUAL OPERATING FEES

15A NCAC 02P .0301 FEES AND PAYMENT

- (a) The owner or operator of each commercial underground storage tank shall pay all annual ~~tank~~ operating fees due for that commercial underground storage tank ~~tank~~ in accordance with G.S. 143-215.94C. Unpaid operating fees attach to the tanks, notwithstanding the ownership of the tanks.
- (b) ~~The Division shall send an invoice, for the amount of the annual operating fees due, to the owner or operator of any commercial petroleum underground storage tank in use on January 1 of the year and which has been registered with the Department. The annual operating fee shall be due and payable 30 days following the date of the invoice and shall be submitted to the Division accordingly.~~
- (c) ~~Any owner or operator not receiving an invoice for annual operating fees shall still pay any fees due according to the following schedule:~~
- (1) ~~If the owner or operator has paid annual operating fees for the subject tank in previous years, the payment will be submitted to the Division within 30 days of the anniversary of the last invoicing date for the fees.~~
- (2) ~~If the owner or operator has not previously paid annual operating fees for the subject tank, any annual operating fee is due on 1 January of that year and shall be submitted to the Division accordingly.~~

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

~~(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 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 be assessed based on the date of receipt of fee payment by the Division.~~

~~(f) All annual operating fees due for any year are assessed in accordance with the schedule of fees in effect during that 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 the owner or operator to determine that all fees have been paid in accordance with Paragraph (a) of this Rule.~~

~~(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 payment may be requested by the owner or operator. A refund will be granted if the owner or operator provides adequate documentation that the tank was exempt from the requirement to pay the annual operating fee.~~

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

15A NCAC 02P .0302 NOTIFICATION

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

- (1) ~~Name~~ name and address of the previous owner and the new owner;
- (2) ~~Name, name,~~ identification number, and street address of the facility;
- (3) ~~Date~~ date of transfer;
- (4) ~~Signatures~~ signatures of the transferring owner and the new owner or their authorized ~~representatives~~; 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~~; 1993; Readopted Eff. September 1, 2022.

SECTION .0400 - REIMBURSEMENT PROCEDURE

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

(a) Date of Release.

- (1) An ~~owner or operator~~ 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) An ~~owner or operator of a noncommercial underground storage tank is eligible for reimbursement of costs without regard to the date a release is discovered. In the case of multiple releases that commingle into one plume, the deductible is established under the first date of release.~~
- (3) An ~~owner or operator of a commercial underground storage tank which qualifies for the Noncommercial Fund pursuant to G.S. 143-215.94D(b)(3) and 143-215.94D(b)(4) is eligible for reimbursement of costs without regard to the date a release is discovered. 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) An ~~owner or operator or landowner of a commercial underground storage tank, from which a release is discovered on or after July 3, 1991, is not eligible for reimbursement from the Commercial Fund if the tank had been removed from the ground more than 120 days prior to the date of discovery of the release. After such time that the Department has notified the responsible 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 or former responsible party as applicable and upon receiving eligibility, said party shall be credited for all prior reimbursed amounts 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~~; 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~~; fees as long as the property has not been transferred to circumvent liability in accordance with this Paragraph.

(c) An ~~owner or operator~~ owner, operator, or landowner of a commercial ~~or noncommercial~~ underground storage tank is not eligible for reimbursement of any ~~expenditures~~ expended costs which are in excess of the amount determined reasonable in accordance with

Rule ~~.0402,~~ .0402 of this Section and which are not necessary in performing cleanup of environmental damage and in compensating ~~third parties~~ third-parties for bodily injury and property damage, and ~~which that~~ are less than any deductible established for the ~~appropriate fund.~~ Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund.

(d) An ~~owner or operator~~ owner, operator, or landowner of a commercial ~~or noncommercial~~ underground storage tank 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 ~~Division,~~ Department, on forms provided by the ~~Division,~~ Department, which are located at 217 West Jones Street, Raleigh, NC 27603 and on the Department's website, and which includes ~~any information and documentation necessary to determine eligibility and to determine that any expended costs are reasonable and necessary.~~ eligibility. An application of eligibility shall include:

- (1) contact information for the applicant;
- (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) tank compliance history;
- (6) disclosure of the existence of environmental liability insurance or any other potential sources of funding information for the release;
- (7) scaled site map showing location of all tanks and releases;
- (8) tank upgrade information;
- (9) property deeds and bills of sale to confirm ownership history;
- (10) any UST Section inspection records; and
- (11) a notarized affidavit from the applicant.

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

(f) The release response and corrective action requirements of any rules of the Commission and of any statute administered by the Department shall not ~~in any way~~ be construed as limited by, or contingent upon, any reimbursement from ~~either the Noncommercial Fund or 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,~~ 1993;
Readopted Eff. September 1, 2022.

