

Semi-Annual Report to the
North Carolina General Assembly

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

September 1, 2002



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Division of Waste Management
<http://wastenot.enr.state.nc.us/>

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EXECUTIVE SUMMARY

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

From July 1 2001 through June 30, 2002, the Underground Storage Tank Program received reports of 1,045 releases or discharges to the environment. During the same time period, 732 sites were closed. A total of 8,585 sites currently exist in North Carolina. Of that number, approximately 84 percent are commercial and 16 percent are non-commercial.

Expedited claim reviews began in July 1, 2001. The increase in claims processed nearly doubled the amount expended from the Commercial Trust Fund in the first six months. This increase continued through June 30, 2002 although revenues remained steady. The precipitous drop in funds available for reimbursement caused the section to begin reimbursing only when funds are available for that purpose. Please see the Recommendations section for suggestions to stabilize the revenue stream.

Pay-for-performance cleanups were adopted by temporary rule on May 14, 2002. This process differs from the standard in that site contracts are awarded by competitive bid and payments are made only when milestones specific, measurable reductions in contaminant levels are met. PFP programs in Florida have reduced costs 66 percent and lowered them by 50 percent in South Carolina. The section looks forward to implementing this new process.

Program Summary

The Division of Waste Management's UST Section in DENR administers North Carolina's underground storage tank program. The UST 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, 2001 through June 30, 2002.

Commercial Fund Revenues	\$27,124,210
Commercial Fund Total Expenditures	\$39,269,690
Noncommercial Fund Revenues	\$ 6,620,808
Noncommercial Fund Total Expenditures	\$10,096,076
Petroleum UST Incidents - Reported	1,045
Petroleum UST Incidents - Closed Out	732

This is the summary of the statistics for the entire history of the UST program (7/1/88 -6/30/02).

Commercial Fund Revenues	\$319,795,285
Commercial Fund Total Expenditures	\$315,915,347
Noncommercial Fund Revenues	\$ 65,685,246
Noncommercial Fund Total Expenditures	\$ 59,709,964
Petroleum UST Incidents - Reported	16,550
Petroleum UST Incidents - Closed Out	7,965

As of June 30, 2002, the status of the Commercial and Noncommercial Funds was:

Commercial Fund Balance	\$3,958,556
Commercial Fund Claims Pending	\$6,606,996
Noncommercial Fund Balance	\$5,977,277
Noncommercial Fund Claims Pending	\$2,004,723

The initiation of expedited claim reviews beginning May 24, 2001 has contributed to an increase in payments from the Commercial Fund. A significant backlog of pending claims was processed and, as a result, reimbursement costs nearly doubled during the six month period between July 1, 2001 and December 31, 2001. Payment increases continued during the following six-month period from January 1, 2002 through June 30, 2002, while revenues remained steady. An evaluation of the claims paid during the twelve month period from July 1, 2001 through June 30, 2002 indicate a significant increase in payments for costs associated with comprehensive site assessments and corrective action plans. This is partly due to re-examining low or undetermined risk sites and an increase of enforcement efforts. Beginning on June 17, 2002, reimbursements from the Commercial Fund have only been made as funds are available. The ability to cover all obligations by the Commercial Fund will continue to be closely monitored during FY 2002 - 2003 and recommendations will be made to address the shortfall.

The Noncommercial Fund still appears to be able to meet all obligations based on the current rate of claims submitted. However, the Noncommercial Fund balance is decreasing. 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. The ability to cover all obligations by the Noncommercial Fund will be closely monitored during the financial year of 2002 - 2003.

FUNDING FOR THE UNDERGROUND STORAGE TANK 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 Fund are provided by the Environmental Protection Agency. Of the 99 staff positions assigned to the UST program, state revenue funds 68 positions and 31 are supported by federal grants.

