

SHORT TITLE: Corporation Commission; amending Underground Storage Tank Indemnity Fund program; emergency.

STATE OF OKLAHOMA

2nd Session of the 45th Legislature (1996)

SENATE BILL NO. 971

By: Easley

AS INTRODUCED

An Act relating to underground storage tanks;

amending Section 15, Chapter 344, O.S.L. 1993, as amended by Section 3, Chapter 352, O.S.L. 1994, 17 O.S. 1991, Section 353, as last amended by Section 3, Chapter 1, O.S.L. 1995, Section 356, as last amended by Section 6, Chapter 352, O.S.L. 1994 and Section 26, Chapter 344, O.S.L. 1993 (17 O.S. Supp. 1995, Sections 340, 353, 356 and 361), which relate to the Oklahoma Storage Tank Release Indemnity Program; modifying certain time requirement for staff recommendations to Storage Tank Advisory Council; authorizing Council to perform certain tasks fulfilling requirements of the Administrative Procedures Act; prohibiting Commission and staff from taking independent actions without good cause; modifying certain determination requirement for certain reimbursement; removing certain approval for work plans submitted to the Indemnity Fund; clarification of certain requirements for payment; requiring certain employees to be certified underground storage tank professionals; and declaring an emergency.

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, Section 301 et seq. of this title, the Aboveground ~~Storage~~ Tank Regulation Act, Section 401 et seq. of this title, and the Oklahoma Petroleum Storage Tank Release Indemnity ~~Fund~~ Program, Section 350 et seq. of this title. 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, Section 250 et seq. of Title 75 of the Oklahoma Statutes;

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. The Council shall act on behalf of the Corporation Commission in issuing notices, developing rule impact statements, in scheduling and conducting technical conferences and rulemaking hearings and in fulfilling the other requirements of the Administrative Procedures Act. The Corporation Commission and its staff shall not act independently of the Council on these matters without good cause communicated to the Council and its members.

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

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, Sections 250.2 to 308.2 of Title 75 of the Oklahoma Statutes.

SECTION 2. 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 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 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 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, Section 350 et seq. of this title. 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~~ this title.

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, Section 301 et seq. of this title, or the Oklahoma Aboveground Tank Regulation Act, Section 401 et seq. of this title, 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 3. 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 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.

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

technical experience of the consultant at a fair and reasonable negotiated fee.

D. The person responsible for taking the corrective action shall keep and preserve suitable records of hydrological and other site investigations and assessments, site rehabilitation plans, contracts and contract negotiations, and accounts, invoices, sales tickets, or other payment records from purchases, sales, leases, or other transactions or claims involving costs actually incurred related to such corrective action or injury or damage. Such records shall be made available upon request to agents and employees of the Indemnity Fund Program during regular business hours, and at other times upon written request. In addition, the employees, agents and representatives of the Indemnity Fund Program may from time to time request submission of such site-specific information as it may require. All records of costs actually incurred shall be certified by affidavit to the Indemnity Fund Program as being true and correct.

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

otherwise extended by written mutual agreement of the applicant and the Administrator.

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

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

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

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 to the Indemnity Fund a work plan for implementation of the approved 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~~ claim 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 4. 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. All other employees of the Oklahoma Petroleum Storage Tank Release Indemnity Program, Section 350 et seq. of this title, shall be hired by the Administrator of the Oklahoma Petroleum Storage Tank Release Indemnity Program.

B. The Administrator shall employ a sufficient number of full-time-equivalent employees to implement the Oklahoma Petroleum Storage Tank Release Indemnity Program within the budgetary limit established in Section ~~26~~ 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.

D. Any employee employed to provide or providing expertise as an environmental professional, including geology, hydrology and engineering, shall be a certified underground storage tank professional.

SECTION 5. 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.

45-2-2080

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