

North Carolina Department of Environmental Quality

Pat McCrory
Governor

Donald R. van der Vaart
Secretary

UNDERGROUND STORAGE TANK (UST) SECTION

September 25, 2015

To: Responsible Parties, Environmental Service Providers, and Other Interested Parties
From: Art Barnhardt, Chief, UST Section 
Subject: Session Law 2015-241 – Phaseout of Noncommercial Leaking UST Fund and Elimination of Initial Abatement Requirements

On Sept. 18, 2015, Governor McCrory signed Session Law (SL) 2015-241. This law alters the statutory and regulatory authority used by the Division of Waste Management's UST section in managing leaking noncommercial UST sites, as well as in the reimbursement of necessary costs to address those releases.

Per SL 2015-241 Section 14.16B.(b), the Department of Environmental Quality (Department) shall not require that a responsible party take immediate action or initial abatement actions at a noncommercial site, with the exception of necessary emergency responses, until such time as the Department has classified the risk posed by the release. Where the release poses an unacceptable risk, additional work will be directed by the Department. Where the release does not pose an unacceptable risk, the responsible party will be notified that no cleanup, no further cleanup, or no further action is required for their release, unless additional information becomes available at a later date to warrant Department reclassification of the site's risk as unacceptable.

Although the Session Law references other dates within Section 14.16A on changes to the Noncommercial Leaking UST Trust Fund, (such as a requirement that releases be reported prior to October 1, 2015 in order to be potentially eligible to access that Fund), no alternate effective dates are defined within Section 14.16B with regard to the regulatory changes.

Accordingly, as of the date of this notice, only those actions explicitly directed and pre-approved by the Department at noncommercial sites determined to pose an unacceptable risk will be considered reasonable and necessary expenses within the limitations defined by North Carolina General Statute (NCGS) 143-215.94V for reimbursement. Any other actions taken or costs incurred at noncommercial sites after this date which were not explicitly directed by the

Department under the conditions defined in SL 2015-241 Section 14.16B.(b) will not be reimbursable.

Additional UST section guidance to be distributed in early October will clarify the procedure to be used in risk clarification for noncommercial sites. Examples of information within that guidance include:

- An explanation of emergency responses that should still be performed under the exception list in Section 14.16B(B)(1), including but not limited to:
 - mitigating fire, explosion, or immediate vapor hazards, and
 - protecting public health, safety, and welfare and the environment where a drinking supply well is found to be impacted or where free-phase petroleum is present on the ground surface, the surface of a body of surface water, or seeping through the wall of a structure, etc.;
- The application of risk evaluations utilizing existing receptor network information obtained from other sites in the area;
- Site-specific risk screening parameters that will be used by the section to determine unacceptable risk for heating oil or diesel noncommercial USTs, versus gasoline noncommercial farm tanks and private-use USTs;
- Receptor-specific risk evaluations that include not just potable use as a drinking water supply, but also receptor use, such as: food preparation, fish cleaning, gardening or livestock watering, swimming, etc., versus incidental or intermittent usage for landscaping irrigation, vehicle or structure washing, other industrial or processing uses, etc.; and
- An explanation of upcoming changes in the UST Section's method of directing and, where eligible, reimbursing a noncommercial RP at low-risk sites for their filing of a Notice of Residual Petroleum on their deed to enable a No Further Action determination for the release.

Following this guidance, formal changes will also be made to all of the affected UST section guidelines, with updated versions published to the UST section guidance web page. At present, no changes are anticipated regarding the assessment and cleanup or reimbursement for commercial UST releases.

Please be aware that these regulatory changes apply to existing noncommercial sites and new noncommercial releases reported to the Department by September 30, 2015 which may potentially be eligible for reimbursement, as well as any noncommercial releases reported on or after October 1, 2015 which would be ineligible for Trust Fund reimbursement. Note also that for existing eligible sites and new sites reported on or before September 30, 2015 (which are subsequently determined to be eligible), any work directed and pre-approved by the UST Section under SL 2015-241 must have a formal claim for reimbursement filed with the UST Section no later than June 30, 2016.

If there are any questions regarding this Session Law, please contact the UST section at (919) 707-8171, or me directly at (919) 707-8263 and by email at art.barnhardt@ncdenr.gov.