ENGROSSED HOUSE
BILL NO. 1652

By: Morgan (Danny) of the House

and

Lerblance of the Senate

An Act relating to Corporation Commission; amending 17 O.S. 2001, Sections 303 and 306, as amended by Sections 1 and 2, Chapter 430, O.S.L. 2004, 306.1, 307, 308, 309, 310, as amended by Section 3, Chapter 430, O.S.L. 2004, 311, 312, 313, 315, 316, 318, 321, 323, 324 and 340, as amended by Sections 4, 5 and 6, Chapter 430, O.S.L. 2004, 351, 352 and 353, as amended by Sections 7 and 8, Chapter 430, O.S.L. 2004, 354, as last amended by Section 1, Chapter 371, O.S.L. 2002, 356, as amended by Section 9, Chapter 430, O.S.L. 2004, 356.1, 359, 360, as amended by Section 10, Chapter 430, O.S.L. 2004 and 365 (17 O.S. Supp. 2004, Sections 303, 306, 310, 323, 324, 340, 352, 353, 354, 356 and 360), which relate to Oklahoma Storage Tank Regulation Act; modifying definitions; modifying certain entry requirements; requiring certain testing; providing for certain administrative penalties; modifying certain fee; clarifying language; providing for certain standards; providing for certain orders; providing for certain permits; requiring certain reports for preapproval; providing for certain cost recovery; clarifying language; providing for certain service of process; allowing certain access to private property; clarifying language; modifying certain venue for enforcement; providing for certain reports; authorizing certain monies for certain funds; clarifying language; modifying certain evidentiary standards; providing for certain license revocation proceedings; deleting obsolete language; providing for certain investigations; clarifying language; modifying membership to Storage Tank Advisory Council; updating language; modifying definitions; clarifying language; modifying certain dates; modifying certain corrective actions; providing for incomplete applications; providing for certain compensation; providing for certain copayments; providing for certain jurisdiction; increasing certain reimbursement thresholds; providing an exception; restricting certain reimbursements; providing for certain equipment; updating language; providing for administrative proceedings; amending 27 O.S. 2001, Section 1-1-203, which relates to state environmental agencies; requiring licensing of certain persons; and providing an effective date.

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

SECTION 1. AMENDATORY 17 O.S. 2001, Section 303, as amended by Section 1, Chapter 430, O.S.L. 2004 (17 O.S. Supp. 2004, Section 303), is amended to read as follows:

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

1. "Abandoned system" means a storage tank system which:

a. has been taken permanently out of service as a storage vessel for any reason or is not intended to be returned to service,

b. has been out of service for one (1) year or more prior to April 21, 1989, or

c. has been rendered permanently unfit for use as determined by the Commission;

2. "Action level" means that the regulated substances have reached the level of contamination;

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

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

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

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

7. "Commission" means the Corporation Commission;

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

9. “Corrective action” means action taken to monitor, investigate, minimize, eliminate or perform remediation of a release from a storage tank system;

10. “Corrective action plan” means the plan submitted to the regulatory program of the Corporation Commission detailing the method and manner of corrective action to be taken for a release;

11. “Department” means the Department of Environmental Quality;

12. “Director” means the Director of the Petroleum Storage Tank Division of the Corporation Commission;

13. “Division” means the Petroleum Storage Tank Division of the Corporation Commission;

14. “Eligible person” means the party who has made application to the Petroleum Storage Tank ~~Release Environmental Cleanup~~ Indemnity Fund and met applicable criteria to receive Petroleum Storage Tank ~~Release Environmental Cleanup~~ Indemnity Fund reimbursement on a confirmed release;

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

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

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

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

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

~~20.~~ 19. “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;

~~21.~~ 20. "New system" means a storage tank system for which the installation or upgrade of the system began on or after ~~April 21, 1989~~ December 22, 1998;

~~22.~~ 21. "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, tank closure, or a violation of the Oklahoma Storage Tank Regulation Act or of a rule promulgated thereunder;

~~23.~~ 22. "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;

~~24.~~ 23. "Permit" means any registration, permit, license or other authorization issued by the Commission to operate a storage tank system;

~~25.~~ 24. "Person" means any individual, trust, firm, joint stock company or corporation, limited liability company, partnership, association, any representative appointed by order of a court, the state, any municipality, county, school district or other political subdivision or agency of the state, or any interstate body. The term also includes a consortium, a joint venture, a commercial entity, the United States Government, a federal agency, including a government corporation, or any other legal entity;

~~26.~~ 25. "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;

~~27.~~ 26. "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;

~~28.~~ 27. "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,~~ land surfaces or subsurfaces, or atmosphere when such contamination or alteration will or is likely to create a nuisance or render the waters ~~or~~, land or atmosphere harmful or detrimental or injurious to the public health, safety or welfare or the environment;

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

~~30.~~ 29. "Release" means any spilling, overfilling, or leaking from a storage tank system that goes beyond the excavation zone, tankpit, or secondary containment facility into the environment;

~~31.~~ 30. "Remediation" means a process or technique used to reduce concentration levels of chemicals of concern in the soil and groundwater, and/or to reduce the presence of free product in the environment to levels that are protective of human health, safety and the environment;

~~32.~~ 31. "Residual product" means petroleum that is absorbed or otherwise bound to geological materials including, but not limited to, sand, silt, or clay in any soil zone in such a manner that groundwater in contact with the residual product or beneath the residual product is not contaminated with regulated substances;

32. "Responsible person" means a person other than a petroleum storage tank system owner or operator, such as an adjacent property owner, impacted party, city or political subdivision, that is

seeking corrective action of real property, and submits to the jurisdiction of the Commission;

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

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

35. "Storage tank system" means a closed-plumbed system including, but not limited to, the storage ~~tank~~ tank(s), the lines, the dispenser for a given product, and a delivery truck that is connected to the storage tank system;

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

37. "~~Tank~~ Storage 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;

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

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

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

SECTION 2. AMENDATORY 17 O.S. 2001, Section 306, as amended by Section 2, Chapter 430, O.S.L. 2004 (17 O.S. Supp. 2004, Section 306), is amended to read as follows:

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

1. Issue, renew, deny, modify, suspend, refuse to renew and revoke permits for storage tank systems pursuant to the provisions of the Oklahoma Storage Tank Regulation Act 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 monitoring or remediation equipment and taking such samples as may be necessary to determine compliance with the provisions of the Oklahoma Storage Tank Regulation Act, and rules promulgated pursuant thereto;

3. Request issuance of an administrative warrant or search warrant as may be necessary ~~from the district court where such public or private property is located~~ by Commission application after notice and hearing to allow entry, inspection, testing, sampling, or copying on public or private property;

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 pursuant thereto;

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

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

7. Employ or designate personnel to conduct investigations and inspections, to make reports of compliance with the provisions of

the Oklahoma Storage Tank Regulation Act and rules promulgated pursuant thereto;

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

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

10. Financially assist other agencies and political subdivisions of the state where the Petroleum Storage Tank Division has jurisdiction;

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

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

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

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

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

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

c. make timely reports to the Commission of pollution ~~or~~, releases, or testing and sampling events at or above Commission action levels,

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

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

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

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

15. Establish and enforce administrative penalties for violations pursuant to the provisions of the Oklahoma Storage Tank Regulation Act, including issuance of field citations by designated personnel for violations of the Oklahoma Storage Tank Regulation Act, including but not limited to the authority to close a facility found to pose an imminent threat to the health, safety or the environment ~~or~~, to be operating ~~tanks~~ a storage tank system for which permit fees have not been paid, or to be operating a storage tank system with an outstanding unpaid field citation or fine. Issuance or payment of field citations shall in no way preclude other enforcement proceedings, administrative penalties, fines or order of the Commission if an owner or operator fails to correct a

violation or abate a threat to health, safety or the environment in a reasonable manner, as determined by the Commission. If a citation is issued or a facility is ~~temporarily~~ closed under the provisions of the Oklahoma Storage Tank Regulation Act, the owner or operator of the facility on application to the Commission shall be afforded a hearing within ten (10) days of filing an application. Any penalties or fines assessed pursuant to this section shall be established by the Commission by rules promulgated pursuant to the Administrative Procedures Act;

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

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

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

19. Create and implement an internally coordinated management system between the Storage Tank Regulation Program and the Oklahoma Petroleum Storage Tank Release Indemnity Program;

20. When necessary, economically advantageous, reasonable and integral to a remediation effort or to establish an alternative

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

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

SECTION 3. AMENDATORY 17 O.S. 2001, Section 306.1, is amended to read as follows:

Section 306.1 Owners of ~~tanks~~ <u>storage tank systems</u> over eleven hundred (1100) gallons containing ~~petroleum products which such petroleum products~~ <u>regulated substances when the regulated substances</u> are used for agricultural purposes and not for resale shall be required to pay a permit fee of not more than Ten Dollars ($10.00) <u>per tank per year</u>.

SECTION 4. AMENDATORY 17 O.S. 2001, Section 307, is amended to read as follows:

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

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

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

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

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

5. An enforcement program;

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

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

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

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

1. Location of the storage tanks;

2. Soil and climate conditions;

3. Uses of the storage tanks;

4. History of maintenance;

5. Age of the storage tanks;

6. National industry codes;

7. Hydrogeology;

8. Water table;

9. Size of the storage tanks;

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

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

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

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

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

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

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

SECTION 5. AMENDATORY 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.

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.

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. In addition to other information requested by the Commission, 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 and the type of leak detection method employed.

E. 1. Permits shall be issued by the Commission 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 and only upon approval by the Commission.

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 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 or a duly authorized representative~~ Director may make application for and obtain an administrative warrant or ~~a search warrant from the district court where the facility is located~~ an order from the Commission after notice and hearing to allow such entry, inspection, testing, sampling or copying.

4. The owner or operator of a storage tank system shall display the permit in a conspicuous location or manner ~~in which the permit can~~ easily ~~be~~ visible to any person depositing a regulated substance into a storage tank system 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 Revolving Fund.

G. The Commission 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 finds, after notice and a hearing conducted in accordance with the provisions of Section 314 of Title 75 of the Oklahoma Statutes, that the applicant or permittee has:

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

2. Failed to comply with any order of the Commission, provision or requirement of this act or any rules promulgated by the Commission 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.

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 6. 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 within twenty-four (24) hours upon discovering such a release.

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

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

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

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

3. Require an owner, operator, or responsible person to submit investigation, remediation or other corrective action plans to the Petroleum Storage Tank Division of the Corporation Commission for preapproval prior to initiating such investigation, remediation, or other corrective action.

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

a. an owner or operator of the storage tank system cannot be identified,

b. an identified owner or operator cannot or will not comply with the order issued pursuant to subsection C of this section,

c. an administrative or judicial proceeding on an order issued pursuant to subsection C of this section is

pending and the Commission determines corrective action is necessary to protect the public health, safety and welfare or the environment until the administrative or judicial proceeding is resolved, or

d. the Commission determines that the release constitutes a ~~clear and immediate~~ danger requiring immediate action to prevent, minimize or mitigate damage to the public health and welfare or the environment. Before taking an action under this paragraph, the Commission shall make all reasonable efforts, taking into consideration the urgency of the situation, to ~~order~~ afford an owner or operator notice and hearing to take a corrective action and notify the owners or occupants of adjacent or affected real property as specified by Section 310 of this title.

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

a. the owner or operator has failed to take a corrective action ordered by the Commission and the Commission has taken the corrective action, or

b. the Commission has taken corrective action in an emergency pursuant to subparagraph d of paragraph 1 of this subsection.

3. Reasonable and necessary expenses incurred by the Commission in taking a corrective action, including costs of investigating a release and administrative and legal expenses, may be recovered ~~in a civil action~~ by application to the Commission with notice and hearing pursuant to Section 311 of this title. The Commission's certification of ~~expenses~~ costs incurred is prima facie evidence that the ~~expenses~~ costs incurred 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~~ Costs incurred that are recovered under this subsection shall be deposited in the Corporation Commission Storage Tank Regulation Revolving Fund.

E. Any order issued by the Commission 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, statutory environmental responsibility imposed by this act; or 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 7. AMENDATORY 17 O.S. 2001, Section 310, as amended by Section 3, Chapter 430, O.S.L. 2004 (17 O.S. Supp. 2004, Section 310), is amended to read as follows:

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

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

a. the alleged violator should be found in violation of Commission rules,

b. the alleged violator should be found to be in violation of the provisions of the Oklahoma Storage Tank Regulation Act,

c. the permit issued to the alleged violator should be suspended, revoked or not reissued,

d. the application for a permit should be denied, or

e. whether any other appropriate relief should be granted.

