

STATE OF OKLAHOMA

1st Session of the 49th Legislature (2003)

2ND CONFERENCE COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL 322

By: Hobson and Easley of the
Senate

and

Rice of the House

2ND CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to petroleum storage tanks; creating the Oklahoma Storage Tank Accountability and Reform Act; providing short title; transferring programs and functions of the Oklahoma Storage Tank Regulation Act from the Corporation Commission to the Department of Environmental Quality; transferring rules and fee schedules for certain time period; requiring Environmental Quality Board to adopt new rules by certain date; providing for certain licenses, permits, certifications and registrations to remain valid; transferring rights, obligations, remedies and pending applications to Department; stating transfer of programs and functions shall not negate any existing order, claim or cause of action or affect enforcement actions; providing for transfer of funds, property, equipment, records, outstanding financial obligations and encumbrances; providing for transfer of certain employees; authorizing Environmental Quality Board and Executive Director to submit proposed statutory changes by certain date; amending 17 O.S. 2001, Section 303, which relates to definitions; modifying definitions; amending 17 O.S. 2001, Section 304, which relates to application of Act; modifying references; modifying jurisdiction of certain storage tanks; amending 17 O.S. 2001, Section 305, which relates to designation of certain agency to administer certain federal programs; modifying jurisdiction over certain program; amending 17 O.S. 2001, Section 306, which relates to powers and duties; modifying powers and duties of the Department; amending 17 O.S. 2001, Section 307, which relates to promulgation of certain rules; requiring the Environmental Quality Board to promulgate certain rules; authorizing Board to establish schedule for certain permit fees; amending 17 O.S. 2001, Section 308, which relates to permits; requiring Department to issue certain permits; requiring certain financial responsibility coverage; amending 17 O.S. 2001, Section 308.1, which relates to certain permit fees; modifying certain fee; authorizing Department to assess certain fees; amending 17 O.S. 2001, Section 309, which relates to storage tank releases; requiring notification to Department; providing for certain appeal to district court; removing authorization for Commission to receive certain

payments from Indemnity Fund; amending 17 O.S. 2001, Section 310, which relates to violations; modifying duties of the Department; stating procedure for appeal; removing adjudicative authority from the Corporation Commission; amending 17 O.S. 2001, Section 311, which relates to penalties; modifying reference to Department; amending 17 O.S. 2001, Section 312, which relates to enforcement of action for injunctions or recovery of penalties; modifying reference to Department; amending 17 O.S. 2001, Section 313, which relates to public information; modifying reference to Department; amending 17 O.S. 2001, Section 314, which relates to annual report of certain releases; modifying reference to Department; amending 17 O.S. 2001, Section 316, which relates to rules of political subdivisions; modifying reference to Board; amending 17 O.S. 2001, Section 365, which relates to the Oklahoma Leaking Underground Storage Tank Trust Fund; modifying reference to Department; amending 27A O.S. 2001, Section 2-2-201, which relates to advisory councils; creating the Storage Tank Management Advisory Council; stating membership; stating jurisdiction of council; amending 27A O.S. 2001, Section 1-3-101, as amended by Section 1, Chapter 397, O.S.L. 2002 (27A O.S. Supp. 2002, Section 1-3-101), which relates to jurisdiction of state environmental agencies; modifying jurisdiction of certain storage tanks; updating statutory reference to certain agency; removing certain jurisdiction from the Corporation Commission; amending 17 O.S. 2001, Section 52, which relates to jurisdiction of the Corporation Commission; removing jurisdiction over certain storage tanks, the Indemnity Fund and Program and the Oklahoma Leaking Underground Storage Tank Trust Fund; amending 17 O.S. 2001, Section 139, which relates to jurisdiction of the Corporation Commission; removing jurisdiction over certain storage tanks, the Indemnity Fund and Program and the Leaking Underground Storage Tank Trust Fund; updating statutory reference to certain agency; transferring programs and functions pertaining to the Indemnity Fund Program from the Corporation Commission to the Oklahoma Petroleum Storage Tank Indemnity Fund Board; transferring certain rules; requiring new rules promulgated by certain date; transferring rights, obligations, remedies, rules, settlement agreements and causes of action to the Indemnity Fund Board; stating transfer of programs and functions shall not negate any existing order, claim or cause of action or affect enforcement actions; providing for transfer of funds, property, equipment, records and outstanding financial obligations and encumbrances; transferring certain proceedings to district court; stating applicability; stating construction; providing for transfer of certain employees; authorizing the Oklahoma Petroleum Storage Tank Indemnity Board and administrator to submit proposed statutory changes by certain date; amending 17 O.S. 2001, Section 350, which relates to the Oklahoma Petroleum Storage Tank Indemnity Program; providing for separate operation and administration from regulatory programs; creating the Oklahoma Petroleum Storage Tank Indemnity Fund

Board; stating purpose; stating membership; stating powers and duties; providing for meetings by certain date; requiring Indemnity Fund Board to hire Administrator of the Oklahoma Petroleum Storage Tank Indemnity Fund; stating requirements for Administrator; stating duties; providing for employees; providing for establishment of policies and procedures; authorizing administrator to enter into certain contracts; prohibiting certain business affiliations; providing for interim administrator; stating powers and duties; amending 17 O.S. 2001, Section 352, which relates to definitions; defining terms; modifying references to certain Board; modifying definitions; amending 17 O.S. 2001, Section 353, which relates to the Oklahoma Petroleum Storage Tank Indemnity Fund; stating affiliation with Department of Environmental Quality; removing reference to Corporation Commission; providing for certain expenses and contracts to be exempt from Central Purchasing Act; prohibiting certain entities from reimbursement from the Indemnity Fund; removing provision preventing certain monies from becoming monies of the state; stating prohibition for certain agencies to use Indemnity Fund monies; removing reference to certain Corporation Commission employees; amending 17 O.S. 2001, Section 354, as last amended by Section 1, Chapter 371, O.S.L. 2002 (17 O.S. Supp. 2002, Section 354), which relates to motor fuel assessment; modifying distribution of certain assessment; amending 17 O.S. 2001, Section 355, which relates to collection of certain assessment; modifying reference to Indemnity Fund Program; amending 17 O.S. 2001, Section 356, which relates to Indemnity Fund Program; modifying references to Indemnity Fund; requiring claims to be filed within certain time period; modifying certain requirements relating to pay for performance contracts; prohibiting payments for certain violations; stating requirements for purchase orders; amending 17 O.S. 2001, Section 356.1, which relates to confidential information; modifying references to reflect transfer; amending 17 O.S. 2001, Section 358, which relates to certain annual reports; modifying references to Indemnity Fund Program; amending 17 O.S. 2001, Section 359, which relates to certain independent audits; requiring annual audits; amending 17 O.S. 2001, Section 360, which relates to expenditures from Indemnity Fund; authorizing certain expenditures; imposing moratoriums on Corporation Commission relating to certain expenditures and administrative proceedings; imposing moratorium on Indemnity Fund relating to certain expenditures, purchase orders, pay for performance contracts and administrative proceedings; requiring Board to promulgate certain rules relating to pay for performance contracts; repealing 17 O.S. 2001, Sections 306.1, 315, 318, 321, 322, 323, 324, 325, 326, 330, 340, 351 and 361, which relate to the Oklahoma Storage Tank Regulation Act, the Storage Tank Advisory Council and the Oklahoma Petroleum Storage Tank Release Indemnity Program; providing for codification; providing for noncodification;

providing for recodification; providing effective dates; and declaring an emergency.

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

SECTION 1. NEW LAW A new section of law not to be codified in the Oklahoma Statutes reads as follows:

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

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2-16-101 of Title 27A, unless there is created a duplication in numbering, reads as follows:

A. All programs and functions pertaining to the Oklahoma Storage Tank Regulation Act are hereby transferred from the Corporation Commission to the Department of Environmental Quality. With regard to all such programs and functions transferred and assigned, all Corporation Commission rules, including fee schedules, relating to such programs and functions are hereby transferred to the Department for the purpose of maintaining and operating such programs and functions. Such rules shall remain in effect only until June 30, 2004, at which time such transferred rules will terminate unless earlier superseded by rules promulgated by the Environmental Quality Board. By February 1, 2004, the Board shall have adopted new permanent rules to implement the programs and functions transferred to the Department.

B. All unexpired or unrevoked licenses, permits, certifications or registrations issued prior to July 1, 2003, pursuant to the Oklahoma Storage Tank Regulation Act, shall remain valid for stated terms and conditions until otherwise provided by law. Such licenses, permits, certifications or registrations shall be subject to the laws and rules of the Department. All rights, obligations and remedies arising out of laws, rules, agreements and causes of action are also transferred to the Department. Any application

pending on June 30, 2003, before the Corporation Commission for a license, permit, certification or registration to be issued pursuant to the Oklahoma Storage Tank Regulation Act is hereby transferred to the Department.

C. The transfer of the programs and functions pertaining to the Oklahoma Storage Tank Regulation Act shall not operate to bar or negate any existing order, claim or cause of action transferred or available to the Department or its predecessor, nor shall it operate to affect enforcement action undertaken by the Corporation Commission prior to such transfer to the Department. Violations of provisions of law, and violations of rules, permits or final orders which occurred prior to the transfer of jurisdiction and authority to the Department shall be subject to penalties available and existing at the time of violation.

D. All unexpended funds, property, equipment, records and any outstanding financial obligations and encumbrances related to the activities of the Oklahoma Storage Tank Regulation Act are hereby transferred to the Department.

E. All employees of the Petroleum Storage Tank Division of the Corporation Commission identified as necessary and appropriate by the Department for the continuing implementation of the Oklahoma Storage Tank Regulation Act are hereby transferred to the Department. The Department shall leave in place at the Corporation Commission the Division Director, the Deputy Division Director and such supervisory and other employees necessary for the continuing administration of the programs and functions not being transferred to the Department and not identified as necessary and appropriate to administer the Oklahoma Storage Tank Regulation Act as determined by the Department. Employees not transferred to the Department of Environmental Quality shall remain employees of the Corporation Commission. Those employees in the unclassified service at the time of their transfer shall remain in the unclassified service. Those

employees who are classified at the time of their transfer shall remain in the classified service.

F. By January 15, 2004, the Environmental Quality Board and the Executive Director of the Department shall jointly submit recommendations, if any, for proposed statutory changes pertaining to the Storage Tank Regulation Act.

SECTION 3. 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~~ Department of Environmental Quality;

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

3. "Corrective action" means action taken to monitor, maintain, minimize, eliminate or clean up a release from a storage tank system;

~~4.~~ 3. "Corrective action plan" means the plan submitted to the regulatory program of the ~~Corporation Commission~~ Department of Environmental Quality detailing the method and manner of corrective action to be taken for a release;

~~5.~~ 4. "Department" means the Department of Environmental Quality;

~~6.~~ 5. "Director" means the Executive Director of the ~~Petroleum Storage Tank Division of the Corporation Commission~~ Department of Environmental Quality;

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

~~8.~~ 6. "Environment" means any water, water vapor, any land including land surface or subsurface, fish, wildlife, biota and all other natural resources;

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

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

~~11.~~ 9. "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.~~ 10. "New system" means a storage tank system for which the installation of the system began on or after April 21, 1989;

~~13.~~ 11. "Operator" means any person in control of or having responsibility for the daily operation of the storage tank system, whether by lease, contract, or other form of agreement. The term "operator" also includes a past operator at the time of a release or a violation of the Oklahoma Storage Tank Regulation Act or of a rule promulgated thereunder;

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

- a. in the case of a storage tank system in use on November 8, 1984, or brought into use after that date,

any person who holds title to, controls, or possesses an interest in a storage tank system used for the storage, use, or dispensing of regulated substances, or

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

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

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

~~16.~~ 14. "Person" means any individual, trust, firm, joint stock company or corporation, limited liability company, federal agency, corporation, including a government corporation, partnership, association, the state or any state agency, municipality, county or other political subdivision of the state, or any interstate body. The term also includes a consortium, a joint venture, a commercial entity, and the United States Government or any other legal entity;

~~17.~~ 15. "Petroleum" means ethylene glycol-based antifreeze, crude oil, crude oil fractions, and refined petroleum fractions, including motor fuel, jet fuel, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents and used oil which are liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute). "Petroleum" also means a mixture of petroleum and hazardous substances provided, the amount of the hazardous substances is of a de minimus quantity;

