ENROLLED SENATE
BILL NO. 941

BY: HOBSON of the SENATE

and

RICE of the HOUSE

AN ACT RELATING TO UNDERGROUND AND ABOVEGROUND STORAGE TANKS AND INDEMNITY FUND; AMENDING 17 O.S. 1991, SECTIONS 305, 306, 309, 352, 353, 356, 365 AND 402, WHICH RELATE TO THE OKLAHOMA UNDERGROUND STORAGE TANK REGULATION ACT, THE OKLAHOMA PETROLEUM UNDERGROUND RELEASE INDEMNITY PROGRAM AND THE OKLAHOMA ABOVEGROUND TANK REGULATION ACT; DESIGNATING THE OKLAHOMA CORPORATION COMMISSION AS THE ONLY STATE AGENCY TO ADMINISTER CERTAIN SECTIONS OF THE SOLID WASTE ACT AND THE SUPERFUND AMENDMENTS AND REAUTHORIZATION ACT OF 1986; MODIFYING POWERS AND DUTIES OF COMMISSION; REMOVING REQUIREMENT FOR THE DEPARTMENT OF POLLUTION CONTROL TO PROMULGATE CERTAIN RULES; AUTHORIZING COMMISSION TO ISSUE FIELD CITATIONS FOR VIOLATIONS OF CERTAIN ACT; PROVIDING PENALTIES; STATING CERTAIN CITATIONS SHALL NOT PRECLUDE OTHER APPLICABLE ENFORCEMENT PROCEEDINGS OR ADMINISTRATIVE PENALTIES; AFFORDING CERTAIN AFFECTED OWNERS OR OPERATORS A HEARING WITHIN CERTAIN TIME PERIOD; PROHIBITING CERTAIN PERSONS EMPLOYED BY OWNERS OR OPERATORS FROM ALLOWING CERTAIN RELEASES TO OCCUR; REMOVING REQUIREMENT FOR COMMISSION TO COORDINATE CERTAIN CORRECTIVE ACTIONS WITH THE DEPARTMENT OF POLLUTION CONTROL AND THE OKLAHOMA LEAKING UNDERGROUND STORAGE TANK TRUST FUND; REMOVING REQUIREMENT FOR

CERTAIN PENALTIES TO BE DEPOSITED IN CERTAIN FUND; MODIFYING DEFINITION OF CERTAIN TERM; MODIFYING TERM; MODIFYING USES FOR MONIES IN CERTAIN INDEMNITY FUND; PROVIDING FOR CERTAIN PAYMENTS TO BE DEPOSITED IN CERTAIN REVOLVING FUND; AUTHORIZING COMMISSION TO MAKE PARTIAL PAYMENTS FOR ONLY INITIAL ELIGIBLE RELEASES REQUIRING EXTENSIVE CORRECTIVE ACTION; AUTHORIZING THE COMMISSION TO EXTEND THE TIME FOR REVIEW OF APPLICATION FOR PARTIAL PAYMENT; REMOVING CERTAIN CONDITION FOR TOTAL REIMBURSEMENT; REMOVING CONDITIONS FOR LIMITED REIMBURSEMENTS; PROHIBITING LEGAL EXPENSES TO BE COVERED BY THE INDEMNITY FUND; AUTHORIZING THE COMMISSION TO KEEP CERTAIN INFORMATION CONFIDENTIAL IF SUCH INFORMATION WOULD ADVERSELY AFFECT PERSONS IF MADE PUBLIC; ALLOWING THE COMMISSION TO KEEP CERTAIN LISTS OF CUSTOMARY OR REASONABLE CHARGES FOR REIMBURSEMENT FROM THE OKLAHOMA PETROLEUM STORAGE TANK RELEASE INDEMNITY FUND; REQUIRING SUCH LIST BE MADE PUBLIC; STATING ESTABLISHMENT OF A REIMBURSABLE FEE SCHEDULE BE SET PURSUANT TO THE ADMINISTRATIVE PROCEDURES ACT; REMOVING REQUIREMENT FOR THE COMMISSION AND THE OKLAHOMA WATER RESOURCES BOARD TO ENTER A JOINT AGREEMENT REGARDING INVESTIGATIONS OF CERTAIN UNDERGROUND STORAGE TANK RELEASES AND THE REIMBURSEMENT OF CERTAIN COSTS RESULTING FROM INVESTIGATIONS; MODIFYING CERTAIN TERM; MODIFYING PURPOSE FOR COMMISSION TO REGULATE ABOVEGROUND STORAGE OF TANKS AT SERVICE STATIONS; PROVIDING FOR JURISDICTION TO HANDLE CERTAIN POLLUTION CASES; PROVIDING FOR CERTAIN DISBURSEMENTS FROM THE

