

SB 1423

THE STATE SENATE
Monday, February 25, 2008

Senate Bill No. 1423
As Amended

SENATE BILL NO. 1423 - By: LERBLANCE of the Senate and ADKINS of the House.

[Corporation Commission - Oklahoma Storage Tank Regulation Act - powers and duties - codification - effective date - emergency]

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

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

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

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

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

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

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

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

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

12 7. "Commission" means the Corporation Commission;

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

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

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

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

1 12. "Director" means the Director of the Petroleum Storage Tank
2 Division of the Corporation Commission;

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

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

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

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

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

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

20 19. "Hazardous substance" means any substance defined in Section
21 101(14) of the Comprehensive Environmental Response, Compensation
22 and Liability Act of 1980, 42 U.S.C., Section 9601, but not
23 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

1 storage, use, or dispensing of regulated substances,
2 or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 2. Enter at any reasonable time upon any public or private
22 property for the purpose of inspecting and investigating storage
23 tank system monitoring or remediation equipment and taking such

1 samples as may be necessary to determine compliance with the
2 provisions of the Oklahoma Storage Tank Regulation Act, and rules
3 promulgated pursuant thereto;

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

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

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

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

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

21 8. Within its discretion, report to the district attorney
22 having jurisdiction or to the Attorney General any act committed by
23 an owner, operator or employee of a facility which may constitute a

1 violation of the provisions of the Oklahoma Storage Tank Regulation
2 Act or rules promulgated pursuant thereto;

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

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

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

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

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

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

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

- 1 b. perform tests, install release detection devices, and
2 where appropriate, monitor the environment to ensure
3 that pollution is not occurring,
- 4 c. make timely reports to the Commission of pollution,
5 releases, or testing and sampling events at or above
6 Commission action levels,
- 7 d. temporarily or permanently cease operation of a
8 storage tank system, modify and immediately remove or
9 control any regulated substance that is found to be
10 causing pollution when such cessation, removal or
11 control is determined to be necessary by the
12 Commission,
- 13 e. provide an alternate or temporary drinking water
14 source to any person deprived of drinking water if it
15 is found that such owner or operator is responsible
16 for polluting the drinking water source beyond
17 applicable drinking water standards, or where no such
18 standard exists, such standard as the Department of
19 Environmental Quality shall determine,
- 20 f. take full corrective action if such owner or operator
21 is found to be responsible for the release, and
- 22 g. take appropriate action to temporarily relocate
23 residents affected by the release;

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

22 16. Institute and maintain or intervene in any action or
23 proceeding where deemed necessary by the Commission pursuant to the

1 provisions of the Oklahoma Storage Tank Regulation Act to protect
2 the health, safety and welfare of any resident of this state or the
3 environment;

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

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

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

20 20. When necessary, economically advantageous, reasonable and
21 integral to a remediation effort or to establish an alternative
22 water supply, the Petroleum Storage Tank Division may purchase real
23 property and easements, and if an owner/operator is unwilling,

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

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

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

20 SECTION 3. AMENDATORY 17 O.S. 2001, Section 309, as
21 amended by Section 6, Chapter 435, O.S.L. 2005 (17 O.S. Supp. 2007,
22 Section 309), is 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 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 an administrative order stating the existence of an~~

1 emergency and requiring that such action be taken as ~~it~~ the
2 Commission deems necessary to meet the emergency. Such order shall
3 be effective immediately. Any person to whom such an order is
4 directed shall comply with ~~said~~ the order immediately but on
5 application to the Commission shall be afforded a hearing within ten
6 (10) days after receipt of the administrative order. On the basis
7 of such hearing, the Commission shall continue such order in effect,
8 revoke it, or modify it. Any person aggrieved by such order
9 continued after the hearing provided for in this subsection may
10 appeal to the Supreme Court as provided in Section 318 of Title 75
11 of the Oklahoma Statutes. Such appeal when docketed shall have
12 priority over all cases pending on ~~said~~ the 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 danger requiring immediate action to prevent,
9 minimize or mitigate damage to the public health and
10 welfare or the environment. Before taking an action
11 under this paragraph, the Commission shall make all
12 reasonable efforts, taking into consideration the
13 urgency of the situation, to afford an owner or
14 operator notice and hearing to take a corrective
15 action and notify the owners or occupants of adjacent
16 or affected real property as specified by Section 310
17 of this title.

