

STATE OF OKLAHOMA

2nd Session of the 49th Legislature (2004)

CONFERENCE COMMITTEE
SUBSTITUTE
FOR ENGROSSED
HOUSE BILL NO. 2616

By: Wells of the House

and

Helton of the Senate

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to the Corporation Commission; amending 17 O.S. 2001, Sections 303, 306 and 310 which relate to the Oklahoma Storage Tank Regulation Act; defining terms; updating statutory references; modifying terms; authorizing the Corporation Commission to financially assist other agencies and political subdivisions of the state; authorizing the Petroleum Storage Tank Division to purchase real estate and easements for certain purposes; limiting liability; providing for disposition of property and proceeds; authorizing Director of the Petroleum Storage Tank Division to pursue certain action; amending 17 O.S. 2001, Sections 323 and 324, which relate to the Oklahoma Petroleum Storage Tank Reform Act; modifying the powers and duties of the Petroleum Storage Tank Division by authorizing division to financially assist other agencies and political subdivisions of the state, acquire real property for certain purposes, and acquire and sell personal property purchased or obtained by certain pay-for-performance contracts; authorizing expenditure of certain monies from the Petroleum Storage Tank Release Environmental Cleanup Indemnity Fund for certain purposes; amending 17 O.S. 2001, Section 340, which relates to the Storage Tank Advisory Council; providing for vacancy upon unexcused absences; modifying composition of advisory council membership; amending 17 O.S 2001, Sections 352, 353, 356 and 360, which relate to the Oklahoma Petroleum Storage Tank Release Indemnity Program; modifying definitions; authorizing the Indemnity Fund to provide reimbursement for certain site assessments; authorizing payment of certain employees from Indemnity Fund; exempting certain eligible persons from retaining an environmental consultant to conduct certain remediation; stating percentage of reimbursement copayment; prohibiting certain impacted property owners from remitting copayments to receive reimbursement from the Indemnity Fund; modifying interest rate for certain claims; providing for certain claims to be evaluated by the Indemnity Program at certain time; stating procedure for certain remediation contracts on behalf of cities or towns; stating procedures for disallowing claims and

providing for resubmission; authorizing the Indemnity Fund to expend funds for administrative functions; amending 27A O.S. 2001, Section 1-3-101, as last amended by Section 2 of Enrolled Senate Bill No. 1204 of the 2nd Session of the 49th Oklahoma Legislature, which relates to environmental agency jurisdictional areas of responsibilities; modifying certain jurisdiction for the Corporation Commission; amending 52 O.S. 2001, Sections 321, 324.1, 324.6, 325, 327, 328, 330, 332, 334 and 346, which relate to regulation of certain fuels; authorizing the Corporation Commission to appoint and assign certain employees for fuel inspection and compliance duties; prohibiting certain employees from engaging in professions regulated by the Petroleum Storage Tank Division; modifying jurisdiction of the Corporation Commission relating to certain fuels; requiring inspection of certain fuels; modifying penalties for violations; updating procedures for administration of certain statutes; stating violations and penalties for refusal to allow inspection of certain fuels; modifying Petroleum Storage Tank Division duties relating to fuel inspections; stating exception for certain fuel; providing certain administrative fine; repealing 17 O.S. 2001, Section 326, which relates to certain administrative audit of the Petroleum Storage Tank Division; repealing 52 O.S. 2001, Sections 322, 324.2, 324.4, 329, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344 and 345, which relate to fuel inspection; and declaring an emergency.

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

SECTION 1. AMENDATORY 17 O.S. 2001, 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. "Action level" means that the regulated substances have reached the level of contamination;

3. "Active case" means a confirmed release notice has been issued by the Corporation Commission to the owner or operator for the specified location;

4. "Backfill" means only the material placed in the excavation zone to support the petroleum storage tank system;

5. "Chemicals of concern" means chemicals that may pose a threat to human health and the environment;

6. "Closed case" means a previously active case which had a confirmed release and the Commission has issued a closure letter advising that no further remediation action is necessary on the site;

7. "Commission" means the ~~Oklahoma~~ Corporation Commission;

~~3-~~ 8. "Contaminants" or "contamination" means a level of concentration of chemicals of concern that may be sufficient to cause adverse effects upon human health or the environment or cause a nuisance;

9. "Corrective action" means action taken to monitor, ~~maintain~~ investigate, minimize, eliminate or ~~clean-up~~ perform remediation of a release from a storage tank system;

~~4-~~ 10. "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-~~ 11. "Department" means the Department of Environmental Quality;

~~6-~~ 12. "Director" means the Director of the Petroleum Storage Tank Division of the Corporation Commission;

~~7-~~ 13. "Division" means the Petroleum Storage Tank Division of the Corporation Commission;

~~8-~~ 14. "Eligible person" means the party who has made application to the Petroleum Storage Tank Release Environmental

Cleanup Indemnity Fund and met applicable criteria to receive
Petroleum Storage Tank Release Environmental Cleanup Indemnity Fund
reimbursement on a confirmed release;

15. "Eligible release" means a release of regulated substances
where the cost of cleanup is subject to reimbursement by the
Petroleum Storage Tank Release Environmental Cleanup Indemnity Fund;

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

~~9.~~ 17. "Environmental consultant" means an individual licensed
by the Commission or an environmental consulting company retaining
or employing a Commission-licensed remediation consultant;

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

~~10.~~ 19. "Facility" means any location or part thereof
containing one or more storage tanks or systems;

~~11.~~ 20. "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.~~ 21. "New system" means a storage tank system for which the
installation of the system began on or after April 21, 1989;

~~13.~~ 22. "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.~~ 23. "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, any person who holds title to, controls, or possesses an interest in a storage tank system immediately before the discontinuation of its use.

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

~~15.~~ 24. "Permit" means any registration, permit, license or other authorization issued by the Commission to operate a storage tank system;

~~16.~~ 25. "Person" means any individual, trust, firm, joint stock company or corporation, limited liability company, ~~federal agency, corporation, including a government corporation,~~ partnership, association, any representative appointed by order of a court, the state ~~or,~~ any state agency, municipality, county, school district or other political subdivision or agency of the state, or any interstate body. The term also includes a consortium, a joint venture, a commercial entity, ~~and~~ the United States Government, a

federal agency, including a government corporation, or any other legal entity;

~~17.~~ 26. "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.~~ 27. "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.~~ 28. "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.~~ 29. "Regulated substances" means hazardous substances or petroleum which are regulated pursuant to the Oklahoma Storage Tank Regulation Act;

~~21.~~ "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.~~ 30. "Release" means any spilling, overfilling, or leaking from a storage tank system that goes beyond the excavation zone, tankpit, or secondary containment facility into the environment;

31. "Remediation" means a process or technique used to reduce concentration levels of chemicals of concern in the soil and groundwater, and/or to reduce the presence of free product in the environment to levels that are protective of human health, safety and the environment;

32. "Residual product" means petroleum that is absorbed or otherwise bound to geological materials including, but not limited to, sand, silt, or clay in any soil zone in such a manner that groundwater in contact with the residual product or beneath the residual product is not contaminated with regulated substances;

33. "Smear zone" means any soil zone containing petroleum that may contaminate groundwater in contact with regulated substances;

34. "Soil zone" means and includes, but is not limited to, vadose zone, capillary fringe, or saturated soil zone;

35. "Storage tank system" means ~~any one or combination of tanks, including underground piping connected thereto, that is used to contain an accumulation of regulated substances~~ a closed-plumbed system including, but not limited to, the storage tank, the lines, the dispenser for a given product, and a delivery truck that is connected to the storage tank system;

36. "Suspicion of release" means preliminary investigative work or assessment performed under a Petroleum Storage Tank Division purchase order to determine if a confirmed release is warranted. The Petroleum Storage Tank Division eligibility process is not required for Petroleum Storage Tank Release Environmental Cleanup Indemnity Fund reimbursement on a suspicion of release;

~~23.~~ 37. "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.~~ 38. "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.~~ 39. "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; and

40. "Work plan" means scopes of work necessary to investigate and/or remediate a release from a storage tank system.

