

**Annual Report to the
Environmental Review Commission
North Carolina General Assembly**

**The Status of Leaking Petroleum Underground Storage
Tanks, the State Cleanup Funds, and the Groundwater
Protection Loan Fund**

September 1, 2008



**NORTH CAROLINA DEPARTMENT OF
ENVIRONMENT AND NATURAL RESOURCES**

Underground Storage Tank Section
Division of Waste Management

**North Carolina
Department of Environment
and
Natural Resources**

**Michael F. Easley
Governor**

**William G. Ross Jr.
Secretary
NC Department of Environment and Natural Resources**

**Dexter R. Matthews
Director
Division of Waste Management**

**NCDENR
Division of Waste Management
UST Section
1637 Mail Service Center
Raleigh NC 27699-1637
(919) 733-8486
<http://wastenot.nc.us>**

Table of Contents

Executive Summary.....	1
Funding for the Underground Storage Tank (UST) Cleanup Program	3
Petroleum UST Incidents	7
Receipts and Disbursements: Commercial and Noncommercial Trust Fund and Groundwater Protection Loan Fund	9
Claims Against the Cleanup Funds	12
Commercial and Noncommercial Fund Balances and Projected Needs	13
Pay-for-Performance.....	20
Recommendations	20
Appendices (available upon request - please contact Ms. Jane Comer at 919.733.1302)	
Appendix A - LUSTs reported 7/1/88-6/30/08	
Appendix B - LUSTs reported 7/1/07-6/30/08	
Appendix C - LUSTs closed out 7/1/88-6/30/08	

Executive Summary

The Department of Environment and Natural Resources is required to prepare an annual report on the status of leaking petroleum underground storage tanks.

North Carolina's underground storage tank program is administered by the Division of Waste Management's UST Section in DENR. The section enforces UST regulations and manages funds used to perform cleanups of petroleum UST discharges or releases. The program was initiated in 1988 in response to growing reports of USTs leaking petroleum into soil and drinking water supplies. Funding for the program has been provided by the Commercial and Noncommercial Trust Funds, the Groundwater Protection Loan Fund, the Federal UST Regulatory Grant and the Federal Leaking UST Fund.

This is the summary of the statistics described in this report for the period July 1, 2007 through June 30, 2008.

Commercial Fund Revenues	\$27,458,790
Commercial Fund Expenditures	\$14,370,804
Noncommercial Fund Revenues *	\$ 6,030,546
Noncommercial Fund Expenditures	\$ 7,521,980
Petroleum UST Incidents – Reported	917
Petroleum UST Incidents - Closed Out	986

*Includes transfer of \$598,935 from commercial fund to non-commercial trust fund per G.S. 119-18(b).

This is the summary of the statistics for the entire history of the UST program (7/1/88-6/30/08).

Commercial Fund Revenues	\$507,208,383
Commercial Fund Expenditures	\$462,875,854
Noncommercial Fund Revenues	\$115,995,875
Noncommercial Fund Expenditures	\$112,643,458
Petroleum UST Incidents – Reported	23,684
Petroleum UST Incidents - Closed Out	14,944

As of June 30, 2008, the status of the Commercial and Noncommercial Funds was:

Commercial Fund Assets	\$ 44,302,190
Commercial Fund Obligations	\$ 35,021,368
Commercial Fund Balance	\$ 9,280,822
Noncommercial Fund Assets	\$ 3,354,413
Noncommercial Fund Obligations	\$ 6,046,525
Noncommercial Fund Balance	- \$ 2,692,112

For FY 2007-2008 the Trust Fund continued its cost management in accordance with the requirements of Session Law 2004-124, effective October 1, 2004. As described in the Annual Reports since FY 2003-2004, the Department is prohibited from pre-approving tasks that will be reimbursed by either Fund unless the claim(s) can be paid within 90

days of their approval. Therefore, the Department is only approving further assessment and remediation for those incidents that are judged to be emergency situations and those incidents that pose the highest risk to human health and the environment. The combined actions continue to result in focusing available resources on those sites warranting the most urgent attention, while maintaining fiscal integrity of the State Trust Fund. The approach taken in addressing this mandate has been to establish a Risk, Rank, and Abatement (RRA) scoring system that allows the UST program to direct work at the highest risk incidents and reimburse claims for that work in a timely manner. Every week the Department reviews balances, encumbrances, and outlays of both the Commercial and Noncommercial Funds, and then adjusts the RRA score to direct as much clean up work as resources will allow. At the start of FY 2007-2008, the RRA was H200 for Commercial sites and H350 for Noncommercial sites. By the close of FY 2007-2008, the RRA was H140 and H350 for Commercial and Noncommercial incidents respectively. For the 12-month period from July 1, 2007 through June 30, 2008 as in the previous two fiscal years, the Commercial Fund balance exceeded obligations. The balance for this year is considerably less than in prior fiscal years because fund obligations now include unreimbursed costs of non-directed work. This reporting change more accurately depicts the true Fund balance. The Noncommercial Fund shows a negative balance because claims exceeded revenue. As with the Commercial Fund, the obligations include unreimbursed costs of non-directed work. Based on the Trust Fund eligibility application and claim request activity in FY 2007-2008, claim reimbursements are expected to deplete revenues in both the Commercial and Noncommercial Funds.

Funding for the Underground Storage Tank Cleanup Program

Program funding is provided by revenues from the Commercial and Noncommercial Trust Funds and the Groundwater Protection Loan Fund. The Federal UST Regulatory Grant and the Federal Leaking UST Grant are provided by the Environmental Protection Agency. Of the 97.8 Full Time Equivalent (FTE) positions assigned to the UST program, 59.2 positions are supported by receipts, 32.7 by federal grants, and 5.9 by state appropriations. In addition, the trust funds and federal grant pay for one laboratory position and four regional administrative positions which support the program.

