

ENROLLED HOUSE
BILL NO. 1415

BY: RICE of the HOUSE

and

BROWN and HOBSON of the
SENATE

AN ACT RELATING TO THE CORPORATION COMMISSION AND WATERS AND WATER RIGHTS; AMENDING SECTIONS 19 AND 20, CHAPTER 90, O.S.L. 1989, SECTION 21, CHAPTER 90, O.S.L. 1989, AS LAST AMENDED BY SECTION 1, CHAPTER 240, O.S.L. 1990, SECTION 22, CHAPTER 90, O.S.L. 1989, AS LAST AMENDED BY SECTION 2, CHAPTER 240, O.S.L. 1990, SECTION 23, CHAPTER 90, O.S.L. 1989, AS LAST AMENDED BY SECTION 3, CHAPTER 1, O.S.L. 1990, SECTION 25, CHAPTER 90, O.S.L. 1989, AS LAST AMENDED BY SECTION 3, CHAPTER 240, O.S.L. 1990 (17 O.S. SUPP. 1990, SECTIONS 350, 351, 352, 353, 354 AND 356) AND SECTION 92, CHAPTER 208, O.S.L. 1987, AS LAST AMENDED BY SECTION 18, CHAPTER 90, O.S.L. 1989 (82 O.S. SUPP. 1990, SECTION 934.1), WHICH RELATE TO THE OKLAHOMA PETROLEUM UNDERGROUND RELEASE INDEMNITY PROGRAM AND THE OKLAHOMA LEAKING UNDERGROUND STORAGE TANK TRUST FUND; MODIFYING SHORT TITLE; MAKING APPLICABLE TO ALL WATERS OF THE STATE; MODIFYING REFERENCES TO INCLUDE ABOVEGROUND STORAGE TANKS; ADDING DEFINITION; MODIFYING CERTAIN FUND NAME; REQUIRING CERTAIN APPLICATIONS TO BE COMPLETE AND INCLUDE SUPPORTING DOCUMENTS; REQUIRING CERTAIN PERSONS TO BE IN SUBSTANTIAL COMPLIANCE WITH CERTAIN RULES; CLARIFYING CERTAIN COSTS WHICH CAN BE RECOVERED; TRANSFERRING CERTAIN FUND TO THE CORPORATION COMMISSION; ESTABLISHING CERTAIN FEES; REQUIRING CERTAIN AGREEMENTS BETWEEN CERTAIN AGENCIES; SPECIFYING CERTAIN CHARGES FOR UNDERGROUND TANKS; PROVIDING FOR PENALTIES; AMENDING SECTION 6, CHAPTER 252, O.S.L. 1990 (70 O.S. SUPP. 1990, SECTION 405), WHICH RELATES TO ABOVEGROUND TANKS; DELAYING CERTAIN REQUIREMENTS; SPECIFYING CERTAIN CHARGES FOR ABOVEGROUND TANKS; DISAPPROVING CERTAIN RULES FOR FEES FOR UNDERGROUND TANKS; PROVIDING FOR RECODIFICATION; PROVIDING FOR NONCODIFICATION; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE; AND DECLARING AN EMERGENCY.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY Section 19, Chapter 90, O.S.L. 1989 (17 O.S. Supp. 1990, Section 350), is amended to read as follows:

Section 350. Sections ~~20~~ 351 through ~~27~~ 358 of this ~~act~~ title shall be known and may be cited as the "Oklahoma Petroleum ~~Underground Storage Tank~~ Release Indemnity Program".

SECTION 2. AMENDATORY Section 20, Chapter 90, O.S.L. 1989 (17 O.S. Supp. 1990, Section 351), is amended to read as follows:

Section 351. A. The Legislature finds that:

1. Significant quantities of petroleum are being stored in ~~underground~~ storage tank systems in this state;
2. Spills, leaks and other releases of petroleum from such ~~underground~~ storage tank systems have occurred, are occurring and will continue to occur;
3. Such releases often pose a significant threat to the public health and safety, the quality of the ~~groundwater~~ water, and other natural resources in this state;
4. Where pollution has occurred, remedial measures have often been delayed for long periods while determination as to the liability and extent of liability are made;
5. Such delays result in the continuation and intensification of the threat to the public health, safety and welfare, in greater damage to the environment, and in significantly higher costs to contain and remove the pollution;
6. Adequate financial resources must be readily available to enable responsible parties and other persons to take the corrective action necessary to rehabilitate such contaminated sites; and
7. Such adequate financial resources may be provided by the creation of a petroleum ~~underground~~ storage tank release environmental cleanup program established by the Oklahoma Petroleum ~~Underground Storage Tank~~ Release Indemnity Program and funded by an assessment on the sale of motor fuel, diesel fuel, and blending materials in this state by a distributor.

B. The Legislature declares that, in order to provide for rehabilitation of as many pollution sites resulting from releases of petroleum from ~~underground~~ storage tank systems, as soon as possible, voluntary corrective action should be encouraged, provided that such corrective action is conducted in a manner and to a level of completion which will protect the public health, safety and welfare and will minimize damage to the environment. To accomplish this purpose, ~~for releases of petroleum which began on or after July 1, 1989,~~ any person entitled to reimbursement pursuant to the provisions of this act shall be reimbursed for certain allowable costs in connection with such corrective action, subject to the conditions specified by this act.

