

ENROLLED SENATE  
BILL NO. 455

By: Easley of the Senate

and

Rice of the House

An Act relating to the Corporation Commission; amending 17 O.S. 1991, Sections 301, 303, as amended by Section 1, Chapter 403, O.S.L. 1992, 304, as amended by Section 2, Chapter 403, O.S.L. 1992, 306, as amended by Section 2, Chapter 406, O.S.L. 1992, 307, 308, 308.1, 309, as amended by Section 3, Chapter 406, O.S.L. 1992, 310, 312, 313, 315, 316, 350, 352, as amended by Section 4, Chapter 406, O.S.L. 1992, 353, as amended by Section 5, Chapter 406, O.S.L. 1992, 354, 356, as amended by Section 6, Chapter 406, O.S.L. 1992, 356.1, as amended by Section 7, Chapter 406, O.S.L. 1992, 357, 358, 359, as amended by Section 11, Chapter 406, O.S.L. 1992, and 365, as amended by Section 8, Chapter 406, O.S.L. 1992 (17 O.S. Supp. 1992, Sections 303, 304, 306, 309, 352, 353, 356, 356.1, 359 and 365), which relate to underground and aboveground storage tanks; modifying statutory references; stating certain effective date; deleting certain definition; deleting references to certain terms; authorizing Department of Environmental Quality to determine certain standard; updating statutory language regarding promulgation of certain agency rules; requiring certain notice upon sale of underground storage tank systems; stating certain penalties for certain tank owners or operators; stating certain information shall not be considered confidential; prohibiting public entities from enacting ordinances conflicting with certain state statutes or agency rules; authorizing certification of underground storage tank professionals; allowing compilation of list of certain contractors; creating the Storage Tank Advisory Council; stating membership; stating authority of council; requiring council to prepare emergency rules and permanent rules pursuant to certain state statutes; authorizing council members to receive travel reimbursement; authorizing council to use certain office space and obtain assistance from the Commission; providing short title; creating the Oklahoma Petroleum Storage Tank Release Indemnity Program; requiring program to be separate from certain regulatory responsibilities; stating duties of administrator; modifying definitions; defining term; requiring General Administrator of the Corporation Commission to hire certain

employee; stating responsibilities of Administrator; transferring certain duties from Corporation Commission to Administrator; adding certain incidental costs to eligible costs for reimbursement; deleting certain budgetary exclusion for Indemnity Fund; prohibiting salaries of certain Commission employees being paid with monies from Indemnity Fund; requiring certain maintenance level to be maintained in fund; authorizing certain employees and agents of Indemnity Fund to request certain information; modifying process requesting review of denied applications; transferring certain administrative duties to Indemnity Fund from Corporation Commission; deleting reference to certain initial application for corrective action; stating certain list shall have certain purposes; creating the Oklahoma Petroleum Storage Tank Release Indemnity Program Claims Review Board; stating membership; stating members shall serve at the pleasure of appointing authority; stating procedures for review of claims; authorizing review of certain claims; requiring certain reports containing certain information; authorizing employment of certain unclassified exempt employees; disapproving certain rule; requiring certain audit be performed annually; specifying certain contents of audit report; requiring certain actions by Storage Tank Advisory Council; providing for noncodification; providing for codification; and declaring an emergency.

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

SECTION 1. AMENDATORY 17 O.S. 1991, Section 301, is amended to read as follows:

Section 301. Sections ~~± 301~~ through ~~17 317~~ of this title and Section 14 of this act shall be known and may be cited as the "Oklahoma Underground Storage Tank Regulation Act".

SECTION 2. AMENDATORY 17 O.S. 1991, Section 303, as amended by Section 1, Chapter 403, O.S.L. 1992 (17 O.S. Supp. 1992, Section 303), is amended to read as follows:

Section 303. ~~For the purposes of~~ As used in the Oklahoma Underground Storage Tank Regulation Act, Section 301 et seq. of this title:

1. "Abandoned system" means an underground storage tank system which:
  - a. has been taken permanently out of service as a storage vessel for any reason or is not intended to be returned to service, or
  - b. has been out of service for one (1) year or more prior to ~~the effective date of this act~~ April 21, 1989, or
  - c. has been rendered permanently unfit for use as determined by the Commission;
2. ~~"Board" means the Pollution Control Coordinating Board;~~
- ~~3.~~ "Commission" means the Oklahoma Corporation Commission;

~~4.~~ 3. "Corrective action" means action taken to monitor, maintain, minimize, eliminate or clean up a release from an underground storage tank system;

~~5.~~ 4. "Department" means the Oklahoma Department of Pollution Control;

~~6.~~ 5. "Environment" means any water, water vapor, any land including land surface or subsurface, fish, wildlife, biota and all other natural resources;

~~7.~~ 6. "Existing system" means an underground storage tank system for which installation of that system commenced prior to ~~the effective date of this act~~ April 21, 1989;

~~8.~~ 7. "Facility" means any location or part thereof containing one or more underground storage tanks or systems;

~~9.~~ 8. "Hazardous substance" ~~is~~ means any substance defined in Section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C., Section 9601, but not including:

- a. any substance regulated as a hazardous waste under Subtitle C of the federal Solid Waste Disposal Act, 42 U.S.C., Section 6903, or
- b. any substance regulated as a hazardous waste under the Oklahoma Hazardous Waste Disposal Act, Section 1-2001 et seq. of Title 63 of the Oklahoma Statutes.

