

ENGROSSED HOUSE
BILL NO. 2844

By: Rice and Sullivan (John)
of the House

and

Littlefield of the
Senate

(petroleum storage - Oklahoma Petroleum Storage Tank
Reform Act - amending 17 O.S., Sections 303, 350, 352,
365 and 402 - codification - effective date - emergency
)

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

SECTION 1. NEW LAW A new section of law to be codified
in the Oklahoma Statutes as Section 450.1 of Title 17, unless there
is created a duplication in numbering, reads as follows:

A. It is the intent of the Legislature to merge the regulation
of spills and releases from petroleum storage tanks, oversight of
petroleum storage tank environmental cleanups, and the reimbursement
of claims for costs incurred for petroleum storage tank
environmental cleanups into the Petroleum Storage Tank Division.

B. This act shall be known and may be cited as the "Oklahoma
Petroleum Storage Tank Reform Act".

C. The purpose of the Oklahoma Petroleum Storage Tank Reform
Act is to provide for the common administration of the various
programs within the Oklahoma Corporation Commission regulating the
release or spilling of fuel from petroleum storage tanks and to:

1. Eliminate overlap and duplication of effort;
2. Provide that petroleum storage tank regulatory concerns of industry and the public shall be addressed in an expedient manner; and
3. Better utilize state financial resources for petroleum storage tank regulatory services, administration, and reimbursement of claims for environmental cleanup by the Petroleum Storage Tank Release Environmental Cleanup Indemnity Fund.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 450.2 of Title 17, unless there is created a duplication in numbering, reads as follows:

A. 1. There is hereby established the Petroleum Storage Tank Division within the Oklahoma Corporation Commission, which shall have separate budget activities and subactivities from any other division of the Commission.

2. The Petroleum Storage Tank Division shall be funded by available federal funds, grants, fees, and appropriations.

3. Reimbursements made to or for the benefit of eligible persons or for the actual abatement and remediation of releases at Leaking Underground Storage Tank Trust Fund sites shall be exempt from the Central Purchasing Act.

B. 1. The Petroleum Storage Tank Division shall be the sole division of the Commission with jurisdiction over releases and spills from petroleum storage tanks.

2. The acts and programs specified by this paragraph shall constitute a part of the Oklahoma Petroleum Storage Tank Reform Act and shall be subject to the jurisdiction of the Division. This jurisdiction shall include, but not be limited to, the administration of the following:

- a. the Oklahoma Underground Storage Tank Regulation Act,
- b. the Oklahoma Aboveground Tank Regulation Act,

- c. the Oklahoma Petroleum Storage Tank Release Indemnity Program,
- d. the Petroleum Storage Tank Release Environmental Cleanup Indemnity Fund,
- e. Oklahoma Underground Storage Tank Regulation Revolving Fund,
- f. the Oklahoma Leaking Underground Storage Tank Trust Fund,
- g. Fuel Inspection and Fuel Laboratory, and
- h. Storage Tank Registration.

All of the powers and duties associated with the administration of these programs, funds and services are hereby transferred to the Petroleum Storage Tank Division, together with all unexpended funds, property, records and any outstanding financial obligations and encumbrances related to the activities of each. All personnel currently employed in these programs are hereby transferred to the new Petroleum Storage Tank Division. All positions in the Petroleum Storage Tank Division, except for fuel specialists who inspect fuel storage tanks and pumps for the Fuel Division, shall be unclassified.

3. All rules promulgated and orders entered by the Oklahoma Corporation Commission prior to the effective date of this act related to the programs, funds and services transferred by this section shall be transferred to the Petroleum Storage Tank Division and shall remain in full force and effect until amended, modified, revoked or repealed by the Corporation Commission and shall be enforced by the Petroleum Storage Tank Division.

C. 1. The Director of the Petroleum Storage Tank Division shall be appointed by the General Administrator of the Oklahoma Corporation Commission. All future Directors of the Petroleum Storage Tank Division shall also be the Administrator of the Indemnity Fund. All other employees of the Petroleum Storage Tank

Division shall be hired by the Director of the Petroleum Storage Tank Division with the approval of the Commission's General Administrator. All positions in the Petroleum Storage Tank Division shall be unclassified.