SECTION 3. AMENDATORY Section 21, Chapter 90, O.S.L. 1989, as last amended by Section 1, Chapter 240, O.S.L. 1990 (17 O.S. Supp. 1990, Section 352), is amended to read as follows:

Section 352. In addition to the terms defined by the Oklahoma Underground Storage Tank Regulation Act and the Oklahoma Aboveground Tank Act, for the purposes of the Oklahoma Petroleum ~~Underground Storage Tank~~ Release Indemnity Program:

1. "Distributor" means:
 - a. every person importing or causing to be imported into this state any motor fuel, diesel fuel or blending material for use, distribution, or sale and distribution, or sale and delivery after the same reaches this state. "Distributor" does not mean persons importing motor fuel only in the supply tank of a vehicle originally provided by the manufacturer of the motor vehicle as a container for motor fuel or diesel fuel to propel such motor vehicle, nor does

"distributor" mean persons only importing motor fuel, diesel fuel or blending material into the state under circumstances requiring that they be licensed as "Motor Fuel/Diesel Fuel Importers for Use" as defined in subsection g of Section 601 of Title 68 of the Oklahoma Statutes and who are actually so licensed,

- b. any person producing, refining, preparing, distilling, blending, manufacturing, or compounding motor fuel or blending material in this state for use, distribution or sale and delivery in this state,
- c. any person within this state producing or collecting what is commonly known as drip, casinghead or natural gasoline,
- d. any person who has in his possession or buys for sale or use motor fuel, diesel fuel or blending material from any person other than a licensed distributor, retailer or dealer,
- e. any person other than a retailer or dealer who sells motor fuel, diesel fuel or blending material to anyone except a licensed distributor,
- f. any person who makes bulk sales of motor fuel, diesel fuel or blending material, and
- g. any other person, including a retailer or dealer, who has filed an application for and has procured a distributor's license in the manner provided by the Oklahoma Motor Fuel/Diesel Fuel Importers for Use Tax Code;

2. "Eligible person" means any:

- a. owner or operator of ~~an underground~~ a storage tank system who has incurred liability as a result of an eligible release, and who meets the requirements specified in Section 356 of this title, or
- b. person who on or after December 23, 1988, purchases property on which an underground storage tank system is located if:
 - (1) the underground storage tank system was located on the property on December 23, 1988,
 - (2) such person could not have known that such underground storage tank system existed. The burden shall be upon such purchaser to show that such purchaser did not know or should not have known of the existence of such underground storage tank system,
 - (3) the owner or operator of the underground storage tank system responsible for the system cannot be determined by the Commission, or the owner or operator of the underground storage tank system responsible for the system is incapable, in the judgment of the Commission, of properly carrying out any necessary corrective action, and
 - (4) either, funds are unavailable from the Oklahoma Leaking Underground Storage Tank Trust Fund or the underground storage tank system is not eligible for corrective action taken pursuant to Section 934.1 of Title 82 of the Oklahoma Statutes;

3. "Eligible release" means a release for which allowable costs, as determined by the Commission, are reimbursable to or on behalf of an eligible person;

4. "Indemnity Fund" means the Petroleum ~~Underground Storage~~ Tank Release Environmental Cleanup Indemnity Fund (~~UST~~ Indemnity Fund);

5. "Owner" means a person who holds title to, controls, or possesses an interest in ~~an underground~~ a storage tank system used for the storage of petroleum. The term "owner" does not include a person who holds an interest in ~~an underground~~ a storage tank solely for financial security, unless through foreclosure or other related actions the holder of a security interest has taken possession of the ~~underground storage~~ tank;

6. "Motor fuel, diesel fuel and blending materials" have the same meaning as those terms are defined by Section 501 of Title 68 of the Oklahoma Statutes;

7. "Person" means any individual, trust, firm, joint stock company or corporation, corporation, partnership, association, any representative appointed by order of the court, municipality, county, school district, or other political subdivision of the state, or any interstate body. The term also includes a consortium, a joint venture, a commercial entity, or any other legal entity;

8. "Reimbursement" means either:

- a. repayment of an approved claim to an eligible person for allowable costs resulting from an eligible release, or
- b. payment of an approved claim submitted on behalf of an eligible person for allowable costs resulting from an eligible release;

9. "Release" means any spilling, overfilling, leaching, emitting, discharging, escaping, or disposing of the petroleum from ~~an underground~~ a storage tank system into the environment of the state. The term release includes but is not limited to suspected releases of petroleum from ~~an underground~~ a storage tank system, identified as a result of positive sampling, testing or monitoring results, or identified in any similarly reliable manner;

10. "Sale" means every gallon of motor fuel, diesel fuel, or blending materials sold, or stored and distributed, or withdrawn from storage, within the state, for sale or use. No gallon of motor fuel, diesel fuel, or blending materials shall be the basis more than once of the assessment imposed by Section 354 of this title; ~~and~~

11. "Storage tank" or "storage tank system" means an underground storage system as such term is defined by the Oklahoma Underground Storage Tank Regulation Act or an aboveground tank as such term is defined by the Oklahoma Aboveground Tank Regulation Act; and

12. "Tax Commission" means the Oklahoma Tax Commission.