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

for hearing. The notice shall be delivered to the alleged violator in accordance with the provisions of subsection C of this section.

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

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

2. Such proof of service shall be filed in the court clerk's office of the Commission.

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

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

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

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

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

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

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

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

4. An order granting access to property shall be upon such terms as to reasonably minimize the impact of the access upon the owner's use of the property and to protect the rights of the property owner.

SECTION 8. 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 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 pursuant to the provisions of subsection A of this section, after notice and hearing. In determining the amount of the penalty, the Commission 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 Revolving Fund.

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 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, 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~~ pursuant to this act, 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, Oklahoma Petroleum Storage Tank Release Indemnity Program or rules promulgated ~~thereto~~ pursuant to the program 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 9. 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 Petroleum Storage Tank Division of the Corporation Commission on behalf of the State of Oklahoma ~~in the appropriate district court of the State of Oklahoma~~ before an administrative law judge of the Commission, or as otherwise authorized by law.

B. The ~~Commission~~ Division may bring an action before an administrative law judge of the Commission, or 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~~ to the act. ~~Said~~ The administrative law judge or court has jurisdiction to determine ~~said~~ the 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 10. 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 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 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 <u>regulated</u> substances <u>or chemicals of concern,</u> in soils or groundwater shall not be considered confidential by the Commission.

SECTION 11. AMENDATORY 17 O.S. 2001, Section 315, is amended to read as follows:

Section 315. There is hereby created in the State Treasury a revolving fund for the Corporation Commission, to be designated the "Corporation Commission Storage Tank Regulation Revolving Fund", (Storage Tank Revolving Fund). The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of all monies received by the Commission, from:

1. The proceeds of any fees imposed pursuant to the provisions of the Oklahoma Storage Tank Regulation Act, Section 301 et seq. of this title;

2. Interest attributable to investment of monies in the Corporation Commission Storage Tank Regulation Revolving Fund;

3. Monies received by the Commission in the form of gifts, grants other than federal grants, reimbursements or appropriations from any source intended to be used for the purposes of the revolving fund; ~~and~~

4. Fines, forfeitures, administrative fees, settlement proceeds; and

5. Any other sums designated for deposit to the revolving fund from any source public or private.

All monies accruing to the credit of said revolving fund are hereby appropriated and may be budgeted and expended by the Commission for the purpose of implementing the provisions of the Oklahoma Storage Tank Regulation Act and the rules promulgated thereto. Expenditures from said revolving fund 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.

SECTION 12. 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 petroleum 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 pursuant to the provisions of the Oklahoma Storage Tank Regulation Act.

SECTION 13. AMENDATORY 17 O.S. 2001, Section 318, is amended to read as follows:

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

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

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

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

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

5. A person whose license has been revoked in a proceeding brought pursuant to this section may apply for a new license after the expiration of a term of no less than one (1) year and no more

than five (5) years from the date of revocation, depending on the decision of the Director of the Petroleum Storage Tank Division of the Corporation Commission. Upon a subsequent determination of violation of:

a. the Oklahoma Storage Tank Regulation Act,

b. the Oklahoma Petroleum Storage Tank Indemnity Program, or

c. promulgated rules,

the Commission may, after notice and hearing, revoke a petroleum storage tank professional license for a term no less than five (5) years.

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

SECTION 14. AMENDATORY 17 O.S. 2001, Section 321, is amended to read as follows:

Section 321. A. It is the intent of the Legislature that the regulation of spills and releases from petroleum storage tanks, oversight of petroleum storage tank environmental cleanups, and the reimbursement of claims for costs incurred for petroleum storage tank environmental cleanups be administered by a single division of the Corporation Commission, the Petroleum Storage Tank Division.

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

C. The purpose of the Oklahoma Petroleum Storage Tank Reform Act is to provide for the administration of the various programs within the Corporation Commission regulating the release or spilling of fuel from petroleum storage tanks and to:

1. Eliminate overlap and duplication of effort;

2. Provide that petroleum storage tank regulatory concerns of industry and the public shall be addressed in an expedient manner; and

3. Better utilize financial resources for petroleum storage tank regulatory services, administration, and reimbursement of claims for environmental cleanup by the Petroleum Storage Tank ~~Release Environmental Cleanup~~ Indemnity Fund.

D. The Storage Tank Advisory Council shall make recommendations and the Corporation Commission shall adopt rules to implement the provisions of this act by January 1, 1999. These rules shall include procedural rules specifically designed for the adjudication of cases within the jurisdiction of the Division.

E. The provisions of this act shall be applicable to all current, pending, past and future contracts, claims and cases within the jurisdiction of the Division, provided that this subsection shall not apply, nor be construed to authorize or permit the reopening or re-review of the underlying claim or claims of any cases which were formally settled pursuant to a formal settlement agreement or in which a final order was entered by the Corporation Commission. Further, the provisions of this act shall not change or modify the terms of pay for performance or purchase order contracts entered into prior to the effective date of this act.

SECTION 15. AMENDATORY 17 O.S. 2001, Section 323, as amended by Section 4, Chapter 430, O.S.L. 2004 (17 O.S. Supp. 2004, Section 323), is amended to read as follows:

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

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

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

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

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

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

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

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

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

9. Enter into agreements for, accept, use, disburse and administer grants of money, personnel and property from the federal government or any department or agency thereof, or from any state or state agency, or from any other source, to promote and conduct in

this state any program relating to petroleum storage tank regulation;

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

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

12. Cause investigations, inquiries and inspections to be made. The Director of the Petroleum Storage Tank Division, or authorized representatives of the Director, shall have the right of access to any property which has or may have had a petroleum storage tank system or a release from a petroleum storage tank system on the premises for such purpose at any reasonable time, upon presentation of identification;

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

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

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

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

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

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

SECTION 16. AMENDATORY 17 O.S. 2001, Section 324, as amended by Section 5, Chapter 430, O.S.L. 2004 (17 O.S. Supp. 2004, Section 324), is amended to read as follows:

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

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

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

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

4. Purchase real property, personal property and easements in conjunction with ~~a~~ remediation ~~effort~~ efforts and/or the establishment of an alternative water supply as provided for in Section 306 of this title.

