

STATE OF OKLAHOMA

1st Session of the 48th Legislature (2001)

SENATE BILL 636

By: Easley of the Senate

and

Wells of the House

AS INTRODUCED

An Act relating to petroleum storage tanks; creating the Petroleum Storage Tank Financial Responsibility Act; providing short title; stating applicability; stating exemptions; requiring storage tank owners or operators to meet certain requirements or close their systems; requiring owner or operator to demonstrate financial responsibility; defining terms; requiring tank owners or operators to obtain coverage for certain corrective actions and compensation; stating amount of coverage required; providing various mechanisms to demonstrate financial responsibility; excluding certain legal costs; stating certain coverage does not limit damage liabilities; authorizing use of guarantee or surety bond; defining term; providing for self-insurance by owners, operators or guarantors; stating procedures and requirements for self-insurance; providing format for certain legal and financial documents required by act; authorizing owner or operator to obtain certain guarantee; stating procedures for guarantor; requiring certain standby trust fund; authorizing owner or operator to obtain liability insurance; stating procedures for certain endorsement; authorizing owner or operator to obtain surety bond; stating procedures for surety bonds; requiring certain standby trust fund; authoring owners or operators to obtain certain irrevocable standby letter of credit; stating procedures for letters of credit; authorizing owners and operators to participate in Petroleum Storage Tank Release Cleanup Environmental Indemnity Fund; stating procedures for use of the indemnity fund; authorizing owners or operators to establish certain trust fund; stating procedures for trust agreement; requiring establishment of certain standby trust funds when using certain mechanisms to meet requirements of act; requiring certain trustee; stating procedures for accessing trust fund; authorizing owners or operators to substitute alternative financial assurance mechanisms while requiring effective assurance at all times; requiring alternate financial assurance to be obtained prior to cancellation of prior financial assurance; requiring notification; stating procedures for cancellation by providers of financial assurance; requiring evidence of financial responsibility; stating procedures for owners or operators to maintain evidence of financial responsibility;

authorizing state regulating agencies to require certain guarantors to place certain amount of funds into a standby trust fund if owner or operator fails to obtain alternate financial assurance within certain time period; authorizing state to draw of trust under certain conditions; releasing owner or operator from required financial responsibility after proper tank closure; stating procedures for bankruptcy; requiring certain funds to be replenished by certain date; amending 17 O.S. 1991, Sections 303, 304, 306, 307, and 309, as last amended by Sections 9, 10, 12, 13, and 16, Chapter 375, O.S.L. 1998, Section 14, Chapter 344, O.S.L. 1993, as amended by Section 24, Chapter 375, O.S.L. 1998, Section 4, Chapter 375, O.S.L. 1998, Section 15, Chapter 344, O.S.L. 1993, as last amended by Section 25, Chapter 375, O.S.L. 1998, 352, as last amended by Section 27, Chapter 375, O.S.L. 1998, 354, as last amended by Section 1, Chapter 313, O.S.L. 1999, and 356, as last amended by Section 30, Chapter 375, O.S.L. 1998 (17 O.S. Supp. 2000, Sections 303, 304, 306, 307, 309, 318, 324, 340, 352, 354 and 356), which relate to petroleum storage tank regulation and indemnity fund; deleting definitions; modifying definitions; modifying powers and duties of the Corporation Commission; requiring Commission to develop certain remediation goals specific to certain sites; modifying requirement for Commission rules relating to adjacent property owners; providing for property owners to abate a nuisance or remedy a trespass as allowed by state law; authorizing the Commission to issue certain license at its discretion; stating qualification for issuance of certain revoked license; requiring certain demonstration prior to issuance of certain revoked license; requiring contractors and employees to meet certain laws, rules and regulations; modifying definitions; defining terms; stating eligibility for certain reimbursements from certain indemnity fund; providing for eligible persons to execute certain initial application for reimbursement; stating procedures for bringing action challenging certain determination within certain time period; authorizing persons suffering bodily injury or property damage to submit claims; authorizing payments from the fund for certain actions; requiring consistency with standard insurance practices; prohibiting payments for punitive damages from the fund; not limiting liability for injuries or costs resulting from certain releases; providing that certain persons' right to seek redress in district court not limited; modifying deadline for certain applications; making applicable to all current, pending, past and future claims and cases; providing for codification; providing for noncodification; providing an effective date; and declaring an 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 320.1 of Title 17, unless there is created a duplication in numbering, reads as follows:

Sections 1 through 20 of this act shall be known as and may be cited as the "Petroleum Storage Tank Financial Responsibility Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 320.2 of Title 17, unless there is created a duplication in numbering, reads as follows:

A. The requirements of the Petroleum Storage Tank Financial Responsibility Act shall apply to the owners or operators of all new and existing petroleum storage tank systems containing petroleum and located within the State. Owners or operators of all new and existing petroleum storage tank systems shall be subject to the requirements of the Petroleum Storage Tank Financial Responsibility Act.

B. The following petroleum storage tank systems are exempt from the provisions of the Petroleum Storage Tank Financial Responsibility Act:

1. Petroleum storage tank systems containing hazardous substances.

2. Petroleum storage tank systems containing a mixture of petroleum and hazardous substances if the petroleum is a de minimus quantity.

3. Petroleum storage tank systems owned by the state regulating agency of the State of Oklahoma or by the federal government.

C. If an owner or operator fails to meet the financial responsibility requirements of the Petroleum Storage Tank Financial Responsibility Act within the time frames contained herein, the owner or operator shall close the petroleum storage tank system in accordance with the requirements of applicable state law and agency rules.

D. If the owner and operator of a petroleum storage tank are separate persons, only one person is required to demonstrate

financial responsibility; however, both parties are liable in the event of noncompliance.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 320.3 of Title 17, unless there is created a duplication in numbering, reads as follows:

As used in the Petroleum Storage Tank Financial Responsibility Act:

1. "Accidental release" shall mean any sudden or nonsudden release of regulated substances arising from operating a petroleum storage tank system that results in bodily injury, property damage, or a need to take corrective action that was neither expected nor intended by the tank owner or operator;

2. "Aggregate coverage" shall mean the total amount of funds that must be available in a single year to cover the corrective action and third-party compensation costs arising from releases covered under the Petroleum Storage Tank Financial Responsibility Act;

3. "Bodily injury" shall have the meaning given to this term by state law. This term shall include those liabilities which, consistent with standard insurance industry practices, are included for coverage in liability insurance policies for bodily injury. However, this term shall not include those liabilities which, consistent with standard insurance industry practices, are excluded from coverage in liability insurance policies for bodily injury;

4. "Controlling interest" shall mean direct ownership of at least 50% of the voting stock of another entity;

5. "Damages" shall mean those monetary losses that result from a release of stored materials in a petroleum storage tank system; said release resulting in an injury, harm, or loss of use to a party because of contamination of that party's land or water as a result of said release;

6. "Guarantee" shall mean that document, agreement, or contract

whereby the financial responsibility requirements of the owner of the petroleum storage tank system under the Petroleum Storage Tank Financial Responsibility Act are satisfied by the guarantor;

7. "Guarantor" shall mean that party or parties who assume responsibility or furnish security for the financial responsibility requirements of an owner of a petroleum storage tank under a guarantee for purposes of compliance with the Petroleum Storage Tank Financial Responsibility Act;

8. "Legal defense costs" shall mean any expenses that an owner or operator or provider of financial assurance incurs in defending against claims or actions brought:

- a. by the state regulating agency to require corrective action or to recover the costs of corrective action,
- b. by or on behalf of a third-party for bodily injury or property damage caused by an accidental release, or
- c. by any person to enforce the terms of a financial assurance mechanism;

9. "Occurrence" shall mean an accident, including continuous or repeated exposure to conditions, which results in a release from a petroleum storage tank system;

10. "Petroleum marketing facilities" shall mean all facilities at which petroleum is produced or refined and all facilities from which petroleum is sold or transferred to other petroleum marketers or to the public;

11. "Petroleum marketing firms" shall mean all firms owning petroleum marketing facilities. Firms owning other types of facilities with petroleum storage tanks as well as petroleum marketing facilities shall be considered to be petroleum marketing firms;

12. "Property damage" shall have the meaning given this term by state law. This term shall include those liabilities which, consistent with standard insurance industry practices, are included

for coverage in liability insurance policies for property damage. However, this term shall not include those liabilities which, consistent with standard insurance industry practices, are excluded from coverage in liability insurance policies for property damage. Such exclusions shall not include corrective action associated with releases from storage tank systems;

13. "Provider of financial assurance" shall mean an entity that provides financial assurance to an owner or operator of a petroleum storage tank system through one of the mechanisms listed in Sections 5 through 12 of this act , including a guarantor, indemnitor, state fund, or a risk retention group, surety, or issuer of a letter of credit;

14. "Risk retention group" shall mean a body of petroleum storage tank system owners who have organized and act as a group in order to satisfy the financial responsibility requirements for all members of the group under the Petroleum Storage Tank Financial Responsibility Act;

15. "State regulating agency" shall mean either the Corporation Commission or the Oklahoma Department of Environmental Quality within their respective jurisdictional areas;

16. "Substantial business relationship" shall mean the extent of a business relationship necessary under applicable state regulating agency law to make a guarantee or indemnity contract issued incident to that relationship valid and enforceable. A guarantee or indemnity contract is issued "incident to relationship" if it arises from and depends on existing economic transactions between the guarantor or indemnitor and the owner or operator;

17. "Tangible net worth" shall mean the tangible assets that remain after deducting liabilities. Such assets do not include intangibles such as goodwill and rights to patents or royalties. For purposes of this definition, "assets" shall mean all existing and all probable future economic benefits obtained or controlled by a

particular entity as a result of past transactions; and

18. "Termination" shall mean only those changes that could result in a gap in coverage, as where the insured has not obtained substitute coverage or has obtained substitute coverage with a different retroactive date than the retroactive date of the original policy.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 320.4 of Title 17, unless there is created a duplication in numbering, reads as follows:

A. Owners or operators of all petroleum storage tank systems shall obtain coverage for taking corrective action and for compensating third-parties for bodily injury and property damage caused by sudden or nonsudden accidental releases arising from operating petroleum storage tank systems.

B. Owners or operators of all petroleum storage tank systems shall maintain coverage in the following amounts:

1. One Million Dollars (\$1,000,000.00). Provided the tank system is located at a petroleum marketing facility, or the tank system has a monthly throughput of more than 10,000 gallons of petroleum, based on annual throughput for the previous calendar year; or

2. Five Hundred Thousand Dollars (\$500,000.00). Provided the tank system is not used at a petroleum marketing facility and the tank system has a monthly throughput of 10,000 gallons of petroleum or less, based on annual throughput for the previous calendar year.