SECTION 4. AMENDATORY Section 22, Chapter 90, O.S.L. 1989, as last amended by Section 2, Chapter 240, O.S.L. 1990 (17 O.S. Supp. 1990, Section 353), is amended to read as follows:

Section 353. A. There is hereby created within the Corporation Commission, the "Petroleum ~~Underground Storage~~ Tank Release Environmental Cleanup Indemnity Fund" (~~UST~~ Indemnity Fund). The Indemnity Fund shall be administered by the Corporation Commission for the benefit of those persons determined to be eligible by the Commission to receive total or limited reimbursement for:

1. the cost of corrective action taken in response to an eligible release; and

2. payment of claims for property damage or personal injury resulting from an eligible release.

B. The Indemnity Fund shall be excluded from budget and expenditure limitations. Reimbursements made to or for the benefit of eligible persons shall be exempt from the Central Purchasing Act.

C. 1. Costs incurred as a result of a release from ~~an~~ underground a storage tank system owned or operated by this state or by the federal government are not reimbursable pursuant to the provisions of the Oklahoma Petroleum ~~Underground~~ Storage Tank Release Indemnity Program. State and federally owned facilities shall take the proper corrective action as may be necessary to protect the environment from a leaking ~~underground~~ storage tank system.

2. Costs incurred as a result of a release from ~~an underground~~ a storage tank system owned or operated by a Class I Railroad are not reimbursable pursuant to the provisions of the Oklahoma Petroleum ~~Underground~~ Storage Tank Release Indemnity Program.

D. The Indemnity Fund shall consist of:

1. all monies received by the Commission as proceeds from the assessment imposed pursuant to Section 354 of this title;

2. interest attributable to investment of money in the Indemnity Fund; and

3. money received by the Corporation Commission in the form of gifts, grants, reimbursements, or from any other source intended to be used for the purposes specified by or collected pursuant to the provisions of the Oklahoma Petroleum ~~Underground~~ Storage Tank Release Indemnity Program.

E. 1. The monies deposited in the Indemnity Fund shall at no time become monies of the state and shall not become part of the general budget of the Corporation Commission or any other state agency. Except as otherwise authorized by this subsection, no monies from the Indemnity Fund shall be transferred for any purpose to any other state agency or any account of the Commission or be used for the purpose of contracting with any other state agency or reimbursing any other state agency for any expense.

2. Monies in the Indemnity Fund shall only be expended for:

a. reimbursements for the benefit of or to eligible persons, and

b. costs incurred by the Commission for the administration of such Indemnity Fund.

Any costs incurred by the Commission pursuant to the provisions of the Oklahoma Petroleum ~~Underground~~ Storage Tank Release Indemnity Program shall not exceed the actual expenditures made by the Commission to implement the provisions of the Oklahoma Petroleum ~~Underground~~ Storage Tank Release Indemnity Program.

Such payment shall be deposited in the Corporation Commission Underground Storage Tank Regulation Revolving Fund.

3. Payment of claims from the Indemnity Fund shall not become or be construed to be an obligation of this state. No claims submitted for reimbursement from the Indemnity Fund shall be paid with state monies.

SECTION 5. AMENDATORY Section 23, Chapter 90, O.S.L. 1989, as last amended by Section 3, Chapter 1, O.S.L. 1990 (17 O.S. Supp. 1990, Section 354), is amended to read as follows:

Section 354. A. Except as otherwise provided by this section, there shall be an assessment of one cent (\$0.01) per gallon upon the sale of each gallon of motor fuel, diesel fuel and blending materials sold to a person in this state by a distributor. The assessment imposed pursuant to the provisions of this section shall be for the purposes of providing revenue to:

1. the Petroleum ~~Underground~~ Storage Tank Release Environmental Cleanup Indemnity Fund pursuant to paragraph 1 of subsection C of this section; and

2. the State Transportation Fund and the State Highway Construction and Maintenance Fund pursuant to paragraph 2 of subsection C of this section.

The assessment shall be imposed at the time of the sale of the motor fuel, diesel fuel and blending materials and shall be collected and remitted to the Oklahoma Tax Commission by such distributor as provided by Section 355 of this title.

B. 1. Exempt from the assessment imposed pursuant to subsection A of this section are:

- a. the state government,
- b. the federal government,
- c. class I railroads, and
- d. sales between distributors, except for distributors required to operate on a tax-paid basis, and sales for exportation outside of this state specified by Section 507 of Title 68 of the Oklahoma Statutes;

2. Exempt from the assessment imposed for purposes specified in paragraph 2 of subsection A of this section are sales of:

- a. motor fuel, diesel fuel and blending materials used solely and exclusively in district-owned or leased public school buses, FFA and 4-H club trucks for the purposes of legally transporting public school children, or in the operation of vehicles used in driver training,
- b. motor fuels, diesel fuels and blending materials used solely and exclusively to propel motor vehicles on the public roads and highways of this state when leased or owned and being operated for the sole benefit of a county, city, town or volunteer fire department specified by Section 527 of Title 68 of the Oklahoma Statutes,
- c. motor fuel, diesel fuel and blending materials to counties and cities and towns,
- d. diesel fuel for off-road purposes specified by Section 509 of Title 68 of the Oklahoma Statutes,
- e. motor fuel, diesel fuel and blending materials used for agricultural purposes specified by Section 509 of Title 68 of the Oklahoma Statutes, and
- f. motor fuel, diesel fuel and blending materials used in aircraft or in aircraft engines pursuant to Section 508 of Title 68 of the Oklahoma Statutes.