B. Actual costs incurred by the Division to be reimbursed by the Petroleum Storage Tank Indemnity Fund shall be documented and reviewed in the same manner as requests for reimbursement submitted by tank owners, operators or other eligible persons for the purpose of obtaining reimbursement from the Petroleum Storage Tank Indemnity Fund.

SECTION 17. AMENDATORY 17 O.S. 2001, Section 340, as amended by Section 6, Chapter 430, O.S.L. 2004 (17 O.S. Supp. 2004, Section 340), is amended to read as follows:

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

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

3. The initial appointments for each gubernatorial and legislative member shall be for progressive terms of one (1) through three (3) years so that only one term expires each calendar year; subsequent appointments shall be for three-year terms.

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

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

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

7. Five members shall constitute a quorum.

B. The Council shall be composed as follows:

1. The Governor shall appoint three members as follows:

a. ~~two members who~~ one member shall be a petroleum storage tank ~~owners or operators or an~~ owner, operator, or agent ~~thereof~~, and

b. ~~one member who shall be~~ two members may include:

(1) a petroleum storage tank owner, operator or agent, or

(2) an engineer who holds a remediation consultant's license issued by the Petroleum Storage Tank Division or works for a company that performs petroleum storage tank services, or

(3) a licensed remediation consultant, or

(4) an owner-operator of an environmental company;

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

a. ~~two members who~~ one member shall be a petroleum storage tank ~~owners or operators or an~~ owner, operator or agent ~~thereof~~, and

b. ~~one member who shall be a geologist~~ two members may include:

(1) a petroleum storage tank owner, operator or agent, or

(2) an engineer who holds a remediation consultant's license issued by the Petroleum Storage Tank Division or works for a company that performs petroleum storage tank services, or

(3) a licensed remediation consultant, or

(4) an owner-operator of an environmental company; and

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

a. ~~two members who~~ one member shall be a petroleum storage tank ~~owners or operators~~ owner, operator or ~~an~~ agent ~~thereof~~, and

b. ~~one member who shall be a registered professional engineer~~ two members may include:

(1) a petroleum storage tank owner, operator or agent, or

(2) an engineer who holds a remediation consultant's license issued by the Petroleum Storage Tank Division or works for a company that performs petroleum storage tank services, or

(3) a licensed remediation consultant, or

(4) an owner-operator of an environmental company.

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

D. The Storage Tank Advisory Council shall:

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

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

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

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

a. pass nonbinding resolutions expressing the sense of the Council, and

b. make recommendations to the Commission and its regulatory programs and the ~~Oklahoma~~ Petroleum Storage Tank ~~Release~~ Indemnity ~~Program~~ Fund concerning the need and the desirability of conducting public meetings, workshops and seminars.

E. The Council shall not recommend rules for promulgation by the Commission unless all applicable requirements of the Administrative Procedures Act and rules of the Commission have been followed, including but not limited to notice, rule impact statement and rule-making hearings. All actions of the Council with regard to rule-making shall be deemed actions of the Commission for the purposes of complying with the Administrative Procedures Act and rules of the Commission. The Council shall advise the Commission on initiating and conducting rule-making proceedings pursuant to the Oklahoma Petroleum Storage Tank Reform Act, Oklahoma Storage Tank Regulation Act and the Oklahoma Petroleum Storage Tank Release Indemnity Program.

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

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

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

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

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

SECTION 18. AMENDATORY 17 O.S. 2001, Section 351, is amended to read as follows:

Section 351. A. The Legislature finds that:

1. Significant quantities of petroleum are being stored in storage tank systems in this state;

2. Spills, leaks and other releases of petroleum from such storage tank systems have occurred, are occurring and will continue to occur;

3. Such releases often pose a significant threat to the public health and safety, the quality of the water, and other natural resources in this state;

4. Where pollution has occurred, remedial measures have often been delayed for long periods while determination as to the liability and extent of liability are made;

5. Such delays result in the continuation and intensification of the threat to the public health, safety and welfare, in greater

damage to the environment, and in significantly higher costs to contain and remove the pollution;

6. Adequate financial resources must be readily available to enable responsible parties and other persons to take the corrective action necessary to rehabilitate such contaminated sites; and

7. Such adequate financial resources may be provided by the creation of a petroleum storage tank ~~release environmental cleanup~~ program established by the Oklahoma Petroleum Storage Tank Release Indemnity Program and funded by an assessment on the sale of motor fuel, diesel fuel, and blending materials in this state by a distributor.

B. The Legislature declares that, in order to provide for rehabilitation of as many pollution sites resulting from releases of petroleum from storage tank systems, as soon as possible, voluntary corrective action should be encouraged, provided that such corrective action is conducted in a manner and to a level of completion which will protect the public health, safety and welfare and will minimize damage to the environment. To accomplish this purpose, any person entitled to reimbursement pursuant to the provisions of this act shall be reimbursed for certain allowable costs in connection with such corrective action, subject to the conditions specified by this act.

SECTION 19. AMENDATORY 17 O.S. 2001, Section 352, as amended by Section 7, Chapter 430, O.S.L. 2004 (17 O.S. Supp. 2004, Section 352), is amended to read as follows:

Section 352. As used in the Oklahoma Petroleum Storage Tank Release Indemnity Program:

1. "Administrator" means the person hired by the Director of the Petroleum Storage Tank Division of the Corporation Commission to administer the Petroleum Storage Tank ~~Release Environmental Cleanup~~ Indemnity Fund and the Oklahoma Petroleum Storage Tank Release Indemnity Program;

2. “Administrative application” means an application for eligibility and reimbursement made to the Petroleum Storage Tank ~~Release Environmental Cleanup~~ Indemnity Fund by the Director of the Petroleum Storage Tank Division on behalf of an unavailable or unwilling applicant;

