

1 ENGROSSED SENATE
2 BILL NO. 1423

By: Lerblance of the Senate
and
Adkins of the House

3
4
5
6 [Corporation Commission - Oklahoma Storage Tank
7 Regulation Act - powers and duties - codification -
8 effective date -
9 emergency]

10

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

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

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

- 17 1. "Abandoned system" means a storage tank system which:
- 18 a. has been taken permanently out of service as a storage
19 vessel for any reason or is not intended to be
20 returned to service,
 - 21 b. has been out of service for one (1) year or more prior
22 to April 21, 1989, or
 - 23 c. has been rendered permanently unfit for use as
24 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;
- 22 10. "Corrective action plan" means the plan submitted to the
23 regulatory program of the Corporation Commission detailing the
24 method and manner of corrective action to be taken for a release;

- 1 11. "Department" means the Department of Environmental Quality;
- 2 12. "Director" means the Director of the Petroleum Storage Tank
3 Division of the Corporation Commission;
- 4 13. "Division" means the Petroleum Storage Tank Division of the
5 Corporation Commission;
- 6 14. "Eligible person" means the party who has made application
7 to the Petroleum Storage Tank Indemnity Fund and met applicable
8 criteria to receive Petroleum Storage Tank Indemnity Fund
9 reimbursement on a confirmed release;
- 10 15. "Eligible release" means a release of regulated substances
11 where the cost of cleanup is subject to reimbursement by the
12 Petroleum Storage Tank Indemnity Fund;
- 13 16. "Environment" means any water, water vapor, any land
14 including land surface or subsurface, atmosphere, fish, wildlife,
15 biota, domestic animals and all other natural resources;
- 16 17. "Environmental consultant" means an individual licensed by
17 the Commission or an environmental consulting company retaining or
18 employing a Commission-licensed remediation consultant;
- 19 18. "Facility" means any location or part thereof containing
20 one or more storage tanks or systems;
- 21 19. "Hazardous substance" means any substance defined in Section
22 101(14) of the Comprehensive Environmental Response, Compensation
23 and Liability Act of 1980, 42 U.S.C., Section 9601, but not
24 including:

- 1 a. any substance regulated as a hazardous waste under
2 Subtitle C of the federal Solid Waste Disposal Act, 42
3 U.S.C., Section 6903, or
4 b. any substance regulated as a hazardous waste under the
5 Oklahoma Hazardous Waste Management Act.

6 The term hazardous substance shall also include a mixture of
7 hazardous substances and petroleum, providing the amount of
8 petroleum is of a de minimus quantity;

9 20. "New system" means a storage tank system for which the
10 installation or upgrade of the system began on or after December 22,
11 1998;

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

18 22. "Owner" means:

- 19 a. in the case of a storage tank system in use on
20 November 8, 1984, or brought into use after that date,
21 any person who holds title to, controls, or possesses
22 an interest in a storage tank system used for the
23 storage, use, or dispensing of regulated substances,
24 or

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

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

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

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

21 25. "Petroleum" means ethylene glycol-based antifreeze, crude
22 oil, ~~crude oil fractions, and refined petroleum fractions,~~ including
23 used oil, motor fuel, gasoline, kerosene, biofuel, biodiesel, E-85,
24 motor fuel with the fuel additive Methyl Tertiary Butyl Ether

1 ~~(MTBE), jet fuel, distillate fuel oils, residual fuel oils,~~
2 ~~lubricants, petroleum solvents and used oil which are liquid at~~
3 ~~standard conditions of temperature and pressure (60 degrees~~
4 ~~Fahrenheit and 14.7 pounds per square inch absolute). "Petroleum"~~
5 ~~also means a mixture of petroleum and hazardous substances if the~~
6 ~~amount of the hazardous substances is of a de minimus quantity or~~
7 ~~aviation fuel;~~

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

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

19 27. "Pollution" means contamination or other alteration of the
20 physical, chemical or biological properties of any natural waters of
21 the state, land surfaces or subsurfaces, or atmosphere when such
22 contamination or alteration will or is likely to create a nuisance
23 or render the waters, land or atmosphere harmful or detrimental or
24

1 injurious to the public health, safety or welfare or the
2 environment;

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

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

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

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

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

24

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

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

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

9 36. "Suspicion of release" means preliminary investigative work
10 or assessment performed under a Petroleum Storage Tank Division
11 purchase order to determine if a confirmed release is warranted.
12 The Petroleum Storage Tank Division eligibility process is not
13 required for Petroleum Storage Tank Indemnity Fund reimbursement on
14 a suspicion of release;