Commercial and Noncommercial Trust Funds

The Leaking Petroleum Underground Storage Tank Cleanup Act of 1988* established two separate funds: the Commercial Trust Fund and the Noncommercial Trust 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 commercial USTs, manage a database and receive annual UST operating fee payments;
- identify responsible parties;
- provide technical assistance to tank owners and operators;
- inspect USTs to ensure compliance with UST regulations;
- monitor site cleanups;
- 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 and evaluate 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 Trust Fund include:

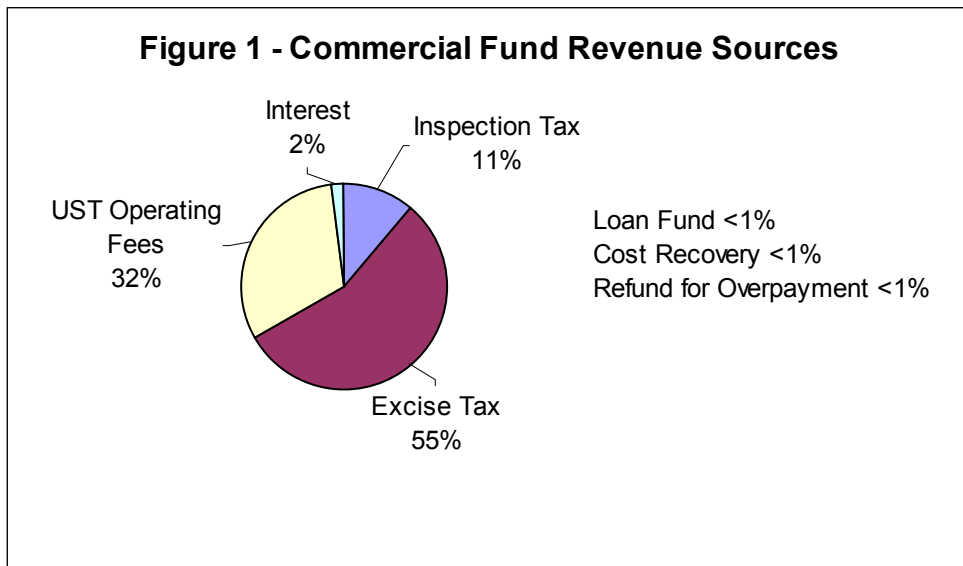
- a motor fuel and kerosene inspection tax,
- an excise tax (0.297 cents per gallon) on motor fuel and kerosene sales,
- annual payment of UST operating fees,
- costs recovered from UST owners and operators for State Lead sites,
- loan collection and interest for the Groundwater Protection Loan Fund, and
- interest earned on the account.

* General Statute 143-215.94A et.seq.

Owners and operators are required to pay annual operating fees to receive operating permits and to be eligible for the Commercial Fund. Annual 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). Tank 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, annual fees were increased to \$200 for commercial USTs with a capacity equal to or less than 3,500 gallons and \$300 for commercial USTs with capacity in excess of 3,500 gallons. Revenues received for the Commercial Fund for the twelve-month period from July 1, 2001 to June 30, 2002 were approximately \$21.1 million (Table 1). The relative contributions to the Commercial Fund from each of the funding sources are illustrated in Figure 1.

Table 1 - Commercial Trust Fund Revenues
7/1/01 - 6/30/02

Motor Fuel & Kerosene Inspection Tax	\$ 3,082,427
Motor Fuel & Kerosene Excise Tax	\$ 14,850,470
UST Operating Fees	\$ 8,525,252
State Lead Cost Recovery	\$ 38,189
Interest	\$ 529,022
Loan Fund Collection and Interest	\$ 98,847
Total Commercial Revenues	\$ 27,124,207



Funding for the Noncommercial Trust Fund is provided by a motor fuel and kerosene inspection tax and excise taxes (0.047 cents per gallon) on kerosene and motor fuel sales.* Owners and operators of noncommercial USTs are not required to pay annual operating fees. Revenues received for the Noncommercial Fund for FY 2001-02 were approximately \$6.6 million (see Table 2, page 3).

