ENGROSSED SENATE
BILL NO. 1221

By: Easley of the Senate

and

Rice of the House

[Oklahoma Storage Tank Regulation Act -

the Indemnity Fund]

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 9, Chapter 375, O.S.L. 1998 (17 O.S. Supp. 1999, Section 303), is amended to read as follows:

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

1. "Abandoned system" means a 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,

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 a 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;

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

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

~~11.~~ 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;~~

~~12. "New system" means a storage tank system for which the installation of the system began on or after April 21, 1989~~ ethylene glycol-based antifreeze, motor oil, motor fuel, gasoline, diesel, aviation fuel, and blending materials used in motor fuels;

~~13.~~ 11. "Operator" means any person in control of or having responsibility for the daily operation of the 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 Storage Tank Regulation Act or of a rule promulgated thereunder;

~~14.~~ 12. "Owner" means:

~~a. in the case of a 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 a storage tank system used for the storage~~, use,~~ or dispensing of ~~regulated~~ hazardous substances, or

~~b.~~ in the case of a storage tank system ~~in use before November 8, 1984, but~~ no longer in ~~service on that date~~ use, any person who holds title to, controls, or possesses an interest in a storage tank system immediately before the discontinuation of its use.

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

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

~~16.~~ 14. "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;

~~17.~~ 15. "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~~ motor oil, motor fuel,

gasoline, diesel, aviation fuel, blending materials used in motor fuels 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;~~

~~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;~~

~~19.~~ 16. "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;

~~20.~~ 17. "Regulated substances" means hazardous substances or petroleum;

~~21.~~ 18. "Release" means any spilling, overfilling, leaking, emitting, discharging, escaping, leaching or disposing of regulated substances from a 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;

~~22.~~ 19. "Storage tank system" means any one or combination of tanks, including ~~underground~~ piping ~~connected thereto, that is~~ hoses, dispensers, and other ancillary equipment associated with the system used to contain an accumulation of regulated substances;

~~23.~~ 20. "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;

~~24.~~ 21. "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; and

~~25.~~ 22. "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. AMENDATORY 17 O.S. 1991, Section 304, as last amended by Section 10, Chapter 375, O.S.L. 1998 (17 O.S. Supp. 1999, Section 304), is amended to read as follows:

Section 304. The provisions of the Oklahoma Storage Tank Regulation Act shall not apply to:

1. Septic tank systems;

2. Pipeline facilities;

3. Surface impoundments, pits, ponds or lagoons;

4. Stormwater and wastewater collection systems;

5. Flow-through process tank systems;

6. Liquid trap or associated gathering lines directly related to oil or gas production and gathering operations;

7. Hydraulic lift tank systems other than those at retail facilities for motor fuel;

8. Storage tank systems with a capacity of less than one hundred ten (110) gallons;

9. Storage tank systems with a de minimus concentration of regulated substances including but not limited to swimming pools and coffins;

10. Storage tank systems that serve as emergency backup tanks, provided that such backup tanks hold regulated substances for only a short period of time and are expeditiously emptied after each use. The provisions of this paragraph shall not prevent Corporation Commission notification requirements and such other restrictions as may be deemed necessary by the Commission to protect the environment;

11. Storage tank systems with a capacity of one thousand one hundred (1,100) gallons or less used for noncommercial agricultural or residential purposes;

12. Storage tank systems and residential tanks for noncommercial use for storing heating oil for consumptive use on the premises where stored; ~~and~~

13. All storage tanks used in the exploration or production of oil and gas; and

14. Storage tank systems storing hazardous wastes regulated under Subtitle C of the federal Solid Waste Disposal Act, 42 U.S.C., Section 6921 et seq., or substances regulated as hazardous wastes under the Oklahoma Hazardous Waste Management Act.