The term hazardous substance shall also include a mixture of hazardous substances and petroleum, providing the amount of petroleum is of a de minimus quantity;

~~10.~~ 9. "New system" means an underground storage tank system for which the installation of the system began on or after ~~the effective date of this act~~ April 21, 1989;

~~11.~~ 10. "Operator" means any person in control of or having responsibility for the daily operation of the underground storage tank system, whether by lease, contract, or other form of agreement;

~~12.~~ 11. "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;

~~13.~~ 12. "Permit" ~~includes~~ means any registration, permit, license or other authorization issued by the Commission to operate an underground storage tank system;

~~14.~~ 13. "Person" means any individual, trust, firm, joint stock company or corporation, limited liability company, federal agency, corporation, including a government corporation, partnership, association, the state or any state agency, municipality, county or other political subdivision of the state, or any interstate body. The term also includes a consortium, a joint venture, a commercial entity, and the United States Government or any other legal entity;

~~15.~~ 14. "Petroleum" means ethylene glycol-based antifreeze, crude oil, crude oil fractions, and refined petroleum fractions, including motor fuel, jet fuel, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents and used oil which are liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute). "Petroleum" also means a mixture of petroleum and hazardous substances provided, the amount of the hazardous substances is of a de minimus quantity;

~~16.~~ 15. "Pipeline facilities" ~~are~~ means new and existing pipe rights-of-way and any equipment, facilities or buildings regulated under:

- a. the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. App., 1671, et seq.),
- b. the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. 2001, et seq.),
- c. the state Hazardous Liquid Transportation System Safety Act, Section 47.1 et seq. of Title 52 of the Oklahoma Statutes, or
- d. intrastate pipeline facilities regulated under state law;

~~17.~~ 16. "Pollution" means contamination or other alteration of the physical, chemical or biological properties of any natural waters of the state, contamination or alteration of the physical, chemical or biological properties of the land surface or subsurface, when such contamination or alteration will or is likely to create a nuisance or render the waters or land harmful or detrimental or injurious to the public health, safety or welfare or the environment;

~~18.~~ 17. "Regulated substances" ~~are~~ means hazardous substances or petroleum;

~~19.~~ 18. "Release" means any spilling, overfilling, leaking, emitting, discharging, escaping, leaching or disposing of regulated substances from an underground storage tank system into the environment of the state. The term "release" includes but is not limited to suspected releases identified as a result of positive sampling, testing or monitoring results, or identified in any similarly reliable manner;

~~20.~~ 19. "Tank" ~~is~~ means a stationary vessel designed to contain an accumulation of regulated substances which is constructed of primarily non-earthen materials that provide structural support;

~~21.~~ 20. "Transporter" means any person who transports, delivers or distributes any quantity of regulated substance from one point to another for the purpose of wholesale or retail gain;

~~22.~~ 21. "Underground storage tank system" means any one or combination of underground tanks, including underground piping connected thereto, that is used to contain an accumulation of regulated substances, and the volume of which, including the volume of underground piping connected thereto, is ten percent (10%) or more beneath the surface of the ground; and

~~23.~~ 22. "Waters of the state" means all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, which are contained within, flow through, or border upon the State of Oklahoma or any portion thereof.

SECTION 3. AMENDATORY 17 O.S. 1991, Section 304, as amended by Section 2, Chapter 403, O.S.L. 1992 (17 O.S. Supp. 1992, Section 304), is amended to read as follows:

Section 304. The provisions of the Oklahoma Underground Storage Tank Regulation Act, Section 301 et seq. of this title, shall not apply to:

1. Septic tank systems;
2. Pipeline facilities;
3. Surface impoundments, pits, ponds or lagoons;
4. Stormwater and wastewater collection systems;
5. Flow-through process tank systems;
6. Liquid trap or associated gathering lines directly related to oil or gas production and gathering operations;
7. Storage tank systems located in an underground area such as a basement, cellar, mineworking, drift, shaft or tunnel, if the storage tanks are situated upon or above the surface of the floor;
8. Hydraulic lift tank systems;
9. Underground storage tank systems with a capacity of less than one hundred ten (110) gallons;
10. Underground storage tank systems with a de minimus concentration of regulated substances including but not limited to swimming pools and coffins;
11. Underground storage tank systems that serve as emergency backup tanks, provided that such backup tanks hold regulated substances for only a short period of time and are expeditiously emptied after each use. The provisions of this paragraph shall not prevent Commission notification requirements and such other restrictions as may be deemed necessary by the Commission to protect the environment;
12. Underground storage tank systems with a capacity of one thousand one hundred (1,100) gallons or less used for noncommercial agricultural or residential purposes;
13. Underground storage tank systems and residential tanks for noncommercial use for storing heating oil for consumptive use on the premises where stored; and
14. Underground storage tank systems storing hazardous wastes regulated under Subtitle C of the federal Solid Waste Disposal Act, 42 U.S.C., Section 6921 et seq., or substances regulated as hazardous wastes under the Oklahoma Hazardous Waste Disposal Act, Section 1-2001 et seq. of Title 63 of the Oklahoma Statutes, or a mixture of such wastes and regulated substances where the wastes constitute greater than fifty percent (50%) of the volume of the mixture.