~~18.~~ 16. "Pipeline facilities" means new and existing pipe rights-of-way and any equipment, facilities or buildings regulated under:

- a. the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. App., 1671, et seq.),
- b. the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. 2001, et seq.),
- c. the state Hazardous Liquid Transportation System Safety Act, ~~Section 47.1 et seq. of Title 52 of the Oklahoma Statutes,~~ or
- d. intrastate pipeline facilities regulated under state law;

~~19.~~ 17. "Pollution" means contamination or other alteration of the physical, chemical or biological properties of any natural waters of the state, contamination or alteration of the physical, chemical or biological properties of the land surface or subsurface, when such contamination or alteration will or is likely to create a nuisance or render the waters or land harmful or detrimental or injurious to the public health, safety or welfare or the environment;

~~20.~~ 18. "Regulated substances" means hazardous substances or petroleum;

~~21.~~ 19. "Release" means any spilling, overfilling, leaking, emitting, discharging, escaping, leaching or disposing of regulated substances from a storage tank system into the environment of the state. The term "release" includes, but is not limited to, suspected releases identified as a result of positive sampling, testing or monitoring results, or identified in any similarly reliable manner;

~~22.~~ 20. "Storage tank system" means any one or combination of tanks, including ~~underground~~ piping connected thereto, ~~that is~~ used to contain an accumulation of regulated substances;

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

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

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

SECTION 4. AMENDATORY 17 O.S. 2001, Section 304, is amended to read as follows:

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

1. Septic tank systems;
2. Pipeline facilities;
3. Surface impoundments, pits, ponds or lagoons;
4. Stormwater and wastewater collection systems;
5. Flow-through process tank systems;
6. Liquid trap or associated gathering lines directly related to oil or gas production and gathering operations;
7. Hydraulic lift tank systems;
8. Storage tank systems with a capacity of less than one hundred ten (110) gallons;
9. Storage tank systems with a de minimus concentration of regulated substances including, but not limited to, swimming pools and coffins;
10. Storage tank systems that serve as emergency backup tanks, provided that such backup tanks hold regulated substances for only a short period of time and are expeditiously emptied after each use.

The provisions of this paragraph shall not prevent ~~Corporation Commission~~ Department of Environmental Quality notification requirements and such other restrictions as may be deemed necessary ~~by the Commission~~ to protect the environment;

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

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

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

14. Storage tanks and storage tank systems within the exclusive jurisdiction of the Corporation Commission as set forth in subsection E of Section 1-3-101 of Title 27A of the Oklahoma Statutes.

SECTION 5. AMENDATORY 17 O.S. 2001, Section 305, is amended to read as follows:

Section 305. ~~Within their respective jurisdictional areas, the Corporation Commission and the~~ The Department of Environmental Quality ~~are~~ is hereby designated as the state ~~agencies~~ agency to administer subtitle I of Title VI of the Solid Waste Disposal Act and Section 205 of the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C.A., Section 6991 et seq. ~~The Corporation Commission shall have jurisdiction over underground and 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 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. The Department of Environmental Quality shall have jurisdiction over underground and aboveground storage tanks containing hazardous substances and other substances or facilities not within the jurisdiction of the Corporation Commission.~~

SECTION 6. 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~~ Department of Environmental Quality shall have the power and duty to:

1. Issue, renew, deny, modify, suspend, refuse to renew and revoke permits for storage tank systems pursuant to the provisions of the Oklahoma Storage Tank Regulation Act, ~~Section 301 et seq. of this title,~~ and rules promulgated pursuant thereto;

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

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

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

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

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

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

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

9. Advise, consult and cooperate with other agencies of this state, the federal government, other states and interstate agencies and with affected groups and political subdivisions to further the purposes of the provisions of the Oklahoma Storage Tank Regulation Act;

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

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

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

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

- a. submit such reports and information concerning the storage tank system as may be determined necessary by the ~~Commission~~ Department pursuant to the provisions

of the Oklahoma Storage Tank Regulation Act or rules promulgated thereto,

- b. perform tests, install release detection devices, and where appropriate, monitor the environment to ensure that pollution is not occurring,
- c. make timely reports to the ~~Commission~~ Department 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~~ Department,
- e. provide an alternate or temporary drinking water source to any person deprived of drinking water if it is found that such owner or operator is responsible for polluting the drinking water source beyond applicable drinking water standards, or where no such standard exists, such standard as the Department ~~of Environmental Quality~~ shall determine,
- f. take full corrective action if such owner or operator is found to be responsible for the release, and
- g. take appropriate action to temporarily relocate residents affected by the release;

~~14. Establish and enforce~~ 13. 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~~ Department 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~~ Department. If a citation is issued or a facility is temporarily closed under the provisions of this section, the owner or operator of said facility on application to the ~~Commission~~ Department shall be afforded a hearing within ten (10) days. Any penalties or fines levied under this section shall be ~~established by the Corporation Commission by in~~ accordance with rules promulgated pursuant to the Administrative Procedures Act, ~~Section 250.1 et seq. of Title 75 of the Oklahoma Statutes;~~

~~15.~~ 14. Institute and maintain or intervene in any action or proceeding where deemed necessary by the ~~Commission~~ Department 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.~~ 15. Prepare an emergency response plan for spills or releases of regulated substances or review emergency response plans developed outside the ~~Commission~~ Department; and

~~17.~~ ~~Establish a schedule of fees for issuance of any permit required pursuant to the provisions of the Oklahoma Storage Tank Regulation Act. The fees shall be in an amount to cover the costs of the Commission in administering the Oklahoma Storage Tank Regulation Act. Payment of the permitting fees for any storage tank system required pursuant to the provisions of the Oklahoma Storage Tank Regulation Act or to rules promulgated thereto shall prohibit the assessment of additional licensing or permitting fees for such storage tank systems by any other agency or municipality of this state;~~

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

~~19.~~ 16. Exercise all incidental powers as necessary and proper for the administration of the Oklahoma Storage Tank Regulation Act.

SECTION 7. AMENDATORY 17 O.S. 2001, Section 307, is amended to read as follows:

Section 307. A. The ~~Corporation Commission~~ Environmental Quality Board shall promulgate rules ~~governing storage tank systems implementing the Oklahoma Storage Tank Regulation Act.~~ The ~~Commission's~~ rules shall, at a minimum, include the following provisions:

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

2. Procedures to follow when release detection methods or equipment or both such methods and equipment records indicate an abnormal loss or gain which is not explainable by spillage, temperature variations or other known causes;

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

4. Requirements to maintain records documenting actions taken in accordance with paragraphs ~~4~~ 3 through ~~3~~ 5 of this subsection;

5. An enforcement program;

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

7. Procedures to allow an adjacent property owner whose property has been contaminated by a release to remediate his or her

own property under the same requirements as the tank owner or operator responsible for remediating the release; and

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

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

B. In promulgating rules establishing standards pursuant to paragraph ~~8~~ 9 of subsection A of this section, the ~~Commission~~ Environmental Quality Board may distinguish in such standards between requirements appropriate for new tanks, existing tanks and for abandoned tanks. In making such distinctions, the ~~Commission~~ Board may consider the following factors:

1. Location of the tanks;
2. Soil and climate conditions;
3. Uses of the tanks;
4. History of maintenance;
5. Age of the tanks;
6. National industry codes;
7. Hydrogeology;
8. Water table;

9. Size of the tanks;

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

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

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

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

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

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

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

SECTION 8. AMENDATORY 17 O.S. 2001, Section 308, is amended to read as follows:

Section 308. A. 1. Except as otherwise provided by this subsection, no storage tank system or facility shall be operated without a permit from the ~~Corporation Commission~~ Department of Environmental Quality.

2. A storage tank system is not required to be permitted if the tank system:

- a. does not contain or has not contained a regulated substance, or
- b. has been permanently closed or has not been in operation since January 1, 1974.

B. No person shall deposit a regulated substance into a storage tank system unless the system is operating pursuant to a permit issued by the ~~Commission~~ Department.

C. Any person who sells a storage tank system shall notify the owner or operator, or both, of the tank of the permit requirements of the Oklahoma Storage Tank Regulation Act, ~~Section 301 et seq. of this title.~~

D. The application form for a permit shall be provided by and filed with the ~~Commission~~ Department. In addition to other information requested by the ~~Commission~~ Department, the application shall include the type of financial responsibility coverage utilized to comply with the requirements of the Oklahoma Storage Tank Regulation Act and by rule of the ~~Commission~~ Department and the type of leak detection method employed.

E. 1. Permits shall be issued by the ~~Commission~~ Department for a period not to exceed one (1) year.

2. Any permit issued pursuant to the provisions of the Oklahoma Storage Tank Regulation Act may be transferred subject to rules promulgated by the ~~Commission~~ Environmental Quality Board and only upon approval by the ~~Commission~~ Department.

3. Any permittee or applicant for permit subject to the provisions of the Oklahoma Storage Tank Regulation Act shall be deemed to have given consent to any duly authorized employee or agent of the ~~Commission~~ Department to access, enter, inspect or monitor, the tank system or facility in accordance with the provisions of the Oklahoma Storage Tank Regulation Act. Refusal to

allow such access, entry, or inspection may constitute grounds for the denial, nonrenewal, suspension, or revocation of a permit. Upon refusal of access, entry, inspection, sampling or copying pursuant to this section, the ~~Commission~~ Department or a duly authorized representative may make application for and obtain an administrative warrant or a search warrant from the district court where the facility is located to allow such entry, inspection, sampling or copying.

4. The owner or operator of a storage tank system shall display the permit in a location or manner in which the permit can easily be visible to any person depositing a regulated substance into a storage tank even after normal business hours.

F. Any permit fee collected pursuant to the Oklahoma Storage Tank Regulation Act shall be deposited in the ~~Corporation Commission~~ Storage Tank Regulation Department of Environmental Quality Revolving Fund to be expended for the purpose of implementing the Oklahoma Storage Tank Regulation Act.

G. The ~~Commission~~ Department may deny approval of a permit application, or refuse to reissue, suspend or revoke a permit issued pursuant to the Oklahoma Storage Tank Regulation Act if the ~~Commission~~ Department finds, after notice and a hearing conducted in accordance with the provisions of ~~Section 314 of Title 75 of the Oklahoma Statutes~~ the Administrative Procedures Act, that the applicant or permittee has:

1. Fraudulently or deceptively obtained or attempted to obtain a permit;

2. Failed to comply with any provision or requirement of this act or any rules promulgated by the ~~Commission~~ Environmental Quality Board in accordance with the provisions of the Oklahoma Storage Tank Regulation Act; or

3. Not maintained in effect, the financial responsibility requirements established by subsection H of this section and by rules of the ~~Commission~~ Board.

H. Any person owning or operating a storage tank system containing a regulated substance who is not otherwise exempted by law or rule of the Commission, shall obtain and have in effect financial responsibility coverage for taking corrective action and for compensating third parties for physical injury and property damage caused by releases arising from operating storage tank systems. The requirement for financial responsibility coverage specified by this subsection shall not be more stringent than is required by the federal Environmental Protection Agency for storage tank systems of equal type, age, and classification.

SECTION 9. AMENDATORY 17 O.S. 2001, Section 308.1, is amended to read as follows:

Section 308.1 A. An annual permit fee of ~~not more than Twenty-five Dollars (\$25.00)~~ One Hundred Dollars (\$100.00) per tank shall be assessed by the ~~Corporation Commission~~ Department of Environmental Quality upon each owner or operator of a storage tank system for ~~petroleum products~~ regulated substances. Such fee shall be assessed upon each storage tank owned or operated by such owner or operator.

