

STATE OF OKLAHOMA

1st Session of the 46th Legislature (1997)

2ND CONFERENCE COMMITTEE
SUBSTITUTE FOR ENGROSSED
SENATE BILL NO. 27

By: Easley of the Senate

and

Rice of the House

2ND CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to regulatory affairs; amending 17 O.S. 1991, Sections 250, 251, as amended by Section 16, Chapter 315, O.S.L. 1994, 310, as amended by Section 9, Chapter 344, O.S.L. 1993, 356, as last amended by Section 2 of Enrolled Senate Bill No. 342 of the 1st Session of the 46th Oklahoma Legislature, 357, as amended by Section 22, Chapter 344, O.S.L. 1993, and Section 11, Chapter 406, O.S.L. 1992, as amended by Section 24, Chapter 344, O.S.L. 1993 (17 O.S. Supp. 1996, Sections 32, 251, 310, 357 and 359), which relate to Commission employees rate adjustments and petroleum storage tank regulation; modifying certain employee position and duties; modifying definition of certain terms; modifying provision for determining fuel or gas costs; providing for determining line loss; providing basis for calculating fuel adjustments; stating factors which may be considered; providing for refund or collection of certain differences; requiring certain proceedings to be brought in district court; stating property owners entitlement to remediate their own property; stating certain affidavit constitutes certain evidence related to costs; stating procedure for resubmittal of denied claims; stating eligible persons are not required to resubmit claims prior to seeking legal remedies; requiring Indemnity Fund to bear the burden of proof in certain cases; requiring such proof to be by preponderance of the evidence; stating certain eligible persons entitled to recover interest, costs and attorney's fees; stating costs; authorizing adjacent property owners to remediate property and make application to and receive reimbursement from the Indemnity Fund; requiring Administrator to bring certain action in certain district court; entitling prevailing party to recover certain interest, costs and attorney's fees; modifying certain date; requiring State Auditor and Inspector to conduct certain independent audit; requiring certain administrative law judges and hearing officers to be subject to the Code of Judicial Conduct; prohibiting Corporation Commissioners from engaging in certain communications with parties to any case pending before the Commission; requiring Commissioner to recuse himself from hearing; requiring other Commissioners to order such Commissioner recused under certain circumstance; requiring Commissioner to recuse himself in certain

proceedings if certain communication has occurred; stating application; prohibiting Commissioners from communicating with certain employers involved in certain cases; authorizing the Chief Justice of the Supreme Court to appoint a judge to serve in recused commissioner's place for certain case; requiring certain response or notice of protests by certain date in certain cases; requiring certain cases to be heard within sixty days of date of filing unless all parties agree; prohibiting more than two continuances unless all parties agree; stating exception; stating certain rules of discovery shall apply to certain cases before the Commission; requiring subpoenas to be issued pursuant to certain statutes; providing certain sections of this act supplement and amend certain sections of the Oklahoma Constitution; stating applicability of certain sections to all cases pending before the Commission upon effective date of act; stating applicability of Oklahoma Telecommunications Act of 1997 to OneNet; stating OneNet shall not be assessed certain fees; prohibiting pricing discrimination for certain Internet services; prohibiting certain entities from reselling OneNet access to the general public at nonpublic sites; providing for treble damages; prohibiting Corporation Commission from acting on certain reimbursement applications; amending 52 O.S. 1991, Section 149, as amended by Section 2, Chapter 315, O.S.L. 1994 (52 O.S. Supp. 1996, Section 149), which relates to the oil and gas conservation division; modifying employment requirements for certain employees; creating employee position; eliminating certain employee positions; removing provision relating to employment of certain employees; amending 74 O.S. 1991, Section 840.8, as renumbered by Section 54, Chapter 242, O.S.L. 1994, and as last amended by Section 20 of Enrolled House Bill No. 2046 of the 1st Session of the 46th Oklahoma Legislature (74 O.S. Supp. 1996, Section 840-5.5), which relates to positions in the unclassified service; placing certain positions in the unclassified service; establishing certain distance for certain animal waste handling facilities from certain dwellings; requiring certain animal feeding operations to obtain certain approval from Department of Environmental Quality; providing for codification; providing for noncodification; repealing 17 O.S. 1991, Section 32, as amended by Section 1, Chapter 315, O.S.L. 1994 (17 O.S. Supp. 1996, Section 32), which relates to a certain administrative position; and declaring an emergency.

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

SECTION 1. AMENDATORY 17 O.S. 1991, Section 250, is amended to read as follows:

Section 250. As used in this act:

1. "Affiliated person, subsidiary, firm or corporation" means any person, subsidiary, firm or corporation which:

- a. controls or is controlled by a public utility,
- b. is controlled by an entity that also controls the utility, or
- c. the utility or an entity controlling the utility has directly or indirectly the power to control;

2. "Commission" means any state regulatory body which has jurisdiction to regulate public utilities or electric cooperatives;

3. "Emergency sales of gas" ~~mean~~ means sales of natural gas made by a public utility or subsidiary thereof to one or more interstate pipelines or other out-of-state customer pursuant to federal law which exempts such transactions from the jurisdiction of the Federal ~~Power~~ Energy Regulatory Commission;

4. "Fair field price" means the value attributed to gas ~~produced from wells owned by a public utility, or a subsidiary or purchased by a public utility from an affiliate of a public utility, which shall be the going price paid by the utility, subsidiary or affiliate to others in the field where such production is located. If the utility, subsidiary or affiliate is not purchasing gas in such field, then such value shall be the price paid by the utility, subsidiary or affiliate in the nearest field where conditions are similar. The value to be attributed to residue gas owned by a public utility, or a subsidiary or affiliate of a public utility, from gas processing plants shall be the going price paid by the utility, subsidiary or affiliate to others from the same plant. If the utility, subsidiary or affiliate is not purchasing gas from said plant, then the value shall be the price paid by the utility, subsidiary or affiliate at the nearest plant where conditions are similar. However, the Commission may require an adjustment of the fair field price when it deems it proper to do so based on information before it, which value is determined either by a competitive bidding process or shown by the utility to be the fair market value of the gas owned or purchased, based upon the best available evidence;~~

5. "Fuel adjustment clause" means any mechanism which allows a public utility or electric generating cooperative to automatically adjust its charges above or below the base amount included in its rates, based upon changes in costs of fuel for generation of electricity, purchased power or purchased gas;