SECTION 4. AMENDATORY 17 O.S. 1991, Section 306, as amended by Section 2, Chapter 406, O.S.L. 1992 (17 O.S. Supp. 1992, 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, Section 301 et seq. of this title, 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~~ thereunder;

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~~ Department of Environmental Quality 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~~ by rules promulgated pursuant to the Administration Administrative Procedures Act, Section 250.1 et seq. of Title 75 of the Oklahoma Statutes;

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 5. AMENDATORY 17 O.S. 1991, Section 307, is amended to read as follows:

Section 307. A. The Commission shall promulgate rules governing underground storage tank systems. The Commission's ~~regulations~~ rules shall, at a minimum, include the following provisions:

1. ~~A requirement~~ Requirements that release detection methods or equipment or both such methods and equipment, adequate to identify releases from underground storage tank systems, be maintained;

2. Procedures to follow when release detection methods or equipment or both such methods and equipment records indicate an abnormal loss or gain which is not explainable by spillage, temperature variations or other known causes;

3. ~~A requirement~~ Requirements that appropriate corrective action be taken in response to a release from an underground storage tank system as may be necessary to protect human health, safety and welfare and the environment;

4. ~~A requirement~~ Requirements to maintain records documenting actions taken in accordance with paragraphs 1 through 3 of this subsection;

5. ~~A requirement for an~~ An enforcement program; and

6. Minimum schedules and standards for the design, construction, installation, operation, maintenance, repair, monitoring, testing, inspection, release detection, performance, abandonment and closure, of underground storage tank systems, as may be necessary to protect human health, safety and welfare and the environment.

B. In promulgating rules establishing standards pursuant to paragraph 6 of subsection A of this section the Commission may distinguish in such standards between requirements appropriate for new tanks, existing tanks and for abandoned tanks. In making such distinctions, the Commission may consider the following factors:

1. Location of the tanks;
2. Soil and climate conditions;
3. Uses of the tanks;
4. History of maintenance;
5. Age of the tanks;
6. National industry codes;
7. Hydrogeology;
8. Water table;
9. Size of the tanks;
10. Quantity of regulated substances periodically deposited in or dispensed from the tank;
11. The compatibility of the regulated substance and the materials of which the tank is fabricated; and
12. Any other factors as deemed necessary by the Commission pursuant to the provisions of the Oklahoma Underground Storage Tank Regulation Act, Section 301 et seq. of this title.

C. The Commission may ~~adopt~~ promulgate rules establishing different requirements for different areas or regions of the state if the Commission finds that more stringent rules ~~or standards~~ are necessary:

1. To protect specific waters of the state including but not limited to those waters of the state designated for additional protection in Oklahoma's water quality standards; or
2. Because conditions peculiar to that area or region require different standards to protect public health, safety, welfare or the environment.

D. In ~~adopting~~ promulgating rules pursuant to the provisions of the Oklahoma Underground Storage Tank Regulation Act, the Commission shall consider all relevant federal standards and regulations on underground storage tank systems. If the Commission ~~adopts~~ promulgates any ~~standard or~~ rule that is different from a federal standard or regulation on the same subject, the Commission shall clearly express the deviation from the federal standard or regulation and the reasons for the deviation at a public hearing or at time of adoption of the rule.

SECTION 6. AMENDATORY 17 O.S. 1991, Section 308, is amended to read as follows:

Section 308. A. 1. Except as otherwise provided by this subsection, no underground storage tank system or facility shall be operated without a permit from the Commission.

2. An underground storage tank system is not required to be permitted if the underground tank system:

- a. does not contain or has not contained a regulated substance, or

b. has been permanently closed or has not been in operation since January 1, 1974.

B. No person shall deposit a regulated substance into an underground storage tank system unless the system is operating pursuant to a permit issued by the Commission.

C. Any person who sells an underground storage tank system shall notify the owner ~~and/or operator~~, or both, of the tank of the permit requirements of the Oklahoma Underground Storage Tank Regulation Act, Section 301 et seq. of this title.

D. The application form for a permit shall be provided by and filed with the Commission. In addition to other information requested by the Commission, the application shall include the type of financial responsibility coverage utilized to comply with the requirements of the Oklahoma Underground Storage Tank Regulation Act and by rule of the Commission and the type of leak detection method employed.

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

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

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

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

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

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

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

2. Failed to comply with any provision or requirement of this act or any rules ~~and regulations adopted~~ promulgated by the Commission in accordance with the provisions of the Oklahoma Underground Storage Tank Regulation Act; or

3. Not maintained in effect, the financial responsibility requirements established by subsection H of this section and by rules of the Commission.

H. Any person owning or operating an underground storage tank system containing a regulated substance who is not otherwise exempted by law or rule ~~or regulation~~ of the Commission, shall obtain and have in effect financial responsibility coverage for taking corrective action and for compensating third parties for physical injury and property damage caused by releases arising from operating underground storage tank systems. The requirement for financial responsibility coverage specified by this subsection shall not be more stringent than is required by the federal Environmental Protection Agency for underground storage tank systems of equal type, age, and classification.