Commercial and Noncommercial Leaking UST Cleanup Funds

The Leaking Petroleum Underground Storage Tank Cleanup Act of 1988 (GS 143-215.94A et. seq) established two separate funds: the Commercial Fund and the Noncommercial Fund. Both may be used to reimburse eligible UST owners, operators and landowners for reasonable and necessary costs incurred as a result of environmental cleanup and third party liability claims. Additionally, both funds enable UST Section staff to:

- record and track UST release incidents;
- register and permit regulated USTs, manage tracking databases, and collect annual UST operating fees;
- identify parties responsible for releases;
- provide technical assistance and training to tank owners and operators;
- inspect UST systems to ensure compliance with leak prevention and detection regulations;
- monitor cleanups or releases;
- review site assessments and corrective action plans;
- evaluate innovative assessment and cleanup technologies;
- review reimbursement claim procedures;
- manage contracts for cleanups designated as "State Lead";
- inspect and monitor land applications of contaminated soil; and
- identify, evaluate, and remove abandoned petroleum USTs.

The UST Section has the authority to contract for the cleanup of petroleum UST incidents if the owner or operator cannot be identified or located, if the owner or operator is financially unable to perform cleanup, or if the owner or operator refuses to perform the required cleanup. In the latter case, the section is authorized by general statute to recover costs incurred during assessment and cleanup activities.

Sources of funding for the Commercial Fund include:

- one-half of 50% of the motor fuel and kerosene inspection tax of 1/4 of one cent per gallon;
- 19/32 of the excise tax of 1/2 cent per gallon on motor fuel and kerosene;
- annual UST operating fees;
- costs recovered from UST owners and operators for work performed by state contractors;
- loan collection and interest for the Groundwater Protection Loan Fund; and
- interest earned on the account.

Owners and operators are required to pay annual operating fees to receive operating permits and to be eligible for the Commercial Fund. Annual operating fees for

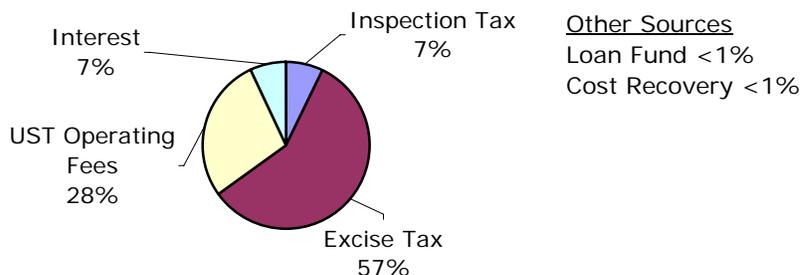
commercial USTs began at a rate of \$30 for tanks with a capacity equal to or less than 3,500 gallons (small tanks) and \$60 for tanks with a capacity in excess of 3,500 gallons (large tanks). Annual operating fees increased annually from 1989 to 1993. From 1993 to 1997, fees were \$150 for small tanks and \$225 for large tanks. Beginning January 1, 1997, fees increased to \$200 for commercial USTs with capacities equal to or less than 3,500 gallons and \$300 for commercial USTs with capacities in excess of 3,500 gallons. HB2498, enacted in 2008, increased annual operating fees to \$420 per tank, regardless of capacity, beginning on 1 January 2009.

Revenues received for the Commercial Fund for the twelve-month period from July 1, 2007 to June 30, 2008 were approximately \$27.5 million (Table 1). The relative contributions to the Commercial Fund from each of the funding sources are illustrated in Figure 1.

Table 1 - Commercial Fund Revenues
7/1/07- 6/30/08

Motor Fuel & Kerosene Inspection Tax	\$ 1,938,609
Motor Fuel & Gasoline Excise Tax	\$ 15,751,141
Operating Fees	\$ 7,686,324
State Lead Cost Recovery	\$ 206,588
Interest	\$ 1,866,517
Loan Fund Collection and Interest	\$ 9611
Total Commercial Revenues	\$ 27,458,790
Transfer to Noncommercial Fund	\$(1,381,849)
Transfer to Department of Agriculture	\$(90,000)
Transfer to Federal LUST Program (cost recovery)	\$(53,752)
Net Commercial Revenues	\$ 25,933,189

Figure 1 - Commercial Fund Revenue Sources



Sources of funding for the Noncommercial Fund include:

- one-half of 50% of the motor fuel and kerosene inspection tax of 1/4 of one cent per gallon;
- 3/32 of the excise tax of 1/2 cent per gallon on motor fuel and kerosene; and
- interest earned on the account.

Owners and operators of noncommercial USTs are not required to pay annual operating fees. Revenues received for the Noncommercial Fund for the 12-month period from July 1, 2007 to June 30, 2008 were slightly greater than \$ 6 million (Table 2).

Table 2 - Noncommercial Fund Revenues

7/1/07 – 6/30/08

Motor Fuel & Kerosene Inspection Tax	\$ 1,938,609
Motor Fuel & Gasoline Excise Tax	\$ 2,488,558
Interest	\$ 221,531
Transfer from Commercial Fund	\$ 1,381,848
Cost Recovery	\$ 0
Total Noncommercial Revenues	\$ 6,030,546

North Carolina General Statute 119-18(b) states that if the amount of revenue in the Noncommercial Fund at the end of the month is at least \$ 5 million, one-half of the motor fuel inspection tax must be credited to the Commercial Fund and one-half must be credited to the Noncommercial Fund. If the amount of revenue in the Noncommercial Fund at the end of the month is less than this threshold amount, all of the inspection tax will be credited to the Noncommercial Fund. For FY 2007-2008, the net transfer of money from the Commercial to the Noncommercial Fund was \$1,381,848.