C. The assessment imposed by subsection A of this section shall be distributed in the following manner:

1. Revenue from the assessment for the first year from July 1, 1989, until December 31, 1989, shall be deposited in the Petroleum ~~Underground~~ Storage Tank Release Environmental Cleanup Indemnity Fund created in Section 353 of this title. At least Five Million Dollars (\$5,000,000.00) shall be maintained in the Indemnity Fund pursuant to subsection D of this section;

2. a. Revenue from the assessment from January 23, 1990, until June 30, 1990, shall be deposited in the Highway Construction and Maintenance Fund except as otherwise provided in subsection D of this section;
- b. Revenue from the assessment from July 1, 1990, shall be deposited in the State Transportation Fund except as otherwise provided in subsection D of this section; and

- c. Revenue from the assessment imposed by subsection A of this section which is deposited in the State Highway Construction and Maintenance Fund or the State Transportation Fund shall be used solely for the purpose of matching Federal-Aid funds for the construction of highways and roads in this state.

D. 1. If at any time the Petroleum ~~Underground~~ Storage Tank Release Environmental Cleanup Indemnity Fund falls below the Five Million Dollars (\$5,000,000.00) maintenance level on or before December 31, 1999, the Corporation Commission shall notify the Tax Commission that the Indemnity Fund has fallen below the required maintenance level and that the assessment is to be deposited into the Indemnity Fund for ninety (90) days pursuant to the provisions of paragraph 2 of this subsection.

2. At least fifteen (15) days prior to the calendar month in which the assessment is to be collected for credit to the Indemnity Fund, the Tax Commission, upon notification by the Corporation Commission that the Indemnity Fund has fallen below the required maintenance level, shall notify the distributors that the assessment is being imposed for purposes of maintaining the Indemnity Fund. The notice shall include a date certain upon which to begin collecting the assessment for credit to the Indemnity Fund and a date certain for ending the assessment for credit to the Indemnity Fund. Upon notice by the Tax Commission that the assessment imposed is for credit to the Indemnity Fund, the distributor shall also assess, for the specified period required by the Tax Commission, the sales of:

- a. motor fuel, diesel fuel and blending materials used solely and exclusively in district-owned or leased public school buses, FFA and 4-H Club trucks for the purposes of legally transporting public school children or in the operation of vehicles used in driver's training,
- b. motor fuels, diesel fuels and blending materials used solely and exclusively to propel motor vehicles on the public roads and highways of the state when leased or owned and being operated for the sole benefit of a county, city or town or volunteer fire department specified by Section 527 of Title 68 of the Oklahoma Statutes,
- c. motor fuel, diesel fuel and blending materials to counties and cities and towns,
- d. diesel fuel for off-road purposes specified by Section 509 of Title 68 of the Oklahoma Statutes,
- e. motor fuel, diesel fuel and blending materials used for agricultural purposes specified by Section 509 of Title 68 of the Oklahoma Statutes, and
- f. motor fuel, diesel fuel and blending materials used in aircraft and aircraft engines pursuant to Section 508 of Title 68 of the Oklahoma Statutes.

3. After the collection period required by this subsection has expired, the revenue collected from the assessment shall be again deposited in the State Transportation Fund as provided in subsection C of this section.

SECTION 6. AMENDATORY Section 25, Chapter 90, O.S.L. 1989, as last amended by Section 3, Chapter 240, O.S.L. 1990 (17 O.S. Supp. 1990, Section 356), is amended to read as follows:

Section 356. A. The Corporation Commission shall provide reimbursement to eligible persons for allowable costs resulting from an eligible release pursuant to the provisions of this section.

B. Any person who intends to file for reimbursement shall make application to the Commission for such reimbursement.

1. The following information shall accompany the application:
 - a. documentation of site conditions prior to initiation of corrective action,
 - b. a record of the costs actually incurred for each corrective action taken,
 - c. evidence that the corrective action was completed in accordance with cleanup criteria established by the Commission,
 - d. how any other financial responsibility requirements will be met,
 - e. whether there is any other liability coverage for the release,
 - f. any injury to property or physical injury incurred as a result of the release,
 - g. a statement certified by affidavit as being true and correct identifying the date or estimated date that the release occurred, and
 - h. such other information and records as the Commission may require shall accompany the application.

2. As a condition for reimbursement pursuant to the provisions of this section, the Commission shall require that any correction action taken as a result of an eligible release, other than correction action taken in an emergency situation, shall be made by the competitive bid of at least two bidders, except for professional engineering, land surveying and other professional services which shall be selected based upon professional qualifications and technical experience of the consultant at a fair and reasonable negotiated fee. Acquisition or contracts for such corrective action shall be awarded to the lowest and best bidder. The Commission may request the owner or operator to submit documentation evidencing proof of such competitive bidding.