6. "Heat rate" means a measure of the efficiency of an electric generating station, computed by dividing the total British Thermal Unit content of the fuel burned by the resulting net kilowatt-hours generated;

7. "Line loss" means the kilowatt-hours of electricity lost in the operation of an electric transmission or distribution system, or the difference between the quantity of gas measured into a gas distribution or transmission system and the quantity of gas sold or transported to customers through that gas distribution or transmission system;

8. "Public utility" or "utility" means any individual, firm, association, partnership, corporation, or any combination thereof, other than a municipal corporation or their lessees, trustees and receivers, owning or operating for compensation in this state equipment or facilities for:

- a. producing, generating, transmitting, distributing, selling or furnishing electricity, or
- b. transmitting, directly or indirectly, or distributing combustible hydrocarbon natural or synthetic natural gas for sale to the public or for wholesale, unless its wholesale rates are regulated by a federal agency; and

9. "Purchased power adjustment clause" means any mechanism which allows an electric public utility or electric distribution cooperative to adjust its charges above or below the base amount included in its rates based upon changes in costs of wholesale power purchased from others.

SECTION 2. AMENDATORY 17 O.S. 1991, Section 251, as amended by Section 16, Chapter 315, O.S.L. 1994 (17 O.S. Supp. 1996, Section 251), is amended to read as follows:

Section 251. A. No fuel adjustment clause of any kind shall hereafter be authorized by the Commission if such clause operates automatically to permit charges, assessments or amendments to existing rate schedules to be made which have not been first approved as provided by Sections 251 through 255 of this title, except as otherwise provided for purchased power adjustments by electric distribution cooperatives in Sections 258 through 262 of this title.

B. If the Commission finds that the changes in the price of fuels required for the generation of electricity by any electric public utility, that the changes in the price of purchased electricity required for distribution by any public utility or changes in the price of purchased gas required for distribution by any gas utility, portends a likely and substantial threat to the ability of the utility to earn a reasonable rate of return, or are likely to cause the utility to have an excessive rate of return, or are likely to substantially impair the ability of the utility to acquire adequate supplies of fuel or gas, the Commission may, after investigation and public hearing, approve suitable fuel adjustment clauses to be superimposed upon the existing rate schedules of the public utility. The Commission shall design the fuel adjustment clause to allow the electric or gas public utility to increase or decrease charges to the consumer according to changes in the cost of fuel, purchased power or purchased gas as compared to the price of such fuels or power as reflected in the base rates.

C. In the Commission's design of fuel adjustment clauses, the following rules shall apply:

1. For the purpose of determining fuel or gas costs, the price paid for the fuel or gas shall be computed at the actual cost of fuel or gas purchased from nonaffiliated persons, firms and corporations; and the actual cost of the production of fuel owned by the public utility or ~~received~~ purchased from affiliated persons, firms and corporations, and in the case of gas, the fair field price for gas owned by the public utility or ~~received~~ purchased from affiliated persons, firms or corporations;

2. The cost of fuel or gas shall be the price paid at the point of delivery into the utility system. In the event the transportation is performed by an affiliated person, firm or corporation as defined in this act which is not subject to the regulatory jurisdiction of the Commission, a regulatory agency of another state having jurisdiction, or the Federal Energy Regulatory Commission or successor agency, the charges made for transportation shall be, if allowed at all, only such as the Commission finds fair, just and reasonable, for purposes of this section. Transportation charges approved by this Commission, a regulatory agency of another state having jurisdiction, or by the Federal Energy Regulatory Commission, or successor agency shall be included for purposes of this section, if allowed by this Commission. The proposed adjustment charge shall not include the cost of transportation beyond its point of delivery into that portion of the utility system regulated by the Corporation Commission unless there is presented to the Commission and it is persuaded by reliable evidence which clearly points to the conclusion that failure to do so will substantially threaten the ability of the utility to earn a reasonable rate of return;

3. The amount of electric energy produced by hydroelectric generating plants and purchased by the public utility proposing the adjustment charge shall be deducted from the amount of electric energy to which any fuel cost applies;

4. The actual efficiency or heat rate of electric public utilities shall be utilized and line losses of electric and gas utilities shall be considered only if reliable evidence clearly points to the conclusion that failure to do so will substantially threaten the ability of the utility to earn a reasonable rate of return. The Commission may limit the level of natural gas line loss permitted through the fuel adjustment clause or purchased gas adjustment clause, based upon safety and economic justification issues;

5. Fuel or gas removed from storage or stockpiles shall be taken into consideration on the basis of the last-in first-out method of inventory accounting; and

6. No estimated fuel adjustment shall be allowed. The adjustment shall be based on the actual cost of fuel, gas or purchased power, which may include measures of costs that are based on factors other than the historical prices paid by the utility for fuel, gas, or purchased power, provided such factors are supported by evidence furnished to the Commission, specifically including, but not limited to, changes supported by indexes, contract prices, or storage supplies as the Commission may find are just and reasonable. All differences between the rates charged and the actual cost of fuel, gas, or purchased power shall be refunded to or collected from ratepayers within a reasonable period of time and in a manner as directed by the Commission.

SECTION 3. AMENDATORY 17 O.S. 1991, Section 310, as amended by Section 9, Chapter 344, O.S.L. 1993 (17 O.S. Supp. 1996, Section 310), is amended to read as follows:

Section 310. A. If upon inspection or investigation, or whenever the Commission determines that there are reasonable grounds to believe that an underground storage tank system is in violation of the Oklahoma Underground Storage Tank Regulation Act, Section 301 et seq. of this title, or of any rule promulgated thereunder or of any order of the Commission, the Commission shall give written notice to the alleged violator specifying the cause of complaint within twenty (20) days after the Commission determines that there are reasonable grounds to believe that the facility is in violation of the Oklahoma Underground Storage Tank Regulation Act, the rules promulgated thereunder or any order of the Commission issued pursuant thereto. Such notice shall require that corrective action be immediately initiated. The notice shall be delivered to the alleged violator in accordance with the provisions of subsection C of this section.

B. 1. If corrective action is not taken in response to the notice issued pursuant to subsection A of this section, the Commission shall initiate proceedings and hold a hearing to determine if:

- a. the alleged violator should be found in violation of Commission rules,
- b. the alleged violator should be found to be in violation of the provisions of the Oklahoma Underground Storage Tank Regulation Act,
- c. the permit issued to the alleged violator should be suspended, revoked or not reissued,
- d. the application for a permit should be denied, or
- e. whether any other appropriate relief should be granted.

