

What the Sun-Setting of the Non-Commercial fund means to Responsible Parties, Consultants and the Underground Storage Tank (UST) Program

On Sept. 18, 2015, the state of North Carolina began the process of sun-setting the Non-Commercial Fund in Session Law 2015-241. No new release will be eligible for the Non-Commercial fund after September 30, 2015.

Frequently Asked Questions

1. What constitutes a noncommercial release for reporting by Sept. 30, 2015, and how should it be reported?

There is no appreciable change in the definition or required reporting of a release.

Determination of a release is made by visual, olfactory (odor) or measurement methods.

Measurement in this case is considered to be screening methods such as photoionization detectors (PIDs). The UST program still requires that releases be reported with 24 hours of discovery.

Reporting for Non-Commercial releases must be accomplished at minimum by email at 11:59 p.m. on Sept. 30, 2015, postmarked by Sept. 30, 2015 or delivered to a state underground storage tank program regional or central office on Sept. 30, 2015 during business hours to meet the deadline for Non-Commercial Fund eligibility consideration.

A release at a high-risk site is still required to be confirmed by a certified sample when directed by the Department.

2. Can odor and visual methods be used for reporting by Sept. 30, 2015, and then followed up by lab confirmation after Oct. 1?

Yes, but note that confirmation sampling that is not directed by the Department will not be reimbursable even at eligible sites.

3. Is there any directed work allowed on the sites currently above the noncommercial funding bar?

No, the bar has currently been raised to 2000H for existing sites. Any 'Directed' Initial Abatement work at new sites must be explicitly directed by the Department within the risk classification structure outlined in the session law.

4. If I have a currently-reported release, what work will I be allowed to perform and submit by July 1, 2016?

Responsible parties for sites that are determined to be low-risk under the new statutory provisions are only required to place a Notice of Residual Petroleum on the contaminated property to receive a No Further Action notification. Additional work may not be reimbursable at high risk sites except as directed by the Department.

5. Can work on sites that are currently non-directed be approved?

Yes, however: no further clean-up will be required or reimbursed for Low-Risk Sites pursuant to the Session Law 2015-241. Only additional work that is explicitly directed by the Department within the risk classification structure outlined in the session law may be reimbursed at any site.

6. For low-risk sites that have been declared closed by the provisions of the budget, what work will the RP be required to do and what will be eligible for reimbursement?

Responsible parties for releases that are determined to be low-risk under the new statutory provisions are only required to place a Notice of Residual Petroleum on the contaminated property to receive a No Further Action notification. Additional work will not be reimbursable at these low-risk sites.

7. Does eligibility need to be determined since there will be no Noncommercial Fund as of Dec. 31, 2016?

Eligibility may still be available for releases reported by Sept. 30, 2015 (and which comply with other eligibility rules and statutes). Please note that the deadline for claims to be filed is June 30, 2016, and that eligibility must be determined prior to a claim being filed for a site.

8. Are all of the current non-commercial sites going to be re-ranked by UST staff and then directed to conduct additional work between now and July 1, 2016?

The current Intermediate and High-Risk sites will be either confirmed High-Risk or re-ranked to Low-Risk. Additional site reevaluations will be scheduled at the request of the site's responsible party.

9. Will the eligibility process remain the same once these sites are paid out of the commercial fund? Any change in the deductible? Under the current Commercial regulations, these tanks are not eligible to be paid from the Commercial Fund. Current commercial tanks that do not require upgrades have a \$20,000 deductible. Would this be the new deductible for non-commercial tanks transferred to the commercial fund after Dec. 31, 2016?

Sun-setting of the NonCommercial Fund will not affect the current requirements of the Commercial Fund or rules associated with commercial USTs. All claims for eligible noncommercial UST work must be filed by June 30, 2016, and, by definition, all eligibility determinations for sites reported on or before September 30, 2015 must be made at some point prior to that claim deadline to be able to file a claim for that noncommercial site. As such, the transfer of any balance or obligation on the books for the noncommercial fund on Dec. 31, 2016 to the commercial fund will not result in any new noncommercial sites being evaluated for eligibility or assigned commercial deductibles at that time.

10. Will the records on noncommercial sites remain in the regional office or be submitted to the state-lead program after the noncommercial fund is sunset?

Currently, the regional offices will oversee the ranking of Noncommercial sites at the request of the site's responsible party. If no viable responsible party is available, high-risk noncommercial sites may be submitted to the State Lead program.

11. When do the new rules for reported releases on or after Oct. 1, 2015 go into effect?

The statutes in Session Law 2015-241 were signed into law on Friday, Sept. 18, 2015; the statute takes the place of rule until the Underground Storage Tank program staff can promulgate new rules as directed by the statute. This action is currently under review by the program staff. Please note that changes to risk classifications and initial abatement requirements also apply to existing sites that predate Oct. 1, 2015. All work must be directed by the Department based on site risk if the responsible party for an eligible site wants to seek reimbursement.

12. Are we going to pay for 'rush' lab samples so people can get their reported release verification in by Sept. 30, 2015?

The Underground Storage Tank program will not reimburse for 'rush' samples as sampling is not required to report a release. See the response to Question 1 for additional information.

13. How does the new June 30, 2016 claim deadline affect sites with respect to the one-year statute of limitations on claims and eligibility?

The one-year statute of limitations on eligibility (NCGS 143-215.94E(j)) and claims (NCGS 143-215.94E(k)) remains in effect. Sites with releases discovered prior to June 30, 2015 will still have to have eligibility determined within one year of a potentially eligible task, and claims will have to be filed within one year of either that eligibility determination or the completion of the tasks that are being claimed, whichever is later. Releases reported on or after July 1, 2015 would not have access to the full year allowed under the statute of limitations, as all claims must be received by June 30, 2016.