

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 2nd Session of the 56th Legislature (2018)

4 COMMITTEE SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 3430

By: Pfeiffer of the House

and

Quinn of the Senate

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10 COMMITTEE SUBSTITUTE

11 An Act relating to the Corporation Commission;
12 amending 17 O.S. 2011, Sections 301, 302, as amended
13 by Section 1, Chapter 155, O.S.L. 2016, 303, as
14 amended by Section 2, Chapter 155, O.S.L. 2016, 304,
15 304.1, 306, 307, 308, 308.1, 309, 310, 311, 312, 313,
16 314, 315, as amended by Section 61, Chapter 304,
17 O.S.L. 2012, 316, 318, 319, 322, as amended by
18 Section 62, Chapter 304, O.S.L. 2012, 324, 325, 330
19 and 340 (17 O.S. Supp. 2017, Sections 302, 303, 315
20 and 322), which relate to administration of the
21 Petroleum Storage Tank Regulation Act; providing for
22 short title; enacting the Oklahoma Petroleum Storage
23 Tank Consolidation Act; imposing duties upon the
24 Petroleum Storage Tank Division; providing for
 administration of the Oklahoma Petroleum Storage Tank
 Program; modifying definitions; providing for
 administration of the Petroleum Storage Tank
 Indemnity Fund; imposing further duties upon
 Petroleum Storage Tank Division with respect to
 certain substances; stating legislative purposes;
 providing for scope of enactment; making findings;
 modifying definitions; modifying certain excluded
 systems or assets; modifying statutory references;
 modifying provisions related to administrative rules
 of the Oklahoma Corporation Commission; modifying
 powers and duties of the Petroleum Storage Tank
 Division; modifying references to corrective actions;

1 modifying references to certain substances; modifying
2 provisions related to releases from certain storage
3 tanks; providing for deposit of certain revenues into
4 the Oklahoma Leaking Underground Storage Tank
5 Revolving Fund; modifying procedures; prescribing
6 procedures related to corrective actions; providing
7 for notice and opportunity to be heard; prescribing
8 procedures for lien enforcement; modifying provisions
9 related to licensing of certain professionals with
10 respect to storage tanks; modifying provisions
11 related to Director of Petroleum Storage Tank
12 Division; providing for powers and duties; modifying
13 provisions related to expenditures from the Petroleum
14 Storage Tank Indemnity Fund; requiring reports;
15 imposing supermajority voting requirement with
16 respect to certain legislation affecting distribution
17 of revenues; providing exceptions; defining terms;
18 providing for imposition of assessment; prescribing
19 assessment amount; stating purposes of assessment;
20 providing for exemptions; providing for distribution
21 of assessment revenues; prescribing procedures with
22 respect to remittance; requiring records; providing
23 for reimbursements from the Petroleum Storage Tank
24 Release Indemnity Fund; prescribing procedures
related thereto; creating Oklahoma Leaking
Underground Storage Tank Trust Fund; creating
Oklahoma Leaking Underground Storage Tank Revolving
Fund; providing for expenditures; prescribing
procedures related to expenditures; modifying
provisions related to membership of Storage Tank
Advisory Council; prohibiting certain actions with
respect to regulated substances; providing for fuel
inspection and compliance personnel; prohibiting
certain employment; providing for effect of judicial
interpretation; authorizing rules of the Corporation
Commission with respect to regulated substances;
prohibiting certain conduct with respect to regulated
substances; providing for fines; providing for
imprisonment; imposing duties on the Petroleum
Storage Tank Division with respect to regulated
substances; exempting certain transactions from scope
of specified statutory provisions; prohibiting
certain conduct with respect to dispensation of
substances; defining terms; requiring labels and
signage; defining terms; providing for determinations
with respect to antifreeze; requiring analysis of
certain samples; repealing 17 O.S. 2011, Sections

1 323, as amended by Section 63, Chapter 304, O.S.L.
2 2012, 350, 351, 352, 353, as amended by Section 1,
3 Chapter 355, O.S.L. 2012, 353.1, as amended by
4 Section 1, Chapter 319, O.S.L. 2013, 354, as last
5 amended by Section 9, Chapter 15, O.S.L. 2013, 355,
6 356, 356.1, 357, 358, as amended by Section 2,
7 Chapter 319, O.S.L. 2013, 359, 360, 361, 365, as
8 amended by Section 64, Chapter 304, O.S.L. 2012 and
9 620 (17 O.S. Supp. 2017, Sections 323, 353, 353.1,
10 354, 358 and 365), which relate to administration of
11 certain programs by the Corporation Commission;
12 repealing 47 O.S. 2011, Sections 461, 462, 463, 464,
13 465, 466, 467, 468, 469 and 470, which relate to
14 regulation of antifreeze; repealing 52 O.S. 2011,
15 Sections 321, 324.1, 324.6, 324.7, 325, as amended by
16 Section 1, Chapter 23, O.S.L. 2012, 327, 328, 330,
17 332, 334, 346 and 347 (52 O.S. Supp. 2017, Section
18 325), which relate to regulation of certain
19 substances; repealing 83 O.S. 2011, Sections 111, as
20 amended by Section 1, Chapter 295, O.S.L. 2015, and
21 as renumbered by Section 7, Chapter 295, O.S.L. 2015,
22 112, as amended by Section 2, Chapter 295, O.S.L.
23 2015, and as renumbered by Section 7, Chapter 295,
24 O.S.L. 2015, 113, as amended by Section 3, Chapter
295, O.S.L. 2015, and as renumbered by Section 7,
Chapter 295, O.S.L. 2015, 114, as amended by Section
4, Chapter 295, O.S.L. 2015, and as renumbered by
Section 7, Chapter 295, O.S.L. 2015 and 117, as
amended by Section 5, Chapter 295, O.S.L. 2015, and
as renumbered by Section 7, Chapter 295, O.S.L. 2015
(52 O.S. Supp. 2017, Sections 325.1, 330.1, 332.1,
346.1 and 346.2), which relate to certain measuring
devices; repealing 63 O.S. 2011, Section 4222, which
relates to certain marina operators; providing for
codification; and providing an effective date.

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

SECTION 1. AMENDATORY 17 O.S. 2011, Section 301, is
amended to read as follows:

1 Section 301. A. ~~Sections 301 through 318 of this title~~ This
2 act shall be known and may be cited as the "Oklahoma Petroleum
3 Storage Tank ~~Regulation~~ Consolidation Act".

4 B. For the purposes of implementing the Oklahoma Petroleum
5 Storage Tank ~~Regulation~~ Consolidation Act, there is hereby ~~created~~
6 recognized the Oklahoma Petroleum Storage Tank ~~Regulation~~ Program
7 administered by the Petroleum Storage Tank Division of the Oklahoma
8 Corporation Commission.

9 C. The Petroleum Storage Tank Division shall maintain, operate
10 and administer the Oklahoma Petroleum Storage Tank Program and shall
11 include, but not be limited to, regulatory compliance activities,
12 enforcement of rules promulgated to implement regulatory programs,
13 technical review, development and approval of corrective action
14 plans and determinations that remediation of contaminated sites is
15 complete.

16 D. The Petroleum Storage Tank Division shall maintain, operate
17 and administer the Petroleum Storage Tank Indemnity Fund (Indemnity
18 Fund) and shall include, but not be limited to, processing,
19 reviewing and paying claims for corrective action costs resulting
20 from a release of regulated substances and mitigate environmental,
21 health and safety threats to the public. The Administrator of the
22 Indemnity Fund shall maintain, operate and administer the Indemnity
23 Fund, and process, review and pay claims to those individuals deemed
24

1 eligible for reimbursement for corrective action at eligible
2 petroleum release sites.

3 E. The Petroleum Storage Tank Division shall maintain, operate
4 and administer an inspection program for facilities that store or
5 dispense Commission-regulated substances for the purpose of
6 determining whether such products comply with the specifications,
7 requirements, rules and orders of the Corporation Commission and the
8 laws of the state.

9 F. The Petroleum Storage Tank Division shall maintain, operate
10 and administer a program for the regulation of antifreeze sold or
11 held with the intent to sell within the state for the purpose of
12 determining whether such products comply with the specifications,
13 requirements, rules and orders of the Corporation Commission and the
14 laws of the state.

15 SECTION 2. AMENDATORY 17 O.S. 2011, Section 302, as
16 amended by Section 1, Chapter 155, O.S.L. 2016 (17 O.S. Supp. 2017,
17 Section 302), is amended to read as follows:

18 Section 302. A. The Legislature finds that the release of
19 ~~petroleum~~ regulated substances from storage tanks into the surface
20 water, groundwater, air and subsurface soils of this state poses a
21 potential threat to the ~~natural resources~~ environment, health,
22 safety and welfare of the residents of this state ~~and to the economy~~
23 ~~of this state.~~

24

1 Therefore the Legislature declares it is the public policy of
2 this state to protect the public health, safety, welfare, ~~the state~~
3 ~~economy~~ and the environment from the potential harmful effects of
4 storage tanks used to store ~~petroleum~~ regulated substances. The
5 Legislature acknowledges that certain statutory enactments regarding
6 petroleum storage tank systems are set forth in other titles. To
7 that extent and to effectuate consolidation, storage tank system
8 inspections and the regulation of antifreeze are included in the
9 Oklahoma Petroleum Storage Tank Consolidation Act. In order to
10 implement this policy, it is the intent of the Legislature to
11 ~~establish a program~~ consolidate programs for the regulation of
12 storage tank systems, antifreeze, inspections and Indemnity Fund
13 compensation for eligible petroleum storage tank releases; and that
14 the regulation of spills and releases from petroleum storage tanks,
15 oversight of petroleum storage tank environmental corrective action,
16 and the reimbursement of claims for costs incurred for petroleum
17 storage tank environmental corrective action be administered by the
18 Oklahoma Corporation Commission Petroleum Storage Tank Division.

19 B. The purpose of the Oklahoma Petroleum Storage Tank
20 Consolidation Act is to provide for the administration of the
21 various programs within the Oklahoma Corporation Commission
22 regulating the release or spilling of regulated substances from
23 petroleum storage tanks and to utilize financial resources for
24 petroleum storage regulatory services, administration and

1 reimbursement of claims for environmental corrective action by the
2 Petroleum Storage Indemnity Fund.

