

EHB 1652

THE STATE SENATE
Tuesday, April 12, 2005

ENGROSSED

House Bill No. 1652

As Amended

ENGROSSED HOUSE BILL NO. 1652 - By: MORGAN (Danny) of the House and LERBLANCE of the Senate.

[Corporation Commission - Oklahoma Storage Tank Regulation Act - modifying definitions - requiring certain testing - providing for certain cost recovery - clarifying language - Storage Tank Advisory Council - modifying membership - 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;

- 1 2. "Action level" means that the regulated substances have
2 reached the level of contamination;
- 3 3. "Active case" means a confirmed release notice has been
4 issued by the Corporation Commission to the owner or operator for
5 the specified location;
- 6 4. "Backfill" means only the material placed in the excavation
7 zone to support the petroleum storage tank system;
- 8 5. "Chemicals of concern" means chemicals that may pose a
9 threat to human health and the environment;
- 10 6. "Closed case" means a previously active case which had a
11 confirmed release and the Commission has issued a closure letter
12 advising that no further remediation action is necessary on the
13 site;
- 14 7. "Commission" means the Corporation Commission;
- 15 8. "Contaminants" or "contamination" means a level of
16 concentration of chemicals of concern that may be sufficient to
17 cause adverse effects upon human health or the environment or cause
18 a nuisance;
- 19 9. "Corrective action" means action taken to monitor,
20 investigate, minimize, eliminate or perform remediation of a release
21 from a storage tank system;

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

4 11. "Department" means the Department of Environmental Quality;

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

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

9 14. "Eligible person" means the party who has made application
10 to the Petroleum Storage Tank ~~Release-Environmental-Cleanup~~
11 Indemnity Fund and met applicable criteria to receive Petroleum
12 Storage Tank ~~Release-Environmental-Cleanup~~ Indemnity Fund
13 reimbursement on a confirmed release;

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

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

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

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

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

5 ~~20.~~ 19. "Hazardous substance" means any substance defined in
6 Section 101(14) of the Comprehensive Environmental Response,
7 Compensation and Liability Act of 1980, 42 U.S.C., Section 9601, but
8 not including:

9 a. any substance regulated as a hazardous waste under
10 Subtitle C of the federal Solid Waste Disposal Act, 42
11 U.S.C., Section 6903, or

12 b. any substance regulated as a hazardous waste under the
13 Oklahoma Hazardous Waste Management Act.

14 The term hazardous substance shall also include a mixture of
15 hazardous substances and petroleum, providing the amount of
16 petroleum is of a de minimus quantity;

17 ~~21.~~ 20. "New system" means a storage tank system for which the
18 installation or upgrade of the system began on or after ~~April 21,~~
19 ~~1989~~ December 22, 1998;

20 ~~22.~~ 21. "Operator" means any person in control of or having
21 responsibility for the daily operation of the storage tank system,
22 whether by lease, contract, or other form of agreement. The term
23 "operator" also includes a past operator at the time of a release,

1 tank closure, or a violation of the Oklahoma Storage Tank Regulation
2 Act or of a rule promulgated thereunder;

3 ~~23.~~ 22. "Owner" means:

4 a. in the case of a storage tank system in use on
5 November 8, 1984, or brought into use after that date,
6 any person who holds title to, controls, or possesses
7 an interest in a storage tank system used for the
8 storage, use, or dispensing of regulated substances,
9 or

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

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

19 ~~24.~~ 23. "Permit" means any registration, permit, license or
20 other authorization issued by the Commission to operate a storage
21 tank system;

22 ~~25.~~ 24. "Person" means any individual, trust, firm, joint stock
23 company or corporation, limited liability company, partnership,

1 association, any representative appointed by order of a court, the
2 state, any municipality, county, school district or other political
3 subdivision or agency of the state, or any interstate body. The
4 term also includes a consortium, a joint venture, a commercial
5 entity, the United States Government, a federal agency, including a
6 government corporation, or any other legal entity;

7 ~~26.~~ 25. "Petroleum" means ethylene glycol-based antifreeze,
8 crude oil, crude oil fractions, and refined petroleum fractions,
9 including motor fuel, jet fuel, distillate fuel oils, residual fuel
10 oils, lubricants, petroleum solvents and used oil which are liquid
11 at standard conditions of temperature and pressure (60 degrees
12 Fahrenheit and 14.7 pounds per square inch absolute). "Petroleum"
13 also means a mixture of petroleum and hazardous substances; provided
14 the amount of the hazardous substances is of a de minimus quantity;

15 ~~27.~~ 26. "Pipeline facilities" means new and existing pipe
16 rights-of-way and any equipment, facilities or buildings regulated
17 under:

- 18 a. the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C.
19 App., 1671, et seq.),
- 20 b. the Hazardous Liquid Pipeline Safety Act of 1979 (49
21 U.S.C. 2001, et seq.),

1 c. the state Hazardous Liquid Transportation System
2 Safety Act, Section 47.1 et seq. of Title 52 of the
3 Oklahoma Statutes, or

4 d. intrastate pipeline facilities regulated under state
5 law;

6 ~~28.~~ 27. "Pollution" means contamination or other alteration of
7 the physical, chemical or biological properties of any natural
8 waters of the state, ~~contamination or alteration of the physical,~~
9 ~~chemical or biological properties of the land surface or subsurface,~~
10 land surfaces or subsurfaces, or atmosphere when such contamination
11 or alteration will or is likely to create a nuisance or render the
12 waters ~~or,~~ land or atmosphere harmful or detrimental or injurious to
13 the public health, safety or welfare or the environment;

14 ~~29.~~ 28. "Regulated substances" means hazardous substances or
15 petroleum which are regulated pursuant to the Oklahoma Storage Tank
16 Regulation Act;

17 ~~30.~~ 29. "Release" means any spilling, overfilling, or leaking
18 from a storage tank system that goes beyond the excavation zone,
19 tankpit, or secondary containment facility into the environment;

20 ~~31.~~ 30. "Remediation" means a process or technique used to
21 reduce concentration levels of chemicals of concern in the soil and
22 groundwater, and/or to reduce the presence of free product in the

1 environment to levels that are protective of human health, safety
2 and the environment;

3 ~~32.~~ 31. "Residual product" means petroleum that is absorbed or
4 otherwise bound to geological materials including, but not limited
5 to, sand, silt, or clay in any soil zone in such a manner that
6 groundwater in contact with the residual product or beneath the
7 residual product is not contaminated with regulated substances;

8 32. "Responsible person" means a person other than a petroleum
9 storage tank system owner or operator, such as an adjacent property
10 owner, impacted party, city or political subdivision, that is
11 seeking corrective action of real property, and submits to the
12 jurisdiction of the Commission;

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

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

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

21 36. "Suspicion of release" means preliminary investigative work
22 or assessment performed under a Petroleum Storage Tank Division
23 purchase order to determine if a confirmed release is warranted.

