

COMMITTEE AMENDMENT

HOUSE OF REPRESENTATIVES

State of Oklahoma

SPEAKER:

CHAIR:

I move to amend SB1423 _____
 _____ Of the printed Bill
 Page _____ Section _____ Lines _____
 _____ Of the Engrossed Bill

By striking the Title, the Enacting Clause, the entire bill, and by inserting in lieu thereof the following language:

AMEND TITLE TO CONFORM TO AMENDMENTS

Amendment submitted by: Dennis Adkins

Adopted: _____

Reading Clerk

1 STATE OF OKLAHOMA

2 2nd Session of the 51st Legislature (2008)

3 PROPOSED COMMITTEE SUBSTITUTE
4 FOR ENGROSSED

5 SENATE BILL NO. 1423

By: Lerblance of the Senate

and

Adkins of the House

6
7
8
9 PROPOSED COMMITTEE SUBSTITUTE

10 (Corporation Commission - Oklahoma Storage Tank

11 Regulation Act - powers and duties - codification -

12 effective date -

13 emergency)

14
15
16 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

17 SECTION 1. AMENDATORY 17 O.S. 2001, Section 303, as last
18 amended by Section 1, Chapter 28, O.S.L. 2006 (17 O.S. Supp. 2007,
19 Section 303), is amended to read as follows:

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

22 1. "Abandoned system" means a storage tank system which:
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- 1 a. has been taken permanently out of service as a storage
2 vessel for any reason or is not intended to be
3 returned to service,
4 b. has been out of service for one (1) year or more prior
5 to April 21, 1989, or
6 c. has been rendered permanently unfit for use as
7 determined by the Commission;

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

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

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

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

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

21 7. "Commission" means the Corporation Commission;

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

3 9. "Corrective action" means action taken to monitor,
4 investigate, minimize, eliminate or perform remediation of a release
5 from a storage tank system;

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

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

10 12. "Director" means the Director of the Petroleum Storage Tank
11 Division of the Corporation Commission;

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

14 14. "Eligible person" means the party who has made application
15 to the Petroleum Storage Tank Indemnity Fund and met applicable
16 criteria to receive Petroleum Storage Tank Indemnity Fund
17 reimbursement on a confirmed release;

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

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

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

4 18. "Facility" means any location or part thereof containing
5 one or more storage tanks or systems;

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

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

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

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

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

21 21. "Operator" means any person in control of or having
22 responsibility for the daily operation of the storage tank system,
23 whether by lease, contract, or other form of agreement. The term
24 "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 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 23. "Permit" means any registration, permit, license or other
20 authorization issued by the Commission to operate a storage tank
21 system;

22 24. "Person" means any individual, trust, firm, joint stock
23 company or corporation, limited liability company, partnership,
24 association, any representative appointed by order of a court, the

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

6 25. "Petroleum" means ethylene_glycol-based antifreeze, crude
7 oil, ~~crude oil fractions, and refined petroleum fractions,~~ including
8 used oil, motor fuel, gasoline, kerosene, biofuel, biodiesel, E-85,
9 motor fuel with the fuel additive Methyl Tertiary Butyl Ether
10 (MTBE), ~~jet fuel, distillate fuel oils, residual fuel oils,~~
11 ~~lubricants, petroleum solvents and used oil which are liquid at~~
12 ~~standard conditions of temperature and pressure (60 degrees~~
13 ~~Fahrenheit and 14.7 pounds per square inch absolute).~~ "Petroleum"
14 ~~also means a mixture of petroleum and hazardous substances if the~~
15 ~~amount of the hazardous substances is of a de minimus quantity or~~
16 aviation fuel;

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

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

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24

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

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

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

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

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

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

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

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

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

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

1 37. "Storage tank" means a stationary vessel designed to
2 contain an accumulation of regulated substances which is constructed
3 of primarily non-earthen materials that provide structural support;