C. Owners or operators of all petroleum storage tank systems shall maintain annual aggregate coverage according to the total number of tanks owned or operated as follows:

1. For 1 to 10 tanks - One Million Dollars (\$1,000,000.00) annual aggregate;

2. For 10 or more tanks - Two Million Dollars (\$2,000,000.00) annual aggregate.

D. 1. If the owner or operator uses separate mechanisms or combinations of mechanisms to demonstrate financial responsibility for achieving the purpose set forth in subsection A of this section, the total amount of per occurrence coverage provided by each mechanism or combination of mechanisms shall be in the full amounts specified in subsection B of this section;

2. If an owner or operator uses separate mechanisms or combinations of mechanisms for different petroleum storage tanks or systems, the annual aggregate coverage required in subsection C of this section shall be based on the number of tanks covered by each separate mechanism or combination of mechanisms.

3. If the number of petroleum storage tanks for which an owner or operator must provide assurance changes and therefore exceeds one hundred (100) tanks, then the owner or operator must increase the annual aggregate amount to Two Million Dollars (\$2,000,000.00) by the anniversary of the date on which the mechanism to demonstrate financial responsibility became effective. If a combination of mechanisms is being used to demonstrate assurance, the owner or operator shall obtain at least Two Million Dollars (\$2,000,000.00) of annual aggregate assurance by the first-occurring effective date anniversary of any one of the financial mechanisms combined, other than a financial test or guarantee, to provide assurance.

4. The amounts of coverage required in subsections B and C of this section shall exclude legal defense costs.

5. The required per-occurrence and annual aggregate coverage do not in any way limit an owner or operator's total liability for damages caused by a leak from a petroleum storage tank system.

E. Except as provided in subsection F of this section, an owner or operator may use any one or combination of the mechanisms listed in Sections 4 through 13 of this act to demonstrate financial responsibility as required by the Petroleum Storage Tank Financial Responsibility Act for one or more petroleum storage tank systems.

F. An owner or operator may use a guarantee or surety bond to establish financial responsibility, but only if the guarantee or surety bond is a legally valid and enforceable obligation in this state.

G. An owner or operator may use a combination of self-insurance and guarantee only if, for purposes of qualifying for the financial test, the financial statements of the owner or operator are not combined with the financial statements of the guarantor.

H. For the purposes of this section, the word "tank" shall mean a single containment vessel and shall not include a combination of single containment vessels.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 320.5 of Title 17, unless there is created a duplication in numbering, reads as follows:

A. 1. An owner or operator, or guarantor may satisfy the requirements of Section 4 of this act by passing a financial test of self-insurance that conforms to the requirements of this section.

2. To pass the financial test of self-insurance, the owner or operator, or guarantor shall meet the criteria in this section based on year-end financial statements for its most recently completed fiscal year.

B. Requirements for passing a financial test for self-insurance are as follows:

1. The owner or operator or guarantor shall have a tangible net worth of at least ten (10) times:

- a. the total of the applicable aggregate amount required by Section 4 of this act, based on the number of petroleum storage tanks for which a financial test of self-insurance is used to demonstrate financial responsibility to the state regulating agency,
- b. the sum of corrective action cost estimates, current closure and post-closure cost estimates, and amount of

liability coverage for which a financial test is used to demonstrate financial responsibility to the state regulating agency, and

- c. the sum of current closure and abandonment cost estimates for which a financial test is used to demonstrate financial responsibility to the state regulating agency;

2. The owner or operator or guarantor shall have a tangible net worth of at least Ten Million Dollars (\$10,000,000.00);

3. The owner or operator or guarantor shall have a letter signed by the chief financial officer worded as specified in subsection E of this section;

4. The owner or operator or guarantor shall either:

- a. file financial statements annually with the Securities and Exchange state regulating agency, the Energy Information Administration, or the Rural Electrification Administration with copies to be sent to the state regulating agency, or
- b. report annually the firms tangible net worth to Dun and Bradstreet, and Dun and Bradstreet must have assigned the firm a financial strength rating of 4A or 5A;

5. The firm's year-end financial statement, if independently audited, cannot include an auditor's adverse opinion or a disclaimer of opinion, or a "going concern" qualification; and

6. The owner or operator may be requested to submit the documents referred to above to the state regulating agency on an annual basis.

C. In addition to the other requirements in this section, the following are required to pass a financial test for self-insurance:

1. The owner or operator or guarantor must meet the financial test requirements for the amounts specified in subsections B and C

of Section 4 of this act;

2. The firm's year end financial statements shall be examined by an independent certified public accountant and shall be accompanied by the accountant's report of the examination;

3. The firm's year-end financial statements may not include an adverse auditor's opinion, a disclaimer of opinion or a "going concern" qualification;

4. The owner or operator, or guarantor shall have a letter signed by the chief financial officer worded as specified in subsection E of this section; and

5. If the financial statements of the owner or operator, or guarantor are not submitted annually to the Securities and Exchange state regulating agency, the Energy Information Administration, or the Rural Electrification Administration, the owner or operator, or guarantor shall obtain a special report prepared by an independent certified public accountant stating that:

- a. he or she has compared the data from the chief financial officer's letter with the amount listed in the financial statements,
- b. no matters come to his or her attention which caused him or her to believe the specified data should be readjusted.

D. 1. If an owner or operator using a financial test of self-insurance to provide financial assurance finds that he or she fails to meet the requirements of this section at the end of its fiscal year, the owner or operator shall obtain alternative coverage within one hundred fifty (150) days of the end of its fiscal year.

2. The state regulating agency may require reports of financial condition at any time from the owner or operator, or guarantor. If the state regulating agency finds, on the basis of such reports or other information, that the owner or operator, or guarantor no longer meets the financial test requirements, the owner or operator

shall obtain alternative coverage within thirty (30) days after notification of such a finding by the state regulating agency.

3. If the owner or operator fails to obtain alternative coverage by the end of the one-hundred-fifty-day or thirty-day period, the owner or operator shall notify the state regulating agency of such failure within ten (10) days.

E. To demonstrate that it meets the financial test of self-insurance permitted in this section, the chief financial officer of the owner or operator or guarantor shall sign, within one hundred twenty (120) days of the close of each fiscal year, a letter worded as follows:

LETTER FROM CHIEF FINANCIAL OFFICER.

I am the Chief Financial Officer of (name and address of the owner or operator or guarantor). This letter is in support of the use of (the financial test of self-insurance, or guarantee) to demonstrate financial responsibility for (taking corrective action or compensating third-parties for bodily injury and property damage) caused by (sudden accidental releases or nonsudden accidental releases) in the amount of at least (insert dollar amount) per occurrence and (insert dollar amount) annual aggregate arising from operating a petroleum storage tank.

Petroleum storage tanks at the following facilities are covered by this financial test or a financial test under an authorized State program by this owner or operator or guarantor. (List each facility: the name and address of the facility where tanks assured by this financial test are located, and whether tanks are assured by this financial test or a financial test under a State program approved under 40 CFR Section 281. If separate mechanisms or combinations of mechanisms are being used to assure any of the tanks at this facility, list each tank assured by this financial test or a financial test under a State program under 40 CFR Section 281 by the tank identification number provided in the notification submitted

pursuant to applicable state statutes and state regulating agency rules). A (financial test or guarantee) is also used by this (owner or operator or guarantor) to demonstrate evidence of financial responsibility in the following amounts under other EPA regulations or other State programs authorized by the EPA under 40 CFR Sections 271 and 145.

Authorized State Programs:	AMOUNT
Closure	_____
Post-Closure Care	_____
Liability Coverage	_____
Corrective Action	_____
Plugging and Abandonment	_____
TOTAL	\$ _____

This "owner, operator," or "guarantor" has not received an adverse opinion, a disclaimer of opinion, or a "going concern" qualification from an independent auditor on his financial statements for the latest completed fiscal year.

(Fill in the information for Alternative I if the criteria of subsection B of Section 5 of this act are being used to demonstrate compliance with the financial test requirements. Fill in the information for Alternative II if the criteria of subsection B of Section 5 of this act are being used to demonstrate compliance with the financial test requirements).

1. Amount of annual PST aggregate coverage being assured by a financial test, or guarantee \$ _____

2. Amount of corrective action, closure and post-closure care costs, liability coverage, and plugging and abandonment costs covered by a financial test, or guarantee \$ _____

3. Sum of lines 1 and 2 \$ _____

4. Total tangible assets \$ _____
5. Total liabilities (if any of the amount reported on line 3 is included in total liabilities, you may deduct that amount from this line and add that amount to line 6) \$ _____
6. Tangible net worth (subtract line 5 from line 4) \$ _____
- | | YES | NO |
|---|-------|-------|
| 7. Is line 6 at least \$10 million? | _____ | _____ |
| 8. Is line 6 at least ten (10) times line 3? | _____ | _____ |
| 9. Have financial statements for the latest fiscal year been filed with the Securities and Exchange Commission? | _____ | _____ |
| 10. Have financial statements for the latest fiscal year been filed with the Energy Information Administration? | _____ | _____ |
| 11. Have financial statements for the latest fiscal year been filed with the Rural Electrification Administration? | _____ | _____ |
| 12. Has financial information been provided to Dun and Bradstreet, and has Dun and Bradstreet provided a financial strength rating of 4A or 5A? (Answer "Yes" only if both criteria have been met.) | _____ | _____ |

Alternative II

1. Amount of annual PST aggregate coverage being assured by a test, or guarantee \$ _____
 2. Amount of corrective action, closure and post-closure care costs, liability coverage, and plugging and abandonment costs covered by a financial test or guarantee \$ _____
 3. Sum of lines 1 and 2 \$ _____
 4. Total tangible assets \$ _____
 5. Total liabilities (if any of the amount reported on line 3 is included in total liabilities, you may deduct that amount from this line and add that amount to line 6) \$ _____
 6. Tangible net worth (subtract line 5 from line 4) \$ _____
 7. Total assets in the U.S. (required only if less than Ninety percent (90%) of assets are located in the U.S.) \$ _____
- | | YES | NO |
|--|----------|-------|
| 8. Is line 6 at least \$10 million? | _____ | _____ |
| 9. Is line 6 at least 6 times line 3? | _____ | _____ |
| 10. Are at least Ninety percent (90%) of assets located in the U.S.? (If "No", complete line 11) | _____ | _____ |
| 11. Is line 7 at least 6 times line 3? (Fill in either lines 12-15 or lines 16-18) | _____ | _____ |
| 12. Current assets | \$ _____ | |
| 13. Current liabilities | \$ _____ | |

- 14. Net working capital (subtract line 13 from line 12) \$ _____
- 15. Is line 14 at least 6 times line 3? _____
- 16. Current bond rating of most recent bond issue _____
- 17. Name of rating service _____
- 18. Date of maturity of bond _____
- 19. Have financial statements for the latest fiscal year been filed with the SEC, the Energy Information Administration, or the Rural Electrification Administration? (If "No", please attach a report from an independent certified public accountant certifying that there are no material differences between the data as reported in lines 4-18 above and the financial statements for the latest fiscal year.) _____

STATE OF _____)
) SS:
 COUNTY OF _____)

I hereby certify that the wording of this letter is identical to the wording specified by this act.