C. The person responsible for taking the corrective action shall keep and preserve suitable records of hydrological and other site investigations and assessments, site rehabilitation plans, contracts and contract negotiations, and accounts, invoices, sales tickets, or other payment records from purchases, sales, leases, or other transactions or claims involving costs actually incurred related to such corrective action or injury or damage. Such records shall be made available upon request to agents and employees of the Commission during regular business hours, and at other times upon written request of the Commission. In addition, the Commission may from time to time request submission of such site-specific information as it may require. All records of costs actually incurred shall be certified by affidavit to the Commission as being true and correct.

- D. 1. a. The Commission shall deny or approve the application for reimbursement on behalf of or to eligible persons and shall complete initial reimbursement within ninety (90) days after receipt of the complete application including but not limited to all requisite supporting documents, unless the time for review is extended by the Commission giving the applicant written notice of intent to extend no later than eighty (80) days from the date of receipt of the application. The total review period shall not be extended beyond one hundred twenty (120) days from the date of receipt of the complete application including but not limited to all requisite supporting documents, unless otherwise

extended by written mutual agreement of the applicant and the Commission.

- b. The Commission, within thirty (30) days of receipt of the complete application including but not limited to all requisite supporting documents, shall determine whether such person is eligible for reimbursement and shall notify such applicant as to his eligibility in writing.

2. Disposition of an application shall be provided to the applicant in writing, accompanied by a written explanation setting forth in detail the reason or reasons for the approval or denial. If the Commission fails to make a determination on an application within the time provided or denies an application, or if a dispute otherwise arises with regard to reimbursement, the applicant may request a hearing.

3. For claims other than the initial application, the Commission shall have thirty (30) days from the date of receipt of the claim in which to approve or deny the claim. If a claim is made subsequent to the date of the initial claim but prior to the completion of the Commission review of the initial application, the thirty-day review period shall not commence until the Commission has completed its review of the initial application. This time for review may be extended by the Commission giving the applicant written notice of intent to extend no later than twenty (20) days from the date of receipt of the claim.

4. For initial eligible releases requiring extensive corrective action, the Commission is authorized to make partial payment for either total or limited reimbursements to eligible persons. An eligible person intending to file for partial payment for either total or limited reimbursement shall submit an environmental corrective action plan including but not limited to the work to be completed, schedule of actions to be taken, and estimates of costs to be reimbursed. Such plan shall be submitted with the application for reimbursement. Unless the application for such partial payment is the initial application for the corrective action, the Commission shall have thirty (30) days from the date of receipt of the application for partial payment in which to approve or deny the application. If the application for partial payment is the initial application for the corrective action, paragraph 1 of this subsection shall control.

E. 1. For total reimbursement to a person described by subparagraph a of paragraph 2 of Section 352 of this title for claims subject to the provisions of subsection G of this section the following conditions apply:

- a. the release occurred on or after December 23, 1988,
- b. the person claiming total reimbursement must be an eligible person,
- c. the eligible person must have been in substantial compliance with the rules and regulations of the Corporation Commission promulgated pursuant to the provisions of the Oklahoma Petroleum ~~Underground~~ Storage Tank Release Indemnity Program and, the Oklahoma Underground Storage Tank Regulation Act and the Oklahoma Aboveground Tank Regulation Act at the time of the reporting of the release,
- d. allowable costs resulting from a release must have been incurred on or after December 23, 1988,
- e. the Commission determines that the release no longer poses a threat to public health and welfare or the environment,

- f. the Corporation Commission was given adequate notice by such owner or operator of the release pursuant to Section 309 of this title, and
- g. such owner or operator, to the extent possible, fully cooperated with the Commission in responding to the release.

2. For total reimbursement to a person described by subparagraph b of paragraph 2 of Section 352 of this title for claims subject to the provisions of subsection G of this section, the following conditions apply:

- a. the person claiming total reimbursement must be an eligible person,
- b. the person, to the extent possible, has fully cooperated with the Commission, and
- c. allowable costs for any corrective action must have been incurred on or after December 23, 1988,

3. a. For limited reimbursement to a person described by subparagraph a of paragraph 2 of Section 352 of this title for claims subject to the provisions of subsection G of this section, the following conditions apply:

- (1) the release occurred prior to December 23, 1988,
- (2) the person claiming the limited reimbursement must be an eligible person,
- (3) the eligible person must be in substantial compliance with the rules and regulations of the Corporation Commission promulgated pursuant to the provisions of the Oklahoma Petroleum ~~Underground~~ Storage Tank Release Indemnity Program ~~and~~, the Oklahoma Underground Storage Tank Regulation Act and the Oklahoma Aboveground Tank Regulation Act at the time of the reporting of the release,
- (4) allowable costs resulting from a release must have been incurred on or after December 23, 1988,
- (5) the Commission determines that the release no longer poses a threat to public health and welfare or the environment,
- (6) such owner or operator, to the extent possible, fully cooperated with the Commission in responding to the release,
- (7) the owner or operator had no knowledge or information that the release occurred prior to December 23, 1988.

b. The limited reimbursement not to exceed One Hundred Thousand Dollars (\$100,000.00) shall be equal to, but shall not exceed, seventy-five percent (75%) of the total allowable costs incurred for the remediation of the release from the ~~underground~~ storage tank system.