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

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

5. "Distributor" means:

a. every person importing or causing to be imported into this state any motor fuel, diesel fuel or blending material for use, distribution, or sale and distribution, or sale and delivery after the same reaches this state. "Distributor" does not mean persons importing motor fuel only in the supply tank of a vehicle originally provided by the manufacturer of the motor vehicle as a container for motor fuel or diesel fuel to propel such motor vehicle, nor does "distributor" mean persons only importing motor fuel, diesel fuel or blending material into the state under circumstances requiring that they be licensed as "Motor Fuel/Diesel Fuel Importers for Use" as defined in subsection (g) of Section 601 of Title 68 of the Oklahoma Statutes and who are actually so licensed,

b. any person producing, refining, preparing, distilling, blending, manufacturing, or compounding motor fuel or blending material in this state for use, distribution or sale and delivery in this state,

c. any person within this state producing or collecting what is commonly known as drip, casinghead or natural gasoline,

d. any person who has in his or her possession or buys for sale or use motor fuel, diesel fuel or blending material from any person other than a licensed distributor, retailer or dealer,

e. any person other than a retailer or dealer who sells motor fuel, diesel fuel or blending material to anyone except a licensed distributor,

f. any person who makes bulk sales of motor fuel, diesel fuel or blending material, and

g. any other person, including a retailer or dealer, who has filed an application for and has procured a distributor's license in the manner provided by the Oklahoma Motor Fuel/Diesel Fuel Importers for Use Tax Code, Section 601 et seq. of Title 68 of the Oklahoma Statutes;

6. "Eligible person" means any:

a. owner or operator of a storage tank system who has incurred liability as a result of an eligible release, and who meets the requirements specified in Section 356 of this title, or

b. person who on or after November 8, 1984, purchases property on which a storage tank system is located if:

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

(2) such person could not have known that such storage tank system existed. The burden shall be upon such purchaser to show that such purchaser did not know or should not have known of the existence of such storage tank system,

(3) the owner or operator of the storage tank system responsible for the system cannot be determined by the Corporation Commission or the Administrator, or the owner or operator of the storage tank system responsible for the system is incapable, in the judgment of the Corporation Commission, of properly carrying out any necessary corrective action, and

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

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

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

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

(3) either funds are unavailable from the Oklahoma Leaking Underground Storage Tank Trust Fund or

the storage tank system or release is not eligible for corrective action taken pursuant to Section 365 of this title,

(4) the person did not participate or was not responsible in any manner, directly or indirectly, in the management of the storage tank system or for the release and otherwise is not engaged in petroleum production, refining or marketing, and

(5) the person meets the requirements specified in Section 356 of this title~~;~~, or

d. person who is an impacted party, adjacent owner or town, city or political subdivision as determined by the Commission and who willingly submits to the regulations of the Commission governing petroleum storage tank system owners, operators or agents;

7. "Disbursements" means funds expended or encumbered which are attributable to a particular petroleum storage tank system release or case;

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

~~8.~~ 9. "Impacted party" means an owner whose property has been impacted by a release from an on-site or off-site petroleum storage tank which the impacted person did not own or operate and for which the impacted person has had no responsibility under Commission rules. An impacted party may apply for an eligibility determination on reimbursement from the Petroleum Storage Tank ~~Release Environmental Cleanup~~ Indemnity Fund. An impacted party is not subject to the Petroleum Storage Tank ~~Release Environmental Cleanup~~ Indemnity Fund deductible;

~~9.~~ 10. "Indemnity Fund" means the Petroleum Storage Tank ~~Release Environmental Cleanup~~ Indemnity Fund;

~~10.~~ 11. "Indemnity Fund Program" means the Oklahoma Petroleum Storage Tank Release Indemnity Program established to administer the Indemnity Fund;

~~11.~~ 12. "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~~.~~;

~~12.~~ 13. "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);

~~13.~~ 14. "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;

~~14.~~ 15. "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;

~~15.~~ 16. “Pay-for-performance” means a process by which an environmental consultant guarantees, by executing a contract pursuant to the provisions of this paragraph, that a release of a regulated substance will be remediated to levels agreed to by the Commission, the eligible person and the consultant. Such levels must be protective of human health, safety and the environment. The performance-based process encompasses several steps including, but not limited to, the development of a contract signed by an officer/owner of the environmental consultant, the eligible person and the Administrator of the Petroleum Storage Tank ~~Release Environmental Cleanup~~ Indemnity Fund. The contract shall contain any agreed upon reasonable price for the work to be performed. Scheduled payments shall be distributed only as performance-based goals are attained;

~~16.~~ 17. "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;

~~17.~~ 18. “Purchase order” means a performance-based agreement negotiated between an environmental consultant and the Petroleum Storage Tank Division stipulating a scope of work to be performed by a target date, for which the Petroleum Storage Tank ~~Release~~

~~Environmental Cleanup~~ Indemnity Fund will reimburse a specified amount;

~~18.~~ 19. "Reimbursement" means either:

a. repayment of an approved claim to an eligible person for allowable costs resulting from an eligible release, or

b. payment of an approved claim submitted on behalf of an eligible person for incurred allowable costs resulting from an eligible release;

~~19.~~ 20. "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~~ regulated substance from a storage tank system, identified as a result of ~~positive~~ sampling, testing or monitoring results, or identified in any similarly reliable manner;

~~20.~~ 21. "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;

~~21.~~ 22. "Storage tank" or "storage tank system" means a storage system as such term is defined by the Oklahoma Storage Tank Regulation Act; and

~~22.~~ 23. "Tax Commission" means the Oklahoma Tax Commission.

SECTION 20. AMENDATORY 17 O.S. 2001, Section 353, as amended by Section 8, Chapter 430, O.S.L. 2004 (17 O.S. Supp. 2004, Section 353), is amended to read as follows:

Section 353. A. There is hereby created within the Corporation Commission, the "Petroleum Storage Tank ~~Release Environmental Cleanup~~ Indemnity Fund". The Director shall hire an Administrator who shall administer the Indemnity Fund and Indemnity Fund Program.

The Indemnity Fund shall be administered by the Administrator for the benefit of those persons determined to be eligible by the Administrator to receive total or partial reimbursement for:

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

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

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

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

B. Reimbursements made to or for the benefit of eligible persons shall be exempt from the Oklahoma Central Purchasing Act.

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

2. Costs incurred as a result of a release from a storage tank system owned or operated by a Class I Railroad are not reimbursable

pursuant to the provisions of the Oklahoma Petroleum Storage Tank Release Indemnity Program.