SECTION 7. AMENDATORY 17 O.S. 1991, Section 308.1, is amended to read as follows:

Section 308.1 A. An annual permit fee of not more than Twenty-five Dollars (\$25.00) per tank shall be assessed by the Commission upon each owner or operator of an underground storage tank system for petroleum products. Such fee shall be assessed upon each underground storage tank owned or operated by such owner or operator.

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

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

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

3. Both such penalty and permit suspension or nonrenewal.

SECTION 8. AMENDATORY 17 O.S. 1991, Section 309, as amended by Section 3, Chapter 406, O.S.L. 1992 (17 O.S. Supp. 1992, 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. The Corporation Commission shall require that any corrective action taken by a tank owner or operator or authorized by the Commission shall be in compliance with all applicable state statutes and rules and federal laws and regulations for the protection of air quality and water quality and for the transportation and disposal of any waste.

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~~+~~1
- b. an identified owner or operator cannot or will not comply with the order issued pursuant to subsection C of this section~~+~~1
- 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~~+~~1 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 9. AMENDATORY 17 O.S. 1991, 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 ~~thereto~~ 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 ~~or,~~ the rules promulgated ~~thereto~~ thereunder or ~~of~~ 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 ~~contempt~~ 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.

SECTION 10. AMENDATORY 17 O.S. 1991, Section 312, is amended to read as follows:

Section 312. A. Enforcement of any action for an injunction or recovery of any administrative or civil penalty assessed pursuant to the Oklahoma Underground Storage Tank Regulation Act, Section 301 et seq. of this title, or rule promulgated thereto may be brought by:

1. The district attorney of the appropriate district court of the State of Oklahoma;
2. The Attorney General on behalf of the State of Oklahoma in the appropriate district court of the State of Oklahoma; or
3. The Commission on behalf of the State of Oklahoma in the appropriate district court of the State of Oklahoma, or as otherwise authorized by law.

B. The Commission may bring an action in a court of competent jurisdiction for equitable relief to redress or restrain a violation by any person of a provision of the Oklahoma Underground Storage Tank Regulation Act or any rule promulgated or order issued pursuant thereto. Said court has jurisdiction to determine said action, and to grant the necessary or appropriate relief, including but not limited to:

1. ~~Enjoin~~ Enjoining further releases;
2. ~~Order~~ Ordering the design, construction, installation or operation of alternate facilities;
3. ~~Order~~ Ordering the removal of facilities, contaminated soils and the restoration of the environment;
4. ~~Fix~~ Fixing and ~~order~~ ordering compensation for any public or private property destroyed, damaged or injured;
5. Except as otherwise provided by law, ~~assess~~ assessing and ~~award~~ awarding punitive damages pursuant to the Oklahoma Underground Storage Tank Regulation Act; and
6. ~~Order~~ Ordering reimbursement to any agency of federal, state or local government from any person whose acts caused governmental expenditures if not already reimbursed by any other state or federal reimbursement program.

SECTION 11. AMENDATORY 17 O.S. 1991, Section 313, is amended to read as follows:

Section 313. A. Any records, reports or information obtained pursuant to the Oklahoma Underground Storage Tank Regulation Act

shall be available to the public except as provided in subsection B of this section.

B. Upon a showing satisfactory to the Commission by any person that records, reports or information, or a particular part thereof is 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.

C. Nothing in this section shall be construed to prevent disclosures of such report, record or information to federal or state representatives as necessary for purposes of administration of any federal or state laws or when relevant to proceedings pursuant to the Oklahoma Underground Storage Tank Regulation Act.

D. Information concerning groundwater quality and the presence or concentration of substances in soils or groundwater shall not be considered confidential by the Commission.

SECTION 12. AMENDATORY 17 O.S. 1991, Section 315, is amended to read as follows:

Section 315. There is hereby created in the State Treasury a revolving fund for the Corporation Commission, to be designated the "Corporation Commission Underground Storage Tank Regulation Revolving Fund", (UST Revolving Fund). The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of all monies received by the Commission, from:

1. The proceeds of any fees imposed pursuant to the provisions of the Oklahoma Underground Storage Tank Regulation Act, Section 301 et seq. of this title;

2. Interest attributable to investment of monies in the Corporation Commission Underground Storage Tank Regulation Revolving Fund;

3. Monies received by the Commission in the form of gifts, grants other than federal grants, reimbursements or appropriations from any source intended to be used for the purposes of the revolving fund;

4. Any other sums designated for deposit to the revolving fund from any source public or private; and

5. Monies received pursuant to the Oklahoma Aboveground Tank Regulation Act, Section 401 et seq. of this title.

All monies accruing to the credit of said revolving fund are hereby appropriated and may be budgeted and expended by the Commission for the purpose of implementing the provisions of the Oklahoma Underground Storage Tank Regulation Act and the rules ~~and regulations~~ promulgated thereto and the Oklahoma Aboveground Tank Regulation Act and rules ~~and regulations~~ promulgated thereto. Expenditures from said revolving fund 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.