OKLAHOMA LEAKING UNDERGROUND STORAGE TANK TRUST FUND; REQUIRING CERTAIN AUDIT; PROVIDING FOR COST OF AUDIT TO BE PAID BY CERTAIN INDEMNITY FUND; REQUIRING COPIES TO BE SUBMITTED TO CERTAIN OFFICIALS; PROVIDING FOR CODIFICATION; PROVIDING FOR NONCODIFICATION; REPEALING 17 O.S. 1991, SECTION 317, WHICH RELATES TO COORDINATION OF ENVIRONMENTAL CONTROL PROGRAMS; AND DECLARING AN EMERGENCY.

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

SECTION 1. AMENDATORY 17 O.S. 1991, Section 305, is amended to read as follows:

Section 305. The Oklahoma Corporation Commission, pursuant to the provisions of the Oklahoma Underground Storage Tank Regulation Act, is hereby designated as the state agency to administer subtitle I of Title VI of the Solid Waste Disposal Act and Section 205 of the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C.A., Section 6991 et seq.

SECTION 2. AMENDATORY 17 O.S. 1991, Section 306, is amended to read as follows:

Section 306. In addition to other powers and duties prescribed by law, the Corporation Commission shall have the power and duty to:

1. issue, renew, deny, modify, suspend, refuse to renew and revoke permits for underground storage tank systems pursuant to the provisions of the Oklahoma Underground Storage Tank Regulation Act and rules promulgated pursuant thereto;

2. enter at any reasonable time upon any public or private property for the purpose of inspecting and investigating an underground storage tank system and taking such samples as may be necessary to determine compliance with the provisions of the Oklahoma Underground Storage Tank Regulation Act, the standards, and rules promulgated thereto;

3. request issuance of an administrative warrant or search warrant as may be necessary from the district court where such public or private property is located to allow entry, inspection, sampling, or copying;

4. have access to and copy any records required to be maintained pursuant to the provisions of the Oklahoma Underground Storage Tank Regulation Act or rules promulgated thereto;

5. inspect any equipment, practice or method which is required by the provisions of the Oklahoma Underground Storage Tank Regulation Act or rules promulgated thereto;

6. have access to and inspect any monitoring stations or conduct tests to identify any actual or suspected release of a regulated substance;

7. employ or designate personnel to conduct investigations and inspections, to make reports of compliance with the provisions of the Oklahoma Underground Storage Tank Regulation Act and rules promulgated thereto;

8. within its discretion, report to the district attorney having jurisdiction or to the Attorney General any act committed by an owner, operator or employee of a facility which may constitute a violation of the provisions of the Oklahoma Underground Storage Tank Regulation Act or rules promulgated thereto;

9. advise, consult and cooperate with other agencies of this state, the federal government, other states and interstate agencies and with affected groups and political subdivisions to further the purposes of the provisions of the Oklahoma Underground Storage Tank Regulation Act;

10. administer the Underground Storage Tank Program in lieu of the federal government upon approval by the Environmental Protection Agency;

11. promulgate and enforce rules to implement the provisions of the Oklahoma Underground Storage Tank Regulation Act;

12. establish minimum standards and schedules for underground storage tank system;

13. require any owner or operator of an underground storage tank system within this state to:

a. submit such reports and information concerning the underground storage tank system as may be determined necessary by the Commission pursuant to the provisions of the Oklahoma Underground Storage Tank Regulation Act or rules promulgated thereto,

b. perform tests, install release detection devices, and where appropriate, monitor the environment to ensure that pollution is not occurring,

c. make timely reports to the Commission of pollution or releases,

d. temporarily or permanently cease operation of an underground storage tank system, modify and immediately remove or control any regulated substance that is found to be causing pollution when such cessation, removal or control is determined to be necessary by the Commission,

e. provide an alternate or temporary drinking water source to any person deprived of drinking water if it is found that such owner or operator is responsible for polluting the drinking water source beyond applicable drinking water standards, or where no such standard exists, such standard as the Oklahoma State Department of Health shall determine,

f. take full corrective action if said owner or operator is found to be responsible for the release, and

g. take appropriate action to temporarily relocate residents affected by the release;