2. The Director shall provide for the administration of the Petroleum Storage Tank Division and shall:

- a. develop the organizational framework of the Petroleum Storage Tank Division,
- b. define duties and set salaries to employ a sufficient number of employees to accomplish the duties and responsibilities of the programs, funds and services of the Petroleum Storage Tank Division, including but not limited to such assistants, chemists, geologists, hydrologists, storage tank professionals, engineers, administrative, clerical and technical personnel, investigators, aides and such other personnel, either on a full-time, part-time, fee or contractual basis, as in the judgment and discretion of the Director shall be deemed necessary, expedient, convenient or appropriate to the performance or carrying out of any of the purposes, objectives, responsibilities or statutory provisions relating to the Petroleum Storage Tank Division. Those employees who were classified at the time of their transfer to the Petroleum Storage Tank Division by this act may elect to remain classified pursuant to Section 840-4.2 of Title 74 of the Oklahoma Statutes,
- c. establish internal policies and procedures for the proper and efficient administration of the Division, and
- d. exercise all incidental powers which are necessary and proper to implement the purposes of the Division

pursuant to the Oklahoma Petroleum Storage Tank Reform Act.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 450.3 of Title 17, unless there is created a duplication in numbering, reads as follows:

Within its jurisdictional areas of responsibility, the Petroleum Storage Tank Division shall have the power and duty to:

1. Issue, renew, deny or suspend, revoke or refuse to renew licenses or permits pursuant to the provisions of the Oklahoma Petroleum Storage Tank Reform Act;

2. Assess those administrative penalties as otherwise specifically authorized by law against any person or entity who violates any of the provisions of the Oklahoma Petroleum Storage Tank Reform Act;

3. Investigate alleged violations of the Petroleum Storage Tank Reform Act;

4. Advise, consult and cooperate with other agencies of the state, towns, cities and counties, industries, other states and the federal government and with affected groups regarding petroleum storage tank issues;

5. Encourage and conduct studies, investigations and research relating to petroleum-storage-tank-related pollution and its causes, effects, prevention, control and abatement;

6. Collect and disseminate information relating to petroleum-storage-tank-related pollution, its prevention and control;

7. Enter into agreements for, accept, use, disburse and administer grants of money, personnel and property from the federal government or any department or agency thereof, or from any state or state agency, or from any other source, to promote and carry on in this state any program relating to petroleum storage tank regulation;

8. Determine, charge and receive fees to be collected for services, research and permits, to file other papers, to make copies of documents, to make prints of maps and drawings, and to certify copies of documents, maps and drawings as authorized by law;

9. Provide a toll free hot line for petroleum-storage-tank-related complaints;

10. Cause investigations, inquiries and inspections to be made. The Director or the representative of the Director shall have the right of access to any property which has or may have a fuel storage tank on the premises for such purpose at any reasonable time, upon presentation of identification;

11. Authorize personnel in the Petroleum Storage Tank Division to conduct investigations, inquiries, and to perform other acts that the Director is authorized or required to conduct or perform;

12. Enforce the provisions of the Petroleum Storage Tank Reform Act;

13. Request criminal prosecution proceedings as authorized by law against any person or entity who has violated any of the provisions of the Oklahoma Petroleum Storage Tank Reform Act or order issued or any rule promulgated pursuant thereto; and

14. Exercise all incidental powers which are necessary and proper to implement the purposes of the Petroleum Storage Tank Reform Act.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 450.4 of Title 17, unless there is created a duplication in numbering, reads as follows:

Monies in the Petroleum Storage Tank Release Environmental Cleanup Indemnity Fund shall only be expended for:

1. Reimbursements to eligible persons, unless duly assigned to another, for eligible expenses including the costs to identify and confirm the existence of a suspected release when so instructed by the Petroleum Storage Tank Division or when the Petroleum Storage

Tank Division determines that such expenses were necessary and appropriate to protect the public health, safety and welfare;

2. Costs incurred by the Petroleum Storage Tank Division for purposes of Indemnity Fund reimbursements including, but not limited to, inspection of underground storage tank sites to remediate the pollution, approval of correction plans, monitoring correction, evaluating claims and determining whether specific claims qualify for payment or reimbursement; and