Groundwater Protection Loan Fund

The Groundwater Protection Loan Fund Program was created in 1991.* It provided financial assistance to owners of commercial USTs who replaced or upgraded their tanks to meet the performance standards required for all USTs by Dec. 22, 1998. Administrative rules implementing the program were adopted by DENR and became effective Dec. 1, 1992. Revenues for the fund were generated through a 0.0025 cent (one quarter of one cent) per gallon motor fuel excise tax received from Jan. 1, 1992 through Dec. 31, 1994.

*Session Laws 1991, c. 538, s. 25 - G.S. 143-215.94P

Federal UST Regulatory Program Grant

The UST Section receives grant money from the federal government to promote compliance with federal and state UST regulations. The UST Section received \$1.27M for three years (October 1, 2006 through September 30, 2009) to fund these activities as well as activities related to implementing provisions of the Federal Energy Policy Act of 2005. The provisions of the Energy Policy Act include inspecting UST facilities at least every three years, implementing secondary containment requirements for all new and replacement UST systems, prohibiting delivery of fuel to non-compliant UST systems,

training UST operators and maintaining and publishing information about sources and causes of releases from UST systems. The grant funds two permanent technical positions and two time-limited UST inspector positions. The grant will also fund contracts to upgrade the existing permitting and inspection database.

Federal Leaking UST Trust Fund Program Grant

The Federal Leaking UST Trust Fund Program Grant is used to clean up petroleum contamination from leaking USTs, provide alternative water supplies to affected third-parties, perform emergency activities, relocate residents affected by leaking USTs and conduct enforcement activities. The use of this grant is limited to regulated USTs, primarily commercial tanks used for storing motor fuels. Releases from USTs used for heating oil and those used for farm or residential uses (1,100 gallons capacity or less) are not eligible for resources from this fund.

Individuals (i.e., owners/operators) do not have access to the grant. Only the federal government and states with cooperative agreements with the EPA can draw on the grant. It may be used in situations when: (1) the responsible party cannot be identified; (2) the responsible party is financially unable to pay for the cleanup; or (3) the responsible party is unwilling and refuses to undertake assessment and/or cleanup actions.

Since the state's UST program began in 1988, the Federal Leaking UST Trust Fund Program Grant has made 28 awards totaling \$51,364,279 to the state's UST Section. As of June 30, 2008, the state has spent \$48,891,374 of these awards. Of that amount, approximately \$21,969,475 has been spent on cleanup activities; \$4,261,267 on enforcement actions; and \$22,665,580 on program administration. Administrative costs include personnel costs, operating costs, travel costs and equipment costs. Because of limitations in program tracking capabilities, program element costs through FY 2000-2001 are estimated. However, in FY 2001-2002, program tracking capabilities were improved such that disbursements can be more accurately reconciled with grant awards.

The program is obligated to seek recovery of all costs incurred during state lead cleanups. As of June 30, 2008, the UST Section had recovered \$1,836,165 in federal cleanup money through cost recovery actions. Of this amount, \$1,075,067 came from the North Carolina Commercial Fund for sites determined eligible for Commercial Fund coverage after cleanup activities had begun.

The EPA approved \$3,299,757 for North Carolina from the Leaking UST Fund for FY 2007-2008. However, approximately 80% (\$2,742,600) of the approved monies were not available until after June 1, 2008.

Petroleum UST Incidents

Discharges or releases from petroleum USTs, called incidents, are reported to DENR regional offices where they are added to an incident management database. Table 3 lists the number of incidents reported and closed out in each region during the twelve-month period from July 1, 2007 through June 30, 2008. It also shows the number of incidents reported and closed out since the UST program began in 1988.

Table 3 Petroleum UST Incidents By Region ¹

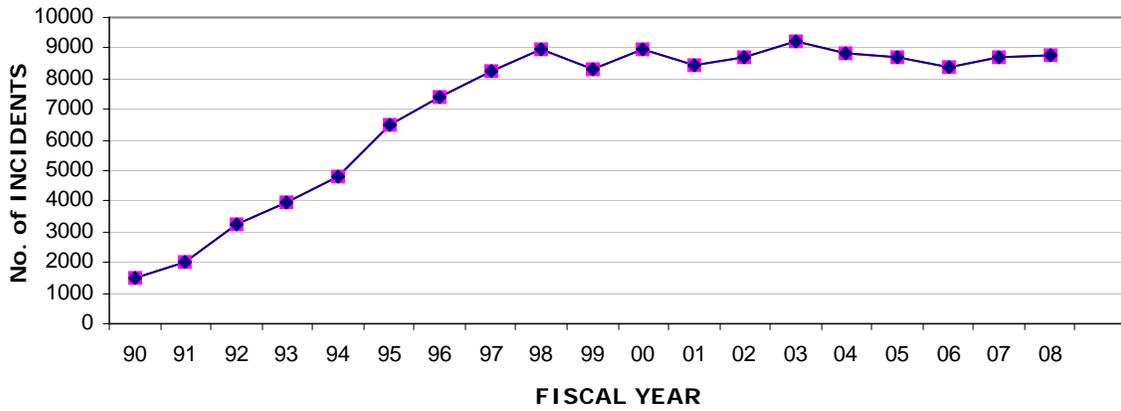
Region	7/1/07 – 6/30/08			7/1/88 – 6/30/08		
	Reported	Closed	Clean Closures	Reported	Closed	Clean Closures
Asheville	88	75	10	2,418	1,501	855
Fayetteville	42	31	10	1,739	910	1,355
Mooresville	201	262	10	4,707	3,254	1,164
Raleigh	210	189	3	4,801	3,032	650
Washington	110	98	0	3,064	1,863	112
Wilmington	63	97	3	1,818	1,067	454
Winston-Salem	203	234	18	5,137	3,317	1,922
	917	986	54	23,684	14,944	6,512

Total reported incidents affecting groundwater that have been closed out:	5,088
Total reported incidents closed out since implementation of RBCA ¹ :	10,613
Total remaining open incidents:	8,740
Open commercial incidents:	6,620
Open noncommercial incidents:	2,120

1. Risk-based corrective action implemented 1/2/98.

Beginning January 2, 1998, the UST Section implemented risk-based corrective action rules for petroleum UST incidents. Discharges or releases under these rules receive a risk classification of "high," "intermediate," or "low" based on the potential threat to human health and the environment. Of the total number of UST incidents closed since 1988, 45 percent were closed following implementation of Risk-Based Corrective Action. The total number of open incidents has generally increased since 1988; however, recent data indicates the trend may be leveling off (Figure 2).