Signature _____
 Name _____
 Title _____
 Date _____

Subscribed and sworn to before me this ____ day of _____, ____.
 _____ Notary Public

My Commission Expires: _____

SECTION 6. NEW LAW A new section of law to be codified

in the Oklahoma Statutes as Section 320.6 of Title 17, unless there is created a duplication in numbering, reads as follows:

A. An owner or operator may satisfy the requirements of Section 4 of this act by obtaining a guarantee that conforms to the requirements of this section.

B. To satisfy the requirements of Section 4 of this act, a guarantor shall either be:

1. A firm that:

- a. possesses a controlling interest in the owner or operator,
- b. possesses a controlling interest in the firm described under this subparagraph, or
- c. is controlled through stock ownership by a common parent firm that possesses a controlling interest in the owner or operator; or

2. A firm engaged in a substantial business relationship with the owner and is issuing the guarantee as an act incident to that business relationship.

C. Within one hundred twenty (120) days of the close of each fiscal year, a guarantor shall demonstrate that it meets the financial test criteria of Section 5 of this act based on year-end financial statements for the latest completed fiscal year by completing the letter from the chief financial officer found in Section 5 of this act, and delivering the letter to the owner or operator. If a guarantor fails to meet the requirements of the financial test of Section 5 of this act at the end of any fiscal year, within one hundred twenty (120) days thereafter a guarantor shall send notice of such failure to the owner or operator, by certified mail, before cancellation or nonrenewal of the guarantee. If the state regulating agency notifies a guarantor that he or she no longer meets the requirements of the financial test of Section 5 of this act, the guarantor shall notify the owner or operator within

ten (10) days of receiving such notification. In either event, the guarantee will terminate no less than one hundred twenty (120) days from the date the owner or operator received notification, as evidenced by the return receipt. The owner or operator shall obtain alternative coverage as specified in Section 19 of this act.

D. Any owner or operator who uses a guarantee to satisfy the requirements of Section 4 of this act shall also establish a standby trust fund at the same time that the guarantee is obtained. Under the terms of the guarantee, all amounts paid by a guarantor under the guarantee shall be deposited directly into the standby trust in accordance with instructions from the state regulating agency referenced in Section 17 of this act. The standby trust must meet the requirements specified in Section 12 of this act. Proof of the standby trust fund must be furnished to the state regulating agency upon request.

E. A guarantee document shall be worded exactly as follows:

GUARANTEE

Guarantee made this (date) by (name of guaranteeing entity), a business entity organized under the laws of the State of _____, and herein referred to as Guarantor, to the state regulating agency, and to any and all third-parties, and obligees, on behalf of (owner or operator) of (business address).

Recitals.

(1) Guarantor meets or exceeds the financial test criteria of the Petroleum Storage Tank Financial Responsibility Act and agrees to comply with the requirements for guarantor as specified in the Petroleum Storage Tank Financial Responsibility Act.

(2) (Owner or operator) owns or operates the following petroleum storage tank systems covered by this guarantee: (list the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at one facility, for

each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to applicable state statutes and state regulating agency rules and the name and address of the facility). This guarantee satisfies the requirements of the Petroleum Storage Tank Financial Responsibility Act for assuring funding for (taking corrective action or compensating third-parties for bodily injury and property damage) caused by either sudden accidental releases or nonsudden accidental releases (if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location) arising from operating the above identified petroleum storage tank(s) in the amount of (insert dollar amount) per occurrence and (insert dollar amount) annual aggregate.

(3) Insert the appropriate phrase: On behalf of our subsidiary (if Guarantor is corporate parent of the owner or operator); On behalf of our affiliate (if Guarantor is a related firm of the owner or operator); or Incident to our business relationship with (if Guarantor is providing the guarantee as an incident to a substantial business relationship with the owner or operator), (owner or operator), Guarantor guarantees to the state regulating agency and to any and all third-parties that:

In the event the (owner or operator) fails to provide alternative coverage within sixty (60) days after receipt of a notice of cancellation for this guarantee and the state regulating agency has determined or suspects that a release has occurred at a petroleum storage tank system covered by this guarantee, the Guarantor, upon instructions from the state regulating agency, shall fund a standby trust in accordance with the provisions of the Petroleum Storage Tank Financial Responsibility Act, in an amount not to exceed the coverage limits specified above.

In the event that the state regulating agency determines that (owner or operator) has failed to perform corrective action for

releases arising out of the operation of the above identified tank(s) in accordance with applicable state statutes and state regulating agency rules, the Guarantor, upon receipt of written instructions from the state regulating agency, shall fund a standby trust in accordance with the provisions of the Petroleum Storage Tank Financial Responsibility Act, in an amount not to exceed the coverage limits specified above.

In the event (owner or operator) fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third-parties caused by sudden or nonsudden accidental releases arising from the operation of the above identified tank(s), or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the Guarantor, upon receipt of written instructions from the state regulating agency, will fund a standby trust in accordance with the provisions of the Petroleum Storage Tank Financial Responsibility Act to satisfy such judgment(s) up to the limits of coverage specified above.

(4) Guarantor agrees that if, at the end of any fiscal year before cancellation of this guarantee, he fails to meet the financial test criteria of the Petroleum Storage Tank Financial Responsibility Act, Guarantor shall send, within one hundred twenty (120) days of such failure, by certified mail, notice to (owner or operator). The guarantee will terminate one hundred twenty (120) days from the date of receipt of the notice by (owner or operator), as evidenced by the return receipt.

(5) Guarantor agrees to notify (owner or operator) by certified mail of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming Guarantor as debtor, within ten (10) days after commencement of the proceedings.

(6) Guarantor agrees to remain bound under this guarantee notwithstanding any modification or alteration of any obligation of

(owner or operator) pursuant to applicable state statutes and state regulating agency rules.

(7) Guarantor agrees to remain bound under this guarantee for so long as (owner or operator) must comply with the applicable financial responsibility requirements of the Petroleum Storage Tank Financial Responsibility Act for the above identified tank(s), except that Guarantor may cancel this guarantee by sending notice by certified mail to the (owner or operator), such cancellation to become effective no earlier than one hundred twenty (120) days after receipt of such notice by (owner or operator), as evidenced by the return receipt.

(8) The Guarantor's obligation does not apply to any of the following:

(a) Any obligation of (insert owner or operator) under a worker's compensation, disability benefits, or unemployment compensation law or similar law;

(b) Bodily injury to an employee of (insert owner or operator) arising from, and in the course of, employment by (insert owner or operator);

(c) Bodily injury or property damage arising from ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or water craft;

(d) Property damage to any property owned, rented, loaned to, in the care, custody or control of, or occupied by (insert owner or operator) that is not the direct result of a release from a petroleum storage tank

(e) Bodily damage or property damage for which (insert owner or operator) is obligated to pay damages by reason of the assumption of liability in a contract agreement other than a contract or agreement entered into to meet the requirements of the Petroleum Storage Tank Responsibility Act.

(9) Guarantor expressly waives notice of acceptance of this

guarantee by the state regulating agency, by any or all third-parties, or by (owner or operator).

STATE OF)
) SS:
COUNTY OF)

On this (date), before me personally came (owner or operator) to me known, who, being by me duly sworn, did depose and say that she/he resides at (address), that she/he is (title) of (corporation), the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that she/he signed her/his name thereto by like order.

(Signature of Notary Public)

(Name of Notary Public)

STATE OF)
) SS:
COUNTY OF)

I hereby certify that the wording of this guarantee is identical to the wording specified by the Petroleum Storage Tank Financial Responsibility Act.

Effective date _____

(Name of Guarantor)

(Authorized signature for Guarantor)

(Name of person signing)

(Title of person signing)

(Date signed)

Signature of witness or notary _____

Subscribed and sworn to before me this ___ day of _____, ____.

_____ Notary Public

My Commission Expires: _____

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 320.7 of Title 17, unless there is created a duplication in numbering, reads as follows:

A. An owner or operator may satisfy the requirements of Section 4 of this act by obtaining liability insurance that conforms to the requirements of this section from a qualified insurer or risk retention group. Such insurance may be in the form of a separate insurance policy or an endorsement to an existing policy. Each insurance policy shall be issued by an insurer or a risk retention group, which, at a minimum, is licensed to transact the business of insurance, or is eligible to provide insurance as an excess or surplus lines insurer, within the State of Oklahoma.

B. 1. Each insurance policy shall be amended by an endorsement worded exactly as follows:

ENDORSEMENT

Name: (Name of each covered location)

Address: (Address of each covered location)

Policy Number:

Period of Coverage: (current policy period)

Name of (Insurer or Risk Retention Group):

Address of (Insurer or Risk Retention Group):

Name of Insured:

Address of Insured:

Endorsement:

1. This endorsement certifies that the policy to which the endorsement is attached provides liability insurance covering the following petroleum storage tank(s): (list the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to applicable state statutes and state regulating agency rules and the name and address of the facility where each tank is located) for (taking corrective action or compensating third-parties for bodily injury and property damage caused by) either sudden accidental releases or nonsudden accidental releases or accidental releases in accordance with and subject to the limits of liability, exclusions, conditions and other terms of the policy (if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location) arising from operating the petroleum storage tank(s) identified above.

The limits of liability are (insert dollar amount) per occurrence and (insert dollar amount) annual aggregate limits of the insurer's or group's liability (if the amount of coverage is different for different types of coverage or for different petroleum storage tanks or locations, indicate the amount of coverage for each type of coverage or for each petroleum storage tank or location), exclusive of legal defense costs, which are subject to a separate limit under the policy. This coverage is provided under (policy number). The effective date of the policy is (date).

2. The insurance afforded with respect to such occurrences is subject to all of the terms and conditions of the policy, provided, however, that any provisions inconsistent with subsections (A) through (E) of this paragraph 2 are hereby amended to conform with subsections (A) through (E).

(A) Bankruptcy or insolvency of the insured shall not relieve the (insurer or group) of its obligations under the policy to which this endorsement is attached.

(B) The (insurer or group) is liable for the payment of amounts within any deductible applicable to the policy, to the provider of corrective action or a damaged third-party with a right of reimbursement by the insured for any such payment made by the (insurer or group). This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms as specified in the Petroleum Storage Tank Financial Responsibility Act.

(C) Whenever requested by the state regulating agency, the (insurer or group) agrees to furnish to the state regulating agency a signed duplicate original of the policy and all endorsements.

(D) Cancellation or any other termination of the insurance by the (insurer or group), except for nonpayment of premium or misrepresentation by the insured will be effective only upon receipt of written notice, sent by certified mail, by the insured and only after the expiration of sixty (60) days after a copy of such written notice is received by the insured, as evidenced by the return receipt. Cancellation for nonpayment of premium or misrepresentation by the insured will be effective only upon written notice and only after expiration of a minimum of ten (10) days after a copy of such written notice is received by the insured, as evidenced by the return receipt.