3 C. The provisions of this act shall be applicable to all
4 current, pending, past and future contracts, claims and cases within
5 the jurisdiction of the Petroleum Storage Tank Division, provided
6 that this subsection shall not apply, nor be construed to authorize
7 or permit the reopening or review of the underlying claim or claims
8 of any cases which were formally settled pursuant to a formal
9 settlement agreement or which a final order was entered by the
10 Corporation Commission. Further, the provisions of this act shall
11 not change or modify the terms of purchase order agreements entered
12 into prior to the effective date of this act.

13 D. In addition, to provide that petroleum storage tank
14 regulatory concerns of industry and the public shall be addressed in
15 an expedient manner, the Legislature further finds that:

16 1. Significant quantities of regulated substances are being
17 stored in storage tank systems in this state;

18 2. Spills, leaks and other releases of regulated substances
19 from such storage tank systems have occurred, are occurring and will
20 continue to occur;

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

1 4. Where contamination has occurred, corrective action measures
2 have often been delayed for long periods while determination as to
3 the liability and extent of liability are made;

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

8 6. Adequate financial resources must be readily available to
9 enable owners, operators and other persons to take the corrective
10 action necessary to investigate and, if necessary, remediate such
11 contaminated sites; and

12 7. Adequate financial resources shall be provided by the
13 petroleum storage tank program established by the Petroleum Storage
14 Tank Indemnity Fund and funded by an assessment on the sale of motor
15 fuel, diesel fuel and blending materials in this state by a
16 distributor.

17 E. The Legislature declares that, in order to provide for the
18 investigation and, if necessary, remediation of as many contaminated
19 sites resulting from releases of regulated substances from storage
20 tank systems as soon as possible, any person eligible for Indemnity
21 Fund reimbursement pursuant to the provisions of this act shall be
22 compensated for certain allowable costs incurred in connection with
23 corrective action, subject to the conditions specified by this act.

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1 SECTION 3. AMENDATORY 17 O.S. 2011, Section 303, as
2 amended by Section 2, Chapter 155, O.S.L. 2016 (17 O.S. Supp. 2017,
3 Section 303), is amended to read as follows:

4 Section 303. As used in the Oklahoma Petroleum Storage Tank
5 ~~Regulation~~ Consolidation Act:

6 1. "Abandoned system" means a storage tank system which:

7 a. has been taken permanently out of service as a storage
8 vessel for any reason or is not intended to be
9 returned to service,

10 b. has been out of service for one (1) year or more prior
11 to April 21, 1989, or

12 c. has been rendered permanently unfit for use as
13 determined by the Commission after notice and hearing;

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

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

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

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

23 6. ~~"Closed case" means a previously active case which had a~~
24 ~~confirmed release and the Commission has issued a closure letter~~

1 ~~advising that no further corrective action is necessary on the site~~
2 "Administrator" means the person hired by the Director of the
3 Petroleum Storage Tank Division of the Corporation Commission to
4 administer the Indemnity Fund;

5 3. "Administrative application" means an application and notice
6 of hearing filed by the Director of the Petroleum Storage Tank
7 Division for a judicial determination of any question regarding the
8 administration of the regulatory, Indemnity Fund or inspection
9 program of the Petroleum Storage Tank Division;

10 4. "Assignment of benefits" means a written directive from the
11 applicant of record instructing the Commission to pay allowable
12 costs incurred directly to the named assignee including, but not
13 limited to, an environmental consultant;

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

17 6. "Biodiesel" for the purpose of prescribing specifications
18 for the quality of biodiesel shall mean a fuel comprised of mono-
19 alkyl esters of long chain fatty acids derived from vegetable oils
20 or animal fats, designated as B100, and meeting the requirements of
21 the American Society for Testing and Materials (ASTM) D6751
22 standards. A biodiesel blend is a blend of biodiesel fuels meeting
23 the ASTM D6751 standards with a petroleum-based diesel fuel, which
24

1 is designated "Bxx", with "xx" representing the volume percentage of
2 biodiesel fuel in the blend;

3 7. "Commission" means the Corporation Commission;

4 8. ~~"Contaminants" or "contamination"~~ "Confirmed release" means
5 a level of concentration of chemicals of concern that may be
6 sufficient to cause adverse effects upon human health or the
7 environment or cause a nuisance;

8 9. "Contaminates" or "contamination" means the presence of
9 Commission-regulated substances in the environment;

10 10. "Corrective action" means action taken to monitor,
11 investigate, minimize, eliminate or perform remediation of a release
12 from a storage tank system;

13 ~~10. "Corrective action plan" means the plan submitted to the~~
14 ~~regulatory program of the Corporation Commission detailing the~~
15 ~~method and manner of corrective action to be taken for a release;~~

16 11. ~~"Department" means the Department of Environmental Quality;~~

17 ~~12.~~ "Director" means the Director of the Petroleum Storage Tank
18 Division of the Corporation Commission;

19 12. "Distributor" means:

20 a. every person importing or causing to be imported into
21 this state any motor fuel, diesel fuel or blending
22 material for use, distribution, or sale and
23 distribution, or sale and delivery after the same
24 reaches this state. Distributor does not mean persons

1 importing motor fuel only in the supply tank of a
2 vehicle originally provided by the manufacturer of the
3 motor vehicle as a container for motor fuel or diesel
4 fuel to propel such motor vehicle, nor does
5 distributor mean persons only importing motor fuel,
6 diesel fuel or blending material into the state under
7 circumstances requiring that they be licensed as
8 "Motor Fuel/Diesel Fuel Importers for Use" as defined
9 in paragraph 7 of Section 601 of Title 68 of the
10 Oklahoma Statutes and who are actually so licensed,
11 b. any person producing, refining, preparing, distilling,
12 blending, manufacturing, or compounding motor fuel or
13 blending material in this state for use, distribution
14 or sale and delivery in this state,
15 c. any person within this state producing or collecting
16 what is commonly known as drip, casing head or natural
17 gasoline,
18 d. any person who has in his or her possession or buys
19 for sale or use motor fuel, diesel fuel or blending
20 material from any person other than a licensed
21 distributor, retailer or dealer,
22 e. any person other than a retailer or dealer who sells
23 motor fuel, diesel fuel or blending material to anyone
24 except a licensed distributor,

- 1 f. any person who makes bulk sales of motor fuel, diesel
2 fuel or blending material, and
3 g. any other person, including a retailer or dealer, who
4 has filed an application for and has procured a
5 distributor's license in the manner provided by the
6 Oklahoma Motor Fuel/Diesel Fuel Importers for Use Tax
7 Code, Section 601 et seq. of Title 68 of the Oklahoma
8 Statutes;

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

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

15 a. any owner or operator of a storage tank system who has
16 incurred liability as a result of an eligible release,
17 and who meets the requirements specified in Section 27
18 of this act,

19 b. any person who on or after November 8, 1984, purchases
20 or acquires property by any means on which a storage
21 tank system is located if:

22 (1) the storage tank system was located on the
23 property on November 8, 1984,

1 (2) such person could not have known that such
2 storage tank system existed. The burden shall be
3 upon such purchaser to show that such purchaser
4 did not know or should not have known of the
5 existence of such storage tank system,

6 (3) the owner or operator of the storage tank system
7 responsible for the system cannot be determined
8 by the Corporation Commission or the Indemnity
9 Fund Administrator, or the owner or operator of
10 the storage tank system responsible for the
11 system is incapable, in the judgment of the
12 Corporation Commission, of properly carrying out
13 any necessary corrective action taken pursuant to
14 Section 30 of this act, and

15 (4) either funds are unavailable from the Oklahoma
16 Leaking Underground Storage Tank Trust (LUST
17 Trust) Fund or the underground storage tank
18 system is not eligible for corrective action
19 taken pursuant to Section 30 of this act,

20 c. any person who acquired ownership of a tank system
21 through inheritance or other means or is responsible
22 for a release by reason of owning the real property
23 within which a tank or a release is or was located if:
24

- 1 (1) the storage tank system of the release was
2 located on the real property on November 8, 1984,
3 (2) the operator of the storage tank system
4 responsible for the system or responsible for a
5 release cannot be determined or found by the
6 Corporation Commission, or the operator of the
7 storage tank system responsible for the system or
8 responsible for the release is incapable, in the
9 judgment of the Corporation Commission, of
10 properly carrying out any necessary corrective
11 action,
12 (3) either funds are unavailable from the LUST Trust
13 Fund or the underground storage tank system or
14 release is not eligible for corrective action
15 taken pursuant to Section 30 of this act,
16 (4) the person did not participate or was not
17 responsible in any manner, directly or
18 indirectly, in the management of the storage tank
19 system or for the release and otherwise is not
20 engaged in petroleum production, refining or
21 marketing, and
22 (5) the person meets the requirements specified in
23 Section 27 of this act, or
24

1 (d) any person who is an impacted party, adjacent owner or
2 town, city or political subdivision as determined by
3 the Commission and who willingly submits to the
4 regulations of the Commission governing petroleum
5 storage tank system owners, operators or agents;

6 15. "Eligible release" means a release of regulated substances
7 ~~where the cost of cleanup is subject to reimbursement by the~~
8 ~~Petroleum Storage Tank Indemnity Fund~~ for which allowable costs, as
9 determined by the Indemnity Fund Administrator, are reimbursable to
10 or on behalf of an eligible person;

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

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

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

19 19. "Impacted party" means an owner whose property has been
20 impacted by a release from an on-site or off-site petroleum storage
21 tank system which the impacted person did not own or operate and for
22 which the impacted person has had no responsibility under Commission
23 rules. An impacted party may apply for an eligibility determination
24

1 for reimbursement from the Indemnity Fund. An impacted party is not
2 subject to the Indemnity Fund co-pay;

3 20. "Indemnity Fund" means the Petroleum Storage Tank Indemnity
4 Fund;

5 21. "Investigation" means activities taken to identify,
6 confirm, monitor or delineate the physical extent of a release;