Figure 2 - Open UST Incidents



UST Release Incident-Kerosene Free Product in Basin

Receipts and Disbursements: Commercial and Noncommercial Trust Funds and Groundwater Protection Loan Fund

Commercial and Noncommercial Funds

UST owners, operators and landowners may request reimbursement of reasonable and necessary costs incurred during environmental assessment and cleanup activities. Claims may be submitted if the eligibility requirements for the trust funds are met. Deductibles that must be met before receiving reimbursement from the Commercial Fund range from \$20,000 to \$75,000. In some cases, exceptions to the standard eligibility deductible determination do occur because a site property experiences compliance related issues or multiple releases at the site. Noncommercial Fund deductibles are \$0 for UST owners and operators, and \$5,000 for landowners. Table 4 lists the receipts and disbursements by fiscal year for both funds for the period July 1, 1988 to June 30, 2008.



Rock Quarry Tank Pull

Table 4 - Receipts & Disbursements for Cleanups
7/1/88 - 6/30/08

FISCAL YEAR	RECEIPTS		DISBURSEMENTS ¹	
	Commercial	Noncommercial	Commercial	Noncommercial
FY 88-89	\$ 2,337,685	\$ 0	\$ 14,768	\$ 0
FY 89-90	5,773,632	2,905,035	79,080	0
FY 90-91	7,330,573	2,934,347	1,616,760	564,206
FY 91-92	13,484,008	3,018,344	4,409,229	2,143,155
FY 92-93	18,032,784	7,693,288	9,651,948	4,069,497
FY 93-94	24,438,966	3,404,086	22,904,802	2,012,312
FY 94-95	56,037,135 ²	5,194,725	37,405,510	2,900,368
FY 95-96	28,178,768	5,215,550	44,060,639	5,029,109
FY 96-97	28,564,034	5,587,781	44,163,273	5,924,799
FY 97-98	27,291,220	5,717,592	30,267,392	3,869,091
FY 98-99	26,783,344	5,945,461	16,104,152	2,776,105
FY 99-00	27,178,623	5,636,563	22,820,069 ³	5,028,505
FY 00-01	27,240,303	5,811,666	24,566,132 ⁴	7,890,618 ⁵
FY 01-02	27,124,210	6,620,808 ⁶	36,872,426	9,182,320
FY 02-03	27,055,759	7,664,329 ⁷	26,498,565	9,898,806
FY 03-04	26,934,685	8,060,151	23,514,179 ⁸	7,756,579
FY 04-05	50,255,908 ¹⁰	14,885,997 ¹⁰	46,966,083 ⁹	11,326,318
FY 05-06	28,143,119	7,615,613 ¹¹	15,474,991 ¹¹	5,005,578
FY 06-07	27,564,837	6,053,993 ¹²	7,372,403 ¹²	5,099,349
FY 07-08	27,458,790	6,030,546 ¹³	11,511,344 ¹³	6,105,295
TOTAL	\$507,208,383	\$115,995,875	\$426,273,745	\$96,592,007

- 1 Does not include administrative costs.
- 2 Commercial receipts for FY 94-95 included \$31,288,889 that was transferred from the Groundwater Protection Loan Fund.
- 3 Adjustment due to a transfer from the Commercial Fund to the Federal Trust Fund of \$288,117 as a cleanup expenditure rather than as an administrative cost.
- 4 \$33,866 transferred to Federal Trust Fund as a cleanup expenditure.
- 5 \$2 million transferred out of Noncommercial Fund to the state's General Fund.
- 6 Includes transfer of \$784,382 from Circle K Settlement Fund
- 7 Includes transfer of \$3,418,990 of motor fuel and kerosene tax from Commercial to Noncommercial trust fund due to balance below \$5 million - General Statute 119-18(b).
- 8 Includes transfer of \$2,036,932 from Commercial to Noncommercial trust funds per GS 119.18(b); transfer of \$90,000 to Dept. of Agriculture; and transfer of \$52,722 to Federal trust fund as a cleanup expenditure.
- 9 Includes transfer of \$3,150,730 from Commercial to Noncommercial trust fund per GS119:18(b). Transfer from Agriculture Department; transfer of \$38,702 to Federal trust fund.
- 10 Includes additional revenue from the 1-year 1.1 cent per gallon excise tax or \$19,000,000 to the Trust Fund.
- 11 Includes \$1,922,601 transfer to Noncommercial Fund, \$90,000 transfer to Dept. of Agriculture, and \$30,016 transfer to repay Federal Trust Fund for State Lead program expenses.
- 12 Includes transfer to Noncommercial Fund of \$598,935 and disbursement from the Commercial Fund to the Department of Agriculture (\$90,000) and Federal LUST Grant (\$108,904).
- 13 Includes transfer to Noncommercial Fund of \$1,381,848, and disbursement from the Commercial Fund to the Department of Agriculture (\$90,000), and Federal LUST Grant (\$53,752).

Funds for administering the state-funded portion of the UST program are provided by the Commercial and Noncommercial Funds. Table 5 lists past administrative expenditures since the beginning of the UST program.