1 The Petroleum Storage Tank Division eligibility process is not
2 required for Petroleum Storage Tank ~~Release Environmental Cleanup~~
3 Indemnity Fund reimbursement on a suspicion of release;

4 37. "~~Tank~~ Storage tank" means a stationary vessel designed to
5 contain an accumulation of regulated substances which is constructed
6 of primarily non-earthen materials that provide structural support;

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

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

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

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

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

1 1. Issue, renew, deny, modify, suspend, refuse to renew and
2 revoke permits for storage tank systems pursuant to the provisions
3 of the Oklahoma Storage Tank Regulation Act and rules promulgated
4 pursuant thereto;

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

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

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

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

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

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

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

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

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

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

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

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

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

- 7 a. submit such reports and information concerning the
8 storage tank system as may be determined necessary by
9 the Commission pursuant to the provisions of the
10 Oklahoma Storage Tank Regulation Act or rules
11 promulgated pursuant thereto,
- 12 b. perform tests, install release detection devices, and
13 where appropriate, monitor the environment to ensure
14 that pollution is not occurring,
- 15 c. make timely reports to the Commission of pollution ~~or,~~
16 releases, or testing and sampling events at or above
17 Commission action levels,
- 18 d. temporarily or permanently cease operation of a
19 storage tank system, modify and immediately remove or
20 control any regulated substance that is found to be
21 causing pollution when such cessation, removal or
22 control is determined to be necessary by the
23 Commission,

- 1 e. provide an alternate or temporary drinking water
2 source to any person deprived of drinking water if it
3 is found that such owner or operator is responsible
4 for polluting the drinking water source beyond
5 applicable drinking water standards, or where no such
6 standard exists, such standard as the Department of
7 Environmental Quality shall determine,
8 f. take full corrective action if such owner or operator
9 is found to be responsible for the release, and
10 g. take appropriate action to temporarily relocate
11 residents affected by the release;

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

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

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

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

18 18. Establish a schedule of fees for issuance of any permit
19 required pursuant to the provisions of the Oklahoma Storage Tank
20 Regulation Act. The fees shall be in an amount to cover the costs
21 of the Commission in administering the Oklahoma Storage Tank
22 Regulation Act. Payment of the permitting fees for any storage tank
23 system required pursuant to the provisions of the Oklahoma Storage

1 Tank Regulation Act or to rules promulgated pursuant thereto shall
2 prohibit the assessment of additional licensing or permitting fees
3 for such storage tank systems by any other agency or municipality of
4 this state;

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

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

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

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

5 Section 306.1 Owners of ~~tanks~~ storage tank systems over eleven
6 hundred (1100) gallons containing ~~petroleum products which such~~
7 ~~petroleum products~~ regulated substances when the regulated
8 substances are used for agricultural purposes and not for resale
9 shall be required to pay a permit fee of not more than Ten Dollars
10 (\$10.00) per tank per year.

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

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

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

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

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

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

6 5. An enforcement program;

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

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

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

21 B. In promulgating rules establishing standards pursuant to
22 paragraph 8 of subsection A of this section, the Commission may
23 distinguish in such standards between requirements appropriate for

1 ~~new tanks, existing tanks and for abandoned tanks~~ storage tank
2 systems. In making such distinctions, the Commission may consider
3 the following factors:

- 4 1. Location of the storage tanks;
- 5 2. Soil and climate conditions;
- 6 3. Uses of the storage tanks;
- 7 4. History of maintenance;
- 8 5. Age of the storage tanks;
- 9 6. National industry codes;
- 10 7. Hydrogeology;
- 11 8. Water table;
- 12 9. Size of the storage tanks;
- 13 10. Quantity of regulated substances periodically deposited in
14 or dispensed from the storage tank;
- 15 11. The compatibility of the regulated substance and the
16 materials of which the storage tank is fabricated; and
- 17 12. Any other factors as deemed necessary by the Commission
18 pursuant to the provisions of the Oklahoma Storage Tank Regulation
19 Act, ~~Section 301 et seq. of this title.~~

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

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

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

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

15 SECTION 5. AMENDATORY 17 O.S. 2001, Section 308, is
16 amended to read as follows:

17 Section 308. A. 1. Except as otherwise provided by this
18 subsection, no storage tank system or facility shall be operated
19 without a permit from the Corporation Commission.

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

22 a. does not contain or has not contained a regulated
23 substance, or

1 b. has been permanently closed or has not been in
2 operation since January 1, 1974.

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

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

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

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

18 2. Any permit issued pursuant to the provisions of the Oklahoma
19 Storage Tank Regulation Act may be transferred subject to rules
20 promulgated by the Commission and only upon approval by the
21 Commission.

22 3. Any permittee or applicant for permit subject to the
23 provisions of the Oklahoma Storage Tank Regulation Act shall be

1 deemed to have given consent to any duly authorized employee or
2 agent of the Commission to access, enter, inspect or monitor, the
3 tank system or facility in accordance with the provisions of the
4 Oklahoma Storage Tank Regulation Act. Refusal to allow such access,
5 entry, or inspection may constitute grounds for the denial,
6 nonrenewal, suspension, or revocation of a permit. Upon refusal of
7 access, entry, inspection, sampling or copying pursuant to this
8 section, the ~~Commission or a duly authorized representative~~ Director
9 may make application for and obtain an administrative warrant or a
10 ~~search warrant from the district court where the facility is located~~
11 an order from the Commission after notice and hearing to allow such
12 entry, inspection, testing, sampling or copying.

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

17 F. Any permit fee collected pursuant to the Oklahoma Storage
18 Tank Regulation Act shall be deposited in the Corporation Commission
19 Storage Tank Regulation Revolving Fund.

20 G. The Commission may deny approval of a permit application, or
21 refuse to reissue, suspend or revoke a permit issued pursuant to the
22 Oklahoma Storage Tank Regulation Act if the Commission finds, after
23 notice and a hearing conducted in accordance with the provisions of

1 Section 314 of Title 75 of the Oklahoma Statutes, that the applicant
2 or permittee has:

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

5 2. Failed to comply with any order of the Commission, provision
6 or requirement of this act or any rules promulgated by the
7 Commission in accordance with the provisions of the Oklahoma Storage
8 Tank Regulation Act; or

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

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

22 SECTION 6. AMENDATORY 17 O.S. 2001, Section 309, is
23 amended to read as follows:

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

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

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

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

22 2. Without notice and hearing pursuant to Section 310 of this
23 title, issue an administrative order stating the existence of an

1 emergency and requiring that such action be taken as it deems
2 necessary to meet the emergency. Such order shall be effective
3 immediately. Any person to whom such an order is directed shall
4 comply with said order immediately but on application to the
5 Commission shall be afforded a hearing within ten (10) days after
6 receipt of the ~~emergency~~ administrative order. On the basis of such
7 hearing, the Commission shall continue such order in effect, revoke
8 it, or modify it. Any person aggrieved by such order continued
9 after the hearing provided for in this subsection may appeal to the
10 Supreme Court as provided in Section 318 of Title 75 of the Oklahoma
11 Statutes. Such appeal when docketed shall have priority over all
12 cases pending on said docket; and

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

- 18 D. 1. The Commission may take corrective action if:
- 19 a. an owner or operator of the storage tank system cannot
20 be identified,
- 21 b. an identified owner or operator cannot or will not
22 comply with the order issued pursuant to subsection C
23 of this section,

1 c. an administrative or judicial proceeding on an order
2 issued pursuant to subsection C of this section is
3 pending and the Commission determines corrective
4 action is necessary to protect the public health,
5 safety and welfare or the environment until the
6 administrative or judicial proceeding is resolved, or
7 d. the Commission determines that the release constitutes
8 a ~~clear and immediate~~ danger requiring immediate
9 action to prevent, minimize or mitigate damage to the
10 public health and welfare or the environment. Before
11 taking an action under this paragraph, the Commission
12 shall make all reasonable efforts, taking into
13 consideration the urgency of the situation, to ~~order~~
14 afford an owner or operator notice and hearing to take
15 a corrective action and notify the owners or occupants
16 of adjacent or affected real property as specified by
17 Section 310 of this title.