SECTION 13. AMENDATORY 17 O.S. 1991, Section 316, is amended to read as follows:

Section 316. No county, incorporated or nonincorporated municipality, state agency or political subdivision shall enact ordinances or promulgate any rules, ordinances or regulations governing any aspect of underground storage tanks within the State of Oklahoma that shall be in conflict with any of the provisions of the Oklahoma Underground Storage Tank Regulation Act, or any rules promulgated by the Commission pursuant to the provisions of the Oklahoma Underground Storage Tank Regulation Act.

SECTION 14. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 318 of Title 17, unless there is created a duplication in numbering, reads as follows:

A. The Corporation Commission is authorized to develop and implement a program for the certification of underground storage tank professionals. Persons certified by the Commission as underground storage tank professionals shall be environmental professionals possessing such training, education and experience as may be required by the Commission. Environmental professionals from different fields possessing equal levels of education and experience, and maintaining or holding professional certification or registration, whether from a state agency or a recognized private organization, shall be subject to the same requirements to become certified. Persons seeking to become certified may be required to demonstrate knowledge of soil and water protection and remediation techniques and the regulation of underground storage tanks.

B. The Corporation Commission shall require that all contractors and their employees participating in the removal of underground storage tanks and the remediation of contaminated tank sites meet all training and other requirements of federal law and regulations and state statutes. The Commission may compile, maintain and make available to the public a list of contractors who have demonstrated to the Commission that they meet such requirements. Nothing contained in this subsection shall prohibit a contractor who meets the requirements of federal law and regulations and state statutes and rules from removing underground storage tanks or remediating contaminated tank sites even though they may not appear on a list of contractors available to the public.

SECTION 15. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 340 of Title 17, unless there is created a duplication in numbering, reads as follows:

A. There is hereby created within the Corporation Commission the Storage Tank Advisory Council. The Council shall consist of nine (9) members. Three members shall be appointed by the Governor, three members shall be appointed by the Speaker of the House of Representatives and three members shall be appointed by the President Pro Tempore of the Senate. The initial appointments for each gubernatorial and legislative member shall be for progressive terms of one (1) through three (3) years so that only one term expires each calendar year; subsequent appointments shall be for three-year terms. Members shall continue to serve until their successors are appointed. Any vacancy shall be filled in the same manner as the original appointments. Five members shall constitute a quorum. The Council shall be composed as follows:

1. The Governor shall appoint three (3) members as follows:
  - a. two members who shall be storage tank owners or operators, and
  - b. one member who shall be a certified U.S.T. consultant or contractor;
2. The President Pro Tempore of the Senate shall appoint three (3) members as follows:
  - a. two members who shall be storage tank owners or operators, and
  - b. one member who shall be a geologist; and
3. The Speaker of the House of Representatives shall appoint three (3) members as follows:
  - a. two members who shall be storage tank owners or operators, and
  - b. one member who shall be a registered professional engineer.

B. The Council shall elect a chair and a vice-chair from among its members. The Council shall meet as required for rule development, review and recommendation and for such other purposes specified by law. Special meetings may be called by the chair or by the concurrence of any three (3) members.

C. The Storage Tank Advisory Council shall:

1. Have authority to recommend to the Corporation Commission rules to implement the Oklahoma Underground Storage Tank Regulation Act, the Aboveground Storage Tank Regulation Act and the Oklahoma Petroleum Tank Release Indemnity Fund Program. The staff of the aboveground and underground storage tank regulatory program and the Indemnity Fund Program shall not have standing to recommend to the Corporation Commission permanent rules or changes to such rules which have not previously been submitted to and considered by the Council for action;

2. Before recommending any permanent rules to the Corporation Commission, give public notice, offer opportunity for public comment and conduct a public rulemaking hearing when required by the Administrative Procedures Act;

3. Have authority to make written recommendations to the Corporation Commission which have been concurred upon by at least a majority of the membership of the Council;

4. Have the authority to provide a public forum for the discussion of issues it considers relevant to its area of jurisdiction, and to:

- a. pass nonbinding resolutions expressing the sense of the Council, and
- b. make recommendations to the Corporation Commission and its regulatory programs and the Indemnity Fund Program concerning the need and the desirability of conducting public meetings, workshops and seminars.

D. The Council shall not recommend rules for promulgation by the Corporation Commission unless all applicable requirements of the Administrative Procedures Act have been followed, including but not limited to notice, rule impact statement and rulemaking hearings.

E. Members of the Council shall serve without compensation but may be reimbursed expenses incurred in the performance of their duties, as provided in the State Travel Reimbursement Act, Section 500.1 et seq. of Title 74 of the Oklahoma Statutes. The Council is authorized to utilize the conference rooms of the Corporation Commission and obtain administrative assistance from the Commission, as required.

SECTION 16. AMENDATORY 17 O.S. 1991, Section 350, is amended to read as follows:

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

B. The Corporation Commission shall maintain, operate and administer the Oklahoma Petroleum Storage Tank Release Indemnity Program separate and apart from any regulatory responsibilities of the Commission pursuant to the Oklahoma Aboveground Tank Regulation Act and the Oklahoma Underground Storage Tank Regulation Act or any other division of the Commission. The Oklahoma Petroleum Storage Tank Release Indemnity Program shall have separate budget activities and subactivities. Regulatory responsibilities of the Corporation Commission shall include, but not be limited to, regulatory compliance activities, enforcement of rules promulgated to implement regulatory programs, technical review, development and approval of corrective action plans and determinations that remediation of contaminated sites is complete.