Table 5 – Administrative Expenditures

FISCAL YEAR	COMMERCIAL	NONCOMMERCIAL
FY 89-90	\$ 201,255	\$ 201,254
FY 90-91	547,595	547,595
FY 91-92	517,221	517,221
FY 92-93	601,687	601,686
FY 93-94	694,424	694,423
FY 94-95	666,270	666,270
FY 95-96	2,322,632	783,684
FY 96-97	2,623,339	801,143
FY 97-98	2,530,036	667,724
FY 98-99	2,567,668	620,574
FY 99-00	2,579,540*	570,738
FY 00-01	2,730,236	733,811
FY 01-02	2,397,264	913,755
FY 02-03	2,221,851	1,166,494
FY 03-04	2,527,451	1,244,864
FY 04-05	2,654,447	1,265,079
FY 05-06	2,636,228	1,298,441
FY 06-07	2,725,418	1,349,006
FY 07-08	2,859,460	1,416,685
TOTAL	\$ 36,604,022	\$ 16,060,447

Incorporating the administrative costs and estimated non-reimbursed obligations (see pages 15 and 18) into receipts and cleanup disbursements yields these Commercial and Noncommercial Fund balances:

Commercial Fund Balance (as of June 30, 2008)	\$ 9,280,823
Noncommercial Fund Balance (as of June 30, 2008)	- \$ 2,692,112

*Adjustment due to a transfer of \$288,117 from the Commercial Fund to the Federal Trust Fund as a cleanup expenditure rather than an administrative cost.

Groundwater Protection Loan Fund

After the Groundwater Protection Loan Fund was created, 11 North Carolina banks agreed to administer the loan program. As of June 30, 1995, four loans totaling \$1,228,350 had been closed. After this date, remaining funds of \$31,288,889 were deposited into the Commercial Fund. Loan repayments are also deposited into the Commercial Fund. During the twelve-month period ending June 30, 2008, \$ 9,055 was repaid. Total receipts for the Loan Fund since its inception in January 1992 are \$33,187,657. The program is no longer active, but loan payments continue to be received.

Claims Against the Cleanup Funds

Claims against both the Commercial and Noncommercial Funds are processed on a “first-come, first-serve” basis. The status of all claims requesting reimbursement from both funds that were received as of June 30, 2008 is presented in Table 6. These claims only include costs claimed to date, and do not represent the total costs for cleanups.

This year, UST Section staff supervised contract cleanups at 780 incidents: 635 commercial UST releases and 145 noncommercial UST releases (Table 6). This was also the final year of the three-year contract for the State Lead program. However, the program has been extended until the close of calendar year 2008 due to changes in the Trust Fund technical guidance and rate documents. These changes took longer than anticipated to complete and implement, and subsequently delayed the selection of contractors for the next 3-year contract period.



Glenwood Avenue, Raleigh - Phytoremediation

Table 6 – Claims Against the Cleanup Fund

	Commercial Fund		Noncommercial Fund	
	<u>Number</u>	<u>Cost</u>	<u>Number</u>	<u>Cost</u>
Claims Paid	26,862	\$401,115,872	11,246	\$90,913,178
Incidents Denied Totally ¹	33	\$4,573,040	4	\$59,845
Claims Denied Partially ²	15,254	\$83,502,762	4,818	\$11,498,133
Total Deductibles Paid	-----	\$74,744,761	-----	\$936,708
Claims Pending Contracted Cleanups ³	418 635	\$4,434,115 \$15,717,956	413 145	\$3,824,617 \$1,861,374

¹ Ineligible

² Excessive or undocumented costs

³ State Lead actions undertaken or completed

Commercial and Noncommercial Fund Balances and Projected Needs

Commercial Fund

As of June 30, 2008, the Commercial Fund balance was \$44,302,190 with pending claims of \$4,434,115 (see Figure 3, Page 14).



Soil and Groundwater Vapor Extraction Remediation System

From fiscal year 2000 through 2004, the difference between the fund balance and the pending claim amounts steadily increased (see Figure 4, Page 12). This was largely due to the fact that the UST Section implemented an expedited review process during fiscal year 2001-2002 in an effort to reduce the time for claim review. While claim review time was reduced, the result was a delay in the reimbursement payment, since the Commercial Fund could only pay out what had been received for the month.

This trend continued up to fiscal year 2004-2005. With the passage of Session Law 2004-124, the difference decreased markedly. The present situation represents a significant change in the complexion of the Commercial Fund over previous years because the UST Section now directs most of the work that is done, and only those commercial and noncommercial incidents with threshold level risks are directed to continue with assessments and remediation. This results in greater fiscal control over the Fund and focuses resources on those incidents exhibiting the greatest risks to human health and the environment. This year, to more accurately show the status of the Commercial Fund, DENR has begun including the un-reimbursed costs of non-directed work in the obligations of the Fund. Nevertheless, the Fund balance has remained greater than disbursements and claims pending (Table 7) and DENR has been able to periodically direct cleanups of more and more high risk incidents.