* House Bill # 681 of 1993

Table 2 - Noncommercial Trust Fund Revenues

7/1/01 - 6/30/02

Motor Fuel & Kerosene Inspection Tax	\$ 3,082,427
Motor Fuel & Kerosene Excise Tax	\$ 2,346,259
Interest	\$ 407,739
Inter-Agency Transfer (Circle K)	<u>\$ 784,382</u>
Total Noncommercial Revenues	\$ 6,620,808

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.

Groundwater Protection Loan Fund

The Groundwater Protection Loan Fund Program was created in 1991.** It provided financial assistance to owners of commercial USTs for replacing or upgrading their tanks to meet the performance standards required for all USTs by December 22, 1998. Administrative rules implementing the program were adopted by DENR and became effective December 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 January 1, 1992 through December 31, 1994.

Federal UST Regulatory Grant Program

This program promotes compliance with UST regulations. It provides the state's UST Section with \$186,675 per year to fund three positions in the DWM central office. The positions provide technical assistance to the owners and operators of USTs, develop materials, conduct educational activities, train regional staff and conduct UST inspections.

Federal Leaking UST Fund

The Federal Leaking UST Trust Fund is used to clean up petroleum contamination from leaking USTs, provide potable water to affected third-parties, perform emergency activities, relocate residents affected by leaking USTs and conduct enforcement activities. This fund is limited to USTs regulated by federal agencies, primarily commercial tanks used for storing motor fuels. Tanks used for heating oil and those used for farm or residential uses (1,100 gallons capacity or less) are not covered by this fund.

Individuals (i.e., owners/operators) do not have access to the fund. Only the federal government and states with cooperative agreements with the EPA can draw on the fund. 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.

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

Since the state's UST program began in 1988, the Federal Leaking UST Fund has made 17 awards totaling \$34,699,569 to the state's UST Section. As of June 30, 2002, the state spent \$33,368,411 from these awards. Of this amount, \$15,574,330 was spent for cleanup-related activities and \$3,202,354 for enforcement actions. Administrative, operating, travel and equipment costs totaled \$14,502,540.

The program is obligated to seek recovery of all costs incurred during state lead cleanups. As of June 30, 2002, the UST Section had recovered \$1,518,496 in federal cleanup money through cost recovery actions. Of this amount, \$729,532 came from the North Carolina Commercial Fund for sites determined eligible for Commercial Fund coverage after cleanup activities had begun. Cost recovery funds in the amount of \$1,382,228 were returned to the Federal Trust Fund to be used for additional corrective action expenditures.

The EPA approved \$2,033,793 for North Carolina from the Leaking UST Fund for FY 2001-2002.

PETROLEUM UST INCIDENTS

Discharges or releases from petroleum USTs are reported to DENR regional offices where they are added to an incident management database. Table 3 (see page 5) lists the number of incidents reported and closed out in each region during the twelve-month period from July 1, 2001 through June 30, 2002. It also shows the number of incidents reported and closed out since the UST program began in 1988.

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, 56 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 (see Figure 2, page 5).