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

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

21 39. "Waters of the state" means all streams, lakes, ponds,
22 marshes, watercourses, waterways, wells, springs, irrigation
23 systems, drainage systems and all other bodies or accumulations of
24 water, surface and underground, natural or artificial, public or

1 private, which are contained within, flow through, or border upon
2 the State of Oklahoma or any portion thereof; and

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

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

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

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

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

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

24

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

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

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

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

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

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

24

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

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

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

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

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

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

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

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

23 d. temporarily or permanently cease operation of a
24 storage tank system, modify and immediately remove or

1 control any regulated substance that is found to be
2 causing pollution when such cessation, removal or
3 control is determined to be necessary by the
4 Commission,

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

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

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

16 15. Establish and enforce administrative penalties for
17 violations pursuant to the provisions of the Oklahoma Storage Tank
18 Regulation Act, including issuance of field citations by designated
19 personnel for violations of the Oklahoma Storage Tank Regulation
20 Act, including but not limited to the authority to close a facility
21 found to pose an imminent threat to the health, safety or the
22 environment, to be operating a storage tank system for which permit
23 fees have not been paid, or to be operating a storage tank system
24 with an outstanding unpaid field citation or fine. Issuance or

1 payment of field citations shall in no way preclude other
2 enforcement proceedings, administrative penalties, fines or order of
3 the Commission if an owner or operator fails to correct a violation
4 or abate a threat to health, safety or the environment in a
5 reasonable manner, as determined by the Commission. If a citation
6 is issued or a facility is closed under the provisions of the
7 Oklahoma Storage Tank Regulation Act, the owner or operator of the
8 facility on application to the Commission shall be afforded a
9 hearing within ten (10) days of filing an application. Any
10 penalties or fines assessed pursuant to this section shall be
11 established by the Commission by rules promulgated pursuant to the
12 Administrative Procedures Act;

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

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

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

1 Regulation Act. Payment of the permitting fees for any storage tank
2 system required pursuant to the provisions of the Oklahoma Storage
3 Tank Regulation Act or to rules promulgated pursuant thereto shall
4 prohibit the assessment of additional licensing or permitting fees
5 for such storage tank systems by any other agency or municipality of
6 this state;

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

10 20. When necessary, economically advantageous, reasonable and
11 integral to a remediation effort or to establish an alternative
12 water supply, the Petroleum Storage Tank Division may purchase real
13 property and easements, and if an owner/operator is unwilling,
14 unknown, unavailable or financially unable, the Petroleum Storage
15 Tank Division may arrange for the design, construction and operation
16 of an alternative water supply system conjunctive with a remediation
17 effort and/or the establishment of an alternative water supply with
18 funds from the Petroleum Storage Tank Indemnity Fund. Provided, no
19 real property shall be purchased by the Commission pursuant to this
20 paragraph which will impose liability on the Petroleum Storage Tank
21 Indemnity Fund or on the state for environmental claims or hazards.
22 Disposition of property purchased by the Petroleum Storage Tank
23 Indemnity Fund shall be made pursuant to the provisions of Section
24 129.4 of Title 74 of the Oklahoma Statutes. Proceeds from any sale

1 shall be deposited to the credit of the Petroleum Storage Tank
2 Indemnity Fund; and

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

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

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

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

17 B. The owner or operator of a storage tank system shall
18 immediately take all reasonable corrective actions necessary to
19 prevent a release or a threatened release of regulated substances
20 from a storage tank system and to abate and remove any such releases
21 subject to applicable federal and state requirements. The
22 Corporation Commission shall require that any corrective action
23 taken by a storage tank system owner or operator or authorized by
24 the Commission shall be in compliance with all applicable state

1 statutes and rules and federal laws and regulations for the
2 protection of air quality and water quality and for the
3 transportation and disposal of any waste.

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

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

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

23 ~~3-2.~~ 2. Require an owner, operator, or responsible person to
24 submit investigation, remediation or other corrective action plans

1 to the Petroleum Storage Tank Division of the Corporation Commission
2 for preapproval prior to initiating such investigation, remediation,
3 or other corrective action.

