



PAT MCCRORY
Governor

DONALD R. VAN DER VAART
Secretary

MEMORANDUM

TO: ENVIRONMENTAL REVIEW COMMISSION
The Honorable Jimmy Dixon, Co-Chairman
The Honorable Chuck McGrady, Co-Chairman
The Honorable Trudy Wade, Co-Chairman

APPROPRIATIONS ON NATURAL AND ECONOMIC RESOURCES
The Honorable Trudy Wade, Co-Chairman
The Honorable Andrew Brock, Co-Chairman
The Honorable Bill Cook, Co-Chairman

APPROPRIATIONS, AGRICULTURE AND NATURAL AND ECONOMIC RESOURCES
The Honorable Jimmy Dixon, Co-Chairman
The Honorable Pat McElraft, Co-Chairman
The Honorable Roger West, Co-Chairman

FROM: Mollie Young, Director of Legislative Affairs, NCDEQ

SUBJECT: Underground Storage Tank Annual Report

Pursuant to G.S. 143-215.94M, "The Secretary shall present an annual report to the Environmental Review Commission, the Fiscal Research Division, the Senate Appropriations Subcommittee on Natural and Economic Resources, and the House Appropriations Subcommittee on Natural and Economic Resources which shall include at least the following: A list of all discharges or releases of petroleum from underground storage tanks. Repealed by Session Laws 2015-241, s. 14.16A(h), effective December 31, 2016. A list of all cleanups undertaken by tank owners or operators and the status of these cleanups. A statement of receipts and disbursements for the Commercial Fund. A statement of all claims against the Commercial Fund, including claims paid, claims denied, pending claims, anticipated claims, and any other obligations. The adequacy of the Commercial Fund to carry out the purposes of this Part together with any recommendations as to measures that may be necessary to assure the continued solvency of the Commercial Fund. Repealed by Session Laws 2012-200, s. 23, effective August 1, 2012. The report required by this section shall be made by the Secretary on or before November 1 of each year.

If you have any questions or need additional information, please contact me by phone at (919) 339-9433 or via e-mail at mollie.young@ncdenr.gov.



Cc: Don Van der Vaart, Secretary, NCDEQ
Tom Reeder, Assistant Secretary for Environment, NCDEQ
Michael Scott, Director of Waste Management, NCDEQ
Lanier McRee, Fiscal Research Division, NCGA

Annual Report to the Environmental Review Commission North Carolina General Assembly

Status of Leaking Petroleum Underground Storage Tanks The State Cleanup Funds

Fiscal Year 2016 (July 1, 2015 to June 30, 2016)

**N.C. Division of Waste Management
Underground Storage Tank Section**



**NORTH CAROLINA DEPARTMENT OF
ENVIRONMENTAL QUALITY**

Pat McCrory

Governor

Donald R. van der Vaart

Secretary

N.C. Department of Environmental Quality

Michael Scott

Director

N.C. Division of Waste Management

NCDEQ

N.C. Division of Waste Management

Underground Storage Tank (UST) Section

1646 Mail Service Center

Raleigh NC 27699-1646

(919) 707-8171

<http://portal.ncdeq.org>

Table of Contents

Executive Summary, Underground Storage Tank Cleanup Funds FY 2016	Page 4
Cleanup Fund Management	Page 7
Commercial Fund Status	Page 7
Noncommercial Fund Status	Page 8
Recommendations	Page 9
Figures and Tables	Page 10

EXECUTIVE SUMMARY – UNDERGROUND STORAGE TANK (UST) CLEANUP FUNDS FY 2016

North Carolina’s underground storage tank program is administered by the Division of Waste Management’s Underground Storage Tank (UST) Section in the North Carolina Department of Environmental Quality (DEQ). The section enforces UST regulations and manages funds used to perform cleanups of petroleum UST discharges or releases (UST incidents). The program was initiated in 1988 in response to growing reports of USTs leaking petroleum into soil and groundwater. Funding for the program is provided by the Commercial and Noncommercial Cleanup Funds, the federal Leaking Underground Storage Tank (LUST) prevention grant, and the federal LUST cleanup grant.

The Commercial and Noncommercial Cleanup Funds are also used to provide safe alternatives to drinking water wells that have been contaminated by petroleum releases from USTs. In FY 2016, the UST program provided alternative water supplies, including bottled water, point-of-entry filtration systems, and waterline extensions, to replace 109 contaminated water supply wells serving 436 citizens.