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

13 23. "Measuring device" shall mean any and all measuring devices
14 through or by the use of which regulated substances are sold,
15 dispensed or delivered to the public or to any person buying any
16 such substance for any purpose other than resale;

17 24. "Motor fuel" has the same meaning as the term is defined by
18 Section 500.3 of Title 68 of the Oklahoma Statutes;

19 25. "New system" means a storage tank system for which the
20 installation or upgrade of the system began on or after December 22,
21 1998. Storage tank systems installed after July 1, 2008, must be
22 secondarily contained and use interstitial monitoring;

23 ~~20.~~ 26. "Operator" means any person in control of or having
24 responsibility for the daily operation of the storage tank system,

1 whether by lease, contract, or other form of agreement. The term
2 "operator" also includes a past operator at the time of a release,
3 tank closure, or a violation of the Oklahoma Petroleum Storage Tank
4 Regulation Consolidation Act or of a rule promulgated thereunder;

5 ~~21.~~ 27. "Owner" means:

6 a. in the case of a storage tank system in use on
7 November 8, 1984, or brought into use after that date,
8 any person who holds title to real estate, controls,
9 or possesses an interest in a storage tank system or
10 property where a storage tank system is located used
11 for the storage, use, or dispensing of regulated
12 substances, or

13 b. in the case of a storage tank system in use before
14 November 8, 1984, but no longer in service on that
15 date, any person who ~~holds~~ held title to, ~~controls~~
16 controlled, or ~~possesses~~ possessed an interest in a
17 storage tank system immediately before the
18 discontinuation of its use.

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

23 ~~22.~~ 28. "Pay-for-performance" means a process by which an
24 environmental consultant guarantees, by executing a contract

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

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

15 ~~23.~~ 30. "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;

23 ~~24.~~ 31. "Petroleum" means antifreeze, new or used motor oil,
24 gasoline, kerosene, diesel, aviation fuel or blended fuel including,

1 but not limited to, gasoline, diesel, and aviation fuel that is
2 blended with biodiesel, ethanol, Methyl Tertiary Butyl Ether (MTBE)
3 or other additive for purposes of fueling a combustion engine;

4 ~~25. "Pipeline facilities" means new and existing pipe rights-~~
5 ~~of-way and any equipment, facilities or buildings regulated under:~~

6 a. ~~the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C.~~
7 ~~App., 1671, et seq.),~~

8 b. ~~the Hazardous Liquid Pipeline Safety Act of 1979 (49~~
9 ~~U.S.C. 2001, et seq.),~~

10 c. ~~the state Hazardous Liquid Transportation System~~
11 ~~Safety Act, Section 47.1 et seq. of Title 52 of the~~
12 ~~Oklahoma Statutes, or~~

13 d. ~~intrastate pipeline facilities regulated under state~~
14 ~~law;~~

15 ~~26.~~ 32. "Pollution" means contamination or other alteration of
16 the physical, chemical or biological properties of any natural
17 waters of the state, land surfaces or subsurfaces, or atmosphere
18 when such contamination or alteration will or is likely to create a
19 nuisance or render the waters, land or atmosphere harmful or
20 detrimental or injurious to the public health, safety or welfare or
21 the environment;

22 33. "Purchase order" means a performance-based agreement
23 negotiated between an environmental consultant and the Petroleum
24 Storage Tank Division stipulating a scope of work to be performed by

1 a target date, for which the Petroleum Storage Tank Indemnity Fund
2 will reimburse a specified amount;

3 ~~27.~~ 34. "Regulated substance" means petroleum which is
4 regulated pursuant to the Oklahoma Petroleum Storage Tank ~~Regulation~~
5 Consolidation Act;

6 35. "Reimbursement" means either:

7 a. repayment of an approved claim to an eligible person
8 for allowable costs resulting from an eligible
9 release, or

10 b. payment of an approved claim submitted on behalf of an
11 eligible person for incurred allowable costs resulting
12 from an eligible release;

13 ~~28.~~ 36. "Release" means any spilling, overfilling, leaching,
14 emitting, discharging, escaping, unintentional disposing or leaking
15 from a storage tank system that goes beyond the excavation zone,
16 tankpit, or secondary containment ~~facility~~ into the environment.
17 The term release includes but is not limited to a suspected or
18 confirmed release of a regulated substance from a storage tank
19 system identified as a result of sampling, testing or monitoring
20 results, or identified in any similarly reliable manner;

21 ~~29.~~ 37. "Remediation" means a process or technique used to
22 reduce concentration levels of chemicals of concern in the soil and
23 groundwater, and/or to reduce the presence of free product in the
24

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

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

8 ~~31.~~ 38. "Responsible person" means a any person ~~other than a~~
9 ~~petroleum storage tank system owner or operator, such as an adjacent~~
10 ~~property owner, impacted party, city or political subdivision, that~~
11 ~~is seeking corrective action of real property, and submits to the~~
12 ~~jurisdiction of the Commission;~~

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

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

17 ~~34.~~ 39. "Sale" means every gallon of motor fuel, diesel fuel,
18 or blending materials sold, or stored and distributed, or withdrawn
19 from storage, within the state, for sale or use. No gallon of motor
20 fuel, diesel fuel, or blending materials shall be the basis more
21 than once of the assessment imposed by Section 25 of this act;

22 40. "Storage tank" is a permanent trade fixture and means a
23 stationary vessel designed to contain an accumulation of regulated
24 substances. It includes the individual compartments within a

1 compartmentalized tank, any aboveground or underground connected
2 pipings, and is a trade fixture. A storage tank that has ten percent
3 (10%) or more of its volume beneath the surface of the ground is
4 considered an underground storage tank;

5 41. "Storage tank system" means a closed-plumbed system
6 including, but not limited to, the storage tank(s), the individual
7 storage tank compartments, the lines, the dispenser for a given
8 product, and containment sump, if any, ancillary equipment or a
9 delivery truck that is connected to the storage tank system;

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

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

19 ~~37.~~ 42. "Synthetic diesel" for the purpose of prescribing
20 specifications for the quality of synthetic diesel shall mean a
21 hydrocarbon made up of hydrocarbons that are primarily aliphatic in
22 character with the number of carbon atoms ranging from C-10 to C-20.
23 The hydrocarbons are produced from carbon monoxide and hydrogen,
24 synthesis gas, by passing the synthesis gas over a catalyst under

1 temperature and pressure, commonly known as Fischer Tropsch process.
2 Synthetic diesel shall meet all ASTM D975 specifications with or
3 without the use of lubrication additives. A synthetic diesel blend
4 is a blend of synthetic diesel fuel with a petroleum-based diesel
5 fuel, which is designated "Sxx", with "xx" representing the volume
6 percentage of synthetic diesel fuel in the blend;

7 43. "Tax Commission" means the Oklahoma Tax Commission;

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

11 ~~38.~~ 45. "Waters of the state" means all streams, lakes, ponds,
12 marshes, watercourses, waterways, wells, springs, irrigation
13 systems, drainage systems and all other bodies or accumulations of
14 water, surface and underground, natural or artificial, public or
15 private, which are contained within, flow through, or border upon
16 the State of Oklahoma or any portion thereof; and

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

19 SECTION 4. AMENDATORY 17 O.S. 2011, Section 304, is
20 amended to read as follows:

21 Section 304. The provisions of the Oklahoma Petroleum Storage
22 Tank ~~Regulation~~ Consolidation Act shall not apply to:

- 23 1. Septic tank systems;
24 2. Pipeline facilities;

- 1 3. Surface impoundments, pits, ponds or lagoons;
- 2 4. Stormwater and wastewater collection systems;
- 3 5. Flow-through process tank systems;
- 4 6. Liquid trap or associated gathering lines directly related
- 5 to oil or gas production and gathering operations;
- 6 7. Hydraulic lift tank systems;
- 7 8. Storage tank systems with a capacity of less than one
- 8 hundred ten (110) gallons;
- 9 9. Fleet and commercial aboveground storage tanks with an
- 10 individual capacity of two thousand one hundred (2,100) gallons or
- 11 less;
- 12 10. Storage tank systems with a de minimus concentration of
- 13 regulated substances ~~including but not limited to swimming pools and~~
- 14 ~~coffins~~;
- 15 11. Storage tank systems that serve as emergency backup tanks,
- 16 provided that such backup tanks hold regulated substances for only a
- 17 short period of time and are expeditiously emptied after each use.
- 18 The provisions of this paragraph shall not prevent Corporation
- 19 Commission notification requirements and such other restrictions as
- 20 may be deemed necessary by the Commission to protect the
- 21 environment;
- 22 12. Farm or residential underground storage tanks with an
- 23 individual capacity of one thousand one hundred (1,100) gallons or
- 24 less used for noncommercial purposes;

1 13. Underground storage tanks used for storing heating oil for
2 consumptive use on the premises where stored;

3 14. Storage tank systems storing hazardous wastes regulated
4 under Subtitle C of the federal Solid Waste Disposal Act, 42 U.S.C.,
5 Section 6921 et seq., or substances regulated as hazardous wastes
6 under the Oklahoma Hazardous Waste Management Act; and

7 15. Fuel storage facilities and associated equipment used in
8 wholesale or bulk distribution activities that are supplied by a
9 pipeline and from which fuel may be removed at a rack.

10 SECTION 5. AMENDATORY 17 O.S. 2011, Section 304.1, is
11 amended to read as follows:

12 Section 304.1 A. All aboveground storage tanks utilized by
13 marinas which are required to be upgraded before July 15, 2007,
14 pursuant to the provisions of permanent Rule OAC 165:26-8-2 and
15 required to meet certain design requirements pursuant to the
16 provisions of permanent Rule OAC 165:26-2-1.3, shall be exempt from
17 such requirements until the Corporation Commission promulgates new
18 rules if the marina is using an underground storage tank with
19 secondary containment, the risk to the environment and human health,
20 safety, and welfare is minimal, and compliance with the upgrade
21 requirements would result in closure of the storage tank system or
22 cause economic hardship to the owner of the storage tank system.
23 Marina owners or operators in this state operating a motor fuel
24 dispensing facility shall not be required to have an attendant or

1 supervisor on duty to supervise, observe or control the dispensing
2 of fuel.