SECTION 2. AMENDATORY 17 O.S. 2001, 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 pursuant 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~~ pursuant thereto;

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

9. Advise, consult, assist, 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. Financially assist other agencies and political subdivisions of the state where the Petroleum Storage Tank Division has jurisdiction;

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

~~11.~~ 12. Promulgate and enforce rules to implement the provisions of the Oklahoma Storage Tank Regulation Act;

~~12.~~ 13. Establish minimum standards and schedules for storage tank system;

~~13.~~ 14. 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 pursuant 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.~~ 15. 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 Oklahoma Storage Tank Regulation Act, the owner or operator of ~~said~~ the facility on application to the Commission shall be afforded a hearing within ten (10) days. Any penalties or fines ~~levied under~~ assessed pursuant to 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.~~ 16. 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.~~ 17. Prepare an emergency response plan for spills or releases of regulated substances or review emergency response plans developed outside the Commission;

~~17.~~ 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 pursuant 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~~ internally coordinated management system ~~among~~ between the Storage Tank Regulation Program and the Oklahoma Petroleum Storage Tank Release Indemnity Program;
~~and~~

~~19.~~ 20. When necessary, economically advantageous, reasonable and integral to a remediation effort or to establish an alternative water supply, the Petroleum Storage Tank Division may purchase real property and easements conjunctive with a remediation effort and/or the establishment of an alternative water supply with funds from the Petroleum Storage Tank Release Environmental Cleanup Indemnity Fund. Provided, no real property shall be purchased by the Commission pursuant to this paragraph which will impose liability on the Petroleum Storage Tank Release Environmental Cleanup Indemnity Fund or on the state for environmental claims or hazards. Disposition of property purchased by the Petroleum Storage Tank Release Environmental Cleanup Indemnity Fund shall be made pursuant to the provisions of Section 129.4 of Title 74 of the Oklahoma Statutes. Proceeds from any sale shall be deposited to the credit of the Petroleum Storage Tank Release Environmental Cleanup Indemnity Fund;
and

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

SECTION 3. AMENDATORY 17 O.S. 2001, Section 310, is amended to read as follows:

Section 310. A. If upon inspection or investigation, or whenever the Corporation Commission determines that there are reasonable grounds to believe that a storage tank system is in violation of the Oklahoma Storage Tank Regulation Act, ~~Section 301 et seq. of this title,~~ or of any rule promulgated ~~thereunder~~ pursuant thereto or of any order of the Commission, the Commission shall give written notice to the alleged violator specifying the cause of complaint within twenty (20) days after the Commission determines that there are reasonable grounds to believe that the facility is in violation of the Oklahoma Storage Tank Regulation Act, the rules promulgated ~~thereunder~~ pursuant thereto or any order of the Commission issued ~~pursuant thereto~~ thereunder. Such notice shall require that corrective action be immediately initiated. The notice shall be delivered to the alleged violator in accordance with the provisions of subsection C of this section.

B. 1. If corrective action is not taken in response to the notice issued pursuant to subsection A of this section, the Commission shall initiate proceedings and hold a hearing to determine if:

- a. the alleged violator should be found in violation of Commission rules,
- b. the alleged violator should be found to be in violation of the provisions of the Oklahoma Storage Tank Regulation Act,
- c. the permit issued to the alleged violator should be suspended, revoked or not reissued,
- d. the application for a permit should be denied, or
- e. whether any other appropriate relief should be granted.

2. Notice of the hearing may be combined with the notice issued pursuant to subsection A of this section and shall be delivered to the alleged violator at least twenty (20) days prior to the time set for hearing. The notice shall be delivered to the alleged violator in accordance with the provisions of subsection C of this section.

3. After hearing, the Commission shall make findings of fact and conclusions of law, and enter its order reflecting its decision in the matter. The order of the Commission shall become final and binding on all parties unless appealed to the Supreme Court as provided in Section 318 of Title 75 of the Oklahoma Statutes within sixty (60) days after the date notice of the Commission's order has been sent to the parties. Except as otherwise provided by this section, Sections 319 through 322 of Title 75 of the Oklahoma Statutes shall be applicable to such appeals.

C. 1. Except as otherwise expressly provided by law, any notice, order, or other instrument issued by or pursuant to authority of the Commission may be served on any person affected thereby personally, by publication, or by mailing a copy of the notice, order, or other instrument by certified mail directed to the person affected at ~~his~~ the last-known post office address as shown by the files or records of the Commission. Proof of service shall be made as in the case of service of a summons or by publication in a civil action or may be made by the affidavit of the person who did the mailing.

2. Such proof of service shall be filed in the office of the Commission.

3. Every certificate or affidavit of service made and filed as provided in this section ~~provided~~ shall be prima facie evidence of the facts therein stated. A certified copy thereof shall have like force and effect.

D. 1. The Commission shall provide notice and an opportunity for hearing to:

~~1. The~~

a. the surface owner of real property where any corrective action is to be taken if such person is not the owner or operator of the storage tank system~~r,~~ and

~~2. The~~

b. the owner of real property adjacent to the location of the corrective action if such real property owner will be adversely affected by the corrective action.

2. The notice shall advise such real property owner or owners that the corrective action is to be taken and that the owner's cooperation will be required for that action to be taken. The Commission shall give the owner or owners of such real property, as the case might be, an opportunity for hearing and to present evidence on the matter.

E. 1. The ~~Corporation~~ Commission is vested with the adjudicative authority to enter orders allowing a tank owner or operator access to property not owned by ~~such~~ the tank owner or operator when necessary to investigate, remediate or perform corrective action as the result of a release. Such actions shall be brought by the tank owner or operator seeking access to the property not owned by the tank owner or operator or by the Director of the Petroleum Storage Tank Division.

2. An order granting access shall only be entered upon a determination that access cannot be obtained by any other means and that the tank owner or operator seeking access has made a good faith effort to obtain access.

3. The Commission shall determine the reasonable compensation, if any, to be paid to the owner of the property which is to be accessed for the use of the property to investigate, remediate or perform corrective action as the result of a release.

4. An order granting access to property shall be upon such terms as to reasonably minimize the impact of the access upon the

~~owners~~ owner's use of the property and to protect the rights of the property owner.

SECTION 4. AMENDATORY 17 O.S. 2001, Section 323, is amended to read as follows:

Section 323. Within its jurisdictional areas of responsibility, the Petroleum Storage Tank Division shall have the power and duty to:

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

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

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

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

5. Financially assist other agencies and political subdivisions of the state;

6. Develop standards for pipeline terminal and refinery delivery point metering and calibration and provide for appropriate inspection and regulation of such meters where the metered product is to be delivered to petroleum storage tanks;

~~6.~~ 7. Encourage and conduct studies, investigations and research relating to petroleum-storage-tank-related pollution and its causes, effects, prevention, control and abatement;

~~7.~~ 8. Collect and disseminate information relating to petroleum-storage-tank-related pollution, its prevention and control;

~~8.~~ 9. Enter into agreements for, accept, use, disburse and administer grants of money, personnel and property from the federal government or any department or agency thereof, or from any state or state agency, or from any other source, to promote and conduct in this state any program relating to petroleum storage tank regulation;

~~9.~~ 10. Determine, charge and receive fees to be collected for services, research and permits, to file other papers, to make copies of documents, to make prints of maps and drawings, and to certify copies of documents, maps and drawings as authorized by law;

~~10.~~ 11. Provide a toll-free hot line for petroleum-storage-tank-related complaints;

~~11.~~ 12. Cause investigations, inquiries and inspections to be made. The Director or authorized representatives of the Director shall have the right of access to any property which has or may have a ~~fuel~~ petroleum storage tank on the premises for such purpose at any reasonable time, upon presentation of identification;

~~12.~~ 13. Authorize personnel in the Petroleum Storage Tank Division to conduct investigations, inquiries, and to perform other acts that the Director is authorized or required to conduct or perform;

~~13.~~ 14. Enforce the provisions of the Oklahoma Petroleum Storage Tank Reform Act;

~~14.~~ 15. Request criminal prosecution proceedings as authorized by law against any person or entity which has violated any of the provisions of the Oklahoma Petroleum Storage Tank Reform Act or order issued or any rule promulgated pursuant thereto; ~~and~~

~~15.~~ 16. Acquire real property in the exercise of its powers for the performance of its duties as authorized by Section 306 of this title. Real property acquired under Section 306 of this title shall be disposed of by the Petroleum Storage Tank Division and the Department of Central Services. The proceeds of the sale shall be

deposited in the Petroleum Storage Tank Release Environmental Cleanup Indemnity Fund;

17. Acquire and sell personal property which has been purchased or obtained by a pay-for-performance contract pursuant to Section 356 of this title. Surplus personal property shall be disposed of by the Petroleum Storage Tank Division and the Department of Central Services pursuant to the Oklahoma Surplus Property Act. The proceeds of the sale shall be deposited in the Petroleum Storage Tank Release Environmental Cleanup Indemnity Fund; and

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

SECTION 5. AMENDATORY 17 O.S. 2001, 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~~ Oklahoma Petroleum Storage Tank Release Indemnity Program; and

3. Reimbursement of actual costs incurred by the Division for the administration of the Petroleum Storage Tank Release Environmental Cleanup Indemnity Fund; and

4. Purchase real property, personal property and easements in conjunction with a remediation effort and/or the establishment of an

alternative water supply as provided for in Section 306 of this title.