B. Failure to pay the fees required by subsection A of this section shall subject an owner or operator of a storage tank system to:

1. A penalty of fifty percent (50%) of the computed total fee due and owing by such owner and operator; or

2. Suspension or nonrenewal of the permit to operate such system issued by the ~~Commission~~ Department until payment of such fees or penalty, or both, so assessed; or

3. Both such penalty and permit suspension or nonrenewal.

SECTION 10. AMENDATORY 17 O.S. 2001, Section 309, is amended to read as follows:

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

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

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

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

2. Without notice and hearing pursuant to Section 310 of this title, issue an administrative order stating the existence of an emergency and requiring that such action be taken as it deems necessary to meet the emergency. Such order shall be effective immediately. Any person to whom such an order is directed shall comply with said order immediately but on application to the ~~Commission~~ Department shall be afforded a hearing within ten (10) days after receipt of the emergency order. On the basis of such

hearing, the ~~Commission~~ Department shall continue such order in effect, revoke it, or modify it. Any person aggrieved by such order continued after the hearing provided for in this subsection may appeal to the ~~Supreme Court~~ district court as provided in ~~Section 318 of Title 75 of the Oklahoma Statutes~~ the Administrative Procedures Act. Such appeal when docketed shall have priority over all cases pending on said docket.

- D. 1. The ~~Commission~~ Department may take corrective action if:
- a. an owner or operator of the storage tank system cannot be identified,
 - b. an identified owner or operator cannot or will not comply with the order issued pursuant to subsection C of this section,
 - c. an administrative or judicial proceeding on an order issued pursuant to subsection C of this section is pending and the ~~Commission~~ Department determines corrective action is necessary to protect the public health, safety and welfare or the environment until the administrative or judicial proceeding is resolved, or
 - d. the ~~Commission~~ Department determines that the release constitutes a clear and immediate danger requiring immediate action to prevent, minimize or mitigate damage to the public health and welfare or the environment. Before taking an action under this paragraph, the ~~Commission~~ Department shall make all reasonable efforts, taking into consideration the urgency of the situation, to order an owner or operator to take a corrective action and notify the owners of real property as specified by Section 310 of this title.

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

- a. the owner or operator has failed to take a corrective action ordered by the ~~Commission~~ Department and the ~~Commission~~ Department has taken the corrective action, or
- b. the ~~Commission~~ Department has taken corrective action in an emergency pursuant to subparagraph d of paragraph 1 of this subsection.

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

E. Any order issued by the ~~Commission~~ Department pursuant to this section shall not limit the liability of the owner or operator or both such owner or operator for any injury, damages, or costs incurred by any person as a result of the release. The owner or operator shall not avoid any liability as a result of such release by means of a conveyance of any right, title or interest in real

property; or by any indemnification, hold harmless agreement, or similar agreement.

1. This subsection does not:

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

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

SECTION 11. 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~~ Department of Environmental Quality 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 or of any order of the ~~Commission~~ Department, the ~~Commission~~ Department shall give written notice to the alleged violator specifying the cause of complaint within twenty (20) days after the ~~Commission~~ Department 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 or any order of the ~~Commission~~ Department issued pursuant thereto. 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~~ Department shall initiate proceedings and hold a hearing to determine if:

- a. the alleged violator should be found in violation of ~~Commission~~ Department 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~~ Department shall make findings of fact and conclusions of law, and enter its order reflecting its decision in the matter. The order of the ~~Commission~~ Department 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~~ as provided by the Administrative Procedures Act.

C. Except as otherwise expressly provided by law, any notice, order, or other instrument issued by or pursuant to authority of the ~~Commission~~ Department 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 person's last-known post office address as shown by the files or records of the ~~Commission~~ Department. 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. Such proof of service shall be filed in the office of the ~~Commission~~ Department.

Every certificate or affidavit of service made and filed as 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. The ~~Commission~~ Department shall provide notice and an opportunity for hearing to:

1. 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; and

2. 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.

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~~ Department 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. 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 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. 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. 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. An order granting access to property shall be upon such terms as to reasonably minimize the impact of the access upon the owners use of the property and to protect the rights of the property owner.~~

SECTION 12. AMENDATORY 17 O.S. 2001, Section 311, is amended to read as follows:

Section 311. A. Any person who has been determined by the ~~Corporation Commission~~ Department of Environmental Quality to have violated any provisions of the Oklahoma Storage Tank Regulation Act or any rule promulgated or order issued pursuant to the provisions of the Oklahoma Storage Tank Regulation Act shall be liable for an administrative penalty of not more than Ten Thousand Dollars (\$10,000.00) for each day that said violation continues.

B. 1. The amount of the penalty shall be assessed by the ~~Commission~~ Department pursuant to the provisions of subsection A of this section, after notice and hearing. In determining the amount of the penalty, the ~~Commission~~ Department shall include, but not be limited to, consideration of the nature, circumstances and gravity of the violation and, with respect to the person found to have committed the violation, the degree of culpability, the effect on ability of the person to continue to do business, and any show of good faith in attempting to achieve compliance with the provisions of the Oklahoma Storage Tank Regulation Act.

2. All penalties collected pursuant to the provisions of this subsection shall be deposited in the ~~Oklahoma Storage Tank~~

~~Regulation~~ Department of Environmental Quality Revolving Fund to be used for the purpose of implementing the Oklahoma Storage Tank Regulation Act.

C. The payment, in full, of any administrative penalty, assessed pursuant to an administrative order, the completion of any corrective action taken for a release pursuant to an administrative order, and the otherwise compliance with an administrative order issued by the ~~Commission~~ Department pursuant to the Oklahoma Storage Tank Regulation Act for a release shall be full and complete satisfaction of the violation for which the administrative order was issued and shall preclude the assessment of any other administrative, or civil ~~or criminal~~ penalty for the same known violation by any other agency of this state.

D. Any person who willfully and knowingly violates any provision of the Oklahoma Storage Tank Regulation Act or a rule, promulgated or order issued pursuant to the provisions of the Oklahoma Storage Tank Regulation Act, upon conviction, shall be guilty of a misdemeanor and may be subject for each offense to a fine of not more than Five Thousand Dollars (\$5,000.00) or imprisonment for a term not to exceed one (1) year or both such fine and imprisonment. Each day of violation pursuant to this subsection shall constitute a separate violation.

E. Any person who willfully and knowingly makes any false statement, representation or certification in any application, record, report, plan or other document filed or required to be filed, or required to be maintained pursuant to the Oklahoma Storage Tank Regulation Act or rules promulgated thereto, or who falsifies, tampers with or knowingly renders inaccurate any monitoring device or method required to be maintained pursuant to the Oklahoma Storage Tank Regulation Act or rules promulgated thereto shall be deemed guilty of a misdemeanor and, upon conviction, may be punished by a fine of not more than Five Thousand Dollars (\$5,000.00) or by

imprisonment for not more than six (6) months, or by both such fine and imprisonment. Each day of violation pursuant to this subsection shall constitute a separate violation.

SECTION 13. AMENDATORY 17 O.S. 2001, Section 312, is amended to read as follows:

Section 312. A. Enforcement of any action for an injunction or recovery of any administrative or civil penalty assessed pursuant to the Oklahoma Storage Tank Regulation Act, ~~Section 301 et seq. of this title,~~ or rule promulgated thereto may be brought by:

1. The district attorney of the appropriate district court of the State of Oklahoma;

2. The Attorney General on behalf of the State of Oklahoma in the appropriate district court of the State of Oklahoma; or

3. The ~~Corporation Commission~~ Department of Environmental Quality on behalf of the State of Oklahoma in the appropriate district court of the State of Oklahoma, or as otherwise authorized by law.

B. The ~~Commission~~ Department may bring an action in a court of competent jurisdiction for equitable relief to redress or restrain a violation by any person of a provision of the Oklahoma Storage Tank Regulation Act or any rule promulgated or order issued pursuant thereto. Said court has jurisdiction to determine said action, and to grant the necessary or appropriate relief, including but not limited to:

1. Enjoining further releases;

2. Ordering the design, construction, installation or operation of alternate facilities;

3. Ordering the removal of facilities, contaminated soils and the restoration of the environment;

4. Fixing and ordering compensation for any public or private property destroyed, damaged or injured;

5. Except as otherwise provided by law, assessing and awarding punitive damages pursuant to the Oklahoma Storage Tank Regulation Act; and

6. Ordering reimbursement to any agency of federal, state or local government from any person whose acts caused governmental expenditures if not already reimbursed by any other state or federal reimbursement program.

SECTION 14. AMENDATORY 17 O.S. 2001, Section 313, is amended to read as follows:

Section 313. A. Any records, reports or information obtained pursuant to the Oklahoma Storage Tank Regulation Act shall be available to the public except as provided in subsection B of this section.

B. Upon a showing satisfactory to the ~~Corporation Commission~~ Department of Environmental Quality by any person that records, reports or information, or a particular part thereof is made public, would divulge production or sales figures or methods, processes or production unique to such person or would otherwise tend to affect adversely the competitive position of such person by revealing trade secrets, the ~~Commission~~ Department shall consider such record, report or information or particular portion thereof, confidential.

C. Nothing in this section shall be construed to prevent disclosures of such report, record or information to federal or state representatives as necessary for purposes of administration of any federal or state laws or when relevant to proceedings pursuant to the Oklahoma Storage Tank Regulation Act.

D. Information concerning groundwater quality and the presence or concentration of substances in soils or groundwater shall not be considered confidential by the ~~Commission~~ Department.

SECTION 15. AMENDATORY 17 O.S. 2001, Section 314, is amended to read as follows:

Section 314. The ~~Corporation Commission~~ Department of Environmental Quality shall prepare an annual compilation of reported releases at the end of the fiscal year, make that report available to the public and provide that report to the Storage Tank Management Advisory Council, the Legislature and to the Governor. The report shall contain, for each reported release:

1. The corrective action or other response taken by the owner, operator or the ~~Commission~~ Department; and

2. Any information or enforcement action taken by the ~~Commission~~ Department against the owner or operator responsible for the release.

SECTION 16. AMENDATORY 17 O.S. 2001, Section 316, is amended to read as follows:

Section 316. No county, incorporated or nonincorporated municipality, state agency or political subdivision shall enact ordinances or promulgate any rules, ordinances or regulations governing any aspect of storage tanks within the State of Oklahoma that shall be in conflict with any of the provisions of the Oklahoma Storage Tank Regulation Act, or any rules promulgated by the ~~Corporation Commission~~ Environmental Quality Board pursuant to the provisions of the Oklahoma Storage Tank Regulation Act.

SECTION 17. AMENDATORY 17 O.S. 2001, Section 365, is amended to read as follows:

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

B. There is hereby created in the State Treasury a revolving fund for the ~~Corporation Commission~~ Department to be designated the

"Oklahoma Leaking Storage Tank Revolving Fund". The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of monies from public or private sources, and any monies collected pursuant to the provisions of this section.

C. All monies accruing to the credit of the Oklahoma Leaking Underground Storage Tank Trust Fund and the Oklahoma Leaking Storage Tank Revolving Fund are hereby appropriated and may be budgeted and expended by the ~~Corporation-Commission~~ Department only for the purpose provided in this section, to best protect human health and the environment. Expenditures from said funds shall be made upon warrants issued by the State Treasurer against claims filed as prescribed by law with the Director of State Finance for approval and payment.

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

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

F. For the purpose of immediately responding to emergency situations created by leaking storage tanks having potentially critical environmental or public health or safety impact, the ~~Corporation-Commission~~ Department may take whatever action it deems necessary without notice or hearing, including the expenditure of

monies from either the Oklahoma Leaking Underground Storage Tank Trust Fund or the Oklahoma Leaking Storage Tank Revolving Fund or from both such funds to promptly respond to the emergency. Such emergency expenditure shall be made pursuant to the provisions of the Oklahoma Central Purchasing Act upon such terms and conditions established by the Department of Central Services to accomplish the purposes of this section.

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

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

- a. the owner or operator has failed to take a corrective action ordered by the ~~Commission~~ Department and the ~~Commission~~ Department has taken the corrective action, or
- b. the ~~Administrator~~ Director has taken corrective action in an emergency.

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

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

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

SECTION 18. AMENDATORY 27A O.S. 2001, Section 2-2-201, is amended to read as follows:

Section 2-2-201. A. There are hereby created:

1. The Water Quality Management Advisory Council;
2. The Hazardous Waste Management Advisory Council;
3. The Solid Waste Management Advisory Council;
4. The Radiation Management Advisory Council; ~~and~~
5. The Laboratory Services Advisory Council; and
6. The Storage Tank Management Advisory Council.