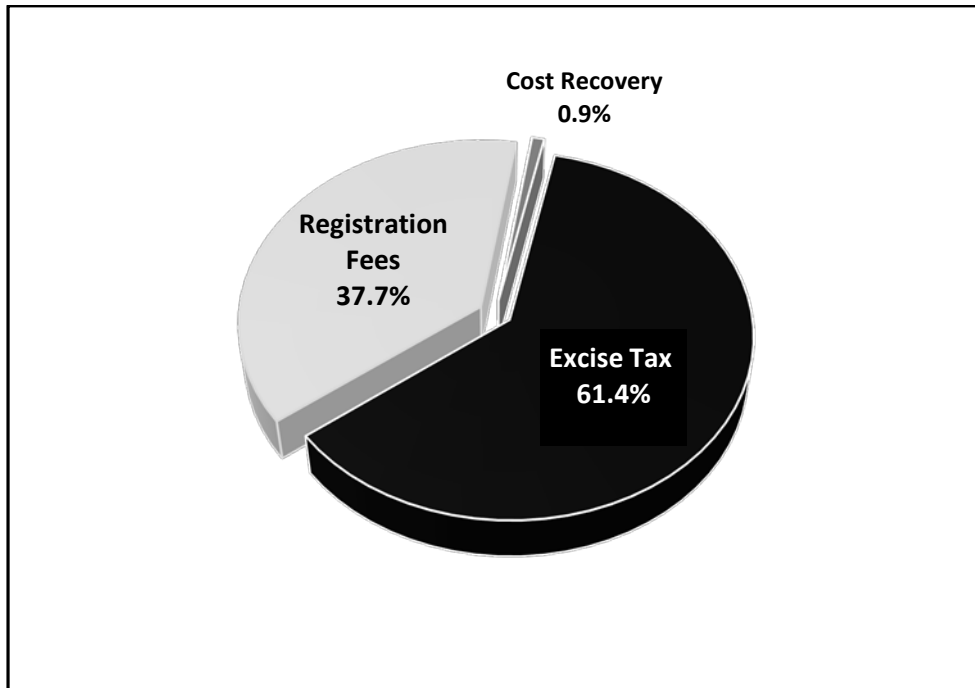
Lists of all known discharges or releases from underground storage tanks, all Responsible Party (RP) cleanups, Noncommercial Fund cleanups requiring state funding, and cleanup status updates are available from the Division of Waste Management.

**FY 2016 Commercial Fund Activity
(July 1, 2015 through June 30, 2016)**

	Amount	Totals
Fund Balance on 7/1/2015	\$36,092,298	\$36,092,298
Revenues (7/1/15 – 6/30/16)		\$26,496,737
Motor Fuel & Gasoline Excise Tax	\$16,266,762	
UST Operating Fees	\$9,999,704	
State Lead Cost Recovery	\$230,272	
Interest	\$ 0	
Loan Fund Collection and Interest	\$ 0	
Transfer - Bernard Allen Trust Fund	\$ 0	
Expenditures		\$27,601,914
Reimbursements	\$18,901,776	
State-Lead Contracting & Laboratory	\$4,624,432	
Program Administration	\$3,985,706	
Transfers from Fund		\$90,000
Transfer to Noncommercial Fund	\$ 0	
Transfer to Department of Agriculture	\$90,000	
Transfer to Federal LUST Program (cost recovery)	\$ 0	
Fund Balance on 6/30/2016		\$34,987,121
Estimated Obligations¹		\$15,154,410
RP-lead cleanup	\$9,611,546	
State-lead cleanup	\$3,255,598	
Pre-approved non-directed actions	\$2,287,266	
Estimated Obligated Balance 06/30/2016		\$19,832,711

1. Estimated 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; approved costs for claims awaiting reimbursement; unreimbursed costs for approved non-directed tasks; and any remaining program expenses.