F. Except as otherwise provided by the Oklahoma Petroleum ~~Underground~~ Storage Tank Release Indemnity Program, a reimbursement shall not be made to any eligible person who has received or is eligible for payment or reimbursement from any other state or federal agency or other third party payor for the corrective action taken or the damages or the injuries associated with a release. The provisions of the Oklahoma Petroleum ~~Underground~~ Storage Tank Release Indemnity Program shall not apply if such eligible person has received or is eligible for payment or reimbursement from any other state or federal agency or other third party payor as a result of such release if such payment or reimbursement is less than the

minimum payment or reimbursement or over the maximum payment or reimbursement from the Indemnity Fund.

G. 1. The Commission shall reimburse from the Indemnity Fund an eligible person for allowable costs in excess of Five Thousand Dollars (\$5,000.00) but not more than:

- a. One Million Dollars (\$1,000,000.00) per occurrence providing the ~~underground~~ storage tank is used in petroleum marketing or if the system has a throughput in excess of ten thousand (10,000) gallons per month based on annual throughput for the previous calendar year, and
 - (1) One Million Dollars (\$1,000,000.00) annual aggregate for owners of one to one hundred ~~underground~~ storage tank systems, or
 - (2) Two Million Dollars (\$2,000,000.00) annual aggregate for owners of more than one hundred ~~underground~~ storage tank systems, or
- b. Five Hundred Thousand Dollars (\$500,000.00) per occurrence providing the system is not used in petroleum marketing, and if the ~~underground~~ storage tank system has a throughput of ten thousand (10,000) gallons or less per month based on annual throughput for the previous calendar year, and
 - (1) One Million Dollars (\$1,000,000.00) annual aggregate for owners of one to one hundred ~~underground~~ storage tank systems, or
 - (2) Two Million Dollars (\$2,000,000.00) for owners with more than one hundred ~~underground~~ storage tank systems.

2. Reimbursement shall not be made from the Indemnity Fund pursuant to this section until the Commission has determined that the costs for which reimbursement is requested were actually incurred and were reasonable.

H. The Indemnity Fund will cover corrective action taken and other actual physical damage caused by an eligible release. The Indemnity Fund will also cover any medical injuries incurred as a result of the eligible release to persons other than employees of the eligible person of the ~~underground~~ storage tank system or their agents and independent contractors retained to perform any such corrective action. The Indemnity Fund shall not be used to:

1. recover payments for loss of time;
2. recover payment of costs which may be associated with but are not integral to corrective action such as the cost of renovating ~~or replacing underground~~, removing or disposing of storage tanks unless the removing of any tanks, concrete, concrete accessories, lines, dispensers or other site improvements is necessary as required by a corrective action plan approved by the Commission or its designated agent;
3. pay for punitive damages from any civil action resulting from the eligible release; or
4. recover costs for loss of business and taking of property associated with the corrective action.

I. The right to apply for reimbursement and the receipt of reimbursement does not limit the liability of an owner or operator for damages, injuries or the costs incurred as a result of an eligible release.

SECTION 7. AMENDATORY Section 92, Chapter 208, O.S.L. 1987, as last amended by Section 18, Chapter 90, O.S.L. 1989 (82 O.S. Supp. 1990, Section 934.1), is amended to read as follows:

Section 934.1 A. There is hereby created in the State Treasury a fund for the ~~State Department of Pollution Control Corporation~~ Commission to be designated the "Oklahoma Leaking Underground Storage Tank Trust Fund". The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of loans and grants from the federal government and any state matching funds required by the federal government with regard to underground storage tanks.

B. There is hereby created in the State Treasury a revolving fund for the ~~State Department of Pollution Control Corporation~~ Commission to be designated the "Oklahoma Leaking Underground Storage Tank Revolving Fund". The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of monies from public or private sources, and any monies collected pursuant to the provisions of this section.

C. All monies accruing to the credit of the Oklahoma Leaking Underground Storage Tank Trust Fund and the Oklahoma Leaking Underground Storage Tank Revolving Fund are hereby appropriated and may be budgeted and expended by the ~~State Department of Pollution Control Corporation~~ Commission only for the purpose provided in this section, to best protect human health and the environment. Expenditures from said funds shall be made upon warrants issued by the State Treasurer against claims filed as prescribed by law with the Director of State Finance for approval and payment.

D. The ~~Pollution Control Coordinating Board~~ Corporation Commission is hereby given the power and authority to receive, administer and authorize payments from the Oklahoma Leaking Underground Storage Tank Trust Fund and the Oklahoma Leaking Underground Storage Tank Revolving Fund. The ~~Board~~ Commission shall establish separate accounts and subaccounts within the Oklahoma Leaking Underground Storage Tank Trust Fund and the Oklahoma Leaking Underground Storage Tank Revolving Fund deemed necessary to implement the provisions of this section.