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.

SECTION 6. AMENDATORY 17 O.S. 2001, Section 340, is amended to read as follows:

Section 340. A. 1. There is hereby created within the Corporation Commission the Storage Tank Advisory Council. The Council shall consist of nine (9) members.

2. Three members shall be appointed by the Governor, three members shall be appointed by the Speaker of the House of Representatives and three members shall be appointed by the President Pro Tempore of the Senate.

3. 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.

4. Members shall continue to serve until their successors are appointed.

5. If a member resigns or fails to attend three meetings with unexcused absences as determined by the chair of the Council in a twelve-month period of the Council, their appointment shall be deemed vacant and the chair of the Council shall notify the original appointing authority.

6. Any vacancy shall be filled in the same manner as the original appointments.

7. Five members shall constitute a quorum.

B. The Council shall be composed as follows:

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

- a. two members who shall be storage tank owners or operators or an agent thereof, and
- b. one member who shall be a licensed ~~storage tank~~ remediation consultant or ~~contractor~~ an owner-operator of an environmental company;

2. The President Pro Tempore of the Senate shall appoint three ~~(3)~~ members as follows:

- a. two members who shall be storage tank owners or operators or an agent thereof, and
- b. one member who shall be a geologist; and

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

- a. two members who shall be storage tank owners or operators or an agent thereof, and
- b. one member who shall be a registered professional engineer.

~~B.~~ C. 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)~~ members.

~~C.~~ D. 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 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 Oklahoma Petroleum Storage Tank Release Indemnity Fund Program concerning the need and the desirability of conducting public meetings, workshops and seminars.

~~D.~~ E. 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, rule impact statement and rule-making hearings. All actions of the Council with regard to rule-making 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 rule-making proceedings pursuant to the Oklahoma Petroleum Storage Tank Reform Act, ~~Petroleum~~ Oklahoma Storage Tank Regulation Act and the Oklahoma Petroleum Storage Tank Release Indemnity ~~Fund~~ Program.

~~E.~~ F. 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.~~ G. 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 Storage 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 7. AMENDATORY 17 O.S. 2001, 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. "Administrative application" means an application for eligibility and reimbursement made to the Petroleum Storage Tank Release Environmental Cleanup Indemnity Fund by the Director of the

Petroleum Storage Tank Division on behalf of an unavailable or unwilling applicant;

3. "Assignment of benefits" means a written directive from the applicant of record instructing the Commission to pay reimbursement directly to the named assignee including, but not limited to, an environmental contractor;

4. "Assignment of rights" or "limited power of attorney" means a transfer of authority granting the assignee the legal right to act on grantor's behalf on specified matters;

5. "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.~~ 6. "Eligible person" means any:

- a. owner or operator of a storage tank system who has incurred liability as a result of an eligible release, and who meets the requirements specified in Section 356 of this title, or
- b. person who on or after November 8, 1984, purchases property on which a storage tank system is located if:
 - (1) the storage tank system was located on the property on November 8, 1984,
 - (2) such person could not have known that such storage tank system existed. The burden shall be upon such purchaser to show that such purchaser did not know or should not have known of the existence of such storage tank system,
 - (3) the owner or operator of the storage tank system responsible for the system cannot be determined by the Corporation Commission or the

Administrator, or the owner or operator of the storage tank system responsible for the system is incapable, in the judgment of the Corporation Commission, of properly carrying out any necessary corrective action, and

(4) either, funds are unavailable from the Oklahoma Leaking Underground Storage Tank Trust Fund or the storage tank system is not eligible for corrective action taken pursuant to Section 365 of this title,

c. person who acquired ownership of a tank through inheritance as denoted in an Order Allowing Final Account and Determination of Heirship and Decree of Final Distribution or is responsible for a release by reason of owning the real property through inheritance within which a tank or a release is or was located if:

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

(2) the operator of the storage tank system responsible for the system or responsible for a release cannot be determined or found by the Corporation Commission, or the operator of the storage tank system responsible for the system or responsible for the release is incapable, in the judgment of the Corporation Commission, of properly carrying out any necessary corrective action,

(3) either funds are unavailable from the Oklahoma Leaking Underground Storage Tank Trust Fund or the storage tank system or release is not eligible for corrective action taken pursuant to Section 365 of this title,

- (4) the person did not participate or was not responsible in any manner, directly or indirectly, in the management of the storage tank system or for the release and otherwise is not engaged in petroleum production, refining or marketing, and
- (5) the person meets the requirements specified in Section 356 of this title;

~~4.~~ 7. "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.~~ 8 "Impacted party" means an owner whose property has been impacted by a release from an on-site or off-site petroleum storage tank which the impacted person did not own or operate and for which the impacted person has had no responsibility under Commission rules. An impacted party may apply for an eligibility determination on reimbursement from the Petroleum Storage Tank Release Environmental Cleanup Indemnity Fund. An impacted party is not subject to the Petroleum Storage Tank Release Environmental Cleanup Indemnity Fund deductible;

9. "Indemnity Fund" means the Petroleum Storage Tank Release Environmental Cleanup Indemnity Fund;

~~6.~~ 10. "Indemnity Fund Program" means the Oklahoma Petroleum Storage Tank Release Indemnity Program established to administer the Indemnity Fund;

~~7.~~ 11. "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.~~ 12. "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.~~ 13. "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, any person who holds title to, controls, or possesses an interest in a storage tank system immediately before the discontinuation of its use.

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

~~10.~~ 14. "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.~~ 15. "Pay-for-performance" means a process by which an environmental consultant guarantees, by executing a contract pursuant to the provisions of this paragraph, that a release of a regulated substance will be remediated to levels agreed to by the Commission and the consultant. Such levels must be protective of human health, safety and the environment. The performance-based process encompasses several steps including, but not limited to, the development of a contract signed by an officer/owner of the environmental consultant, the eligible person and the Administrator

of the Petroleum Storage Tank Release Environmental Cleanup Indemnity Fund. The contract shall contain any agreed upon reasonable price for the work to be performed. Scheduled payments shall be distributed only as performance-based goals are attained;

16. "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.~~ 17. "Purchase order" means a performance-based agreement negotiated between an environmental consultant and the Petroleum Storage Tank Division stipulating a scope of work to be performed by a target date, for which the Petroleum Storage Tank Release Environmental Cleanup Indemnity Fund will reimburse a specified amount;

18. "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 incurred allowable costs resulting from an eligible release;

~~13.~~ 19. "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.~~ 20. "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.~~ 21. "Storage tank" or "storage tank system" means a storage system as such term is defined by the Oklahoma Storage Tank Regulation Act; and

~~16.~~ 22. "Tax Commission" means the Oklahoma Tax Commission.

SECTION 8. AMENDATORY 17 O.S. 2001, Section 353, is amended to read as follows:

Section 353. A. There is hereby created within the Corporation Commission, the "Petroleum Storage Tank Release Environmental Cleanup Indemnity Fund". The Director shall hire an Administrator who shall administer the Indemnity Fund and Indemnity Fund Program. The Indemnity Fund shall be administered by the Administrator for the benefit of those persons determined to be eligible by the Administrator to receive total or partial reimbursement for:

1. The costs determined to be eligible by the Administrator in preparing a corrective action plan;

2. The cost of corrective action taken in response to an eligible release;

3. Payment of claims for property damage or personal injury resulting from an eligible release; and

4. Necessary costs incidental to the cost of a site assessment or the corrective action taken and for filing and obtaining reimbursement from the Indemnity Fund.