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

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

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

15 SECTION 2. AMENDATORY 17 O.S. 2001, Section 306, as last
16 amended by Section 2, Chapter 435, O.S.L. 2005 (17 O.S. Supp. 2007,
17 Section 306), is amended to read as follows:

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

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

24

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

7 3. Request issuance of an administrative warrant or search
8 warrant as may be necessary by Commission application after notice
9 and hearing to allow entry, inspection, testing, sampling, or
10 copying on public or private property;

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

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

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

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

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

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

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

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

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

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

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

22 a. submit such reports and information concerning the
23 storage tank system as may be determined necessary by
24 the Commission pursuant to the provisions of the

1 Oklahoma Storage Tank Regulation Act or rules
2 promulgated pursuant thereto,

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

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

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

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

22 f. take full corrective action if such owner or operator
23 is found to be responsible for the release, and
24

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

3 15. Establish and enforce administrative penalties for
4 violations pursuant to the provisions of the Oklahoma Storage Tank
5 Regulation Act, including issuance of field citations by designated
6 personnel for violations of the Oklahoma Storage Tank Regulation
7 Act, including but not limited to the authority to close a facility
8 found to pose an imminent threat to the health, safety or the
9 environment, to be operating a storage tank system for which permit
10 fees have not been paid, or to be operating a storage tank system
11 with an outstanding unpaid field citation or fine. Issuance or
12 payment of field citations shall in no way preclude other
13 enforcement proceedings, administrative penalties, fines or order of
14 the Commission if an owner or operator fails to correct a violation
15 or abate a threat to health, safety or the environment in a
16 reasonable manner, as determined by the Commission. If a citation
17 is issued or a facility is closed under the provisions of the
18 Oklahoma Storage Tank Regulation Act, the owner or operator of the
19 facility on application to the Commission shall be afforded a
20 hearing within ten (10) days of filing an application. Any
21 penalties or fines assessed pursuant to this section shall be
22 established by the Commission by rules promulgated pursuant to the
23 Administrative Procedures Act;

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

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

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

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

22 20. When necessary, economically advantageous, reasonable and
23 integral to a remediation effort or to establish an alternative
24 water supply, the Petroleum Storage Tank Division may purchase real

1 property and easements, and if an owner/operator is unwilling,
2 unknown, unavailable or financially unable, the Petroleum Storage
3 Tank Division may arrange for the design, construction and operation
4 of an alternative water supply system conjunctive with a remediation
5 effort and/or the establishment of an alternative water supply with
6 funds from the Petroleum Storage Tank Indemnity Fund. Provided, no
7 real property shall be purchased by the Commission pursuant to this
8 paragraph which will impose liability on the Petroleum Storage Tank
9 Indemnity Fund or on the state for environmental claims or hazards.
10 Disposition of property purchased by the Petroleum Storage Tank
11 Indemnity Fund shall be made pursuant to the provisions of Section
12 129.4 of Title 74 of the Oklahoma Statutes. Proceeds from any sale
13 shall be deposited to the credit of the Petroleum Storage Tank
14 Indemnity Fund; ~~and~~

15 21. Implement and coordinate an Underground Storage Tank
16 Operator Training Program pursuant to the provisions of Section 4 of
17 this act, issue annual permits related thereto and assess any fees
18 necessary for such training and permitting; and

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

21 SECTION 3. AMENDATORY 17 O.S. 2001, Section 309, as
22 amended by Section 6, Chapter 435, O.S.L. 2005 (17 O.S. Supp. 2007,
23 Section 309), is amended to read as follows:

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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 Require the owner or operator to take reasonable and~~
21 ~~necessary corrective actions; or~~

22 2. ~~Without notice and hearing pursuant to Section 310 of this~~
23 ~~title, issue Issue an administrative order stating the existence of~~
24 an emergency and requiring that such action be taken as ~~it~~ the

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

12 ~~3-~~ 2. Require an owner, operator, or responsible person to
13 submit investigation, remediation or other corrective action plans
14 to the Petroleum Storage Tank Division of the Corporation Commission
15 for preapproval prior to initiating such investigation, remediation,
16 or other corrective action.