B. 1. Each Advisory Council created pursuant to subsection A of this section shall consist of nine (9) members. 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. The initial appointments for each gubernatorial and legislative member

shall be for progressive terms of one (1) through three (3) years so that only one term expires each calendar year; subsequent appointments shall be for three-year terms. Members of the Advisory Councils shall serve at the pleasure of and may be removed from office by the appointing authority. Members shall continue to serve until their successors are appointed. Any vacancy shall be filled in the same manner as the original appointments. Five members shall constitute a quorum.

2. Each Advisory Council shall elect a chair and a vice-chair from among its members. Each 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. 1. All members of the Water Quality Management Advisory Council shall be knowledgeable of water quality and of the environment. The Council shall be composed as follows:

- a. the Governor shall appoint three members as follows:
 - (1) one member representing the field of engineering,
 - (2) one member representing a statewide nonprofit environmental organization, and
 - (3) one member representing the general public,
- b. the President Pro Tempore of the Senate shall appoint three members as follows:
 - (1) one member representing an industry located in this state,
 - (2) one member representing an oil field-related industry, and
 - (3) one member representing the field of geology, and
- c. the Speaker of the House of Representatives shall appoint three members as follows:

- (1) one member representing a political subdivision of the state who shall be a member of the local governmental body of a city or town,
- (2) one member representing a rural water district organized pursuant to the laws of this state, and
- (3) one member representing the field of agriculture.

2. The jurisdictional areas of the Water Quality Management Advisory Council shall include Article VI of this chapter, water quality and protection and related activities and such other areas as designated by the Environmental Quality Board.

D. 1. All members of the Hazardous Waste Management Advisory Council shall be knowledgeable of hazardous waste and of the environment. The Council shall be composed as follows:

a. the Governor shall appoint three members as follows:

- (1) one member representing an industry located in this state,
- (2) one member representing a statewide nonprofit environmental organization, and
- (3) one member representing a political subdivision of the state who shall be a member of the local governing body of a city or town,

b. the President Pro Tempore of the Senate shall appoint three members as follows:

- (1) one member representing a political subdivision of the state who shall be a member of the local governmental body of a city or town,
- (2) one member representing the general public, and
- (3) one member representing industry generating hazardous waste, and

c. the Speaker of the House of Representatives shall appoint three members as follows:

- (1) one member representing the field of engineering,

(2) one member representing the hazardous waste industry, and

(3) one member representing the field of geology.

2. The jurisdictional areas of the Hazardous Waste Management Advisory Council shall include Article VII of this chapter, the Oklahoma Hazardous Waste Reduction Program, and such other areas as designated by the Board.

E. 1. All members of the Solid Waste Management Advisory Council shall be knowledgeable of solid waste and of the environment. The Council shall be composed as follows:

a. the Governor shall appoint three members as follows:

(1) one member representing a statewide nonprofit environmental organization,

(2) one member shall be a county commissioner, and

(3) one member representing the general public,

b. the President Pro Tempore of the Senate shall appoint three members as follows:

(1) one member representing an industry located in this state generating solid waste,

(2) one member representing a political subdivision of this state who shall be a member of the local governmental body of a city or town, and

(3) one member representing the field of geology, and

c. the Speaker of the House of Representatives shall appoint three members as follows:

(1) one member representing the solid waste disposal industry in this state,

(2) one member representing the field of engineering, and

(3) one member representing the transportation industry.

2. The jurisdictional areas of the Solid Waste Management Advisory Council shall include Article X of this chapter, the Oklahoma Waste Tire Recycling Act and such other areas as designated by the Board.

F. 1. All members of the Radiation Management Advisory Council shall be knowledgeable of radiation hazards and radiation protection. The Council shall be composed as follows:

a. the Governor shall appoint three members as follows:

- (1) one member representing an industry located in this state which uses sources of radiation in its manufacturing or processing business,
- (2) one member representing a statewide nonprofit environmental organization, and
- (3) one member representing the engineering profession who shall be a professional engineer employed and experienced in matters of radiation management and protection,

b. the President Pro Tempore of the Senate shall appoint three members as follows:

- (1) one member representing the faculty of an institution of higher learning of university status and shall be experienced in matters of scientific knowledge and competent in matters of radiation management and protection,
- (2) one member representing the general public, and
- (3) one member representing the field of industrial radiography, and

c. the Speaker of the House of Representatives shall appoint three members as follows:

- (1) one member representing the transportation industry,

- (2) one member representing the petroleum industry who is trained and experienced in radiation management and protection, and
- (3) one member representing a medical institution within this state who shall be experienced in matters of radiation management and protection.

2. The jurisdictional areas of the Radiation Management Advisory Council shall include Article IX of this chapter and such other areas as designated by the Board.

G. 1. All members of the Laboratory Services Advisory Council shall be knowledgeable of laboratory services and certification standards. The Council shall be composed as follows:

- a. the Governor shall appoint three members as follows:
 - (1) one member representing a private laboratory within the state certified by the Department,
 - (2) one member representing the field of hydro-geology, and
 - (3) one member representing permit holders required to routinely submit laboratory analyses results to the Department of Environmental Quality,
- b. the President Pro Tempore of the Senate shall appoint three members as follows:
 - (1) one member representing a private laboratory within the state certified by the Department,
 - (2) one member representing a public laboratory within the state certified by the Department, and
 - (3) one member representing the field of microbiology, and
- c. the Speaker of the House of Representatives shall appoint three members as follows:
 - (1) one member representing a private laboratory within the state certified by the Department,

- (2) one member representing permit holders required to routinely submit laboratory analyses results to the Department, and
- (3) one member representing the field of environmental chemistry.

2. The jurisdictional areas of the Laboratory Services Advisory Council shall include Article IV of this chapter and such other areas designated by the Board.

H. 1. All Members of the Storage Tank Management Advisory Council shall be knowledgeable of storage tanks and the environment. The Council shall be composed as follows:

- a. the Governor shall appoint three members as follows:
 - (1) one member representing an agency or political subdivision of this state,
 - (2) one member representing a refinery, or a terminal operator or supplier licensed or registered with the Oklahoma Tax Commission, and
 - (3) one member representing a statewide nonprofit environmental organization,
- b. the President Pro Tempore of the Senate shall appoint three members as follows:
 - (1) one member representing a storage tank owner or operator,
 - (2) one member representing the general public, and
 - (3) one member who shall be a geologist, and
- c. the Speaker of the House of Representatives shall appoint three members as follows:
 - (1) one member representing a transporter registered or licensed with the Oklahoma Tax Commission whose primary business is trucking,
 - (2) one member who shall be a registered professional engineer, and

(3) one member representing a storage tank owner or operator.

2. The jurisdictional areas of the Storage Tank Management Advisory Council shall be the Oklahoma Storage Tank Regulation Act and such other areas as designated by the Board.

I. 1. The Air Quality Council created pursuant to Section 6, Chapter 215, O.S.L. 1992 (63 O.S. Supp. 1992, Section 1-1807.1) shall remain in effect as the Air Quality Advisory Council and carry on the powers and duties assigned to it by law. The current members of the Air Quality Council shall remain on the Council until the expiration of their individual terms of office or until such offices are vacated. Future appointments to the Council shall be made according to the provisions of this section.

2. The Council shall consist of nine (9) members who shall be residents of this state and appointed by the Governor with the advice and consent of the Senate.

3. Members of the Council shall have the qualifications as follows:

- a. one member shall be selected from the engineering profession, and, as such, shall be a professional engineer and experienced in matters of air pollution equipment and control, who shall not be an employee of any unit of government,
- b. one member shall be selected from industry in general, and, as such, shall be employed as a manufacturing executive carrying on a manufacturing business within this state,
- c. one member shall be selected from a faculty of an institution of higher learning of university status and shall be experienced in matters of scientific knowledge and competent in matters of air pollution control and evaluation,

- d. one member shall be selected from the transportation industry,
- e. one member shall be selected from the petroleum industry, and, as such, shall be employed by a petroleum company carrying on a petroleum refining business within the state, and, as such, shall be trained and experienced in matters of scientific knowledge of causes as well as effects of air pollution,
- f. one member shall be selected from agriculture, and, as such, shall be engaged in or employed by a basic agricultural business or the processing of agricultural products,
- g. one member shall be selected from the political subdivisions of the state, and, as such, shall be a member of the local government body of a city or town,
- h. one member, whose first term shall expire on June 15, 1998, shall be selected from the general public, and
- i. one member, whose first term shall expire on June 15, 1999, shall be selected from the electric utilities industry, and as such, shall be knowledgeable in matters of air pollution and control.

4. Each member shall be appointed to serve a term of office of seven (7) years, except that the term of those first appointed shall expire as follows:

- a. One at the end of one (1) year after date of appointment;
- b. One at the end of two (2) years after date of appointment;
- c. One at the end of three (3) years after date of appointment;

- d. One at the end of four (4) years after date of appointment;
- e. One at the end of five (5) years after date of appointment;
- f. One at the end of six (6) years after date of appointment; and
- g. One at the end of seven (7) years after date of appointment;
- h. The terms of all members shall be deemed to have expired on June 15~~th~~ of the year of expiration, and shall continue until successors have been duly appointed and qualified. If a vacancy occurs, the Governor shall appoint a person for the remaining portion of the unexpired term created by the vacancy.
Five members of the Council shall constitute a quorum.

5. The Council shall hold at least two regular meetings each calendar year at a place and time to be fixed by the Council. The Council shall select one of its members to serve as chair and another of its members to serve as vice-chair at the first regular meeting in each calendar year to serve as the chair and vice-chair for the ensuing year. Special meetings may be called, and any meeting may be canceled, by the chair, or by three members of the Council by delivery of written notice to each member of the Council.

6. The jurisdictional areas of the Air Quality Advisory Council shall include Article V of this chapter and such other areas as designated by the Board.

~~±~~ J. In addition to other powers and duties assigned to each Council pursuant to this Code, each Council shall, within its jurisdictional area:

1. Have authority to recommend to the Board rules on behalf of the Department. The Department shall not have standing to recommend to the Board permanent rules or changes to such rules within the

jurisdiction of a Council which have not previously been submitted to the appropriate Council for action;

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

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

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 Board or Department concerning the need and the desirability of conducting meetings, workshops and seminars; and

5. Cooperate with each other Council, the public, the Board and the Executive Director of the Department in order to coordinate the rules within their respective jurisdictional areas and to achieve maximum efficiency and effectiveness in furthering the objectives of the Department.

~~J.~~ K. The Councils shall not recommend rules for promulgation by the Environmental Quality Board unless all applicable requirements of the Administrative Procedures Act have been followed, including but not limited to notice, rule impact statement and rule-making hearings.

~~K.~~ L. Members of the Councils 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 Councils are authorized to utilize the conference rooms of the

Department of Environmental Quality and obtain administrative assistance from the Department, as required.

SECTION 19. AMENDATORY 27A O.S. 2001, Section 1-3-101, as amended by Section 1, Chapter 397, O.S.L. 2002 (27A O.S. Supp. 2002, Section 1-3-101), 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 superceded. 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, non-point 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. Hazardous substance tanks, petroleum storage tanks and other storage tank systems not within the exclusive jurisdiction of the Corporation Commission as set forth in subsection E of this section;

17. Freshwater wellhead protection;

~~17.~~ 18. Groundwater protection for activities subject to the jurisdictional areas of environmental responsibility of the Department;

~~18.~~ 19. Utilization and enforcement of Oklahoma Water Quality Standards and implementation documents;

~~19.~~ 20. 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.~~ 21. Development and maintenance of a computerized information system relating to water quality pursuant to Section 1-4-107 of this title; and

~~21.~~ 22. 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. ~~State~~ Oklahoma Department of Agriculture, Food, and Forestry.

1. The ~~State~~ Oklahoma Department of Agriculture, Food, and Forestry shall have the following jurisdictional areas of environmental responsibility except as provided in subsection B of this section and paragraphs 2 and 3 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, and
- 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.

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 such 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 such facilities, and

- b. facilities which store grain, feed, seed, fertilizer, and agricultural chemicals that are required by federal N.P.D.E.S. 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.

3. Any point source discharge related to agriculture from sources specified in paragraph 1 of this subsection which require a federal National Pollutant Discharge Elimination Systems permit and which are not specified under paragraph 2 of this subsection as being subject to the jurisdiction of the Department of Environmental Quality shall continue to be subject to the direct jurisdiction of the federal Environmental Protection Agency for issuance and enforcement of such permit and shall not be required to be permitted by the Department of Environmental Quality or the Oklahoma Department of Agriculture, Food, and Forestry.