SECTION 3. AMENDATORY 17 O.S. 1991, Section 306, as last amended by Section 12, Chapter 375, O.S.L. 1998 (17 O.S. Supp. 1999, Section 306), is amended to read as follows:

Section 306. In addition to other powers and duties prescribed by law, the Corporation Commission shall have the power and duty to:

1. Issue, renew, deny, modify, suspend, refuse to renew and revoke permits for storage tank systems pursuant to the provisions

of the Oklahoma Storage Tank Regulation Act, Section 301 et seq. of this title, and rules promulgated pursuant thereto;

2. Enter at any reasonable time upon any public or private property for the purpose of inspecting and investigating a storage tank system and taking such samples as may be necessary to determine compliance with the provisions of the Oklahoma Storage Tank Regulation Act, and rules promulgated thereto;

3. Request issuance of an administrative warrant or search warrant as may be necessary from the district court where such public or private property is located to allow entry, inspection, sampling, or copying;

4. Have access to and copy any records required to be maintained pursuant to the provisions of the Oklahoma Storage Tank Regulation Act or rules promulgated thereunder;

5. Inspect any equipment, practice or method which is required by the provisions of the Oklahoma Storage Tank Regulation Act or rules promulgated thereto;

6. Have access to and inspect any monitoring stations or conduct tests to identify any actual or suspected release of a regulated substance;

7. Employ or designate personnel to conduct investigations and inspections, to make reports of compliance with the provisions of the Oklahoma Storage Tank Regulation Act and rules promulgated thereto;

8. Within its discretion, report to the district attorney having jurisdiction or to the Attorney General any act committed by an owner, operator or employee of a facility which may constitute a violation of the provisions of the Oklahoma Storage Tank Regulation Act or rules promulgated thereto;

9. Advise, consult and cooperate with other agencies of this state, the federal government, other states and interstate agencies and with affected groups and political subdivisions to further the

purposes of the provisions of the Oklahoma Storage Tank Regulation Act;

10. Administer the Storage Tank Program in lieu of the federal government upon approval by the Environmental Protection Agency;

11. Promulgate and enforce rules to implement the provisions of the Oklahoma Storage Tank Regulation Act;

12. Establish minimum standards and schedules for storage tank system;

13. Require any owner or operator of a storage tank system within this state to:

a. submit such reports and information concerning the storage tank system as may be determined necessary by the Commission pursuant to the provisions of the Oklahoma Storage Tank Regulation Act or rules promulgated thereto,

b. perform tests, install release detection devices, and where appropriate, monitor the environment to ensure that pollution is not occurring,

c. make timely reports to the Commission of pollution or releases,

d. temporarily or permanently cease operation of a storage tank system, modify and immediately remove or control any regulated substance that is found to be causing pollution <u>or posing a threat to human health and safety</u> when such cessation, removal or control is determined to be necessary by the Commission,

e. provide an alternate or temporary drinking water source to any person deprived of drinking water if it is found that such owner or operator is responsible for polluting the drinking water source beyond applicable drinking water standards, or where no such

standard exists, such standard as the Department of Environmental Quality shall determine,

f. take full corrective action if such owner or operator is found to be responsible for the release, and

g. take appropriate action to temporarily relocate residents affected by the release;

14. Establish and enforce administrative penalties for violations pursuant to the provisions of the Oklahoma Storage Tank Regulation Act, including issuance of field citations by designated personnel for violations of the Oklahoma Storage Tank Regulation Act, including but not limited to the authority to close a facility found to pose an imminent threat to the health, safety or the environment or to be operating tanks for which permit fees have not been paid. Issuance or payment of field citations shall in no way preclude other enforcement proceedings, administrative penalties, fines or order of the Commission if an owner or operator fails to correct a violation or abate a threat to health, safety or the environment in a reasonable manner, as determined by the Commission. If a citation is issued or a facility is temporarily closed under the provisions of this section, the owner or operator of said facility on application to the Commission shall be afforded a hearing within ten (10) days. Any penalties or fines levied under this section shall be established by the Corporation Commission by rules promulgated pursuant to the Administrative Procedures Act, Section 250.1 et seq. of Title 75 of the Oklahoma Statutes;

15. Institute and maintain or intervene in any action or proceeding where deemed necessary by the Commission pursuant to the provisions of the Oklahoma Storage Tank Regulation Act to protect the health, safety and welfare of any resident of this state or the environment;

16. Prepare an emergency response plan for spills or releases of regulated substances or review emergency response plans developed outside the Commission;

17. Develop remediation goals to protect human health and safety that are specific to the site that is contaminated and the substance contaminating the site;