18 2. The owner or operator is liable for the cost of 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 by
10 application to the Commission with notice and hearing pursuant to
11 Section 311 of this title. The Commission's certification of costs
12 incurred is prima facie evidence that the costs incurred are
13 reasonable and necessary. The Commission shall be entitled to apply
14 for and receive payment from the Indemnity Fund Program on behalf of
15 an eligible person for an eligible release upon any site upon which
16 the Commission has taken corrective action. Such payments shall be
17 deemed to be reimbursement of the eligible person. Costs incurred
18 that are recovered under this subsection shall be deposited in the
19 Corporation Commission Storage Tank Regulation Revolving Fund.

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

1 avoid any liability, statutory environmental responsibility imposed
2 by ~~this act~~ Section 301 et seq. of this title; or as a result of
3 such release by means of a conveyance of any right, title or
4 interest in real property; or by any indemnification, hold harmless
5 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 4. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 319 of Title 17, unless there is
21 created a duplication in numbering, reads as follows:

22 A. The Corporation Commission is authorized to implement, or
23 contract for, an Underground Storage Tank Operator Training Program

1 as required to comply with the provisions of the federal Energy
2 Policy Act of 2005.

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

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

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

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

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

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

22 E. Operators of underground storage tank systems shall repeat
23 the applicable training if the tank for which they have primary

1 daily on-site management responsibilities is determined to be out of
2 compliance with a requirement or order of the Commission.

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

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

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

22 Section 365. A. There is hereby created in the State Treasury
23 a fund for the Corporation Commission to be designated the "Oklahoma

1 Leaking Underground Storage Tank Trust Fund". The fund shall be a
2 continuing fund, not subject to fiscal year limitations, and shall
3 consist of loans and grants from the federal government and any
4 state matching funds required by the federal government with regard
5 to underground storage tanks.

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

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

21 D. The Corporation Commission is hereby given the power and
22 authority to receive, administer and authorize payments from the
23 Oklahoma Leaking Underground Storage Tank Trust Fund and the

1 Oklahoma Leaking Underground Storage Tank Revolving Fund. The
2 Commission shall establish separate accounts and subaccounts within
3 the Oklahoma Leaking Underground Storage Tank Trust Fund and the
4 Oklahoma Leaking Underground Storage Tank Revolving Fund deemed
5 necessary to implement the provisions of this section.

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

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

21 ~~G.~~ F. 1. The Corporation Commission shall seek reimbursement
22 from the responsible person, firm or corporation for all
23 expenditures made from either the Oklahoma Leaking Underground

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

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

- 17 a. the owner or operator has failed to take a corrective
18 action ordered by the Commission and the Commission
19 has taken the corrective action, or
20 b. the Administrator has taken corrective action in an
21 emergency.

22 3. Reasonable and necessary expenses incurred by the Commission
23 in taking a corrective action, including costs of investigating a

1 release and administrative and legal expenses, may be recovered in
2 an administrative proceeding. The Commission's certification of
3 expenses is prima facie evidence that the expenses are reasonable
4 and necessary. Expenses that are recovered under this subsection
5 shall be deposited in the Oklahoma Leaking Underground Storage Tank
6 Revolving Fund.

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

12 The administrative penalties assessed and collected by the
13 Corporation Commission shall be deposited to the Oklahoma Leaking
14 Underground Storage Tank Revolving Fund to be disbursed by the
15 Commission in support of relevant agency activities.

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

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

21 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS, dated 2-20-08 - DO
22 PASS, As Amended and Coauthored.