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

- 5 a. an owner or operator of the storage tank system cannot
6 be identified,
- 7 b. an identified owner or operator cannot or will not
8 comply with the order issued pursuant to subsection C
9 of this section,
- 10 c. an administrative or judicial proceeding on an order
11 issued pursuant to subsection C of this section is
12 pending and the Commission determines corrective
13 action is necessary to protect the public health,
14 safety and welfare or the environment until the
15 administrative or judicial proceeding is resolved, or
- 16 d. the Commission determines that the release constitutes
17 a danger requiring immediate action to prevent,
18 minimize or mitigate damage to the public health and
19 welfare or the environment. Before taking an action
20 under this paragraph, the Commission shall make all
21 reasonable efforts, taking into consideration the
22 urgency of the situation, to afford an owner or
23 operator notice and hearing to take a corrective
24 action and notify the owners or occupants of adjacent

1 or affected real property as specified by Section 310
2 of this title.

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

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

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

13 3. Reasonable and necessary expenses incurred by the Commission
14 in taking a corrective action, including costs of investigating a
15 release and administrative and legal expenses, may be recovered by
16 application to the Commission with notice and hearing pursuant to
17 Section 311 of this title. The Commission's certification of costs
18 incurred is prima facie evidence that the costs incurred are
19 reasonable and necessary. The Commission shall be entitled to apply
20 for and receive payment from the Indemnity Fund Program on behalf of
21 an eligible person for an eligible release upon any site upon which
22 the Commission has taken corrective action. Such payments shall be
23 deemed to be reimbursement of the eligible person. Costs incurred
24

1 that are recovered under this subsection shall be deposited in the
2 Corporation Commission Storage Tank Regulation Revolving Fund.

3 E. Any order issued by the Commission pursuant to this section
4 shall not limit the liability of the owner or operator or both such
5 owner or operator for any injury, damages, or costs incurred by any
6 person as a result of the release. The owner or operator shall not
7 avoid any liability, statutory environmental responsibility imposed
8 by ~~this act~~ Section 301 et seq. of this title; or as a result of
9 such release by means of a conveyance of any right, title or
10 interest in real property; or by any indemnification, hold harmless
11 agreement, or similar agreement.

12 1. This subsection does not:

13 a. prohibit a person who may be liable from entering an
14 agreement by which the person is insured, held
15 harmless, or indemnified for part or all of the
16 liability,

17 b. prohibit the enforcement of an insurance, hold
18 harmless, or indemnification agreement, or

19 c. bar a cause of action brought by a person who may be
20 liable or by an insurer or guarantor, whether by right
21 of subrogation or otherwise.

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

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

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

8 B. The Commission may develop a training program within their
9 agency or contract with an associated industry group or any other
10 qualified entity it deems appropriate to fulfill the requirements of
11 federal law or the provisions of this section.

12 C. Operators of underground storage tanks shall complete a
13 training program commensurate with their responsibility for the
14 operation of underground storage tanks. The training program shall
15 be approved by the Commission and encompass three levels of training
16 as follows:

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

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

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

24

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

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

8 F. Payments for administrative, technical and legal costs
9 incurred in carrying out the provisions of this section may be paid
10 from monies in the Corporation Commission Storage Tank Regulation
11 Revolving Fund, created in Section 315 of Title 17 of the Oklahoma
12 Statutes, including the costs of any additional employees,
13 contracting or increased general operating costs of the Commission
14 which are attributable to the requirements of this section. Such
15 costs shall not be payable from any monies other than those credited
16 to the Corporation Commission Storage Tank Revolving Fund and shall
17 not exceed Two Hundred Fifty Thousand Dollars (\$250,000.00)
18 annually. The Commission may assess any fees necessary to implement
19 the provisions of this section.

20 G. This section shall be part of and supplemental to the
21 Oklahoma Storage Tank Regulation Act and the Commission is
22 authorized to promulgate any rules necessary to comply with the
23 provisions of this section.
24

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

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

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

17 C. All monies accruing to the credit of the Oklahoma Leaking
18 Underground Storage Tank Trust Fund and the Oklahoma Leaking
19 Underground Storage Tank Revolving Fund are hereby appropriated and
20 may be budgeted and expended by the Corporation Commission only for
21 the purpose provided in this section, to best protect human health
22 and the environment. Expenditures from ~~said~~ the funds shall be made
23 upon warrants issued by the State Treasurer against claims filed as
24

1 prescribed by law with the Director of State Finance for approval
2 and payment.

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

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

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

24

1 Revolving Fund or from both such funds to promptly respond to the
2 emergency.

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

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

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

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

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

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

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

20 SECTION 6. This act shall become effective July 1, 2008.

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