(E) The insurance covers claims otherwise covered by the policy that are reported to the (insurer or group) within six (6) months of the effective date of cancellation or nonrenewal of the policy except where the new or renewed policy has the same retroactive date or a retroactive date earlier than that of the prior policy, and which arise out of any covered occurrence that commenced after the policy retroactive date, if applicable, and prior to such policy

renewal or termination date. Claims reported during such extended reporting periods are subject to the terms, conditions, limits, including limits of liability, and exclusions of the policy.

STATE OF _____)
) SS:
COUNTY OF _____)

I hereby certify that the wording of this instrument is identical to the wording specified by the Petroleum Storage Tank Financial Responsibility Act and that (insurer or group) is (licensed to transact the business of insurance in Oklahoma, or eligible to provide insurance as an excess or surplus lines insurer in Oklahoma.)

Effective date _____

(Name of insurer or risk retention group)

(Authorized signature for insurer or risk retention group)

(Name of person signing)

(Title of person signing)

(Date signed)

Signature of witness or notary _____

Subscribed and sworn to before me this ____ day of _____, ____.

_____ Notary Public

My Commission Expires: _____

2. Or evidenced by a certificate of insurance worded exactly as follows:

CERTIFICATE OF INSURANCE

Name: (Name of each covered location)

Address: (Address of each covered location)

Policy Number:

Endorsement (if applicable):

Period of Coverage: (current policy period)

Name of (Insurer or Risk Retention Group):

Address of (Insurer or Risk Retention Group):

Name of Insured:

Address of Insured:

Certification:

1. (Name of insurer or risk retention group), (the insurer or group), as identified above, hereby certifies that is has issued liability insurance covering the following petroleum storage tank(s): (list the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to applicable state statutes and state regulating agency rules and the name and address of the facility where each tank is located) for (taking corrective action or compensating third-parties for bodily injury and property damage caused by) either sudden accidental releases or nonsudden accidental releases in accordance with and subject to the limits of liability, exclusions, conditions and other terms of the policy (if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location) arising from operating the petroleum storage tank(s) identified above.

The limits of liability are (insert dollar amount of the "per occurrence" and "annual aggregate" limits of the insurer's or

group's liability); (if the amount of coverage is different for different types of coverage or for different petroleum storage tanks or locations, indicate the amount of coverage for each type of coverage or for each petroleum storage tank or location), exclusive of legal defense costs, which are subject to a separate limit under the policy. This coverage is provided under (policy number) which was issued (date). The effective date of the policy is (date).

2. The (insurer or group) further certifies the following with respect to the insurance described in paragraph 1:

(A) Bankruptcy or insolvency of the insured shall not relieve (insurer or group) of its obligations under the policy to which the certificate applies.

(B) The (insurer or group) is liable for the payment of amounts within any deductible applicable to the policy to the provider of corrective action or a damaged third-party, with a right of reimbursement by the insured for any such payment made by (insurer or group). This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms as specified in the Petroleum Storage Tank Financial Responsibility Act.

(C) Whenever requested by the state regulating agency, the (insurer or group) agrees to furnish to the state regulating agency a signed duplicate original of the policy and all endorsements.

(D) Cancellation or any other termination of the insurance by the (insurer or group), except for nonpayment of premium or misrepresentation by the insured, will be effective only upon receipt of written notice and only after the expiration of sixty (60) days after a copy of such written notice is received by the insured. Cancellation for nonpayment of premium or misrepresentation by the insured will be effective only upon written notice and only after expiration of a minimum of ten (10) days after a copy of such written notice is received by the insured, as

evidenced by the return receipt.

(Insert for claims - made policies):

(E) The insurance covers claims otherwise covered by the policy that are reported to the (insurer or group) within six months of the effective date of cancellation or nonrenewal of the policy except where the new or renewed policy has the same retroactive date or a retroactive date earlier than that of the prior policy, and which arise out of any covered occurrence that commenced after the policy retroactive date, if applicable, and prior to such policy renewal or termination date. Claims reported during such extended reporting period are subject to the terms, conditions, limits, including limits of liability, and exclusions of the policy.

STATE OF)
) SS:
COUNTY OF)

I hereby certify that the wording of this instrument is identical to the wording specified by the Petroleum Storage Tank Financial Responsibility Act and that (insurer or group) is (licensed to transact the business of insurance in Oklahoma, or eligible to provide insurance as an excess or surplus lines insurer in Oklahoma.)

Effective date _____

(Name of insurer or risk retention group)

(Authorized signature for insurer or risk retention group)

(Name of person signing)

(Title of person signing)

(Date signed)

(Address of representative)

Subscribed and sworn to before me this ___ day of _____, ____.

_____ Notary Public

My Commission Expires: _____

SECTION 8. NEW LAW A new section of law to be codified

in the Oklahoma Statutes as Section 320.8 of Title 17, unless there is created a duplication in numbering, reads as follows:

A. An owner or operator may satisfy the requirements of Section 4 of this act by obtaining a surety bond that conforms to the requirements of this section. The surety company issuing the bond shall be among those listed as acceptable sureties on Federal bonds in the latest Circular 570 of the U.S. Department of the Treasury.

B. Under the terms of the surety bond, a surety shall become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the performance bond. In all cases, the surety liability is limited to the per-occurrence and annual aggregate penal sums.

C. Any owner or operator who uses a surety bond to satisfy the requirements of Section 4 of this act shall also establish a standby trust fund at the same time the surety bond is established. Under the terms of the bond, all amounts paid by the surety under the bond shall be deposited directly into the standby trust fund in accordance with the instructions from the state regulating agency under Section 17 of this act. This standby trust fund shall meet the requirements specified in Section 12 of this act. Proof of the standby trust fund must be furnished to the state regulating agency upon request.

D. Any owner or operator who uses a surety bond to comply with the requirements of Section 4 of this act shall use a bond worded exactly as follows:

PERFORMANCE BOND

Date bond executed:

Period of coverage:

Principal: (legal name and business address of owner or operator)

Type of organization: (individual, joint venture, partnership, or corporation)

State of incorporation (if applicable):

Surety(ies): (name(s) and business address(es))

Scope of coverage: (list the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to applicable state statutes and state regulating agency rules and the name and address of the facility. List the coverage guaranteed by the bond: taking corrective action or compensating third-parties for bodily injury and property damage caused by either sudden accidental releases or nonsudden accidental releases or accidental releases arising from operating the petroleum storage tank). _____

Penal sums of bond:

Per occurrence: \$ _____

Annual aggregate: \$ _____

Surety's bond number: _____

Know All Persons by These Presents, that we, the Principal and Surety(ies), hereto are firmly bound to the state regulating agency in the above penal sums for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sums jointly and severally only for the purpose of allowing a joint action or actions against any or all of us, and for all

other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sums only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sums.

Whereas said Principal is required under Subtitle I of the Resources Conservation and Recovery Act (RCRA), as amended, and the Petroleum Storage Tank Financial Responsibility Act, to provide financial assurance for (taking corrective action or compensating third-parties for bodily injury and property damage caused by either sudden accidental releases or nonsudden accidental releases or accidental releases; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location) arising from operating the petroleum storage tanks identified above; and

Whereas the Principal shall establish a standby trust fund as is required when a surety bond is used to provide such financial assurance;

Now, therefore, the conditions of the obligation are such that if the Principal shall faithfully (take corrective action in accordance with applicable state statutes, state regulating agency rules and state regulating agency's instructions, or compensate injured third-parties for bodily injury and property damage caused by either sudden or nonsudden) accidental releases arising from operating the petroleum storage tank(s) identified above, or if the Principal shall provide alternate financial assurance, as specified in the Petroleum Storage Tank Financial Responsibility Act, within one hundred twenty (120) days after the date the notice of cancellation is received by the Principal from the Surety(ies), then this obligation shall be null and void; otherwise it is to remain in full force and effect.

Such obligation does not apply to any of the following:

(a) Any obligation of (insert owner or operator) under a worker's compensation, disability benefits, or unemployment compensation law or other similar law;

(b) Bodily injury to an employee of (insert owner or operator) arising from, and in the course of, employment by (insert owner or operator);

(c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or water craft;

(d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by (insert owner or operator) that is not the direct result of a release from a petroleum storage tank;

(e) Bodily injury or property damage for which (insert owner or operator) is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of the Petroleum Storage Tank Financial Responsibility Act.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above.

Upon notification by the state regulating agency that the Principal has failed to (take corrective action, in accordance with applicable state statutes, state regulating agency rules, and the state regulating agency 's instructions, or compensate injured third-parties) as guaranteed by this bond, the Surety(ies) shall either perform (corrective action in accordance with applicable state statutes, the state regulating agency's rules and the state regulating agency's instructions, or third-party liability compensation) or place funds in an amount up to the annual aggregate penal sum into a standby trust fund as directed by the state regulating agency pursuant to the Petroleum Storage Tank

Responsibility Act.

Upon notification by the state regulating agency that the Principal has failed to provide alternate financial assurance within sixty (60) days after the date of the notice of cancellation is received by the Principal from the Surety(ies) and that the state regulating agency has determined or suspects that a release has occurred, the Surety(ies) shall place funds in an amount not exceeding the annual aggregate penal sum into the standby trust fund as directed by the state regulating agency under the Petroleum Storage Tank Financial Responsibility Act.

The Surety(ies) hereby waive(s) notification of amendments to applicable laws, statutes, rules, and regulation and agrees that no such amendments shall in any way alleviate its (their) obligation on this bond.

The liabilities of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the annual aggregate to the penal sum shown on the face of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said annual aggregate penal sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal, provided, however, that cancellation shall not occur during the one hundred twenty (120) days beginning on the date of receipt of the notice of cancellation by the Principal, as evidenced by the return receipt.

The Principal may terminate this bond by sending written notice to the Surety(ies).

In Witness Whereof, the Principal and Surety(ies) have executed this Bond and have affixed their seals of the date set forth.

STATE OF)
) SS:
COUNTY OF)

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified by the Petroleum Storage Tank Financial Responsibility Act.

PRINCIPAL

(Signature(s))

(Name(s))

(Title(s))

(Corporate seal)

CORPORATE SURETY(IES)

(Name and address)

State of incorporation: _____

Liability limit: \$ _____

(Signature(s))

(Name(s) and Title(s))

(Corporate seal)

(For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.)

Bond premium: \$ _____

Subscribed and sworn to before me this ____ day of _____, ____.

_____ Notary Public

My Commission Expires: _____

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 320.9 of Title 17, unless there is created a duplication in numbering, reads as follows:

A. 1. An owner or operator may satisfy the requirements of Section 4 of this act by obtaining an irrevocable standby letter of credit that conforms to the requirements of this section. The issuing institution shall be an entity that has the authority to issue letters of credit in Oklahoma and whose letter-of-credit operations are regulated and examined by a federal or state

regulating agency.