Table 3 - Petroleum UST Incidents by Region

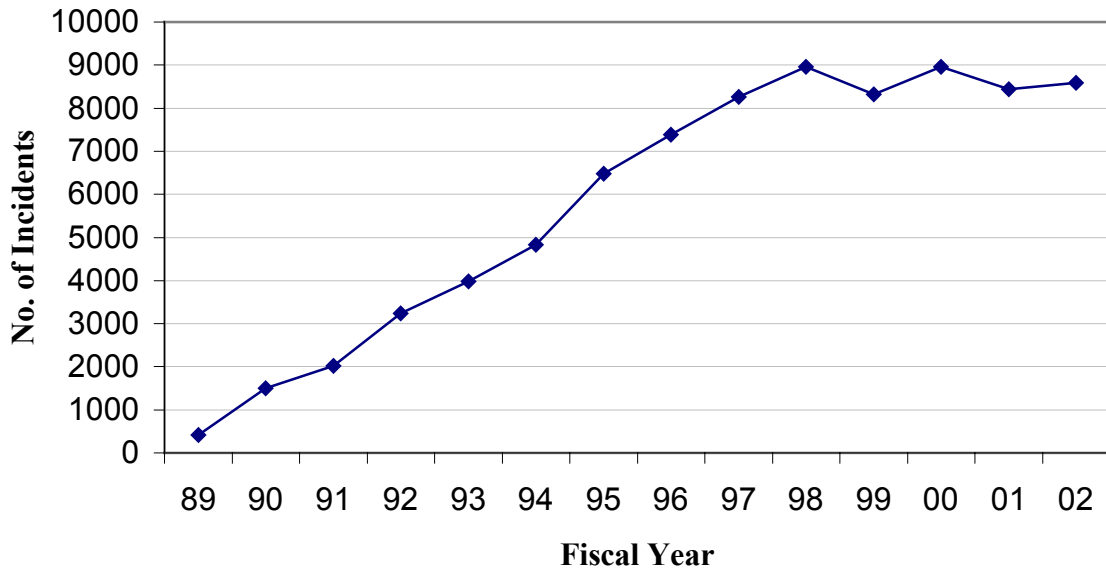
REGION	7/1/01 - 6/30/02		7/1/88 - 6/30/02	
	Reported	Closed	Reported	Closed
Asheville	82	27	1570	998
Fayetteville	43	37	978	472
Mooreville	163	155	3,357	1,641
Raleigh	249	165	3,467	1,472
Washington	174	133	2,113	986
Wilmington	101	65	1,278	463
Winston-Salem	<u>233</u>	<u>150</u>	<u>3,787</u>	<u>1,933</u>
TOTAL	1,045	732	16,550	7,965

Total reported releases affecting groundwater that have been closed out	1,431
Total reported releases closed out since implementation of RBCA*	4,466
Total remaining open sites	8,585
Estimated open commercial sites**	7,211
Estimated open noncommercial sites**	1,374

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

** Based on an average of past data (85%) and the current twelve month period (76%), approximately 84 percent of the reported releases are from commercial sites, while the other 16 percent are from noncommercial sites.

Figure 2 - Open UST Incidents



**RECEIPTS AND DISBURSEMENTS:
COMMERCIAL AND NONCOMMERCIAL TRUST FUNDS
AND GROUNDWATER PROTECTION LOAN FUND**

Commercial and Noncommercial Funds

UST owners, operators and landowners may submit reimbursement claims for 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. 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, 2002.

Table 4 - Receipts & Disbursements for Cleanups
7/1/88 - 6/30/02

FISCAL YEAR	RECEIPTS		DISBURSEMENTS ¹	
	<u>Commercial</u>	<u>Noncommercial</u>	<u>Commercial</u>	<u>Noncommercial</u>
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	<u>27,124,210</u>	<u>6,620,808⁶</u>	<u>36,872,426</u>	<u>9,182,320</u>
TOTAL	\$319,795,285	\$ 65,685,246	\$294,936,180	\$ 51,390,085

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.

The administrative budget for the state-funded portion of the UST program is derived from the Commercial and Noncommercial Funds. Table 5 lists past administrative expenditures since the beginning of the UST program.

Table 5 - Administrative Expenditures

<u>Fiscal Year</u>	<u>Commercial</u>	<u>Noncommercial</u>
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	<u>2,397,264</u>	<u>913,755</u>
TOTAL	\$ 20,979,167	\$8,319,878

Incorporating the administrative costs into receipts and cleanup disbursements yields these Commercial and Noncommercial Fund balances:

Commercial Fund Balance (as of June 30, 2002)	\$ 3,958,556
Noncommercial Fund Balance (as of June 30, 2002)	\$ 5,977,277

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 Trust Fund. Loan repayments are also deposited into the Commercial Fund. During the twelve-month period ending June 30, 2002, \$67,903 was repaid. Total receipts for the Loan Fund since its inception in January 1992 are \$32,994,840.

* 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.