E. The ~~Board is authorized to make payments to the Corporation Commission, the Department of Health, the Water Resources Board, the Department of Agriculture, the Department of Pollution Control and the Office of the Attorney General~~ may make expenditures from the Oklahoma Leaking Underground Storage Tank Revolving Fund for payment of costs incurred by the any appropriate state agency for corrective actions, enforcement actions and cost recovery actions undertaken as necessary to protect human health and the environment as set out in Subchapter IX of Title 42 of the United States Code. The Corporation Commission and Oklahoma Water Resources Board shall enter a joint agreement whereby:

1. The Oklahoma Water Resources Board shall investigate all facilities where complaints or other information indicate that a release of petroleum from an underground storage tank system has caused pollution to waters of the state which are not wholly contained within or upon the site where the tank or tanks are located; and

2. The Oklahoma Water Resources Board shall be reimbursed for taking corrective actions, enforcement actions and cost recovery actions resulting from such investigations.

F. For the purpose of immediately responding to emergency situations created by leaking underground storage tanks having potentially critical environmental or public health or safety impact, the ~~Board~~ Corporation Commission may take whatever action it deems necessary without notice or hearing, including the expenditure of monies from either the Oklahoma Leaking Underground Storage Tank Trust Fund or the Oklahoma Leaking Underground Storage Tank

Revolving Fund or from both such funds to promptly respond to the emergency. Such emergency expenditure shall be made pursuant to the provisions of the Oklahoma Central Purchasing Act upon such terms and conditions established by the Office of Public Affairs to accomplish the purposes of this section.

G. The ~~Board~~ Corporation Commission shall seek reimbursement from the responsible person, firm or corporation for all expenditures made from either the Oklahoma Leaking Underground Storage Tank Trust Fund or the Oklahoma Leaking Underground Storage Tank Revolving Fund or from both such funds; ~~provided however, that the Corporation Commission shall seek reimbursement from the responsible person, firm or corporation for all expenditures made pursuant to action taken by the Corporation Commission.~~ All monies received by the Corporation Commission ~~or by the Board~~ as reimbursement or penalties relating to expenditures made from the Oklahoma Leaking Underground Storage Tank Trust Fund or Leaking Underground Storage Tank Revolving Fund shall be transferred for deposit to the credit of the Oklahoma Leaking Underground Storage Tank Revolving Fund. All monies received by the Corporation Commission ~~or Board~~ as reimbursement or penalties relating to expenditures made from the Oklahoma Corporation Commission Underground Storage Tank Regulation Revolving Fund shall be transferred for deposit to the Oklahoma Corporation Commission Underground Storage Tank Regulation Revolving Fund.

H. Any owner or operator of an underground storage tank who fails to comply with any order issued by ~~the Board, the Corporation Commission, the Department of Health, the Oklahoma Water Resources Board or the Department of Agriculture~~ Corporation Commission for corrective or enforcement actions may be subject to an administrative penalty not to exceed Twenty-five Thousand Dollars (\$25,000.00) for each tank for each day of violation.

The administrative penalties assessed and collected by the ~~Board, the Department of Health, the Oklahoma Water Resources Board or the Department of Agriculture~~ Corporation Commission shall be deposited to the Oklahoma Leaking Underground Storage Tank Revolving Fund to be disbursed by the ~~Board~~ Commission in support of relevant agency activities. ~~Except for any monies received pursuant to subsection C of this section, any administrative penalties assessed and collected by the Corporation Commission shall be deposited into the Corporation Commission Underground Storage Tank Regulation Revolving Fund.~~

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 306.1 of Title 17, unless there is created a duplication in numbering, reads as follows:

Owners of tanks over eleven hundred (1100) gallons containing petroleum products which such petroleum products are used for agricultural purposes and not for resale shall be required to pay a permit fee of not more than Ten Dollars (\$10.00).

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 308.1 of Title 17, unless there is created a duplication in numbering, reads as follows:

A. An annual permit fee of not more than Twenty-five Dollars (\$25.00) per tank shall be assessed by the Commission upon each owner or operator of an underground storage tank system for petroleum products. Such fee shall be assessed upon each underground storage tank owned or operated by such owner or operator.

B. Failure to pay the fees required by subsection A of this section shall subject an owner or operator of an underground storage tank system to:

1. a penalty of fifty percent (50%) of the computed total fee due and owing by such owner and operator; or

2. suspension or nonrenewal of the permit to operate such system issued by the Commission until payment of such fees and/or penalty so assessed; or

3. both such penalty and permit suspension or nonrenewal.

SECTION 10. AMENDATORY Section 6, Chapter 252, O.S.L. 1990 (17 O.S. Supp. 1990, Section 405), is amended to read as follows:

Section 405. A. By September 1, ~~1990~~ 1991, each owner of an aboveground tank as defined in Section 324.7 of Title 74 of the Oklahoma Statutes located in this state which is in service or otherwise contains a flammable liquid shall notify the Commission of the aboveground tank, the age, size, type, location and contents of such tank.

B. Beginning on July 1, ~~1991~~ 1992, no aboveground tank shall be operated nor shall any flammable liquid be stored in any aboveground tank without a permit from the Commission.

C. The Commission shall not issue a permit to any person who is not in compliance with the Oklahoma Aboveground Tank Regulation Act.