D. The Indemnity Fund shall consist of:

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

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

3. Money received by the Commission in the form of gifts, grants, reimbursements, or from any other source intended to be used for the purposes specified by or collected pursuant to the provisions of the Oklahoma Petroleum Storage Tank Release Indemnity Program.

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

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

reimburse the Division the actual costs of inspection services performed on behalf of the Oklahoma Petroleum Storage Tank Release Indemnity Program.

3. Monies in the Indemnity Fund shall only be expended for:

a. reimbursements to eligible persons unless duly assigned to another, and

b. costs incurred by the Indemnity Fund Program for the administration of the fund and costs incurred for the sole purpose of evaluating claims and determining whether specific claims qualify for payment or reimbursement from such Indemnity Fund.

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

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

SECTION 21. AMENDATORY 17 O.S. 2001, Section 354, as last amended by Section 1, Chapter 371, O.S.L. 2002 (17 O.S. Supp. 2004, Section 354), is amended to read as follows:

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

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

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

3. The State Transportation Fund pursuant to subparagraph c of paragraph 5 of subsection C of this section;

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 Revolving Fund created in Section 180.7 of this title;

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 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 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 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

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

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

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

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

purposes of legally transporting public school children or in the operation of vehicles used in driver's training,

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

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

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

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

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

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

SECTION 22. AMENDATORY 17 O.S. 2001, Section 356, as amended by Section 9, Chapter 430, O.S.L. 2004 (17 O.S. Supp. 2004, Section 356), is amended to read as follows:

Section 356. A. The Oklahoma Petroleum Storage Tank Release Indemnity Program shall provide reimbursement to eligible persons for allowable costs resulting from an eligible release pursuant to the provisions of this section.

B. Any person who intends to file for reimbursement shall make application to the Oklahoma Petroleum Storage Tank Release Indemnity Program for such reimbursement. The only information required to be filed with the application shall be that information required by the Oklahoma Petroleum Storage Tank Release Indemnity Program to determine eligibility for reimbursement.

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

a. documentation of site conditions prior to initiation of corrective action,

b. a record of the costs actually incurred by the eligible person for each corrective action taken,

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

d. how any other financial responsibility requirements will be met,

e. whether there is any other liability coverage for the release,

f. any injury to property or physical injury incurred as a result of the release,

g. the corrective action plan approved by or submitted to the Storage Tank Regulation Program, and

h. such other information and records as the Oklahoma Petroleum Storage Tank Release Indemnity Program may require.

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

C. 1. The Oklahoma Petroleum Storage Tank Release Indemnity Program:

a. ~~shall~~ may require that any corrective action taken as a result of an eligible release, other than corrective action taken in an emergency situation, ~~shall~~ may 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,

b. shall require that an eligible person or a property owner whose off-site property has been contaminated by a release shall not retain an environmental consultant to conduct the remediation of the release in which the eligible person, property owner, or impacted party has more than a ten percent (10%) interest ownership, is an employee, or is an officer of the environmental consultant, and

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

2. Any competitive bid submitted pursuant to this section shall be accompanied by the sworn noncollusion statement contained in Section 85.22 of Title 74 of the Oklahoma Statutes, modified in wording as appropriate. In the event bids are not obtained ~~as required by~~ pursuant to this subsection, expenditures made without

bids shall only be reimbursed by the amount determined to be the reasonable value of the equipment purchased or the task or scope of work performed.

3. Professional engineering, geological, land surveying and other professional services or services provided by a 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 eligible person responsible for taking the corrective action shall keep and preserve suitable records of hydrological and other site investigations and assessments, site rehabilitation plans, contracts and contract negotiations, and accounts, invoices, sales tickets, or other payment records from purchases, sales, leases, or other transactions or claims involving costs actually incurred related to such corrective action or injury or damage. Such records shall be made available upon request to agents and employees of the Oklahoma Petroleum Storage Tank Release Indemnity Program during regular business hours, and at other times upon written request. In addition, the employees, agents and representatives of the Oklahoma Petroleum Storage Tank Release Indemnity Program may from time to time request submission of such site-specific information as it may require. All records of costs actually incurred shall be certified by affidavit to the Oklahoma Petroleum Storage Tank Release Indemnity Program as being true and correct.

E. 1. a. The Administrator shall deny or approve and pay, in whole or in part, the application for reimbursement on behalf of or to eligible persons and shall complete initial reimbursement within ninety (90) days after

receipt of the complete application including but not limited to all requisite supporting documents, unless the time for review is extended by the Administrator giving the applicant written notice of intent to extend no later than eighty (80) days from the date of receipt of the application. The total review period shall not be extended beyond one hundred twenty (120) days from the date of receipt of the complete application including but not limited to all requisite supporting documents, unless otherwise extended by written mutual agreement of the applicant and the Administrator.

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

c. An application deemed to be incomplete shall not trigger the time allowed for review.

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

3. For claims submitted subsequent to submittal of the application, the Administrator shall have thirty (30) days from the date of receipt of the supplemental claim in which to approve or deny the supplemental claim. If a supplemental claim is made

subsequent to the date of the application but prior to the completion of the review of the application, the thirty-day review period shall not commence until the Oklahoma Petroleum Storage Tank Release Indemnity Program has completed its review of the application. This time for review may be extended by the Administrator giving the applicant written notice of intent to extend no later than twenty (20) days from the date of receipt of the claim.

4. For eligible releases requiring extensive corrective action, the Administrator is authorized to make an initial payment and periodic supplemental payments for reimbursements to eligible persons for ongoing reimbursable costs actually incurred. An eligible person intending to file for supplemental payments for reimbursement shall submit work plans for implementation of the corrective action plan approved by the Commission's regulatory program pursuant to the Oklahoma Storage Tank Regulation Act, or for other work which is proposed to be performed. Such work plans shall include, but not be limited to, the work to be completed, schedule of actions to be taken, and estimates of costs to be reimbursed. Such information may be submitted with the application for reimbursement or whenever appropriate. Such work plans shall be submitted for informational purposes only. After approval of the application, the Administrator shall have thirty (30) days from the date of receipt of a claim for supplemental payment in which to approve and pay or deny the supplemental claim. The thirty-day time for review may be extended by the Administrator for an additional thirty (30) days upon giving the applicant written notice of such intent to extend no later than twenty (20) days from the date of receipt of the claim. If the claim for payment is included with the application for reimbursement, paragraph 1 of this subsection shall control.