2. Notice of the hearing may be combined with the notice issued pursuant to subsection A of this section and shall be delivered to the alleged violator at least twenty (20) days prior to the time set for hearing. The notice shall be delivered to the alleged violator in accordance with the provisions of subsection C of this section.

3. After hearing, the Commission shall make findings of fact and conclusions of law, and enter its order reflecting its decision in the matter. The order of the Commission shall become final and binding on all parties unless appealed to the Supreme Court as provided in Section 318 of Title 75 of the Oklahoma Statutes within sixty (60) days after the date notice of the Commission's order has been sent to the parties. Except as otherwise provided by this section, Sections 319 through 322 of Title 75 of the Oklahoma Statutes shall be applicable to such appeals.

C. Except as otherwise expressly provided by law, any notice, order, or other instrument issued by or pursuant to authority of the Commission may be served on any person affected thereby personally, by publication, or by mailing a copy of the notice, order, or other instrument by certified mail directed to the person affected at his last-known post office address as shown by the files or records of the Commission. Proof of service shall be made as in the case of service of a summons or by publication in a civil action or may be made by the affidavit of the person who did

the mailing. Such proof of service shall be filed in the office of the Commission.

Every certificate or affidavit of service made and filed as in this section provided shall be prima facie evidence of the facts therein stated. A certified copy thereof shall have like force and effect.

D. Whenever determined to be necessary, the Commission shall provide notice and an opportunity for hearing to:

1. The surface owner of real property where any corrective action is to be taken if such person is not the owner or operator of the underground storage tank system; and

2. The owner of real property adjacent to the location of the corrective action if such real property owner will be adversely affected by the corrective action.

The notice shall advise such real property owner or owners that the corrective action is to be taken and that the owner's cooperation will be required for that action to be taken. The Commission shall give the owner or owners of such real property, as the case might be, an opportunity for hearing and to present evidence on the matter. Any proceeding to gain access to property not owned by the tank owner or operator shall be brought in the district court of the county where the property is located. Such property owners shall be entitled to remediate their own property if they so desire.

SECTION 4. AMENDATORY 17 O.S. 1991, Section 356, as last amended by Section 2 of Enrolled Senate Bill No. 342 of the 1st Session of the 46th Oklahoma Legislature, is amended to read as follows:

Section 356. A. The Indemnity Fund Program 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 Indemnity Fund Program for such reimbursement. The only information required to be filed with the

application shall be that information required by the Corporation Commission to determine eligibility for reimbursement.

1. The following information may accompany the application and shall be required prior to any reimbursement:

- 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 or will be completed in accordance with cleanup criteria established by the Corporation 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. the corrective action plan approved by or submitted to the appropriate regulatory program, and
- h. such other information and records as the Indemnity Fund Program may require.

2. The application shall contain a statement certified by affidavit that the information contained therein is true and correct. Such affidavit shall constitute prima facie evidence that the cost and expenses incurred by an eligible person were reasonable, necessary and integral to the corrective action or remediation and the rates charged were customary.

C. 1. As a condition for reimbursement pursuant to the provisions of this section, the Indemnity Fund Program shall require that any corrective action taken as a result of an eligible release, other than corrective action taken in an emergency situation, shall be made by the competitive bid of at least two bidders. Acquisition or contracts or subcontracts for corrective action or for labor or equipment which exceed Two Thousand Five Hundred Dollars (\$2,500.00) from any one vendor or subcontractor for any one site shall be awarded to the lowest and

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best bidder. The Indemnity Fund Program may require the owner or operator to submit documentation evidencing proof of such competitive bidding. Any competitive bid submitted pursuant to this section shall be accompanied by the sworn noncollusion statement contained in Section 85.22 of Title 74 of the Oklahoma Statutes, modified in wording as appropriate.

2. Professional engineering, geological, land surveying and other professional services or services provided by a Corporation Commission certified underground storage tank consultant required for investigation and the preparation of corrective action plans or proposed corrective action plans and oversight of corrective action shall be selected based upon professional qualifications and technical experience of the consultant at a fair and reasonable negotiated fee.

D. 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 Indemnity Fund Program during regular business hours, and at other times upon written request. In addition, the employees, agents and representatives of the Indemnity Fund Program 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 Indemnity Fund Program as being true and correct.

E. 1. a. The Administrator shall deny or approve, in whole or in part, 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

Administrator 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 Administrator.

- b. The Administrator, 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 of a claim, in whole or in part. If the Administrator fails to make a determination on an application or payment within the time provided or denies an application, or if a dispute otherwise arises with regard to reimbursement, the applicant may seek appropriate legal remedies.

3. For claims submitted subsequent to submittal of the application, the Administrator shall have thirty (30) days from the date of receipt of the supplemental claim in which to approve or deny the supplemental claim. If a supplemental claim is made subsequent to the date of the application but prior to the completion of the review of the application, the thirty-day review period shall not commence until the Indemnity Fund Program has completed its review of the application. This time for review may be extended by the Administrator giving the applicant written notice of intent to extend no later than twenty (20) days from the date of receipt of the claim. Resubmittal of denied claims for reconsideration shall be treated and processed as supplemental

claims. An eligible person is not required to resubmit claims prior to seeking appropriate legal remedies.

4. For eligible releases requiring extensive corrective action, the Administrator is authorized to make an initial payment and periodic supplemental payments for reimbursements to eligible persons for ongoing reimbursable costs actually incurred. An eligible person intending to file for supplemental payments for reimbursement shall submit a work plan for implementation of the corrective action plan approved by the Corporation Commission's regulatory program pursuant to the Oklahoma Underground Storage Tank Regulation Act or the Oklahoma Aboveground Tank Regulation Act, and additional appropriate information which shall include, but not be limited to, the work to be completed, schedule of actions to be taken, and estimates of costs to be reimbursed. Such information shall be submitted with the application for reimbursement. After approval of the application, the Administrator shall have thirty (30) days from the date of receipt of a claim for supplemental payment in which to approve or deny the supplemental claim. The thirty-day time for review may be extended by the Administrator 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 claim. If the claim for payment is included with the application for reimbursement, paragraph 1 of this subsection shall control.

F. 1. For 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 reimbursement must be an eligible person,
- b. the eligible person must have been in substantial compliance with the applicable rules 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 Corporation 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 Corporation Commission in responding to the release.