C. The Administrator of the Oklahoma Petroleum Storage Tank Release Indemnity Program shall maintain, operate and administer the Oklahoma Petroleum Storage Tank Release Indemnity Program and process, review and pay claims in a manner similar to and consistent with the processing, review and payment of claims by self-insurance pools and insurance companies.

SECTION 17. AMENDATORY 17 O.S. 1991, Section 352, as amended by Section 4, Chapter 406, O.S.L. 1992 (17 O.S. Supp. 1992, 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~~ As used in the Oklahoma Petroleum Storage Tank Release Indemnity Program:

1. "Administrator" means the person hired by the General Administrator of the Corporation Commission to administer the Petroleum Storage Tank Release Environmental Cleanup Indemnity Fund and the Oklahoma Petroleum Storage Tank Release Indemnity Program;

2. "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, Section 601 et seq. of Title 68 of the Oklahoma Statutes;

~~2.~~ 3. "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 Corporation Commission or the Administrator, or the owner or operator of the underground storage tank system responsible for the system is incapable, in the judgment of the Corporation 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.~~ 4. "Eligible release" means a release for which allowable costs, as determined by the Commission Administrator, are reimbursable to or on behalf of an eligible person;

~~4.~~ 5. "Indemnity Fund" means the Petroleum Storage Tank Release Environmental Cleanup Indemnity Fund ~~(Indemnity Fund)~~;

6. "Indemnity Fund Program" means the Oklahoma Petroleum Storage Tank Release Indemnity Program established to administer the Indemnity Fund;

~~5.~~ 7. "Maintenance level" means the minimum balance of the Indemnity Fund to be maintained and below which the Indemnity Fund balance will fall when the balance of the Indemnity Fund is below the dollar amount of disbursements from the Indemnity Fund for the payment of claims during the preceding six (6) months plus Five Million Dollars (\$5,000,000.00);

8. "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.~~ 9. "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.~~ 10. "Person" means any individual, trust, firm, joint stock company or corporation, corporation, limited liability company, 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.~~ 11. "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.~~ 12. "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.~~ 13. "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.~~ 14. "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.~~ 15. "Tax Commission" means the Oklahoma Tax Commission.

SECTION 18. AMENDATORY 17 O.S. 1991, Section 353, as amended by Section 5, Chapter 406, O.S.L. 1992 (17 O.S. Supp. 1992, 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 General Administrator of the Corporation Commission shall hire an Administrator who shall administer the Indemnity Fund and Indemnity Fund Program. The Indemnity Fund shall be administered by the ~~Corporation Commission Administrator~~ for the benefit of those persons determined to be eligible by the ~~Commission Administrator~~ 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; ~~and~~
3. Necessary costs incidental to the cost of the corrective action taken and for filing and obtaining reimbursement from the Indemnity Fund.

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, Section 85.1 et seq. of Title 74 of the Oklahoma Statutes.

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 Corporation 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 Corporation Commission or be used for the purpose of contracting with any other state agency or reimbursing any other state agency for any expense.

2. No monies from the Indemnity Fund shall be used to pay or reimburse the Corporation Commission for, in whole or in part, the salary of any employee involved in the regulation of underground or aboveground storage tanks pursuant to the Oklahoma Underground Storage Tank Regulation Act or the Oklahoma Aboveground Tank Regulation Act or the administration of programs pursuant to said acts, including the development, review and approval of corrective action plans as required by the regulatory programs.

3. 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~~ Indemnity Fund Program 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 Corporation Commission pursuant to the provisions of the Oklahoma Petroleum Storage Tank Release Indemnity Program shall not exceed the actual expenditures made by the Corporation 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.~~ 4. 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 19. AMENDATORY 17 O.S. 1991, Section 354, is amended to read as follows:

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

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

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

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

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

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

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

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

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

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

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

as otherwise provided in subsection D of this section;  
and

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

D. 1. If at any time the Petroleum Storage Tank Release Environmental Cleanup Indemnity Fund falls below the ~~Five Million Dollars (\$5,000,000.00)~~ required maintenance level on or before December 31, 1999, the ~~Corporation Commission Administrator~~ shall notify the Tax Commission that the Indemnity Fund has fallen below the required maintenance level and that the assessment is to be deposited into the Indemnity Fund for ~~ninety (90) days~~ at least three (3) calendar months pursuant to the provisions of paragraph 2 of this subsection.

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

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

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

SECTION 20. AMENDATORY 17 O.S. 1991, Section 356, as amended by Section 6, Chapter 406, O.S.L. 1992 (17 O.S. Supp. 1992, Section 356), is amended to read as follows:

Section 356. A. ~~The Corporation Commission~~ 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 ~~Commission~~ Indemnity Fund Program 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 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. a statement certified by affidavit as being true and correct identifying the date or estimated date that the release occurred, ~~and~~
  - h. the corrective action plan approved by or submitted to the appropriate regulatory program, and
  - i. such other information and records as the ~~Commission~~ Indemnity Fund Program may require shall accompany the application.