2. The letter of credit shall be irrevocable with the term specified by the issuing institution. The letter of credit shall provide that credit be automatically renewed for the same term, unless, at least one hundred twenty (120) days before the current expiration date, the issuing institution notifies the owner or operator by certified mail of its decision not to renew the letter of credit. Under the terms of the letter of credit, the one hundred twenty (120) days will begin on the date when the owner or operator receives the notice, as evidenced by the return receipt.

B. An owner or operator who uses a letter of credit to satisfy the requirements of Section 4 of this act shall also establish a standby trust fund at the same time the letter of credit is issued. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the state regulating agency shall be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the state regulating agency under Section 17 of this act. This standby trust shall meet the requirements specified in Section 12 of this act. Proof of the standby trust fund must be furnished to the state regulating agency upon request.

C. Any owner or operator who uses a letter of credit to comply with the provisions of Section 4 of this act shall use a letter of credit worded exactly as follows:

IRREVOCABLE STANDBY LETTER OF CREDIT

(Name and address of issuing institution)

(Name and address of the state regulating agency)

Dear Sir or Madam:

We hereby establish our Irrevocable Standby Letter of Credit No. _____ in your favor, at the request and for the account of (owner's or operator's name and address) up to the aggregate amount of (insert dollar amount in words) U.S. Dollars (insert dollar

amount), available upon presentation of:

1. Your sight draft, bearing reference to this letter of credit No. _____, and

2. Your signed statement reading as follows: "I certify that the amount of the draft is payable pursuant to regulations issued under authority of Subtitle I of the Resources Conservation and Recovery Act of 1976 as amended, and the Petroleum Storage Tank Financial Responsibility Act and rules promulgated pursuant thereto."

This letter of credit may be drawn on to cover (taking of corrective action or compensating third-parties for bodily injury and property damage caused by either sudden accidental releases or nonsudden accidental releases or accidental releases arising from operating the petroleum storage tank(s) identified below) in the amount of (insert dollar amount in words) per occurrence and (insert dollar amount in words) annual aggregate: (List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to applicable state law and state regulating agency rules and the name and address of the facility.)

The letter of credit may not be drawn on to cover any of the following:

(a) Any obligation of (owner or operator) under a worker's compensation, disability benefits, or unemployment compensation law or other similar law;

(b) Bodily injury to an employee of (owner or operator) arising from, and in the course of, employment by (owner or operator);

(c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any

aircraft, motor vehicle, or water craft;

(d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by (owner or operator) that is not the direct result of a release from a petroleum storage tank;

(e) Bodily injury or property damage for which (owner or operator) is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of the Petroleum Storage Tank Financial Responsibility Act.

This letter of credit is effective as of (date) and shall expire on (expiration date), but such expiration date shall be automatically extended for a period of (at least the length of the original term) on (expiration date) and on each successive expiration date, unless, at least one hundred twenty (120) days before the current expiration date, we notify (insert owner or operator) by certified mail that we have decided not to extend this letter of credit beyond the current expiration date. In the event that (insert owner or operator) is so notified, any unused portion of the credit shall be available upon presentation of your sight draft for one hundred twenty (120) days after the date of receipt by (owner or operator), as shown on the signed return receipt.

Whenever this letter of credit is drawn on and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us, and we shall deposit the amount of the draft directly into the standby trust fund of (owner or operator name) in accordance with your instructions.

We certify that the wording of this letter of credit is identical to the wording specified by the Petroleum Storage Tank Financial Responsibility Act.

We certify that the institution's letter of credit operations are regulated and examined by a federal agency or an agency of the

State of Oklahoma.

(Signature(s) and title(s) of official(s) of issuing institution)

(Date)

This credit is subject to (insert the most recent edition of the "Uniform Customs and Practice for Documentary Credits", published by the International Chamber of Commerce or the "Uniform Commercial Code")

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 320.10 of Title 17, unless there is created a duplication in numbering, reads as follows:

A. 1. An owner or operator may satisfy the requirements of Section 4 of this act by participation in and use of the Petroleum Storage Tank Release Cleanup Environmental Indemnity Fund (Indemnity Fund Program) Sections 350 et seq. of Title 17 of the Oklahoma Statutes.

2. There is a deductible for use of this mechanism and for which compliance may be demonstrated by use of any of the mechanisms outlined in Sections 5 through 9 and 11 of this act.

B. The owner or operator participating in the Indemnity Fund will be deemed to be in compliance with Section 4 of this act for the amounts and types of costs covered by the state fund.

C. 1. The Corporation Commission shall provide to each owner or operator for whom it is assuming financial responsibility a letter or certificate describing the nature of the state's assumption of this responsibility.

2. The letter or certificate from the Corporation Commission shall include the following information:

- a. the facility's name and address,
- b. amount of funds for corrective action or compensating third parties, and

c. general requirements for seeking reimbursement from the fund.

3. The owner or operator must maintain this letter or certificate on file as proof of financial responsibility in accordance with Section 16 of this act.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 320.11 of Title 17, unless there is created a duplication in numbering, reads as follows:

A. An owner or operator may satisfy the requirements of Section 4 of this act by establishing a trust fund in accordance with the Petroleum Storage Tank Financial Responsibility Act. The trustee shall be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal agency or an agency of the State of Oklahoma.

B. When established, the fund shall be funded for the full required amount of coverage, or funded for part of the required amount of coverage and used in combination with other mechanisms that provide the remaining required coverage.

C. 1. If the value of the trust fund is greater than the amount required, the owner or operator may submit a written request to the state regulating agency for release of the excess.

2. If other financial assurance as outlined in the Petroleum Storage Tank Financial Responsibility Act is substituted for all or part of the trust fund, the owner or operator shall submit a written request to the state regulating agency for release of the excess.

3. Within sixty (60) days after receiving a request from the owner or operator for release of the funds as specified in paragraphs 1 and 2 of this subsection, the state regulating agency shall instruct the trustee to release to the owner or operator such funds as the state regulating agency specifies in writing.

D. Owners or operators using a trust fund to comply with the provisions of Section 4 of this act shall use a trust agreement,

accompanied by a formal certification of acknowledgement, that is worded exactly as follows:

TRUST AGREEMENT

Trust agreement (the Agreement), entered into as of (date) by and between (name and address of the owner), the State of Oklahoma, (insert corporation, partnership, association, or proprietorship), the Grantor, and (name and address of corporate trustee), (insert Incorporated in the State of _____ or a national bank), the Trustee.

Whereas, the United States Environmental Protection Agency (EPA), an agency of the United States Government and the state regulating agency have established certain regulations applicable to the Grantor, requiring that an owner or operator of a petroleum storage tank shall provide assurance that funds will be available when needed for corrective action and third-party compensation for bodily injury and property damage caused by sudden and nonsudden accidental releases arising from the operation of the petroleum storage tank. (This paragraph is only applicable to the standby trust agreement.)

Whereas, the Grantor has elected to establish either a guarantee, surety bond, or letter of credit to provide all or part of such financial assurance for the petroleum storage tanks identified herein and is required to establish a standby trust fund able to accept payments from one of the instruments listed. (This paragraph is only applicable to the standby trust agreement.)

Whereas, the Grantor, acting through his duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee.

Now, therefore, the Grantor and the Trustee agree as follows:

Section 1. Definitions.

As used in this Agreement:

A. The term "Grantor" means the owner who enters into this

Agreement and any successors or assigns of the Grantor.

B. The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

Section 2. Identification of the Financial Assurance Mechanism.

This Agreement pertains to the (identify the financial assurance mechanism, either a guarantee, surety bond, or letter of credit, from which the standby trust fund is established to receive payments). (This paragraph is only applicable to the standby trust agreement.)

Section 3. Establishment of Fund.

The Grantor and the Trustee hereby establish a trust fund (the Fund) for the benefit of state regulating agency. The Grantor and the Trustee intend that no third-party have access to the Fund except as herein provided. The Fund is established initially as a standby to receive payments and shall not consist of any property. Payments made by the provider of financial assurance pursuant to the state regulating agency 's instructions are transferred to the Trustee and are referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor as provider of financial assurance, any payments necessary to discharge any liability of the Grantor established by the state regulating agency.

Section 4. Payment for (Corrective Action or Third-party Liability Claims)

The Trustee shall make payments from the Fund as the state regulating agency shall direct, in writing, to provide for payment of the costs of (taking corrective action or compensating third-parties for bodily injury and property damage caused by either

sudden accidental releases or nonsudden accidental releases or accidental releases) arising from operating the tanks covered by the financial assurance mechanism identified in this Agreement. The Fund may not be drawn upon to cover any of the following:

(a) Any obligation of (insert owner or operator) arising from, and in the course of employment by (insert owner or operator);

(b) Bodily injury to an employee of (insert owner or operator) arising from, and in the course of employment by (insert owner or operator);

(c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or water craft;

(d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by (insert owner or operator) that is not the direct result of a release from a petroleum storage tank;

(e) Bodily injury or property damage for which (insert owner or operator) is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of the Petroleum Storage Tank Financial Responsibility Act.

The Trustee shall reimburse the Grantor, or other persons as specified by the state regulating agency, from the Fund for corrective action expenditures or third-party liability claims in such amounts as the state regulating agency shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts as the state regulating agency specifies in writing. Upon refund, such funds shall no longer constitute part of the Fund as defined herein.

Section 5. Payments Comprising the Fund.

Payments made to the Trustee for the Fund shall consist of cash and securities acceptable to the Trustee.

Section 6. Trustee Management.

The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his duties with respect to the trust fund solely in the interest of the beneficiaries and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims, as such:

A. Securities or other obligations of the Grantor, or any other owner of the tanks or any of their affiliates as defined in the Investment Company Act of 1940 as amended, 15 U.S.C. 80a-2(a), shall not be acquired or held, unless they are securities or other obligations of the Federal or a State government;

B. The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the Federal or State government; and

C. The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment.

The Trustee is expressly authorized in its discretion:

A. To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

B. To purchase shares in any investment company registered

under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. Express Powers of Trustee.

Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

A. To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

B. To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

C. To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or the State of Oklahoma, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

D. To deposit any cash in the Fund in interest-bearing accounts

maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or State government; and

E. To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses.

All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee shall be paid from the Fund.

Section 10. Advice of Counsel.

The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any questions arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 11. Trustee Compensation.

The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 12. Successor Trustee.

The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall

assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in writing sent to the Grantor and the present Trustee by certified mail ten (10) days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this section shall be paid as provided in Section 9.

Section 13. Instructions to the Trustee.

All orders, requests, and instructions by the Grantor to the Trustee shall be in writing signed by such persons as are designated in the attached Schedule B or such other designees as the Grantor may designate by amendment to Schedule B. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests, and instructions by the state regulating agency to the Trustee shall be in writing, signed by the state regulating agency, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or the state regulating agency hereunder has occurred.

The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor or the state regulating agency, except as provided for herein.

Section 14. Amendment of Agreement.

This Agreement may be amended by an instrument in writing executed by the Grantor and the Trustee, or by the Trustee and the

state regulating agency if the Grantor ceases to exist.

Section 15. Irrevocability and Termination.