CLAIMS AGAINST THE CLEANUP FUNDS

Claims against both the Commercial and Noncommercial Funds are processed on a “first-come, first-served” basis. The status of all claims requesting reimbursement from both funds that were received as of June 30, 2002 is presented in Table 6. These claims only include costs claimed to date, and do not represent the total costs for cleanups.

UST Section staff have supervised contract cleanups at 277 commercial and noncommercial sites (Table 6, 213 commercial and 64 noncommercial). Currently, DENR has four contracts with environmental engineering/geology firms that perform a range of assessment and cleanup actions. The term of these contracts is 18 months with an option to renew for an additional 18 months. Two contracts expire in August 2002 and two contracts expire in November 2002.

Table 6 - Claims Against the Cleanup Funds
7/1/88 - 6/30/02

	Commercial Fund		Noncommercial Fund	
	<u>Number</u>	<u>Cost</u>	<u>Number</u>	<u>Cost</u>
Claims Paid	18,265	\$288,334,564	5,617	\$ 47,927,270
Incidents Denied Totally ¹	33	\$ 4,573,040	4	\$ 59,845
Claims Denied Partially ²	11,134	\$ 57,301,779	2,860	\$ 7,273,497
Total Deductibles Paid	-----	\$ 58,585,814	-----	\$ 255,515
Claims Pending	571	\$ 6,606,996	205	\$ 2,004,723
Contracted Cleanups ³	213	\$ 8,019,963	64	\$ 1,736,882

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, 2002, the Commercial Fund balance was \$3,958,556 with pending claims of \$6,606,996 (see Figure 3, Page 9). Since January 1, 2001, the difference between the fund balance and the pending amount has decreased (see Figure 4, Page 9). During the six-month period from July 1, 2001 to December 2001 expedited reviews were initiated in an effort to reduce claim review time. While the claim review time has been reduced, the result has been an increase of nearly double the claim reimbursement payments during the six-month period of July 1, 2001 to December 31, 2001. Expedited reviews have continued during the period January 1, 2002 through June 30, 2002. Review of the claims paid beginning on July 1, 2001 indicate that a significant increase of payments are being made for comprehensive site assessments and corrective action plans. The increase in CSAs and CAPs appears to be related to required work

for sites that were formerly under suspension and have been re-evaluated (low and undetermined risk sites). Claim amounts continue to increase while revenues remain steady.