2. As a condition for reimbursement pursuant to the provisions of this section, the ~~Commission~~ Indemnity Fund Program shall require that any ~~correction~~ corrective action taken as a result of an eligible release, other than ~~correction~~ corrective action taken in an emergency situation, shall be made by the competitive bid of at least two bidders, except for professional engineering, geological, land surveying and other professional services or services provided by a certified underground storage tank consultant 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~~ Indemnity Fund Program 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~~ Indemnity Fund Program during regular business hours, and at other times upon written request ~~of the Commission~~. In addition, the ~~Commission~~ 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 ~~Commission~~ Indemnity Fund Program as being true and correct.

- D. 1. a. The ~~Commission~~ 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 ~~Commission~~ 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 ~~Commission~~ Administrator.
- b. The ~~Commission~~ 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 ~~Commission~~ 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 ~~request a hearing~~ seek appropriate legal remedies.

3. For claims ~~other than the initial~~ submitted subsequent to submittal of the application, the ~~Commission~~ 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 ~~initial claim application~~ but prior to the completion of the Commission review of the initial application, the thirty-day review period shall not commence until the ~~Commission~~ Indemnity Fund Program has completed its review of the ~~initial~~ application. This time for review may be extended by the ~~Commission~~ Administrator 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~~ Administrator is authorized to make ~~partial~~ 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 ~~partial~~ supplemental payments for reimbursement shall submit an environmental a work plan for implementation of the corrective action plan including 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 ~~plan~~

information shall be submitted with the application for reimbursement. ~~Unless the application for such partial payment is the initial~~ After approval of the application for the corrective action, the Commission Administrator shall have thirty (30) days from the date of receipt of ~~the application~~ a claim for partial supplemental payment in which to approve or deny the ~~application~~ supplemental claim. The thirty-day time for review may be extended by the Commission 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 ~~application~~ claim. If the ~~application~~ claim for partial payment is included with the initial application for the corrective action for reimbursement, 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 applicable 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 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.

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 Corporation 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~~ 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 ~~Commission~~ Administrator 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~~ 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.

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 21. AMENDATORY 17 O.S. 1991, Section 356.1, as amended by Section 7, Chapter 406, O.S.L. 1992 (17 O.S. Supp. 1992, Section 356.1), is amended to read as follows:

Section 356.1 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~~ may 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 Environmental Cleanup Indemnity Fund. Such list shall be on a regionwide or statewide basis and shall be made available to the public. Such list shall be for informational purposes only and shall not establish limits on reimbursement levels from the Indemnity Fund.

~~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 22. AMENDATORY 17 O.S. 1991, Section 357, is amended to read as follows:

Section 357. A. Payment of any claim from the Indemnity Fund shall be subject to the ~~Commission~~ Indemnity Fund acquiring by subrogation the right to recover any amounts paid by the Indemnity Fund to any claimant who receives reimbursement for claims which were determined to be fraudulent, reimbursable by other sources, or excessive. The ~~Commission~~ Administrator shall bring an action 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.

B. The ~~Corporation Commission~~ 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 ~~Corporation Commission~~ Administrator upon being served with notice of the lawsuit. The ~~Corporation Commission~~ 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 23. AMENDATORY 17 O.S. 1991, Section 358, is amended to read as follows:

Section 358. A. The Corporation Commission shall submit an annual report to the Speaker of the House of Representatives and the President Pro Tempore of the Senate ~~detailing the disbursements made from the Indemnity Fund~~ containing the total number of underground storage tank applicants requesting disbursement from the Indemnity Fund during the preceding year; the total number of underground storage tank applicants receiving partial payment during the preceding year and the total amount disbursed for such payments; the total number of underground storage tank applicants receiving full payment during the preceding year and total amount disbursed for such payments; the total number of applicants denied disbursement from the Indemnity Fund during the preceding year, and the total amount denied for such disbursement; the average time frame for

providing disbursements to applicants; a historical comparison of disbursements in regard to applicants requesting disbursement, applicants receiving partial and full payments, applicants denied disbursement, and average time frame for providing disbursement; a detailed summary of administrative expenditures related to the Indemnity Fund program; other information which the Commission believes is pertinent regarding the Indemnity Fund program; and any other information requested by the Speaker of the House of Representatives or the President Pro Tempore of the Senate regarding the Indemnity Fund program.

B. The Oklahoma Tax Commission shall submit an annual report to the Speaker of the House of Representatives and the President Pro Tempore of the Senate detailing the amount of assessments collected for deposit to the Indemnity Fund and to the State Transportation Fund.

C. The Oklahoma Department of Transportation shall submit an annual report to the Speaker of the House of Representatives and the President Pro Tempore of the Senate detailing the expenditures made from the revenue received from the assessment levied pursuant to Section 354 of this title.

D. The reports shall include recommendations for any changes which may be required in the amount of the assessment imposed by Section 354 of this title.