Figure 3 - Commercial Fund Balance and Claims Pending & Obligations

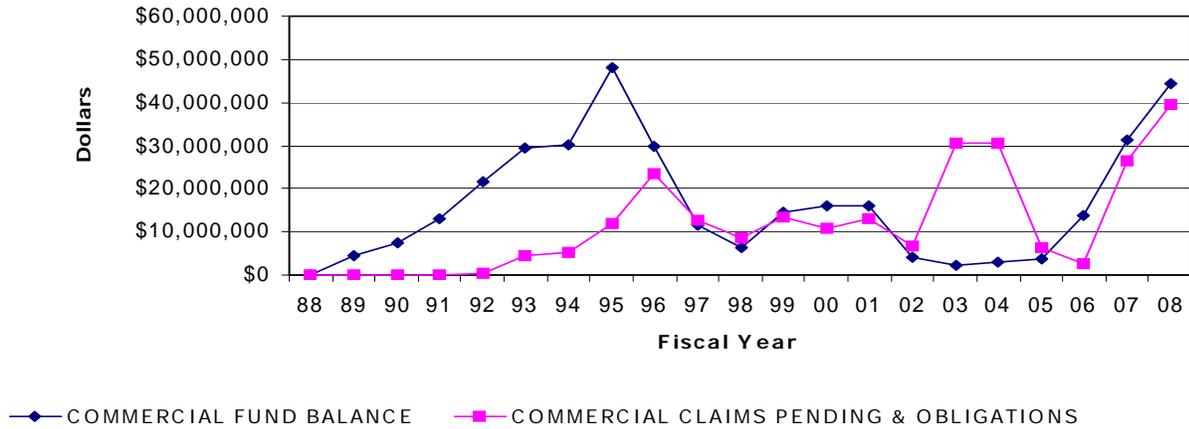
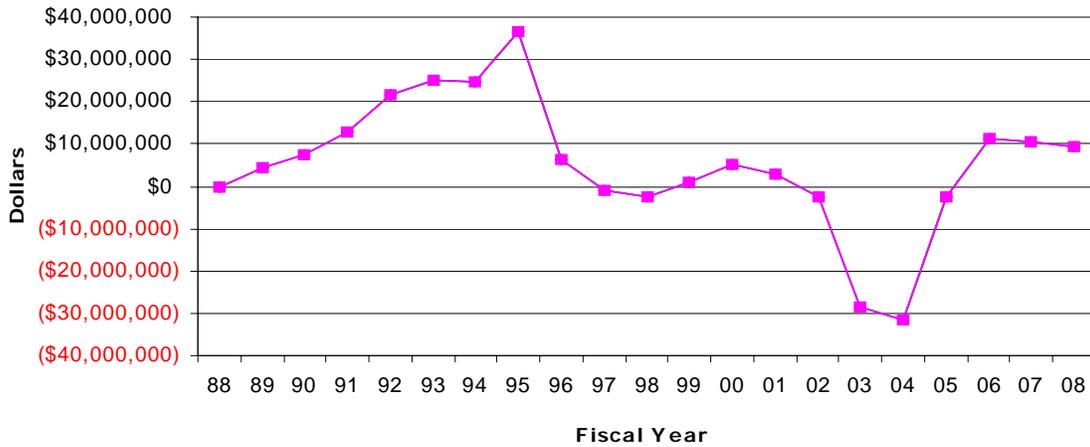


Figure 4 - Commercial Fund Balance Minus Claims Pending & Obligations



**Table 7 – Total Commercial Fund Revenues and Expenditures
7/1/07 – 6/30/08**

Commercial Fund Balance as of 6/30/07	\$ 31,214,205
Total Commercial Revenues (see Table 1)	\$ 27,458,790
Total Commercial Expenditures	\$ 14,370,804
Total Claims and Contracted Cleanups -	\$9,985,744
Transfers ¹	- \$1,525,600
Administrative Costs	- \$2,859,460
Total Projected Estimated Obligations²	\$ 35,021,368
Estimated Commercial Fund Balance as of 6/30/08	\$ 9,280,823

1-From Table 4, footnote 12, transfer to the Noncommercial Fund for State Lead expenses.

2-Obligations are an estimated cost to the Fund not previously developed for the annual report. Obligations include estimates of un-reimbursed costs for tasks not requiring pre-approval that were incurred prior to implementation of Session Law 2004-124, outstanding un-reimbursed costs for pre-approved directed tasks, requested reimbursement costs for claims under review, and approved claim costs awaiting reimbursement.

One initiative which may affect a future demand on the Commercial Fund is pay-for-performance (PFP) cleanups. On Oct. 1, 2001, the General Assembly ratified House Bill 1063, which allows responsible parties to participate in the pay-for-performance program on a voluntary basis. PFP requires cleanup goals to be met before payments can be made to environmental consultants. This reimbursement method requires the Commercial Fund to obligate the contracted cleanup costs. PFP obligations may initially place a higher demand on the Commercial Fund, but should decrease the costs of cleanups. PFP was re-authorized by House Bill 2498 in 2008.

Another factor that may increase future demands on the Commercial Fund is the increase in claims for bodily injuries and property damages brought by third parties. In FY 2007-2008, there were no third party claim settlements. However, by the close of FY 2007-2008, there were four third party claims in progress. The financial impact of third party claims cannot be estimated with certainty because the Commercial Fund does not directly control award amounts resulting from legal actions due to third-party claims.

After UST operating fees were increased on January 1, 1997, revenue from this funding source declined through the end of FY 1998-99 (Table 8). This decline was likely due to a reduction in the number of registered USTs which occurred after implementation of the 1998 federal upgrade requirements for USTs. Many tank owners chose to close their USTs rather than bring them into compliance with the new standards. Since 1998, the number of registered USTs has continued to gradually decrease each year, which it has this year also. Since January 1, 1997 annual operating fees have remained unchanged, at \$200 to \$300 per tank, based on tank capacity. In 2008, House Bill 2498 was enacted, which increased the annual operating fee to \$420 per tank, regardless of tank capacity. This legislation was enacted in order to bring sufficient additional revenue into the Commercial Fund to help the state meet two requirements of the federal Energy Policy Act of 2005 – removing free product petroleum at all releases and conducting compliance inspections at least once every three years.