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 documents⁷,1 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 and Program and the 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.~~ 6. 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 oil and gas related equipment and products,
- c. bulk terminals, aboveground and underground storage tanks not subject to the jurisdiction of the Corporation 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.~~ 7. 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 stormwater 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 Oklahoma Conservation 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. Department of Civil Emergency Management. The 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;

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;

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; and

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

SECTION 20. AMENDATORY 17 O.S. 2001, Section 52, is amended to read as follows:

Section 52. A. 1. Except as otherwise provided by this section, the Corporation Commission is hereby vested with exclusive jurisdiction, power and authority with reference to:

- 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. injection wells known as Class II wells under the federal Underground Injection Control Program. 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, and
- k. subsurface storage of oil, natural gas and liquefied petroleum gas in geologic strata.

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 United States 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 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 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 and Program and the 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 hazardous or solid waste or other pollutants from rolling stock and rail facilities.

~~7.~~ 6. 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 oil and gas related equipment and products,
- 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 Oklahoma Department of Agriculture, Food, and Forestry as specified by this section.

~~8.~~ 7. 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.

B. The Corporation Commission and incorporated cities and towns shall have exclusive jurisdiction over permit fees for the drilling and operation of oil and gas wells.

C. The Corporation Commission shall comply with and enforce the Oklahoma Water Quality Standards.

SECTION 21. AMENDATORY 17 O.S. 2001, Section 139, is amended to read as follows:

Section 139. A. The Corporation Commission is vested with exclusive jurisdiction, power and authority, and it shall be its duty, to make and enforce such rules and orders governing and regulating the handling, 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 and brine wells within this state as are reasonable and necessary for the purpose of preventing the pollution of the surface and subsurface waters in the state, and to otherwise carry out the purpose of this act.

B. 1. Except as otherwise provided by this subsection, 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. injection wells known as Class II wells under the
federal Underground Injection Control Program. 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
the 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 associated with processing at
or in any:
 - (1) natural gas liquids extraction plant,
 - (2) refinery,
 - (3) reclaiming facility other than for those
specified within subparagraph e of this
paragraph,
 - (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, and
- k. subsurface storage of oil, natural gas and liquefied petroleum gas in geologic strata.

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 United States 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 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 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 and Program and the 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 hazardous or solid waste or other pollutants from rolling stock and rail facilities.

~~7.~~ 6. 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 oil and gas related equipment and products,
- 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 Oklahoma Department of Agriculture, Food, and Forestry as specified by this section.

~~8.~~ 7. 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.

C. The Corporation Commission shall comply with and enforce the Oklahoma Water Quality Standards.

D. 1. For the purpose of immediately responding to emergency situations having potentially critical environmental or public safety impact and resulting from activities within its jurisdiction, the Commission may take whatever necessary action, without notice and hearing, including the expenditure of monies from the Corporation Commission Revolving Fund, to promptly respond to the emergency. Such emergency expenditure shall be made pursuant to the provisions of the Oklahoma Central Purchasing Act, upon such terms and conditions established by the Department of Central Services to accomplish the purposes of this section. Thereafter, the Commission shall seek reimbursement from the responsible person, firm or corporation for all expenditures made from the Corporation Commission Revolving Fund. Any monies received as reimbursement shall be deposited to the credit of the Corporation Commission Revolving Fund.

2. The Commission shall not expend from any fund in the State Treasury, in any fiscal year, for the purposes herein provided, an amount of money in excess of the total sum specifically authorized annually by the Legislature for such purposes. Any monies received by the Commission through execution on any required surety shall not be subject to such limitation on expenditure for remedial action.

3. Neither the Commission nor any independent contractor of the Commission authorized to conduct remedial action under this section shall be held liable or responsible for any damages resulting from non-negligent actions reasonably necessary for conducting remedial work. Nothing in this section shall limit the authority of the Commission or relieve any person or persons otherwise legally responsible from any obligation to prevent or remediate pollution.

SECTION 22. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5-1-101 of Title 27A, unless there is created a duplication in numbering, reads as follows:

A. All programs and functions pertaining to the Indemnity Fund Program are hereby transferred from the Corporation Commission to the Oklahoma Petroleum Storage Tank Indemnity Fund Board, herein referred to as the "Indemnity Fund Board". With regard to all such programs and functions transferred and assigned, all Corporation Commission rules relating to such programs and functions are hereby transferred to the Oklahoma Petroleum Storage Tank Indemnity Fund Board for the purpose of maintaining and operating such programs and functions. Such rules shall remain in effect only until June 30, 2004, at which time such transferred rules will terminate unless earlier superseded by rules promulgated by the Oklahoma Petroleum Storage Tank Indemnity Fund Board. By February 1, 2004, the Oklahoma Petroleum Storage Tank Indemnity Fund Board shall have adopted new permanent rules to implement the programs and functions transferred to the Oklahoma Petroleum Storage Tank Indemnity Fund Board.

B. All rights, obligations and remedies arising out of laws, rules, settlement agreements, other agreements and causes of action are also transferred to the Oklahoma Petroleum Storage Tank Indemnity Fund Board. The transfer to the Oklahoma Petroleum Storage Tank Indemnity Fund Board of the programs and functions pertaining to the Indemnity Fund Program shall not operate to bar or negate any existing settlement agreement, other written agreement, order, claim or cause of action transferred or available to the Indemnity Fund Program, nor shall it operate to affect any action undertaken by the Indemnity Fund Program prior to such transfer.

C. All unexpended funds, property, equipment, records and any outstanding financial obligations and encumbrances related to the

activities of the Indemnity Fund Program are hereby transferred to the Oklahoma Petroleum Storage Tank Indemnity Fund Board.

D. Any proceedings relating to the denial of claims or eligibility for reimbursement pending as of the effective date of this section shall be transferred to district court as specified in paragraph 2 of subsection E of Section 356 of Title 17 of the Oklahoma Statutes as amended and recodified by this act. The provisions of Sections 22 through 34 of this act shall be applicable to all current, pending, past and future contracts, claims and causes of action pertaining to the Indemnity Fund Program, provided that this subsection shall not apply, nor be construed to authorize or permit the reopening or review of the underlying claim or claims of any cases that were formally settled with a formal settlement agreement or in which a final order was entered by the Corporation Commission, unless such action was or is otherwise allowed by law.

E. All full-time employees of the Indemnity Fund Program identified by the Oklahoma Petroleum Storage Tank Indemnity Fund Board as necessary and appropriate for the continuing operation of the Indemnity Fund Program are hereby transferred to the Oklahoma Petroleum Storage Tank Indemnity Fund Board. The Oklahoma Petroleum Storage Tank Indemnity Fund Board shall not be obligated to receive by transfer any employee engaged in supervisory activities.

F. By January 15, 2004, the Oklahoma Petroleum Storage Tank Indemnity Fund Board and the Administrator of the Oklahoma Petroleum Storage Tank Indemnity Fund Program shall submit joint recommendations, if any, for proposed statutory changes pertaining to the Indemnity Fund Program.

SECTION 23. AMENDATORY 17 O.S. 2001, Section 350, is amended to read as follows:

Section 350. A. Sections 350 through 358 of this title shall be known and may be cited as the "Oklahoma Petroleum Storage Tank Release Indemnity Program".

B. ~~The Corporation Commission shall maintain, operate and administer the Oklahoma Petroleum Storage Tank Release Indemnity Program cooperatively with,~~ herein referred to as the "Indemnity Fund Program" shall be operated and administered separate and apart from the regulatory program programs implementing the regulatory responsibilities of ~~the Commission pursuant to the Oklahoma Storage Tank Regulation Act or any other division of the Commission~~ any state environmental agency. Regulatory responsibilities of the ~~Corporation Commission~~ state environmental agencies shall include, but not be limited to, regulatory permitting activities, regulatory compliance activities, enforcement of rules promulgated to implement regulatory programs, technical review, ~~development and~~ approval of corrective action plans and determinations that remediation of contaminated sites is complete.

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

SECTION 24. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5-1-102 of Title 27A, unless there is created a duplication in numbering, reads as follows:

A. There is hereby created the Oklahoma Petroleum Storage Tank Indemnity Fund Board. The Board shall be composed of three (3) members as follows:

1. The Director of the Department of Transportation or his or her designee;
2. The State Auditor and Inspector or his or her designee; and
3. The Executive Director of the Department of Environmental Quality or his or her designee.

B. The Board shall have the following powers, duties and responsibilities:

1. To elect a chair and a vice-chair from among its members;
2. To provide oversight of the Oklahoma Petroleum Storage Tank Indemnity Fund and Oklahoma Petroleum Storage Tank Indemnity Fund Program;
3. To promulgate rules for the implementation of the Indemnity Fund and Indemnity Fund Program;
4. To review and approve an organizational structure for the Indemnity Fund Program developed and submitted by the Administrator;
5. To develop a budget for the administration, including claims processing, for the Indemnity Fund and Indemnity Fund Program; and
6. To hire an Administrator of the Indemnity Fund and Indemnity Fund Program, to prescribe his or her duties consistent with the statutes governing the Indemnity Fund and Indemnity Fund Program, and to fix his or her compensation.

C. The first meeting of the Board shall be called before July 1, 2003, or on the effective date of this act, whichever is later, by the Executive Director of the Department of Environmental Quality who shall preside over such meeting until such time as a chair is elected. Subsequent meetings shall be called by the chair at least quarterly or more frequently as necessary to carry out the provisions of this section.

D. The Oklahoma Petroleum Storage Tank Indemnity Fund Board and the Oklahoma Petroleum Storage Tank Indemnity Fund Program shall be affiliated with the Department of Environmental Quality.

SECTION 25. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5-1-103 of Title 27A, unless there is created a duplication in numbering, reads as follows:

A. The Oklahoma Petroleum Storage Tank Indemnity Fund Board shall hire the Administrator of the Petroleum Storage Tank Indemnity

Fund. The Administrator shall serve at the pleasure of the Indemnity Fund Board.

B. The Administrator shall have experience in administration of environmental programs, environmental contracting, environmental remediation or such other areas as may be required by the Indemnity Fund Board.

C. The Administrator shall provide for the administration of the Indemnity Fund Program and shall:

1. Be the executive officer and supervise the activities of the Indemnity Fund Program;

2. Employ, discharge, appoint or contract with, and fix the duties and compensation of such assistants, attorneys, geologists, environmental professionals, administrative, clerical, technical, investigators or such other personnel, either on a full-time, part-time, fee, or contractual basis, as in his or her judgment and discretion shall be deemed necessary, expedient, convenient or appropriate to the performance or carrying out of any of the purposes, objectives, responsibilities or statutory provisions relating to the Indemnity Fund Program, or to assist the Administrator in the performance of his or her official duties and functions;

3. Establish internal policies and procedures for the proper and efficient administration of the Indemnity Fund Program;

4. Enter into such contracts as may be necessary and prudent to properly administer the Indemnity Fund Program, including contracts with qualified companies for claims processing services; and

5. Exercise all incidental powers that are necessary and proper to implement and administer the Indemnity Fund Program.

D. The Administrator shall not be an owner, stockholder, employee or officer of, nor have any other business relationship with or receive any compensation from, any corporation, limited liability company, partnership, sole proprietorship, or any other

business or entity which owns storage tanks or does business with the Indemnity Fund Program.

E. In the event of the Administrator's temporary absence, the Administrator may delegate the exercise of such powers and duties to an acting administrator during the Administrator's absence, subject to an organizational structure approved by the Board. In the event of a vacancy in the position of Administrator, the Board may employ an interim or acting Administrator who is authorized to exercise such powers and duties until a permanent Administrator is employed. Any designee authorizing such powers and duties of the Administrator as authorized or on a temporary or acting basis shall meet the requirements of subsection D of this section for the Administrator.

F. All references with respect to the exercise of the powers and duties related to the Indemnity Fund Program shall mean the exercise of such powers and duties by the Administrator or the Administrator's authorized designee.