18. Establish a schedule of fees for issuance of any permit required pursuant to the provisions of the Oklahoma Storage Tank Regulation Act. The fees shall be in an amount to cover the costs of the Commission in administering the Oklahoma Storage Tank Regulation Act. Payment of the permitting fees for any storage tank system required pursuant to the provisions of the Oklahoma Storage Tank Regulation Act or to rules promulgated thereto shall prohibit the assessment of additional licensing or permitting fees for such storage tank systems by any other agency or municipality of this state;

~~18.~~ 19. Create and implement an internal coordinated management system among the Storage Tank Regulation Program and the Oklahoma Petroleum Storage Tank Release Indemnity Program; and

~~19.~~ 20. Exercise all incidental powers as necessary and proper for the administration of the Oklahoma Storage Tank Regulation Act.

SECTION 4. AMENDATORY 17 O.S. 1991, Section 307, as last amended by Section 13, Chapter 375, O.S.L. 1998 (17 O.S. Supp. 1999, Section 307), is amended to read as follows:

Section 307. A. The Corporation Commission shall promulgate rules governing storage tank systems. The Commission's rules shall, at a minimum, include the following provisions:

1. Requirements that release detection methods or equipment or both such methods and equipment, adequate to identify releases from storage tank systems, be maintained;

2. Procedures to follow when release detection methods or equipment or both such methods and equipment records indicate an

abnormal loss or gain which is not explainable by spillage, temperature variations or other known causes;

3. Requirements that appropriate corrective action be taken in response to a release from a storage tank system as may be necessary to protect human health, safety and welfare and the environment;

4. Requirements to maintain records documenting actions taken in accordance with paragraphs 1 through 3 of this subsection;

5. An enforcement program;

6. Requirements that notice be given to landowners whose property has been or may be affected by a release and providing such landowner the opportunity to have input into any activities impacting such landowners property;

7. Procedures to allow an adjacent property owner whose property has been contaminated by a release to remediate his or her own property under the same requirements as the tank owner or operator responsible for remediating the release, providing the tank owner or operator is unable or unwilling to remediate the release; and

8. Minimum schedules and standards for the design, construction, installation, operation, maintenance, repair, monitoring, testing, inspection, release detection, performance, abandonment and closure, of storage tank systems, as may be necessary to protect human health, safety and welfare and the environment.

B. In promulgating rules establishing standards pursuant to paragraph 8 of subsection A of this section, the Commission may distinguish in such standards between requirements appropriate for new tanks, existing tanks and for abandoned tanks. In making such distinctions, the Commission may consider the following factors:

1. Location of the tanks;

2. Soil and climate conditions;

3. Uses of the tanks;

4. History of maintenance;

5. Age of the tanks;

6. National industry codes;

7. Hydrogeology;

8. Water table;

9. Size of the tanks;

10. Quantity of regulated substances periodically deposited in or dispensed from the tank;

11. The compatibility of the regulated substance and the materials of which the tank is fabricated; and

12. Any other factors as deemed necessary by the Commission pursuant to the provisions of the Oklahoma Storage Tank Regulation Act, Section 301 et seq. of this title.

C. The Commission may promulgate rules establishing different requirements for different areas or regions of the state if the Commission finds that more stringent rules are necessary:

1. To protect specific waters of the state including but not limited to those waters of the state designated for additional protection in Oklahoma's water quality standards; or

2. Because conditions peculiar to that area or region require different standards to protect public health, safety, welfare or the environment.

D. In promulgating rules pursuant to the provisions of the Oklahoma Storage Tank Regulation Act, the Commission shall consider all relevant federal standards and regulations on storage tank systems. If the Commission promulgates any rule that is different from a federal standard or regulation on the same subject, the Commission shall clearly express the deviation from the federal standard or regulation and the reasons for the deviation at a public hearing or at time of adoption of the rule.

SECTION 5. AMENDATORY Section 14, Chapter 344, O.S.L. 1993, as last amended by Section 24, Chapter 375, O.S.L. 1998 (17 O.S. Supp. 1999, Section 318), is amended to read as follows:

Section 318. A. The Corporation Commission is authorized to develop and implement a program for the licensing of storage tank professionals. Persons licensed by the Commission as storage tank professionals shall be environmental professionals possessing such training, education and experience as may be required by the Commission. Environmental professionals from different fields possessing equal levels of education and experience, and maintaining or holding professional license, certification or registration, whether from a state agency or a recognized private organization, shall be subject to the same requirements to become licensed. Persons seeking to become licensed may be required to demonstrate knowledge of soil and water protection and remediation techniques and the regulation of storage tanks.