Table 8 – Commercial UST Population and Operating Fee Revenue

<u>Fiscal Year</u>	<u>No. of Commercial USTs Billed</u>	<u>Operating Fee Revenue</u>
FY 1988-89	-	\$ 4,322,917
FY 1989-90	-	\$ 8,086,895
FY 1990-91	57,385	\$ 6,889,969
FY 1991-92	52,529	\$ 9,910,737
FY 1992-93	48,812	\$18,032,784
FY 1993-94	43,314	\$23,661,875
FY 1994-95	39,289	\$ 8,500,000
FY 1995-96	37,529	\$11,050,000
FY 1996-97	37,776	\$10,839,975
FY 1997-98	36,563	\$10,008,917
FY 1998-99	34,428	\$ 8,697,468
FY 1999-00	33,558	\$ 8,844,093
FY 2000-01	33,776	\$ 8,464,019
FY 2001-02	32,839	\$ 8,553,715
FY 2002-03	31,155	\$ 8,087,033
FY 2003-04	32,005	\$ 8,309,807
FY 2004-05	31,518	\$ 7,987,101
FY 2005-06	30,638	\$ 7,951,508
FY 2006-07	30,145	\$ 7,937,236
FY 2007-08	28,477	\$ 7,686,324

At present, there are approximately 6,619 commercial incidents that have yet to be closed out. Risk levels at these sites rank from low to high. With implementation of Session Law 2004-124, the Department now directs most work done at both Commercial and Noncommercial incidents. In addition, all high risk incidents have been assigned a relative risk, and further assessment and remediation is being directed on only those incidents with a high enough relative risk. While the statutory responsibility of the responsible party to address their incident remains, the Session Law limits the number of incidents that can be addressed and the cost of work reimbursed. This improves fiscal control and management, but it will result in a longer time necessary to address all petroleum releases.

Data tracking improvements are continuously made to the UST incident management database. These changes will enable the UST Section to better predict the number of incident closures and project Commercial Fund expenditures.

UST systems pose a substantial threat to human health and the environment. While the total number of reported incidents has decreased, down from over 1,200 a few years ago, there were over 917 releases reported last year. Maintaining the quality of North Carolina's drinking water and groundwater depends on preventing releases to the environment. Direct education and technical assistance for tank owners and operators is critical. Only education and assistance ensure responsible handling of petroleum products (including methyl tert-butyl ether) and early detection in the event of a leak.

North Carolina currently has about 28,477 active regulated USTs at 8,917 facilities. Our inspection data show that over 56 percent of tank owners and operators do not comply with UST regulations. These regulations cover proper operation and maintenance, with an emphasis on leak detection. If we are to preserve the quality of North Carolina's drinking water, improving compliance must be a future priority.



UST Release Incident-Tank Removal

To help the state meet the requirements of the federal Energy Policy Act of 2005, the North Carolina General Assembly (under Session Law 2008-107) authorized DENR to annually use \$791,614 in additional funds from the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund to establish and support 11 positions within the UST program, including one Environmental Program Supervisor, nine Environmental Specialists, and one Environmental Engineer. Adding these positions to the UST program will enable DENR to increase compliance inspection frequency and to conduct UST operator training, actions which are not only required by the federal Energy Policy Act, but which will prevent releases of petroleum from USTs into the environment. The additional funds are made available from part of the increase in annual operating fees.

Noncommercial Fund

As of June 30, 2008, the Noncommercial Fund balance was \$3,354,413 (Table 9). The total for pending claims stood at \$3,824,617 (Table 6). Compared to the previous fiscal year, claims against the Noncommercial Fund and reimbursements from the Noncommercial Fund have increased. This trend is most likely the result of increased environmental awareness on the part of buyers and lenders during sales of residential

property where heating oil USTs are located. Many of the releases from unregulated USTs are discovered during property transfers. The Department expects this trend to continue.

**Table 9 - Total Noncommercial Fund Revenues, Expenditures and Balance
7/1/07-6/30/08**

Noncommercial Fund Balance as of 6/30/07	\$4,845,847
Total Noncommercial Revenues (see Table 2, page 3)	\$6,030,546
Total Noncommercial Expenditures	- \$7,521,980
Total Claims and Contracted Cleanups	\$6,105,295
Administrative Costs	\$1,416,685
Noncommercial Fund Balance as of 6/30/08	\$3,354,413
Projected Noncommercial Fund Obligations¹	\$6,046,525
Estimated Noncommercial Fund Balance as of 6/30/08	- \$2,692,112

¹ Obligations are an estimated cost to the Fund not previously developed for the annual report. Obligations include estimates of un-reimbursed costs for tasks not requiring pre-approval that were incurred prior to implementation of Session Law 2004-124, outstanding un-reimbursed costs for pre-approved directed tasks, requested reimbursement costs for claims under review, and approved claim costs awaiting reimbursement.