SECTION 24. AMENDATORY 17 O.S. 1991, Section 359, as amended by Section 11, Chapter 406, O.S.L. 1992 (17 O.S. Supp. 1992, Section 359), is amended to read as follows:

Section 359. 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 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 (~~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 25. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 360 of Title 17, unless there is created a duplication in numbering, reads as follows:

A. Annual expenditures from the Petroleum Storage Tank Release Environmental Cleanup Indemnity Fund for costs incurred for the administration of the Indemnity Fund shall be limited to ten percent (10%) of the amount of claims paid during such year not to exceed One Million Dollars (\$1,000,000.00) per fiscal year.

B. The Administrator shall make written reports on a quarterly basis to the Speaker of the House of Representatives and the

President Pro Tempore of the Senate detailing expenditures on personnel and equipment and other expenses concerning and incurred as a result of administering the Indemnity Fund. The report shall include salaries and fringe benefits of all full-time-equivalent employees of the Indemnity Fund and reimbursements made to the Oklahoma Corporation Commission by division for administrative or support services provided by the Commission to the Indemnity Fund.

SECTION 26. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 361 of Title 17, unless there is created a duplication in numbering, reads as follows:

A. The Administrator of the Oklahoma Petroleum Storage Tank Release Indemnity Program shall be appointed by the General Administrator of the Oklahoma Corporation Commission. All other employees of the Oklahoma Petroleum Storage Tank Release Indemnity Program shall be hired by the Administrator of the Oklahoma Petroleum Storage Tank Release Indemnity Program.

B. The Administrator shall employ a sufficient number of full-time-equivalent employees to implement the Oklahoma Petroleum Storage Tank Release Indemnity Program within the budgetary limit established in Section 26 of this act. The Indemnity Fund Program employees shall be in the unclassified service and shall be exempt from the agency full-time-equivalent limit. All employees involved in reviewing and approving claims and in the approval and issuance of payments shall be employees of the Indemnity Fund Program under the supervision of the Administrator.

C. The Administrator is authorized to employ temporary workers, contract labor, or to contract with a private claims processing company as may be prudent to properly administer the Indemnity Fund.

SECTION 27. AMENDATORY 17 O.S. 1991, Section 365, as amended by Section 8, Chapter 406, O.S.L. 1992 (17 O.S. Supp. 1992, 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~~ Department of Central Services to accomplish the purposes of this section.

G. 1. 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.

2. The owner or operator is liable for the cost of the corrective action taken by the Corporation 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 Administrator has taken corrective action in an emergency.

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. 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 Leaking Underground Storage Tank 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 28. The permanent rule of the Corporation Commission codified in the Oklahoma Administrative Code as OAC 165:27-3-4, and all amendments thereto, are hereby disapproved.

SECTION 29. The State Auditor and Inspector shall require that the independent audit required during 1993 by Section 24 of this act be a financial, management and program audit. In addition to the audit requirements contained in Section 24 of this act, the auditor retained to perform the audit shall evaluate the administration, management and operation of the Oklahoma Petroleum Storage Tank Release Indemnity Program and the Petroleum Storage Tank Release Environmental Cleanup Indemnity Fund. The auditor shall evaluate the administration, management and operation of the Indemnity Fund Program and the Indemnity Fund in comparison to similar indemnity programs and other comparable programs established, both public and private, to pay remediation costs, damage claims or insurance claims, and in accordance with generally accepted administration and management principles. The final report of the auditor shall contain options and recommendations regarding appropriate staffing levels, funding levels, claims audit requirements, claims processing and payment procedures, retainage pending completion of remediation, and advance or partial payments prior to claim approval. The audit shall also address the timeliness of approval and payment of claims and the separation of the Indemnity Fund Program from the Corporation Commission's regulatory programs.

SECTION 30. The Storage Tank Advisory Council established by Section 15 of this act shall conduct meetings pursuant to the provisions of paragraph 4 of subsection C of Section 15 of this act to provide a public forum for the discussion of issues relating to the Oklahoma Aboveground Tank Regulation Act, the Oklahoma Underground Tank Regulation Act and the Oklahoma Petroleum Storage Tank Release Indemnity Program. Issues to be addressed may include an appropriate review process for claims denied by the Indemnity Fund Program, the effects of cleanup levels on property adjacent to a remediated tank site, the responsibility of the Indemnity Fund Program for the adverse impact to property adjacent to remediated tank sites and such other issues the Advisory Council deems appropriate or raised by the public. In conducting these public forums, the Advisory Council shall solicit input from tank owners and operators, environmental consultants, contractors, property owners, the real estate industry and others interested in the issues raised. The Advisory Council shall issue a report setting forth its findings and conclusions based upon its study of the issues and shall make any recommendations, if any, which it deems appropriate. Copies of the report shall be submitted to the Corporation Commissioners, the President Pro Tempore of the Senate, the Speaker of the House of Representatives, the Chairman of the Senate Committee on Natural Resources and the Chairman of the House of Representatives Energy, Environment and Natural Resources Committee.

SECTION 31. Sections 28, 29 and 30 of this act shall not be codified in the Oklahoma Statutes.

SECTION 32. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the Senate the 21st day of May, 1993.

President of the Senate  
Passed the House of Representatives the 25th day of May, 1993.

Speaker of the House of  
Representatives