SECTION 26. 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~~ Oklahoma Petroleum Storage Tank Indemnity Fund Board to administer the Oklahoma Petroleum Storage Tank ~~Release Environmental Cleanup~~ Indemnity Fund and the Oklahoma Petroleum Storage Tank ~~Release~~ Indemnity Program;

2. "Distributor" means:

- a. every person importing or causing to be imported into this state any motor fuel, diesel fuel or blending material for use, distribution, or sale and distribution, or sale and delivery after the same reaches this state. "Distributor" does not mean

- persons importing motor fuel only in the supply tank of a vehicle originally provided by the manufacturer of the motor vehicle as a container for motor fuel or diesel fuel to propel such motor vehicle, nor does "distributor" mean persons only importing motor fuel, diesel fuel or blending material into the state under circumstances requiring that they be licensed as "Motor Fuel/Diesel Fuel Importers for Use" as defined in subsection (g) of Section 601 of Title 68 of the Oklahoma Statutes and who are actually so licensed,
- b. any person producing, refining, preparing, distilling, blending, manufacturing, or compounding motor fuel or blending material in this state for use, distribution or sale and delivery in this state,
 - c. any person within this state producing or collecting what is commonly known as drip, casinghead or natural gasoline,
 - d. any person who has in his or her possession or buys for sale or use motor fuel, diesel fuel or blending material from any person other than a licensed distributor, retailer or dealer,
 - e. any person other than a retailer or dealer who sells motor fuel, diesel fuel or blending material to anyone except a licensed distributor,
 - f. any person who makes bulk sales of motor fuel, diesel fuel or blending material, and
 - g. any other person, including a retailer or dealer, who has filed an application for and has procured a distributor's license in the manner provided by the Oklahoma Motor Fuel/Diesel Fuel Importers for Use Tax Code, Section 601 et seq. of Title 68 of the Oklahoma Statutes;

3. "Eligible person" means any:

- a. owner or operator of a storage tank system who has incurred liability as a result of an eligible release, and who meets the requirements specified in Section 356 of this title, or
- b. person who on or after November 8, 1984, purchases property on which a storage tank system is located if:
 - (1) the storage tank system was located on the property on November 8, 1984,
 - (2) such person could not have known that such storage tank system existed. The burden shall be upon such purchaser to show that such purchaser did not know or should not have known of the existence of such storage tank system,
 - (3) the owner or operator of the storage tank system responsible for the system cannot be determined ~~by the Corporation Commission or the Administrator,~~ or the owner or operator of the storage tank system responsible for the system is incapable, ~~in the judgment of the Corporation Commission,~~ of properly carrying out any necessary corrective action, and
 - (4) either, funds are unavailable from the Oklahoma Leaking Underground Storage Tank Trust Fund or the storage tank system is not eligible for corrective action taken pursuant to Section 365 of this title, or
- c. person who acquired ownership of a tank through inheritance as denoted in an Order Allowing Final Account and Determination of Heirship and Decree of Final Distribution or is responsible for a release by

reason of owning the real property through inheritance within which a tank or a release is or was located if:

- (1) the storage tank system of the release was located on the real property on November 8, 1984,
- (2) the operator of the storage tank system responsible for the system or responsible for a release cannot be determined or found ~~by the Corporation Commission~~, or the operator of the storage tank system responsible for the system or responsible for the release is incapable, ~~in the judgment of the Corporation Commission~~, of properly carrying out any necessary corrective action,
- (3) either funds are unavailable from the Oklahoma Leaking Underground Storage Tank Trust Fund or the storage tank system or release is not eligible for corrective action taken pursuant to Section 365 of this title,
- (4) the person did not participate or was not responsible in any manner, directly or indirectly, in the management of the storage tank system or for the release and otherwise is not engaged in petroleum production, refining or marketing, and
- (5) the person meets the requirements specified in Section 356 of this title;

4. "Eligible release" means a release for which allowable costs, as determined by the Administrator, are reimbursable to or on behalf of an eligible person;

5. "Indemnity Fund" means the Oklahoma Petroleum Storage Tank ~~Release Environmental Cleanup~~ Indemnity Fund;

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

7. "Investigation" means activities taken to identify, confirm, monitor or delineate the physical extent of a release and which result in the selection of an appropriate means to remediate a release and specific design criteria for such remediation upon which competitive bids may be reasonably based;

8. "Maintenance level" means the minimum balance of the Indemnity Fund to be maintained and below which the Indemnity Fund balance will fall when the balance of the Indemnity Fund is below the dollar amount of disbursements from the Indemnity Fund for the payment of claims during the preceding six (6) months plus Five Million Dollars (\$5,000,000.00);

9. "Owner" means:

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

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

10. "Motor fuel, diesel fuel and blending materials" have the same meaning as those terms are defined by Section 501 of Title 68 of the Oklahoma Statutes;

11. "Person" means any individual, trust, firm, joint stock company or corporation, corporation, limited liability company, partnership, association, any representative appointed by order of the court, municipality, county, school district, or other political subdivision of the state, or any interstate body. The term also includes a consortium, a joint venture, a commercial entity, or any other legal entity. The term also refers to any agency of the State of Oklahoma which purchases property containing storage tanks from an owner or operator qualified to access the Indemnity Fund and upon which an eligible release has occurred prior to the agency acquiring the property;

12. "Reimbursement" means either:

- a. repayment of an approved claim to an eligible person for allowable costs resulting from an eligible release, or
- b. payment of an approved claim submitted on behalf of an eligible person for allowable costs resulting from an eligible release;

13. "Release" means any spilling, overfilling, leaching, emitting, discharging, escaping, or unintentional disposing of the petroleum from a storage tank system into the environment of the state. The term release includes but is not limited to suspected releases of petroleum from a storage tank system, identified as a result of positive sampling, testing or monitoring results, or identified in any similarly reliable manner;

14. "Sale" means every gallon of motor fuel, diesel fuel, or blending materials sold, or stored and distributed, or withdrawn from storage, within the state, for sale or use. No gallon of motor

fuel, diesel fuel, or blending materials shall be the basis more than once of the assessment imposed by Section 354 of this title;

15. "Storage tank" or "storage tank system" means a storage system as such term is defined by the Oklahoma Storage Tank Regulation Act; and

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

SECTION 27. 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 "Oklahoma 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 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 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.

3. Costs incurred as a result of a release from storage tanks and storage tank systems used in connection with the drilling, development, production and operation of oil and gas wells, disposal wells and injection wells used in the exploration for and production of oil and gas, including the disposal of deleterious substances related to such activities, are not reimbursable pursuant to the provisions of the Oklahoma Petroleum Storage Tank Indemnity Program.

D. The Indemnity Fund shall consist of:

1. All monies received by the ~~Corporation Commission~~ Indemnity Fund Program 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~~ Indemnity Fund Program 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~~ Department or any other state agency. Except as otherwise authorized by this subsection, no monies from the Indemnity Fund shall be transferred for any purpose to any other state agency or any account of the ~~Corporation Commission~~ Department 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~~ any state environmental agency for the salary of any employee 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 storage tank regulatory programs ~~pursuant to said act~~, including the development, review and approval of corrective action plans as required by ~~the~~ such regulatory programs. ~~The Commission shall crosstrain the field staff of the Petroleum Storage Tank Division to perform inspections and related field activities for all programs within the Division and the Indemnity Fund Program may reimburse the Division the actual costs of inspection services performed on behalf of the 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~~ which shall include costs incurred for the sole purpose of evaluating claims and determining whether specific claims qualify

for payment or reimbursement from such Indemnity Fund.

- c. ~~Any~~ any costs incurred by and reimbursed to the ~~Corporation Commission~~ Department pursuant to the provisions of the Oklahoma Petroleum Storage Tank ~~Release~~ Indemnity Program which shall not exceed the actual expenditures made by the ~~Corporation Commission~~ Department to ~~implement the provisions of~~ assist in administering 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 28. AMENDATORY 17 O.S. 2001, Section 354, as last amended by Section 1, Chapter 371, O.S.L. 2002 (17 O.S. Supp. 2002, Section 354), is amended to read as follows:

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

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

2. The Oklahoma Petroleum Storage Tank ~~Release Environmental Cleanup~~ Indemnity Fund pursuant to paragraphs 2, 3 and 4 of subsection C of this section;

3. The ~~State Transportation~~ Highway Construction and Maintenance Fund pursuant to ~~subparagraph e of~~ paragraph 5 of subsection C of this section; and

~~4. The Corporation Commission pursuant to subparagraph a of paragraph 5 of subsection C of this section;~~

~~5. The Environmental Trust Revolving Fund pursuant to subparagraph b of paragraph 5 of subsection C of this section;~~ and

~~6. The Higher Education Facilities Revolving Fund pursuant to paragraphs 2 and 3 of subsection C of this section.~~

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

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

- a. the state government,
- b. the federal government,
- c. class I and class II railroads, and
- d. sales for exportation outside of this state by a licensed exporter.

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

- a. motor fuel, diesel fuel and blending materials used solely and exclusively in district-owned or leased public school buses, FFA and 4-H club trucks for the purposes of legally transporting public school children, or in the operation of vehicles used in driver training,
- b. motor fuels, diesel fuels and blending materials used solely and exclusively to propel motor vehicles on the public roads and highways of this state when leased or owned and being operated for the sole benefit of a county, city, town, volunteer fire department with a state certification and rating, rural electric

cooperative, rural water and sewer district, rural ambulance service district, or federally recognized Indian tribe as specified by Section 500.10 of Title 68 of the Oklahoma Statutes,

- c. motor fuel, diesel fuel and blending materials to counties and cities and towns,
- d. diesel fuel for off-road purposes specified by Section 500.10 of Title 68 of the Oklahoma Statutes,
- e. motor fuel, diesel fuel and blending materials used for agricultural purposes specified by Section 500.10 of Title 68 of the Oklahoma Statutes, and
- f. motor fuel, diesel fuel and blending materials used in aircraft or in aircraft engines pursuant to Section 500.10 of Title 68 of the Oklahoma Statutes.

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

1. The first One Million Dollars (\$1,000,000.00) collected during each fiscal year shall be deposited into the ~~Oklahoma Corporation Commission~~ Department of Environmental Quality Revolving Fund created in Section ~~180.7 of this title~~ 2-3-401 of Title 27A of the Oklahoma Statutes for the purpose of funding air quality programs related to mobile and area sources of air pollution;

2. From July 1, 2002, until June 30, 2004, fifty percent (50%) of all revenue from the assessment received over the amount required by paragraph 1 of this subsection shall be deposited in the Higher Education Facilities Revolving Fund and fifty percent (50%) of all revenue from the assessment received over the amount required by paragraph 1 of this subsection shall be deposited in the Oklahoma Petroleum Storage Tank Release ~~Environmental Cleanup~~ Indemnity Fund created in Section 353 of this title;

3. From July 1, 2004, until the total amount deposited since July 1, 2002, in the Higher Education Facilities Revolving Fund

totals Thirty-eight Million Dollars (\$38,000,000.00) twenty-five percent (25%) of all revenue from the assessment received over the amount required by paragraph 1 of this subsection shall be deposited in the Higher Education Facilities Revolving Fund and seventy-five percent (75%) of all revenue from the assessment received over the amount required by paragraph 1 of this subsection shall be deposited in the Oklahoma Petroleum Storage Tank ~~Release Environmental Cleanup~~ Indemnity Fund created in Section 353 of this title;

4. After the total amount deposited in the Higher Education Facilities Revolving Fund totals Thirty-eight Million Dollars (\$38,000,000.00), any revenue from the assessment received over the amount required in paragraph 1 of this subsection, shall be deposited in the Oklahoma Petroleum Storage Tank ~~Release Environmental Cleanup~~ Indemnity Fund created in Section 353 of this title in amounts necessary to maintain the maintenance level of the Indemnity Fund pursuant to subsection D of this section; and

5. The balance of any revenue from the assessment remaining above the amount required in paragraphs 1 through 4 of this subsection ~~shall be deposited as follows:~~

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

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

~~e. the balance of the monies collected during each fiscal year shall be deposited in the State Transportation Highway Construction and Maintenance Fund and shall be used solely for the purpose of matching Federal-Aid funds for the construction of highways and roads in this state.~~

D. 1. If at any time the Oklahoma Petroleum Storage Tank ~~Release Environmental Cleanup~~ Indemnity Fund falls below the required maintenance level on or before December 31, 2012, the Administrator shall notify the Oklahoma Tax Commission and the Department of Transportation that the Indemnity Fund has fallen below the required maintenance level and that the assessment is to be deposited into the Indemnity Fund for at least three (3) calendar months pursuant to the provisions of paragraph 2 of this subsection.