Subject to the right of the parties to amend this Agreement as provided in Section 14, this Trust shall be irrevocable and shall continue until terminated at the written direction of the Grantor and the Trustee, or by the Trustee and the state regulating agency, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

Section 16. Immunity and Indemnification.

The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the state regulating agency issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 17. Choice of Law.

This Agreement shall be administered, construed, and enforced according to the laws of the State of Oklahoma, or the Comptroller of the Currency in the case of National Association banks.

Section 18. Interpretation.

As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

In Witness whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals (if applicable) to be hereunto affixed and attested as of the date first above written: the parties below certify that

the wording of this Agreement is identical to the wording specified by the Petroleum Storage Tank Financial Responsibility Act.

(Signature of Grantor)

(Name of the Grantor)

(Title)

Attest:

(Signature of Trustee)

(Name of the Trustee)

(Title)

(Seal)

Attest:

(Signature of the Witness)

(Name of the Witness)

(Title)

(Seal)

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 320.12 of Title 17, unless there is created a duplication in numbering, reads as follows:

A. An owner or operator using any one of the mechanisms authorized by Sections 6, 8 and 9 of this act shall establish a standby trust fund in accordance with this section at the same time the mechanism is established. The trustee shall be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal agency or an agency of the State of Oklahoma.

B. Owners or operators using any one of the mechanisms listed in subsection A of the this section shall use a standby trust agreement, accompanied by a formal certification of acknowledgement, worded exactly as shown in subsection D of Section 11 of this act.

C. The state regulating agency will instruct the trustee to refund the balance of the standby trust fund to the grantor if the state regulating agency determines that no additional corrective

action costs or third-party liability claims will occur as a result of a release covered by the financial assurance mechanism for which the standby trust fund was established.

D. An owner or operator shall establish one trust fund as the depository mechanism for all funds assured in compliance with the Petroleum Storage Tank Financial Responsibility Act.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 320.13 of Title 17, unless there is created a duplication in numbering, reads as follows:

A. An owner or operator may substitute any alternative financial assurance mechanisms specified in the Petroleum Storage Tank Financial Responsibility Act, provided that at all times an effective financial assurance mechanism or combination of mechanisms is maintained which satisfies the requirements of Section 4 of this act.

B. After obtaining an alternate financial assurance mechanism specified in the Petroleum Storage Tank Financial Responsibility Act, an owner or operator may cancel the prior financial assurance.

C. The state regulating agency shall be notified in writing within thirty (30) days of such a change.

SECTION 14. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 320.14 of Title 17, unless there is created a duplication in numbering, reads as follows:

A. Except as otherwise provided, a provider of financial assurance may cancel or fail to renew a financial assurance mechanism by sending a notice of termination by certified mail to the owner or operator.

B. Termination of a guarantee, a surety bond, or letter of credit may not occur, however, during the one-hundred-twenty-day notice period beginning on the date the owner or operator receives the notice of termination as evidenced by the return receipt.

C. Termination of insurance or risk retention group coverage,

except for nonpayment or misrepresentation by the insured, or state regulating agency funded assurance may not occur until sixty (60) days after the date on which the owner or operator receives the notice of termination as evidenced by the return receipt.

Termination for nonpayment of premium or misrepresentation by the insured may not occur until a minimum of ten (10) days after the date on which the owner or operator received the notice of termination, as evidenced by the return receipt.

D. If a provider of financial responsibility cancels or fails to renew, for reasons other than incapacity of the provider as specified in Section 15 of this act, the owner or operator must obtain alternative coverage as specified in the Petroleum Storage Tank Financial Responsibility Act within sixty (60) days after receipt of the notice of termination. If the owner or operator fails to obtain alternate coverage within sixty (60) days after receipt of the notice of termination, the owner or operator shall notify the state regulating agency of such failure and shall submit:

1. The name and address of the provider of financial assurance;
2. The effective date of the termination; and
3. The evidence of the financial assurance mechanism subject to the termination, maintained in accordance with Section 16 of this act.

SECTION 15. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 320.15 of Title 17, unless there is created a duplication in numbering, reads as follows:

A. Evidence of financial responsibility may be required:

1. Within thirty (30) days after the owner or operator identifies a release in accordance with state statutes and the regulating agencies' rules an owner or operator shall certify compliance with the financial responsibility requirement of the Petroleum Storage Tank Financial Responsibility Act; and

2. If the owner or operator fails to obtain alternate coverage

as required by the Petroleum Storage Tank Financial Responsibility Act within thirty (30) days after receiving notice of:

- a. commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming a provider of financial assurance as debtor,
- b. suspension or revocation of the authority of a provider of financial assurance to issue a financial assurance mechanism,
- c. failure of a guarantor to meet the requirements of Section 4 of this act,
- d. other incapacity of a provider of financial assurance, or
- e. as required by Sections 5 and 14 of this act.

B. The state regulating agency may require an owner or operator to submit evidence of financial assurance as described in Section 16 of this act or such other information relevant to compliance with the requirements of the Petroleum Storage Tank Financial Responsibility Act at any time.

SECTION 16. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 320.16 of Title 17, unless there is created a duplication in numbering, reads as follows:

A. Owners or operators shall maintain evidence of all financial assurance mechanisms used under the Petroleum Storage Tank Financial Responsibility Act until released from the requirements of the Petroleum Storage Tank Financial Responsibility Act pursuant to Section 18 of this act. Owners or operators shall maintain such evidence at the petroleum storage tank system site or at the owner's or operator's place of business. Records maintained off-site shall be made available upon request of the state regulating agency.

B. An owner or operator shall maintain the following types of evidence of financial responsibility:

1. Any owner or operator using a financial assurance mechanism

specified in Sections 5 through 9 and Section 11 of this act shall maintain a copy of the instruments required by said sections.

2. Any owner or operator using a financial test of self-insurance or a guarantee, shall maintain a copy of the chief financial officer's letter based on the year-end financial statements for the most recently completed fiscal year. Such evidence shall be on file no later than one hundred twenty (120) days after the close of said fiscal year.

3. Any owner or operator using a guarantee, surety bond, or letter of credit shall maintain an originally signed duplicate of the standby trust fund agreement and copies of any amendments to the agreement.

4. Any owner or operator using an insurance policy or risk retention group coverage shall maintain an originally signed duplicate of the insurance policy or risk retention group coverage policy, with the endorsement or certificate of insurance and any amendments to the agreements.

5. An owner or operator covered by a state fund or other state regulating shall maintain a copy of any evidence of coverage supplied by or required by the State fund under Section 10 of this act.

6. Any owner or operator using a financial assurance mechanism specified in Sections 5 through 9 and 11 of this act shall maintain an updated copy of a certification of financial responsibility worded exactly as shown in subsection C of this section. The owner or operator shall update this certification whenever the financial assurance mechanism or mechanisms used to demonstrate financial responsibility change.

C. The certification required by paragraph 6 of subsection B of this section shall be worded exactly as shown below:

CERTIFICATION OF FINANCIAL RESPONSIBILITY

(Owner or operator) hereby certifies that it is in compliance

with the requirements of the Petroleum Storage Tank Financial Responsibility Act.

The financial assurance mechanism(s) used to demonstrate financial responsibility under the Petroleum Storage Tank Financial Responsibility Act is (are) as follows:

(For each mechanism, list the type of mechanism, name of issuer, mechanism number (if applicable), amount of coverage, effective period of coverage and whether the mechanism covers taking corrective action or compensating third-parties for bodily injury and property damage caused by either sudden accidental releases or nonsudden accidental releases or accidental releases).

(Signature of owner or operator)

(Name of owner or operator)

(Title)

(Date)

(Signature of witness or notary)

(Name of witness or notary)

(Date)

SECTION 17. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 320.17 of Title 17, unless there is created a duplication in numbering, reads as follows:

A. The state regulating agency shall require the guarantor, surety or institution issuing a letter of credit, or, as applicable, such other provider of financial assurance, to place the amount of funds stipulated by the state regulating agency, up to the limit of funds provided by the financial assurance mechanism, into a standby trust if the owner or operator fails to obtain alternate financial assurance within sixty (60) days after receiving notice of cancellation of the guarantee, surety bond, letter of credit, or, as applicable, such other financial assurance mechanisms, and:

1. The state regulating agency determines or suspects that a release from a petroleum storage tank system covered by the

mechanism has occurred and so notifies the owner or operator; or

2. The owner or operator has notified the state regulating agency pursuant to applicable state statutes and state regulating agency rules of a release from a petroleum storage tanks system covered by the mechanism; or

3. The conditions of subsection B of this section are satisfied.

B. The state regulating agency may draw on a standby trust fund when either:

1. The state regulating agency makes a final determination that a release has occurred and immediate or long-term corrective action for the release is needed, but the owner or operator, after appropriate notice and opportunity to comply, has not conducted corrective action as required under applicable state statutes and state regulating agency rules; or

2. The state regulating agency has received either:

- a. certification from the owner or operator and the third-party liability claimant or claimants and from attorneys representing the owner or operator and the third-party liability claimant or claimants that a third-party liability claim should be paid, or
- b. a nonappealable final court order establishing a judgment against the owner or operator for bodily injury or property damage caused by an accidental release from a petroleum storage tank covered by financial assurance under the Petroleum Storage Tank Financial Responsibility Act, and the state regulating agency determines that the owner or operator has not satisfied the judgment.

C. If the state regulating agency determines that the amount of corrective action costs and third-party liability claims eligible for payment under subsection B of this section may exceed the

balance of the standby trust fund and the obligation of the provider of financial assurance, the first priority for payment shall be corrective action costs necessary to protect human health and environment pursuant to applicable state statutes and state regulating agency rules. The state regulating agency shall pay third-party liability claims in the order in which the state regulating agency receives certifications and valid court orders pursuant to subparagraphs a and b of paragraph 2 of subsection B of this section.

D. The certification required by subparagraph a of paragraph 2 of subsection B of this section shall be worded exactly as follows:

CERTIFICATION OF VALID CLAIM

The undersigned, as principals and as legal representatives of (owner or operator) and (name and address of third-party claimant), hereby certify that the claim of bodily injury or property damage caused by an accidental release arising from operating (owner's or operator's) petroleum storage tank should be paid in the amount of \$_____.

(Signatures)

Owner or Operator

Attorney for Owner or Operator

(Notary)

(Date)

(Signature(s))

Claimant(s)

Attorney(s) for Claimant(s)

(Notary)

(Date)

1. (Indicate the amount of coverage for each type of coverage or for each petroleum storage tank or location), exclusive of legal defense costs, which are subject to a separate limit under the policy. This coverage is provided under (policy number) which was

issued on (date). The effective date of the policy is (date).

2. The (Insurer or Group) further certifies the following with respect to the insurance described in paragraph 1:

A. Bankruptcy or insolvency of the insured shall not relieve (Insurer or Group) of its obligations under the policy to which the certificate applies.