B. Reimbursements made to or for the benefit of eligible persons shall be exempt from the Oklahoma Central Purchasing Act, ~~Section 85.1 et seq. of Title 74 of the Oklahoma Statutes.~~

C. 1. Costs incurred as a result of a release from a storage tank system owned or operated by this state or by the federal government are not reimbursable pursuant to the provisions of the Oklahoma Petroleum Storage Tank Release Indemnity Program. State and federally owned facilities shall take the proper corrective action as may be necessary to protect the environment from a leaking storage tank system. Provided, that an agency of the state may access said fund for reimbursement when it 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. In such case, the agency of the state shall be reimbursed for allowable costs in excess of Five Thousand Dollars (\$5,000.00) at the same level or amount of reimbursement as the qualified owner or operator would have received pursuant to Section 356 of Title 17 of the Oklahoma Statutes.

2. Costs incurred as a result of a release from a storage tank system owned or operated by a Class I Railroad are not reimbursable pursuant to the provisions of the Oklahoma Petroleum Storage Tank Release Indemnity Program.

D. The Indemnity Fund shall consist of:

1. All monies received by the ~~Corporation~~ Commission as proceeds from the assessment imposed pursuant to Section 354 of this title;

2. Interest attributable to investment of money in the Indemnity Fund; and

3. Money received by the ~~Corporation~~ Commission in the form of gifts, grants, reimbursements, or from any other source intended to be used for the purposes specified by or collected pursuant to the

provisions of the Oklahoma Petroleum Storage Tank Release Indemnity Program.

E. 1. The monies deposited in the Indemnity Fund shall at no time become monies of the state and shall not become part of the general budget of the ~~Corporation~~ Commission or any other state agency. Except as otherwise authorized by ~~this subsection~~ the Oklahoma Storage Tank Regulation Act and the Oklahoma Petroleum Storage Tank Release Indemnity Program, no monies from the Indemnity Fund shall be transferred for any purpose to any other state agency or any account of the ~~Corporation~~ Commission or be used for the purpose of contracting with any other state agency or reimbursing any other state agency for any expense.

2. No monies from the Indemnity Fund shall be used to pay or reimburse the ~~Corporation~~ Commission for the salary of any employee, except for the Compliance and Inspection Division, while such employee is performing work involved in the regulation of storage tanks pursuant to the Oklahoma Storage Tank Regulation Act or the administration of programs pursuant to said act, including the development, review and approval of corrective action plans as required by the regulatory programs. The Commission shall ~~crossstrain~~ cross train the field staff of the Petroleum Storage Tank Division to perform inspections and related field activities for all programs within the Division and the Oklahoma Petroleum Storage Tank Release Indemnity Fund Program may reimburse the Division the actual costs of inspection services performed on behalf of the Oklahoma Petroleum Storage Tank Release Indemnity Fund Program.

3. Monies in the Indemnity Fund shall only be expended for:
- a. reimbursements to eligible persons unless duly assigned to another, and
 - b. costs incurred by the Indemnity Fund Program for the administration of the fund and costs incurred for the sole purpose of evaluating claims and determining

whether specific claims qualify for payment or reimbursement from such Indemnity Fund.

Any costs incurred by and reimbursed to the ~~Corporation~~ Commission pursuant to the provisions of the Oklahoma Petroleum Storage Tank Release Indemnity Program shall not exceed the actual expenditures made by the ~~Corporation~~ Commission to implement the provisions of the Oklahoma Petroleum Storage Tank Release Indemnity Program.

4. Payment of claims from the Indemnity Fund shall not become or be construed to be an obligation of this state. No claims submitted for reimbursement from the Indemnity Fund shall be paid with state monies.

SECTION 9. AMENDATORY 17 O.S. 2001, 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 Oklahoma Petroleum Storage Tank Release Indemnity ~~Fund~~ Program for such reimbursement. The only information required to be filed with the application shall be that information required by the Oklahoma Petroleum Storage Tank Release Indemnity ~~Fund~~ Program to determine eligibility for reimbursement.

1. The following information may accompany the application and shall be required prior to any reimbursement:

- a. documentation of site conditions prior to initiation of corrective action,
- b. a record of the costs actually incurred by the eligible person for each corrective action taken,
- c. evidence that the corrective action was completed or will be completed in accordance with cleanup criteria

established pursuant to the Oklahoma Storage Tank Regulation Act,

- d. how any other financial responsibility requirements will be met,
- e. whether there is any other liability coverage for the release,
- f. any injury to property or physical injury incurred as a result of the release,
- g. the corrective action plan approved by or submitted to the Storage Tank Regulation Program, and
- h. such other information and records as the Oklahoma Petroleum Storage Tank Release 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 Oklahoma Petroleum Storage Tank Release Indemnity Fund Program:

- a. 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,~~
- b. shall require that an eligible person or a property owner whose off-site property has been contaminated by

a release shall not retain an environmental consultant to conduct the remediation of the release in which the eligible person, property owner, or impacted party has more than a ten percent (10%) interest ownership, is an employee, or is an officer of the environmental consultant, and

c. may require the owner or operator to submit documentation evidencing proof of such competitive bidding.

2. 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~~ subsection, expenditures made without bids shall only be reimbursed by the amount determined to be the reasonable value of the equipment purchased or the task or scope of work performed.

~~2.~~ 3. 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 Oklahoma Petroleum Storage Tank Release Indemnity Fund Program during regular business hours, and at other times upon written request. In addition, the employees, agents and representatives of the Oklahoma Petroleum Storage Tank Release 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 Oklahoma Petroleum Storage Tank Release 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 or her eligibility in writing.

2. Disposition of an application shall be provided to the applicant in writing, accompanied by a written explanation setting forth in detail the reason or reasons for the approval or denial of a claim, in whole or in part. If the Administrator fails to make a determination on an application or payment within the time provided or denies an application, or if a dispute otherwise arises with regard to reimbursement, the applicant may seek appropriate legal remedies.

3. For claims submitted subsequent to submittal of the application, the Administrator shall have thirty (30) days from the date of receipt of the supplemental claim in which to approve or deny the supplemental claim. If a supplemental claim is made subsequent to the date of the application but prior to the completion of the review of the application, the thirty-day review period shall not commence until the Oklahoma Petroleum Storage Tank Release 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 Petroleum Storage Tank Release Environmental Cleanup Indemnity Fund.

H. 1. ~~Eligible persons~~ An eligible person shall be reimbursed from the Indemnity Fund for allowable costs in excess of ~~Five Thousand Dollars (\$5,000.00)~~ but not more than the copayment of one percent (1%) of the reimbursable costs for the remediation. Copayments shall not exceed a maximum of Five Thousand Dollars (\$5,000.00). The Indemnity Fund shall charge the eligible person directly for an initial one-thousand-dollar copayment and thereafter in one-thousand-dollar increments as warranted by the progressive total case costs. When the total case cost is finalized, the Petroleum Storage Tank Release Environmental Cleanup Indemnity Fund shall reimburse the eligible person any overpayment of the one-percent copayment.

2. An impacted party whose on-site or off-site property has been contaminated by a release who elects the procedure authorized by this subsection shall not be required to remit copayments in order to receive reimbursement from the Petroleum Storage Tank Release Environmental Cleanup Indemnity Fund.

3. Reimbursements shall not exceed:

- 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.~~ 4. Reimbursement shall not be made from the Petroleum Storage Tank Release Environmental Cleanup 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 Petroleum Storage Tank Release Environmental Cleanup Indemnity Fund ~~will~~ shall cover corrective action taken and other actual physical damage caused by an eligible release. The Petroleum Storage Tank Release Environmental Cleanup Indemnity Fund ~~will~~ shall 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 Petroleum Storage Tank Release Environmental Cleanup Indemnity Fund shall not be used to:

1. Recover payments for loss of time;

2. Recover payment of costs which may be associated with but are not integral to corrective action such as the cost of renovating, removing or disposing of storage tanks unless the removing of any tanks, concrete, concrete accessories, lines, dispensers or other site improvements is necessary as required by a corrective action plan approved by the ~~Corporation~~ Commission's regulatory program;

3. Pay for punitive damages from any civil action resulting from the eligible release;

4. Recover costs for loss of business and taking of property associated with the corrective action; or

5. Pay legal expenses.

J. The right to apply for reimbursement and the receipt of reimbursement does not limit the liability of an owner or operator for damages, injuries or the costs incurred as a result of an eligible release.

K. The right to file the initial application, supplemental claims, and resubmittals for reimbursement and the right to certify that costs are true, correct and actually incurred ~~may~~ shall not be assigned to a person rendering services for corrective action on the subject site.