F. 1. For reimbursement to a person described by subparagraph a of paragraph 2 of Section 352 of this title for claims subject to the provisions of subsection G of this section the following conditions apply:

a. the person claiming reimbursement must be an eligible person,

b. the eligible person must have been in substantial compliance with the applicable rules promulgated pursuant to the provisions of the Oklahoma Petroleum Storage Tank Release Indemnity Program, and the Oklahoma Storage Tank Regulation Act at the time of the reporting of the release,

c. allowable costs resulting from a release must have been incurred on or after December 23, 1988,

d. the Commission determines that the release no longer poses a threat to public health and welfare or the environment,

e. the Commission was given adequate notice by such owner or operator of the release pursuant to Section 309 of this title, and

f. such owner or operator, to the extent possible, fully cooperated with the Commission in responding to the release.

A person seeking reimbursement who has not been in substantial compliance with the applicable rules as required in subparagraph b of this paragraph, or who failed to give adequate notice as required in subparagraph e of this paragraph will remain ineligible until all corrective action ordered by the Commission has been accomplished and all fines paid. Payment of fines and documentation of corrective action shall be shown by a certification signed by the Director of the Division of the Corporation Commission which has responsibility for the storage tank regulatory functions set out in

Chapter 14 of this title. The certificate must state that all fines resulting from noncompliance have been paid and any required corrective action has been completed and no additional enforcement actions are required.

2. For reimbursement to a person described by subparagraph b of paragraph 2 of Section 352 of this title for claims subject to the provisions of subsection G of this section, the following conditions apply:

a. the person claiming reimbursement must be an eligible person,

b. the person, to the extent possible, has fully cooperated with the Commission, and

c. allowable costs for any corrective action must have been incurred on or after December 23, 1988.

G. Except as otherwise provided by the Oklahoma Petroleum Storage Tank Release Indemnity Program, a reimbursement shall not be made to any eligible person who has received or is eligible for payment or reimbursement from any other state or federal agency or other third party payor for the corrective action taken or the damages or the injuries associated with a release. ~~The provisions of the Oklahoma Petroleum Storage Tank Release Indemnity Program shall not apply if such eligible person has received or is eligible for payment or reimbursement from any other~~ If a state or federal agency or other third-party payor ~~as a result of such release if such payment or reimbursement is less than the minimum payment or reimbursement or over the maximum payment or reimbursement from the Petroleum Storage Tank Release Environmental Cleanup~~ does not fully compensate the eligible person, then the eligible person may seek compensation for the uncompensated amount from the Indemnity Fund.

H. 1. An eligible person shall be reimbursed from the Indemnity Fund for allowable costs in excess of the copayment of one percent (1%) of the reimbursable costs for the remediation.

Copayments shall not exceed a maximum of Five Thousand Dollars ($5,000.00). The Indemnity Fund shall charge the eligible person directly for an initial one-thousand-dollar copayment and thereafter in one-thousand-dollar increments as warranted by the progressive total case costs. When the total case cost is finalized, the Petroleum Storage Tank ~~Release Environmental Cleanup~~ Indemnity Fund shall reimburse the eligible person any overpayment of the one-percent copayment. For releases that occurred prior to June 4, 2004, eligible persons shall pay the five-thousand-dollar deductible as a copayment which may be paid in installments.

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

3. Reimbursements shall not exceed:

a. ~~One Million Dollars ($1,000,000.00)~~ One Million Five Hundred Thousand Dollars ($1,500,000.00) 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)~~ Two Million Dollars ($2,000,000.00) annual aggregate for owners of one to one hundred storage tank systems, or

(2) ~~Two Million Dollars ($2,000,000.00)~~ Three Million Dollars ($3,000,000.00) 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)~~ Two Million Dollars ($2,000,000.00) annual aggregate for owners of one to one hundred storage tank systems, or

(2) ~~Two Million Dollars ($2,000,000.00)~~ Three Million Dollars ($3,000,000.00) for owners with more than one hundred storage tank systems.

c. The reimbursement limits in this paragraph shall not include funds expended on city, county, state or political subdivision property where the city, county, state or political subdivision is an impacted party or adjacent property owner.

4. Reimbursement shall not be made from the Petroleum Storage Tank ~~Release Environmental Cleanup~~ Indemnity Fund pursuant to this section until the Administrator has determined that the costs for which reimbursement is requested were actually incurred and were reasonable.

I. The Petroleum Storage Tank ~~Release Environmental Cleanup~~ Indemnity Fund shall cover corrective action taken and other actual physical damage caused by an eligible release. The Petroleum Storage Tank ~~Release Environmental Cleanup~~ Indemnity Fund shall also cover any medical injuries incurred as a result of the eligible release to persons other than employees of the eligible person of the storage tank system or their agents and independent contractors

retained to perform any such corrective action. The Petroleum Storage Tank ~~Release Environmental Cleanup~~ Indemnity Fund shall not be used to:

1. Recover payments for loss of time;

2. Recover payment of costs which may be associated with but are not integral to corrective action such as the cost of renovating, removing or disposing of storage tanks unless the removing of any petroleum storage tanks, concrete, concrete accessories, lines, dispensers or other site improvements is necessary as required by a corrective action plan approved by the 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 shall not be assigned to a person rendering services for corrective action on the subject site.

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

a. the costs of investigation,

b. participation in the determination of activities to be conducted upon the site,

c. corrective action, and

d. remediation of his or her property.

2. Reimbursement shall be subject to the same requirements as requests for reimbursement made by the eligible person on such sites and shall be handled in the same manner as other sites which have adjacent release or overlapping or commingled plumes. <u>The amount reimbursed to the property owner and eligible person shall not exceed the statutory limits of subsection H of this section.</u>

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

O. 1. Claims for reimbursement pursuant to the Oklahoma Petroleum Storage Tank Release Indemnity Program must be made within

two (2) years of June 9, 1998, or two (2) years after site closure, whichever is later.

2. Eligible persons should be encouraged to submits claims for reimbursement as the costs are incurred and in the order they are incurred. However, the right to submit a claim or the time during which to submit a claim for reimbursement shall not be limited or restricted except as provided in this subsection.

