

1 STATE OF OKLAHOMA

2 1st Session of the 51st Legislature (2007)

3 COMMITTEE SUBSTITUTE  
4 FOR

5 SENATE BILL 819

6 By: Lerblance

7 COMMITTEE SUBSTITUTE

8 [ petroleum storage tanks - modifying certain  
9 exemption based on capacity - noncodification -  
10 emergency ]

11  
12 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

13 SECTION 1. AMENDATORY 17 O.S. 2001, Section 304, as  
14 amended by Section 2, Chapter 28, O.S.L. 2006 (17 O.S. Supp. 2006,  
15 Section 304), is amended to read as follows:

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

- 18 1. Septic tank systems;
- 19 2. Pipeline facilities;
- 20 3. Surface impoundments, pits, ponds or lagoons;
- 21 4. Stormwater and wastewater collection systems;
- 22 5. Flow-through process tank systems;
- 23 6. Liquid trap or associated gathering lines directly related  
24 to oil or gas production and gathering operations;

- 1        7. Hydraulic lift tank systems;
- 2        8. Underground storage tank systems with a capacity of less  
3 than one hundred ten (110) gallons;
- 4        9. Fleet and commercial aboveground storage ~~tank systems~~ tanks  
5 with a an individual capacity of ~~one thousand three hundred twenty~~  
6 ~~(1,320)~~ two thousand one hundred (2,100) gallons or less;
- 7        10. Storage tank systems with a de minimus concentration of  
8 regulated substances including but not limited to swimming pools and  
9 coffins;
- 10       11. Storage tank systems that serve as emergency backup tanks,  
11 provided that such backup tanks hold regulated substances for only a  
12 short period of time and are expeditiously emptied after each use.  
13 The provisions of this paragraph shall not prevent Corporation  
14 Commission notification requirements and such other restrictions as  
15 may be deemed necessary by the Commission to protect the  
16 environment;
- 17       12. Storage tank systems with a capacity of ~~one thousand three~~  
18 ~~hundred twenty (1,320)~~ two thousand one hundred (2,100) gallons or  
19 less used for noncommercial agricultural or residential purposes;
- 20       13. Storage tank systems and residential tanks for  
21 noncommercial use for storing heating oil for consumptive use on the  
22 premises where stored; and
- 23       14. Storage tank systems storing hazardous wastes regulated  
24 under Subtitle C of the federal Solid Waste Disposal Act, 42 U.S.C.,

1 Section 6921 et seq., or substances regulated as hazardous wastes  
2 under the Oklahoma Hazardous Waste Management Act.

3 SECTION 2. AMENDATORY 17 O.S. 2001, Section 353, as last  
4 amended by Section 20, Chapter 435, O.S.L. 2005 (17 O.S. Supp. 2006,  
5 Section 353), is amended to read as follows:

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

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

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

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

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

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

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

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

22 D. The Indemnity Fund shall consist of:

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

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

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

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

17           2. No monies from the Indemnity Fund shall be used to pay or  
18 reimburse the Commission for the salary of any employee, except for  
19 the Compliance and Inspection ~~Division~~ Department, while such  
20 employee is performing work involved in the regulation of storage  
21 tanks pursuant to the Oklahoma Storage Tank Regulation Act or the  
22 administration of programs pursuant to said act, including the  
23 development, review and approval of corrective action plans as  
24 required by the regulatory programs, however, the Indemnity Fund

1 shall pay for all costs associated with administering the Compliance  
2 and Inspection Department including, but not limited to, automobile  
3 and travel costs, computer software and equipment, and other costs  
4 incurred in administering the Compliance and Inspection Department.

5 The Commission shall cross train the field staff of the Petroleum  
6 Storage Tank Division to perform inspections and related field  
7 activities for all programs within the Division and the Oklahoma  
8 Petroleum Storage Tank Release Indemnity Program may reimburse the  
9 Division the actual costs of inspection services performed on behalf  
10 of the Oklahoma Petroleum Storage Tank Release Indemnity Program.

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

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

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

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

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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 3.       AMENDATORY       17 O.S. 2001, Section 365, as  
6 amended by Section 26, Chapter 435, O.S.L. 2005 (17 O.S. Supp. 2006,  
7 Section 365), is amended to read as follows:

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

15       B. There is hereby created in the State Treasury a revolving  
16 fund for the Corporation Commission to be designated the "Oklahoma  
17 Leaking Storage Tank Revolving Fund". The fund shall be a  
18 continuing fund, not subject to fiscal year limitations, and shall  
19 consist of monies from public or private sources, and any monies  
20 collected pursuant to the provisions of this section.

21       C. All monies accruing to the credit of the Oklahoma Leaking  
22 Underground Storage Tank Trust Fund and the Oklahoma Leaking Storage  
23 Tank Revolving Fund are hereby appropriated and may be budgeted and  
24 expended by the Corporation Commission only for the purpose provided

1 in this section, to best protect human health and the environment.  
2 Expenditures from said funds shall be made upon warrants issued by  
3 the State Treasurer against claims filed as prescribed by law with  
4 the Director of State Finance for approval and payment.

5 D. The Corporation Commission is hereby given the power and  
6 authority to receive, administer and authorize payments from the  
7 Oklahoma Leaking Underground Storage Tank Trust Fund and the  
8 Oklahoma Leaking Storage Tank Revolving Fund. The Commission shall  
9 establish separate accounts and subaccounts within the Oklahoma  
10 Leaking Underground Storage Tank Trust Fund and the Oklahoma Leaking  
11 Storage Tank Revolving Fund deemed necessary to implement the  
12 provisions of this section.

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

19 F. For the purpose of immediately responding to emergency  
20 situations created by leaking storage tanks having potentially  
21 critical environmental or public health or safety impact, the  
22 Corporation Commission may take whatever action it deems necessary  
23 without notice or hearing, including the expenditure of monies from  
24 either the Oklahoma Leaking Underground Storage Tank Trust Fund or

1 the Oklahoma Leaking Storage Tank Revolving Fund or from both such  
2 funds to promptly respond to the emergency. ~~Such emergency~~  
3 ~~expenditure shall be made pursuant to the provisions of the Oklahoma~~  
4 ~~Central Purchasing Act upon such terms and conditions established by~~  
5 ~~the Department of Central Services to accomplish the purposes of~~  
6 ~~this section.~~

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

21 2. The owner or operator is liable for the cost of the  
22 corrective action taken by the Corporation Commission pursuant to  
23 this subsection, including the cost of investigating the release and  
24 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 Administrator has taken corrective action in an  
5                    emergency.

6           3.    Reasonable and necessary expenses incurred by the Commission  
7 in taking a corrective action, including costs of investigating a  
8 release and administrative and legal expenses, may be recovered in  
9 an administrative proceeding. The Commission's certification of  
10 expenses is prima facie evidence that the expenses are reasonable  
11 and necessary. Expenses that are recovered under this subsection  
12 shall be deposited in the Leaking Storage Tank Revolving Fund.

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

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

22           SECTION 4.       NEW LAW       A new section of law not to be  
23 codified in the Oklahoma Statutes reads as follows:

1 The Corporation Commission is hereby authorized to promulgate  
2 rules to implement the requirements of the federal Energy Policy Act  
3 of 2005 relating to the regulation of petroleum storage tanks.

4 SECTION 5. 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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