

ENGROSSED HOUSE
BILL NO. 2856

By: Rice of the House

and

Easley of the Senate

(Corporation Commission - amending 14 sections in Title 17
- Oklahoma Underground Storage Tank Regulation Act -
emergency)

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

SECTION 1. AMENDATORY 17 O.S. 1991, Section 301, as amended by Section 1, Chapter 344, O.S.L. 1993 (17 O.S. Supp. 1995, Section 301), is amended to read as follows:

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

B. For purposes of implementing the Oklahoma Underground Storage Tank Regulation Act, there is hereby created the Underground Storage Tank Regulation Program.

SECTION 2. AMENDATORY 17 O.S. 1991, Section 303, as last amended by Section 1, Chapter 352, O.S.L. 1994 (17 O.S. Supp. 1995, Section 303), is amended to read as follows:

Section 303. As used in the Oklahoma Underground Storage Tank Regulation Act:

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 April 21, 1989, or
- c. has been rendered permanently unfit for use as determined by the Commission;

2. "Commission" means the Oklahoma Corporation Commission;

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

4. "Corrective action plan" or "corrective action remediation plan" means the plan submitted to the regulatory program of the Corporation Commission detailing the method and manner of corrective action to be taken for a release;

5. "Department" means the Department of Environmental Quality;

6. "Eligible release" means a release for which allowable costs, as determined by the administrator, are reimbursable to or on behalf of an eligible person pursuant to the Oklahoma Petroleum Storage Tank Release Indemnity Program;

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

~~7.~~ 8. "Existing system" means an underground storage tank system for which installation of that system commenced prior to April 21, 1989;

~~8.~~ 9. "Facility" means any location or part thereof containing one or more underground storage tanks or systems;

~~9.~~ 10. "Hazardous substance" 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 Management Act.

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.~~ 11. "New system" means an underground storage tank system for which the installation of the system began on or after April 21, 1989;

~~11.~~ 12. "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. The term "operator" also includes a past operator at the time of a release or a violation of the Oklahoma Underground Storage Tank Regulation Act or of a rule promulgated thereunder;

~~12.~~ 13. "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 any 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, without participating in the management of an underground storage tank and otherwise is not engaged in petroleum production, refining, and marketing, holds indicia of ownership primarily to protect the owner's security interest in the tank;~~

~~13.~~ 14. "Permit" means any registration, permit, license or other authorization issued by the Commission to operate an underground storage tank system;

~~14.~~ 15. "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.~~ 16. "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.~~ 17. "Pipeline facilities" 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.~~ 18. "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.~~ 19. "Regulated substances" means hazardous substances or petroleum;

~~19.~~ 20. "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.~~ 21. "Risk-based corrective action" means a risk management process used to assess the potential risk to human health, safety and the environment from releases from regulated facilities;

22. "Tank" 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.~~ 23. "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.~~ 24. "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.~~ 25. "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 306, as last amended by Section 4, Chapter 344, O.S.L. 1993 (17 O.S. Supp. 1995, Section 306), is amended to read as follows:

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

1. Implement and enforce the Underground Storage Tank Regulation Program. Regulatory responsibilities of the Corporation Commission pursuant to the Underground Storage Tank Regulation Program 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;

2. Issue, renew, deny, modify, suspend, refuse to renew and revoke permits for underground storage tank systems and for certifications of underground storage tank professionals 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.~~ 3. 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, and rules promulgated thereto;

~~3.~~ 4. 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.~~ 5. 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 thereunder;

~~5.~~ 6. 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.~~ 7. Have access to and inspect any monitoring stations or conduct tests to identify any actual or suspected release of a regulated substance;

~~7.~~ 8. 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.~~ 9. 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.~~ 10. 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.~~ 11. Administer the Underground Storage Tank Program in lieu of the federal government upon approval by the Environmental Protection Agency;

~~11.~~ 12. Promulgate and enforce rules to implement the provisions of the Oklahoma Underground Storage Tank Regulation Act;

~~12.~~ 13. Establish minimum standards and schedules for underground storage tank system;

~~13.~~ 14. Require any owners or operators to submit corrective action remediation plans in such manner and containing such information as is required by rules promulgated by the Commission;

15. 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 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. submit a corrective action remediation plan, as required by the Commission; and
- h. take appropriate action to temporarily relocate residents affected by the release;

~~14.~~ 16. 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 by rules promulgated pursuant to the Administrative Procedures Act, Section 250.1 et seq. of Title 75 of the Oklahoma Statutes;