3 B. All aboveground storage tanks utilized by retail facilities
4 which are required to meet Underwriters Laboratories (UL) or
5 American Petroleum Institute (API) standards for aboveground fuel
6 storage tanks pursuant to the provisions of permanent Rule OAC
7 165:26-10-2 and are required to meet certain design requirements
8 pursuant to the provisions of permanent Rule OAC 165:26-2-1.3~~7~~ shall
9 be exempt from such requirements until the Corporation Commission
10 promulgates new rules, if the retail facility is using an
11 underground storage tank with secondary containment, the risk to the
12 environment and human health, safety and welfare is minimal, and
13 compliance with the tank requirements would result in closure of the
14 storage tank system or cause economic hardship to the owner of the
15 storage tank system.

16 C. All aboveground storage tanks utilized by fleet and
17 commercial facilities which are required to meet Underwriters
18 Laboratories (UL) or American Petroleum Institute (API) standards
19 for aboveground fuel storage tanks pursuant to the provisions of
20 permanent Rule OAC 165:26-12-2 and are required to meet certain
21 design requirements pursuant to the provisions of permanent Rule OAC
22 165:26-2-1.3~~7~~ shall be exempt from such requirements until the
23 Corporation Commission promulgates new rules, if the fleet or
24 commercial facility is using an underground storage tank with

1 secondary containment, the risk to the environment and human health,
2 safety and welfare is minimal, and compliance with the tank
3 requirements would result in closure of the storage tank system or
4 cause economic hardship to the owner of the storage tank system.

5 ~~D. Any rules promulgated by the Corporation Commission~~
6 ~~governing the design and labeling of aboveground storage tanks~~
7 ~~shall be amended to allow storage tanks designed and built for~~
8 ~~underground use to be used as aboveground storage tanks if used~~
9 ~~with secondary containment and if the storage tanks were installed~~
10 ~~for that use prior to July 1, 2007. Any rules promulgated by the~~
11 ~~Commission shall not be more stringent than any Environmental~~
12 ~~Protection Agency standards or regulations relating to aboveground~~
13 ~~storage tank design~~ After July 1, 2007, an underground storage
14 tank cannot be used as an aboveground storage tank.

15 SECTION 6. AMENDATORY 17 O.S. 2011, Section 306, is
16 amended to read as follows:

17 Section 306. ~~In addition to other powers and duties prescribed~~
18 ~~by law~~ Within its jurisdictional areas of responsibility, the
19 Corporation Commission Petroleum Storage Tank Division shall have
20 the power and duty to:

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

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 Petroleum Storage Tank ~~Regulation~~
6 Consolidation Act, and rules 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 Petroleum
13 Storage Tank ~~Regulation~~ Consolidation Act or rules promulgated
14 pursuant thereto;

15 5. Cause investigations, inquiries and inspections to be made.
16 Inspect any equipment, practice or method prior to implementation
17 which is required by the provisions of the Oklahoma Petroleum
18 Storage Tank ~~Regulation~~ Consolidation Act or rules promulgated
19 pursuant thereto;

20 6. Have the right to access to any property which has or may
21 have had a petroleum storage tank system, a suspicion of release or
22 a confirmed release from a petroleum storage tank system on the
23 premises, and inspect any monitoring ~~stations~~ equipment, samples, or
24

1 conduct sampling or tests to identify any actual or suspected
2 release of a regulated substance;

3 7. Investigate alleged violations of the Oklahoma Petroleum
4 Storage Tank Consolidation Act. Employ, authorize or designate
5 personnel to conduct inquiries investigations ~~and,~~ inspections, and
6 to perform other acts that the Director of the Petroleum Storage
7 Tank Division is authorized or required to conduct or perform, to
8 make reports of compliance with the provisions of the Oklahoma
9 Petroleum Storage Tank Regulation Consolidation Act and rules
10 promulgated pursuant thereto;

11 8. Within its discretion, report and request criminal
12 prosecution proceedings to the district attorney having jurisdiction
13 or to the Attorney General any act committed by ~~an~~ any person,
14 entity, owner, operator ~~or,~~ employee or agent of a facility which
15 may constitute a violation of the provisions of the Oklahoma
16 Petroleum Storage Tank Regulation Consolidation Act, any order
17 issued or rules promulgated pursuant thereto;

18 9. Advise, consult, assist, and cooperate with other agencies
19 of this state, towns, cities, counties, industries, the federal
20 government, other states and interstate agencies and with affected
21 groups and political subdivisions ~~to further the purposes of the~~
22 ~~provisions of the Oklahoma Storage Tank Regulation Act~~ regarding
23 petroleum storage tank issues;

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 Petroleum Storage Tank ~~Regulation~~ Consolidation Act;

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

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 Petroleum Storage Tank ~~Regulation~~
16 Consolidation Act or rules promulgated pursuant
17 thereto,

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

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

24

- 1 d. temporarily or permanently cease operation of a
2 storage tank system, modify and immediately remove or
3 control any regulated substance that is found to be
4 causing ~~pollution~~ contamination when such cessation,
5 removal or control is determined to be necessary by
6 the Commission,
- 7 e. provide an alternate or temporary drinking water
8 source to any person deprived of drinking water if it
9 is found that such owner or operator is responsible
10 for ~~polluting~~ contaminating the drinking water source
11 beyond applicable drinking water standards, or where
12 no such standard exists, such standard as the
13 Department of Environmental Quality shall determine,
- 14 f. take full corrective action if such owner or operator
15 or other such responsible person is found to be
16 responsible for the release, and
- 17 g. take appropriate action to temporarily relocate
18 residents affected by the release;

19 15. Establish and enforce administrative penalties against any
20 person or entity for violations pursuant to the provisions of the
21 Oklahoma Petroleum Storage Tank ~~Regulation~~ Consolidation Act,
22 requirements, rules promulgated thereunder, or orders issued
23 therefrom, including issuance of field citations by designated
24 personnel for violations of the Oklahoma Petroleum Storage Tank

1 ~~Regulation~~ Consolidation Act, including but not limited to the
2 authority to ~~close a facility~~ shutdown a storage tank system found
3 to pose an imminent threat to the health, safety or the environment,
4 to be operating a storage tank system for which permit fees have not
5 been paid, or to be operating a storage tank system with an
6 outstanding unpaid field citation or fine, or violation of a
7 Commission requirement, rule or order. The Commission shall
8 promulgate rules specifying the events that provide for storage tank
9 system shutdown. Issuance or payment of field citations shall in no
10 way preclude other enforcement proceedings, administrative
11 penalties, fines or order of the Commission if an owner or operator
12 fails to correct a violation or abate a threat to health, safety or
13 the environment in a reasonable manner, as determined by the
14 Commission. If a citation is issued or a facility is closed under
15 the provisions of the Oklahoma Petroleum Storage Tank ~~Regulation~~
16 Consolidation Act, the owner or operator of the facility on
17 application and notice of hearing to the Commission shall be
18 afforded a hearing within ten (10) days of filing an application.
19 Any 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
24 provisions of the Oklahoma Petroleum Storage Tank ~~Regulation~~

1 Consolidation Act to protect the health, safety and welfare of any
2 resident of this state or the environment;

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

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

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

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

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

19 21. Acquire and sell personal property which has been purchased
20 or obtained by a pay-for-performance contract pursuant to Section 27
21 of this act. Surplus personal property shall be disposed of by the
22 Petroleum Storage Tank Division and the Office of Management and
23 Enterprise Services pursuant to the Oklahoma Surplus Property Act.
24

1 The proceeds of the sale shall be deposited in the Petroleum Storage
2 Tank Indemnity Fund;

3 22. Implement and coordinate an Underground Storage Tank
4 Operator Training Program pursuant to the provisions of Section 6
5 319 of this act title, issue annual permits related thereto and
6 assess any fees necessary for such training and permitting; and

7 22. 23. Encourage and conduct studies, investigations and
8 research; and collect and disseminate information relating to
9 petroleum storage tank related contamination and its causes,
10 effects, prevention, control and abatement;

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

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

21 26. Provide a toll-free phone number for petroleum storage tank
22 related complaints;

23 27. Develop standards for pipeline terminal and refinery
24 delivery point metering and calibration and provide for appropriate

1 inspection and regulation of such meters where the metered product
2 is to be delivered to petroleum storage tanks; and

3 28. Exercise all incidental powers as necessary and proper for
4 the administration of the Oklahoma Petroleum Storage Tank ~~Regulation~~
5 Consolidation Act.

6 SECTION 7. AMENDATORY 17 O.S. 2011, Section 307, is
7 amended to read as follows:

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

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

14 2. Procedures to follow when release detection methods or
15 equipment or both such methods and records indicate an abnormal loss
16 or gain which is not explainable by spillage, temperature variations
17 or other known causes;

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

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

23 5. An enforcement program;

24

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

5 7. Procedures to allow an adjacent property owner whose
6 property has been contaminated by a release to ~~remediate~~ engage in
7 corrective action on his or her own property under the same
8 requirements as the tank owner or operator responsible for
9 ~~remediating the release~~ performing corrective action; and

10 8. Minimum schedules and standards for the design,
11 construction, installation, operation, maintenance, repair,
12 monitoring, testing, inspection, release detection, performance,
13 abandonment and closure, of storage tank systems, as may be
14 necessary to protect human health, safety and welfare and the
15 environment.

16 B. In promulgating rules establishing standards pursuant to
17 paragraph 8 of subsection A of this section, the Commission may
18 distinguish in such standards between requirements appropriate for
19 storage tank systems. In making such distinctions, the Commission
20 may consider the following factors:

- 21 1. Location of the storage tanks;
- 22 2. Soil and climate conditions;
- 23 3. Uses of the storage tanks;
- 24 4. History of maintenance;

- 1 5. Age of the storage tanks;
- 2 6. National industry codes;
- 3 7. Hydrogeology;
- 4 8. Water table;
- 5 9. Size of the storage tanks;
- 6 10. Quantity of regulated substances periodically deposited in
- 7 or dispensed from the storage tank;
- 8 11. The compatibility of the regulated substance and the
- 9 materials of which the storage tank is fabricated; and
- 10 12. Any other factors as deemed necessary by the Commission
- 11 pursuant to the provisions of the Oklahoma Petroleum Storage Tank
- 12 ~~Regulation~~ Consolidation Act.