A person seeking reimbursement who has not been in substantial compliance with the applicable rules as required in subparagraph b of this paragraph, or who failed to give adequate notice as required in subparagraph e of this paragraph will remain ineligible until all corrective action ordered by the Commission has been accomplished and all fines paid. Payment of fines and documentation of corrective action shall be shown by a certification signed by the Director of the Division of the Corporation Commission which has responsibility for the underground storage tank regulatory functions set out in Chapter 14 of this title. The certificate must state that all fines resulting from noncompliance have been paid and any required corrective action has been completed and no additional enforcement actions are required.

2. For 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 reimbursement must be an eligible person,
- b. the person, to the extent possible, has fully cooperated with the Corporation Commission, and

- c. allowable costs for any corrective action must have been incurred on or after December 23, 1988.

G. 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.

H. 1. Eligible persons shall be reimbursed from the Indemnity Fund 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 Administrator has determined that the costs for which reimbursement is requested were actually incurred and were reasonable.

I. 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 Corporation Commission's regulatory program;
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.

J. 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.

K. The right to apply for reimbursement and the right to certify that costs are true, correct and actually incurred may not

be assigned to a person rendering services for corrective action on the subject site.

L. The Indemnity Fund shall bear the burden of proof in every case brought pursuant to the Oklahoma Petroleum Storage Tank Release Indemnity Program. The burden of proof to be applied in such cases shall be by a preponderance of the evidence. Any tank owner or operator or other eligible person bringing an action pursuant to this act shall be entitled to recover interest, the costs of the action and attorney's fees. Costs of the action shall include administrative costs and witness fees and expenses related to the proceeding.

M. Any adjacent property owner whose property has been contaminated by an eligible release may remediate his or her own property and shall be eligible to make direct application to and receive reimbursement from the Indemnity Fund.

N. The Indemnity Fund shall pay the reasonable costs of all activities required by the regulatory program of the Corporation Commission. This shall include the reasonable or contracted cost of all equipment furnished or acquired, all piping, wells and surface equipment furnished, acquired or provided pursuant to any free product removal, corrective action, remedial action plan or remediation plan which is required, approved or directed to be implemented, even if such plan is rescinded or superseded by a plan calling for risk-based assessment closure or other remediation activities.

SECTION 5. AMENDATORY 17 O.S. 1991, Section 357, as amended by Section 22, Chapter 344, O.S.L. 1993 (17 O.S. Supp. 1996, Section 357), is amended to read as follows:

Section 357. A. Payment of any claim from the Indemnity Fund shall be subject to the Indemnity Fund acquiring by subrogation the right to recover any amounts paid by the Indemnity Fund to or on behalf of any claimant who receives reimbursement for claims eligible person which ~~were~~ may be determined to be fraudulent, reimbursable by other sources, or excessive. The Administrator shall bring an action in the district court where the property is located on behalf of the Indemnity Fund to recover any such

~~payments to any claimant and additional costs incurred by such Indemnity Fund which includes but is not limited to: interest, administrative and adjudicative costs, and attorney's fees. The prevailing party in such cases shall be entitled to recover interest, costs of the action, including administrative and witness fees and expenses, and attorney's fees.~~

B. The Administrator is authorized to represent and protect the Indemnity Fund in any state or federal judicial or administrative proceeding.

C. Any person who is a party to a lawsuit and who may request any payment or reimbursement payable from the Indemnity Fund as a result of such lawsuit shall notify the Administrator upon being served with notice of the lawsuit. The Administrator is authorized to establish and enforce such third party claim requirements as are necessary to implement and comply with the provisions of this section.

SECTION 6. AMENDATORY Section 11, Chapter 406, O.S.L. 1992, as amended by Section 24, Chapter 344, O.S.L. 1993 (17 O.S. Supp. 1996, Section 359), is amended to read as follows:

Section 359. A. By ~~August 1, 1992~~ December 1, 1997, and every year thereafter, the State Auditor and Inspector shall ~~contract with an auditor, or auditing company to~~ conduct an independent audit of 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. 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 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 701 of Title 17, unless there is created a duplication in numbering, reads as follows:

In the performance of their adjudicative functions, the Corporation Commissioners and all persons appointed or acting in the capacity of administrative law judge or administrative hearing officer shall be subject to the Code of Judicial Conduct.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 702 of Title 17, unless there is created a duplication in numbering, reads as follows:

A. While exercising their adjudicative authority the Corporation Commissioners shall not, directly or indirectly, engage in any communication, either written or oral, with any party or their representatives to any case pending before the Corporation Commission other than those occurring in the course of the proceedings. Any Commissioner engaging in such a communication shall recuse himself from participating in any hearing or deliberations, or otherwise, regarding such matter and if a Commissioner fails to recuse himself he shall be ordered recused by the remaining Commissioners.

B. In the event a Corporation Commissioner has engaged in any communication, whether direct or indirect and whether written or oral, with any party or their representatives regarding any matter which subsequently becomes a case before the Corporation Commission in which the Commission is asked to exercise its adjudicative authority, the Commissioner engaging in such a communication shall recuse himself from participating in any

hearing or deliberations, or otherwise, regarding such matter and if a Commissioner fails to recuse himself he shall be ordered recused by the remaining Commissioners.

C. The provisions of subsections A and B of this section shall apply in all cases where the Corporation Commission or its divisions or staff are parties to the action, either as the applicant, a respondent or as an interested party. The Corporation Commissioners shall not communicate, directly or indirectly or orally or in writing, with any employee of the Commission who is involved in a case regarding the subject matter of the case and if a Commissioner has engaged in any communication regarding the subject matter of a case before it became a case the provisions of subsection B shall apply.

D. In every case where a Corporation Commissioner has been recused the Chief Justice of the Supreme Court shall appoint a judge of the district court, a Judge from the Courts of Appeals or a Justice of the Supreme Court to serve in the recused Corporation Commissioner's place for the purpose of hearing the case in which the recusal occurred.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 703 of Title 17, unless there is created a duplication in numbering, reads as follows:

Beginning January 1, 1998, in every case requiring the exercise of its adjudicative authority the Corporation Commission shall require that any person protesting a case shall file a response or notice of protest at least five (5) days prior to the scheduled hearing date. The Corporation Commission may extend the time for filing or grant leave to file out of time upon a showing of exigent or extraordinary circumstances.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 704 of Title 17, unless there is created a duplication in numbering, reads as follows:

A. Every case requiring the exercise of adjudicative authority by the Corporation Commission shall be heard within sixty (60) days of the date of filing unless all parties actively

participating in the case agree otherwise or as otherwise provided in this section.