~~15.~~ 17. 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.~~ 18. Prepare an emergency response plan for spills or releases of regulated substances or review emergency response plans developed outside the Commission;

~~17.~~ 19. 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 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~~

20. Create an internal coordinated management system among the Underground Storage Tank Regulation Program, the Oklahoma Aboveground Tank Program and the Oklahoma Petroleum Storage Tank Release Indemnity Program to ensure that tank remediation plans and reimbursements and payments from the Oklahoma Petroleum Storage Tank Release Environmental Remediation Indemnity Fund for remediation are accepted, reviewed, evaluated, and determined in the most cost-effective manner and by the most efficient use of the monies in the Indemnity Fund; and

~~18.~~ 21. Exercise all incidental powers as necessary and proper for the administration of the Oklahoma Underground Storage Tank Regulation Act.

B. 1. The Corporation Commission shall establish and implement a classification system for underground storage tank or release

sites needing corrective action. The Commission shall classify and prioritize the contaminated sites based upon the urgency of need for corrective action according to criteria established by the Commission pursuant to the provisions of the Underground Storage Tank Regulation Program.

2. For the classification sites that pose an imminent risk to the public health, safety, or welfare, or the environment, corrective action shall be implemented forthwith. If the Commission determines that no imminent risk to the public health, safety, or welfare, or the environment exists at a contaminated site, the Commission may allow corrective action at these sites to be conducted on a schedule approved by the Commission.

3. The prioritization of each site will be based on information collected from historical records, a visual inspection and site assessment data. The owner shall be required to identify any known or potential contaminant sources from regulated underground storage tanks, any environmental impacts, the presence of potentially impacted humans and environment, and potential significant transport pathways. The prioritization of each site shall determine the appropriate response action to be implemented at the site.

4. The provisions of this subsection shall not be used by the Commission to limit the ability of an owner or operator to submit a claim pursuant to the Oklahoma Petroleum Storage Tank Release Indemnity Program.

C. 1. In administering the Underground Storage Tank Regulation Program, the Commission shall:

- a. approve site-specific corrective action remediation plans for each site as necessary, using risk-based corrective action,
- b. review and inspect site assessment and remedial activities and reports,

- c. use risk-based corrective action remediation procedures as determined by Commission rule to establish remediation levels,
- d. promulgate by rule criteria for assigning a priority to each site using risk-based corrective action and assign a priority to each site according to those criteria,
- e. promulgate by rule criteria and procedures for risk-based corrective action site closures.

2. The Commission by rule may approve site assessment methodologies. The Commission shall promulgate by rule criteria to be used to determine:

- a. the necessity for site assessment, and
- b. the nature of the site assessment required.

3. The Commission shall not approve a corrective action remediation plan until the Commission and the owner of the site by agreement set specific goals in the plan for completing discrete corrective action tasks before specified dates. The owner or operator is responsible for ensuring the goals are met.

SECTION 4. AMENDATORY 17 O.S. 1991, Section 309, as last amended by Section 8, Chapter 344, O.S.L. 1993 (17 O.S. Supp. 1995, 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; and

3. Require the owner or operator to submit or provide for the submission of a corrective action remediation plan.

D. 1. Corrective remediation action taken pursuant to the Underground Storage Tank Regulation Program shall be conducted in accordance with the risk-based corrective action process established by the Commission.

2. If initial corrective response actions have not resulted in completion of corrective remediation action, the owner or operator shall provide that a corrective remediation action plan be prepared to address contamination at the site.

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

- a. an owner or operator of the underground storage tank system cannot be identified,
 - b. an identified owner or operator cannot or will not comply with the order issued pursuant to subsection C of this section,
 - c. an administrative or judicial proceeding on an order issued pursuant to subsection C of this section is pending and the Commission determines corrective action is necessary to protect the public health, safety and welfare or the environment until the administrative or judicial proceeding is resolved, or
 - d. the Commission determines that the release constitutes a clear and immediate danger requiring immediate action to prevent, minimize or mitigate damage to the public health and welfare or the environment. Before taking an action under this paragraph, the Commission shall make all reasonable efforts, taking into consideration the urgency of the situation, to order an owner or operator to take a corrective action and notify the owners of real property as specified by Section 310 of this title.
2. The owner or operator is liable for the cost of the corrective action taken by the Commission pursuant to this subsection, including the cost of investigating the release and administrative and legal expenses, if:

- a. the owner or operator has failed to take a corrective action ordered by the Commission and the Commission has taken the corrective action; or
- b. the Commission has taken corrective action in an emergency pursuant to subparagraph d of paragraph 1 of this subsection.