3. Costs incurred by the Division for the administration of the Indemnity Fund.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 450.5 of Title 17, unless there is created a duplication in numbering, reads as follows:

The Director of the Petroleum Storage Tank Division shall make a written report on a quarterly basis to the Corporation Commissioner, 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 Division. The report shall include salaries and fringe benefits of all full-time equivalent employees of the Division and reimbursements made to the Corporation Commission by division for administrative or support services provided by the Commission to the Division.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 450.6 of Title 17, unless there is created a duplication in numbering, reads as follows:

A. By August 1st of each year, the State Auditor and Inspector shall contract with an auditor, or auditing company, to conduct an independent audit of the books, records, files and other such documents of the Oklahoma Corporation Commission pertaining to and which relate to the administration of the Petroleum Storage Tank Division. The first such audit will only be of the Indemnity Fund

with each subsequent annual audit to include the management of programs, funds and services of the Petroleum Storage Tank Division. The audits shall include but shall not be limited to a review of agency compliance with state statutes regarding the following:

1. The Oklahoma Underground Storage Tank Regulation Act;
2. The Oklahoma Aboveground Tank Regulation Act;
3. The Oklahoma Underground Storage Tank Revolving Fund; and
4. The Oklahoma Leaking Underground Storage Tank Trust Fund.

B. The cost of the audit shall be borne by the Indemnity Fund.

C. Copies of the audit shall be submitted to the State Auditor and Inspector, the Governor, the Speaker of the House of Representatives, the President Pro Tempore of the Senate and the Chairmen of the Appropriations Committees of both the Oklahoma House of Representatives and the State Senate.

SECTION 7. AMENDATORY 17 O.S. 1991, Section 303, as last amended by Section 1, Chapter 352, O.S.L. 1994 (17 O.S. Supp. 1997, Section 303), is amended to read as follows:

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

1. "Abandoned system" means an underground storage tank system which:
 - a. has been taken permanently out of service as a storage vessel for any reason or is not intended to be returned to service, or
 - b. has been out of service for one (1) year or more prior to April 21, 1989, or
 - c. has been rendered permanently unfit for use as determined by the Commission;
2. "Commission" means the Oklahoma Corporation Commission;
3. "Corrective action" means action taken to monitor, maintain, minimize, eliminate or clean up a release from an underground storage tank system;

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

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

6. "Director" means the Director of the Petroleum Storage Tank Division of the Corporation Commission;

7. "Division" means the Petroleum Storage Tank Division of the Corporation Commission;

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

~~7.~~ 9. "Existing system" means an underground storage tank system for which installation of that system commenced prior to April 21, 1989;

~~8.~~ 10. "Facility" means any location or part thereof containing one or more underground storage tanks or systems;

~~9.~~ 11. "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.~~ 12. "New system" means an underground storage tank system for which the installation of the system began on or after April 21, 1989;

~~11.~~ 13. "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.~~ 14. "Owner" means:

- a. in the case of an underground storage tank system in use on November 8, 1984, or brought into use after that date, any person who holds title to, controls, or possesses an interest in an underground storage tank system used for the storage, use, or dispensing of regulated substances, or
- b. in the case of an underground storage tank system in use before November 8, 1984, but no longer in service on that date, any person who holds title to, controls, or possesses an interest in an underground storage tank system immediately before the discontinuation of its use.

The term "owner" does not include a person who holds an interest in an underground tank system solely for financial security, unless through foreclosure or other related actions the holder of a security interest has taken possession of the underground tank system;

~~13.~~ 15. "Permit" means any registration, permit, license or other authorization issued by the Commission to operate an underground storage tank system;

~~14.~~ 16. "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.~~ 17. "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.~~ 18. "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.~~ 19. "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.~~ 20. "Regulated substances" means hazardous substances or petroleum;

~~19.~~ 21. "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.~~ 22. "Tank" means a stationary vessel designed to contain an accumulation of regulated substances which is constructed of primarily nonearthen materials that provide structural support;

~~21.~~ 23. "Transporter" means any person who transports, delivers or distributes any quantity of regulated substance from one point to another for the purpose of wholesale or retail gain;

~~22.~~ 24. "Underground storage tank system" means any one or combination of underground tanks, including underground piping connected thereto, that is used to contain an accumulation of regulated substances, and the volume of which, including the volume of underground piping connected thereto, is ten percent (10%) or more beneath the surface of the ground; and

~~23.~~ 25. "Waters of the state" means all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, which are contained within, flow through, or border upon the State of Oklahoma or any portion thereof.