L. Any person who prevails in an action brought pursuant to the Oklahoma Petroleum Storage Tank Release Indemnity Program to recover claims disallowed by an administrative action of the Oklahoma Petroleum Storage Tank Release Indemnity ~~Fund~~ Program upon an application, supplemental claim or resubmittal requesting ~~reimbursement~~ 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. 1. In any case that has been determined to be eligible for reimbursement from the Petroleum Storage Tank Release Environmental Cleanup Indemnity Fund, a property owner whose property has been contaminated by an eligible release may remediate his or her own property and make direct application to and receive reimbursement from the Petroleum Storage Tank Release Environmental Cleanup Indemnity Fund for any of the following:

- a. the costs of investigation,
- b. participation in the determination of activities to be conducted upon the site,
- c. corrective action, and
- d. remediation of his or her property.

~~Such reimbursement~~ 2. Reimbursement shall be subject to the same requirements as requests for reimbursement made by the eligible person on such sites and shall be handled in the same manner as other sites which have adjacent release or overlapping or commingled plumes.

N. In the event the Oklahoma Petroleum Storage Tank Release Indemnity Fund Program fails to reimburse a claim as provided by this section, any person who prevails in an action brought pursuant to the Oklahoma Petroleum Storage Tank Release Indemnity Program to recover claims disallowed by an administrative action of the Oklahoma Petroleum Storage Tank Release Indemnity Fund Program upon an application, supplemental claim or resubmittal requesting reimbursement shall be entitled to receive interest upon such claim at the rate of ~~twelve percent (12%) per annum~~ provided for in subsection I of Section 727 of Title 12 of the Oklahoma Statutes.

O. 1. Claims for reimbursement pursuant to the Oklahoma Petroleum Storage Tank Release Indemnity Program must be made within two (2) years of ~~the effective date of this act~~ June 9, 1998, or two (2) years after site closure, whichever is later.

2. Eligible persons should be encouraged to 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.

3. All claims, including but not limited to, resubmitted claims, shall be evaluated by the Oklahoma Petroleum Storage Tank Release Indemnity Program under the system of evaluation employed by the Indemnity Fund Program at the time the costs were incurred. Nothing in this paragraph shall prevent a claimant from challenging the validity of the system of evaluation employed by the Indemnity Fund at the time the costs were incurred.

P. 1. The Oklahoma Petroleum Storage Tank Release Indemnity Fund Program is authorized to enter into contracts for site remediation or corrective action which ~~are~~ may be performance based. Parties to such contracts shall be the eligible person, the off-site owner, the impacted party, the licensed storage tank remediation consultant guaranteeing and the Oklahoma Petroleum Storage Tank Release Indemnity Fund Program which may guarantee the remediation or corrective action ~~and the Indemnity Fund Program~~. Each party must execute the contract before it is effective.

2. If:

- a. an owner or operator is not available and a storage tank system has made a release into the environment,
or
- b. where there is a suspicion of a release onto any property where tanks are located and/or onto property proximate thereto, or where tanks are located and a site assessment is necessary to confirm a release or perform tank closure, and
- c. such property is located within the limits of the town or city,

the town or city may obtain assignments from property owners in order to assume the rights of an eligible party for the purpose of reimbursement of the costs associated with the assessment, investigation and remediation of any site.

3. The Administrator of the Petroleum Storage Tank Release Environmental Cleanup Indemnity Fund may also designate a town or city to be an eligible party for the purpose of reimbursement of the costs associated with the assessment, investigation and remediation of any site.

4. If the town or city has title to the property or is the recipient of proceeds from a sale or auction of the property, the town or city shall reimburse the Petroleum Storage Tank Release Environmental Cleanup Indemnity Fund for any required copayment within three (3) years from the closure of the case.

5. 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, and
- 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.~~ 6. Any consultant or company 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 Oklahoma Petroleum Storage Tank Release 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 Oklahoma Petroleum Storage

Tank Release 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.

S. 1. When a claim submitted for first reimbursement consideration is disallowed in whole or in part by the Administrator of the Petroleum Storage Tank Release Environmental Cleanup Indemnity Fund, an applicant shall have ninety (90) days to resubmit the disallowed claim for reconsideration. Unless otherwise authorized by the Administrator of the Petroleum Storage Tank Release Environmental Cleanup Indemnity Fund, resubmittal of a claim that has been disallowed in whole or in part shall only be allowed one time.

2. Except as otherwise provided by this paragraph, if the disallowed claim is not resubmitted within ninety (90) days from the date of the disallowance, the claim shall no longer be eligible for reimbursement from the Petroleum Storage Tank Release Environmental Cleanup Indemnity Fund. An action by the applicant disputing a disallowed claim shall be commenced within one (1) year of the date

of the last disallowance and shall be brought for an administrative hearing before the Commission.

3. Any applicant that, prior to November 1, 2004, has incurred a disallowance of a claim in whole or in part and has not resubmitted the disallowed claim for further consideration has until February 28, 2005, to resubmit the disallowed claim for such consideration. After February 28, 2005, the claim shall be deemed denied and shall no longer be eligible for reconsideration or reimbursement from the Petroleum Storage Tank Release Environmental Cleanup Indemnity Fund.

4. The Director of the Petroleum Storage Tank Division may consider hardship exceptions such as, but not limited to, active military duty, to the time limits contained in this subsection.

SECTION 10. AMENDATORY 17 O.S. 2001, Section 360, is amended to read as follows:

Section 360. A. Annual expenditures from the Petroleum Storage Tank Release Environmental Cleanup Indemnity Fund for costs incurred for the administration of the Indemnity Fund shall be ~~limited to ten percent (10%) of the amount of claims paid during such year not to exceed One Million Dollars (\$1,000,000.00) per fiscal year~~ established by the Legislature by budgetary limits for the annual expenditures from the Petroleum Storage Tank Release Environmental Cleanup Indemnity Fund for direct and indirect expenses incurred for the administration of the Indemnity Fund administrative functions of the Corporation Commission.

B. The Administrator shall make written reports on a quarterly basis to the Speaker of the House of Representatives and the President Pro Tempore of the Senate detailing expenditures on personnel and equipment and other expenses concerning and incurred as a result of administering the Petroleum Storage Tank Release Environmental Cleanup Indemnity Fund. The report shall include salaries and fringe benefits of all full-time-equivalent employees

of the Petroleum Storage Tank Release Environmental Cleanup Indemnity Fund and reimbursements made to the ~~Corporation~~ Commission by division for administrative or support services provided by the Commission to the Petroleum Storage Tank Release Environmental Cleanup Indemnity Fund.

SECTION 11. AMENDATORY 27A O.S. 2001, Section 1-3-101, as last amended by Section 2 of Enrolled Senate Bill No. 1204 of the 2nd Session of the 49th Oklahoma Legislature, is amended to read as follows:

Section 1-3-101. A. The provisions of this section specify the jurisdictional areas of responsibility for each state environmental agency and state agencies with limited environmental responsibility. The jurisdictional areas of environmental responsibility specified in this section shall be in addition to those otherwise provided by law and assigned to the specific state environmental agency; provided that any rule, interagency agreement or executive order enacted or entered into prior to the effective date of this section which conflicts with the assignment of jurisdictional environmental responsibilities specified by this section is hereby superseded. The provisions of this subsection shall not nullify any financial obligation arising from services rendered pursuant to any interagency agreement or executive order entered into prior to July 1, 1993, nor nullify any obligations or agreements with private persons or parties entered into with any state environmental agency before July 1, 1993.