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

~~E.~~ F. 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 5. AMENDATORY Section 14, Chapter 344, O.S.L. 1993 (17 O.S. Supp. 1995, Section 318), is amended to read as follows:

Section 318. A. 1. The Corporation Commission is authorized to develop ~~and~~, implement and enforce 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.

2. 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.

3. 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. 1. 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 and any rules promulgated thereto.

2. 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.

3. 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.

C. 1. The Commission may deny, suspend, revoke, or reinstate a certification.

2. The Commission shall promulgate rules establishing the grounds for denial, suspension, revocation, or reinstatement of a certification, and establishing procedures for disciplinary actions.

3. Proceedings relating to the suspension or revocation of certification issued pursuant to this section are subject to the administrative hearings, administrative penalties and enforcement acts specified by the Oklahoma Underground Storage Tank Regulation Act.

4. A person or business entity whose license or certificate of registration has been revoked may apply for a new license or certificate of registration after the expiration of one (1) year from the date of the revocation.

SECTION 6. AMENDATORY Section 15, Chapter 344, O.S.L. 1993, as amended by Section 3, Chapter 352, O.S.L. 1994 (17 O.S. Supp. 1995, Section 340), is amended to read as follows:

Section 340. 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 Oklahoma Aboveground ~~Storage~~ Tank Regulation Act and the Oklahoma Petroleum Storage Tank Release Indemnity ~~Fund~~ Program. The staff of the Corporation Commission within the Aboveground and Underground Storage Tank Regulatory Program and the Oklahoma Petroleum Storage Tank Release Indemnity ~~Fund~~ Program shall not have

standing to recommend to the Corporation Commission proposed permanent rules or changes to such rules which have not previously been submitted to the Council for action at least fifteen (15) days prior to the hearing for adoption of the rules by the Corporation Commission;

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; and

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. All actions of the Council with regard to rulemaking shall be deemed actions of the Corporation Commission for the purposes of complying with the Administrative Procedures Act.

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. The Council is authorized to utilize the conference rooms of the

Corporation Commission and obtain administrative assistance from the Commission, as required.

F. 1. The Corporation Commission is specifically charged with the duty of promulgating rules which will implement the duties and responsibilities of the Oklahoma Underground Storage Tank Regulation Act, the Oklahoma Aboveground Storage Tank Regulation Act and the Oklahoma Petroleum Storage Tank Release Indemnity ~~Fund~~ Program.

2. Except as provided in this subsection, rules within the jurisdiction of the Council provided for by this section shall be promulgated with the advice of such Council.

3. The Corporation Commission may promulgate emergency rules without the advice of the Council when the time constraints of the emergency, as determined by the Corporation Commission, do not permit timely development of recommendations by the Council.

4. If the Corporation Commission adopts any proposed permanent rules without the advice of the Council or not in accord with the advice of the Council, the Corporation Commission shall detail the reasons therefor on the rule report submitted to the Governor and the Legislature pursuant to Article 1 of the Administrative Procedures Act.

SECTION 7. AMENDATORY 17 O.S. 1991, Section 350, as amended by Section 16, Chapter 344, O.S.L. 1993 (17 O.S. Supp. 1995, Section 350), is amended to read as follows:

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

B. 1. The Corporation Commission except for an internal coordinated management system developed by the Commission among the Oklahoma Underground Storage Tank Regulation Program, the Oklahoma Aboveground Tank Program and the Oklahoma Petroleum Storage Tank Release Indemnity Program to ensure that tank corrective action plans for remediation and reimbursement and payment from the

Underground Petroleum Storage Tank Release Environmental Remediation Indemnity Fund for remediation are accepted, reviewed and evaluated, and determined in the most cost-effective manner and by the most efficient use of the monies in the Indemnity Fund 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.