14. establish and enforce administrative penalties for violations pursuant to the provisions of the Oklahoma Underground Storage Tank Regulation Act, including issuance of field citations by designated personnel for violations of the Oklahoma Underground Storage Tank Regulation Act, including but not limited to the authority to close a facility found to pose an imminent threat to the health, safety or the environment or to be operating tanks for which permit fees have not been paid. Issuance or payment of field citations shall in no way preclude other enforcement proceedings, administrative penalties, fines or order of the Commission if an owner or operator fails to correct a violation or abate a threat to health, safety or the environment in a reasonable manner, as determined by the Commission. If a citation is issued or a facility is temporarily closed under the provisions of this section, the owner or operator of said facility on application to the Commission shall be afforded a hearing within ten (10) days. Any penalties or

fines levied under this section shall be established by the Corporation Commission under the Administration Procedures Act;

15. institute and maintain or intervene in any action or proceeding where deemed necessary by the Commission pursuant to the provisions of the Oklahoma Underground Storage Tank Regulation Act to protect the health, safety and welfare of any resident of this state or the environment;

16. prepare an emergency response plan for spills or releases of regulated substances or review emergency response plans developed outside the Commission;

17. establish a schedule of fees for issuance of any permit required pursuant to the provisions of the Oklahoma Underground Storage Tank Regulation Act. The fees shall be in an amount to cover the costs of the Commission in administering the Oklahoma Underground Storage Tank Regulation Act. Payment of the permitting fees for any underground storage tank system required pursuant to the provisions of the Oklahoma Underground Storage Tank Regulation Act or to rules and regulations promulgated thereto shall prohibit the assessment of additional licensing or permitting fees for such underground storage tank systems by any other agency or municipality of this state; and

18. exercise all incidental powers as necessary and proper for the administration of the Oklahoma Underground Storage Tank Regulation Act.

SECTION 3. AMENDATORY 17 O.S. 1991, Section 309, is amended to read as follows:

Section 309. A. No owner or operator, employee or agent of such owner or operator, or transporter shall knowingly allow a release from an underground storage tank system to occur or continue to occur without reporting the release to the Commission within twenty-four (24) hours upon discovering such a release.

B. The owner or operator of an underground storage tank system shall immediately take all reasonable corrective actions necessary to prevent a release or a threatened release of regulated substances from an underground storage tank system and to abate and remove any such releases subject to applicable federal and state requirements.

C. If there is a release from an underground storage tank system, the Commission may:

1. after notice and hearing pursuant to Section 310 of this title, order the owner or operator to take reasonable and necessary corrective actions;

2. without notice and hearing pursuant to Section 310 of this title, issue an administrative order stating the existence of an emergency and requiring that such action be taken as it deems necessary to meet the emergency. Such order shall be effective immediately. Any person to whom such an order is directed shall comply with said order immediately but on application to the Commission shall be afforded a hearing within ten (10) days after receipt of the emergency order. On the basis of such hearing, the Commission shall continue such order in effect, revoke it, or modify it. Any person aggrieved by such order continued after the hearing provided for in this subsection may appeal to the Supreme Court as provided in Section 318 of Title 75 of the Oklahoma Statutes. Such appeal when docketed shall have priority over all cases pending on said docket.

D. 1. The Commission may take corrective action if:

a. an owner or operator of the underground storage tank system cannot be identified;

b. an identified owner or operator cannot or will not comply with the order issued pursuant to subsection C of this section;

c. an administrative or judicial proceeding on an order issued pursuant to subsection C of this section is

pending and the Commission determines corrective action is necessary to protect the public health, safety and welfare or the environment until the administrative or judicial proceeding is resolved; or

d. the Commission determines that the release constitutes a clear and immediate danger requiring immediate action to prevent, minimize or mitigate damage to the public health and welfare or the environment. Before taking an action under this paragraph, the Commission shall make all reasonable efforts, taking into consideration the urgency of the situation, to order an owner or operator to take a corrective action and notify the owners of real property as specified by Section 310 of this title.

2. The owner or operator is liable for the cost of the corrective action taken by the Commission pursuant to this subsection, including the cost of investigating the release and administrative and legal expenses, if:

a. the owner or operator has failed to take a corrective action ordered by the Commission and the Commission has taken the corrective action; or

b. the Commission has taken corrective action in an emergency pursuant to subparagraph d of paragraph 1 of this subsection.

3. Reasonable and necessary expenses incurred by the Commission in taking a corrective action, including costs of investigating a release and administrative and legal expenses, may be recovered in a civil action pursuant to Section 311 of this title. The Commission's certification of expenses is prima facie evidence that the expenses are reasonable and necessary. Expenses that are recovered under this subsection shall be deposited in the Corporation Commission Underground Storage Tank Regulation Revolving Fund.