B. Department of Environmental Quality. The Department of Environmental Quality shall have the following jurisdictional areas of environmental responsibility:

1. All point source discharges of pollutants and storm water to waters of the state which originate from municipal, industrial, commercial, mining, transportation and utilities, construction, trade, real estate and finance, services, public administration,

manufacturing and other sources, facilities and activities, except as provided in subsections D and E of this section;

2. All nonpoint source discharges and pollution except as provided in subsections D, E and F of this section;

3. Technical lead agency for point source, nonpoint source and storm water pollution control programs funded under Section 106 of the federal Clean Water Act, for areas within the Department's jurisdiction as provided in this subsection;

4. Surface water and groundwater quality and protection and water quality certifications;

5. Waterworks and wastewater works operator certification;

6. Public and private water supplies;

7. Underground injection control pursuant to the federal Safe Drinking Water Act and 40 CFR Parts 144 through 148, except for Class II injection wells, Class V injection wells utilized in the remediation of groundwater associated with underground or aboveground storage tanks regulated by the Corporation Commission, and those wells used for the recovery, injection or disposal of mineral brines as defined in the Oklahoma Brine Development Act regulated by the ~~Corporation~~ Commission;

8. Air quality under the federal Clean Air Act and applicable state law, except for indoor air quality and asbestos as regulated for worker safety by the federal Occupational Safety and Health Act and by Chapter 11 of Title 40 of the Oklahoma Statutes;

9. Hazardous waste and solid waste, including industrial, commercial and municipal waste;

10. Superfund responsibilities of the state under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 and amendments thereto, except the planning requirements of Title III of the Superfund Amendment and Reauthorization Act of 1986;

11. Radioactive waste and all regulatory activities for the use of atomic energy and sources of radiation except for the use of sources of radiation by diagnostic x-ray facilities;

12. Water, waste, and wastewater treatment systems including, but not limited to, septic tanks or other public or private waste disposal systems;

13. Emergency response as specified by law;

14. Environmental laboratory services and laboratory certification;

15. Hazardous substances other than branding, package and labeling requirements;

16. Freshwater wellhead protection;

17. Groundwater protection for activities subject to the jurisdictional areas of environmental responsibility of the Department;

18. Utilization and enforcement of Oklahoma Water Quality Standards and implementation documents;

19. Environmental regulation of any entity or activity, and the prevention, control and abatement of any pollution, not subject to the specific statutory authority of another state environmental agency;

20. Development and maintenance of a computerized information system relating to water quality pursuant to Section 1-4-107 of this title; and

21. Development and promulgation of a Water Quality Standards Implementation Plan pursuant to Section 1-1-202 of this title for its jurisdictional area of environmental responsibility.

C. Oklahoma Water Resources Board. The Oklahoma Water Resources Board shall have the following jurisdictional areas of environmental responsibility:

1. Water quantity including, but not limited to, water rights, surface water and underground water, planning, and interstate stream compacts;

2. Weather modification;

3. Dam safety;

4. Flood plain management;

5. State water/wastewater loans and grants revolving fund and other related financial aid programs;

6. Administration of the federal State Revolving Fund Program including, but not limited to, making application for and receiving capitalization grant awards, wastewater prioritization for funding, technical project reviews, environmental review process, and financial review and administration;

7. Water well drillers/pump installers licensing;

8. Technical lead agency for clean lakes eligible for funding under Section 314 of the federal Clean Water Act or other applicable sections of the federal Clean Water Act or other subsequent state and federal clean lakes programs; administration of a state program for assessing, monitoring, studying and restoring Oklahoma lakes with administration to include, but not be limited to, receipt and expenditure of funds from federal, state and private sources for clean lakes and implementation of a volunteer monitoring program to assess and monitor state water resources, provided such funds from federal Clean Water Act sources are administered and disbursed by the Office of the Secretary of Environment;

9. Statewide water quality standards and their accompanying use support assessment protocols, anti-degradation policy and implementation, and policies generally affecting Oklahoma Water Quality Standards application and implementation including but not limited to mixing zones, low flows and variances or any modification or change thereof pursuant to Section 1085.30 of Title 82 of the Oklahoma Statutes;

10. Groundwater protection for activities subject to the jurisdictional areas of environmental responsibility of the Board;

11. Development and promulgation of a Water Quality Standards Implementation Plan pursuant to Section 1-1-202 of this title for its jurisdictional area of environmental responsibility;

12. Development of classifications and identification of permitted uses of groundwater, in recognized water rights, and associated groundwater recharge areas;

13. Establishment and implementation of a statewide beneficial use monitoring program for waters of the state in coordination with the other state environmental agencies;

14. Coordination with other state environmental agencies and other public entities of water resource investigations conducted by the federal United States Geological Survey for water quality and quantity monitoring in the state; and

15. Development and submission of a report concerning the status of water quality monitoring in this state pursuant to Section 1-1-202 of this title.

D. Oklahoma Department of Agriculture, Food, and Forestry. 1. The Oklahoma Department of Agriculture, Food, and Forestry shall have the following jurisdictional areas of environmental responsibility except as provided in paragraph 2 of this subsection:

- a. point source discharges and nonpoint source runoff from agricultural crop production, agricultural services, livestock production, silviculture, feed yards, livestock markets and animal waste,
- b. pesticide control,
- c. forestry and nurseries,
- d. fertilizer,
- e. facilities which store grain, feed, seed, fertilizer and agricultural chemicals,

- f. dairy waste and wastewater associated with milk production facilities,
- g. groundwater protection for activities subject to the jurisdictional areas of environmental responsibility of the Department,
- h. utilization and enforcement of Oklahoma Water Quality Standards and implementation documents,
- i. development and promulgation of a Water Quality Standards Implementation Plan pursuant to Section 1-1-202 of this title for its jurisdictional areas of environmental responsibility, and
- j. storm water discharges for activities subject to the jurisdictional areas of environmental responsibility of the Department.

2. In addition to the jurisdictional areas of environmental responsibility specified in subsection B of this section, the Department of Environmental Quality shall have environmental jurisdiction over:

- a. (1) commercial manufacturers of fertilizers, grain and feed products, and chemicals, and over manufacturing of food and kindred products, tobacco, paper, lumber, wood, textile mill and other agricultural products,
 - (2) slaughterhouses, but not including feedlots at these facilities, and
 - (3) aquaculture and fish hatcheries,
- including, but not limited to, discharges of pollutants and storm water to waters of the state, surface impoundments and land application of wastes and sludge, and other pollution originating at these facilities, and

- b. facilities which store grain, feed, seed, fertilizer, and agricultural chemicals that are required by federal NPDES regulations to obtain a permit for storm water discharges shall only be subject to the jurisdiction of the Department of Environmental Quality with respect to such storm water discharges.

E. Corporation Commission. 1. The Corporation Commission is hereby vested with exclusive jurisdiction, power and authority, and it shall be its duty to promulgate and enforce rules, and issue and enforce orders governing and regulating:

- a. the conservation of oil and gas,
- b. field operations for geologic and geophysical exploration for oil, gas and brine, including seismic survey wells, stratigraphic test wells and core test wells,
- c. the exploration, drilling, development, producing or processing for oil and gas on the lease site,
- d. the exploration, drilling, development, production and operation of wells used in connection with the recovery, injection or disposal of mineral brines,
- e. reclaiming facilities only for the processing of salt water, crude oil, natural gas condensate and tank bottoms or basic sediment from crude oil tanks, pipelines, pits and equipment associated with the exploration, drilling, development, producing or transportation of oil or gas,
- f. underground injection control pursuant to the federal Safe Drinking Water Act and 40 CFR Parts 144 through 148, of Class II injection wells, Class V injection wells utilized in the remediation of groundwater associated with underground or aboveground storage tanks regulated by the ~~Corporation~~ Commission, and

those wells used for the recovery, injection or disposal of mineral brines as defined in the Oklahoma Brine Development Act. Any substance that the United States Environmental Protection Agency allows to be injected into a Class II well may continue to be so injected,

- g. tank farms for storage of crude oil and petroleum products which are located outside the boundaries of refineries, petrochemical manufacturing plants, natural gas liquid extraction plants, or other facilities which are subject to the jurisdiction of the Department of Environmental Quality with regard to point source discharges,
- h. the construction and operation of pipelines and associated rights-of-way, equipment, facilities or buildings used in the transportation of oil, gas, petroleum, petroleum products, anhydrous ammonia or mineral brine, or in the treatment of oil, gas or mineral brine during the course of transportation but not including line pipes in any:
 - (1) natural gas liquids extraction plant,
 - (2) refinery,
 - (3) reclaiming facility other than for those specified within subparagraph e of this subsection,
 - (4) mineral brine processing plant, and
 - (5) petrochemical manufacturing plant,
- i. the handling, transportation, storage and disposition of saltwater, mineral brines, waste oil and other deleterious substances produced from or obtained or used in connection with the drilling, development, producing and operating of oil and gas wells, at:

- (1) any facility or activity specifically listed in paragraphs 1 and 2 of this subsection as being subject to the jurisdiction of the Commission, and
 - (2) other oil and gas extraction facilities and activities,
- j. spills of deleterious substances associated with facilities and activities specified in paragraph 1 of this subsection or associated with other oil and gas extraction facilities and activities,
 - k. subsurface storage of oil, natural gas and liquefied petroleum gas in geologic strata,
 - l. groundwater protection for activities subject to the jurisdictional areas of environmental responsibility of the Commission,
 - m. utilization and enforcement of Oklahoma Water Quality Standards and implementation documents, and
 - n. development and promulgation of a Water Quality Standards Implementation Plan pursuant to Section 1-1-202 of this title for its jurisdictional areas of environmental responsibility.