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

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

7 3. Reasonable and necessary expenses incurred by the Commission
8 in taking a corrective action, including costs of investigating a
9 release and administrative and legal expenses, may be recovered ~~in a~~
10 ~~civil action~~ by application to the Commission with notice and
11 hearing pursuant to Section 311 of this title. The Commission's
12 certification of ~~expenses~~ costs incurred is prima facie evidence
13 that the ~~expenses~~ costs incurred are reasonable and necessary. The
14 Commission shall be entitled to apply for and receive payment from
15 the Indemnity Fund Program on behalf of an eligible person for an
16 eligible release upon any site upon which the Commission has taken
17 corrective action. Such payments shall be deemed to be
18 reimbursement of the eligible person. ~~Expenses~~ Costs incurred that
19 are recovered under this subsection shall be deposited in the
20 Corporation Commission Storage Tank Regulation Revolving Fund.

21 E. Any order issued by the Commission pursuant to this section
22 shall not limit the liability of the owner or operator or both such
23 owner or operator for any injury, damages, or costs incurred by any

1 person as a result of the release. The owner or operator shall not
2 avoid any liability, statutory environmental responsibility imposed
3 by this act; or as a result of such release by means of a conveyance
4 of any right, title or interest in real property; or by any
5 indemnification, hold harmless agreement, or similar agreement.

6 1. This subsection does not:

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

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

19 SECTION 7. AMENDATORY 17 O.S. 2001, Section 310, as
20 amended by Section 3, Chapter 430, O.S.L. 2004 (17 O.S. Supp. 2004,
21 Section 310), is amended to read as follows:

22 Section 310. A. If upon inspection or investigation, or
23 whenever the Corporation Commission determines that there are

1 reasonable grounds to believe that a storage tank system owner,
2 operator or responsible person is in violation of the Oklahoma
3 Storage Tank Regulation Act or of any rule promulgated pursuant
4 thereto or of any order of the Commission, the Commission shall give
5 written notice to the alleged violator specifying the cause of
6 complaint ~~within twenty (20) days after the Commission determines~~
7 ~~that there are reasonable grounds to believe that the facility is in~~
8 ~~violation of the Oklahoma Storage Tank Regulation Act, the rules~~
9 ~~promulgated pursuant thereto or any order of the Commission issued~~
10 ~~thereunder.~~ Such notice shall require that corrective action be
11 immediately initiated. The notice shall be delivered to the alleged
12 violator in accordance with the provisions of subsection C of this
13 section.

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

- 18 a. the alleged violator should be found in violation of
19 Commission rules,
20 b. the alleged violator should be found to be in
21 violation of the provisions of the Oklahoma Storage
22 Tank Regulation Act,

- 1 c. the permit issued to the alleged violator should be
- 2 suspended, revoked or not reissued,
- 3 d. the application for a permit should be denied, or
- 4 e. whether any other appropriate relief should be
- 5 granted.

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

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

20 C. 1. Except as otherwise expressly provided by law, any
21 notice, order, or other instrument issued by or pursuant to
22 authority of the Commission may be served on any person affected
23 thereby personally, by publication, or by mailing a copy of the

1 notice, order, or other instrument by certified mail directed to the
2 person affected at the last-known post office address as shown by
3 the files or records of the Commission. Service shall be considered
4 complete if certified mail service is returned unclaimed, or
5 refused. Proof of service shall be made as in the case of service
6 of a summons or by publication ~~in a civil action~~ or may be made by
7 the affidavit of the person who did the mailing.

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

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

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

- 16 a. the surface owner of real property where any
17 corrective action is to be taken if such person is not
18 the owner or operator of the storage tank system, and
19 b. the owner of real property adjacent to the location of
20 the corrective action if such real property owner will
21 be adversely affected by the corrective action.

22 2. The notice shall advise such real property owner or owners
23 that the corrective action is to be taken and that the owner's

1 cooperation will be required for that action to be taken. The
2 Commission shall give the owner or owners of such real property, as
3 the case might be, an opportunity for hearing and to present
4 evidence on the matter.

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

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

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

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

5 SECTION 8. AMENDATORY 17 O.S. 2001, Section 311, is
6 amended to read as follows:

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

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

1 2. All penalties collected pursuant to the provisions of this
2 subsection shall be deposited in the Oklahoma Storage Tank
3 Regulation Revolving Fund.

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

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

1 E. Any person who willfully and knowingly makes any false
2 statement, representation or certification in any application,
3 record, report, plan or other document filed or required to be
4 filed, or required to be maintained pursuant to the Oklahoma Storage
5 Tank Regulation Act or rules promulgated ~~thereto~~ pursuant to this
6 act, or who falsifies, tampers with or knowingly renders inaccurate
7 any monitoring device or method required to be maintained pursuant
8 to the Oklahoma Storage Tank Regulation Act, Oklahoma Petroleum
9 Storage Tank Release Indemnity Program or rules promulgated ~~thereto~~
10 pursuant to the program shall be deemed guilty of a misdemeanor and,
11 upon conviction, may be punished by a fine of not more than Five
12 Thousand Dollars (\$5,000.00) or by imprisonment for not more than
13 six (6) months, or by both such fine and imprisonment. Each day of
14 violation pursuant to this subsection shall constitute a separate
15 violation.

16 SECTION 9. AMENDATORY 17 O.S. 2001, Section 312, is
17 amended to read as follows:

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

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

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

3 3. The Petroleum Storage Tank Division of the Corporation
4 Commission on behalf of the State of Oklahoma ~~in the appropriate~~
5 ~~district court of the State of Oklahoma~~ before an administrative law
6 judge of the Commission, or as otherwise authorized by law.

7 B. The ~~Commission~~ Division may bring an action before an
8 administrative law judge of the Commission, or in a court of
9 competent jurisdiction for equitable relief to redress or restrain a
10 violation by any person of a provision of the Oklahoma Storage Tank
11 Regulation Act or any rule promulgated or order issued pursuant
12 ~~thereto~~ to the act. ~~Said~~ The administrative law judge or court has
13 jurisdiction to determine ~~said~~ the action, and to grant the
14 necessary or appropriate relief, including but not limited to:

15 1. Enjoining further releases;

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

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

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

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

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

8 SECTION 10. AMENDATORY 17 O.S. 2001, Section 313, is
9 amended to read as follows:

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

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

22 C. Nothing in this section shall be construed to prevent
23 disclosures of such report, record or information to federal or

1 state representatives as necessary for purposes of administration of
2 any federal or state laws or when relevant to proceedings pursuant
3 to the Oklahoma Storage Tank Regulation Act.

4 D. Information concerning groundwater quality and the presence
5 or concentration of regulated substances or chemicals of concern, in
6 soils or groundwater shall not be considered confidential by the
7 Commission.

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

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

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

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

21 3. Monies received by the Commission in the form of gifts,
22 grants other than federal grants, reimbursements or appropriations

1 from any source intended to be used for the purposes of the
2 revolving fund; ~~and~~

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

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

7 All monies accruing to the credit of said revolving fund are
8 hereby appropriated and may be budgeted and expended by the
9 Commission for the purpose of implementing the provisions of the
10 Oklahoma Storage Tank Regulation Act and the rules promulgated
11 thereto. Expenditures from said revolving fund shall be made upon
12 warrants issued by the State Treasurer against claims filed as
13 prescribed by law with the Director of State Finance for approval
14 and payment.

15 SECTION 12. AMENDATORY 17 O.S. 2001, Section 316, is
16 amended to read as follows:

17 Section 316. No county, incorporated or nonincorporated
18 municipality, state agency or political subdivision shall enact
19 ordinances or promulgate any rules, ordinances or regulations
20 governing any aspect of petroleum storage tanks within the State of
21 Oklahoma that shall be in conflict with any of the provisions of the
22 Oklahoma Storage Tank Regulation Act, or any rules promulgated by

1 the Corporation Commission pursuant to the provisions of the
2 Oklahoma Storage Tank Regulation Act.