B. No more than two continuances shall be granted by the Corporation Commission in any adjudicative case unless the continuance is agreed to by all of the parties actively participating in the case or as otherwise provided in this section.

C. The Corporation Commission may grant an extension of time or continuance contrary to the provisions of subsections A and B of this section upon the showing of exigent or extraordinary circumstances.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 705 of Title 17, unless there is created a duplication in numbering, reads as follows:

In all adjudicative proceedings before the Corporation Commission pursuant to the Oklahoma Underground Storage Tank Regulation Act, Sections 301 through 317 of Title 17 of the Oklahoma Statutes and the Oklahoma Petroleum Storage Tank Release Indemnity Program, Sections 350 through 358 of Title 17 of the Oklahoma Statutes, subpoenas shall be issued pursuant to the provisions of Section 2004.1 of Title 12 of the Oklahoma Statutes and discovery shall occur pursuant to the provisions of the Oklahoma Discovery Code, Sections 3224 through 3237 of Title 12 of the Oklahoma Statutes.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 706 of Title 17, unless there is created a duplication in numbering, reads as follows:

It is the intention of the Legislature that Sections 3 through 11 of this act supplement and implement Sections 18 through 34, inclusive, of Article IX of the Constitution of the State of Oklahoma, and are amendments to and alterations of Sections 18 through 34, inclusive, of Article IX of the Constitution of the State of Oklahoma, as authorized by Section 35 of Article IX of said Constitution.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 139.108 of Title 17, unless there is created a duplication in numbering, reads as follows:

A. Except for the provisions of this section, nothing in the Oklahoma Telecommunications Act of 1997 shall be construed as applicable to the telecommunications network known as OneNet or to any other component of the Oklahoma Government Telecommunications Network. Neither OneNet nor any other component of the Oklahoma Government Telecommunications Network shall be assessed any fee or other charge for the support of universal service.

B. No provider of Internet service or any company providing telecommunications services or its affiliate or subsidiary, may price such Internet service in an anticompetitive, discriminatory, or predatory manner or subsidize the price of Internet service with revenues received from other services. No governmental agency or entity using or being eligible to use OneNet facilities may price such Internet services in an anticompetitive or predatory manner. Any governmental agency or entity using OneNet facilities is hereby prohibited from reselling OneNet access directly to the general public at any nonpublic site. Any company or individual damaged from a violation of this subsection by a private company or individual shall be entitled to treble damages.

C. The Corporation Commission shall not approve, endorse, forward or file any application for reimbursement submitted pursuant to subsection (h) of Section 254 of the Communications Act of 1934, as amended, for transmission services requiring a circuit of T-1 or greater capacity unless OneNet is the circuit provider. For purposes of this subsection, "T-1" means a digital, one-million-five-hundred-forty-four-thousand-bit (1.544 Mbit) circuit with capacity sufficient to simultaneously transmit twenty-four (24) voice or data channels at sixty-four thousand bits per second (64 Kbits/sec).

SECTION 14. AMENDATORY 74 O.S. 1991, Section 840.8, as renumbered by Section 54, Chapter 242, O.S.L. 1994, and as last amended by Section 20 of Enrolled House Bill No. 1436 of the 1st Reg. No. 1750Page 22

Session of the 46th Oklahoma Legislature, is amended to read as follows:

Section 840-5.5 A. The following offices, positions, and personnel shall be in the unclassified service and shall not be placed under the classified service:

1. Persons chosen by popular vote or appointment to fill an elective office, and their employees, except the employees of the Corporation Commission, the State Department of Education and the Department of Labor;

2. Members of boards and commissions, and heads of agencies; also one principal assistant or deputy and one executive secretary for each state agency;

3. All judges, elected or appointed, and their employees;

4. Persons employed with one-time, limited duration, federal or other grant funding that is not continuing or indefinitely renewable. The length of the unclassified employment shall not exceed the period of time for which that specific federal funding is provided. Provided any person unclassified pursuant to this paragraph on April 11, 1995, in a capacity that does not meet the criteria listed in this paragraph may continue to be employed in such status until July 1, 1995;

5. All officers and employees of The Oklahoma State System of Higher Education, State Board of Education and State Department of Vocational and Technical Education;

6. Persons employed in a professional or scientific capacity to make or conduct a temporary and special inquiry, investigation, or examination on behalf of the Legislature or a committee thereof or by authority of the Governor. These appointments and authorizations shall terminate on the first day of the regular legislative session immediately following the appointment, if not terminated earlier. However, nothing in this paragraph shall prevent the reauthorization and reappointment of any such person;

7. Election officials and employees;

8. Temporary employees employed to work less than one thousand (1,000) hours in any twelve-month period. This category

of employees may include persons employed on an intermittent, provisional, seasonal, temporary or emergency basis;

9. Temporary lake patrol officers, regardless of the number of hours worked, who are employed by the Department of Public Safety during the period March 16 through October 31 in any calendar year; provided, the hours worked shall be considered in determining the temporary employee's eligibility for subsequent employment in any other unclassified temporary employment category;

10. Professional trainees only during the prescribed length of their course of training or extension study;

11. Students who are employed on a part-time basis, which shall be seventy-five percent (75%) of a normal forty-hour work week or thirty (30) hours per week, or less, or on a full-time basis if the employment is pursuant to a cooperative education program such as that provided for under Title I IV-D of the Higher Education Act of 1965 (20 U.S.C. 1087a-1087c), as amended, and who are regularly enrolled in:

- a. an institution of higher learning within The Oklahoma State System of Higher Education,
- b. an institution of higher learning qualified to become coordinated with said State System of Higher Education. For purposes of this act a student shall be considered a regularly enrolled student if he or she is enrolled in a minimum of five (5) hours of accredited graduate courses or a minimum of ten (10) hours of accredited undergraduate courses, provided, however, the student shall only be required to be enrolled in a minimum of six (6) hours of accredited undergraduate courses during the summer, and such student is regularly attending classes during that semester of employment, or
- c. high school students regularly enrolled in a high school in Oklahoma and regularly attending classes during such time of enrollment;