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

- 18 a. an owner or operator of the storage tank system cannot
19 be identified,
20 b. an identified owner or operator cannot or will not
21 comply with the order issued pursuant to subsection C
22 of this section,
23 c. an administrative or judicial proceeding on an order
24 issued pursuant to subsection C of this section is

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

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

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

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

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

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

17 E. Any order issued by the Commission pursuant to this section
18 shall not limit the liability of the owner or operator or both such
19 owner or operator for any injury, damages, or costs incurred by any
20 person as a result of the release. The owner or operator shall not
21 avoid any liability, statutory environmental responsibility imposed
22 by ~~this act~~ Section 301 et seq. of this title; or as a result of
23 such release by means of a conveyance of any right, title or
24

1 interest in real property; or by any indemnification, hold harmless
2 agreement, or similar agreement.

3 1. This subsection does not:

4 a. prohibit a person who may be liable from entering an
5 agreement by which the person is insured, held
6 harmless, or indemnified for part or all of the
7 liability,

8 b. prohibit the enforcement of an insurance, hold
9 harmless, or indemnification agreement, or

10 c. bar a cause of action brought by a person who may be
11 liable or by an insurer or guarantor, whether by right
12 of subrogation or otherwise.

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

16 SECTION 4. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 319 of Title 17, unless there is
18 created a duplication in numbering, reads as follows:

19 A. The Corporation Commission is authorized to implement, or
20 contract for, an Underground Storage Tank Operator Training Program
21 as required to comply with the provisions of the federal Energy
22 Policy Act of 2005.

23 B. The Commission may develop a training program within their
24 agency or contract with an associated industry group or any other

1 qualified entity it deems appropriate to fulfill the requirements of
2 federal law or the provisions of this section.

3 C. Operators of underground storage tanks shall complete a
4 training program commensurate with their responsibility for the
5 operation of underground storage tanks. The training program shall
6 be approved by the Commission and encompass three levels of training
7 as follows:

8 1. Persons having primary responsibility for on-site operation
9 and maintenance of underground storage tank systems;

10 2. Persons having daily on-site responsibility for the
11 operation and maintenance of underground storage tank systems; and

12 3. Daily, on-site employees having primary responsibility for
13 addressing emergencies presented by a spill or release from an
14 underground storage tank.

15 D. Storage tank operators shall demonstrate completion of the
16 training program required by the Commission to obtain an annual
17 permit for the operation of underground storage tanks.

18 E. Operators of underground storage tank systems shall repeat
19 the applicable training if the tank for which they have primary
20 daily on-site management responsibilities is determined to be out of
21 compliance with a requirement or order of the Commission.

22 F. Payments for administrative, technical and legal costs
23 incurred in carrying out the provisions of this section may be paid
24 from monies in the Corporation Commission Storage Tank Regulation

1 Revolving Fund created in Section 315 of Title 17 of the Oklahoma
2 Statutes or from the Petroleum Storage Tank Indemnity Fund created
3 in Section 353 of Title 17 of the Oklahoma Statutes, including the
4 costs of any additional employees, contracting or increased general
5 operating costs of the Commission which are attributable to the
6 requirements of this section. The costs shall not be payable from
7 any monies other than those credited to the Corporation Commission
8 Storage Tank Regulation Revolving Fund or the Petroleum Storage Tank
9 Indemnity Fund and shall not exceed Two Hundred Fifty Thousand
10 Dollars (\$250,000.00) annually. The Commission may assess any fees
11 necessary to implement the provisions of this section.

12 G. This section shall be part of and supplemental to the
13 Oklahoma Storage Tank Regulation Act and the Commission is
14 authorized to promulgate any rules necessary to comply with the
15 provisions of this section.