B. The (Insurer or Group) is liable for the payment of amounts within any deductible applicable to the policy of the provider of corrective action or a damaged third-party, with a right of reimbursement by the insured for any such payment made by (Insurer or Group). This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms as specified in Sections 5 through 13 of this act.

C. Whenever requested by the state regulating agency, the (Insurer or Group) agrees to furnish to the state regulating agency a signed duplicate original of the policy and all endorsements.

D. Cancellation or any other termination of the insurance by the (Insurer or Group) except for nonpayment of premium or misrepresentation by the insured, will be effective only upon receipt of written notice and only after the expiration of sixty (60) days after a copy of such written notice is received by the insured. Cancellation for nonpayment of premium or misrepresentation by the insured will be effective only upon written notice and only after expiration of a minimum of ten (10) days after a copy of such written notice is received by the insured, as evidenced by the return receipt.

(Insert for claims - made policies):

E. The insurance covers claims otherwise covered by the policy that are reported to the (Insurer or Group) within six months of the effective date of cancellation or nonrenewal of the policy except where the new or renewed policy has the same retroactive date or a

retroactive date earlier than that of the prior policy, and which arise out of any covered occurrence that commenced after the policy retroactive date, if applicable, and prior to such policy renewal or termination date. Claims reported during such extended reporting period are subject to the terms, conditions, limits, including limits of liability, and exclusions of the policy.

STATE OF _____)
) SS:

COUNTY OF _____)

I hereby certify that the wording of this guarantee is identical to the wording specified by the Petroleum Storage Tank Financial Responsibility Act.

Effective date _____

(Name of guarantor)

(Authorized signature for guarantor)

(Name of person signing)

(Title of person signing)

(Date signed)

Signature of witness or notary _____

Subscribed and sworn to before me this ____ day of _____, ____.

_____ Notary Public

My Commission Expires: _____

SECTION 18. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 320.18 of Title 17, unless there is created a duplication in numbering, reads as follows:

An owner or operator of a petroleum storage tank system is no longer required to maintain financial responsibility under the Petroleum Storage Tank Financial Responsibility Act for a petroleum storage tank system after the system has been properly closed, or if corrective action is required, after the system has been properly closed and corrective action has been completed, as required by applicable state statutes and state regulating agencies' rules.

SECTION 19. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 320.19 of Title 17, unless there is created a duplication in numbering, reads as follows:

A. Within ten (10) days after commencement of voluntary or involuntary proceedings under Title 11 (Bankruptcy), U.S. Code, naming an owner or operator as debtor, the owner or operator shall notify the state regulating agency by certified mail of such commencement and shall submit the appropriate forms listed in Section 16 of this act documenting current financial responsibility.

B. Within ten (10) days after commencement of voluntary or involuntary proceedings under Title 11 (Bankruptcy), U.S. Code, naming a guarantor providing financial assurance as a debtor, such guarantor shall notify all owners or operators guaranteed by certified mail of such commencement as required under the terms of the guarantee specified in Section 11 of this act.

C. 1. Any owner or operator who obtains financial assurance by a mechanism other than the financial test of self-insurance under Section 5 of this act shall be deemed to be without the required financial assurance in the event of a bankruptcy or incapacity of its provider of financial assurance, or the suspension or revocation of authority of the provider of financial assurance to issue a guarantee, insurance policy, risk retention group coverage policy, surety bond, letter of credit, or state regulating agency-required mechanism. The owner or operator shall obtain alternate financial assurance as specified in Subchapter 13 of this Chapter within thirty (30) days after receiving notice of such an event. If an owner or operator does not obtain alternate coverage within thirty (30) days after such notification, he must notify the state regulating agency.

2. Within thirty (30) days after receipt of notification that a state fund has become incapable of paying for corrective action or third-party compensation costs, the owner or operator must obtain

alternate financial assurance.

SECTION 20. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 320.20 of Title 17, unless there is created a duplication in numbering, reads as follows:

A. If a standby trust is funded upon instructions by the state regulating agency, with funds drawn from a guarantee, letter of credit, or surety bond, and the amount in the standby trust is reduced below the full amount of coverage required, the owner or operator shall, by the anniversary date of the financial mechanism from which the funds were drawn:

1. Replenish the value of financial assurance to equal the full amount of coverage required; or

2. Acquire another financial assurance mechanism for the amount by which funds in the standby trust have been reduced.

B. For the Petroleum Storage Tank Financial Responsibility Act, the full amount of coverage required is the amount of coverage to be provided by Section 4 of this act. If a combination of mechanisms was used to provide the assurance which were drawn upon, replenishment shall occur by the earliest anniversary date among the mechanisms.

SECTION 21. AMENDATORY 17 O.S. 1991, Section 303, as last amended by Section 9, Chapter 375, O.S.L. 1998 (17 O.S. Supp. 2000, 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;~~

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 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 or at the time of 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 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.~~ 16. "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.~~ 17. "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.~~ 18. "Regulated substances" means hazardous substances or petroleum;

~~21.~~ 19. "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.~~ 20. "Storage tank system" means any one or combination of tanks, including underground, but not limited to, piping connected thereto, that is hoses, dispensers, and other ancillary equipment associated with the system used to contain an accumulation of regulated substances;

~~23.~~ 21. "Tank" means a stationary vessel designed to contain an accumulation of regulated substances which is constructed of primarily non-earthen materials that provide structural support;

~~24.~~ 22. "Transporter" means any person who transports, delivers or distributes any quantity of regulated substance from one point to another for the purpose of wholesale or retail gain; and

~~25.~~ 23. "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 22. AMENDATORY 17 O.S. 1991, Section 304, as last amended by Section 10, Chapter 375, O.S.L. 1998 (17 O.S. Supp. 2000, 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;
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. Storage tanks and storage tank systems 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 23. AMENDATORY 17 O.S. 1991, Section 306, as last amended by Section 12, Chapter 375, O.S.L. 1998 (17 O.S. Supp. 2000, 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~~ storage tank program in lieu of the federal government under Subtitle I of the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6991 et seq. within its jurisdictional areas upon approval by the federal 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~~ systems;

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 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 site-specific remediation goals to protect human health, safety and the environment that are specific to the site that is contaminated and the substance or substances contaminating the site consistent with applicable state and federal laws, rules, standards and regulations;

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 24. AMENDATORY 17 O.S. 1991, Section 307, as last amended by Section 13, Chapter 375, O.S.L. 1998 (17 O.S. Supp. 2000, 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; and

~~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; 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~~ 7 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 25. AMENDATORY 17 O.S. 1991, Section 309, as last amended by Section 16, Chapter 375, O.S.L. 1998 (17 O.S. Supp. 2000, Section 309), is amended to read as follows:

Section 309. A. No owner or operator, employee or agent of such owner or operator, or transporter shall knowingly allow a release from a storage tank system to occur or continue to occur without reporting the release to the Corporation Commission within twenty-four (24) hours upon discovering such a release.

B. The owner or operator of a storage tank system shall immediately take all reasonable corrective actions necessary to prevent a release or a threatened release of regulated substances from a storage tank system and to abate and remove any such releases subject to applicable federal and state requirements. The Corporation Commission shall require that any corrective action taken by a tank owner or operator or authorized by the Commission shall be in compliance with all applicable state statutes and rules and federal laws and regulations for the protection of air quality and water quality and for the transportation and disposal of any waste.

C. If there is a release from a storage tank system, the Commission may:

1. After notice and hearing pursuant to Section 310 of this title, order the owner or operator to take reasonable and necessary corrective actions;

2. Without notice and hearing pursuant to Section 310 of this title, issue an administrative order stating the existence of an emergency and requiring that such action be taken as it deems necessary to meet the emergency. Such order shall be effective immediately. Any person to whom such an order is directed shall comply with said order immediately but on application to the Commission shall be afforded a hearing within ten (10) days after receipt of the emergency order. On the basis of such hearing, the Commission shall continue such order in effect, revoke it, or modify it. Any person aggrieved by such order continued after the hearing provided for in this subsection may appeal to the Supreme Court as provided in Section 318 of Title 75 of the Oklahoma Statutes. Such appeal when docketed shall have priority over all cases pending on said docket.

D. 1. The Commission may take corrective action if:

- a. an owner or operator of the storage tank system cannot be identified,
- b. an identified owner or operator cannot or will not comply with the order issued pursuant to subsection C of this section,
- c. an administrative or judicial proceeding on an order issued pursuant to subsection C of this section is pending and the Commission determines corrective action is necessary to protect the public health, safety and welfare or the environment until the administrative or judicial proceeding is resolved, or
- d. the Commission determines that the release constitutes a clear and immediate danger requiring immediate action to prevent, minimize or mitigate damage to the

public health and welfare or the environment. Before taking an action under this paragraph, the Commission shall make all reasonable efforts, taking into consideration the urgency of the situation, to order an owner or operator to take a corrective action and notify the owners of real property as specified by Section 310 of this title.

2. The owner or operator is liable for the cost of the corrective action taken by the 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 and the Commission has taken the corrective action, or
- b. the Commission has taken corrective action in an emergency pursuant to subparagraph d of paragraph 1 of this subsection.

3. Reasonable and necessary expenses incurred by the Commission in taking a corrective action, including costs of investigating a release and administrative and legal expenses, may be recovered in a civil action pursuant to Section 311 of this title. The Commission's certification of expenses is prima facie evidence that the expenses are reasonable and necessary. The Commission shall be entitled to apply for and receive payment from the Indemnity Fund Program on behalf of an eligible person for an eligible release upon any site upon which the Commission has taken corrective action. Such payments shall be deemed to be reimbursement of the eligible person. Expenses that are recovered under this subsection shall be deposited in the Corporation Commission Storage Tank Regulation Revolving Fund.

E. 1. Any order issued by the Commission pursuant to ~~this section~~ the Oklahoma Storage Tank Regulation Act shall not limit the

liability of the owner or operator or both such owner or operator for any injury, damages, or costs incurred by any person as a result of the release. The owner or operator shall not avoid any liability as a result of such release by means of a conveyance of any right, title or interest in real property; or by any indemnification, hold harmless agreement, or similar agreement.

~~1.~~ 2. Any order issued pursuant to the provisions of the Oklahoma Storage Tank Regulation Act shall not abridge nor limit the rights of any property owner not a tank owner or operator to abate a nuisance or to remedy a trespass upon the owner's property in any manner otherwise allowed by law.

3. This subsection does not:

- a. prohibit a person who may be liable from entering an agreement by which the person is insured, held harmless, or indemnified for part or all of the liability,
- b. prohibit the enforcement of an insurance, hold harmless, or indemnification agreement, or
- c. bar a cause of action brought by a person who may be liable or by an insurer or guarantor, whether by right of subrogation or otherwise.

~~2.~~ 4. Except as otherwise provided by law, if there is more than one person liable, such persons shall be jointly liable for any injury, damages, or costs.

