

SHORT TITLE: Oklahoma Petroleum Storage Tank Release Indemnity Program; modifying structure of Program; effective date.

STATE OF OKLAHOMA

2nd Session of the 45th Legislature (1996)

SENATE BILL NO. 1103

By: Stipe

AS INTRODUCED

An Act relating to the Oklahoma Petroleum Storage Tank Release Indemnity Program; amending Section 15, Chapter 344, O.S.L. 1993, as amended by Section 3, Chapter 352, O.S.L. 1994, 17 O.S. 1991, Sections 350, as amended by Section 16, Chapter 344, O.S.L. 1993, 352, as last amended by Section 2, Chapter 1, O.S.L. 1995, 353, as last amended by Section 3, Chapter 1, O.S.L. 1995, 356, as last amended by Section 6, Chapter 352, O.S.L. 1994, Section 7, Chapter 406, O.S.L. 1992, as amended by Section 21, Chapter 344, O.S.L. 1993, 358, as amended by Section 23, Chapter 344, O.S.L. 1993, Section 11, Chapter 406, O.S.L. 1992, as amended by Section 24, Chapter 344, O.S.L. 1993, Section 25, Chapter 344, O.S.L. 1993 and Section 26, Chapter 344, O.S.L. 1993 (17 O.S. Supp. 1995, Sections 340, 350, 352, 353, 356, 356.1, 358, 359, 360, and 361), which relate to underground storage tanks; modifying certain duties of the Storage Tank Advisory Council; modifying certain time period to submit proposed rules to Council; removing certain indemnity fund program from the Corporation Commission; creating the Board of Managers of the Oklahoma Petroleum Storage Tank Release Indemnity Program; stating membership; providing for appointments; stating terms; stating quorum requirement; stating qualifications of appointed members; authorizing Board to elect chair and vice-chair; stating meeting requirements; providing for special meetings; requiring Board to implement certain program, appoint an Indemnity Fund Manager, approve budget, provide certain public forum, to serve without compensation; providing for travel reimbursement; requiring Program Administrator to operate program pursuant to policies developed by the Board; modifying definition; clarifying statutory references; removing eligibility determination from Corporation Commission; deleting references to Corporation Commission; deleting provision for payment of certain Corporation Commission costs; clarifying references to Corporation Commission; providing for Indemnity Fund Administrator to perform certain functions; deeming certain expenditures obtained by bids to be fair and reasonable and reimbursable unless there is contrary evidence; providing for reimbursement for professional services based on standard billing rates; authorizing certain applicants to seek legal remedies in district court; transferring certain

duties from Corporation Commission to Indemnity Fund Administrator and Program; removing requirement for Corporation Commission to report certain reimbursements; providing for Board of Managers to appoint certain employees; modifying statutory reference; and providing an effective date.

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

SECTION 1. 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, and the Oklahoma 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 proposed permanent rules or changes to such rules which have not previously been submitted to the Council for action at least ~~fifteen (15)~~ ninety (90) 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, and the Oklahoma Aboveground ~~Storage~~ Tank Regulation Act ~~and the Oklahoma Petroleum 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 2. 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. 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.~~ There is hereby created the Board of Managers of the Oklahoma Petroleum Storage Tank Release Indemnity Program. The Board shall consist of nine (9) members. The Board shall consist of the State Insurance Commissioner, or a designee, the State Auditor and Inspector, or a designee, the Attorney General of Oklahoma, or a designee, two members appointed by the Governor, two members appointed by the President Pro Tempore of the Senate and two members appointed by the Speaker of the House of Representatives. The terms for the initial gubernatorial appointments shall be for one (1) and two (2) years as designated by the Governor. The terms for the initial President Pro Tempore appointments shall be for one (1) and three (3) years as designated by the President Pro Tempore of the Senate. The terms for the initial Speaker of the House of Representatives appointments shall be for one (1) and three (3) years as designated by the Speaker of the House of Representatives. 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 Board shall be composed as follows:

1. The Governor shall appoint two members who shall be storage tank owners or operators;

2. The President Pro Tempore of the Senate shall appoint two members as follows:

a. one member who shall be a storage tank owner or operator, and

b. one member who shall be a geologist; and

3. The Speaker of the House of Representatives shall appoint two members as follows:

- a. one member who shall be a storage tank owner or operator, and
- b. one member who shall be a registered professional engineer.

