

SHORT TITLE: Corporation Commission; modifying Oklahoma Petroleum Storage Tank Release Indemnity Program; emergency.

STATE OF OKLAHOMA

1st Session of the 46th Legislature (1997)

SENATE BILL NO. 342

By: Hobson

AS INTRODUCED

An Act relating to the Corporation Commission;

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 Fund; modifying certain definition; and declaring an emergency.

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

SECTION 1. 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,

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 judgement 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 2. 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.

46-1-0575

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