E. Any order issued by the Commission pursuant to this section shall not limit the liability of the owner or operator or both such owner or operator for any injury, damages, or costs incurred by any person as a result of the release. The owner or operator shall not avoid any liability as a result of such release by means of a conveyance of any right, title or interest in real property; or by any indemnification, hold harmless agreement, or similar agreement.

1. This subsection does not:

a. prohibit a person who may be liable from entering an agreement by which the person is insured, held harmless, or indemnified for part or all of the liability,

b. prohibit the enforcement of an insurance, hold harmless, or indemnification agreement, or

c. bar a cause of action brought by a person who may be liable or by an insurer or guarantor, whether by right of subrogation or otherwise.

2. Except as otherwise provided by law, if there is more than one person liable, such persons shall be jointly liable for any injury, damages, or costs.

SECTION 4. AMENDATORY 17 O.S. 1991, 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 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 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 November 8, 1984, purchases property on which an underground storage tank system is located if:

(1) the underground storage tank system was located on the property on November 8, 1984,

(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 Storage Tank Release Environmental Cleanup Indemnity Fund (Indemnity Fund);

5. "Owner" means:

a. In the case of an underground storage tank system in use on November 8, 1984, or brought into use after that date, any person who holds title to, controls, or possesses an interest in an underground storage tank system used for the storage, use, or dispensing of regulated substances, or

b. In the case of an underground storage tank system in use before November 8, 1984, but no longer in service on that date, any person who holds title to, controls, or possesses an interest in an underground storage tank system immediately before the discontinuation of its use.

The term "owner" does not include a person who holds an interest in an underground tank system solely for financial security unless through foreclosure or other related actions the holder of a security interest has taken possession of the underground tank system;

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 unintentional disposing of the petroleum from a storage tank system into the environment of the state. The term release includes but is not limited to suspected releases of petroleum from 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;

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 5. AMENDATORY 17 O.S. 1991, Section 353, is amended to read as follows:

Section 353. A. There is hereby created within the Corporation Commission, the "Petroleum Storage Tank Release Environmental Cleanup Indemnity Fund" (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 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 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 storage tank system.

2. Costs incurred as a result of a release from a storage tank system owned or operated by a Class I Railroad are not reimbursable pursuant to the provisions of the Oklahoma Petroleum 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 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 to eligible persons unless duly assigned to another, and

b. costs incurred by the Commission for the administration of the fund and costs incurred for the sole purpose of evaluating claims and determining whether specific claims qualify for payment or reimbursement from such Indemnity Fund.

Any costs incurred by the Commission pursuant to the provisions of the Oklahoma Petroleum Storage Tank Release Indemnity Program shall not exceed the actual expenditures made by the Commission to implement the provisions of the Oklahoma Petroleum 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 6. AMENDATORY 17 O.S. 1991, 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 payments for reimbursements to eligible persons. An eligible person intending to file for partial payments for 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. The thirty-day time for review may be extended by the Commission for an additional thirty (30) days upon giving the applicant written notice of such intent to extend no later than twenty (20) days from the date of receipt of 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 person claiming total reimbursement must be an eligible person,

b. 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 Storage Tank Release Indemnity Program, the Oklahoma Underground Storage Tank Regulation Act and the Oklahoma Aboveground Tank Regulation Act at the time of the reporting of the release,

c. allowable costs resulting from a release must have been incurred on or after December 23, 1988,

d. the Commission determines that the release no longer poses a threat to public health and welfare or the environment,

e. the Corporation Commission was given adequate notice by such owner or operator of the release pursuant to Section 309 of this title, and

f. 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. F. Except as otherwise provided by the Oklahoma Petroleum 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 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 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 storage tank systems, or

(2) Two Million Dollars ($2,000,000.00) annual aggregate for owners of more than one hundred 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 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 storage tank systems, or

(2) Two Million Dollars ($2,000,000.00) for owners with more than one hundred 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 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, 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;

4. recover costs for loss of business and taking of property associated with the corrective action; or

5. pay legal expenses.

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. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 356.1 of Title 17, unless there is created a duplication in numbering, reads as follows:

A. Upon a showing satisfactory to the Corporation Commission by any person that records, reports or information, or a particular part thereof, if made public, would divulge production or sales figures or methods, processes or production unique to such person or would otherwise tend to affect adversely the competitive position of such person by revealing trade secrets, the Commission shall consider such record, report or information, or particular portion thereof, confidential.

B. 1. The Commission shall maintain a list of customary and reasonable fees charged by service providers for work, materials, equipment, labor, consulting fees and other services eligible for reimbursement from the Oklahoma Petroleum Storage Tank Release Indemnity Fund. Such list shall be on a regionwide or statewide basis and shall be made available to the public.