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

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

children or in the operation of vehicles used in driver's training,

- b. motor fuels, diesel fuels and blending materials used solely and exclusively to propel motor vehicles on the public roads and highways of the state when leased or owned and being operated for the sole benefit of a county, city or town, volunteer fire department with a state certification and rating, rural electric cooperative, rural water and sewer district, rural ambulance service district, or federally recognized Indian tribe as specified by Section 500.10 of Title 68 of the Oklahoma Statutes,
- c. motor fuel, diesel fuel and blending materials to counties and cities and towns,
- d. diesel fuel for off-road purposes specified by Section 500.10 of Title 68 of the Oklahoma Statutes,
- e. motor fuel, diesel fuel and blending materials used for agricultural purposes specified by Section 500.10 of Title 68 of the Oklahoma Statutes, and
- f. motor fuel, diesel fuel and blending materials used in aircraft and aircraft engines pursuant to Section 500.10 of Title 68 of the Oklahoma Statutes.

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

SECTION 29. AMENDATORY 17 O.S. 2001, Section 355, is amended to read as follows:

Section 355. A. It shall be the duty of every supplier, licensed importer or any other appropriate person under this act to

precollect and remit any assessment so precollected pursuant to the provisions of this act and Section 354 of this title and make and submit an assessment collection report as required by this section.

B. 1. The assessment imposed pursuant to the provision of Section 354 of this title shall be collected and remitted to the Oklahoma Tax Commission at the same time and in the same manner as provided by law for the collection and remission of tax levies upon the sale of gasoline within this state. The basis for computation of the amount due shall be one hundred percent (100%) of the net gallonage reported to the Tax Commission for assessment.

2. Each supplier, licensed importer or other appropriate person shall make and submit for each calendar month that the assessment is imposed an itemized and verified assessment collection report showing:

- a. the name of the supplier, licensed importer or other appropriate person collecting the assessment;
- b. the total amount of motor fuel, diesel fuel and blending materials sold during the preceding month;
- c. the total amount of assessments collected by the supplier, licensed importer or other appropriate person during the preceding month; and
- d. such further information the Tax Commission may require to enable it to compute correctly and collect the assessment made pursuant to this act.

The reports shall be filed at the same time and in like manner as required for gasoline tax reports pursuant to this act.

C. Every supplier, licensed importer or other appropriate person shall keep and preserve suitable records of the gross sales of motor fuel, diesel fuel and blending materials, the assessment collected and such other pertinent records and documents which may be necessary to determine the amount of assessment due as will substantiate and prove the accuracy of the reports. All the records

shall be preserved for a period of three (3) years, unless the Tax Commission, in writing, has authorized their destruction or disposal at an earlier date. The records shall be open for examination by employees of the Tax Commission, ~~the Corporation Commission~~ the Oklahoma Petroleum Storage Tank Indemnity Fund Program or the ~~Oklahoma~~ Department of Transportation in the performance of their duties pursuant to law.

D. Any supplier, licensed importer or other appropriate person who fails to comply with any provisions of this section shall pay a penalty imposed by the Tax Commission. Any monies collected for payment of the penalty shall be deposited in the same manner as the assessments pursuant to the provisions of subsection B of Section 354 of this title. The penalty shall be equal to ten percent (10%) of the gross amount of the assessments received by the supplier, licensed importer or other appropriate person for the report period that the supplier, licensed importer or other appropriate person failed to timely mail the required report or remit any monies collected pursuant to the provisions of this act.

E. The Tax Commission shall keep a separate accounting of all the monies received pursuant to this section and together with any interests and penalties thereon shall deposit such monies monthly as provided in subsection B of Section 354 of this title.

SECTION 30. 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 Indemnity Fund Program for such reimbursement. The only information required to be filed with the application shall

be that information required by the Indemnity Fund Program to determine eligibility for reimbursement.

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

- a. documentation of site conditions prior to initiation of corrective action,
- b. a record of the costs actually incurred by the eligible person for each corrective action taken,
- c. evidence that the corrective action was completed or will be completed in accordance with cleanup criteria established pursuant to the Oklahoma Storage Tank Regulation Act,
- d. how any other financial responsibility requirements will be met,
- e. whether there is any other liability coverage for the release,
- f. any injury to property or physical injury incurred as a result of the release,
- g. the corrective action plan approved by or submitted to the Oklahoma Storage Tank Regulation Program, and
- h. such other information and records as the Indemnity Fund Program may require.

2. The application shall contain a statement certified by affidavit that the information contained therein is true and correct based upon the best of the information available to and knowledge of the affiant.

C. 1. The Indemnity Fund Program shall require that any corrective action taken as a result of an eligible release, other than corrective action taken in an emergency situation, shall be made by the competitive bid of at least two bidders. Acquisition or contracts or subcontracts for corrective action or for labor or equipment comprising a single task or scope of work which exceed Two

Thousand Five Hundred Dollars (\$2,500.00) from any one vendor or subcontractor for any one site shall be awarded to the lowest and best bidder. The Indemnity Fund Program ~~may~~ shall require the owner or operator to submit documentation evidencing proof of such competitive bidding. Any competitive bid submitted pursuant to this section shall be accompanied by the sworn noncollusion statement contained in Section 85.22 of Title 74 of the Oklahoma Statutes, modified in wording as appropriate. In the event bids are not obtained as required by this paragraph, expenditures made without bids shall only be reimbursed amount determined to the reasonable value of the equipment purchased or the task or scope of work performed.

2. Professional engineering, geological, land surveying and other professional services or services provided by a Corporation Commission licensed storage tank consultant required for investigation and the preparation of corrective action plans or proposed corrective action plans and oversight of corrective action shall be selected based upon professional qualifications and technical experience of the consultant at a fair and reasonable fee as negotiated between the eligible person and his or her consultant.

D. The person responsible for taking the corrective action shall keep and preserve suitable records of hydrological and other site investigations and assessments, site rehabilitation plans, contracts and contract negotiations, and accounts, invoices, sales tickets, or other payment records from purchases, sales, leases, or other transactions or claims involving costs actually incurred related to such corrective action or injury or damage. Such records shall be made available upon request to agents and employees of the Indemnity Fund Program during regular business hours, and at other times upon written request. In addition, the employees, agents and representatives of the Indemnity Fund Program may from time to time request submission of such site-specific information as it may

require. All records of costs actually incurred shall be certified by affidavit to the Indemnity Fund Program as being true and correct.

E. 1. a. The Administrator shall deny or approve and pay, in whole or in part, the application for reimbursement on behalf of or to eligible persons and shall complete initial reimbursement within ninety (90) days after receipt of the complete application including but not limited to all requisite supporting documents, unless the time for review is extended by the Administrator giving the applicant written notice of intent to extend no later than eighty (80) days from the date of receipt of the application. The total review period shall not be extended beyond one hundred twenty (120) days from the date of receipt of the complete application including but not limited to all requisite supporting documents, unless otherwise extended by written mutual agreement of the applicant and the Administrator.

b. The Administrator, within thirty (30) days of receipt of the complete application including but not limited to all requisite supporting documents, shall determine whether such person is eligible for reimbursement and shall notify such applicant as to his eligibility in writing.

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

remedies in the district court of the county where the storage tank system is located or the county where the applicant maintains an office or conducts business.

3. For claims submitted subsequent to submittal of the application, the Administrator shall have thirty (30) days from the date of receipt of the supplemental claim in which to approve or deny the supplemental claim. If a supplemental claim is made subsequent to the date of the application but prior to the completion of the review of the application, the thirty-day review period shall not commence until the Indemnity Fund Program has completed its review of the application. This time for review may be extended by the Administrator giving the applicant written notice of intent to extend no later than twenty (20) days from the date of receipt of the claim.

4. For eligible releases requiring extensive corrective action, the Administrator is authorized to make an initial payment and periodic supplemental payments for reimbursements to eligible persons for ongoing reimbursable costs actually incurred. An eligible person intending to file for supplemental payments for reimbursement shall submit work plans for implementation of ~~the~~ a 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~~ 4 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 was given by such owner or operator of the release pursuant to ~~Section 309 of this title~~ applicable statutes and rules, 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~~ appropriate state environmental agency 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~~ 4 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~~ in responding to the release, and
- c. allowable costs for any corrective action must have been incurred on or after December 23, 1988.

G. Except as otherwise provided by the Oklahoma Petroleum Storage Tank ~~Release~~ Indemnity Program, a reimbursement shall not be made to any eligible person who has received or is eligible for payment or reimbursement from any other state or federal agency or other third party payor for the corrective action taken or the damages or the injuries associated with a release. The provisions of the Oklahoma Petroleum Storage Tank ~~Release~~ Indemnity Program shall not apply if such eligible person has received or is eligible for payment or reimbursement from any other state or federal agency or other third party payor as a result of such release if such payment or reimbursement is less than the minimum payment or

reimbursement or over the maximum payment or reimbursement from the Indemnity Fund.

H. 1. Eligible persons shall be reimbursed from the Indemnity Fund for allowable costs in excess of Five Thousand Dollars (\$5,000.00) but not more than:

- a. One Million Dollars (\$1,000,000.00) per occurrence providing the storage tank is used in petroleum marketing or if the system has a throughput in excess of ten thousand (10,000) gallons per month based on annual throughput for the previous calendar year, and
 - (1) One Million Dollars (\$1,000,000.00) annual aggregate for owners of one to one hundred storage tank systems, or
 - (2) Two Million Dollars (\$2,000,000.00) annual aggregate for owners of more than one hundred storage tank systems, or
- b. Five Hundred Thousand Dollars (\$500,000.00) per occurrence providing the system is not used in petroleum marketing, and if the storage tank system has a throughput of ten thousand (10,000) gallons or less per month based on annual throughput for the previous calendar year, and
 - (1) One Million Dollars (\$1,000,000.00) annual aggregate for owners of one to one hundred storage tank systems, or
 - (2) Two Million Dollars (\$2,000,000.00) annual aggregate for owners with more than one hundred storage tank systems.

2. Reimbursement shall not be made from the Indemnity Fund pursuant to this section until the Administrator has determined that the costs for which reimbursement is requested were actually incurred and were reasonable.

I. The Indemnity Fund will cover corrective action taken and other actual physical damage caused by an eligible release. The Indemnity Fund will also cover any medical injuries incurred as a result of the eligible release to persons other than employees of the eligible person of the storage tank system or their agents and independent contractors retained to perform any such corrective action. The Indemnity Fund shall not be used to:

1. Recover payments for loss of time;

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

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

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

5. Pay legal expenses.

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

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

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

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

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

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

O. Claims for reimbursement pursuant to the Oklahoma Petroleum Storage Tank Release Indemnity Program must be made within two (2) years of ~~the effective date of this act~~ June 8, 1998, or two (2) years after site closure, whichever is later. Eligible persons should be encouraged to ~~submits~~ submit claims for reimbursement as the costs are incurred and in the order they are incurred. However, the right to submit a claim or the time during which to submit a

claim for reimbursement shall not be limited or restricted except as provided in this subsection.

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

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

- a. twenty percent (20%) of the total contract price for the first twenty-five percent (25%) reduction in contamination to be accomplished by such system,
- b. an additional twenty percent (20%) of the total contract price, for a total of forty percent (40%) for the next twenty-five percent (25%), for a total of fifty percent (50%) reduction, in contamination to be accomplished by such system,
- c. an additional twenty percent (20%) of the total contract price, for a total of sixty percent (60%) for next first twenty-five percent (25%), for a total of

seventy-five percent (75%) reduction in contamination to be accomplished by such system,

- d. an additional twenty percent (20%) of the total contract price, for a total of eighty percent (80%) for next first twenty-five percent (25%), for a total of one hundred percent (100%) reduction in contamination to be accomplished by such system,
- e. with a final payment of the remaining twenty percent (20%) of the contract price to be paid after the site remains clean for six (6) months.