B. 1. The Commission may deny, suspend, revoke, or reinstate the license of a storage tank professional.

2. The Commission shall promulgate rules establishing the basis for denial, suspension, revocation, or reinstatement of a storage tank professional license, and establishing procedures for disciplinary actions.

3. The burden of proof in all proceedings brought pursuant to this section shall be clear and convincing evidence.

4. Proceedings relating to the suspension or revocation of a license issued pursuant to this section are subject to the hearing, penalty and enforcement provisions of the Storage Tank Regulation Act.

5. A person whose license has been revoked in a proceeding brought pursuant to this section may apply for a new license after the expiration of one (1) year from the date of revocation<u>, unless</u>

the license was revoked for defrauding or attempting to defraud another person or the Petroleum Storage Tank Indemnity Fund.

C. The Corporation Commission shall require that all contractors and their employees participating in the removal of storage tanks and the remediation of contaminated tank sites meet all training and other requirements of federal law and regulations and state statutes. The Commission may compile, maintain and make available to the public a list of contractors who have demonstrated to the Commission that they meet such requirements. Nothing contained in this subsection shall prohibit a contractor who meets the requirements of federal law and regulations and state statutes and rules from removing storage tanks or remediating contaminated tank sites even though they may not appear on a list of contractors available to the public.

SECTION 6. AMENDATORY 17 O.S. 1991, Section 352, as last amended by Section 27, Chapter 375, O.S.L. 1998 (17 O.S. Supp. 1999, 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 Director of the Petroleum Storage Tank Division 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 or her 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 a storage tank system is located if:

(1) the storage tank system was located on the property on November 8, 1984,

(2) such person could not have known that such 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 storage tank system,

(3) the owner or operator of the storage tank system responsible for the system cannot be determined by the Corporation Commission or the Administrator, or the owner or operator of the 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 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 storage tank system of the release was located on the real property on November 8, 1984,

(2) the operator of the 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 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 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 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 <u>of motor fuel, gasoline, diesel, aviation fuel and blending materials</u> 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 a 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 a storage tank system used for the storage, use, or dispensing of ~~regulated substances~~ motor fuel, gasoline, diesel, aviation fuel and blending materials, or

b. in the case of a storage tank system ~~in use before November 8, 1984, but~~ no longer in ~~service on that date,~~ use any person who holds title to, controls, or possesses an interest in a storage tank system immediately before the discontinuation of its use.

The term "owner" does not include a person who holds an interest in a tank system solely for financial security unless through foreclosure or other related actions the holder of a security interest has taken possession of the 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 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 <u>or suspected releases</u> of ~~petroleum~~ <u>motor fuel gasoline, diesel, aviation fuel, and blending materials</u> 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 a storage system as such term is defined by the Oklahoma Storage Tank Regulation Act; and

16. "Tax Commission" means the Oklahoma Tax Commission.

SECTION 7. AMENDATORY 17 O.S. 1991, Section 354, as last amended by Section 1, Chapter 313, O.S.L. 1999 (17 O.S. Supp. 1999, Section 354), is amended to read as follows:

Section 354. A. Except as otherwise provided by this section, there shall be an assessment of one cent ($0.01) per gallon upon the sale of each gallon of motor fuel, diesel fuel and blending materials used or consumed in this state. The assessment imposed pursuant to the provisions of this section shall be for the purposes of providing revenue to:

1. ~~The Oklahoma Corporation Commission Revolving Fund pursuant to paragraph 1 of subsection C of this section;~~

~~2.~~ The Petroleum Storage Tank Release Environmental Cleanup Indemnity Fund pursuant to paragraph ~~2~~ 1 of subsection C of this section;

~~3.~~ 2. The State Transportation Fund pursuant to paragraph ~~3~~ 1 of subsection C of this section;

~~4.~~ 3. The Corporation Commission pursuant to paragraph ~~3~~ 2 of subsection C of this section; and

~~5.~~ 4. The Environmental Trust Revolving Fund pursuant to paragraph ~~3~~ 2 of subsection C of this section.