Figure 5 - Noncommercial Fund Balance and Claims Pending & Obligations

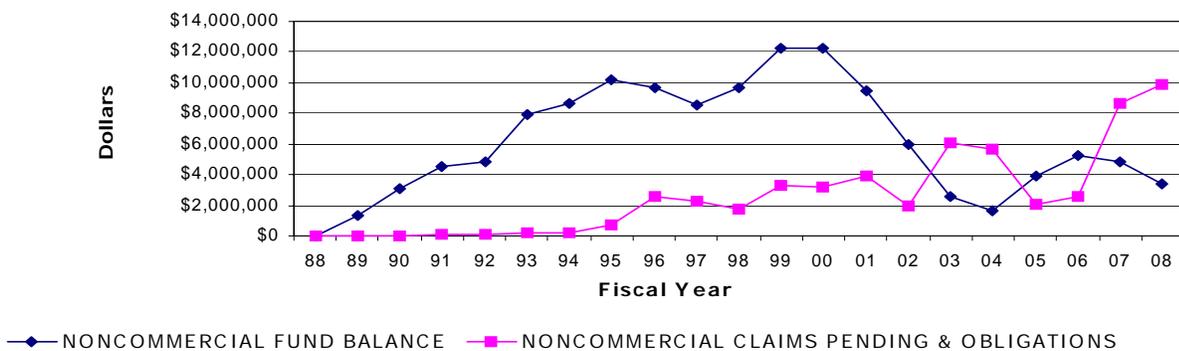


Figure 6 - Noncommercial Fund Balance Minus Claims Pending & Obligations

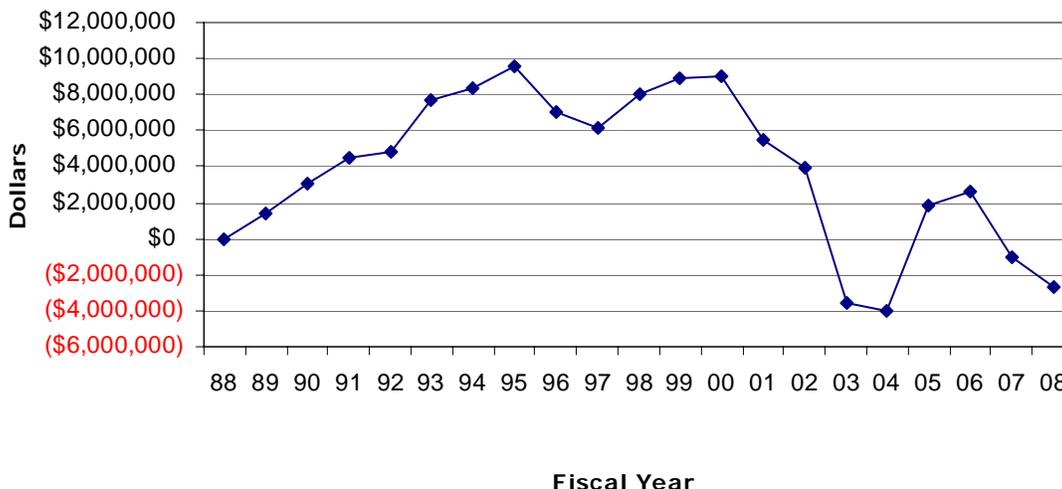


Table 10 shows the estimated cost to complete cleanups for noncommercial incidents reported from July 1, 2007 to June 30, 2008. It should be noted, however, that cleanups can easily extend over several years and costs may vary greatly. In addition, these figures do not include remedial costs for reported releases from past fiscal years.

Table 10 – Estimate of Cleanup Costs for Noncommercial Incidents Reported July 1, 2007 – June 30, 2008

Region	Incidents*	Total Estimated Cleanup Cost**
Asheville	40	\$ 988,000
Fayetteville	5	\$ 123,500
Mooreville	103	\$ 2,544,100
Raleigh	116	\$ 2,865,200
Washington	79	\$ 1,951,300
Wilmington	38	\$ 938,600
Winston-Salem	109	\$ 2,692,300
Total	490	\$12,102,400

*In evaluating the last 12-month period, approximately 53% of reported new releases are from noncommercial sites
 **An average cost of \$ 24,700 is used as an estimate of total cleanup costs for noncommercial sites

Pay for Performance

On October 15, 2001, House Bill 1063 was enacted by the North Carolina General Assembly. This bill gives the Division of Waste Management's Underground Storage Tank program the authority to allow voluntary performance-based cleanups of discharges or releases of petroleum from underground storage tanks. Two petroleum release incidents were ultimately selected for the initial pilot program and performance-based contracts were awarded to two qualified environmental service providers to cleanup the releases for set costs and in specified time periods. In both cases, specified milestones (generally percentage reductions in contaminate levels in the soil and groundwater) must be achieved before reimbursements for costs are made to the environmental service providers from the Commercial Trust Fund. Cleanup continues in accordance with the awarded contracts at both incidents with both incidents having reached the 75% cleanup milestones ahead of the projected schedule.

House Bill 2498 extended the voluntary pilot program retroactively back to October 1, 2001 with a new expiration date of October 1, 2011. The UST Section will continue to notify applicants to the UST Program of the availability of pay-for-performance and encourage responsible parties of UST releases to consider pay-for-performance cleanups of their incidents.

Recommendations

The UST Section makes the following recommendations for the Commercial and Noncommercial Cleanup Funds and the UST program:

- Transition from (and ultimately terminate) providing required financial responsibility (FR) for owners and operators of regulated, commercial USTs from the Commercial Cleanup Fund to other FR mechanisms, such as private insurance, bonding, letters of credit, self-insurance, and others. This action will initially reduce and ultimately end the use of Fund resources to clean up new releases from UST systems of responsible owners and operators. Fund resources will continue to be used to clean up existing releases, and new releases from UST systems owned or operated by non-viable parties. Transitioning to other non-Fund FR mechanisms will also help to reduce the number and severity of releases by giving tank owners and operators additional economic incentives to prevent releases and clean up releases before contamination reaches the state's soil and ground water.
- Prevent releases by increasing the compliance inspection frequency for USTs in North Carolina. More frequent inspections will ensure UST systems are in compliance with all release prevention and detection requirements, detect and correct more out-of-compliance equipment and operating procedures that could allow a release, and detect some undiscovered releases before contamination of the soil and ground water occurs.
- Prevent releases by providing more frequent release prevention and detection training to UST owners and operators. Not only is more extensive owner/operator training required by the federal Energy Policy Act of 2005, but it is particularly important due to the large number of UST facilities in North Carolina being bought and operated by new and inexperienced owner/operators each year.
- Continue to find and implement better and more cost-effective methods for assessing and cleaning up petroleum releases, including reviewing existing rules and

regulations and reducing or eliminating requirements whenever practical while maintaining a sufficient level of protection for public health and the environment.

- Continue to encourage responsible parties of UST releases to consider pay-for-performance cleanups of their incidents. Pay-for-performance (PFP) is a reimbursement method that requires cleanup goals to be met before payments can be made to environmental consultants. The PFP pilot program indicates that cost savings are realized in cleaning up the pilot program sites selected.