2. 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 8. AMENDATORY 17 O.S. 1991, Section 352, as last amended by Section 2, Chapter 1, O.S.L. 1995 (17 O.S. Supp. 1995, Section 352), is amended to read as follows:

Section 352. 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~~ Remediation

Indemnity Fund and the Oklahoma Petroleum Storage Tank Release
Indemnity Program;

2. "Corrective action remediation plan" or "corrective action plan" means the plan submitted pursuant to the Underground Storage Tank Regulation Act;

3. "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;~~

~~3.~~ 4. "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 365 of this title;

~~4.~~ 5. "Eligible release" means a release for which allowable costs, as determined by the Administrator, are reimbursable to or on behalf of an eligible person;

~~5.~~ 6. "Indemnity Fund" means the Petroleum Storage Tank Release Environmental ~~Cleanup~~ Remediation Indemnity Fund;

~~6.~~ 7. "Indemnity Fund Program" means the Oklahoma Petroleum Storage Tank Release Indemnity Program established to administer the Indemnity Fund;

~~7.~~ 8. "Investigation" means activities taken to identify, confirm, monitor or delineate the physical extent of a release and which result in the selection of an appropriate means to remediate a release and specific design criteria for such remediation upon which competitive bids may be reasonably based;

~~8.~~ 9. "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);

~~9.~~ 10. "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, without participating in the management of an underground storage tank and otherwise not engaged in petroleum production, refining, and marketing, 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~~ indicia of ownership primarily to protect the owner's security interest in the tank;

~~10.~~ 11. "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;

~~11.~~ 12. "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. The term also refers to any agency of the State of Oklahoma which purchases property containing underground storage tanks from an owner or operator qualified to access the Indemnity Fund and upon which an eligible release has occurred prior to the agency acquiring the property;

~~12.~~ 13. "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;

~~13.~~ 14. "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;

~~14.~~ 15. "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;

~~15.~~ 16. "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

~~16.~~ 17. "Tax Commission" means the Oklahoma Tax Commission.

SECTION 9. AMENDATORY 17 O.S. 1991, Section 353, as last amended by Section 3, Chapter 1, O.S.L. 1995 (17 O.S. Supp. 1995, 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~~ Remediation 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 Administrator for the benefit of those persons determined to be eligible by the Administrator to receive total or limited reimbursement for:

1. The costs determined to be eligible by the Corporation Commission in preparing a corrective action plan;

2. The cost of corrective action taken in response to an eligible release;

3. Payment of claims for property damage or personal injury resulting from an eligible release; and

4. Necessary costs incidental to the cost of the corrective action taken and for filing and obtaining reimbursement from the Indemnity Fund.

B. 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, except as otherwise provided by paragraph 3 of this subsection, or by the federal government are not reimbursable pursuant to the provisions of the Oklahoma Petroleum Storage Tank Release Indemnity Program.

2. 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. ~~Provided, that an~~

3. An agency of the state may access ~~said~~ the fund for reimbursement when it purchases property containing underground storage tanks from an owner or operator qualified to access the Indemnity Fund and upon which an eligible release has occurred prior to the agency acquiring the property. In such case, the agency of the state shall be reimbursed for allowable costs in excess of Five Thousand Dollars (\$5,000.00) at the same level or amount of reimbursement as the qualified owner or operator would have received

pursuant to Section 356 of ~~Title 17 of the Oklahoma Statutes~~ this title.

~~2.~~ 4. 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 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.

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 10. AMENDATORY 17 O.S. 1991, Section 354, as last amended by Section 23, Chapter 285, O.S.L. 1995 (17 O.S. Supp. 1995, 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~~ Remediation Indemnity Fund pursuant to paragraph 1 of subsection C of this section;

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

3. The Corporation Commission pursuant to paragraph 2 of subsection C of this section; and

4. The Environmental Trust Revolving 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 shall be deposited in the Petroleum Storage Tank Release Environmental ~~Cleanup~~ Remediation Indemnity Fund created in Section 353 of this title in amounts necessary to maintain the maintenance level of the Indemnity Fund pursuant to subsection D of this section;

2. Except as otherwise provided in subsection D of this section, revenue from the assessment shall be deposited as follows:

- a. the first One Million Dollars (\$1,000,000.00) collected during each fiscal year shall be earmarked for appropriation to the Corporation Commission in such amount to be used solely for regulatory activities associated with the exploration and production of oil and gas,
- b. the second One Million Dollars (\$1,000,000.00) collected during each fiscal year shall be deposited in the Environmental Trust Revolving Fund created in Section 2-3-403 of Title 27A of the Oklahoma Statutes,

to be used solely for the cleanup of abandoned oil and gas processing and refining sites, and

- c. the balance of the monies collected during each fiscal year shall be deposited in the State Transportation Fund and 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 Oklahoma Petroleum Storage Tank Release Environmental ~~Cleanup~~ Remediation Indemnity Fund falls below the required maintenance level on or before December 31, 1999, the 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 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 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 for appropriation to the Corporation Commission, and in the Environmental Trust Revolving Fund and the State Transportation Fund as provided in subsection C of this section.