Figure 3 - Commercial Fund Balance and Claims Pending

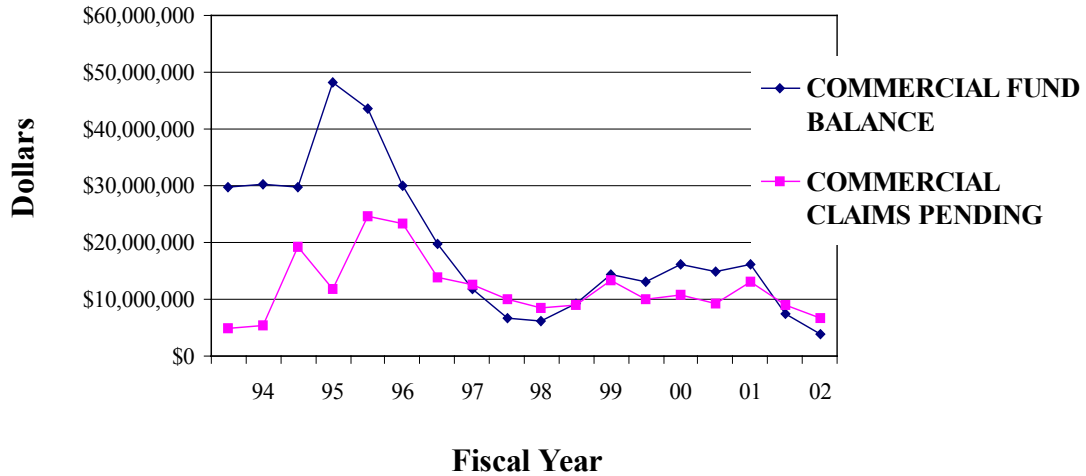
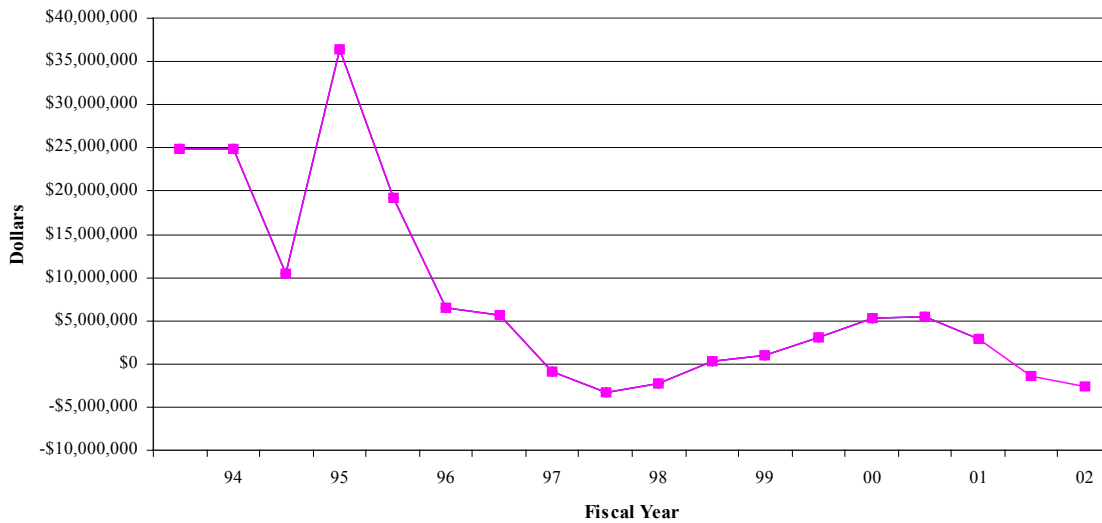


Figure 4 - Commercial Fund Balance Minus Claims Pending



Commercial Fund revenues should remain relatively steady while claim costs and contracted cleanups will likely increase due to the continuation of expedited reviews.

Table 7 - Total Commercial Fund Revenues and Expenditures
7/1/01 – 6/30/02

Total Commercial Revenues (see Table 1, page 2)	\$27,124,207
Total Claims and Contracted Cleanups	\$36,872,426
Administrative Costs	<u>\$ 2,397,264</u>
Total Commercial Expenditures	\$39,269,690

Another factor, which may effect an increase of demands to the Commercial Fund in the future, is pay-for-performance based cleanups. On October 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. Pay-for-performance is a reimbursement method that requires cleanup goals to be met before payments can be made to environmental consultants. This reimbursement method requires the Trust Fund to obligate the contracted cleanup costs. Pay-for-performance obligations may initially place a higher demand on the Trust Fund, but should greatly decrease the costs of cleanups and thus result in a lesser burden to the Trust Fund.

Another factor that may effect future demands on the Commercial Fund is third-party claims. There is currently one pending third-party claim under review which has the potential to place a burden of many hundred thousands of dollars on the Commercial Fund. Other third party claims may be planned that have not been submitted for review.

After UST operating fees were raised on January 1, 1997, revenue from this funding source declined through the end of FY 1998-99 (see Table 8). This decrease was likely due to the reduction in the number of registered USTs that occurred as a result of the federal 1998 upgrade regulations. The number of registered USTs continued to decrease during the period from July 1, 2001 to June 30, 2002. However, UST operating fees have remained stable.

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 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

At present, approximately 7,200 commercial incidents have yet to be closed out. With minor work performed in accordance with the RBCA rules, many of these sites may receive “no further action” letters. However, some will require additional assessment and corrective action that will subsequently result in additional demands on the Commercial Fund.

Data tracking improvements are being 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. Over 1,200 leaks are reported each year. Maintaining the quality of North Carolina’s drinking water 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 tertiary-butyl ether, and early detection in the event of a leak.