3. Any eligible person, consultant, contractor or company, including affiliated companies, 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 improperly or inappropriately manipulates sampling results or baseline sampling, obtains payments for remediation services never performed, submits fraudulent documents or information, or who in any other manner materially breaches a pay for performance contract shall be prohibited, directly or indirectly, from entering into another pay for performance contract or purchase order, any other type of contract with the Indemnity Fund or from receiving, directly or indirectly, reimbursement or payment from the Indemnity Fund for a period of three (3) years.

Q. The Indemnity Fund Program is authorized to enter into purchase orders for the performance of corrective action or various tasks or scopes of work to be performed upon a site as is prudent. Each purchase order shall establish an amount to be paid for the completion of a particular corrective action, task or scope of work. Such purchase orders shall be entered into between the Indemnity

Fund Program and the eligible person ~~or~~ and his or her environmental contractor or consultant. The Indemnity Fund Program and the eligible person or his or her environmental contractor or 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. Any purchase order issued shall comply with subsection C of this section.

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~~. Such evaluation 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.

SECTION 31. AMENDATORY 17 O.S. 2001, Section 356.1, is amended to read as follows:

Section 356.1 A. Upon a showing satisfactory to the ~~Corporation Commission~~ Administrator by any person that records, reports or information, or a particular part thereof, if made public, would divulge production or sales figures or methods, processes or production unique to such person or would otherwise tend to affect adversely the competitive position of such person by revealing trade secrets, the ~~Commission~~ Administrator shall consider such record, report or information, or particular portion thereof, confidential.

B. In order to assist a tank owner, operator or other person in determining fair and reasonable costs, the Indemnity Fund Program may maintain a list of customary and reasonable fees charged by

service providers for work, materials, equipment, labor, consulting fees and other services eligible for reimbursement from the Petroleum Storage Tank ~~Release Environmental Cleanup~~ Indemnity Fund. Such list shall be for informational purposes only and shall not establish limits on reimbursement levels from the Indemnity Fund.

SECTION 32. AMENDATORY 17 O.S. 2001, Section 358, is amended to read as follows:

Section 358. A. The ~~Corporation Commission~~ Oklahoma Petroleum Storage Tank Indemnity Fund Program shall submit an annual report to the Speaker of the House of Representatives and the President Pro Tempore of the Senate containing the total number of storage tank applicants requesting disbursement from the Indemnity Fund during the preceding year; the total number of storage tank applicants receiving partial payment during the preceding year and the total amount disbursed for such payments; the total number of storage tank applicants receiving full payment during the preceding year and total amount disbursed for such payments; the total number of applicants denied disbursement from the Indemnity Fund during the preceding year, and the total amount denied for such disbursement; the average time frame for providing disbursements to applicants; a historical comparison of disbursements in regard to applicants requesting disbursement, applicants receiving partial and full payments, applicants denied disbursement, and average time frame for providing disbursement; a detailed summary of administrative expenditures related to the Indemnity Fund program; other information which the ~~Commission~~ Administrator believes is pertinent regarding the Indemnity Fund program; and any other information requested by the Speaker of the House of Representatives or the President Pro Tempore of the Senate regarding the Indemnity Fund ~~program~~ Program.

B. The Oklahoma Tax Commission shall submit an annual report to the Speaker of the House of Representatives and the President Pro

Tempore of the Senate detailing the amount of assessments collected for deposit to the Indemnity Fund and to the State ~~Transportation Highway Construction and Maintenance~~ Fund.

C. The ~~Oklahoma~~ Department of Transportation shall submit an annual report to the Speaker of the House of Representatives and the President Pro Tempore of the Senate detailing the expenditures made from the revenue received from the assessment levied pursuant to Section 354 of this title.

D. The reports shall include recommendations for any changes which may be required in the amount of the assessment imposed by Section 354 of this title.

SECTION 33. AMENDATORY 17 O.S. 2001, Section 359, is amended to read as follows:

Section 359. A. By December 1, 1998, and every year thereafter, the ~~State Auditor and Inspector~~ Oklahoma Petroleum Storage Tank Indemnity Fund Board shall retain an independent auditor to conduct an independent audit of the books, records, files and other such documents of the ~~Corporation Commission~~ Indemnity Fund Program pertaining to and which relate to the administration of the Petroleum Storage Tank ~~Release Environmental Cleanup~~ Indemnity Fund. The audit shall include but shall not be limited to a review of agency compliance with state statutes regarding the Indemnity Fund, internal control procedures, adequacy of claim process expenditures from and debits of the Indemnity Fund regarding administration, personnel, operating and other expenses ~~charged by the Corporation Commission,~~ including any payments to the Department of Environmental Quality; the duties performed in detail by agency personnel and Indemnity Fund personnel for which payment is made from the Indemnity Fund, and recommendations for improving claim processing, equipment needed for claim processing, internal control or structure for administering the Indemnity Fund; and such other areas deemed necessary by the State Auditor and Inspector.

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

C. Copies of the audit shall be submitted to the ~~State Auditor and Inspector~~ Oklahoma Petroleum Storage Tank Indemnity Fund Board, the Governor, the Speaker of the House of Representatives, the President Pro Tempore of the Senate and the Chairs of the Appropriation Committees of ~~both~~ the Oklahoma House of Representatives and the Oklahoma State Senate.

SECTION 34. 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, including the costs of processing and paying claims, 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, unless additional expenditures are authorized by the Oklahoma Legislature.

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 Indemnity Fund. The report shall include salaries and fringe benefits of all full-time-equivalent employees of the Indemnity Fund and reimbursements made to the ~~Corporation Commission by division~~ Department of Environmental Quality for administrative or support services provided by the ~~Commission~~ Department to the Indemnity Fund.

SECTION 35. NEW LAW A new section of law not to be codified in the Oklahoma Statutes reads as follows:

A. Until July 1, 2003, there is hereby imposed a moratorium upon expenditures by the Corporation Commission for the administration of the Oklahoma Storage Tank Regulation Act other

than those expenditures necessary and appropriate for normal operating expenses.

B. Until July 1, 2003, there is hereby imposed a moratorium on any administrative proceedings at the Corporation Commission, formal or informal, for the imposition of any administrative penalties or fines without the express approval and participation of the Attorney General's Office.

SECTION 36. NEW LAW A new section of law not to be codified in the Oklahoma Statutes reads as follows:

A. Until July 1, 2003, there is hereby imposed a moratorium upon expenditures by the Indemnity Fund Program for the administration of the Indemnity Fund other than those expenditures necessary and appropriate for normal operating expenses.

B. Until July 1, 2003, there is hereby imposed a moratorium on the approval of purchase orders and the encumbrance by the Indemnity Fund Program of any funds for the performance of corrective action.

C. There is hereby imposed a moratorium upon the Indemnity Fund Program from entering into pay for performance contracts until the Oklahoma Petroleum Storage Tanks Indemnity Fund Board promulgates permanent rules implementing the use of pay for performance contracts. Such rules shall, at a minimum, provide, that at least three bids be obtained for each pay for performance contract, that the terms of each pay for performance contract require the contractor to provide all equipment, equipment replacement, repairs, and operational costs, for the moneys to be paid under the contract, that the contracts be in compliance with Section 85.44C of Title 74 of the Oklahoma Statutes, and that each contractor be required to post a performance bond or other similar guarantee of performance under the contract. The Board shall also evaluate and determine whether all environmental consulting, monitoring and evaluation services shall be performed by the environmental consultant who

shall remain separate and independent from the contractor under the pay for performance contract.

D. Until July 1, 2003, there is hereby imposed a moratorium on any administrative proceedings at the Corporation Commission, formal or informal, pertaining to the Indemnity Fund Program.

SECTION 37. REPEALER 17 O.S. 2001, Sections 302, 306.1, 315, 318, 321, 322, 323, 324, 325, 326, 330, 340, 351 and 361, are hereby repealed.

SECTION 38. RECODIFICATION 17 O.S. 2001, Section 301, shall be recodified as Section 2-16-102 of Title 27A of the Oklahoma Statutes; 17 O.S. 2001, Section 303, as amended by Section 3 of this act, shall be recodified as Section 2-16-103 of Title 27A of the Oklahoma Statutes; 17 O.S. 2001, Section 304, as amended by Section 4 of this act, shall be recodified as Section 2-16-104 of Title 27A of the Oklahoma Statutes; 17 O.S. 2001, Section 305, as amended by Section 5 of this act, shall be recodified as Section 2-16-105 of Title 27A of the Oklahoma Statutes; 17 O.S. 2001, Section 306, as amended by Section 6 of this act, shall be recodified as Section 2-16-106 of Title 27A of the Oklahoma Statutes; 17 O.S. 2001, Section 307, as amended by Section 7 of this act, shall be recodified as Section 2-16-107 of Title 27A of the Oklahoma Statutes; 17 O.S. 2001, Section 308, as amended by Section 8 of this act, shall be recodified as Section 2-16-108 of Title 27A of the Oklahoma Statutes; 17 O.S. 2001, Section 308.1, as amended by Section 9 of this act, shall be recodified as Section 2-16-109 of Title 27A of the Oklahoma Statutes; 17 O.S. 2001, Section 309, as amended by Section 10 of this act, shall be recodified as Section 2-16-110 of Title 27A of the Oklahoma Statutes; 17 O.S. 2001, Section 310, as amended by Section 11 of this act, shall be recodified as Section 2-16-111 of Title 27A of the Oklahoma Statutes; 17 O.S. 2001, Section 311, as amended by Section 12 of this act, shall be recodified as Section 2-16-112 of Title 27A of the Oklahoma Statutes; 17 O.S.

2001, Section 312, as amended by Section 13 of this act, shall be recodified as Section 2-16-113 of Title 27A of the Oklahoma Statutes; 17 O.S. 2001, Section 313, as amended by Section 14 of this act, shall be recodified as Section 2-16-114 of Title 27A of the Oklahoma Statutes; 17 O.S. 2001, Section 314, as amended by Section 15 of this act, shall be recodified as Section 2-16-115 of Title 27A of the Oklahoma Statutes; 17 O.S. 2001, Section 316, as amended by Section 16 of this act, shall be recodified as Section 2-16-116 of Title 27A of the Oklahoma Statutes; and 17 O.S. 2001, Section 365, as amended by Section 17 of this act, shall be recodified as Section 2-16-117 of Title 27A of the Oklahoma Statutes, unless there is created a duplication in numbering.

SECTION 39. RECODIFICATION 17 O.S. 2001, Section 350, as amended by Section 23 of this act, shall be recodified as Section 5-1-105 of Title 27A of the Oklahoma Statutes; 17 O.S. 2001, Section 352, as amended by Section 26 of this act, shall be recodified as Section 5-1-106 of Title 27A of the Oklahoma Statutes; 17 O.S. 2001, Section 353, as amended by Section 27 of this act, shall be recodified as Section 5-1-107 of Title 27A of the Oklahoma Statutes; 17 O.S. 2001, Section 354, as last amended by Section 28 of this act, shall be recodified as Section 5-1-108 of Title 27A of the Oklahoma Statutes; 17 O.S. 2001, Section 355, as amended by Section 29 of this act, shall be recodified as Section 5-1-109 of Title 27A of the Oklahoma Statutes; 17 O.S. 2001, Section 356, as amended by Section 30 of this act, shall be recodified as Section 5-1-110 of Title 27A of the Oklahoma Statutes; 17 O.S. 2001, Section 356.1, as amended by Section 31 of this act, shall be recodified as Section 5-1-111 of Title 27A of the Oklahoma Statutes; 17 O.S. 2001, Section 357, shall be recodified as Section 5-1-112 of Title 27A of the Oklahoma Statutes; 17 O.S. 2001, Section 358, as amended by Section 32 of this act, shall be recodified as Section 5-1-113 of Title 27A of the Oklahoma Statutes; 17 O.S. 2001, Section 359, as amended by

Section 33 of this act, shall be recodified as Section 5-1-114 of Title 27A of the Oklahoma Statutes; and 17 O.S. 2001, Section 360, as amended by Sections 34 of this act, shall be recodified as Section 5-1-115 of Title 27A of the Oklahoma Statutes, unless there is created a duplication in numbering.

SECTION 40. Sections 1 through 21 and 23 through 34 of this act shall become effective July 1, 2003.

SECTION 41. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

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