The assessment shall be imposed at the time of the sale of the motor fuel, diesel fuel and blending materials and shall be precollected and remitted to the Oklahoma Tax Commission in accordance with Section 500.1 et seq. of Title 68 of the Oklahoma Statutes and as provided by Section 355 of this title.

B. 1. Exempt from the assessment imposed pursuant to subsection A of this section are:

a. the state government,

b. the federal government,

c. class I and class II railroads, and

d. sales for exportation outside of this state by a licensed exporter.

2. Exempt from the assessment imposed for purposes specified in paragraph 3 of subsection A of this section are sales of:

a. motor fuel, diesel fuel and blending materials used solely and exclusively in district-owned or leased public school buses, FFA and 4-H club trucks for the purposes of legally transporting public school children, or in the operation of vehicles used in driver training,

b. motor fuels, diesel fuels and blending materials used solely and exclusively to propel motor vehicles on the public roads and highways of this state when leased or owned and being operated for the sole benefit of a county, city, town, volunteer fire department with a state certification and rating, rural electric cooperative, rural water and sewer district, rural ambulance service district, or federally recognized Indian tribe as specified by Section 500.10 of Title 68 of the Oklahoma Statutes,

c. motor fuel, diesel fuel and blending materials to counties and cities and towns,

d. diesel fuel for off-road purposes specified by Section 500.10 of Title 68 of the Oklahoma Statutes,

e. motor fuel, diesel fuel and blending materials used for agricultural purposes specified by Section 500.10 of Title 68 of the Oklahoma Statutes, and

f. motor fuel, diesel fuel and blending materials used in aircraft or in aircraft engines pursuant to Section 500.10 of Title 68 of the Oklahoma Statutes.

C. The assessment imposed by subsection A of this section shall be distributed in the following manner:

1. ~~The first One Million Dollars ($1,000,000.00) collected during each fiscal year shall be deposited into the Oklahoma Corporation Commission Revolving Fund created in Section 180.7 of this title;~~

~~2.~~ Any revenue from the assessment ~~received over the amount required in paragraph 1 of this subsection,~~ shall be deposited in the Petroleum Storage Tank Release Environmental Cleanup Indemnity Fund created in Section 353 of this title in amounts necessary to maintain the maintenance level of the Indemnity Fund pursuant to subsection D of this section; and

~~3.~~ 2. The balance of any revenue from the assessment remaining above the amount required in ~~paragraphs 1 and 2~~ this paragraph and paragraph 1 of this subsection shall be deposited as follows:

a. the first One Million Dollars ($1,000,000.00) collected during each fiscal year shall be deposited in the Corporation Commission Storage Tank Regulation Revolving Fund for the purpose of implementing the provisions of the Oklahoma Storage Tank Regulation Act and the rules promulgated thereunder,

b. the second One Million Dollars ($1,000,000.00) collected during each fiscal year shall be deposited in the Environmental Trust Revolving Fund created in Section 2-3-403 of Title 27A of the Oklahoma Statutes, to be used solely for the cleanup of abandoned oil and gas processing and refining sites, and

c. the balance of the monies collected during each fiscal year shall be deposited in the State Transportation

Fund and shall be used solely for the purpose of matching Federal-Aid funds for the construction of highways and roads in this state.

D. 1. If at any time the Petroleum Storage Tank Release Environmental Cleanup Indemnity Fund falls below the required maintenance level on or before December 31, 2009, the Administrator shall notify the Tax Commission that the Indemnity Fund has fallen below the required maintenance level and that the assessment is to be deposited into the Indemnity Fund for at least three (3) calendar months pursuant to the provisions of paragraph 2 of this subsection.

2. At least fifteen (15) days prior to the calendar month in which the assessment is to be collected for credit to the Indemnity Fund, the Tax Commission, upon notification by the Administrator that the Indemnity Fund has fallen below the required maintenance level, shall notify the suppliers, licensed importers or other appropriate persons that the assessment is being imposed for purposes of maintaining the Indemnity Fund. The notice shall include a date certain upon which to begin collecting the assessment for credit to the Indemnity Fund and a date certain for ending the assessment for credit to the Indemnity Fund. Upon notice by the Tax Commission that the assessment imposed is for credit to the Indemnity Fund, the supplier, licensed importer or other appropriate person shall also assess, for the specified period required by the Tax Commission, the sales of:

a. motor fuel, diesel fuel and blending materials used solely and exclusively in district-owned or leased public school buses, FFA and 4-H Club trucks for the purposes of legally transporting public school children or in the operation of vehicles used in driver's training,

b. motor fuels, diesel fuels and blending materials used solely and exclusively to propel motor vehicles on the

public roads and highways of the state when leased or owned and being operated for the sole benefit of a county, city or town, volunteer fire department with a state certification and rating, rural electric cooperative, rural water and sewer district, rural ambulance service district, or federally recognized Indian tribe as specified by Section 500.10 of Title 68 of the Oklahoma Statutes,

c. motor fuel, diesel fuel and blending materials to counties and cities and towns,

d. diesel fuel for off-road purposes specified by Section 500.10 of Title 68 of the Oklahoma Statutes,

e. motor fuel, diesel fuel and blending materials used for agricultural purposes specified by Section 500.10 of Title 68 of the Oklahoma Statutes, and

f. motor fuel, diesel fuel and blending materials used in aircraft and aircraft engines pursuant to Section 500.10 of Title 68 of the Oklahoma Statutes.

3. After the collection period required by this subsection has expired, the revenue collected from the assessment shall be again deposited in the Corporation Commission Revolving Fund, the Environmental Trust Revolving Fund, and the State Transportation Fund as provided in subsection C of this section.

SECTION 8. AMENDATORY 17 O.S. 1991, Section 356, as last amended by Section 30, Chapter 375, O.S.L. 1998 (17 O.S. Supp. 1999, Section 356), is amended to read as follows:

Section 356. A. The Oklahoma Petroleum Storage Tank Release 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 Indemnity Fund Program 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 by the eligible person for each corrective action taken,

c. evidence that the corrective action was completed or will be completed in accordance with cleanup criteria established pursuant to the Oklahoma Storage Tank Regulation Act,

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 Storage Tank Regulation 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 based upon the best of the information available to and knowledge of the affiant.

C. 1. 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 comprising a single task or scope of work 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. In the event bids are not obtained as required by this paragraph, expenditures made without bids shall only be reimbursed amount determined to the reasonable value of the equipment purchased or the task or scope of work performed.

2. Professional engineering, geological, land surveying and other professional services or services provided by a Corporation Commission licensed 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 fee as negotiated between the eligible person and his or her consultant.

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 and pay, 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 work plans for implementation of the corrective action plan approved by the Corporation Commission's regulatory program pursuant to the Oklahoma Storage Tank Regulation Act, or for other work which is proposed to be performed. Such work plans 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 may be submitted with the application for reimbursement or whenever appropriate. Such work plans shall be submitted for informational purposes only. 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 and pay 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, and the Oklahoma Storage 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.

A person seeking reimbursement who has not been in substantial compliance with the applicable rules as required in subparagraph b of this paragraph, or who failed to give adequate notice as required in subparagraph e of this paragraph will remain ineligible until all corrective action ordered by the Commission has been accomplished

and all fines paid. Payment of fines and documentation of corrective action shall be shown by a certification signed by the Director of the Division of the Corporation Commission which has responsibility for the storage tank regulatory functions set out in Chapter 14 of this title. The certificate must state that all fines resulting from noncompliance have been paid and any required corrective action has been completed and no additional enforcement actions are required.

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 file the initial application, supplemental claims, and resubmittals 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~~ <u>person or company actually performing delineation or remediation work may submit their claims directly to and be paid directly by the Indemnity Fund but only the eligible party can sign the initial application</u>.

L. Any person who prevails in an action brought pursuant to the Oklahoma Petroleum Storage Tank Release Indemnity Program to recover claims disallowed by an administrative action of the Indemnity Fund

Program upon an application, supplemental claim or resubmittal requesting reimbursment shall be entitled to recover interest, the costs of the action and attorney fees. Costs of the action shall include filing fees, administrative costs, witness fees and expenses related to the proceeding.

M. In any case that has been determined to be eligible for reimbursement from the Indemnity Fund, a property owner whose property has been contaminated by an eligible release may remediate his or her own property and make direct application to and receive reimbursement from the Indemnity Fund for any of the following: the costs of investigation, participation in the determination of activities to be conducted upon the site, corrective action and remediation of his or her property. Such reimbursement shall be subject to the same requirements as requests for reimbursement made by the eligible person on such sites and shall be handled in the same manner as other sites which have adjacent release or overlapping or commingled plumes.