13 C. The Commission may promulgate rules establishing different

14 requirements for different areas or regions of the state if the

15 Commission finds that more stringent rules are necessary:

16 1. To protect specific waters of the state including but not

17 limited to those waters of the state designated for additional

18 protection in Oklahoma's water quality standards; or

19 2. Because conditions peculiar to that area or region require

20 different standards to protect public health, safety, welfare or the

21 environment.

22 D. In promulgating rules pursuant to the provisions of the

23 Oklahoma Petroleum Storage Tank ~~Regulation~~ Consolidation Act, the

24 Commission shall consider all relevant federal standards and

1 regulations on storage tank systems. If the Commission promulgates
2 any rule that is more stringent than a federal standard or
3 regulation on the same subject, the Commission shall clearly express
4 the deviation from the federal standard or regulation and the
5 reasons for the deviation at a public hearing or at time of adoption
6 of the rule.

7 SECTION 8. AMENDATORY 17 O.S. 2011, Section 308, is
8 amended to read as follows:

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

12 2. A storage tank system is not required to be permitted if the
13 tank system:

14 a. does not contain or has not contained a regulated
15 substance, or

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

18 B. No person shall deposit a regulated substance into a storage
19 tank system unless the system is operating pursuant to a permit
20 issued by the Commission.

21 C. Any person who sells a storage tank system shall notify the
22 owner or operator, or both, of the permit requirements of the
23 Oklahoma Petroleum Storage Tank Regulation Consolidation Act,
24 Section 301 et seq. of this title.

1 D. ~~The application form for a permit shall be provided by and~~
2 ~~filed with the Commission. A storage tank registration form must be~~
3 ~~provided to and approved by the Commission before a permit is~~
4 ~~issued.~~ In addition to other information requested by the
5 Commission, the ~~application~~ registration form shall include the type
6 of financial responsibility coverage utilized to comply with the
7 requirements of the Oklahoma Petroleum Storage Tank ~~Regulation~~
8 Consolidation Act and by rule of the Commission and the type of leak
9 detection method employed.

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

12 2. Any permit issued pursuant to the provisions of the Oklahoma
13 Petroleum Storage Tank ~~Regulation~~ Consolidation Act may be
14 transferred subject to rules promulgated by the Commission and only
15 upon approval by the Commission.

16 3. Any permittee ~~or applicant for permit~~ subject to the
17 provisions of the Oklahoma Petroleum Storage Tank ~~Regulation~~
18 Consolidation Act shall be deemed to have given consent to any duly
19 authorized employee or agent of the Commission to access, enter,
20 inspect or monitor, the tank system or facility in accordance with
21 the provisions of the Oklahoma Petroleum Storage Tank ~~Regulation~~
22 Consolidation Act. Refusal to allow such access, entry, or
23 inspection may constitute grounds for the denial, nonrenewal,
24 suspension, or revocation of a permit. Upon refusal of access,

1 entry, inspection, sampling or copying pursuant to this section, the
2 Director may make application for and obtain an administrative
3 warrant or an order from the Commission after notice and hearing to
4 allow such entry, inspection, testing, sampling or copying.

5 4. The owner or operator of a storage tank system shall display
6 the permit in a conspicuous location or manner easily visible to any
7 person depositing a regulated substance into a storage tank system
8 even after normal business hours.

9 F. Any permit fee collected pursuant to the Oklahoma Petroleum
10 Storage Tank ~~Regulation~~ Consolidation Act shall be deposited in the
11 Corporation Commission Petroleum Storage Tank ~~Regulation~~
12 Consolidation Revolving Fund.

13 G. The Commission may deny approval of a ~~permit application~~
14 storage tank registration, or refuse to reissue, suspend or revoke a
15 permit issued pursuant to the Oklahoma Petroleum Storage Tank
16 ~~Regulation~~ Consolidation Act if the Commission finds, after notice
17 and a hearing ~~conducted in accordance with the provisions of Section~~
18 ~~314 of Title 75 of the Oklahoma Statutes,~~ pursuant to Section 311 of
19 this title that the applicant or permittee has:

20 1. Fraudulently or deceptively obtained or attempted to obtain
21 a permit;

22 2. Failed to comply with any order of the Commission, provision
23 or requirement of this act or any rules promulgated by the
24

1 Commission in accordance with the provisions of the Oklahoma
2 Petroleum Storage Tank Regulation Consolidation Act; or

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

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

16 SECTION 9. AMENDATORY 17 O.S. 2011, Section 308.1, is
17 amended to read as follows:

18 Section 308.1 A. An annual permit fee of not more than Twenty-
19 five Dollars (\$25.00) per tank shall be assessed by the Corporation
20 Commission upon each owner or operator of a storage tank system for
21 ~~petroleum products~~ regulated substances. Such fee shall be assessed
22 upon each storage tank or storage tank compartment owned or operated
23 by such owner or operator whether in use or not.

24

1 B. Failure to pay the fees required by subsection A of this
2 section shall subject an owner or operator of a storage tank system
3 to:

4 1. A penalty of fifty percent (50%) of the computed total fee
5 due and owing by such owner and operator; or

6 2. ~~Suspension~~ Storage tank system shutdown, suspension or
7 nonrenewal of the permit to operate such system issued by the
8 Commission until payment of such fees or penalty, or both, so
9 assessed; or

10 3. ~~Both~~ All such penalty, shutdown of storage tank system and
11 permit suspension or nonrenewal.

12 SECTION 10. AMENDATORY 17 O.S. 2011, Section 309, is
13 amended to read as follows:

14 Section 309. A. No person including but not limited to the
15 owner or operator, employee or agent of such owner or operator, or
16 transporter shall knowingly allow a release or suspicion of a
17 release from a storage tank system to occur or continue to occur
18 without reporting the release or suspicion of a release to the
19 Corporation Commission within twenty-four (24) hours upon
20 discovering such a release or information that suggests that a
21 release has occurred.

22 B. The owner or operator of a storage tank system shall
23 immediately take all reasonable corrective actions necessary to
24 prevent a release or a threatened release of regulated substances

1 from a storage tank system and to abate and remove any such releases
2 subject to applicable federal and state requirements. The
3 Corporation Commission shall require that any corrective action
4 taken by a storage tank system owner or operator or authorized by
5 the Commission shall be in compliance with all applicable state
6 statutes and rules and federal laws and regulations for the
7 protection of air quality and water quality and for the
8 transportation and disposal of any waste.

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

11 1. Issue an administrative order stating the existence of an
12 emergency and requiring that such action be taken as the Commission
13 deems necessary to meet the emergency. Such order shall be
14 effective immediately. Any person to whom such an order is directed
15 shall comply with the order immediately but on application to the
16 Commission shall be afforded a hearing within ten (10) days after
17 receipt of the administrative order. On the basis of such hearing,
18 the Commission shall continue such order in effect, revoke it, or
19 modify it. Any person aggrieved by such order continued after the
20 hearing provided for in this subsection may appeal to the Supreme
21 Court as provided in Section 318 of Title 75 of the Oklahoma
22 Statutes. Such appeal when docketed shall have priority over all
23 cases pending on the docket; and

24

1 2. Require an owner, operator, or responsible person to submit
2 investigation, remediation or other corrective action plans to the
3 Petroleum Storage Tank Division of the Corporation Commission for
4 preapproval prior to initiating such investigation, remediation, or
5 other corrective action.

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

7 a. an owner or operator of the storage tank system cannot
8 be identified,

9 b. an identified owner or operator cannot or will not
10 comply with the order issued pursuant to subsection C
11 of this section,

12 c. an administrative or judicial proceeding on an order
13 issued pursuant to subsection C of this section is
14 pending and the Commission determines corrective
15 action is necessary to protect the public health,
16 safety and welfare or the environment until the
17 administrative or judicial proceeding is resolved, or

18 d. the Commission determines that the release constitutes
19 a danger requiring immediate action to prevent,
20 minimize or mitigate damage to the public health and
21 welfare or the environment. Before taking an action
22 under this paragraph, the Commission shall make all
23 reasonable efforts, taking into consideration the
24 urgency of the situation, to afford an owner or

1 operator notice and hearing to take a corrective
2 action and notify the owners or occupants of adjacent
3 or affected real property as specified by Section 310
4 of this title.

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

- 9 a. the owner or operator has failed to take a corrective
10 action ~~ordered~~ required by the Commission and the
11 Commission has taken the corrective action, or
12 b. the Commission has taken corrective action in an
13 emergency pursuant to subparagraph d of paragraph 1 of
14 this subsection.

15 3. Reasonable and necessary expenses incurred by the
16 Commission, the Oklahoma Leaking Underground Storage Tank Trust
17 Fund, or the Oklahoma Leaking Underground Storage Tank Revolving
18 Fund, in taking a corrective action, including costs of
19 investigating a release and administrative and legal expenses, may
20 be recovered from the Indemnity Fund by application to the
21 Commission with notice and hearing pursuant to Section 311 of this
22 title. The Commission's certification of costs incurred is prima
23 facie evidence that the costs incurred are reasonable and necessary.
24 The Commission shall be entitled to apply for and receive payment

1 from the Indemnity Fund ~~Program on behalf of an eligible person for~~
2 ~~an eligible release~~ upon any site upon which the Commission has
3 taken corrective action. ~~Such payments shall be deemed to be~~
4 ~~reimbursement of the eligible person.~~ Costs incurred that are
5 recovered under this subsection shall be deposited in the
6 Corporation Commission Storage Tank Regulation Revolving Fund.
7 Costs reimbursed by the Indemnity Fund for Oklahoma Leaking
8 Underground Storage Tank Trust Fund or Oklahoma Leaking Underground
9 Storage Tank Revolving Fund expenditures shall be deposited in the
10 Oklahoma Leaking Underground Storage Tank Revolving Fund.