North Carolina currently has about 31,620 active regulated USTs at 9,900 facilities. Of that number, we estimate 40 to 50 percent are located within 500 feet of both domestic and public drinking water supplies. Our inspection data show that over 30 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.

Noncommercial Fund

As of June 30, 2002, the Noncommercial Fund balance was \$5,977,277. The total for pending claims stood at \$2,004,723. Based on past data, the present financial condition of this fund appears sound (see Figure 5), but will be carefully monitored for anticipated increased demands.

Figure 5 - Noncommercial Fund Balance and Claims Pending

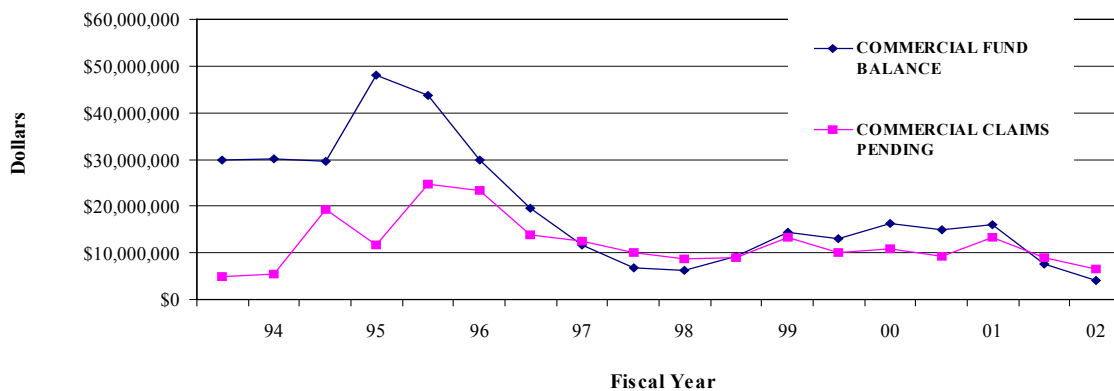


Figure 6 - Noncommercial Fund Balance Minus Claims Pending

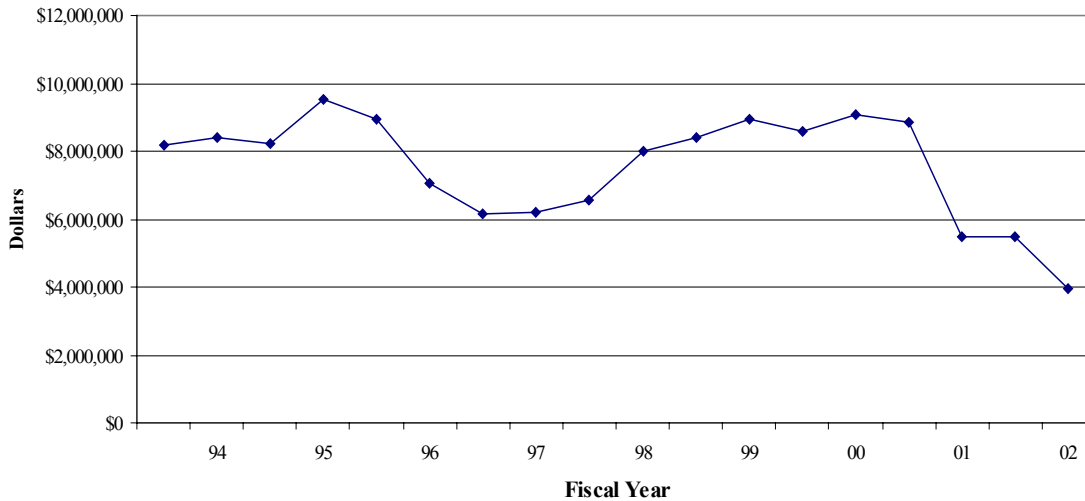


Table 9 - Total Noncommercial Fund Revenues and Expenditures
7/1/01-6/30/02

Total Noncommercial Revenues (see Table 2, page 3)	\$6,620,808
Total Claims and Contracted Cleanups	\$ 9,182,321
Administrative Costs	\$ 913,755
Total Noncommercial Expenditures	\$10,096,076

Table 10 shows the estimated cost to complete cleanups for noncommercial incidents reported from July 1, 2001 to June 30, 2002. It should be noted, however, that cleanups can easily extend over several years and costs may vary greatly.