Commercial Fund Revenue Sources – FY 2016

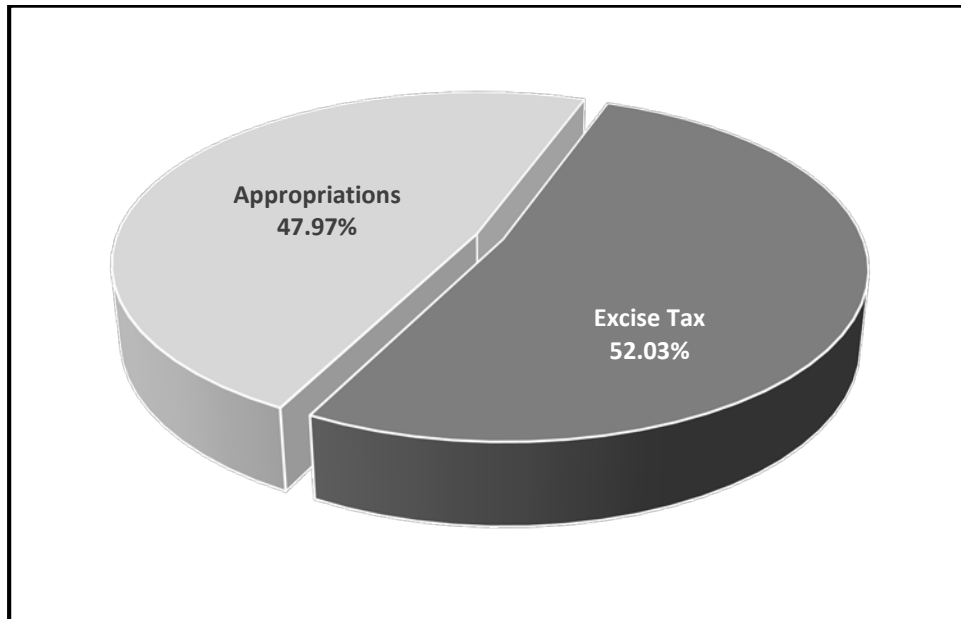


**FY 2016 Noncommercial Fund Activity
(July 1, 2015 through June 30, 2016)**

	Amount	Totals
Fund Balance on 7/1/2015		\$348,018
Revenues (7/1/15 – 6/30/16)		\$4,939,450
Motor Fuel & Gasoline Excise Tax	\$2,570,022	
Interest	\$ 0	
Appropriations	\$2,369,428	
Cost Recovery	\$ 0	
Expenditures		\$5,066,483
Total Claims and Contracted Cleanups	\$5,066,483	
Administrative Costs	\$ 0	
Fund Balance on 6/30/2016		\$220,986
Estimated Obligations¹		\$1,654,260
Estimated Obligated Balance 6/30/16		(\$1,433,274)

1. Estimated 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, approved costs for claims awaiting reimbursement, unreimbursed costs for approved non-directed tasks, and any remaining program administration costs.

Noncommercial Fund Revenue Sources – FY 2016



**Summary of Key Statistics since UST Program Inception
(July 1, 1988 to June 30, 2016)**

Commercial Fund Revenues	\$ 727,552,667
Commercial Fund Expenditures	\$ 692,446,657
Noncommercial Fund Revenues	\$ 161,652,032
Noncommercial Fund Expenditures	\$ 161,431,980
Petroleum UST Releases – Reported	
Commercial	19,835
Noncommercial	10,315
Total	30,150
Petroleum UST Releases - Closed Out	
Commercial	14,256
Noncommercial	8,140
Total	22,396
<u>FY 2016 Activity</u>	
Petroleum UST Releases - Reported	
Commercial	284
Noncommercial	437
Petroleum UST Releases – Closed Out	
Commercial	497
Noncommercial	442

Cleanup Fund Management

In FY 2016, the Division of Waste Management's UST Section managed two funds for cleanup of environmental contamination from petroleum underground storage tank (UST) releases. The Commercial Cleanup Fund pays the costs of cleanups of releases of petroleum from commercial USTs, which are typically regulated gasoline station tanks or heating oil tanks of greater than 1,100-gallons capacity. The owners of commercial USTs pay annual operating fees into the Commercial Cleanup Fund and also pay deductible amounts toward the costs of assessments and cleanups of petroleum releases. The Noncommercial Cleanup Fund pays the costs of cleanups of releases of petroleum from unregulated USTs such as home heating oil tanks and smaller farm tanks. The owners of noncommercial USTs do not pay fees. New legislation for FY 2014 added a \$1,000 deductible and 10 percent co-pay up to a combined maximum owner share of \$2,000 for cleanup expenses.

In FY 2016, the UST section managed the cleanup funds in accordance with the requirements of N.C.G.S 143-215.94E which directs the department to give priority to cleanup of releases in emergency situations and to those that pose the greatest risks to human health and the environment. The statute also directs the division to order non-emergency work only if the costs could be reimbursed by the appropriate cleanup fund within 90 days of claim approval. To meet these legislative requirements, the division uses a Risk, Rank and Abatement (RRA) scoring system that quantifies the relative risks of all releases, allowing the division to direct work at the highest risk incidents and reimburse the costs of that work within 90 days. Every week the division reviews balances, expenditures and obligations of both the Commercial and Noncommercial Funds, and periodically adjusts the RRA score threshold in order to direct as much cleanup work as resources will allow. In FY 2016, as a result of implementing more intensive oversight and cost control measures the Section was able to lower the RRA score threshold for the Commercial Fund for the first time since FY 2013. By the end of FY 2016, the program was able to direct cleanup activities at all high-risk commercial UST releases and all but 266 intermediate-risk releases. During FY 2016, the program was able to direct cleanup activities at only about two percent of all high-risk noncommercial UST releases.

Commercial Fund Status

For the 12-month period from July 1, 2015 through June 30, 2016, the UST Commercial Fund cash balance declined. On June 30, 2016, the Commercial Fund balance was \$34,987,121, a decline of \$1,105,177 from the FY 2015 end-of-year balance. Beginning in late FY 2014 and continuing through FY 2016 the Fund undertook an intensive re-evaluation of its risk-based closure process and instituted a more rigorous review of pre-approvals for site work. This has resulted in cost savings that more closely balanced revenues with expenditures during FY 2016. Concurrently, the Fund undertook an administrative review of all pending task authorizations with regard to statute of limitations requirements. Pending estimated obligations as of June 30, 2016 were \$15,154,410. Both of these measures remain on-going, with the goal of the Fund eventually being able to direct work on all high and intermediate risk incidents.

Estimated Costs of Clean Up

The Department can estimate the costs of cleaning up all known commercial UST releases by multiplying the average cost to the Fund per release (\$153,497 for FY 2012 – FY 2016) by the number of known commercial releases needing cleanup (5,579). The result is approximately \$856.4 million, an amount that includes about \$15.2 million obligated for cleanups already underway. At current revenue levels (\$26 million per year on average), it will take the Fund approximately 31.6 years to generate the receipts necessary to pay existing obligations. This estimate does not account for the costs of cleaning up releases not yet reported (future releases). The number of reported new releases has decreased in recent years, due to increased inspection and prevention measures implemented in 2008. In FY2011 through FY2016, an average of 272 new, fund-eligible commercial UST releases per year were discovered and reported.