15A NCAC 02P .0402 CLEANUP COSTS

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

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

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

- (1) ~~Costs of the removal and disposal of noncommercial underground storage tanks and contents removed on or after July 3, 1991, and of commercial underground storage tanks and contents removed on or after January 1, 1992; 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 costs of the replacement of any underground storage tank, piping, fitting, or ancillary ~~equipment;~~ equipment required to operate and maintain a UST system;
- (3) Costs costs incurred in preparation of any proposals or bid 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 ~~ultimately~~ selected to provide the service solicited;
- (4) ~~Interest on any accounts, loans, etc.;~~ interest of any kind;
- (5) Expenses expenses charged by the ~~owner or operator~~ owner, operator, or landowner in the processing and management of a reimbursement application or subsequent claims;
- (6) Attorney's attorney's fees;
- (7) Penalties, penalties, fees, and fines assessed by any court or agency;
- (8) Loss loss of profits, fees, and wages incurred by the ~~owner or operator~~ owner, operator, or landowner;

- (9) ~~Costs incurred during cleanup if preapproval of the cleanup tasks and associated costs was not obtained from the Division. Preapproval is not required for assessment activities or for costs determined by the Division to be related to emergency response actions; 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 cost-effective environmental cleanup, or third-party 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 pre-approval 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; ~~143-215.94D~~; 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~~; 2000;
 Readopted Eff. September 1, 2022.

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

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

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

(c) The term ~~third-party property damage~~ "third-party property damage" means actual physical damage or damage due to specific loss of normal use of property owned by a person other than the owner or operator of an underground storage tank from which a release has occurred. A property owner shall not be considered a ~~third-party third-party~~ if the property was transferred by the owner or operator of an underground storage tank in anticipation of damage due to a release. ~~Third-party~~ Third-party property damage shall be reimbursed from the ~~appropriate fund~~ 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 ~~actually~~ 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; ~~143-215.94D~~; 143-215.94E; 143-215.94L; 143-215.94T; 143B-282;
 Eff. February 1, ~~1993~~; 1993;
 Readopted Eff. September 1, 2022.

15A NCAC 02P .0404 REQUESTS FOR REIMBURSEMENT

(a) After a determination of eligibility, the owner, operator, or landowner may make a request for reimbursement. An application A request for reimbursement must shall be made on a form forms located at 217 West Jones Street, Raleigh, NC 27603 or on the Department's website provided by the Division. Department only after the determination of eligibility has been issued. The application form must accompany the initial reimbursement request. request shall include the following:

- (1) notarized certification of the costs form;
- (2) notarized certification of payment to subcontractors form, if applicable;
- (3) summary of work performed form;
- (4) reimbursement payment information form;
- (5) certification of remediation system installation form, if applicable;
- (6) itemized breakdown of the requested reimbursement, primary and secondary claim forms; 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) ~~A request for reimbursement shall include copies of any documentation required by the Division to determine that expended costs are reasonable and necessary.~~ Proof of completion of work and payment ~~must~~ shall accompany any request for reimbursement, except when reimbursement ~~will be~~ is made jointly to the ~~owner or operator~~ owner, operator, or landowner and either a provider of service or a ~~third party~~ third-party claimant. ~~The Division may require the owner or operator or landowner to submit any information required for the purpose of substantiating any claim for reimbursement on forms provided by the Division.~~

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

(d) The ~~Division~~ Department shall reimburse an ~~owner or operator~~ eligible owner, operator, or landowner for expenses following completion of any ~~significant~~ phase of cleanup work ~~or~~ in accordance with the schedule allowed by G.S. ~~143-215.94E(e),~~ 143-215.94E(c2).

(e) If any amount approved for reimbursement is less than the amount of reimbursement requested, the ~~Division~~ 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.~~ 1993.
Readopted Eff. September 1, 2022.

15A NCAC 02P .0405 METHOD OF REIMBURSEMENT

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

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

(c) Joint reimbursement of cleanup costs shall be made to an ~~owner or operator~~ 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 or operator~~ owner, operator, or landowner.

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

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.~~ 1993.
Readopted Eff. September 1, 2022.

15A NCAC 02P .0406 REIMBURSEMENT APPORTIONMENT

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

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

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

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

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

~~(c)~~ If multiple storage tanks, either above ground or underground, at a single facility are contributing to a single occurrence, 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 occurrences are addressed in a single cleanup action, expenses shall be reimbursed based on apportionment among the occurrences. The method of apportionment shall be as follows:~~

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

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

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

15A NCAC 02P .0407 FINAL ACTION APPEAL RIGHTS

(a) The Director, ~~or his delegate,~~ 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 ~~appropriate fund.~~ Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund. The Director, ~~or his delegate,~~ Underground Storage Tank

Section Chief, or Trust Fund Branch Head shall make the agency decision on any written request claim for reimbursement made subsequent to an initial application, once an applicant has been granted eligibility.

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

(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; ~~143-215.94D~~; 143-215.94E; 143-215.94L; 143-215.94T; 143B-282; 150B-23; ~~150B-36~~;
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