SECTION 26. AMENDATORY Section 14, Chapter 344, O.S.L. 1993, as amended by Section 24, Chapter 375, O.S.L. 1998 (17 O.S. Supp. 2000, 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. The issuance of a new license to a person whose license has previously been revoked is discretionary with the Commission. A person whose license has been revoked shall not be entitled to a new license due solely to the passage of the one-year period allowing for a new application for a license.

6. A person whose license is revoked for defrauding or attempting to defraud another person or the Petroleum Storage Tank Indemnity Fund shall be required to demonstrate rehabilitation before being granted a new license.

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 27. AMENDATORY Section 4, Chapter 375, O.S.L. 1998 (17 O.S. Supp. 2000, Section 324), is amended to read as follows:

Section 324. A. Monies in the Petroleum Storage Tank Release Environmental Cleanup Indemnity Fund shall only be expended for:

1. Reimbursements to eligible persons for eligible expenses including the costs to identify and confirm the existence of a suspected release when so instructed by the regulatory program of the Petroleum Storage Tank Division or when such expenses were necessary and appropriate to protect the health, safety and welfare of the public and the environment;

2. Reimbursement of actual costs incurred by the Petroleum Storage Tank Division in evaluating claims and determining whether specific claims qualify for payment or reimbursement by the Indemnity Fund Program; and

3. Reimbursement of actual costs incurred by the Division for the administration of the Indemnity Fund.

B. Actual costs incurred by the Division to be reimbursed by the Indemnity Fund shall be documented and reviewed in the same manner as requests for reimbursement submitted by tank owners,

operators or other eligible persons for the purpose of obtaining reimbursement from the Indemnity Fund.

C. Annual expenditures, whether for direct or indirect costs, from the Petroleum Storage Tank Release Environmental Cleanup Indemnity Fund for actual costs incurred for the operation and administration of the Indemnity Fund shall be limited to and shall not exceed One Million Dollars (\$1,000,000.00) per fiscal year. Reimbursement of costs to the Corporation Commission shall not be on an allocation basis but shall be made on an actual cost basis.

SECTION 28. AMENDATORY Section 15, Chapter 344, O.S.L. 1993, as last amended by Section 25, Chapter 375, O.S.L. 1998 (17 O.S. Supp. 2000, Section 340), is amended to read as follows:

Section 340. A. There is hereby created within the Corporation Commission the Storage Tank Advisory Council. The Council shall consist of ~~nine (9)~~ fifteen (15) members. ~~Three~~ Five members shall be appointed by the Governor, ~~three~~ five members shall be appointed by the Speaker of the House of Representatives and ~~three~~ five members shall be appointed by the President Pro Tempore of the Senate. The initial appointments for each gubernatorial and legislative member shall be for progressive terms of one (1) through three (3) years so that only one term expires each calendar year; subsequent appointments shall be for three-year terms. Members shall continue to serve until their successors are appointed. Any vacancy shall be filled in the same manner as the original appointments. ~~Five~~ Eight members shall constitute a quorum. The Council shall be composed as follows:

1. The Governor shall appoint ~~three (3)~~ five (5) members as follows:

- a. two members who shall be storage tank owners or operators, ~~and~~ one of whom shall be a representative of a major oil company,

- b. one member who shall be a licensed storage tank consultant or contractor,
- c. one member of the general public, and
- d. one member who shall be a transporter registered or licensed by the Oklahoma Tax Commission whose primary business is trucking;

2. The President Pro Tempore of the Senate shall appoint ~~three~~ five (5) members as follows:

- a. two members who shall be storage tank owners or operators, ~~and~~ one of whom shall be a representative of a major oil company,
- b. one member who shall be a geologist,
- c. one member who shall be a representative of a statewide nonprofit environmental organization, and
- d. one member who shall be a supplier registered or licensed by the Oklahoma Tax Commission; and

3. The Speaker of the House of Representatives shall appoint ~~three (3)~~ five (5) members as follows:

- a. two members who shall be storage tank owners or operators, ~~and~~ one of whom shall be a tank owner or operator not engaged in petroleum marketing,
- b. one member who shall be a registered professional engineer,
- c. one member who shall be a representative of a statewide nonprofit environmental organization, and
- d. one member who shall be a terminal operator registered or licensed by the Oklahoma Tax Commission.

B. The Council shall elect a chair and a vice-chair from among its members. The Council shall meet as required for rule development, review and recommendation and for such other purposes specified by law. Special meetings may be called by the chair or by the concurrence of any ~~three (3)~~ five (5) members.

C. The Storage Tank Advisory Council shall:

1. Have authority to recommend to the Corporation Commission rules to implement the Oklahoma Storage Tank Regulation Act, and the Oklahoma Petroleum Tank Release Indemnity Fund Program. The staff of the storage tank regulatory program and the Indemnity Fund Program shall not have standing to recommend to the Corporation Commission proposed permanent rules or changes to such rules which have not previously been submitted to the Council for action at least forty-five (45) days prior to the hearing for adoption of the rules by the Corporation Commission;

2. Before recommending any permanent rules to the Corporation Commission, give public notice, offer opportunity for public comment and conduct a public rulemaking hearing ~~when~~ as required by the Administrative Procedures Act and rules of the Commission;

3. Have authority to make written recommendations to the Corporation Commission which have been concurred upon by at least a majority of the membership of the Council; and

4. Have the authority to provide a public forum for the discussion of issues it considers relevant to its area of jurisdiction, and to:

- a. pass nonbinding resolutions expressing the sense of the Council, and
- b. make recommendations to the Corporation Commission and its regulatory programs and the Indemnity Fund Program concerning the need and the desirability of conducting public meetings, workshops and seminars.

D. The Council shall not recommend rules for promulgation by the Corporation Commission unless all applicable requirements of the Administrative Procedures Act and rules of the Commission have been followed, including but not limited to notice, public comment period, rule impact statement and rulemaking hearings prior to the making of a recommendation. All actions of the Council with regard

to rulemaking shall be deemed actions of the Corporation Commission for the purposes of complying with the Administrative Procedures Act and rules of the Commission. The Council shall advise the Corporation Commission on initiating and conducting rulemaking proceedings pursuant to the Oklahoma Petroleum Storage Tank Reform Act, Petroleum Storage Tank Act and the Oklahoma Petroleum Tank Release Indemnity Fund Program.

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

F. 1. The Corporation Commission is specifically charged with the duty of promulgating rules which will implement the duties and responsibilities of the Oklahoma Storage Tank Regulation Act and the Oklahoma Petroleum Tank Release Indemnity Fund Program.

2. Except as provided in this subsection, rules within the jurisdiction of the Council provided for by this section shall be promulgated with the advice of such Council.

3. The Corporation Commission may promulgate emergency rules without the advice of the Council when the time constraints of the emergency, as determined by the Corporation Commission, do not permit timely development of recommendations by the Council.

4. If the Corporation Commission adopts any proposed permanent rules without the advice of the Council or not in accord with the advice of the Council, the Corporation Commission shall detail the reasons therefor on the rule report submitted to the Governor and the Legislature pursuant to Article 1 of the Administrative Procedures Act.

SECTION 29. AMENDATORY 17 O.S. 1991, Section 352, as last amended by Section 27, Chapter 375, O.S.L. 1998 (17 O.S. Supp. 2000, 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 or other person who owns property which either has or has had a storage tank system located thereon who has incurred costs, expenses or 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,~~

~~e. 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 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,
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 or at the time of 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 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 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 30. AMENDATORY 17 O.S. 1991, Section 354, as last amended by Section 1, Chapter 313, O.S.L. 1999 (17 O.S. Supp. 2000, 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 of subsection C of this section;~~

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

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

~~5.~~ 2. 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. The assessment shall not be precollected and remitted as provided herein from or on behalf of any owner or operator who meets the financial assurance requirements of the Petroleum Storage Tank Financial Responsibility Act through the use of a financial assurance mechanism other than participation in the Indemnity Fund Program.

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~~ paragraph 1 and ~~2~~ 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 31. AMENDATORY 17 O.S. 1991, Section 356, as last amended by Section 30, Chapter 375, O.S.L. 1998 (17 O.S. Supp. 2000, 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, when applicable, 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 or as otherwise provided by law,
- 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. The applicant's right to seek appropriate legal remedies shall not be limited or restricted, except as may be specifically provided by statute.

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. Notwithstanding the provisions of paragraph 1 of this subsection, eligible persons who are owners and operators of systems that have been upgraded to meet the requirements to continue to operate after December 22, 1998, and who suffer an eligible release after complying with said upgrade requirements, shall be reimbursed from the Indemnity Fund for allowable costs in excess of Five Hundred Dollars (\$500.00) 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.

3. 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~~ As reimbursement paid directly to compensate an owner or operator, 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 to determine eligibility 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~~ must be executed by the person seeking determination as an eligible person for reimbursement for costs incurred as the result of an eligible release. The person or company actually performing the investigation or corrective work may submit on behalf of an eligible person, claims for reimbursement pursuant to written authorization received from the eligible person. An eligible person may also assign the right to directly receive reimbursement payments directly to the person actually performing the investigation and corrective action.

L. Any person who prevails in an action brought pursuant to the Oklahoma Petroleum Storage Tank Release Indemnity Program to challenge a determination of ineligibility for reimbursement or 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 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~~ payment from the Indemnity Fund for any of the following: the costs of investigation, participation in the determination of ~~activities~~ the investigation and corrective action 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~~ the costs of abating a nuisance or addressing a trespass to property. The provisions of this section shall not limit the liability of an owner, operator or other eligible person for damages, injuries or the costs incurred as a result of an eligible release. The provisions of this section shall not limit the rights of any person to seek redress in the district court for bodily injury, property damage or other claims arising from an eligible release.

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 or determined ineligible by an administrative action of the Indemnity Fund Program upon an application, supplemental claim or resubmittal requesting a determination of eligibility or 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~~ shall be ~~made within two~~ ~~(2) years of the effective date of this act~~ filed on or before June 30, 2002, or two (2) years after site closure, whichever is later. Eligible persons should be encouraged to ~~submits~~ submit 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. The Indemnity Fund Program shall accept claims for reimbursement in all cases where the Commission has actual or constructive notice of a release.

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 or contractor 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. The reasonable cost of a task or scope of work that is currently considered reasonable may be the basis for reimbursing past claims, but may not be the basis for denying past claims. In reviewing past claims, the Indemnity Fund Program shall reimburse claims based upon standard billing rates and practices for environmental services reflecting costs typically incurred by owners and operators in similar circumstances as the owner or operator seeking reimbursement, for the time period contemporaneous with the period during which the costs were incurred.

SECTION 32. NEW LAW A new section of law not to be codified in the Oklahoma Statutes reads as follows:

The provisions of Sections 21 through 31 of this act shall be applicable to all current, pending, past and future storage tank claims and cases, provided that this subsection shall not apply, nor be construed to authorize or permit the reopening or review of the underlying claim or claims of any cases which were formerly settled pursuant to a formal settlement agreement or in which a final order was entered by the Corporation Commission.

SECTION 33. This act shall become effective July 1, 2001.

SECTION 34. 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.

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