Noncommercial Fund Status

The Noncommercial Cleanup Fund also shows a negative FY 2016 balance because claims exceeded revenue. The General Assembly made appropriations of \$4.88 million in FY 2013, \$3.5 million in FY 2014, \$3.42 in FY 2015, and \$2.37M in FY 2016 to the Noncommercial Cleanup Fund. In all four fiscal years these funds were quickly expended, primarily to reimburse approved pending claims. On June 30, 2016, the Noncommercial Fund cash balance was \$220,986 with pending estimated obligations of \$1,654,260. The estimated obligated Noncommercial Cleanup Fund balance at the end of FY 2016 is - \$1,433,274.

Estimated Costs to Clean Up

House Bill 97, 2015 Appropriations Act directs the phase-out of the Noncommercial Cleanup Fund as follows:

- Claims for work reported by October 1, 2015 may be submitted by June 30, 2016.
- No claims will be accepted after June 30, 2016.
- Outstanding assets and liabilities of the Noncommercial Fund will be transferred to the Commercial Fund for appropriate distribution after December 31, 2016.

Based upon claims and appeals received prior to June 30, 2016, the Department estimates that liabilities transferred to the Commercial Fund will be approximately \$1.65M. US EPA has stated that this transfer will be viewed as a diversion of federally-required financial responsibility funding.

FY 2016
Petroleum Underground Storage Tank Cleanup Funds
Recommendations

- 1) Continue on-going cost control measures:
 - i) Evaluation and implementation of better, more systematic ways to apply risk-based closure criteria to incidents.
 - ii) Institution of more rigorous review of pre-approvals for requested site work.
- 2) Investigate possible revenue enhancement mechanisms to enable the Commercial Fund to better meet projected future obligations.
- 3) Consider long-term transition from the Commercial Cleanup Fund as the primary mechanism for owners of regulated USTs to meet federal financial responsibility requirements. In place of or in conjunction with a state-subsidized fund, owners and operators of newly installed or replaced or upgraded, regulated commercial UST systems should be required to use other financial responsibility mechanisms, such as private insurance, bonding, letters of credit, or self-insurance.
- 4) Continue the successful programs previously implemented to prevent releases by maintaining a compliance inspection frequency of at least every three years for USTs in North Carolina.
- 5) Continue the successful programs previously implemented to prevent and minimize releases by providing release prevention and detection training to UST owners and operators.

Tables and Figures

Table 1 - UST Releases Since Program Inception (FY 1989 - FY 2016)

Commercial UST Releases		Noncommercial UST Releases	
Releases Reported	19,835	Releases Reported	10,315
RP-Lead	18,185	RP-Lead	10,059
State-Lead	1,650	State-Lead	256
Cleaned Up to No Further Action	14,256	Cleaned Up to No Further Action	8,140
RP-Lead	13,468	RP-Lead	7,998
State-Lead	788	State-Lead	142
Ongoing Cleanups	3,131	Ongoing Cleanups	188
RP-Lead	2,389	RP-Lead	188
State-Lead	742	State-Lead	0
No Action Currently Being Taken	2,448	No Action Currently Being Taken	2,175
RP-Lead	2,228	RP-Lead	2,061
State-Lead	120	State-Lead	114

Figure 1 - UST Incidents & UST Incidents Closed (Cumulative)