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

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

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

21 2. The Commission shall promulgate rules establishing the basis
22 for denial, suspension, revocation, or reinstatement of a petroleum

1 storage tank professional license, and establishing procedures for
2 disciplinary actions.

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

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

9 5. A person whose license has been revoked in a proceeding
10 brought pursuant to this section may apply for a new license after
11 the expiration of a term of no less than one (1) year and no more
12 than five (5) years from the date of revocation, depending on the
13 decision of the Director of the Petroleum Storage Tank Division of
14 the Corporation Commission. Upon a subsequent determination of
15 violation of:

16 a. the Oklahoma Storage Tank Regulation Act,
17 b. the Oklahoma Petroleum Storage Tank Indemnity Program,
18 or
19 c. promulgated rules,
20 the Commission may, after notice and hearing, revoke a petroleum
21 storage tank professional license for a term no less than five (5)
22 years.

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

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

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

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

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

5 1. Eliminate overlap and duplication of effort;

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

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

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

18 E. The provisions of this act shall be applicable to all
19 current, pending, past and future contracts, claims and cases within
20 the jurisdiction of the Division, provided that this subsection
21 shall not apply, nor be construed to authorize or permit the
22 reopening or re-review of the underlying claim or claims of any
23 cases which were formally settled pursuant to a formal settlement

1 agreement or in which a final order was entered by the Corporation
2 Commission. Further, the provisions of this act shall not change or
3 modify the terms of pay for performance or purchase order contracts
4 entered into prior to the effective date of this act.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 17. Acquire and sell personal property which has been purchased
2 or obtained by a pay-for-performance contract pursuant to Section
3 356 of this title. Surplus personal property shall be disposed of
4 by the Petroleum Storage Tank Division and the Department of Central
5 Services pursuant to the Oklahoma Surplus Property Act. The
6 proceeds of the sale shall be deposited in the Petroleum Storage
7 Tank ~~Release Environmental Cleanup~~ Indemnity Fund; and

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

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

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

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

22 2. Reimbursement of actual costs incurred by the Petroleum
23 Storage Tank Division in evaluating claims and determining whether

1 specific claims qualify for payment or reimbursement by the Oklahoma
2 Petroleum Storage Tank Release Indemnity Program;

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

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

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

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

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

22 2. Three members shall be appointed by the Governor, three
23 members shall be appointed by the Speaker of the House of

1 Representatives and three members shall be appointed by the
2 President Pro Tempore of the Senate.

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

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

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

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

16 7. Five members shall constitute a quorum.

17 B. The Council shall be composed as follows:

18 1. The Governor shall appoint three members as follows:

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

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

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

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

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

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

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

22 b. make recommendations to the Commission and its
23 regulatory programs and the ~~Oklahoma~~ Petroleum Storage

1 Tank ~~Release~~ Indemnity ~~Program~~ Fund concerning the
2 need and the desirability of conducting public
3 meetings, workshops and seminars.

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

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

22 G. 1. The Commission is specifically charged with the duty of
23 promulgating rules which will implement the duties and

1 responsibilities of the Oklahoma Storage Tank Regulation Act and the
2 Oklahoma Petroleum Storage Tank Release Indemnity Program.

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

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

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

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

17 Section 351. A. The Legislature finds that:

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

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

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

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

7 5. Such delays result in the continuation and intensification
8 of the threat to the public health, safety and welfare, in greater
9 damage to the environment, and in significantly higher costs to
10 contain and remove the pollution;

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

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

20 B. The Legislature declares that, in order to provide for
21 rehabilitation of as many pollution sites resulting from releases of
22 petroleum from storage tank systems, as soon as possible, voluntary
23 corrective action should be encouraged, provided that such

1 corrective action is conducted in a manner and to a level of
2 completion which will protect the public health, safety and welfare
3 and will minimize damage to the environment. To accomplish this
4 purpose, any person entitled to reimbursement pursuant to the
5 provisions of this act shall be reimbursed for certain allowable
6 costs in connection with such corrective action, subject to the
7 conditions specified by this act.

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

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

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

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

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

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

8 5. "Distributor" means:

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

- 1 b. any person producing, refining, preparing, distilling,
2 blending, manufacturing, or compounding motor fuel or
3 blending material in this state for use, distribution
4 or sale and delivery in this state,
5 c. any person within this state producing or collecting
6 what is commonly known as drip, casinghead or natural
7 gasoline,
8 d. any person who has in his or her possession or buys
9 for sale or use motor fuel, diesel fuel or blending
10 material from any person other than a licensed
11 distributor, retailer or dealer,
12 e. any person other than a retailer or dealer who sells
13 motor fuel, diesel fuel or blending material to anyone
14 except a licensed distributor,
15 f. any person who makes bulk sales of motor fuel, diesel
16 fuel or blending material, and
17 g. any other person, including a retailer or dealer, who
18 has filed an application for and has procured a
19 distributor's license in the manner provided by the
20 Oklahoma Motor Fuel/Diesel Fuel Importers for Use Tax
21 Code, Section 601 et seq. of Title 68 of the Oklahoma
22 Statutes;
23 6. "Eligible person" means any:

- 1 a. owner or operator of a storage tank system who has
2 incurred liability as a result of an eligible release,
3 and who meets the requirements specified in Section
4 356 of this title, or
- 5 b. person who on or after November 8, 1984, purchases
6 property on which a storage tank system is located if:
- 7 (1) the storage tank system was located on the
8 property on November 8, 1984,
- 9 (2) such person could not have known that such
10 storage tank system existed. The burden shall be
11 upon such purchaser to show that such purchaser
12 did not know or should not have known of the
13 existence of such storage tank system,
- 14 (3) the owner or operator of the storage tank system
15 responsible for the system cannot be determined
16 by the Corporation Commission or the
17 Administrator, or the owner or operator of the
18 storage tank system responsible for the system is
19 incapable, in the judgment of the Corporation
20 Commission, of properly carrying out any
21 necessary corrective action, and
- 22 (4) either, funds are unavailable from the Oklahoma
23 Leaking Underground Storage Tank Trust Fund or

1 the storage tank system is not eligible for
2 corrective action taken pursuant to Section 365
3 of this title,

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

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

12 (2) the operator of the storage tank system
13 responsible for the system or responsible for a
14 release cannot be determined or found by the
15 Corporation Commission, or the operator of the
16 storage tank system responsible for the system or
17 responsible for the release is incapable, in the
18 judgment of the Corporation Commission, of
19 properly carrying out any necessary corrective
20 action,

21 (3) either funds are unavailable from the Oklahoma
22 Leaking Underground Storage Tank Trust Fund or
23 the storage tank system or release is not

1 eligible for corrective action taken pursuant to
2 Section 365 of this title,

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

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

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

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

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

22 ~~8.~~ 9. "Impacted party" means an owner whose property has been
23 impacted by a release from an on-site or off-site petroleum storage

1 tank which the impacted person did not own or operate and for which
2 the impacted person has had no responsibility under Commission
3 rules. An impacted party may apply for an eligibility determination
4 on reimbursement from the Petroleum Storage Tank Release
5 ~~Environmental Cleanup~~ Indemnity Fund. An impacted party is not
6 subject to the Petroleum Storage Tank Release ~~Environmental Cleanup~~
7 Indemnity Fund deductible;

8 ~~9.~~ 10. "Indemnity Fund" means the Petroleum Storage Tank
9 ~~Release Environmental Cleanup~~ Indemnity Fund;

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

13 ~~11.~~ 12. "Investigation" means activities taken to identify,
14 confirm, monitor or delineate the physical extent of a release and
15 which result in the selection of an appropriate means to remediate a
16 release and specific design criteria for such remediation upon which
17 competitive bids may be reasonably based;