2. If the Commission establishes a schedule of reimbursable fees for any work, material, equipment, labor, consulting or other services eligible for reimbursement from the Indemnity Fund, the Commission shall set such fees pursuant to the Administrative Procedures Act. The establishment of a schedule of reimbursable fees shall not constitute rate setting.

SECTION 8. AMENDATORY 17 O.S. 1991, Section 365, is amended to read as follows:

Section 365. A. There is hereby created in the State Treasury a fund for the 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 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 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 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 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 Corporation Commission may make expenditures from the Oklahoma Leaking Underground Storage Tank Revolving Fund for payment of costs incurred by 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.

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 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 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. All monies received by the Corporation Commission 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 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 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 Corporation Commission shall be deposited to the Oklahoma Leaking Underground Storage Tank Revolving Fund to be disbursed by the Commission in support of relevant agency activities.

SECTION 9. AMENDATORY 17 O.S. 1991, Section 402, is amended to read as follows:

Section 402. For purposes of the Oklahoma Aboveground Tank Regulation Act:

1. "Aboveground tank" means any stationary vessel at a service station and is located above the surface of the ground or on the ground which is designed to contain an accumulation of flammable liquids and which is constructed of nonearthen materials that provide structural support;

2. "Commission" means the Oklahoma Corporation Commission;

3. "Flammable liquids" means all petroleum products used as motor fuel and all grades of gasoline, kerosene, diesel fuel, and aviation fuel having a vapor pressure not exceeding forty (40) pounds per square inch absolute at one hundred (100) degrees Fahrenheit; and

4. "Service station" means any facility, including but not limited to businesses serving the public, marinas and airports, where flammable liquids are stored in aboveground tanks and dispensed for retail sale into the fuel tanks of airplanes, vessels or motor vehicles.

SECTION 10. A. The Corporation Commission shall refer appropriate Leaking Underground Storage Tank (LUST) cases to the Oklahoma Water Resources Board which involve releases of petroleum fuel from underground storage tank systems which have caused pollution to waters of the state which are not wholly contained within or upon the site where the tank or tanks are located; provided however, that such referrals shall be phased out over a two-year period of time commencing July 1, 1991. The Corporation Commission shall be solely responsible for all such cases from and after July 1, 1993, if the Corporation Commission has demonstrated to the Environmental Protection Agency (EPA) and the Legislature that it has the necessary staffing, capability and expertise to continue to handle the program. The Commission shall provide the Speaker of the House of Representatives, President Pro Tempore of the Senate and their respective Natural Resource Committee chairs, copies of the FY 92 Annual Report to the EPA and State Program Approval Documents from the EPA.

B. During the two-year period prior to July 1, 1993, the Corporation Commission shall make disbursements from the Oklahoma Leaking Underground Storage Tank Trust Fund for payment to the Oklahoma Water Resources Board as specified in the joint memorandum of the Commission and the Board dated April 17, 1992. The Corporation Commission and Oklahoma Water Resources Board are further authorized to enter into such additional agreements as may be necessary to specifically describe, in a manner consistent with the joint memorandum dated April 17, 1992, how the provisions of Section 365E of Title 17 of the Oklahoma Statutes will be implemented.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 359 of Title 17, unless there is created a duplication in numbering, reads as follows:

A. By August 1, 1992, and every even numbered year thereafter, the State Auditor and Inspector shall contract with an auditor, or auditing company to audit the books, records, files and other such documents of the Oklahoma Corporation Commission pertaining to and which relate to the administration of the Petroleum Storage Tank Release Environmental Cleanup Indemnity Fund (Indemnity Fund). The audit shall include but shall not be limited to a review of agency compliance with state statutes regarding the Indemnity Fund, internal control procedures, adequacy of claim process expenditures from and debits of the Indemnity Fund regarding administration, personnel, operating and other expenses charged by the Corporation Commission; the duties performed in detail by agency personnel and Indemnity Fund personnel for which payment is made from the Indemnity Fund, and recommendations for improving claim processing, equipment needed for claim processing, internal control or structure for administering the Indemnity Fund; and such other areas deemed necessary by the State Auditor and Inspector.

B. The cost of the audit shall be borne by the Indemnity Fund.

C. Copies of the audit shall be submitted to the State Auditor and Inspector, the Governor, the Speaker of the House of Representatives, the President Pro Tempore of the Senate and the

Chairmen of the Appropriation Committees of both the Oklahoma House of Representatives and the State Senate.

SECTION 12. Section 10 of this act shall not be codified in the Oklahoma Statutes.

SECTION 13. REPEALER 17 O.S. 1991, Section 317, is hereby repealed.

SECTION 14. 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.