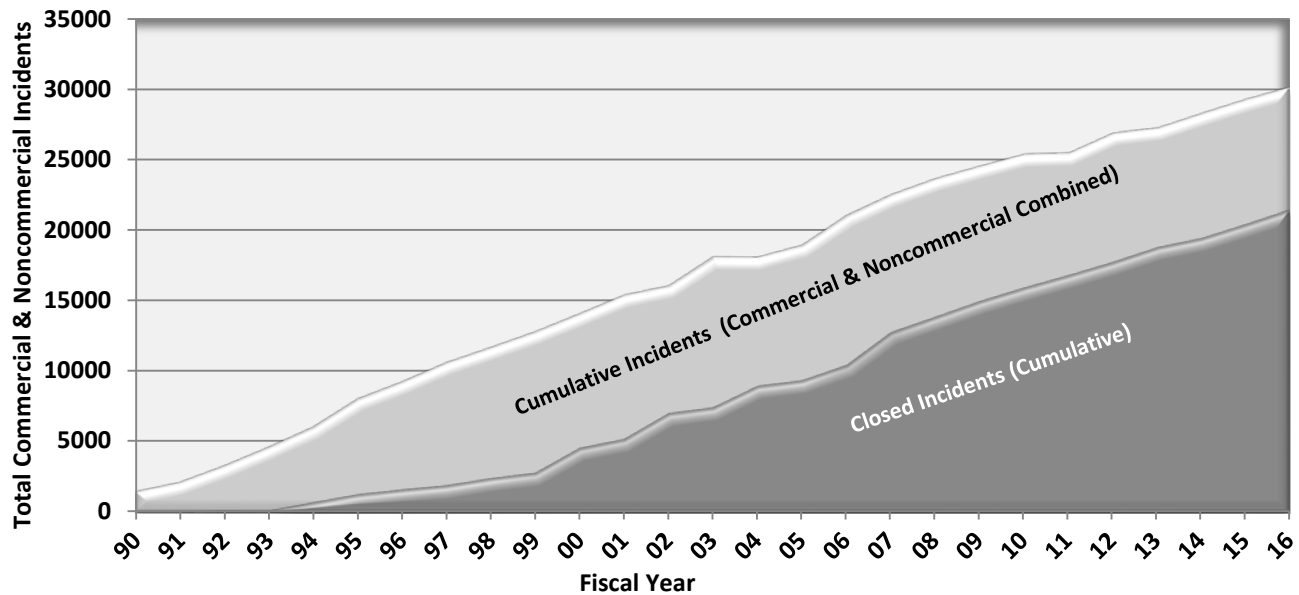


Figure 1A - Open UST Incidents

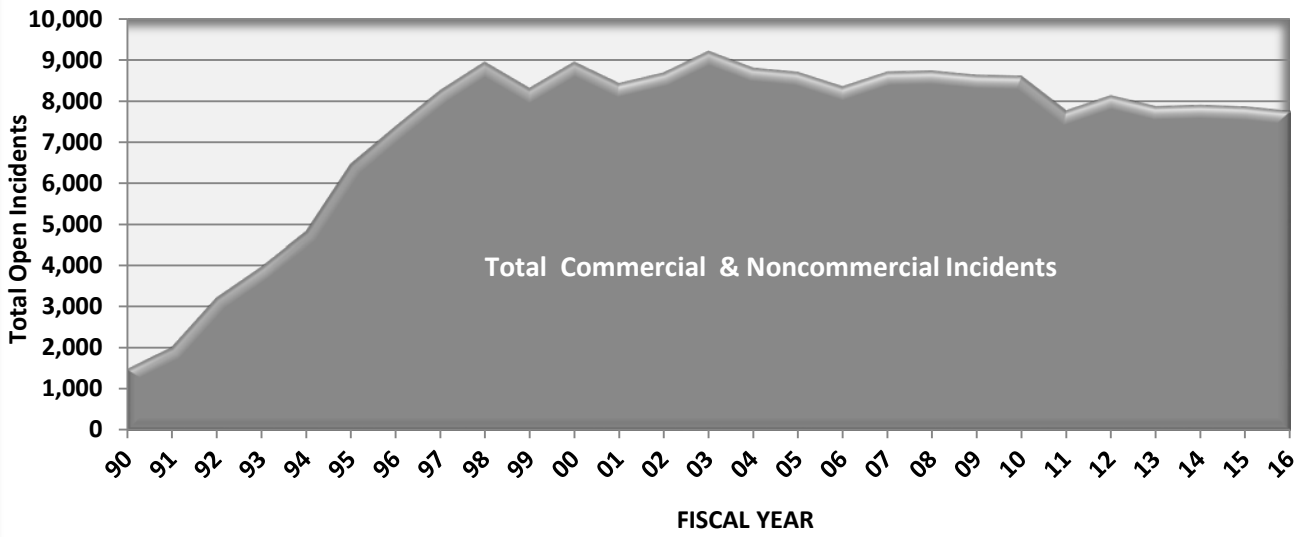


Table 2
Receipts, Disbursements and Program Expenses for the Commercial Fund
7/1/88 – 6/30/16

Fiscal Year	Receipts	Disbursements¹	Legislatively Allowed Program Expenses
FY 1989	\$ 2,337,685	\$ 14,768	
FY 1990	5,773,632	79,080	\$ 201,255
FY 1991	7,330,573	1,616,760	547,595
FY 1992	13,484,008	4,409,229	517,221
FY 1993	18,032,784	9,651,948	601,687
FY 1994	24,438,966	22,904,802	694,424
FY 1995	56,037,135 ²	37,405,510	666,270
FY 1996	28,178,768	44,060,639	2,322,632
FY 1997	28,564,034	44,163,273	2,623,339
FY 1998	27,291,220	30,267,392	2,530,036
FY 1999	26,783,344	16,104,152	2,567,668
FY 2000	27,178,623	22,820,069 ³	2,579,540
FY 2001	27,240,303	24,566,132 ⁴	2,730,236
FY 2002	27,124,210	36,872,426	2,397,264
FY 2003	27,055,759	26,498,565	2,221,851
FY 2004	26,934,685	23,514,179 ⁵	2,527,451
FY 2005	50,255,908 ⁷	46,966,083 ⁶	2,654,447
FY 2006	28,143,119	15,474,991 ⁸	2,636,228
FY 2007	27,564,837	7,372,403 ⁹	2,725,418
FY 2008	27,458,790	11,511,344 ¹⁰	2,859,460
FY 2009	31,026,131	15,007,590 ¹¹	3,380,143
FY 2010	27,969,400	17,760,225 ¹²	3,703,143
FY 2011	26,951,504	31,697,736 ¹³	3,859,161
FY 2012	26,311,956	29,132,749 ¹⁴	3,881,825
FY 2013	26,316,112	29,187,009 ¹⁴	3,960,943
FY 2014	28,222,762	27,091,769 ¹⁴	3,806,616
FY 2015	27,049,782	25,607,888 ¹⁴	3,890,089
FY 2016	26,496,737	23,616,208 ¹⁴	3,985,706
TOTAL	\$ 727,552,767	\$ 625,374,919	\$ 67,071,648