SECTION 11. AMENDATORY 17 O.S. 1991, Section 356, as last amended by Section 6, Chapter 352, O.S.L. 1994 (17 O.S. Supp. 1995, Section 356), is amended to read as follows:

Section 356. A. The Oklahoma Petroleum Storage Tank Release Indemnity Fund Program shall provide reimbursement to eligible persons for allowable costs resulting from an eligible release pursuant to the provisions of this section.

B. Any person who intends to file for reimbursement shall make application to the Indemnity Fund Program for such reimbursement. The only information required to be filed with the application shall be that information required by the Corporation Commission to determine eligibility for reimbursement.

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

- a. documentation of site conditions prior to initiation of corrective action,
- b. a record of the costs actually incurred for each corrective action taken,
- c. evidence that the corrective action was completed or will be completed in accordance with cleanup criteria ~~established~~ by the Corporation Commission through the corrective action remediation plan,
- d. how any other financial responsibility requirements will be met,
- e. whether there is any other liability coverage for the release,
- f. any injury to property or physical injury incurred as a result of the release,
- g. the corrective action remediation plan approved by or submitted ~~to the appropriate regulatory program~~ pursuant to the Underground Storage Tank Regulation Program, and
- h. such other information and records as the Indemnity Fund Program may require.

2. The application shall contain a statement certified by affidavit that the information contained therein is true and correct.

C. 1. As a condition for reimbursement pursuant to the provisions of this section, the Indemnity Fund Program shall require

that any corrective action taken as a result of an eligible release, other than corrective action taken in an emergency situation, shall be made by the competitive bid of at least two bidders.

2. Contracts for remediation activities shall be performance based. Terms of the contracts shall include but not be limited to:

- a. total costs of remediation,
- b. length of time necessary to implement and complete the remediation, and
- c. a schedule for corrective action plan implementation.

Acquisition or contracts or subcontracts for corrective action or for labor or equipment which exceed Two Thousand Five Hundred Dollars (\$2,500.00) from any one vendor or subcontractor for any one site shall be awarded to the lowest and best bidder. The Indemnity Fund Program may require the owner or operator to submit documentation evidencing proof of such competitive bidding. Any competitive bid submitted pursuant to this section shall be accompanied by the sworn noncollusion statement contained in Section 85.22 of Title 74 of the Oklahoma Statutes, modified in wording as appropriate.

~~2.~~ 3. Professional engineering, geological, land surveying and other professional services or services provided by a Corporation Commission certified underground storage tank consultant required for investigation and the preparation of corrective action plans or proposed corrective action plans and oversight of corrective action shall be selected based upon professional qualifications and technical experience of the consultant at a fair and reasonable negotiated fee.

D. The person responsible for taking the corrective action shall keep and preserve suitable records of hydrological and other site investigations and assessments, site rehabilitation plans, contracts and contract negotiations, and accounts, invoices, sales tickets, or other payment records from purchases, sales, leases, or

other transactions or claims involving costs actually incurred related to such corrective action or injury or damage. Such records shall be made available upon request to agents and employees of the Indemnity Fund Program during regular business hours, and at other times upon written request. In addition, the employees, agents and representatives of the Indemnity Fund Program may from time to time request submission of such site-specific information as it may require. All records of costs actually incurred shall be certified by affidavit to the Indemnity Fund Program as being true and correct.

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

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

2. Disposition of an application shall be provided to the applicant in writing, accompanied by a written explanation setting forth in detail the reason or reasons for the approval or denial of a claim, in whole or in part. If the Administrator fails to make a determination on an application or payment within the time provided or denies an application, or if a dispute otherwise arises with regard to reimbursement, the applicant may seek appropriate legal remedies.

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

4. For eligible releases requiring extensive corrective action, the Administrator is authorized to make an initial payment and periodic supplemental payments for reimbursements to eligible persons for ongoing reimbursable costs actually incurred. An eligible person intending to file for supplemental payments for reimbursement shall submit a work plan for implementation of the corrective action plan approved by the Corporation Commission's regulatory program pursuant to the Oklahoma Underground Storage Tank Regulation Act or the Oklahoma Aboveground Tank Regulation Act, and additional appropriate information which shall include, but not be limited to, the work to be completed, schedule of actions to be taken, and estimates of costs to be reimbursed. Such information shall be submitted with the application for reimbursement. After

approval of the application, the Administrator shall have thirty (30) days from the date of receipt of a claim for supplemental payment in which to approve or deny the supplemental claim. The thirty-day time for review may be extended by the Administrator for an additional thirty (30) days upon giving the applicant written notice of such intent to extend no later than twenty (20) days from the date of receipt of the claim. If the claim for payment is included with the application for reimbursement, paragraph 1 of this subsection shall control.