11 E. Any order issued by the Commission pursuant to this section
12 shall not limit the liability of the owner or operator or both such
13 owner or operator for any injury, damages, or costs incurred by any
14 person as a result of the release. The owner or operator shall not
15 avoid any liability, statutory environmental responsibility imposed
16 by Section 301 et seq. of this title; or as a result of such release
17 by means of a conveyance of any right, title or interest in real
18 property; or by any indemnification, hold harmless agreement, or
19 similar agreement.

20 1. This subsection does not:

21 a. prohibit a person who may be liable from entering an
22 agreement by which the person is insured, held
23 harmless, or indemnified for part or all of the
24 liability,

1 b. prohibit the enforcement of an insurance, hold
2 harmless, or indemnification agreement, or

3 c. bar a cause of action brought by a person who may be
4 liable or by an insurer or guarantor, whether by right
5 of subrogation or otherwise.

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

9 SECTION 11. AMENDATORY 17 O.S. 2011, Section 310, is
10 amended to read as follows:

11 Section 310. A. If upon inspection or investigation, or
12 whenever the Corporation Commission determines that there are
13 reasonable grounds to believe that a storage tank system owner,
14 operator or responsible person is in violation of the Oklahoma
15 Petroleum Storage Tank Regulation Consolidation Act or of any rule
16 promulgated pursuant thereto or of any order of the Commission, the
17 Commission shall give written notice or issue a Notice of Violation
18 to the alleged violator specifying the cause of complaint. Such
19 notice shall require that action or corrective action be immediately
20 initiated. The notice shall be delivered to the alleged violator in
21 accordance with the provisions of subsection C of this section.

22 B. 1. If action or corrective action is not taken in response
23 to the notice issued pursuant to subsection A of this section, the
24

1 Commission shall initiate proceedings and hold a hearing to
2 determine if:

3 a. the alleged violator should be found in contempt or in
4 violation of Commission rules, requirements, enabling
5 statutes, and/or Commission orders,

6 ~~b. the alleged violator should be found to be in~~
7 ~~violation of the provisions of the Oklahoma Storage~~
8 ~~Tank Regulation Act,~~

9 ~~e. the any permit or license issued to the alleged~~
10 ~~violator should be suspended, revoked or not reissued,~~

11 ~~d. the application for a permit should be denied, or~~

12 ~~e. c.~~ whether any other appropriate relief should be granted.

13 2. Notice of the hearing ~~may be combined with the notice issued~~
14 ~~pursuant to subsection A of this section and shall be delivered to~~
15 ~~the alleged violator at least twenty (20) days prior to the time set~~
16 ~~for hearing. The notice shall be delivered to the alleged violator~~
17 ~~in accordance with the provisions of subsection C of this section.~~

18 3. After hearing, the Commission shall make findings of fact
19 and conclusions of law, and enter its order reflecting its decision
20 in the matter. The order of the Commission shall become final and
21 binding on all parties unless appealed to the Supreme Court as
22 provided in Section 318 of Title 75 of the Oklahoma Statutes within
23 sixty (60) days of the Commission's order. Except as otherwise
24

1 provided by this section, Sections 319 through 322 of Title 75 of
2 the Oklahoma Statutes shall be applicable to such appeals.

3 C. 1. Except as otherwise expressly provided by law, any
4 notice, order, or other instrument issued by or pursuant to
5 authority of the Commission may be served on any person affected
6 thereby personally, by publication, or by mailing a copy of the
7 notice, order, or other instrument by certified mail directed to the
8 person affected at the last-known post office address as shown by
9 the files or records of the Commission. Service shall be considered
10 complete if certified mail service is returned unclaimed,
11 undeliverable, unable to forward, vacant or refused. Proof of
12 service shall be made as in the case of service of a summons or by
13 publication or may be made by the affidavit of the person who did
14 the mailing.

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

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

21 ~~D. 1. The Commission shall provide notice and an opportunity~~
22 ~~for hearing to:~~

23
24

- 1 a. ~~the surface owner of real property where any~~
2 ~~corrective action is to be taken if such person is not~~
3 ~~the owner or operator of the storage tank system, and~~
4 b. ~~the owner of real property adjacent to the location of~~
5 ~~the corrective action if such real property owner will~~
6 ~~be adversely affected by the corrective action.~~

7 2. ~~The notice shall advise such real property owner or owners~~
8 ~~that the corrective action is to be taken and that the owner's~~
9 ~~cooperation will be required for that action to be taken. The~~
10 ~~Commission shall give the owner or owners of such real property, as~~
11 ~~the case might be, an opportunity for hearing and to present~~
12 ~~evidence on the matter.~~

13 E. 1. ~~The Commission is vested with the adjudicative authority~~
14 ~~to enter orders allowing a petroleum storage tank system owner,~~
15 ~~operator or otherwise responsible person access to property not~~
16 ~~owned by the tank owner, operator, or otherwise responsible person~~
17 ~~when necessary to investigate, remediate or perform corrective~~
18 ~~action as the result of a release. Actions shall be brought by the~~
19 ~~tank owner, operator or otherwise responsible person seeking access~~
20 ~~to the property not owned by the tank owner, operator, otherwise~~
21 ~~responsible person, or by the Director of the Petroleum Storage Tank~~
22 ~~Division.~~

23 2. ~~An order granting access shall only be entered upon a~~
24 ~~determination that access cannot be obtained by any other means and~~

1 ~~that the petroleum storage tank system owner, operator or otherwise~~
2 ~~responsible person seeking access has made a good faith effort to~~
3 ~~obtain access.~~

4 ~~3. The Commission shall determine the reasonable compensation,~~
5 ~~if any, to be paid to the owner of the property which is to be~~
6 ~~accessed for the use of the property to investigate, remediate or~~
7 ~~perform corrective action as the result of a release.~~

8 ~~4. An order granting access to property shall be upon such~~
9 ~~terms as to reasonably minimize the impact of the access upon the~~
10 ~~owner's use of the property and to protect the rights of the~~
11 ~~property owner.~~

12 SECTION 12. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 310.1 of Title 17, unless there
14 is created a duplication in numbering, reads as follows:

15 A. 1. The Commission shall provide notice and an opportunity
16 for hearing to:

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

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

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

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

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

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

24

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

5 SECTION 13. AMENDATORY 17 O.S. 2011, Section 311, is
6 amended to read as follows:

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

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

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

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

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

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

17 SECTION 14. AMENDATORY 17 O.S. 2011, Section 312, is
18 amended to read as follows:

19 Section 312. A. Enforcement of any action for an injunction or
20 recovery of any administrative fine or civil penalty assessed
21 pursuant to the Oklahoma Petroleum Storage Tank Regulation
22 Consolidation Act, Section 301 et seq. of this title, or rule
23 promulgated thereto may be brought by:
24

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

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

5 3. The Petroleum Storage Tank Division of the Corporation
6 Commission on behalf of the State of Oklahoma before an
7 administrative law judge of the Commission, or as otherwise
8 authorized by law.

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

17 1. Enjoining further releases;

18 2. Ordering the design, construction, installation or operation
19 of alternate facilities;

20 3. Ordering the removal of facilities, contaminated soils and
21 the restoration of the environment;

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

24

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

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

8 C. All judgments or fines assessed against any corporation,
9 person or firm for the violation of any order or regulation shall be
10 a first lien on all property of such corporation, person or firm
11 within the state, and it shall be the duty of the Corporation
12 Commission, if such judgment or fine is not paid within thirty (30)
13 days after the rendition of such judgment or fine, to issue an
14 execution, directed to the Marshal of the Corporation Commission,
15 commanding him to seize sufficient property of such corporation,
16 person or firm to satisfy the fine or judgment. It shall be the
17 duty of the Marshal to sell or dispose of properties levied on by
18 reason of an execution issued by the Commission, in like manner as
19 now required by sheriffs of this state, for the sale of the property
20 levied on by virtue of an execution issued on a judgment of a
21 district court.

22 SECTION 15. AMENDATORY 17 O.S. 2011, Section 313, is
23 amended to read as follows:
24

1 Section 313. A. Any records, reports or information obtained
2 pursuant to the Oklahoma Petroleum Storage Tank ~~Regulation~~
3 Consolidation Act shall be available to the public except as
4 provided in subsection B of this section.

5 B. Upon a showing satisfactory to the Corporation Commission by
6 any person that records, reports or information, or a particular
7 part thereof is made public, would divulge production or sales
8 figures or methods, processes or production unique to such person or
9 would otherwise tend to affect adversely the competitive position of
10 such person by revealing trade secrets, the Commission shall
11 consider such record, report or information or particular portion
12 thereof, confidential.

13 C. Nothing in this section shall be construed to prevent
14 disclosures of such report, record or information to federal or
15 state representatives as necessary for purposes of administration of
16 any federal or state laws or when relevant to proceedings pursuant
17 to the Oklahoma Petroleum Storage Tank ~~Regulation~~ Consolidation Act.

18 D. Information concerning groundwater quality and the presence
19 or concentration of regulated substances or chemicals of concern, in
20 soils or groundwater shall not be considered confidential by the
21 Commission.

22 SECTION 16. AMENDATORY 17 O.S. 2011, Section 314, is
23 amended to read as follows:

24

1 Section 314. The Corporation Commission shall prepare an annual
2 compilation of new reported releases at the end of the fiscal year,
3 make ~~that report~~ available to the public and provide that report to
4 the Storage Tank Advisory Council, the Legislature and to the
5 Governor. The report shall contain, ~~for each reported release:~~

6 1. ~~The corrective action or other response taken by the owner,~~
7 ~~operator or the Commission~~ number of petroleum release cases
8 activated during the fiscal year; and

9 2. ~~Any information or enforcement action taken by the~~
10 ~~Commission against the owner or operator responsible for the release~~
11 The number of petroleum release cases closed during the fiscal year;
12 and

13 3. The number of petroleum release cases closed since
14 inception.