Table 10 - Estimate of Cleanup Costs for Noncommercial Incidents
Reported 7/1/01 - 6/30/02

<u>Region</u>	<u>Incidents*</u>	<u>Total Estimated Cleanup Cost**</u>
Asheville	30	\$ 1,875,000
Fayetteville	16	\$ 1,000,000
Mooreville	60	\$ 3,750,000
Raleigh	92	\$ 5,750,000
Washington	64	\$ 4,000,000
Wilmington	37	\$ 2,312,500
Winston-Salem	86	\$ 5,375,000
Total	385	\$24,062,500

* Calculations of the last 12-month period indicate that approximately 37 percent of reported releases are from noncommercial sites.

** An average cost of \$62,500 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 performance-based cleanups of sites where petroleum has been discharged or released from underground storage tanks. Sites selected for the pilot program will be posted for competitive bidding in the North Carolina Interactive Purchasing System. A performance-based contract will be awarded to the qualified environmental services firm that submits the lowest, technically qualified bid for an acceptable remedial proposal for the advertised site. A series of milestones (generally percentage reductions in contaminant levels in the soil and groundwater) must be achieved before payments are made to the cleanup firm from the Commercial or Non-Commercial Fund.

On November 2, 2001, the Division of Waste Management convened a stakeholders workgroup consisting of representatives of the Professional Engineers of North Carolina, the Consulting Engineers Council of North Carolina, the North Carolina Board for the Licensing of Geologists and the North Carolina Petroleum Marketer's Association to develop a temporary rule. A follow-up meeting on November 9, 2001 resulted in the further refinement of the rule and the discussions of the contract and bidding procedures proposed for use with the rule.

The proposed temporary rule was presented to the Groundwater Committee of the Environmental Management Commission on December 12, 2001. It received a favorable vote to proceed to full commission review in February 2002. On February 14, 2002, the EMC voted to approve the publication of the temporary rule in the North Carolina Register. The temporary rule was published for public comment between March 15 and April 15, 2002 in Volume 16, Issue 18, page 2,019 of the NC Register. No comments were received. The Commission adopted the temporary rule on May 14, 2002.

RECOMMENDATIONS

Based on the results of this report, the UST Section makes the following recommendations for the Commercial and Noncommercial Trust Funds:

- Responsible parties of UST releases should continue to be encouraged to consider pay-for-performance cleanups at their sites. Pay-for-performance is a reimbursement method that requires cleanup goals to be met before payments can be made to environmental consultants. PFP programs in other states have dramatically reduced the costs for cleanups. Costs are down 66 percent in Florida and 50 percent in South Carolina. PFP also accelerates the rate of cleanups. The Department of Environment and Natural Resources will monitor the obligated costs for pay-for-performance contracts and the potential cleanup cost savings of the PFP program.
- Additional revenue should be made available for continued expedited payment of Commercial Fund claims.
- Establish a statute of limitations for filing claims. Because fund deductible amounts vary, we propose grouping all years with like deductibles (Example: releases detected 6/88-12/91 and 1/92-12/93) and assigning a common claim submittal deadline. The UST Section can inform its customers of the new deadline, and then provide one year for all claims to be prepared and filed. By learning more about outstanding claims, the UST Section can increase its ability to predict fund expenditures.
- The \$5 million Noncommercial Fund floor which triggers revenue diversion from the Commercial Fund should be reduced to \$2.5 million to more accurately reflect a typical month's demand. The remaining amount above the floor should be transferred to the Commercial Fund to assist with meeting this Fund's outstanding obligations.