1. Does not include program expenses.
2. Commercial receipts for FY 1995 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 clean-up expenditure rather than as a program expense.
4. Includes \$33,866 transferred to the Federal Trust Fund for clean-up expenditure.
5. Includes transfer of \$2,036,932 from Commercial to Noncommercial Trust Funds per GS 119.18(b); transfer of \$90,000 to Department of Agriculture and Consumer Services; and transfer of \$452,722 to the Federal Trust Fund for clean-up expenditure.
6. Includes transfer of \$43,150,730 from Commercial to Noncommercial Trust Fund per GS 119.18(b). Transfer from Department of Agriculture and Consumer Services of \$38,702 to Federal Trust Fund.
7. Includes additional revenue from the 1-year 1.1 cent per gallon excise tax or \$19 million to the Trust Fund.
8. Includes \$1,922,601 transfer to Noncommercial Fund, \$90,000 transfer to Department of Agriculture and Consumer Services, and \$30,016 transfer to repay Federal Trust Fund for State Lead program expenses.
9. Includes transfer to Noncommercial Fund of \$598,935 and disbursement from the Commercial Fund to the Department of Agriculture and Consumer Services (\$90,000) and Federal LUST Grant (\$108,904).
10. Includes transfer to Noncommercial Fund of \$1,381,848, and disbursement from the Commercial Fund to the Department of Agriculture and Consumer Services (\$90,000), and Federal LUST Grant (\$53,752).
11. Includes transfer to Noncommercial Fund of \$1,004,895, and disbursement from the Commercial Fund to the Department of Agriculture and Consumer Services (\$90,000).
12. Includes disbursement to Department of Agriculture and Consumer Services of \$90,000.
13. Includes disbursements to Department of Agriculture and Consumer Services (\$90,000) and legislatively mandated transfer of interest (\$614,239.29).
14. Includes disbursements to Department of Agriculture and Consumer Services (\$90,000).

**Table 3 – Claims Processed for the Commercial Cleanup Fund
7/1/88 – 6/30/15**

Claim Action	Number
Claims Paid	44,245
Incidents Denied Totally ¹	33
Claims Denied Partially ²	17,656
Claims Pending	264
Contracted Cleanups ³	1,655

1 Ineligible (operating fees not paid; release discovery pre-dates program)
 2 Claims contain excessive or undocumented costs
 3 State lead actions undertaken/completed

