North Carolina Department of Environment and Natural Resources Division of Waste Management

Michael F. Easley, Governor William G. Ross Jr., Secretary Dexter R. Matthews, Director



UNDERGROUND STORAGE TANK (UST) SECTION

24 October 2003

To: Responsible Parties, Environmental Service Companies, and Consultants

From: Grover Nicholson, Chief, UST Section

Subject: Session Law 2003-352 (House Bill 897)

The UST statutes require the Department to determine the degree of risk to human health and the environment posed by a release from a commercial UST and to set a schedule for further assessment and cleanup based on the degree of risk. Recent amendments to the UST statutes direct the Department also to consider the availability of funds in the Commercial Fund and the order in which the discharge or release was reported in setting the schedule if any of the costs of assessment or cleanup are eligible to be paid from the Fund. See Section 10 of Session Law 2003-352. The amendments do not change the existing requirements for responsible parties to collect and remove the discharge and complete the initial assessment to determine the degree of risk of the release as required by 15A NCAC 2N .0601 through .0604 and .0701 through .0703 and .0705 as incorporated in 15A NCAC 2L .0115(c). The amendments do not change the existing requirements to receive pre-approval from the Department before conducting assessment or cleanup activities after the risk of the release has been determined.

This provision of the new law is intended to focus the available resources in the Commercial Fund on releases that pose the highest risk to human health and the environment. Since, at this time, the Commercial Fund resources are insufficient to assess and cleanup all releases simultaneously, as of **November 30, 2003**, the Department implements Section 10 of Session Law 2003-352 as follows.

(1) Responsible parties of high risk releases presently undergoing assessment and cleanup will continue to assess and cleanup the releases. The Department will use a Notice of Regulatory Requirements (NORR) to direct responsible parties of new high risk releases to assess and cleanup the releases. Existing rules require that natural attenuation be used to the maximum extent possible. High risk releases should be monitored to the extent necessary to protect human health; the cost of monitoring beyond that necessary to protect human health will not be reimbursed by the Commercial Fund. All claims against the Commercial Fund for costs of assessment and cleanup of high risk releases either presently ongoing or directed by a NORR from the Department will be reimbursed before claims for costs of activities, at any releases, not directed by the Department.

- (2) The Department will use a Notice of Regulatory Requirements (NORR) to direct responsible parties of intermediate risk releases and low risk releases to assess and remove or clean up contaminated soil and free product (the sources of contamination) to the appropriate risk based cleanup levels. The Department will reimburse claims against the Commercial Fund for activities at intermediate risk and low risk releases that have been directed by the Department through a NORR before reimbursing claims for costs of activities, at any releases, not directed by the Department.
- (3) The Department will direct responsible parties to assess, monitor, or cleanup **groundwater** at intermediate risk releases, only after the Department determines that higher risk releases are being properly addressed. All claims against the Commercial Fund for costs of **groundwater** assessment, monitoring, or cleanup of intermediate risk releases will be reimbursed only after the reimbursement of all claims for costs of activities directed by the Department at higher risk releases.
- (4) The Department will direct responsible parties to assess, monitor, or cleanup **free product** at intermediate risk releases which have free product levels less than one-quarter of an inch (1/4") in thickness, only after the Department determines that higher risk releases are being properly addressed. All claims against the Commercial Fund for costs of assessing, monitoring, or cleaning up **free product** of intermediate risk releases which have free product levels less than one-quarter of an inch (1/4") in thickness will be reimbursed only after the reimbursement of all claims for costs of activities directed by the Department at higher risk releases.

Responsible parties of Intermediate Risk releases with groundwater contamination will receive a "Notice of Regulatory Requirements" (NORR) when the Department determines it is appropriate to proceed with further assessment or cleanup activities. Each responsible party has a continuing obligation in accordance with 15A NCAC 2L .0115(e) to notify the Department of any changes that could effect the assigned risk of the release. Initial risk classification criteria is located in 15A NCAC 2L .0115(d). If responsible parties take initial steps to collect and remove the releases as required by the Department and complete the initial assessments required to determine the risks of releases, the responsible parties shall not be subject to any violations or penalties for any failures to proceed with further assessments or cleanups until directed by the Department. However, responsible parties are not relieved of the requirements for further assessment and cleanups of releases whenever the Department deems them to be necessary and directs the responsible party to proceed or when this Section of the law expires (1 October 2005).

If a responsible party elects to conduct assessment and cleanup activities before being directed to do so by the Department, eligible costs for these activities will be reimbursed only after the reimbursement of all eligible costs for activities that the Department directs to proceed. Claimants must be aware that there will be a considerable delay in reimbursement of eligible costs for activities that the Department does not direct to proceed. All responsible parties, whether they are directed by the Department to proceed with assessment and cleanup or elect to conduct assessment and cleanup without Department directive, must obtain State Trust Fund pre-approval for planned activities and costs following initial abatement and assessment activities. State Trust Fund pre-approvals do not constitute Department directives to proceed with assessment or cleanup activities.