18 ~~12.~~ 13. "Maintenance level" means the minimum balance of the
19 Indemnity Fund to be maintained and below which the Indemnity Fund
20 balance will fall when the balance of the Indemnity Fund is below
21 the dollar amount of disbursements from the Indemnity Fund for the
22 payment of claims during the preceding six (6) months plus Five
23 Million Dollars (\$5,000,000.00);

1 ~~13.~~ 14. "Owner" means:

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

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

17 ~~14.~~ 15. "Motor fuel, diesel fuel and blending materials" have
18 the same meaning as those terms are defined by Section 501 of Title
19 68 of the Oklahoma Statutes;

20 ~~15.~~ 16. "Pay-for-performance" means a process by which an
21 environmental consultant guarantees, by executing a contract
22 pursuant to the provisions of this paragraph, that a release of a
23 regulated substance will be remediated to levels agreed to by the

1 Commission, the eligible person and the consultant. Such levels
2 must be protective of human health, safety and the environment. The
3 performance-based process encompasses several steps including, but
4 not limited to, the development of a contract signed by an
5 officer/owner of the environmental consultant, the eligible person
6 and the Administrator of the Petroleum Storage Tank ~~Release~~
7 ~~Environmental Cleanup~~ Indemnity Fund. The contract shall contain
8 any agreed upon reasonable price for the work to be performed.
9 Scheduled payments shall be distributed only as performance-based
10 goals are attained;

11 ~~16.~~ 17. "Person" means any individual, trust, firm, joint stock
12 company or corporation, corporation, limited liability company,
13 partnership, association, any representative appointed by order of
14 the court, municipality, county, school district, or other political
15 subdivision of the state, or any interstate body. The term also
16 includes a consortium, a joint venture, a commercial entity, or any
17 other legal entity. The term also refers to any agency of the State
18 of Oklahoma which purchases property containing storage tanks from
19 an owner or operator qualified to access the Indemnity Fund and upon
20 which an eligible release has occurred prior to the agency acquiring
21 the property;

22 ~~17.~~ 18. "Purchase order" means a performance-based agreement
23 negotiated between an environmental consultant and the Petroleum

1 Storage Tank Division stipulating a scope of work to be performed by
2 a target date, for which the Petroleum Storage Tank ~~Release~~
3 ~~Environmental Cleanup~~ Indemnity Fund will reimburse a specified
4 amount;

5 ~~18.~~ 19. "Reimbursement" means either:

- 6 a. repayment of an approved claim to an eligible person
7 for allowable costs resulting from an eligible
8 release, or
- 9 b. payment of an approved claim submitted on behalf of an
10 eligible person for incurred allowable costs resulting
11 from an eligible release;

12 ~~19.~~ 20. "Release" means any spilling, overfilling, leaching,
13 emitting, discharging, escaping, or unintentional disposing of the
14 petroleum from a storage tank system into the environment of the
15 state. The term release includes but is not limited to suspected
16 releases of ~~petroleum~~ regulated substance from a storage tank
17 system, identified as a result of ~~positive~~ sampling, testing or
18 monitoring results, or identified in any similarly reliable manner;

19 ~~20.~~ 21. "Sale" means every gallon of motor fuel, diesel fuel,
20 or blending materials sold, or stored and distributed, or withdrawn
21 from storage, within the state, for sale or use. No gallon of motor
22 fuel, diesel fuel, or blending materials shall be the basis more
23 than once of the assessment imposed by Section 354 of this title;

1 ~~21.~~ 22. "Storage tank" or "storage tank system" means a storage
2 system as such term is defined by the Oklahoma Storage Tank
3 Regulation Act; and

4 ~~22.~~ 23. "Tax Commission" means the Oklahoma Tax Commission.

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

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

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

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

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

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

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

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

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

23 D. The Indemnity Fund shall consist of:

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

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

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

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

19 2. No monies from the Indemnity Fund shall be used to pay or
20 reimburse the Commission for the salary of any employee, except for
21 the Compliance and Inspection Division, while such employee is
22 performing work involved in the regulation of storage tanks pursuant
23 to the Oklahoma Storage Tank Regulation Act or the administration of

1 programs pursuant to said act, including the development, review and
2 approval of corrective action plans as required by the regulatory
3 programs. The Commission shall cross train the field staff of the
4 Petroleum Storage Tank Division to perform inspections and related
5 field activities for all programs within the Division and the
6 Oklahoma Petroleum Storage Tank Release Indemnity Program may
7 reimburse the Division the actual costs of inspection services
8 performed on behalf of the Oklahoma Petroleum Storage Tank Release
9 Indemnity Program.

- 10 3. Monies in the Indemnity Fund shall only be expended for:
- 11 a. reimbursements to eligible persons unless duly
12 assigned to another, and
 - 13 b. costs incurred by the Indemnity Fund Program for the
14 administration of the fund and costs incurred for the
15 sole purpose of evaluating claims and determining
16 whether specific claims qualify for payment or
17 reimbursement from such Indemnity Fund.

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

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

5 SECTION 21. AMENDATORY 17 O.S. 2001, Section 354, as
6 last amended by Section 1, Chapter 371, O.S.L. 2002 (17 O.S. Supp.
7 2004, Section 354), is amended to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

1 children, or in the operation of vehicles used in
2 driver training,
3 b. motor fuels, diesel fuels and blending materials used
4 solely and exclusively to propel motor vehicles on the
5 public roads and highways of this state when leased or
6 owned and being operated for the sole benefit of a
7 county, city, town, volunteer fire department with a
8 state certification and rating, rural electric
9 cooperative, rural water and sewer district, rural
10 ambulance service district, or federally recognized
11 Indian tribe as specified by Section 500.10 of Title
12 68 of the Oklahoma Statutes,
13 c. motor fuel, diesel fuel and blending materials to
14 counties and cities and towns,
15 d. diesel fuel for off-road purposes specified by Section
16 500.10 of Title 68 of the Oklahoma Statutes,
17 e. motor fuel, diesel fuel and blending materials used
18 for agricultural purposes specified by Section 500.10
19 of Title 68 of the Oklahoma Statutes, and
20 f. motor fuel, diesel fuel and blending materials used in
21 aircraft or in aircraft engines pursuant to Section
22 500.10 of Title 68 of the Oklahoma Statutes.

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

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

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

15 3. From July 1, 2004, until the total amount deposited since
16 July 1, 2002, in the Higher Education Facilities Revolving Fund
17 totals Thirty-eight Million Dollars (\$38,000,000.00) twenty-five
18 percent (25%) of all revenue from the assessment received over the
19 amount required by paragraph 1 of this subsection shall be deposited
20 in the Higher Education Facilities Revolving Fund and seventy-five
21 percent (75%) of all revenue from the assessment received over the
22 amount required by paragraph 1 of this subsection shall be deposited

1 in the Petroleum Storage Tank ~~Release Environmental Cleanup~~
2 Indemnity Fund created in Section 353 of this title;

3 4. After the total amount deposited in the Higher Education
4 Facilities Revolving Fund totals Thirty-eight Million Dollars
5 (\$38,000,000.00), any revenue from the assessment received over the
6 amount required in paragraph 1 of this subsection, shall be
7 deposited in the Petroleum Storage Tank ~~Release Environmental~~
8 ~~Cleanup~~ Indemnity Fund created in Section 353 of this title in
9 amounts necessary to maintain the maintenance level of the Indemnity
10 Fund pursuant to subsection D of this section; and

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

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

20 b. the second One Million Dollars (\$1,000,000.00)
21 collected during each fiscal year shall be deposited
22 in the Environmental Trust Revolving Fund created in
23 Section 2-3-403 of Title 27A of the Oklahoma Statutes,