12. The spouses of personnel who are employed on a part-time basis to assist or work as a relief for their spouses in the Oklahoma Tourism and Recreation Department;

13. Service substitute attendants who are needed to replace museum and site attendants who are unavoidably absent. Service substitutes may work as part-time or full-time relief for absentees for a period of not more than four (4) weeks per year in the Oklahoma Historical Society sites and museums; such substitutes will not count towards the agency's Full-Time-Equivalent Employee Limit;

14. Employees of either the House of Representatives or the State Senate or the Legislative Service Bureau;

15. Corporation Commission personnel occupying the following offices and positions:

- a. Administrative aides, and executive secretaries to the Commissioners,
- b. Directors of all the divisions, personnel managers and comptrollers,
- c. General Counsel,
- d. Public Utility Division Chief Engineer,
- e. Public Utility Division Chief Accountant,
- f. Public Utility Division Chief Economist,
- g. Public Utility Division Deputy Director, ~~and~~
- h. Secretary of the Commission~~†~~†,
- i. Deputy Conservation Director,
- j. Manager of Pollution Abatement,
- k. Manager of Field Operations,
- l. Manager of Technical Services,
- m. Director of Administrative and Support Services, and
- n. Public Utility Division Chief of Telecommunications;

16. At the option of the employing agency, the Supervisor, Director, or Educational Coordinator in any other state agency having a primary responsibility to coordinate educational programs operated for children in state institutions;

17. Bill Willis Community Mental Health Center personnel occupying the following offices and positions:

- a. Director of Facility,
- b. Deputy Director for Administration,
- c. Clinical Services Director,
- d. Executive Secretary to Director, and
- e. Directors or Heads of Departments or Services;

18. Office of State Finance personnel occupying the following offices and positions:

- a. State Comptroller,
- b. Information Services Divisions Manager,
- c. Network Manager, and
- d. Network Technician;

19. Employees of the Oklahoma Development Finance Authority;

20. Those positions so specified in the annual business plan of the Department of Commerce;

21. Those positions so specified in the annual business plan of the Oklahoma Center for the Advancement of Science and Technology;

22. The following positions and employees of the Oklahoma School of Science and Mathematics:

- a. positions for which the annual salary is Twenty-four Thousand One Hundred Ninety-three Dollars (\$24,193.00) or more, as determined by the Office of Personnel Management, provided no position shall become unclassified because of any change in salary or grade while it is occupied by a classified employee,
- b. positions requiring certification by the State Department of Education, and
- c. positions and employees authorized to be in the unclassified service of the state elsewhere in this section or in subsection B of this section;

23. Office of Personnel Management employees occupying the following positions:

- a. the Carl Albert Internship Program Coordinator, and
- b. one Administrative Assistant;

24. Department of Labor personnel occupying the following offices and positions:

- a. two Deputy Commissioners,
- b. Executive Secretary to the Commissioner,
- c. Chief of Staff, and
- d. two Administrative Assistants;

25. The State Bond Advisor and his employees;

26. The Oklahoma Employment Security Commission employees occupying the following positions:

- a. Associate Director,
- b. Secretary to the Associate Director, and
- c. Assistant to the Executive Director;

27. Oklahoma Human Rights Commission personnel occupying the position of Administrative Assistant;

28. The officers and employees of the State Banking Department;

29. Officers and employees of the University Hospitals Authority except personnel in the state classified service pursuant to Section 3211 of Title 63 of the Oklahoma Statutes and members of the University Hospitals Authority Model Personnel System created pursuant to subsection E of Section 3211 of Title 63 of the Oklahoma Statutes or as otherwise provided for in Section 3213.2 of Title 63 of the Oklahoma Statutes;

30. Alcoholic Beverage Laws Enforcement Commission employees occupying the three Administrative Service Assistant positions;

31. The Oklahoma State Bureau of Investigation employee occupying the Special Investigator position and one executive secretary in addition to the one authorized pursuant to paragraph 2 of this subsection;

32. The Governor's Representative of the Oklahoma Highway Safety Office of the Oklahoma Department of Public Safety who shall be appointed by the Governor;

33. Oklahoma Department of Transportation employee occupying the position of the Director of the Oklahoma Aeronautics Commission;

34. Commissioners of the Land Office employees occupying the following positions:

- a. Director of the Investments Division,
- b. Assistant Director of the Investments Division, and
- c. one Administrative Assistant;

35. Within the Bureau of Narcotics and Dangerous Drugs Control Commission, the following positions:

- a. two Narcotics Agent positions, provided, authorization for such positions shall be terminated when federal support for the positions by the Gang Intelligence/Enforcement Program is discontinued, and
- b. one executive secretary in addition to the one authorized pursuant to paragraph 2 of this subsection;

36. A maximum of one hundred (100) positions, within full-time-employee limitations of the Oklahoma Military Department, to work in any of the Department of Defense directed youth programs or the State of Oklahoma Juvenile Justice Youth Programs. The authorization for such positions shall be terminated if the federal funding for the positions is discontinued;

37. Within the Oklahoma Commission on Children and Youth the following unclassified positions:

- a. one Oversight Specialist and one Community Development Planner,
- b. one State Plan Grant Coordinator, provided authorization for the position shall be terminated when federal support for the position by the United States Department of Education Early Intervention Program is discontinued, and
- c. one executive secretary in addition to the one authorized pursuant to paragraph 2 of this subsection;

38. The following positions and employees of the Department of Central Services:

- a. one Executive Secretary in addition to the Executive Secretary authorized by paragraph 2 of this subsection,
- b. the Director of Central Purchasing, and
- c. one Alternate Fuels Administrator;

39. One Environmental Specialist I within the Water Resources Board;

40. J.D. McCarty Center for Children with Developmental Disabilities personnel occupying the following offices and positions:

- a. Physical Therapists,
- b. Physical Therapist Assistants,
- c. Occupational Therapists,
- d. Certified Occupational Therapist Aides, and
- e. Speech Pathologists;

41. The Development Officer within the Oklahoma Historical Society;

42. State Department of Agriculture personnel occupying the following positions:

- a. one Executive Secretary in addition to the Executive Secretary authorized by paragraph 2 of this subsection,
- b. Agricultural Marketing Coordinator III, and
- c. temporary fire suppression personnel, regardless of the number of hours worked, who are employed by the State Department of Agriculture during the period of October 1 through May 31 in any fiscal year; provided, however, notwithstanding the provisions of any other section of law, the hours worked by such employees shall not entitle such employees to any benefits received by full-time employees; and

43. The Contracts Administrator within the Oklahoma State Employees Benefits Council.

B. If an agency has the authority to employ personnel in the following offices and positions, the appointing authority shall

have the discretion to appoint personnel to the unclassified service:

1. Licensed medical doctors, osteopathic physicians, dentists, and psychologists;
2. Certified public accountants;
3. Licensed attorneys; and
4. Licensed veterinarians.