C. The Board of Managers shall elect a chair and vice-chair from among its members. The Board shall meet at least quarterly as required to carry out its duties as specified by law. Special meetings may be called by the chair or by the concurrence of any three members.

D. The Board of Managers shall:

1. Develop policies and procedures to implement the Oklahoma Petroleum Storage Tank Release Indemnity Program;

2. Appoint an Indemnity Fund Administrator who shall be the executive administrator of the Oklahoma Petroleum Storage Tank Release Indemnity Program;

3. Approve the budget for the Oklahoma Petroleum Storage Tank Release Indemnity Program; and

4. Provide a public forum for the discussion of issues relevant to the Oklahoma Petroleum Storage Tank Release Indemnity Program.

E. Members of the Board shall serve without compensation but may be reimbursed for expenses incurred in the performance of duties as provided in the State Travel Reimbursement Act, Section 500.1 et seq. of Title 74 of the Oklahoma Statutes.

F. 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 pursuant to policies and procedures developed by the Board.

SECTION 3. 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" or "Indemnity Fund Administrator" means the person hired by the ~~General Administrator of the Corporation Commission~~ Board of Managers of the Oklahoma Petroleum Storage Tank Release Indemnity Program 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;

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 365 of this title;

4. "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. "Indemnity Fund" means the Petroleum Storage Tank Release Environmental Cleanup Indemnity Fund;

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

7. "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. "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. "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;

10. "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. "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. "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. "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. "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. "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. "Tax Commission" means the Oklahoma Tax Commission.

SECTION 4. 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 Indemnity Fund". ~~The General Administrator of the Corporation Commission~~ Board of Managers of the Oklahoma Petroleum Storage Tank Release Indemnity Program shall hire an Administrator who shall administer the Indemnity Fund and Indemnity Fund Program in conformance with the policies and procedures developed by the Board of Managers. 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~~ of 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 Oklahoma 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. Provided, that an agency of the state may access said 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.

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 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 5. 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 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~~ Indemnity Fund Administrator to determine eligibility for reimbursement.

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

- a. documentation of site conditions prior to initiation of corrective action,
- b. a record of the costs actually incurred for each corrective action taken,
- c. evidence that the corrective action was completed or will be completed in accordance with cleanup criteria established by the Corporation Commission,

- d. how any other financial responsibility requirements will be met,
- e. whether there is any other liability coverage for the release,
- f. any injury to property or physical injury incurred as a result of the release,
- g. the corrective action plan approved by or submitted to the appropriate regulatory program, and
- h. such other information and records as the Indemnity Fund Program may require.

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

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

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

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 or her 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 in district court.

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 6. 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~~ Indemnity Fund Administrator 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~~ Indemnity Fund Administrator shall consider such record, report or information, or particular portion thereof, confidential.

B. The ~~Commission~~ Indemnity Fund Program 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 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 7. 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~~ Indemnity Fund Program shall submit an annual report to the Speaker of the House of Representatives and the President Pro Tempore of the Senate 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~~ Indemnity Fund Program 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 8. AMENDATORY Section 11, Chapter 406, O.S.L. 1992, as amended by Section 24, Chapter 344, O.S.L. 1993 (17 O.S. Supp. 1995, Section 359), is amended to read as follows:

Section 359. A. By August 1, 1992, and every year thereafter, the State Auditor and Inspector shall contract with an auditor, or auditing company to conduct an independent audit of the books, records, files and other such documents of the ~~Oklahoma Corporation Commission~~ Indemnity Fund Program pertaining to and which relate to the administration of the Petroleum Storage Tank Release Environmental Cleanup Indemnity Fund. The audit shall include but shall not be limited to a review of agency compliance with state statutes regarding the Indemnity Fund, internal control procedures, adequacy of claim process expenditures from and debits of the Indemnity Fund regarding administration, personnel, and 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~~ Chairs of the Appropriation Committees of both the Oklahoma House of Representatives and the State Senate.

SECTION 9. 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 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 10. AMENDATORY Section 26, Chapter 344, O.S.L. 1993 (17 O.S. Supp. 1995, Section 361), is amended to read as follows:

Section 361. A. The Administrator of the Oklahoma Petroleum Storage Tank Release Indemnity Program shall be appointed by the ~~General Administrator of the Oklahoma Corporation Commission~~ Board of Managers of the Oklahoma Petroleum Storage Tank Release Indemnity Program. 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 with the approval of the Board of Managers.

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~~ 360 of this ~~act~~ title. 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 11. This act shall become effective November 1, 1996.

45-2-2334

MJM