15 SECTION 17. AMENDATORY 17 O.S. 2011, Section 315, as
16 amended by Section 61, Chapter 304, O.S.L. 2012 (17 O.S. Supp. 2017,
17 Section 315), is amended to read as follows:

18 Section 315. There is hereby created in the State Treasury a
19 revolving fund for the Corporation Commission, to be designated the
20 "Corporation Commission Storage Tank ~~Regulation~~ Revolving Fund",
21 (Storage Tank Revolving Fund). The fund shall be a continuing fund,
22 not subject to fiscal year limitations, and shall consist of all
23 monies received by the Commission, from:

1 1. The proceeds of any fees imposed pursuant to the provisions
2 of the Oklahoma Petroleum Storage Tank ~~Regulation~~ Consolidation Act,
3 Section 301 et seq. of this title;

4 2. Interest attributable to investment of monies in the
5 Corporation Commission Storage Tank ~~Regulation~~ Revolving Fund;

6 3. Monies received by the Commission in the form of gifts,
7 grants other than federal grants, reimbursements or appropriations
8 from any source intended to be used for the purposes of the
9 revolving fund;

10 4. Fines, forfeitures, administrative fees, settlement
11 proceeds; and

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

14 All monies accruing to the credit of said revolving fund are
15 hereby appropriated and may be budgeted and expended by the
16 Commission for the purpose of implementing the provisions of the
17 Oklahoma Petroleum Storage Tank ~~Regulation~~ Consolidation Act and the
18 rules promulgated thereto. Expenditures from said revolving fund
19 shall be made upon warrants issued by the State Treasurer against
20 claims filed as prescribed by law with the Director of the Office of
21 Management and Enterprise Services for approval and payment.

22 SECTION 18. AMENDATORY 17 O.S. 2011, Section 316, is
23 amended to read as follows:

24

1 Section 316. No county, incorporated or nonincorporated
2 municipality, state agency or political subdivision shall enact
3 ordinances or promulgate any rules, ordinances ~~or~~, regulations or
4 requirements governing any aspect of petroleum storage ~~tanks~~ tank
5 system regulation within the State of Oklahoma that shall be in
6 conflict with any of the provisions of the Oklahoma Petroleum
7 Storage Tank ~~Regulation~~ Consolidation Act, ~~or~~ any rules promulgated
8 or any orders issued by the Corporation Commission pursuant to the
9 provisions of the Oklahoma Petroleum Storage Tank ~~Regulation~~
10 Consolidation Act.

11 SECTION 19. AMENDATORY 17 O.S. 2011, Section 318, is
12 amended to read as follows:

13 Section 318. A. 1. The Corporation Commission is authorized
14 to ~~develop and~~ implement a program for the licensing of petroleum
15 storage tank professionals. Persons licensed by the Commission as
16 ~~petroleum storage tank professionals shall be environmental~~
17 ~~professionals possessing such~~ environmental consultants must have
18 the training, education and experience as may be required by the
19 Commission. ~~Environmental professionals from different fields~~
20 ~~possessing equal levels of education and experience, and maintaining~~
21 ~~or holding professional license, certification or registration,~~
22 ~~whether from a state agency or a recognized private organization,~~
23 ~~shall be subject to the same requirements to become licensed.~~
24 Persons seeking to become licensed may be required to demonstrate

1 knowledge, experience and expertise of soil and water protection and
2 remediation techniques and the regulation of petroleum storage
3 tanks.

4 2. The Corporation Commission shall require that all
5 contractors and their employees participating in the removal of
6 storage tanks and the corrective action or remediation of
7 contaminated tank sites meet all training and other requirements of
8 federal law and regulations, and state statutes.

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

11 2. The Commission shall promulgate rules establishing the basis
12 for denial, suspension, revocation, or reinstatement of a petroleum
13 storage tank professional license, and establishing procedures for
14 disciplinary actions.

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

17 4. Proceedings relating to the suspension or revocation of a
18 license issued pursuant to this section are subject to the hearing,
19 penalty and enforcement provisions of the Oklahoma Petroleum Storage
20 Tank Regulation Consolidation Act.

21 5. A person whose license has been revoked in a proceeding
22 brought pursuant to this section may apply for a new license after
23 the expiration of a term of no less than one (1) year and no more
24 than five (5) years from the date of revocation, depending on the

1 decision of the Director of the Petroleum Storage Tank Division of
2 the Corporation Commission. Upon a subsequent determination of
3 violation of:

- 4 a. the Oklahoma Petroleum Storage Tank ~~Regulation~~
5 Consolidation Act,
- 6 b. the Oklahoma Petroleum Storage Tank Indemnity ~~Program~~
7 Fund, or
- 8 c. promulgated rules,

9 the Commission may, after notice and hearing, revoke a petroleum
10 storage tank professional license for a term no less than five (5)
11 years.

12 ~~C. The Corporation Commission shall require that all~~
13 ~~contractors and their employees participating in the removal of~~
14 ~~storage tanks and the remediation of contaminated tank sites meet~~
15 ~~all training and other requirements of federal law and regulations~~
16 ~~and state statutes. The Commission may compile, maintain and make~~
17 ~~available to the public a list of contractors who have demonstrated~~
18 ~~to the Commission that they meet such requirements.~~

19 SECTION 20. AMENDATORY 17 O.S. 2011, Section 319, is
20 amended to read as follows:

21 Section 319. A. The Corporation Commission is authorized to
22 implement, ~~or contract for,~~ an Underground Storage Tank Operator
23 Training Program as required to comply with the provisions of the
24 federal Energy Policy Act of 2005.

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

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

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

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

15 3. Persons with daily, on-site primary responsibility for
16 addressing emergencies presented by a spill or release from an
17 underground storage tank.

18 D. Storage tank operators shall be required to complete the
19 training program required by the Commission to obtain ~~an annual~~
20 ~~permit~~ certification for the operation of underground storage tanks.

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

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

13 ~~G.~~ The Commission is authorized to promulgate any rules
14 necessary to comply with the provisions of this section.

15 SECTION 21. AMENDATORY 17 O.S. 2011, Section 322, as
16 amended by Section 62, Chapter 304, O.S.L. 2012 (17 O.S. Supp. 2017,
17 Section 322), is amended to read as follows:

18 Section 322. A. 1. Effective July 1, 1998, there is hereby
19 established the Petroleum Storage Tank Division within the
20 Corporation Commission, which shall have separate budget activities
21 and subactivities from any other division of the Commission.

22 2. The Petroleum Storage Tank Division shall be funded by
23 available federal funds, grants, fees, and appropriations.
24

1 B. 1. The Petroleum Storage Tank Division shall be the sole
2 division of the Commission with jurisdiction over releases and
3 spills from petroleum storage tanks.

4 2. The acts and programs specified by this paragraph shall
5 constitute a part of the Oklahoma Petroleum Storage Tank ~~Reform~~
6 Consolidation Act and shall be subject to the jurisdiction of the
7 Division. This jurisdiction shall include, but not be limited to,
8 the administration of the following previous acts, programs, funds,
9 and inspections:

10 a. the Oklahoma Petroleum Storage Tank ~~Regulation~~
11 Consolidation Act,

12 b. ~~the Oklahoma Petroleum Storage Tank Release Indemnity~~
13 ~~Program,~~

14 c. the Oklahoma Petroleum Storage Tank ~~Release~~
15 ~~Environmental Cleanup~~ Indemnity Fund,

16 ~~d.~~ c. the Oklahoma Petroleum Storage Tank ~~Regulation~~
17 ~~Revolving~~ Fund,

18 e. d. the Oklahoma Leaking Underground Storage Tank Trust
19 Fund,

20 ~~f.~~ ~~Fuel~~

21 e. the Oklahoma Leaking Underground Storage Tank Trust
22 Revolving Fund,

23 f. Compliance and Inspection and Fuel Laboratory, and

24 g. Petroleum Storage Tank Registration, Licensing, and

1 h. Antifreeze.

2 ~~All of the powers and duties associated with the administration~~
3 ~~of these programs, funds and services are hereby transferred to the~~
4 ~~Petroleum Storage Tank Division, together with all unexpended funds,~~
5 ~~property, records and any outstanding financial obligations and~~
6 ~~encumbrances related to the activities of each.~~

7 3. ~~All personnel currently employed in these programs are~~
8 ~~hereby transferred to the new Petroleum Storage Tank Division. All~~
9 ~~positions in the Petroleum Storage Tank Division, except for fuel~~
10 ~~specialists who inspect fuel storage tanks and pumps for the Fuel~~
11 ~~Division, shall be unclassified. Those employees who are classified~~
12 ~~at on the time effective date of their transfer to the Petroleum~~
13 ~~Storage Tank Division by this act may elect to remain classified~~
14 ~~pursuant to Section 840-4.2 of Title 74 of the Oklahoma Statutes.~~

15 4. All rules promulgated and orders entered by the Oklahoma
16 Corporation Commission prior to the effective date of this act
17 related to the programs, funds and services ~~transferred by this~~
18 ~~section shall be transferred to of the Petroleum Storage Tank~~
19 ~~Division and shall remain in full force and effect until overturned,~~
20 ~~amended, modified, revoked or repealed by the Corporation Commission~~
21 ~~and shall be enforced by the Petroleum Storage Tank Division.~~

22 C. 1. The Director of the Petroleum Storage Tank Division
23 shall be appointed by the ~~General Administrator~~ Director of
24 Administration of the Corporation Commission ~~from a list of at least~~

1 ~~three candidates recruited and screened by the Office of Management~~
2 ~~and Enterprise Services. The Office of Management and Enterprise~~
3 ~~Services shall develop such employment qualifications and standards~~
4 ~~for education and experience for the position of Director of the~~
5 ~~Petroleum Storage Tank Division as are appropriate based upon the~~
6 ~~responsibilities and duties of the Director pursuant to this act.~~
7 ~~Minimum qualifications for the Director shall include a bachelor's~~
8 ~~degree from an accredited college or university and five (5) years'~~
9 ~~experience in a supervisory capacity in an administrative, personnel~~
10 ~~management or regulatory position, or an attorney with at least ten~~
11 ~~(10) years' involvement with state governmental programs. The~~
12 ~~Office of Management and Enterprise Services shall complete its~~
13 ~~development of employment qualifications and standards and~~
14 ~~recruitment and screening of the initial candidates for appointment~~
15 ~~of the first permanent Director by December 1, 1998. All other~~
16 ~~employees of the Petroleum Storage Tank Division shall be hired by~~
17 ~~the Director of the Petroleum Storage Tank Division with the~~
18 ~~approval of the General Administrator.~~