C. Effective July 1, 1996, authorization for unclassified offices, positions, or personnel contained in a bill or joint resolution shall terminate June 30 of the ensuing fiscal year after the authorization unless the authorization is codified in the Oklahoma Statutes or the termination is otherwise provided in the legislation.

SECTION 15. AMENDATORY 52 O.S. 1991, Section 149, as amended by Section 2, Chapter 315, O.S.L. 1994 (52 O.S. Supp. 1996, Section 149), is amended to read as follows:

Section 149. There is hereby created within the Corporation Commission of Oklahoma, herein called "Commission", a Conservation Division, the duties and functions of which, subject to the supervision and direction of the Commission, shall be to aid the Commission in the administration and performance of the powers, duties and functions of the Commission with respect to oil and gas conservation and the prevention of pollution resulting from oil and gas production, transportation, and refining operations. The Conservation Division so created shall consist of the following personnel:

1. A Director of Conservation, who, in addition to the duties and functions now or hereafter prescribed for such officer in this title, shall have overall responsibility, supervision and direction of the activities of the Conservation Division and the administration and enforcement of the rules, regulations and orders of the Commission relating to oil and gas conservation and the prevention of pollution. The Director of Conservation shall be a graduate of an accredited college or university with a Bachelor's Degree and shall have five (5) years' experience in a

supervisory capacity in an administrative or personnel management position;

2. A Manager of Pollution Abatement, whose duties and functions shall be to direct and supervise the activities of the Conservation Division with respect to the prevention of pollution. The Manager of Pollution Abatement shall be a graduate of an accredited college or university with a Bachelor of Science Degree in petroleum, civil or mechanical engineering, geology, environmental science or a related field and shall have at least five (5) years' practical or regulatory experience in the production of oil and gas, three (3) years of which must have been in an administrative or supervisory capacity;

3. A Manager of Field Operations, whose duties and functions shall be to direct, supervise and coordinate the activities of the district offices and all the field activities of the Conservation Division with respect to both oil and gas conservation and the prevention of pollution. The Manager of Field Operations shall be a graduate of an accredited college or university with a Bachelor of Science Degree in ~~Petroleum Engineering~~ petroleum, civil or mechanical engineering, geology, environmental science or a related field and at least five (5) years' practical or regulatory experience in the production of oil and gas, three (3) years of which must have been in an administrative or supervisory capacity or, ~~in the alternative, shall have at least ten (10) years' experience in the production of oil and gas, of which five (5) years shall be in a supervisory capacity~~ an equivalent combination of education and experience, substituting one (1) additional year of qualifying experience for each year of the required degree;

4. A Deputy Director of Conservation, whose duties and functions shall be the administrative management of the various offices of the Conservation Division including, but not limited to, office services and procedures, coordinating personnel administration, processing of expense statements, budget preparation and cost accounting, procurement and use of supplies, files, records, and other professional and clerical services, computer services, with other divisions of the Commission and

providing technical assistance as necessary. The Deputy Director of Conservation shall be a graduate of an accredited college or university with a ~~Bachelor's Degree~~ Bachelor of Science Degree in petroleum, civil or mechanical engineering, geology, environmental science or a related field and shall have five (5) years' practical or regulatory experience in a the production of oil and gas, three (3) years of which must have been in an administrative or supervisory capacity in an administrative or personnel management position;

5. ~~A Senior Engineer and a Senior Geologist, whose duties and functions shall be to provide the Commission, the Director of Conservation, and the Conservation Division with engineering, geological and other technical advice and assistance as needed with respect to oil and gas conservation and the prevention of pollution, including participation in hearings before the Commission or Administrative Law Judges. The Senior Engineer shall be a graduate of an accredited college or university, with a Bachelor of Science Degree in Petroleum Engineering and at least five (5) years' experience as a petroleum engineer. The Senior Geologist shall be a graduate of an accredited college or university, with a Bachelor of Science Degree in Geology and shall have five (5) years' practical experience in petroleum geology~~ A Manager of Technical Services, whose duties and functions shall be to direct, supervise and coordinate the technical activities of the Conservation Division with respect to oil and gas conservation, prevention of waste and prevention of pollution. The Manager of Technical Services shall be a graduate of an accredited college or university with a Bachelor of Science Degree in petroleum, civil or mechanical engineering, geology, environmental science or a related field and at least five (5) years' practical or regulatory experience in the production of oil and gas, three (3) years of which must have been in an administrative or supervisory capacity;

6. ~~Staff Engineers and Geologists to serve on the staff and as assistants to the Senior Engineer. The Staff Engineers and Geologists shall be graduates of accredited colleges or~~

~~universities, with Bachelor of Science Degrees in Engineering or Geology, as the case may be, and have a knowledge of petroleum engineering or geology and its application;~~

~~7.~~ District Managers, whose duties and functions shall be to supervise and direct the district offices and all field activities of the Conservation Division, including both oil and gas conservation and the prevention of pollution in the respective districts to which they are assigned. A District Manager shall be a graduate of an accredited college or university with a Bachelor of Science Degree in ~~Petroleum Engineering~~ petroleum, civil or mechanical engineering, geology, environmental science or a related field and shall have five (5) years' practical or regulatory experience in the production of oil and gas, three (3) years of which must have been in an administrative or supervisory capacity ~~or, in lieu of a college degree, shall have ten (10) years' experience in the production of oil and gas, of which five (5) years' experience shall be in a supervisory capacity~~ an equivalent combination of education and experience, substituting one (1) year of practical or regulatory experience in the production of oil and gas for each year of the required degree;