2. The exclusive jurisdiction, power and authority of the ~~Corporation~~ Commission shall also extend to the construction, operation, maintenance, site remediation, closure and abandonment of the facilities and activities described in paragraph 1 of this subsection.

3. When a deleterious substance from a Commission-regulated facility or activity enters a point source discharge of pollutants or storm water from a facility or activity regulated by the Department of Environmental Quality, the Department shall have sole jurisdiction over the point source discharge of the commingled pollutants and storm water from the two facilities or activities

insofar as Department-regulated facilities and activities are concerned.

4. For purposes of the federal Clean Water Act, any facility or activity which is subject to the jurisdiction of the ~~Corporation~~ Commission pursuant to paragraph 1 of this subsection and any other oil and gas extraction facility or activity which requires a permit for the discharge of a pollutant or storm water to waters of the United States shall be subject to the direct jurisdiction of the federal Environmental Protection Agency and shall not be required to be permitted by the Department of Environmental Quality or the ~~Corporation~~ Commission for such discharge.

5. The ~~Corporation~~ Commission shall have jurisdiction over:

- a. underground storage tanks that contain antifreeze, motor oil, motor fuel, gasoline, kerosene, diesel, or aviation fuel and that are not located at refineries or at the upstream or intermediate shipment points of pipeline operations, including, but not limited to, tanks from which these materials are dispensed into vehicles, or tanks used in wholesale or bulk distribution activities, as well as leaks from pumps, hoses, dispensers, and other ancillary equipment associated with the tanks, whether above the ground or below; provided, that any point source discharge of a pollutant to waters of the United States during site remediation or the off-site disposal of contaminated soil, media, or debris shall be regulated by the Department of Environmental Quality,
- b. aboveground storage tanks that contain antifreeze, motor oil, motor fuel, gasoline, kerosene, diesel, or aviation fuel and that are not located at refineries or at the upstream or intermediate shipment points of pipeline operations, including, but not limited to,

tanks from which these materials are dispensed into vehicles, or tanks used in wholesale or bulk distribution activities, as well as leaks from pumps, hoses, dispensers, and other ancillary equipment associated with the tanks, whether above the ground or below; provided, that any point source discharge of a pollutant to waters of the United States during site remediation or the off-site disposal of contaminated soil, media, or debris shall be regulated by the Department of Environmental Quality, and

- c. the Petroleum Storage Tank Release Environmental Cleanup Indemnity Fund, the Oklahoma Petroleum Storage Tank Release Indemnity Program, and the Oklahoma Leaking Underground Storage Tank Trust Fund.

6. The Department of Environmental Quality shall have sole jurisdiction to regulate the transportation, discharge or release of deleterious substances or solid or hazardous waste or other pollutants from rolling stock and rail facilities.

7. The Department of Environmental Quality shall have sole environmental jurisdiction for point and nonpoint source discharges of pollutants and storm water to waters of the state from:

- a. refineries, petrochemical manufacturing plants and natural gas liquid extraction plants,
- b. manufacturing of equipment and products related to oil and gas,
- c. bulk terminals, aboveground and underground storage tanks not subject to the jurisdiction of the Commission pursuant to this subsection, and
- d. other facilities, activities and sources not subject to the jurisdiction of the ~~Corporation~~ Commission or the Oklahoma Department of Agriculture, Food, and Forestry as specified by this section.

8. The Department of Environmental Quality shall have sole environmental jurisdiction to regulate air emissions from all facilities and sources subject to operating permit requirements under Title V of the federal Clean Air Act as amended.

F. Oklahoma Conservation Commission. The Oklahoma Conservation Commission shall have the following jurisdictional areas of environmental responsibility:

1. Soil conservation, erosion control and nonpoint source management except as otherwise provided by law;

2. Monitoring, evaluation and assessment of waters to determine the condition of streams and rivers being impacted by nonpoint source pollution. In carrying out this area of responsibility, the Oklahoma Conservation Commission shall serve as the technical lead agency for nonpoint source categories as defined in Section 319 of the federal Clean Water Act or other subsequent federal or state nonpoint source programs, except for activities related to industrial and municipal storm water or as otherwise provided by state law;

3. Wetlands strategy;

4. Abandoned mine reclamation;

5. Cost-share program for land use activities;

6. Assessment and conservation plan development and implementation in watersheds of clean lakes, as specified by law;

7. Complaint data management;

8. Coordination of environmental and natural resources education;

9. Federal upstream flood control program;

10. Groundwater protection for activities subject to the jurisdictional areas of environmental responsibility of the Commission;

11. Development and promulgation of a Water Quality Standards Implementation Plan pursuant to Section 1-1-202 of this title for its jurisdictional areas of environmental responsibility; and

12. Utilization of Oklahoma Water Quality Standards and Implementation documents.

G. Department of Mines. The Department of Mines shall have the following jurisdictional areas of environmental responsibility:

1. Mining regulation;

2. Mining reclamation of active mines;

3. Groundwater protection for activities subject to the jurisdictional areas of environmental responsibility of the Commission; and

4. Development and promulgation of a Water Quality Standards Implementation Plan pursuant to Section 1-1-202 of this title for its jurisdictional areas of responsibility.

H. Department of Wildlife Conservation. The Department of Wildlife Conservation shall have the following jurisdictional areas of environmental responsibilities:

1. Investigating wildlife kills;

2. Wildlife protection and seeking wildlife damage claims; and

3. Development and promulgation of a Water Quality Standards Implementation Plan pursuant to Section 1-1-202 of this title for its jurisdictional areas of environmental responsibility.

I. Department of Public Safety. The Department of Public Safety shall have the following jurisdictional areas of environmental responsibilities:

1. Hazardous waste, substances and material transportation inspections as authorized by the Hazardous Materials Transportation Act; and

2. Inspection and audit activities of hazardous waste and materials carriers and handlers as authorized by the Hazardous Materials Transportation Act.

J. Department of Labor. The Department of Labor shall have the following jurisdictional areas of environmental responsibility:

1. Regulation of asbestos in the workplace pursuant to Chapter 11 of Title 40 of the Oklahoma Statutes;

2. Asbestos monitoring in public and private buildings; and

3. Indoor air quality as regulated under the authority of the Oklahoma Occupational Health and Safety Standards Act, except for those indoor air quality issues specifically authorized to be regulated by another agency.

Such programs shall be a function of the Department's occupational safety and health jurisdiction.

K. Oklahoma Department of ~~Civil~~ Emergency Management. The Oklahoma Department of ~~Civil~~ Emergency Management shall have the following jurisdictional areas of environmental responsibilities:

1. Coordination of all emergency resources and activities relating to threats to citizens' lives and property pursuant to the Oklahoma ~~Civil Defense and~~ Emergency Resources Management Act of 1967;

2. Administer and enforce the planning requirements of Title III of the Superfund Amendments and Reauthorization Act of 1986 and develop such other emergency operations plans that will enable the state to prepare for, respond to, recover from and mitigate potential environmental emergencies and disasters pursuant to the Oklahoma Hazardous Materials Planning and Notification Act;

3. Administer and conduct periodic exercises of emergency operations plans provided for in this subsection pursuant to the Oklahoma ~~Civil Defense and~~ Emergency Resources Management Act of 1967;

4. Administer and facilitate hazardous materials training for state and local emergency planners and first responders pursuant to the Oklahoma ~~Civil Defense and~~ Emergency Resources Management Act of 1967; and

5. Maintain a computerized emergency information system allowing state and local access to information regarding hazardous materials' location, quantity and potential threat.

SECTION 12. AMENDATORY 52 O.S. 2001, Section 321, is amended to read as follows:

Section 321. It shall be unlawful for any person, firm or corporation in the State of Oklahoma to sell, offer for sale, use, or consume any gasoline, kerosene, naphtha, motor fuel and/or burning oil manufactured in this state or brought into it unless the same complies with the rules and regulations of the Corporation Commission and the laws of the State of Oklahoma.