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

- a. the person claiming reimbursement must be an eligible person,
- b. the eligible person must have been in substantial compliance with the applicable rules promulgated pursuant to the provisions of the Oklahoma Petroleum Storage Tank Release Indemnity Program, the Oklahoma Underground Storage Tank Regulation Act and the Oklahoma Aboveground Tank Regulation Act at the time of the reporting of the release,
- c. allowable costs resulting from a release must have been incurred on or after December 23, 1988,
- d. the Corporation Commission determines that the release no longer poses a threat to public health and welfare or the environment,
- e. the Corporation Commission was given adequate notice by such owner or operator of the release pursuant to Section 309 of this title, and

- f. such owner or operator, to the extent possible, fully cooperated with the Corporation Commission in responding to the release.

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

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

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

H. 1. Eligible persons shall be reimbursed from the Indemnity Fund for allowable costs in excess of Five Thousand Dollars (\$5,000.00) but not more than:

- a. One Million Dollars (\$1,000,000.00) per occurrence providing the storage tank is used in petroleum marketing or if the system has a throughput in excess

of ten thousand (10,000) gallons per month based on annual throughput for the previous calendar year, and

(1) One Million Dollars (\$1,000,000.00) annual aggregate for owners of one to one hundred storage tank systems, or

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

b. Five Hundred Thousand Dollars (\$500,000.00) per occurrence providing the system is not used in petroleum marketing, and if the storage tank system has a throughput of ten thousand (10,000) gallons or less per month based on annual throughput for the previous calendar year, and

(1) One Million Dollars (\$1,000,000.00) annual aggregate for owners of one to one hundred storage tank systems, or

(2) Two Million Dollars (\$2,000,000.00) for owners with more than one hundred storage tank systems.

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

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

1. Recover payments for loss of time;

2. Recover payment of costs which may be associated with but are not integral to corrective action such as the cost of renovating, removing or disposing of storage tanks unless the removing of any tanks, concrete, concrete accessories, lines, dispensers or other site improvements is necessary as required by a corrective action plan approved by the Corporation Commission's regulatory program;

3. Pay for punitive damages from any civil action resulting from the eligible release;

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

5. Pay legal expenses.

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

K. The right to apply for reimbursement and the right to certify that costs are true, correct and actually incurred may not be assigned to a person rendering services for corrective action on the subject site.

SECTION 12. AMENDATORY Section 7, Chapter 406, O.S.L. 1992, as amended by Section 21, Chapter 344, O.S.L. 1993 (17 O.S. Supp. 1995, 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. The Contracts for remediation activity shall be performance based. In order to assist an owner, operator or any other person in determining proper contract costs, the Commission 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 Petroleum Storage Tank Release Environmental ~~Cleanup~~ Remediation 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.

SECTION 13. AMENDATORY 17 O.S. 1991, Section 358, as amended by Section 23, Chapter 344, O.S.L. 1993 (17 O.S. Supp. 1995, 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 containing ~~the~~:

1. The total number of underground and aboveground storage tank applicants requesting disbursement from the Indemnity Fund during the preceding year; ~~the~~

2. The total number of underground and aboveground storage tank applicants receiving partial payment during the preceding year and the total amount disbursed for such payments; ~~the~~

3. The total number of underground and aboveground storage tank applicants receiving full payment during the preceding year and total amount disbursed for such payments; ~~the~~

4. The total number of applicants denied disbursement from the Indemnity Fund during the preceding year, and the total amount denied for such disbursement; ~~the~~

5. The average time frame for providing disbursements to applicants; ~~a~~

6. 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

7. A detailed summary of administrative expenditures related to the Indemnity Fund program; ~~other~~

8. Other information which the Commission believes is pertinent regarding the Indemnity Fund program; and ~~any~~

9. 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. The report shall be in such form as is required by the Speaker of the House of Representatives and by the President Pro Tempore of the Senate.

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 14. AMENDATORY Section 25, Chapter 344, O.S.L. 1993 (17 O.S. Supp. 1995, Section 360), is amended to read as follows:

Section 360. A. Annual expenditures from the Petroleum Storage Tank Release Environmental ~~Cleanup~~ Remediation 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 15. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the House of Representatives the 5th day of March, 1996.

Speaker of the House of
Representatives

Passed the Senate the ____ day of _____, 1996.

President of the Senate