

STATE OF OKLAHOMA

1st Session of the 43rd Legislature (1991)

HOUSE BILL NO. 1415

BY: RICE

AS INTRODUCED

AN ACT RELATING TO THE CORPORATION COMMISSION;

AMENDING SECTION 9, CHAPTER 90, O.S.L. 1989 (17  
O.S. SUPP. 1990, SECTION 309), WHICH RELATES TO THE  
OKLAHOMA UNDERGROUND STORAGE TANK REGULATION ACT;  
CLARIFYING LANGUAGE; AND DECLARING AN EMERGENCY.

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

SECTION 1. AMENDATORY Section 9, Chapter 90, O.S.L. 1989  
(17 O.S. Supp. 1990, 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 ~~10~~ 310 of this ~~act~~ title, order the owner or operator to take reasonable and necessary corrective actions;

2. without notice and hearing pursuant to Section ~~10~~ 310 of this ~~act~~ 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 ~~10~~ 310 of this ~~act~~ 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 ~~11~~ 311 of this ~~act~~ 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.

4. Corrective action by the Commission for an underground storage tank release shall be coordinated with the Department and its authority to operate the Oklahoma Leaking Underground Storage Tank Trust Fund. The Commission, when necessary, shall seek action through the Department and the Oklahoma Leaking Underground Storage Tank Trust Fund.

5. In the event the Commission initiates actions through the Department and the Oklahoma Leaking Underground Storage Tank Trust Fund, all monies recovered and administrative or civil penalties collected in regard to said action shall be deposited to the Oklahoma Leaking Underground Storage Tank Trust 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 2. 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.