SECTION 13. AMENDATORY 52 O.S. 2001, Section 324.1, is amended to read as follows:

Section 324.1 For the purpose of enforcing the fuel inspection laws of the State of Oklahoma, the Corporation Commission of Oklahoma shall appoint and assign for duty, one State Fuel Inspector, who shall receive a salary of not to exceed Four Thousand Two Hundred Dollars (\$4,200.00) per annum, payable monthly; and one graduate chemist with at least one (1) year's experience in a refinery laboratory, who shall receive a salary of not to exceed Three Thousand Seven Hundred Twenty Dollars (\$3,720.00) per annum, payable monthly; one assistant graduate chemist who shall receive a salary of not to exceed Two Thousand Seven Hundred Dollars (\$2,700.00) per annum, payable monthly; one secretary who shall receive a salary of not to exceed One Thousand Nine Hundred Twenty Dollars (\$1,920.00) per annum, payable monthly; and one stenographer bookkeeper, who shall receive a salary of not to exceed One Thousand Eight Hundred Dollars (\$1,800.00) per annum, payable monthly; provided that, the State Fuel Inspector, chemist, and assistant chemist shall receive their actual, necessary traveling expenses; and provided further, that the duties now imposed on the Conservation Officer with reference to the inspection of gasoline

~~and other motor fuels shall be transferred to the State Fuel Inspector herein provided; and provided further, that the salaries and expenses of employees provided for herein shall be paid from the General Revenue Fund~~ fuel inspection and compliance personnel sufficient to discharge the duties and obligations of the Commission regarding the inspection, testing, calibration and compliance of fuel and fuel storage facilities pursuant to the Oklahoma Storage Tank Regulation Act and the Oklahoma Petroleum Storage Tank Reform Act.

SECTION 14. AMENDATORY 52 O.S. 2001, Section 324.6, is amended to read as follows:

Section 324.6 The employees of the ~~Fuel Inspection~~ Petroleum Storage Tank Division shall not engage in any job or business in an industry or engage in a profession in any area or field, regulated by the ~~Fuel Inspection~~ Petroleum Storage Tank Division of the Corporation Commission.

SECTION 15. AMENDATORY 52 O.S. 2001, Section 325, is amended to read as follows:

Section 325. A. Jurisdiction is hereby conferred upon the Corporation Commission, and the same is authorized and empowered, to prescribe and promulgate such rules and ~~regulations and/or~~ specifications for safety ~~and/or~~ and quality with reference to gasoline, kerosene, naphtha, motor fuel ~~and/or~~ and burning oil as it may deem proper from time to time; provided that, the Corporation Commission shall prescribe rules ~~and regulations~~ governing the test for octane rating on motor fuels and prescribe such rating.

B. Such specifications as may be prescribed and promulgated by the Corporation Commission shall be accepted as statutory enactments and shall be received as prima facie evidence by any court of competent jurisdiction within the State of Oklahoma.

SECTION 16. AMENDATORY 52 O.S. 2001, Section 327, is amended to read as follows:

Section 327. A. It shall be unlawful for any person to sell, or offer for sale, any of the following liquids without first having had the same inspected as herein provided, namely: Kerosene or any burning oil; naphtha; gasoline; and motor fuel of any character as now or hereafter defined by law; and any liquid intended to be mixed with any of the foregoing liquids to form a mixture designed to be used as in internal combustion engines ~~for propelling automotive vehicles.~~

B. It shall be unlawful for any person to sell, or offer for sale, any mixtures or combinations of any two or more of the foregoing liquids without first having had such mixture or combination inspected as herein provided, ~~and it.~~ It shall not be an excuse or defense to a prosecution therefor that the component liquids had previously been inspected.

C. If any person shall sell, or offer for sale, any of the above mentioned liquids or mixtures or combinations, without having had the ~~same inspected as herein provided, he shall be guilty of a misdemeanor and~~ inspection, such person may be subject to a fine of Five Hundred Dollars (\$500.00) and imprisonment for ninety (90) days, or both, for each offense per day per violation.

SECTION 17. AMENDATORY 52 O.S. 2001, Section 328, is amended to read as follows:

Section 328. In administering this ~~act~~ chapter the Corporation Commission shall follow the rules of procedure prescribed in ~~Chapter 131, Session Laws of 1933, relating to conservation of oil~~ Title 17 of the Oklahoma Statutes.

SECTION 18. AMENDATORY 52 O.S. 2001, Section 330, is amended to read as follows:

Section 330. Any dealer in, or manufacturer or other person in possession of ~~oils or fluids specified in the first section of this article,~~ gasoline or motor fuels who ~~shall refuse~~ refuses to admit an inspector ~~or his deputy~~ upon his the premises, ~~so far as it may~~

~~be necessary for the performance of his to perform the duties, or shall obstruct an inspector or his deputy in the performance of his duties, of the inspector shall, for each refusal to admit on his premises, or obstruction offered to inspector, be guilty of a misdemeanor and, be subject to a fine of One Hundred (\$100.00) and imprisonment for ninety (90) days, or both, for each offense Five Hundred Dollars (\$500.00) per day per violation.~~

SECTION 19. AMENDATORY 52 O.S. 2001, Section 332, is amended to read as follows:

Section 332. A. It shall be the duty of the ~~State Oil Inspector and the deputy oil inspectors~~ Petroleum Storage Tank Division to inspect all ~~refineries,~~ filling stations, ~~tank cars,~~ bulk stations, and other places where gasoline, kerosene, naphtha, motor fuel ~~and/or~~ burning oil is kept or stored, for the purpose of determining whether or not such products comply with the orders, rules, ~~regulations, and/or~~ and specifications of the Corporation Commission and the laws of the state; ~~and the State Oil Inspector and his deputies shall from time to time, and whenever in their opinion it is necessary, or when directed by the Corporation Commission or the State Oil Inspector,~~ The Petroleum Storage Tank Division may take samples from any and all places where such products are kept or stored, and shall test the same or have the same tested to determine whether or not the owner or other person in charge of such filling station, ~~refinery,~~ bulk station, ~~tank car,~~ or other ~~place~~ places where gasoline and motor fuels are kept or stored is complying with the orders, rules, ~~regulations, and/or~~ and specifications of the Corporation Commission and the laws of the state.

B. It shall be the further duty of the ~~State Oil Inspector and his deputies~~ Petroleum Storage Tank Division, whenever they find a dispenser or receptacle used for delivering to the public regulated petroleum products which do not meet the minimum specifications

required by the rules ~~and regulations~~ of the Corporation Commission and the laws of the state, immediately to ~~place a sign on said seal and lock the dispenser or receptacle, stating that the product contained therein does not meet said specifications, and immediately to seal and lock said receptacle; provided that, the.~~ The seal will be removed when the violation is corrected. The owner thereof shall ~~have~~ has the right to ~~make application to the~~ apply for a hearing before the Corporation Commission ~~for an order removing said sign, lock, or seal, which application shall be heard by the Corporation Commission without unnecessary delay and no notice of hearing shall be required.~~

The ~~State Oil Inspector and deputy oil inspectors~~ Petroleum Storage Tank Division shall make such reports to the Corporation Commission as ~~and when the Corporation Commission may require~~ required.

SECTION 20. AMENDATORY 52 O.S. 2001, Section 334, is amended to read as follows:

Section 334. The provisions of ~~this law~~ Section 332 of this title shall not apply to ~~oils or fluids~~ gasoline or motor fuel brought into this state in transit for shipment to and consumption in other states or territories.

SECTION 21. AMENDATORY 52 O.S. 2001, Section 346, is amended to read as follows:

Section 346. Any person, firm, or corporation who sells, offers for sale, uses, or consumes any gasoline, kerosene, naphtha, motor fuel, ~~and/or~~ burning oil within the State of Oklahoma which does not comply with the rules, ~~regulations, and/or~~ and specifications of the Corporation Commission and the laws of the State of Oklahoma, ~~and or~~ any person who tampers with or molests any sign, lock, or seal mentioned in ~~Section 6 of this act shall be guilty of a misdemeanor and upon conviction~~ chapter and upon a finding of contempt or conviction thereof will be punished by ~~a~~ an administrative fine of

~~not more than Five Hundred Dollars (\$500.00) and imprisonment of not more than ninety (90) days, or both such fine and imprisonment; and in addition thereto he shall be guilty of contempt of the orders, rules, and regulations of the Corporation Commission, and shall be subject to a fine by said Commission in a sum not exceeding Five Hundred Dollars (\$500.00) and each. Each day on which any person, firm, or corporation violates any of such orders, and rules, and regulations shall be deemed a separate and distinct offense.~~

SECTION 22. REPEALER 17 O.S. 2001, Section 326, is hereby repealed.

SECTION 23. REPEALER 52 O.S. 2001, Sections 322, 324.2, 324.4, 329, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344 and 345, are hereby repealed.

SECTION 24. 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.

49-2-8962 SB 05/06/04