SECTION 8. AMENDATORY 17 O.S. 1991, Section 350, as amended by Section 16, Chapter 344, O.S.L. 1993 (17 O.S. Supp. 1997, 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~~ in conjunction with the 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~~ and the Oklahoma Petroleum Storage Tank Reform Act. ~~The Oklahoma Petroleum Storage Tank Release Indemnity Program shall have separate budget activities and subactivities. Regulatory responsibilities of the Corporation Commission shall include, but not be limited to, regulatory compliance activities, enforcement of rules promulgated to implement regulatory programs, technical review, development and approval of corrective action plans and determinations that remediation of contaminated sites is complete.~~

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

SECTION 9. AMENDATORY 17 O.S. 1991, Section 352, as last amended by Section 1, Chapter 253, O.S.L. 1997 (17 O.S. Supp. 1997, 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~~ Division;

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,

- c. person who acquired ownership of a tank through inheritance as denoted in an Order Allowing Final Account and Determination of Heirship and Decree of Final Distribution or is responsible for a release by reason of owning the real property through inheritance within which a tank or a release is or was located if:
- (1) the underground storage tank system of the release was located on the real property on November 8, 1984,
 - (2) the operator of the underground storage tank system responsible for the system or responsible for a release cannot be determined or found by the Corporation Commission, or the operator of the underground storage tank system responsible for the system or responsible for the release is incapable, in the judgment of the Corporation Commission, of properly carrying out any necessary corrective action,
 - (3) either funds are unavailable from the Oklahoma Leaking Underground Storage Tank Trust Fund or the underground storage tank system or release is not eligible for corrective action taken pursuant to Section 365 of this title,
 - (4) the person did not participate or was not responsible in any manner, directly or indirectly, in the management of the underground storage tank system or for the release and otherwise is not engaged in petroleum production, refining or marketing, and

(5) the person meets the requirements 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 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 10. AMENDATORY 17 O.S. 1991, Section 365, as last amended by Section 27, Chapter 344, O.S.L. 1993 (17 O.S. Supp. 1997, Section 365), is amended to read as follows:

Section 365. A. There is hereby created in the State Treasury a fund for the Corporation Commission to be designated the "Oklahoma Leaking Underground Storage Tank Trust Fund". The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of loans and grants from the federal government and any state matching funds required by the federal government with regard to underground storage tanks.

B. There is hereby created in the State Treasury a revolving fund for the Corporation Commission to be designated the "Oklahoma Leaking Underground Storage Tank Revolving Fund". The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of monies from public or private sources, and any monies collected pursuant to the provisions of this section.

C. All monies accruing to the credit of the Oklahoma Leaking Underground Storage Tank Trust Fund and the Oklahoma Leaking

Underground Storage Tank Revolving Fund are hereby appropriated and may be budgeted and expended by the Petroleum Storage Tank Division of the Corporation Commission only for the purpose provided in this section, to best protect human health and the environment.

Expenditures from said funds shall be made upon warrants issued by the State Treasurer against claims filed as prescribed by law with the Director of State Finance for approval and payment.

D. The Petroleum Storage Tank Division of the Corporation Commission is hereby given the power and authority to receive, administer and authorize payments from the Oklahoma Leaking Underground Storage Tank Trust Fund and the Oklahoma Leaking Underground Storage Tank Revolving Fund. The Petroleum Storage Tank Division of the Commission shall establish separate accounts and subaccounts within the Oklahoma Leaking Underground Storage Tank Trust Fund and the Oklahoma Leaking Underground Storage Tank Revolving Fund deemed necessary to implement the provisions of this section.