~~8.~~ 7. Assistant District Managers, whose duties and functions shall be to supervise, direct and coordinate the activities of field and office personnel and who shall be under the supervision of the District Managers. An Assistant District Manager shall be a graduate from an accredited college or university with a Bachelor of Science degree in petroleum, civil or mechanical engineering, geology, environmental science or related field and shall have ~~three (3)~~ four (4) years' practical or regulatory experience in the production of oil and gas, one (1) year of which must have been in a supervisory capacity ~~or, in lieu of a college degree, shall have seven (7) years' experience in the production of oil and gas of which three (3) years', experience shall be in a supervisory capacity~~ an equivalent combination of education and experience, substituting one (1) year of practical or regulatory experience in the production of oil and gas for each year of the required degree;

~~9.~~ 8. Oil and Gas Field Inspectors, whose duties and functions, subject to the direction and supervision of the Oil and Gas ~~Inspection~~ Field Inspector Supervisor of the respective district to which they are assigned, shall be to make inspections and investigations, witness tests, and generally serve as enforcement officers and representatives of the Commission in the administration and enforcement of the rules, regulations and orders of the Commission relating to both oil and gas conservation and the prevention of pollution. An Oil and Gas Field Inspector shall ~~be a high school graduate with at least five (5)~~ have four (4) years' practical experience in oil field production and drilling operations ~~or equivalent training and experience with the Commission;~~

~~10.~~ 9. Assistant Manager of Field Operations, who under the general direction of the Manager of Field Operations, shall direct, supervise and coordinate office personnel and the activities of the district office and other field programs. An Assistant Manager of Field Operations shall be a graduate of an accredited college or university with a Bachelor of Science Degree in ~~Petroleum Engineering~~ petroleum, civil or mechanical engineering, geology, environmental science or related fields and shall have five (5) years' practical or regulatory experience in the production of oil and gas or, ~~in lieu of a college degree,~~ ~~shall have ten (10) years' experience in the production of oil and gas, of which five (5) years' experience shall be in a supervisory capacity~~ an equivalent combination of education and experience, substituting one (1) year of practical or regulatory experience in the production of oil and gas for each year of the required degree;

~~11.~~ 10. Oil and Gas Safety Specialist, who, under the general direction of the Assistant District Manager of the respective district to which they are assigned, shall be trained in Hydrogen Sulfide Gas control and safety and in hazardous chemical detection and shall investigate incidents of public safety concerns. An Oil and Gas Safety Specialist shall have five (5) years' regulatory experience ~~as an Oil and Gas Field Inspector with the Corporation~~

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~~Commission and be fully competent in well control and blowout prevention for drilling operations, in Hydrogen Sulfide control and safety and in hazardous chemical detection in the production of oil and gas or a Bachelor of Science Degree in Industrial Safety and one (1) year of regulatory experience in the production of oil and gas;~~

~~12.~~ 11. Senior Field Inspector, who, under the general direction or the Oil and Gas Field Inspector Supervisor of the respective district to which they are assigned, shall perform detailed inspections and investigations and provide expert testimony concerning the enforcement of rules of the Corporation Commission. A Senior Field Inspector shall have ~~five (5)~~ four (4) years' practical and two (2) years' regulatory experience in the production of oil and gas industry or shall have at least three ~~(3) years'~~ experience as an Oil and Gas Field Inspector with the ~~Corporation Commission;~~ and

~~13.~~ 12. Oil and Gas Inspector Supervisor, who, under the supervision of the Assistant District Manager of the respective district to which they are assigned, shall supervise and perform field inspection activities related to tests, surveys and investigations of oil and gas production, pollution control and environmental protection. An Oil and Gas Inspector Supervisor shall be a high school graduate with at least five ~~(5)~~ have four (4) years' practical and three (3) years' regulatory experience in the production of oil and gas field production and drilling operations or equivalent training and experience with the ~~Commission;~~

~~14.~~ A Senior Statistician and Assistant Statisticians, whose duties and functions shall be the procurement, compilation, analysis and preparation of reports and schedules containing statistics necessary or desirable to the administration or performance of the powers, duties and functions of the Commission and of the Conservation Division with respect to oil and gas conservation and the prevention of pollution. The Senior Statistician shall be a graduate of an accredited college or university with a Bachelor's Degree in Accounting, Business

~~Administration, Mathematics or the sciences and at least two (2) years' experience in the processing of large volumes of data with respect to oil and gas operations. An Assistant Statistician shall have at least a high school education and an aptitude and experience in working with the tabulation of numbers; and~~

~~15. Secretaries, who shall be qualified to accurately take and transcribe dictation and perform normal duties performed by a secretary; stenographer-clerks who shall be qualified to do typing, filing, handling of mail, and the routine clerical duties of an office; file clerks or librarians who shall be qualified to keep and maintain the central files and records of the Division; and duplicating machine operators.~~

~~The employees of the Commission who at the effective date of this act are holding positions or performing functions corresponding to those herein prescribed but who do not have the qualifications required by this act for such positions or functions shall not, for that reason, be disqualified to continue in such positions or to perform such functions, but at such time as there is a vacancy in such position it shall be filled by an employee having the qualifications herein prescribed.~~

SECTION 16. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 9-210.2 of Title 2, unless there is created a duplication in numbering, reads as follows:

Notwithstanding any other provision of law, on and after November 1, 1997, no animal feeding operation with a capacity of more than one thousand (1,000) animal units which primarily uses a liquid animal waste management system and where animals are primarily housed in a roof covered structure anywhere in this state east of the Indian Meridian may be established or expanded where its closest waste facility is located within a distance of three-fourths (3/4) of one mile of any dwelling not owned or leased by the owner of the animal feeding operation.

SECTION 17. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2-6-107 of Title 27A,

unless there is created a duplication in numbering, reads as follows:

Every animal feeding operation with a capacity of more than one thousand (1,000) animal units which primarily uses a liquid animal waste management system and where animals are primarily housed in a roof covered structure shall be required prior to the construction of any lagoon or other waste handling facility to obtain from the Department of Environmental Quality an approval which indicates that the waste handling facility is designed in a manner that will neither contribute to groundwater contamination nor be anaerobic.

SECTION 18. Sections 3 through 11 of this act shall apply to all cases pending before the Corporation Commission upon the effective date of these sections.

SECTION 19. NONCODIFICATION The provisions of Section 18 of this act shall not be codified in the Oklahoma Statutes.

SECTION 20. REPEALER 17 O.S. 1991, Section 32, as amended by Section 1, Chapter 315, O.S.L. 1994 (17 O.S. Supp. 1996, Section 32), is hereby repealed.

SECTION 21. 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.

46-1-1750

MJM