Figure 3 - Commercial Fund Balance and Claims Pending & Obligations

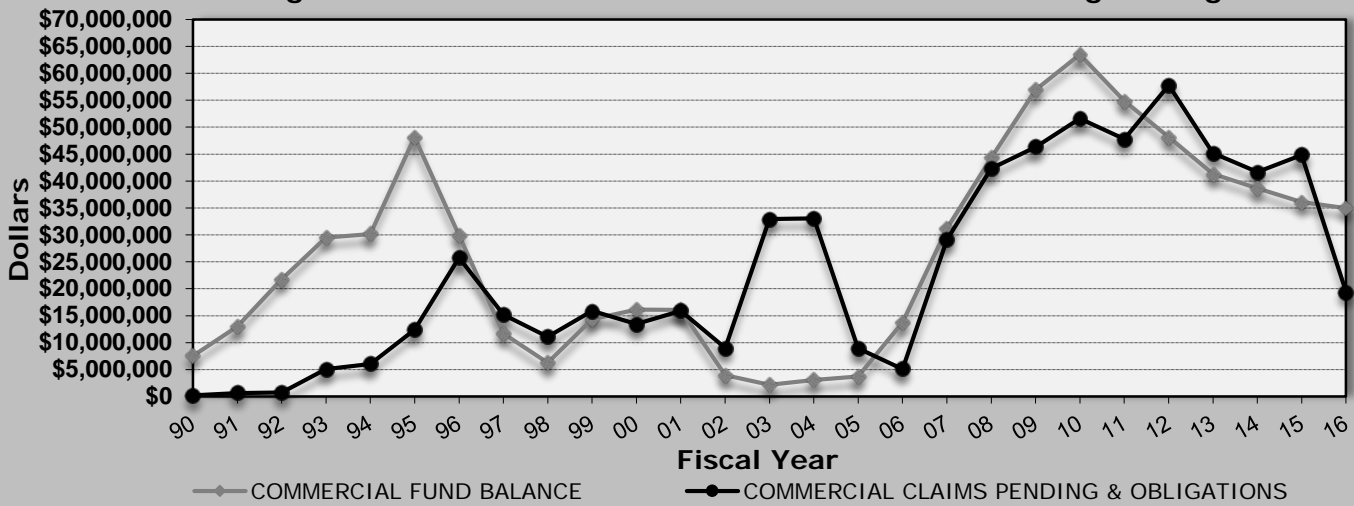
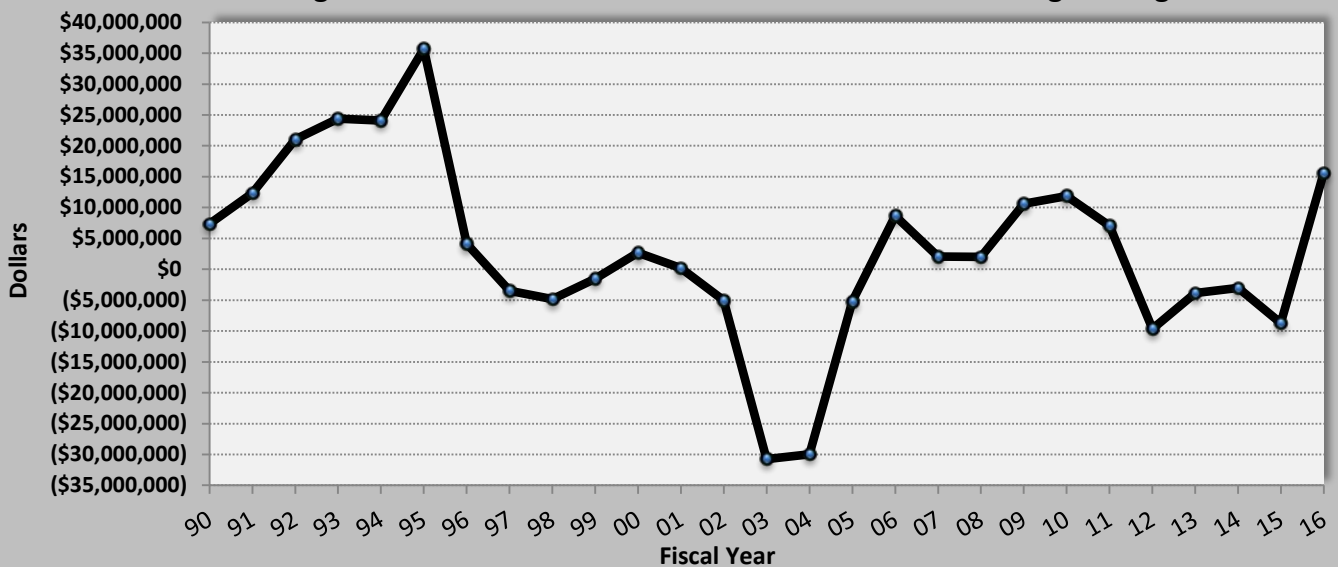


Figure 4 - Commercial Fund Balance Minus Claims Pending & Obligations



**Table 4 – Receipts & Disbursements for Noncommercial Cleanups
7/1/88 – 6/30/15**

Fiscal Year	Receipts	Disbursements¹	Program Expenses
FY 1989	\$ 0	\$ 0	\$ 0
FY 1990	2,905,035	0	201,254
FY 1991	2,934,347	564,206	547,595
FY 1992	3,018,344	2,143,155	517,221
FY 1993	7,693,288	4,069,497	601,686
FY 1994	3,404,086	2,012,312	694,423
FY 1995	5,194,725	2,900,368	666,270
FY 1996	5,215,550	5,029,109	783,684
FY 1997	5,587,781	5,924,799	801,143
FY 1998	5,717,592	3,869,091	667,724
FY 1999	5,945,461	2,776,105	620,574
FY 2000	5,636,563	5,028,505	570,738
FY 2001	5,811,666	7,890,618 ²	733,811
FY 2002	6,620,808 ³	9,182,320	913,755
FY 2003	7,664,329 ⁴	9,898,806	1,166,494
FY 2004	8,060,151	7,756,579	1,244,864
FY 2005	14,885,997 ⁵	11,326,318	1,265,079
FY 2006	7,615,613 ⁶	5,005,578	1,298,441
FY 2007	6,053,993 ⁷	5,099,349	1,349,006
FY 2008	6,030,546 ⁸	6,105,295	1,416,685
FY 2009	6,178,730 ⁹	5,878,808	1,324,956
FY 2010	6,726,977 ¹⁰	4,371,297	1,451,830
FY 2011	6,388,636	5,922,935	1,518,243 ¹¹
FY 2012	2,402,783	3,001,065	1,521,606
FY 2013	7,272,018 ¹²	5,494,840	1,552,619
FY 2014	5,895,127 ¹³	4,599,607	1,492,126
FY 2015	5,852,436 ¹⁴	4,068,263	1,524,845
FY 2016	4,939,450 ¹⁵	5,066,483	0
TOTAL	\$161,652,032	\$134,985,308	\$ 26,446,672