D. 1. Permits shall be issued by the Commission for a period not to exceed one (1) year.

2. Any permit issued pursuant to the provisions of the Oklahoma Aboveground Tank Regulation Act may be transferred subject to rules promulgated by the Commission and only upon approval by the Commission.

3. Any permittee or applicant for permit subject to the provisions of the Oklahoma Aboveground Tank Regulation Act shall be deemed to have given consent to any duly authorized employee or agent of the Commission to access, inspect or monitor the aboveground tank in accordance with the provisions of the Oklahoma Aboveground Tank Regulation Act. Refusal to allow such access, entry, or inspection may constitute grounds for the denial, nonrenewal, suspension or revocation of a permit. Upon refusal of access, entry, inspection, sampling or copying pursuant to this section, the Commission or a duly authorized representative may make application for and obtain an administrative warrant or a search warrant from the district court where the facility is located to allow such entry, inspection, sampling or copying.

4. The owner or operator of an aboveground tank shall display the permit in a location or manner in which the permit can easily be visible to any person depositing a flammable liquid into an aboveground tank even after normal business hours.

E. Beginning on July 1, ~~1991~~ 1992, no person shall deposit a flammable liquid into an aboveground tank unless the system is operating pursuant to a permit issued by the Commission.

F. Any permit fee collected pursuant to the Oklahoma Aboveground Tank Regulation Act shall be deposited in the Corporation Commission Underground Storage Tank Regulation Revolving Fund.

G. The Commission may deny approval of a permit application, or refuse to reissue, suspend or revoke a permit issued pursuant to the Oklahoma Aboveground Tank Regulation Act if the Commission finds, after notice and a hearing conducted in accordance with the provisions of Section 314 of Title 75 of the Oklahoma Statutes, that the applicant or permittee has:

1. fraudulently or deceptively obtained or attempted to obtain a permit; or

2. failed to comply with any provision or requirement of this act or any rules and regulations adopted by the Commission in

accordance with the provisions of the Oklahoma Aboveground Tank Regulation Act.

H. Any person who sells an aboveground tank shall notify the owner and/or operator of the tank of the permit requirements of the Oklahoma Aboveground Tank Regulation Act.

I. 1. An annual permit fee of not more than Twenty-five Dollars (\$25.00) per tank shall be assessed by the Commission upon each owner or operator of an aboveground storage tank system. Such fee shall be assessed upon each aboveground storage tank owned or operated by such owner or operator;

2. Failure to pay the fees required by paragraph 1 of this subsection shall subject an owner or operator of an aboveground storage tank system to:

- a. a penalty of fifty percent (50%) of the computed total fee due and owing by such owner and operator, or
- b. suspension or nonrenewal of the permit to operate such system issued by the Commission until payment of such fees and/or penalty so assessed, or
- c. both such penalty and permit suspension or nonrenewal.

SECTION 11. The amendments to subsection G of Rule 9 adopted by the Oklahoma Corporation Commission and submitted to the Speaker of the House of Representatives and the President Pro Tempore of the Senate on March 28, 1991, relating to Fees for Underground Storage Tanks are hereby specifically disapproved by the Oklahoma Legislature, pursuant to the authority of Section 308 of Title 75 of the Oklahoma Statutes. The proposed amendments to subsection G of Rule 9 reads as follows:

"G. Underground Storage Tanks:

1. Tank Permit Fee:

- a. Pursuant to OCC-UST Rule 18, an annual permit fee shall be charged to all owners of underground storage tanks in accordance with the schedule set forth below. The amount to be paid will be by facility and based upon the total number of tanks owned at that facility, as well as their designation, at the beginning of the State fiscal year, which is July 1.

~~July 1, 1989 - June 30, 1990.~~

For Petroleum UST Facilities:

Number of Tanks:	1-3 1	2-3	4-7	8-12	13-25			
Amount:	\$60 \$60	\$110	\$100	\$160	\$150	\$210	\$250	\$350
Number of Tanks:	26-50	51-75	76-100	101+				
Amount:	\$500	\$600	\$1000	\$1100	\$1500	\$1600	\$2000	\$2100

For Hazardous Substances UST Facilities: \$100/Tank

A facility which has both petroleum and hazardous substance USTs will be considered as two separate facilities.

- b. The above fee shall be paid on a yearly basis for any tank which is not properly closed in accordance with OCC-UST Rule 12.
- c. For any facility installed or permanently abandoned during a calendar year, the full yearly fee shall be assessed.
- d. The Commission shall assess the fees according to a schedule based on owner's name as is listed in the UST database. Billings will be mailed out approximately 45 days in advance of the due date as noted on the billing. The billings will be distributed over the entire fiscal year."

SECTION 12. RECODIFICATION Section 92, Chapter 208, O.S.L. 1987 (82 O.S. Supp. 1990, Section 934.1), as last amended by

Section 7 of this act, shall be recodified as Section 365 of Title 17 of the Oklahoma Statutes.

SECTION 13. Section 11 of this act shall not be codified in the Oklahoma Statutes.

SECTION 14. This act shall become effective July 1, 1991.

SECTION 15. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the House of Representatives the 2nd day of May, 1991.

Speaker of the House of
Representatives

Passed the Senate the 6th day of May, 1991.

President of the Senate