N. In the event the Indemnity Fund Program fails to reimburse a claim as provided by this section, any person who prevails in an action brought pursuant to the Oklahoma Petroleum Storage Tank Release Indemnity Program to recover claims disallowed by an administrative action of the Indemnity Fund Program upon an application, supplemental claim or resubmittal requesting reimbursement shall be entitled to receive interest upon such claim at the rate of twelve percent (12%) per annum.

O. Claims for reimbursement pursuant to the Oklahoma Petroleum Storage Tank Release Indemnity Program must be made within two (2) years of the effective date of this act or two (2) years after site closure, whichever is later. Eligible persons should be encouraged to submits claims for reimbursement as the costs are incurred and in the order they are incurred. However, the right to submit a claim

or the time during which to submit a claim for reimbursement shall not be limited or restricted except as provided in this subsection.

P. 1. The Indemnity Fund Program is authorized to enter into contracts for site remediation or corrective action which are performance based. Parties to such contracts shall be the eligible person, the licensed storage tank consultant guaranteeing the remediation or corrective action and the Indemnity Fund Program. Each party must execute the contract before it is effective.

2. Terms of pay for performance contracts shall include, but not be limited to, the total amount to be paid for completion of the remediation or corrective action provided for by the contract and the length of time necessary to implement and complete the remediation or corrective action. Performance payments under pay for performance contracts shall be based upon the actual reduction of contamination upon the site being remediated. For those sites upon which it is estimated that remediation will take more than six (6) months and will require the installation and operation of a mechanical remediation system, payments under such contracts for the remediation to be accomplished by such system shall be as follows:

a. twenty percent (20%) of the total contract price for the first twenty-five percent (25%) reduction in contamination to be accomplished by such system,

b. an additional twenty percent (20%) of the total contract price, for a total of forty percent (40%) for the next twenty-five percent (25%), for a total of fifty percent (50%) reduction, in contamination to be accomplished by such system,

c. an additional twenty percent (20%) of the total contract price, for a total of sixty percent (60%) for next first twenty-five percent (25%), for a total of seventy-five percent (75%) reduction in contamination to be accomplished by such system,

d. an additional twenty percent (20%) of the total contract price, for a total of eighty percent (80%) for next first twenty-five percent (25%), for a total of one hundred percent (100%) reduction in contamination to be accomplished by such system,

e. with a final payment of the remaining twenty percent (20%) of the contract price to be paid after the site remains clean for six (6) months.

3. Any consultant who fails to complete corrective action or remediation as provided in a pay for performance contract, or who has failed or fails, before requesting and receiving the first payment under a pay for performance contract, to install equipment upon a site which was proposed or which was to be installed whenever possible, or who in any other manner materially breaches a pay for performance contract shall be prohibited from entering into another pay for performance contract or purchase order with the Indemnity Fund for a period of three (3) years.

Q. The Indemnity Fund Program is authorized to enter into purchase orders for the performance of corrective action or various tasks or scopes of work to be performed upon a site as is prudent. Each purchase order shall establish an amount to be paid for the completion of a particular corrective action, task or scope of work. Such purchase orders shall be entered into between the Indemnity Fund Program and the eligible person or his or her consultant. The Indemnity Fund Program and the eligible person or his or her consultant shall conduct negotiations in good faith. Rules promulgated to implement this subsection shall not place any restrictions upon the negotiation process by limiting the number of revisions which may be submitted or restricting the time period during which they may be submitted.

R. In evaluating and determining the amount of reimbursement to be paid upon a claim, the Indemnity Fund Program shall consider the

reasonable cost of the task or scope of work that was reasonable and completed and shall be based upon standard billing rates and practices for environmental services as normally billed by such professionals, contractors or other service providers. If the overall total cost of performing a particular task or scope of work is reasonable, the Indemnity Fund Program shall fully reimburse the total cost of the particular task or scope of work performed.

Passed the Senate the 14th day of March, 2000.

_____
President of the Senate

Passed the House of Representatives the ____ day of _____, 2000.

_____
Speaker of the House of Representatives