1. Does not include program expenses.
2. \$2 million was transferred from the Noncommercial Fund to the State's General Fund.
3. Includes transfer of \$784,382 from Circle K Settlement Fund.
4. Includes transfer of \$3,418,990 of motor fuel and kerosene tax from Commercial to Noncommercial trust funds due to balance below \$5 million – GS 119.18(b).
5. Includes additional revenue from the 1-year 1.1 cent per gallon excise tax or \$19 million to the Trust Fund.
6. Includes \$1,922,601 transfer to Noncommercial Fund, \$90,000 transfer to the Department of Agriculture and Consumer Services and \$30,016 transfer to repay Federal Trust Fund for State Lead program expenses.
7. Includes transfer to Noncommercial Fund of \$598,935 and disbursement from Commercial Fund to Department of Agriculture and Consumer Services (\$90,000) and Federal LUST Grant (\$108,904).
8. Includes transfer to Noncommercial Fund of \$1,381,848, and disbursement from the Commercial Fund to the Department of Agriculture and Consumer Services (\$90,000), and Federal LUST Grant (\$53,752).
9. Includes transfer to Noncommercial Fund of \$1,004,895, and disbursement from the Comm. fund to Department of Agriculture and Consumer Services (\$90,000).
10. Includes transfer from NC DOT of \$4,283,393.
11. Includes legislatively mandated transfer of interest from the Fund - \$614,239.29.
12. Includes legislative appropriation of funds and interest transfer to the receipts for the Fund - \$4,880,000.
13. Includes legislative appropriation of funds and interest transfer to the receipts for the Fund - \$3,500,000.
14. Includes legislative appropriation of funds and interest transfer to the receipts for the Fund - \$3,417,105.
15. Includes legislative transfer of funds to the receipts for the Fund - \$2,369,428.

**Table 5 – Claims Processed for the Noncommercial Cleanup Fund
7/1/88– 6/30/15**

Claim Action	Number
Claims Paid	15,624
Incidents Denied Totally ¹	4
Claims Denied Partially ²	5,855
Claims Pending	188
Contracted Cleanups ³	254

1 Ineligible (operating fees not paid; release discovery pre-dates program)
 2 Claims contain excessive or undocumented costs
 3 State lead actions undertaken/completed

Figure 5 - Noncommercial Fund Balance and Claims Pending & Obligations

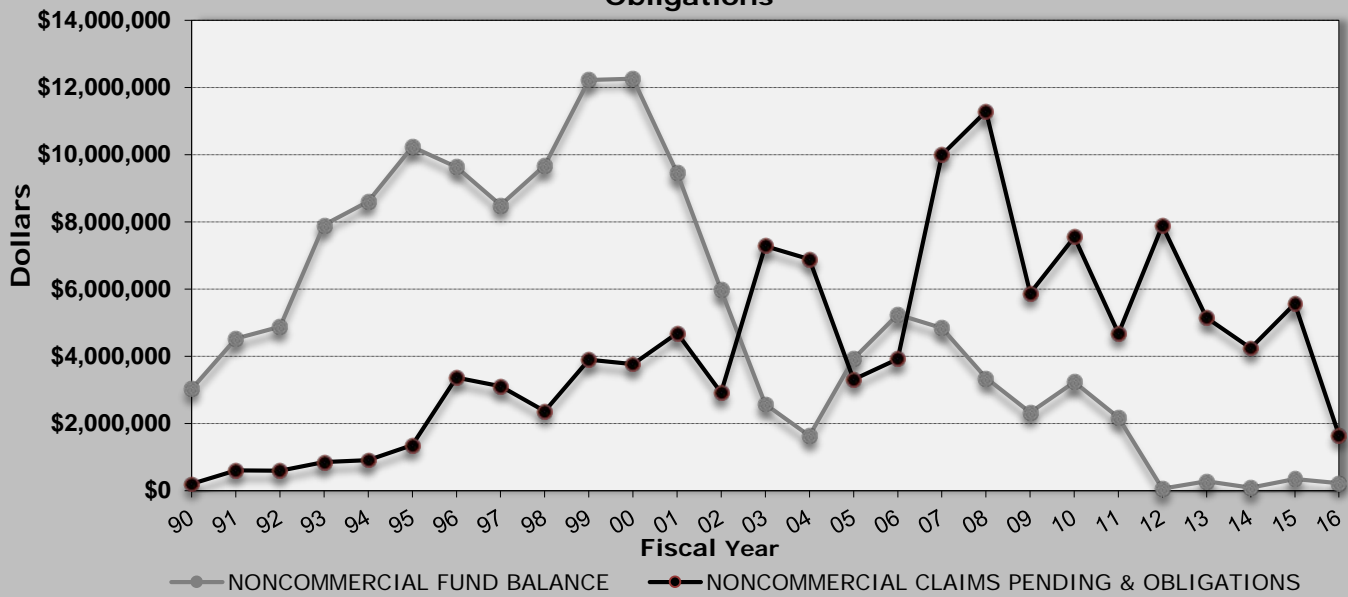


Figure 6 - Noncommercial Fund Balance Minus Claims Pending & Obligations