E. The Petroleum Storage Tank Division of the Corporation Commission may make expenditures from the Oklahoma Leaking Underground Storage Tank Revolving Fund for payment of costs incurred by any appropriate state agency for corrective actions, enforcement actions and cost recovery actions undertaken as necessary to protect human health and the environment as set out in Subchapter IX of Title 42 of the United States Code.

F. For the purpose of immediately responding to emergency situations created by leaking underground storage tanks having potentially critical environmental or public health or safety impact, the Petroleum Storage Tank Division of the Corporation Commission may take whatever action it deems necessary without notice or hearing, including the expenditure of monies from either the Oklahoma Leaking Underground Storage Tank Trust Fund or the Oklahoma Leaking Underground Storage Tank Revolving Fund or from

both such funds to promptly respond to the emergency. Such emergency expenditure shall be made pursuant to the provisions of the Oklahoma Central Purchasing Act upon such terms and conditions established by the Department of Central Services to accomplish the purposes of this section.

G. 1. The Petroleum Storage Tank Division of the Corporation Commission shall seek reimbursement from the responsible person, firm or corporation for all expenditures made from either the Oklahoma Leaking Underground Storage Tank Trust Fund or the Oklahoma Leaking Underground Storage Tank Revolving Fund or from both such funds. All monies received by the Petroleum Storage Tank Division of the Corporation Commission as reimbursement or penalties relating to expenditures made from the Oklahoma Leaking Underground Storage Tank Trust Fund or Leaking Underground Storage Tank Revolving Fund shall be transferred for deposit to the credit of the Oklahoma Leaking Underground Storage Tank Revolving Fund. All monies received by the Petroleum Storage Tank Division of the Corporation Commission as reimbursement or penalties relating to expenditures made from the Oklahoma Corporation Commission Underground Storage Tank Regulation Revolving Fund shall be transferred for deposit to the Oklahoma Corporation Commission Underground Storage Tank Regulation Revolving Fund.

2. The owner or operator is liable for the cost of the corrective action taken by the Petroleum Storage Tank Division of the Corporation Commission pursuant to this subsection, including the cost of investigating the release and administrative and legal expenses, if:

- a. the owner or operator has failed to take a corrective action ordered by the ~~Commission~~ Division and the ~~Commission~~ Division has taken the corrective action,
- or

b. the Administrator has taken corrective action in an emergency.

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

H. Any owner or operator of an underground storage tank who fails to comply with any order issued by the ~~Corporation Commission~~ Division for corrective or enforcement actions may be subject to an administrative penalty not to exceed Twenty-five Thousand Dollars (\$25,000.00) for each tank for each day of violation.

I. The administrative penalties assessed and collected by the ~~Corporation Commission~~ Division shall be deposited to the Oklahoma Leaking Underground Storage Tank Revolving Fund to be disbursed by the Commission in support of relevant agency activities.

SECTION 11. AMENDATORY 17 O.S. 1991, Section 402, as amended by Section 9, Chapter 406, O.S.L. 1992 (17 O.S. Supp. 1997, Section 402), is amended to read as follows:

Section 402. For purposes of the Oklahoma Aboveground Tank Regulation Act:

1. "Aboveground tank" means any stationary vessel at a service station and is located above the surface of the ground or on the ground which is designed to contain an accumulation of flammable liquids and which is constructed of nonearthen materials that provide structural support;

2. "~~Commission~~ Division" means the ~~Oklahoma~~ Petroleum Storage Tank Division of the Corporation Commission;

3. "Flammable liquids" means all petroleum products used as motor fuel and all grades of gasoline, kerosene, diesel fuel, and aviation fuel having a vapor pressure not exceeding forty (40) pounds per square inch absolute at one hundred (100) degrees Fahrenheit; and

4. "Service station" means any facility, including but not limited to businesses serving the public, marinas and airports, where flammable liquids are stored in aboveground tanks and dispensed for retail sale into the fuel tanks of airplanes, vessels or motor vehicles.

SECTION 12. This act shall become effective July 1, 1998.

SECTION 13. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the House of Representatives the 4th day of March, 1998.

Speaker of the House of
Representatives

Passed the Senate the ____ day of _____, 1998.

President of the Senate