

ENGROSSED HOUSE  
BILL NO. 1397

By: Rice of the House  
and  
Easley of the Senate

An Act relating to the Corporation Commission;  
amending 17 O.S. 1991, Section 303, as last amended  
by Section 1, Chapter 352, O.S.L. 1994 (17 O.S.  
Supp. 1996, Section 303), which relates to the  
Oklahoma Underground Storage Tank Regulation Act;  
adding and modifying definitions; prohibiting  
adjacent property owners from unduly impeding or  
interfering with certain remediation procedures for  
underground storage tanks; providing for notice and  
rules; providing for liability of certain costs;  
providing penalties for certain actions; providing  
for damages to property and injury to adjacent  
property owner; clarifying rights; providing for  
certain grounds and defenses; amending 17 O.S.  
1991, Section 352, as last amended by Section 2,  
Chapter 1, O.S.L. 1995 (17 O.S. Supp. 1996, Section  
352), which relates to the Oklahoma Petroleum  
Storage Tank Release Indemnity Program; modifying  
definitions; providing for codification; and  
providing an effective date.

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

SECTION 1. AMENDATORY 17 O.S. 1991, Section 303, as last amended by Section 1, Chapter 352, O.S.L. 1994 (17 O.S. Supp. 1996, 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. "Adjacent property owner" means any person, other than an owner or operator, owning an interest in any property affected by a release;

3. "Commission" means the Oklahoma Corporation Commission;

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

~~4.~~ 5. "Corrective action 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.~~ 6. "Department" means the Department of Environmental Quality;

~~6.~~ 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 without being otherwise 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. "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.~~ 22. "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.~~ 23. "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.~~ 24. "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 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 312.1 of Title 17, unless there is created a duplication in numbering, reads as follows:

A. No adjacent property owner shall unduly impede or interfere with any efforts of the Corporation Commission or the owner or operator to undertake investigation, site assessment, or corrective action in accordance with the requirements of the Oklahoma Underground Storage Tank Regulation Act.

B. If the adjacent property owner denies access to property when such access is reasonably necessary for investigation, site assessment, or corrective action undertaken by the Corporation Commission, or by the owner or operator pursuant to a Corporation Commission directive, order, or approved corrective action plan, the Corporation Commission, after notice and hearing pursuant to Section 310 of Title 17 of the Oklahoma Statutes, may order the adjacent property owner to undertake the portion of investigation, site

assessment, or corrective action which was prohibited by the denial of access.

C. Any adjacent property owner violating subsection A of this section shall be liable for any investigation, site assessment, or corrective action costs resulting from such violation.

D. 1. The provisions of this section shall not preclude the adjacent property owner voluntarily or pursuant to a Commission order allowing or authorizing an investigation, site assessment or corrective action taken on the property pursuant to this section from maintaining any civil action necessary to recover actual damages to the property or injury to any person resulting from the investigations, assessments or corrective action together with any reasonable attorney fees.

2. Nothing in this subsection shall be construed to prevent the owner or operator of the underground tank from making defense in any such civil action upon the ground of comparative or contributory negligence to the extent to which such defense is allowed by law.

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. 1996, 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 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, or
- c. person who, without participating in the management of an underground storage tank and without being otherwise engaged in petroleum production, refining,

and marketing, holds indicia of ownership primarily to protect the owner's security interest in the tank, and who meets the requirement specified in Section 356 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~~ shall 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 without being otherwise engaged in petroleum production, refining, and marketing, holds indicia of ownership primarily to protect the owner's security interest in the tank;

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. This act shall become effective November 1, 1997.

Passed the House of Representatives the 26th day of February, 1997.

Speaker of the House of Representatives

Passed the Senate the \_\_\_\_ day of \_\_\_\_\_, 1997.

President

of the Senate