3. All claims, including but not limited to, resubmitted claims, shall be evaluated by the Oklahoma Petroleum Storage Tank Release Indemnity Program under the system of evaluation employed by the Indemnity Fund Program at the time the costs were incurred.

P. 1. The Oklahoma Petroleum Storage Tank Release Indemnity Program is authorized to enter into contracts for site remediation or corrective action which may be performance based. Parties to such contracts shall be the eligible person, the off-site owner, the impacted party, the licensed remediation consultant and the Oklahoma Petroleum Storage Tank Release Indemnity Program which may guarantee the remediation or corrective action. Each party must execute the contract before it is effective. Costs of equipment used in the performance-based contract may be reimbursed separate and apart from the performance-based contract as determined by the Administrator.

2. If:

a. an owner or operator is not available and a storage tank system has made a release into the environment, or

b. where there is a suspicion of a release onto any property where tanks are located and/or onto property proximate thereto, or where tanks are located and a site assessment is necessary to confirm a release or perform tank closure, and

c. such property is located within the limits of the town ~~or~~, city or political subdivision,

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

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

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

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

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

b. an additional twenty percent (20%) of the total contract price, for a total of forty percent (40%) for the next twenty-five percent (25%), for a total of

fifty percent (50%) reduction, in contamination to be accomplished by such system,

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

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

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

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

<u>a. paid in advance by the Indemnity Fund, and</u>

<u>b. allocated for a pay-for-performance site</u>.

Q. The Oklahoma Petroleum Storage Tank Release Indemnity Program is authorized to enter into purchase orders for the performance of corrective action or various tasks or scopes of work to be performed upon a site as is prudent. Each purchase order

shall establish an amount to be paid for the completion of a particular corrective action, task or scope of work. Such purchase orders shall be entered into between the Oklahoma Petroleum Storage Tank Release Indemnity Program and the eligible person or his or her consultant. The Indemnity Fund Program and the eligible person or his or her consultant shall conduct negotiations in good faith. Rules promulgated to implement this subsection shall not place any restrictions upon the negotiation process by limiting the number of revisions which may be submitted or restricting the time period during which they may be submitted.

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

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

2. Except as otherwise provided by this paragraph, if the disallowed claim is not resubmitted within ninety (90) days from the date of the disallowance, the claim shall no longer be eligible for reimbursement from the Petroleum Storage Tank ~~Release Environmental~~

~~Cleanup~~ Indemnity Fund. An action by the applicant disputing a disallowed claim shall be commenced within one (1) year of the date of the last disallowance and shall be brought for an administrative hearing before the Commission.

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

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

SECTION 23. 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 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 shall consider such record, report or information, or particular portion thereof, confidential.

B. In order to assist a petroleum storage 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 on a regionwide or

statewide basis and shall be made available to the public. Such list shall be for informational purposes only and shall not establish limits on reimbursement levels from the Indemnity Fund. The Indemnity Fund Program shall maintain and make available as information used to establish a list of customary and reasonable fees. Any such list shall be compiled with the assistance of and reviewed and approved by the Storage Tank Advisory Council.

SECTION 24. 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 shall conduct an independent audit of the books, records, files and other such documents of the Corporation Commission 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; 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, 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 State Senate.

SECTION 25. AMENDATORY 17 O.S. 2001, Section 360, as amended by Section 10, Chapter 430, O.S.L. 2004 (17 O.S. Supp. 2004, Section 360), is amended to read as follows:

Section 360. A. Annual expenditures from the Petroleum Storage Tank ~~Release Environmental Cleanup~~ Indemnity Fund for costs incurred for the administration of the Indemnity Fund shall be established by the Legislature by budgetary limits for the annual expenditures from the Petroleum Storage Tank ~~Release Environmental Cleanup~~ Indemnity Fund for direct and indirect expenses incurred for the administration of the Indemnity Fund administrative functions of the Corporation Commission.

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

SECTION 26. 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 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 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 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 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 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 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 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 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 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 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 pursuant to this subsection, including the cost of investigating the release and administrative and legal expenses, if:

a. the owner or operator has failed to take a corrective action ordered by the Commission and the Commission has taken the corrective action, or

b. the Administrator has taken corrective action in an emergency.

3. Reasonable and necessary expenses incurred by the Commission in taking a corrective action, including costs of investigating a release and administrative and legal expenses, may be recovered in ~~a civil action~~ an administrative proceeding. The Commission'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 Leaking Storage Tank Revolving Fund.

H. Any owner or operator of an storage tank who fails to comply with any order issued by the Corporation Commission 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 shall be deposited to the Oklahoma Leaking Storage Tank Revolving Fund to be disbursed by the Commission in support of relevant agency activities.

SECTION 27. AMENDATORY 27A O.S. 2001, Section 1-1-203, is amended to read as follows:

Section 1-1-203. A. Each state environmental agency and each state agency with limited environmental responsibilities, within its areas of environmental jurisdiction, shall promulgate, by rule, time periods for issuance or denial of permits and licenses that are required by law. Any such matter requiring an individual proceeding shall be resolved in accordance with the rules of the agency and any applicable statutes. The rules shall provide that such time periods shall only be extended by agreement with the licensee or permittee or if circumstances outside the agency's control prevent that agency from meeting its time periods. If the agency fails to issue or deny a permit or license within the required time periods because of circumstances outside of the agency's control, the agency shall

state in writing the reasons such licensing or permitting is not ready for issuance or denial.

B. 1. Each state environmental agency and each state agency with limited environmental responsibilities shall promulgate rules establishing time periods for complaint resolution as required by law.

2. Complaints received by any state environmental agency or state agency with limited environmental responsibilities concerning a site or facility permitted by or which clearly falls within the jurisdiction of another state environmental agency or state agency with limited environmental responsibilities shall be immediately referred to the appropriate agency for investigation and resolution. Such investigation shall be made by the appropriate division and employees of the appropriate agency.

C. Any person, as defined in Section 2-1-102 of this title, who performs environmental investigation or remediation work which is regulated by the Corporation Commission, must first receive a license for performing investigative or remediation work from the Corporation Commission.

SECTION 28. This act shall become effective November 1, 2005.

Passed the House of Representatives the 10th day of March, 2005.

_____
Presiding Officer of the House of Representatives

Passed the Senate the ____ day of _____, 2005.

_____
Presiding Officer of the Senate