16 SECTION 5. AMENDATORY 17 O.S. 2001, Section 365, as last
17 amended by Section 3, Chapter 109, O.S.L. 2007 (17 O.S. Supp. 2007,
18 Section 365), is amended to read as follows:

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

3 B. There is hereby created in the State Treasury a revolving
4 fund for the Corporation Commission to be designated the "Oklahoma
5 Leaking Underground Storage Tank Revolving Fund". The fund shall be
6 a continuing fund, not subject to fiscal year limitations, and shall
7 consist of monies from public or private sources, and any monies
8 collected pursuant to the provisions of this section.

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

18 D. The Corporation Commission is hereby given the power and
19 authority to receive, administer and authorize payments from the
20 Oklahoma Leaking Underground Storage Tank Trust Fund and the
21 Oklahoma Leaking Underground Storage Tank Revolving Fund. The
22 Commission shall establish separate accounts and subaccounts within
23 the Oklahoma Leaking Underground Storage Tank Trust Fund and the
24

1 Oklahoma Leaking Underground Storage Tank Revolving Fund deemed
2 necessary to implement the provisions of this section.

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

9 ~~F.~~ For the purpose of immediately responding to emergency
10 situations created by leaking underground storage tanks having
11 potentially critical environmental or public health or safety
12 impact, the Corporation Commission may take whatever action it deems
13 necessary without notice or hearing, including the expenditure of
14 monies from either the Oklahoma Leaking Underground Storage Tank
15 Trust Fund or the Oklahoma Leaking Underground Storage Tank
16 Revolving Fund or from both such funds to promptly respond to the
17 emergency.

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

1 Trust Fund or Oklahoma Leaking Underground Storage Tank Revolving
2 Fund shall be transferred for deposit to the credit of the Oklahoma
3 Leaking Underground Storage Tank Revolving Fund. All monies
4 received by the Corporation Commission as reimbursement or penalties
5 relating to expenditures made from the Oklahoma Corporation
6 Commission Storage Tank Regulation Revolving Fund shall be
7 transferred for deposit to the ~~Oklahoma~~ Corporation Commission
8 Storage Tank Regulation Revolving Fund.

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

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

18 3. Reasonable and necessary expenses incurred by the Commission
19 in taking a corrective action, including costs of investigating a
20 release and administrative and legal expenses, may be recovered in
21 an administrative proceeding. The Commission's certification of
22 expenses is prima facie evidence that the expenses are reasonable
23 and necessary. Expenses that are recovered under this subsection
24

1 shall be deposited in the Oklahoma Leaking Underground Storage Tank
2 Revolving Fund.

3 ~~H.~~ G. Any owner or operator of an underground storage tank who
4 fails to comply with any order issued by the Corporation Commission
5 for corrective or enforcement actions may be subject to an
6 administrative penalty not to exceed Twenty-five Thousand Dollars
7 (\$25,000.00) for each underground tank for each day of violation.

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

12 SECTION 6. AMENDATORY 11 O.S. 2001, Section 43-108, is
13 amended to read as follows:

14 Section 43-108. Whenever the provisions of a statute, local
15 ordinance or regulation require a greater width or size of yards,
16 courts or other open spaces, or require a lower height of building
17 or less number of stories, or require a greater percentage of lot to
18 be left unoccupied, or impose higher standards than any other
19 applicable statute, local ordinance or regulation, then the
20 provisions of the statute, local ordinance or regulation which
21 impose higher standards or greater restrictions shall govern. In no
22 event shall any provision of this article apply to any property of
23 any railway company or terminal company. As used in this section,
24

1 "terminal company" shall include a qualified terminal as defined in
2 Section 500.3 of Title 68 of the Oklahoma Statutes.

3 SECTION 7. This act shall become effective July 1, 2008.

4 SECTION 8. It being immediately necessary for the preservation
5 of the public peace, health and safety, an emergency is hereby
6 declared to exist, by reason whereof this act shall take effect and
7 be in full force from and after its passage and approval.

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