1 to be used solely for the cleanup of abandoned oil and
2 gas processing and refining sites, and

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

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

15 2. At least fifteen (15) days prior to the calendar month in
16 which the assessment is to be collected for credit to the Indemnity
17 Fund, the Tax Commission, upon notification by the Administrator
18 that the Indemnity Fund has fallen below the required maintenance
19 level, shall notify the suppliers, licensed importers or other
20 appropriate persons that the assessment is being imposed for
21 purposes of maintaining the Indemnity Fund. The notice shall
22 include a date certain upon which to begin collecting the assessment
23 for credit to the Indemnity Fund and a date certain for ending the

1 assessment for credit to the Indemnity Fund. Upon notice by the Tax
2 Commission that the assessment imposed is for credit to the
3 Indemnity Fund, the supplier, licensed importer or other appropriate
4 person shall also assess, for the specified period required by the
5 Tax Commission, the sales of:

- 6 a. motor fuel, diesel fuel and blending materials used
7 solely and exclusively in district-owned or leased
8 public school buses, FFA and 4-H Club trucks for the
9 purposes of legally transporting public school
10 children or in the operation of vehicles used in
11 driver's training,
- 12 b. motor fuels, diesel fuels and blending materials used
13 solely and exclusively to propel motor vehicles on the
14 public roads and highways of the state when leased or
15 owned and being operated for the sole benefit of a
16 county, city or town, volunteer fire department with a
17 state certification and rating, rural electric
18 cooperative, rural water and sewer district, rural
19 ambulance service district, or federally recognized
20 Indian tribe as specified by Section 500.10 of Title
21 68 of the Oklahoma Statutes,
- 22 c. motor fuel, diesel fuel and blending materials to
23 counties and cities and towns,

- 1 d. diesel fuel for off-road purposes specified by Section
2 500.10 of Title 68 of the Oklahoma Statutes,
3 e. motor fuel, diesel fuel and blending materials used
4 for agricultural purposes specified by Section 500.10
5 of Title 68 of the Oklahoma Statutes, and
6 f. motor fuel, diesel fuel and blending materials used in
7 aircraft and aircraft engines pursuant to Section
8 500.10 of Title 68 of the Oklahoma Statutes.

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

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

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

21 B. Any person who intends to file for reimbursement shall make
22 application to the Oklahoma Petroleum Storage Tank Release Indemnity
23 Program for such reimbursement. The only information required to be

1 filed with the application shall be that information required by the
2 Oklahoma Petroleum Storage Tank Release Indemnity Program to
3 determine eligibility for reimbursement.

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

- 6 a. documentation of site conditions prior to initiation
7 of corrective action,
- 8 b. a record of the costs actually incurred by the
9 eligible person for each corrective action taken,
- 10 c. evidence that the corrective action was completed or
11 will be completed in accordance with cleanup criteria
12 established pursuant to the Oklahoma Storage Tank
13 Regulation Act,
- 14 d. how any other financial responsibility requirements
15 will be met,
- 16 e. whether there is any other liability coverage for the
17 release,
- 18 f. any injury to property or physical injury incurred as
19 a result of the release,
- 20 g. the corrective action plan approved by or submitted to
21 the Storage Tank Regulation Program, and

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

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

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

10 a. ~~shall~~ may require that any corrective action taken as
11 a result of an eligible release, other than corrective
12 action taken in an emergency situation, ~~shall~~ may be
13 made by the competitive bid of at least two bidders.
14 Acquisition or contracts or subcontracts for
15 corrective action or for labor or equipment comprising
16 a single task or scope of work which exceed Two
17 Thousand Five Hundred Dollars (\$2,500.00) from any one
18 vendor or subcontractor for any one site shall be
19 awarded to the lowest and best bidder,

20 b. shall require that an eligible person or a property
21 owner whose off-site property has been contaminated by
22 a release shall not retain an environmental consultant
23 to conduct the remediation of the release in which the

1 eligible person, property owner, or impacted party has
2 more than a ten percent (10%) interest ownership, is
3 an employee, or is an officer of the environmental
4 consultant, and

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

8 2. Any competitive bid submitted pursuant to this section shall
9 be accompanied by the sworn noncollusion statement contained in
10 Section 85.22 of Title 74 of the Oklahoma Statutes, modified in
11 wording as appropriate. In the event bids are not obtained ~~as~~
12 ~~required by~~ pursuant to this subsection, expenditures made without
13 bids shall only be reimbursed by the amount determined to be the
14 reasonable value of the equipment purchased or the task or scope of
15 work performed.

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

1 D. The eligible person responsible for taking the corrective
2 action shall keep and preserve suitable records of hydrological and
3 other site investigations and assessments, site rehabilitation
4 plans, contracts and contract negotiations, and accounts, invoices,
5 sales tickets, or other payment records from purchases, sales,
6 leases, or other transactions or claims involving costs actually
7 incurred related to such corrective action or injury or damage.
8 Such records shall be made available upon request to agents and
9 employees of the Oklahoma Petroleum Storage Tank Release Indemnity
10 Program during regular business hours, and at other times upon
11 written request. In addition, the employees, agents and
12 representatives of the Oklahoma Petroleum Storage Tank Release
13 Indemnity Program may from time to time request submission of such
14 site-specific information as it may require. All records of costs
15 actually incurred shall be certified by affidavit to the Oklahoma
16 Petroleum Storage Tank Release Indemnity Program as being true and
17 correct.

18 E. 1. a. The Administrator shall deny or approve and pay, in
19 whole or in part, the application for reimbursement on
20 behalf of or to eligible persons and shall complete
21 initial reimbursement within ninety (90) days after
22 receipt of the complete application including but not
23 limited to all requisite supporting documents, unless

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

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

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

19 2. Disposition of an application shall be provided to the
20 applicant in writing, accompanied by a written explanation setting
21 forth in detail the reason or reasons for the approval or denial of
22 a claim, in whole or in part. If the Administrator fails to make a
23 determination on an application or payment within the time provided

1 or denies an application, or if a dispute otherwise arises with
2 regard to reimbursement, the applicant may seek appropriate legal
3 remedies.

4 3. For claims submitted subsequent to submittal of the
5 application, the Administrator shall have thirty (30) days from the
6 date of receipt of the supplemental claim in which to approve or
7 deny the supplemental claim. If a supplemental claim is made
8 subsequent to the date of the application but prior to the
9 completion of the review of the application, the thirty-day review
10 period shall not commence until the Oklahoma Petroleum Storage Tank
11 Release Indemnity Program has completed its review of the
12 application. This time for review may be extended by the
13 Administrator giving the applicant written notice of intent to
14 extend no later than twenty (20) days from the date of receipt of
15 the claim.

16 4. For eligible releases requiring extensive corrective action,
17 the Administrator is authorized to make an initial payment and
18 periodic supplemental payments for reimbursements to eligible
19 persons for ongoing reimbursable costs actually incurred. An
20 eligible person intending to file for supplemental payments for
21 reimbursement shall submit work plans for implementation of the
22 corrective action plan approved by the Commission's regulatory
23 program pursuant to the Oklahoma Storage Tank Regulation Act, or for

1 other work which is proposed to be performed. Such work plans shall
2 include, but not be limited to, the work to be completed, schedule
3 of actions to be taken, and estimates of costs to be reimbursed.
4 Such information may be submitted with the application for
5 reimbursement or whenever appropriate. Such work plans shall be
6 submitted for informational purposes only. After approval of the
7 application, the Administrator shall have thirty (30) days from the
8 date of receipt of a claim for supplemental payment in which to
9 approve and pay or deny the supplemental claim. The thirty-day time
10 for review may be extended by the Administrator for an additional
11 thirty (30) days upon giving the applicant written notice of such
12 intent to extend no later than twenty (20) days from the date of
13 receipt of the claim. If the claim for payment is included with the
14 application for reimbursement, paragraph 1 of this subsection shall
15 control.

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

- 20 a. the person claiming reimbursement must be an eligible
21 person,
22 b. the eligible person must have been in substantial
23 compliance with the applicable rules promulgated

1 pursuant to the provisions of the Oklahoma Petroleum
2 Storage Tank Release Indemnity Program, and the
3 Oklahoma Storage Tank Regulation Act at the time of
4 the reporting of the release,

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

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

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

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

16 A person seeking reimbursement who has not been in substantial
17 compliance with the applicable rules as required in subparagraph b
18 of this paragraph, or who failed to give adequate notice as required
19 in subparagraph e of this paragraph will remain ineligible until all
20 corrective action ordered by the Commission has been accomplished
21 and all fines paid. Payment of fines and documentation of
22 corrective action shall be shown by a certification signed by the
23 Director of the Division of the Corporation Commission which has

1 responsibility for the storage tank regulatory functions set out in
2 Chapter 14 of this title. The certificate must state that all fines
3 resulting from noncompliance have been paid and any required
4 corrective action has been completed and no additional enforcement
5 actions are required.

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

- 10 a. the person claiming reimbursement must be an eligible
11 person,
- 12 b. the person, to the extent possible, has fully
13 cooperated with the Commission, and
- 14 c. allowable costs for any corrective action must have
15 been incurred on or after December 23, 1988.

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

1 ~~for payment or reimbursement from any other~~ If a state or federal
2 agency or other third-party payor ~~as a result of such release if~~
3 ~~such payment or reimbursement is less than the minimum payment or~~
4 ~~reimbursement or over the maximum payment or reimbursement from the~~
5 ~~Petroleum Storage Tank Release Environmental Cleanup~~ does not fully
6 compensate the eligible person, then the eligible person may seek
7 compensation for the uncompensated amount from the Indemnity Fund.

8 H. 1. An eligible person shall be reimbursed from the
9 Indemnity Fund for allowable costs in excess of the copayment of one
10 percent (1%) of the reimbursable costs for the remediation.
11 Copayments shall not exceed a maximum of Five Thousand Dollars
12 (\$5,000.00). The Indemnity Fund shall charge the eligible person
13 directly for an initial one-thousand-dollar copayment and thereafter
14 in one-thousand-dollar increments as warranted by the progressive
15 total case costs. When the total case cost is finalized, the
16 ~~Petroleum Storage Tank Release Environmental Cleanup~~ Indemnity Fund
17 shall reimburse the eligible person any overpayment of the one-
18 percent copayment. For releases that occurred prior to June 4,
19 2004, eligible persons shall pay the five-thousand-dollar deductible
20 as a copayment which may be paid in installments.

21 2. An impacted party whose on-site or off-site property has
22 been contaminated by a release who elects the procedure authorized
23 by this subsection shall not be required to remit copayments in

1 order to receive reimbursement from the Petroleum Storage Tank
2 ~~Release Environmental Cleanup~~ Indemnity Fund. The impacted party or
3 adjacent owner submits to the jurisdiction of the Commission by
4 applying for Indemnity Fund reimbursement.

5 3. Reimbursements shall not exceed:

6 a. ~~One Million Dollars (\$1,000,000.00)~~ One Million Five
7 Hundred Thousand Dollars (\$1,500,000.00) per
8 occurrence providing the storage tank is used in
9 petroleum marketing or if the system has a throughput
10 in excess of ten thousand (10,000) gallons per month
11 based on annual throughput for the previous calendar
12 year, and

13 (1) ~~One Million Dollars (\$1,000,000.00)~~ Two Million
14 Dollars (\$2,000,000.00) annual aggregate for
15 owners of one to one hundred storage tank
16 systems, or

17 (2) ~~Two Million Dollars (\$2,000,000.00)~~ Three Million
18 Dollars (\$3,000,000.00) annual aggregate for
19 owners of more than one hundred storage tank
20 systems, or

21 b. Five Hundred Thousand Dollars (\$500,000.00) per
22 occurrence providing the system is not used in
23 petroleum marketing, and if the storage tank system

1 has a throughput of ten thousand (10,000) gallons or
2 less per month based on annual throughput for the
3 previous calendar year, and

4 (1) ~~One Million Dollars (\$1,000,000.00)~~ Two Million
5 Dollars (\$2,000,000.00) annual aggregate for
6 owners of one to one hundred storage tank
7 systems, or

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

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

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

21 I. The Petroleum Storage Tank ~~Release Environmental Cleanup~~
22 Indemnity Fund shall cover corrective action taken and other actual
23 physical damage caused by an eligible release. The Petroleum

1 Storage Tank ~~Release Environmental Cleanup~~ Indemnity Fund shall also
2 cover any medical injuries incurred as a result of the eligible
3 release to persons other than employees of the eligible person of
4 the storage tank system or their agents and independent contractors
5 retained to perform any such corrective action. The Petroleum
6 Storage Tank ~~Release Environmental Cleanup~~ Indemnity Fund shall not
7 be used to:

- 8 1. Recover payments for loss of time;
 - 9 2. Recover payment of costs which may be associated with but
10 are not integral to corrective action such as the cost of
11 renovating, removing or disposing of storage tanks unless the
12 removing of any petroleum storage tanks, concrete, concrete
13 accessories, lines, dispensers or other site improvements is
14 necessary as required by a corrective action plan approved by the
15 Commission's regulatory program;
 - 16 3. Pay for punitive damages from any civil action resulting
17 from the eligible release;
 - 18 4. Recover costs for loss of business and taking of property
19 associated with the corrective action; or
 - 20 5. Pay legal expenses.
- 21 J. The right to apply for reimbursement and the receipt of
22 reimbursement does not limit the liability of an owner or operator

1 for damages, injuries or the costs incurred as a result of an
2 eligible release.

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

8 L. Any person who prevails in an action brought pursuant to the
9 Oklahoma Petroleum Storage Tank Release Indemnity Program to recover
10 disallowed claims ~~disallowed by an administrative action of the~~
11 ~~Oklahoma Petroleum Storage Tank Release Indemnity Program~~ upon an
12 application, supplemental claim or resubmittal requesting
13 reimbursement shall be entitled to recover interest, the costs of
14 the action and attorney fees. Costs of the action shall include
15 filing fees, administrative costs, witness fees and expenses related
16 to the proceeding.

17 M. 1. In any case that has been determined to be eligible for
18 reimbursement from the Petroleum Storage Tank ~~Release Environmental~~
19 ~~Cleanup~~ Indemnity Fund, a property owner whose property has been
20 contaminated by an eligible release may remediate his or her own
21 property and make direct application to and receive reimbursement
22 from the Petroleum Storage Tank ~~Release Environmental Cleanup~~
23 Indemnity Fund for any of the following:

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

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

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

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

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

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

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

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

22 2. If:

- 1 a. an owner or operator is not available and a storage
2 tank system has made a release into the environment,
3 or
4 b. where there is a suspicion of a release onto any
5 property where tanks are located and/or onto property
6 proximate thereto, or where tanks are located and a
7 site assessment is necessary to confirm a release or
8 perform tank closure, and
9 c. such property is located within the limits of the town
10 ~~or~~, city or political subdivision,

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

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

20 4. If the town ~~or~~, city or political subdivision has title to
21 the property or is the recipient of proceeds from a sale or auction
22 of the property, the town or city shall reimburse the Petroleum
23 Storage Tank ~~Release Environmental Cleanup~~ Indemnity Fund for any

1 required copayment within three (3) years from the closure of the
2 case.

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

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

1 next first twenty-five percent (25%), for a total of
2 seventy-five percent (75%) reduction in contamination
3 to be accomplished by such system,
4 d. an additional twenty percent (20%) of the total
5 contract price, for a total of eighty percent (80%)
6 for next first twenty-five percent (25%), for a total
7 of one hundred percent (100%) reduction in
8 contamination to be accomplished by such system, and
9 e. with a final payment of the remaining twenty percent
10 (20%) of the contract price to be paid after the site
11 remains clean for six (6) months.

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

23 a. paid in advance by the Indemnity Fund, and

1 b. allocated for a pay-for-performance site.

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

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

1 is reasonable, the Indemnity Fund Program shall fully reimburse the
2 total cost of the particular task or scope of work performed.

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

12 2. Except as otherwise provided by this paragraph, if the
13 disallowed claim is not resubmitted within ninety (90) days from the
14 date of the disallowance, the claim shall no longer be eligible for
15 reimbursement from the Petroleum Storage Tank ~~Release Environmental~~
16 ~~Cleanup~~ Indemnity Fund. An action by the applicant disputing a
17 disallowed claim shall be commenced within one (1) year of the date
18 of the last disallowance and shall be brought for an administrative
19 hearing before the Commission.

20 3. Any applicant that, prior to November 1, 2004, has incurred
21 a disallowance of a claim in whole or in part and has not
22 resubmitted the disallowed claim for further consideration has until
23 February 28, 2005, to resubmit the disallowed claim for such

1 consideration. After February 28, 2005, the claim shall be deemed
2 denied and shall no longer be eligible for reconsideration or
3 reimbursement from the Petroleum Storage Tank ~~Release Environmental~~
4 ~~Cleanup~~ Indemnity Fund.

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

8 SECTION 23. AMENDATORY 17 O.S. 2001, Section 356.1, is
9 amended to read as follows:

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

18 B. In order to assist a petroleum storage tank owner, operator
19 or other person in determining fair and reasonable costs, the
20 Indemnity Fund Program may maintain a list of customary and
21 reasonable fees charged by service providers for work, materials,
22 equipment, labor, consulting fees and other services eligible for
23 reimbursement from the Petroleum Storage Tank ~~Release Environmental~~

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

9 SECTION 24. AMENDATORY 17 O.S. 2001, Section 359, is
10 amended to read as follows:

11 Section 359. A. By December 1, 1998, and every year
12 thereafter, the State Auditor and Inspector shall conduct an
13 independent audit of the books, records, files and other such
14 documents of the Corporation Commission pertaining to and which
15 relate to the administration of the Petroleum Storage Tank ~~Release~~
16 ~~Environmental Cleanup~~ Indemnity Fund. The audit shall include but
17 shall not be limited to a review of agency compliance with state
18 statutes regarding the Indemnity Fund, internal control procedures,
19 adequacy of claim process expenditures from and debits of the
20 Indemnity Fund regarding administration, personnel, operating and
21 other expenses charged by the Corporation Commission; the duties
22 performed in detail by agency personnel and Indemnity Fund personnel
23 for which payment is made from the Indemnity Fund, and

1 recommendations for improving claim processing, equipment needed for
2 claim processing, internal control or structure for administering
3 the Indemnity Fund; and such other areas deemed necessary by the
4 State Auditor and Inspector.

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

6 C. Copies of the audit shall be submitted to the State Auditor
7 and Inspector, the Governor, the Speaker of the House of
8 Representatives, the President Pro Tempore of the Senate and the
9 Chairs of the Appropriation Committees of both the Oklahoma House of
10 Representatives and the State Senate.

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

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

22 B. The Administrator shall make written reports on a quarterly
23 basis to the Speaker of the House of Representatives and the

1 President Pro Tempore of the Senate detailing expenditures on
2 personnel and equipment and other expenses concerning and incurred
3 as a result of administering the Petroleum Storage Tank ~~Release~~
4 ~~Environmental Cleanup~~ Indemnity Fund. The report shall include
5 salaries and fringe benefits of all full-time-equivalent employees
6 of the Petroleum Storage Tank ~~Release Environmental Cleanup~~
7 Indemnity Fund and reimbursements made to the Commission by division
8 for administrative or support services provided by the Commission to
9 the Petroleum Storage Tank ~~Release Environmental Cleanup~~ Indemnity
10 Fund.

11 SECTION 26. AMENDATORY 17 O.S. 2001, Section 365, is
12 amended to read as follows:

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

20 B. There is hereby created in the State Treasury a revolving
21 fund for the Corporation Commission to be designated the "Oklahoma
22 Leaking Storage Tank Revolving Fund". The fund shall be a
23 continuing fund, not subject to fiscal year limitations, and shall

1 consist of monies from public or private sources, and any monies
2 collected pursuant to the provisions of this section.

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

11 D. The Corporation Commission is hereby given the power and
12 authority to receive, administer and authorize payments from the
13 Oklahoma Leaking Underground Storage Tank Trust Fund and the
14 Oklahoma Leaking Storage Tank Revolving Fund. The Commission shall
15 establish separate accounts and subaccounts within the Oklahoma
16 Leaking Underground Storage Tank Trust Fund and the Oklahoma Leaking
17 Storage Tank Revolving Fund deemed necessary to implement the
18 provisions of this section.

19 E. The Corporation Commission may make expenditures from the
20 Oklahoma Leaking Storage Tank Revolving Fund for payment of costs
21 incurred by any appropriate state agency for corrective actions,
22 enforcement actions and cost recovery actions undertaken as

1 necessary to protect human health and the environment as set out in
2 Subchapter IX of Title 42 of the United States Code.

3 F. For the purpose of immediately responding to emergency
4 situations created by leaking storage tanks having potentially
5 critical environmental or public health or safety impact, the
6 Corporation Commission may take whatever action it deems necessary
7 without notice or hearing, including the expenditure of monies from
8 either the Oklahoma Leaking Underground Storage Tank Trust Fund or
9 the Oklahoma Leaking Storage Tank Revolving Fund or from both such
10 funds to promptly respond to the emergency. Such emergency
11 expenditure shall be made pursuant to the provisions of the Oklahoma
12 Central Purchasing Act upon such terms and conditions established by
13 the Department of Central Services to accomplish the purposes of
14 this section.

15 G. 1. The Corporation Commission shall seek reimbursement from
16 the responsible person, firm or corporation for all expenditures
17 made from either the Oklahoma Leaking Underground Storage Tank Trust
18 Fund or the Oklahoma Leaking Storage Tank Revolving Fund or from
19 both such funds. All monies received by the Corporation Commission
20 as reimbursement or penalties relating to expenditures made from the
21 Oklahoma Leaking Underground Storage Tank Trust Fund or Leaking
22 Storage Tank Revolving Fund shall be transferred for deposit to the
23 credit of the Oklahoma Leaking Storage Tank Revolving Fund. All

1 monies received by the Corporation Commission as reimbursement or
2 penalties relating to expenditures made from the Oklahoma
3 Corporation Commission Storage Tank Regulation Revolving Fund shall
4 be transferred for deposit to the Oklahoma Corporation Commission
5 Storage Tank Regulation Revolving Fund.

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

- 10 a. the owner or operator has failed to take a corrective
11 action ordered by the Commission and the Commission
12 has taken the corrective action, or
13 b. the Administrator has taken corrective action in an
14 emergency.

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

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

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

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

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

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

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

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

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

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

21 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS, dated 4-6-05 - DO
22 PASS, As Amended.