19 2. The Director shall provide for the administration of the
20 Petroleum Storage Tank Division and shall:

- 21 a. develop the organizational framework of the Petroleum
22 Storage Tank Division,
- 23 b. define duties and set salaries of employees, to employ
24 a sufficient number of employees to accomplish the

1 duties and responsibilities of the programs, funds and
2 services of the Petroleum Storage Tank Division,
3 including but not limited to such assistants,
4 chemists, geologists, hydrologists, storage tank
5 professionals, engineers, administrative, clerical and
6 technical personnel, investigators, aides and such
7 other personnel, either on a full-time, part-time, fee
8 or contractual basis, as in the judgment and
9 discretion of the Director shall be deemed necessary,
10 expedient, convenient or appropriate to the

11 performance or carrying out of any of the purposes,
12 objectives, responsibilities or statutory provisions
13 relating to the Petroleum Storage Tank Division,
14 c. establish internal policies and procedures for the
15 proper and efficient administration of the Division,

16 d. clearly delineate the duties and responsibilities of
17 the various programs as prescribed by law within the
18 jurisdiction of the division,

19 e. create and implement an internal coordinated
20 management system among the Storage Tank Regulation
21 Program and the ~~Oklahoma Petroleum Storage Tank~~
22 ~~Release Indemnity Program Fund~~, and

23 f. the Indemnity Fund Administrator and all other
24 employees of the Indemnity Fund shall be hired by the

1 Director of the Petroleum Storage Tank Division of the
2 Corporation Commission,

3 g. Indemnity Fund employees shall be in the unclassified
4 service and shall be exempt from the agency full-time-
5 equivalent limit. All employees involved in reviewing
6 and approving claims and in the approval and issuance
7 of payments shall be employees of the Indemnity Fund
8 under the supervision of the Director or Director's
9 designee,

10 h. the Director is authorized to employ temporary
11 workers, contract labor, or to contract with a private
12 company as may be prudent to properly administer the
13 Indemnity Fund, and

14 i. exercise all incidental powers which are necessary and
15 proper to implement the purposes of the Division
16 pursuant to the Oklahoma Petroleum Storage Tank ~~Reform~~
17 Consolidation Act and to implement all programs within
18 the Division's jurisdiction.

19 SECTION 22. AMENDATORY 17 O.S. 2011, Section 324, is
20 amended to read as follows:

21 Section 324. A. Monies in the Petroleum Storage Tank Indemnity
22 Fund shall only be expended for:

23 1. Reimbursements to eligible persons, unless duly assigned to
24 another, for eligible expenses including the costs to identify and

1 confirm the existence of a suspected release when so instructed by
2 the ~~regulatory program of the~~ Petroleum Storage Tank Division or
3 when such expenses ~~were~~ as determined by the Petroleum Storage Tank
4 Division as necessary and appropriate to protect the health, safety
5 and welfare of the public and the environment;

6 ~~2. Reimbursement of actual costs incurred by the Petroleum~~
7 ~~Storage Tank Division in evaluating claims and determining whether~~
8 ~~specific claims qualify for payment or reimbursement by the Oklahoma~~
9 ~~Petroleum Storage Tank Release Indemnity Program;~~

10 ~~3.~~ Reimbursement of actual costs incurred by the Division for
11 the administration of the ~~Petroleum Storage Tank Indemnity Fund; and~~

12 ~~4.~~ 3. Purchase real property, personal property and easements
13 in conjunction with ~~remediation~~ corrective action efforts and/or the
14 establishment of an alternative water supply as provided for in
15 Section 306 of this title.

16 ~~B. Actual costs incurred by the Division to be reimbursed by~~
17 ~~the Petroleum Storage Tank Indemnity Fund shall be documented and~~
18 ~~reviewed in the same manner as requests for reimbursement submitted~~
19 ~~by tank owners, operators or other eligible persons for the purpose~~
20 ~~of obtaining reimbursement from the Petroleum Storage Tank Indemnity~~
21 ~~Fund;~~

22 4. Reimbursement of actual costs incurred by the Petroleum
23 Storage Tank Division for the administration of the Indemnity Fund
24 and costs incurred for the purpose of evaluating claims and

1 determining whether specific claims qualify for payment or
2 reimbursement from the Indemnity Fund. Any costs incurred by and
3 reimbursed to the Commission pursuant to the provisions of the
4 Indemnity Fund shall not exceed the actual expenditures made by the
5 Commission to implement the provisions of the Indemnity Fund; and

6 5. Payment of claims from the Indemnity Fund shall not become
7 or be construed to be an obligation of this state. No claims
8 submitted for reimbursement from the Indemnity Fund shall be paid
9 with state monies.

10 B. The Director of the Petroleum Storage Tank Division shall
11 hire an Administrator who shall administer the Indemnity Fund for
12 the benefit of those persons determined to be eligible by the
13 Administrator to receive total or partial reimbursement for:

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

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

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

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

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

1 D. 1. Costs incurred as a result of a release from a storage
2 tank system owned or operated by this state are reimbursable
3 pursuant to the provisions of the Oklahoma Petroleum Storage Tank
4 Consolidation Act. State-owned facilities shall take the proper
5 corrective action as may be necessary to protect the environment
6 from a leaking storage tank system. An agency of the state may also
7 access said fund for reimbursement when it purchases property
8 containing storage tanks from an owner or operator qualified to
9 access the Indemnity Fund and upon which an eligible release has
10 occurred prior to the agency acquiring the property.

11 2. Costs incurred as a result of a release from a storage tank
12 system owned or operated by a Class I railroad or the federal
13 government are not reimbursable pursuant to the provisions of the
14 Oklahoma Petroleum Storage Tank Consolidation Act.

15 E. The Indemnity Fund shall consist of:

16 1. All monies received by the Commission as proceeds from the
17 assessment imposed pursuant to Section 25 of this act;

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

20 3. Money received by the Commission in the form of gifts,
21 grants, reimbursements or from any other source intended to be used
22 for the purposes specified by or collected pursuant to the
23 provisions of the Oklahoma Petroleum Storage Tank Consolidation Act.

1 F. 1. Except as provided in this section, the monies deposited
2 in the Indemnity Fund shall at no time become monies of the state
3 and shall not become part of the general budget of the Commission or
4 any other state agency. Except as otherwise authorized by the
5 Oklahoma Petroleum Storage Tank Consolidation Act, no monies from
6 the Indemnity Fund shall be transferred for any purpose to any other
7 state agency or any account of the Commission or be used for the
8 purpose of contracting with any other state agency or reimbursing
9 any other state agency for any expense.

10 2. Monies from the Indemnity Fund may be used to pay or
11 reimburse the Commission for the salary and indirect expense of any
12 employee of the Petroleum Storage Tank Division while such employee
13 is performing work involved in the regulation of storage tanks
14 pursuant to the Oklahoma Petroleum Storage Tank Consolidation Act or
15 the administration of programs pursuant to said act, including the
16 development, review and approval of corrective action plans as
17 required by the regulatory programs. The Indemnity Fund shall pay
18 for all costs associated with administering the Compliance and
19 Inspection Department including, but not limited to, automobile and
20 travel costs, computer software and equipment, and other costs
21 incurred in administering the Compliance and Inspection Department.
22 The Commission shall cross-train the field staff of the Petroleum
23 Storage Tank Division to perform inspections and related field
24 activities for all programs within the Division and the Indemnity

1 Fund may reimburse the Division the actual costs of inspection
2 services performed on behalf of the Indemnity Fund.

3 SECTION 23. AMENDATORY 17 O.S. 2011, Section 325, is
4 amended to read as follows:

5 Section 325. A. The Director of the Petroleum Storage Tank
6 Division shall make a written report on ~~a quarterly~~ an annual basis
7 to the Corporation Commissioners, the Storage Tank Advisory Council,
8 the Speaker of the House of Representatives and the President Pro
9 Tempore of the Senate detailing ~~expenditures on personnel and~~
10 ~~equipment and other expenses concerning and incurred as a result of~~
11 ~~administering the Division. The report shall include salaries and~~
12 ~~fringe benefits of all full-time equivalent employees of the~~
13 ~~Division and reimbursements made to the Corporation Commission by~~
14 ~~the Division for administrative or support services provided by the~~
15 ~~Commission to the Division~~ the following:

16 1. The total number of storage tank applicants requesting
17 disbursement from the Indemnity Fund during the preceding year;

18 2. The total number of storage tank applicants receiving
19 payment during the preceding year and total amount disbursed for
20 such payments;

21 3. The average time frame for providing disbursements to
22 applicants;

23 4. The total amount of funds needed to complete the corrective
24 action and achieve closure of all release cases; and

1 5. Any other information requested by the Speaker of the House
2 of Representatives or the President Pro Tempore of the Senate
3 regarding the Indemnity Fund program.

4 B. The Oklahoma Tax Commission shall submit an annual report to
5 the Speaker of the House of Representatives and the President Pro
6 Tempore of the Senate detailing the amount of assessments collected
7 for deposit to the Indemnity Fund and to the State Transportation
8 Fund.

9 C. The Oklahoma Department of Transportation shall submit an
10 annual report to the Speaker of the House of Representatives and the
11 President Pro Tempore of the Senate detailing the expenditures made
12 from the revenue received from the assessment levied pursuant to
13 Section 25 of this act.

14 D. The Oklahoma Department of Environmental Quality shall
15 submit an annual report to the Speaker of the House of
16 Representatives and the President Pro Tempore of the Senate
17 detailing the expenditures made from the revenue received from the
18 assessment levied pursuant to Section 25 of this act.

19 E. By December 1, 1998, and every year thereafter, the State
20 Auditor and Inspector shall conduct an independent audit of the
21 books, records, files and other such documents of the Corporation
22 Commission pertaining to and which relate to the administration of
23 the Petroleum Storage Tank Indemnity Fund. The audit shall include
24 but shall not be limited to a review of agency compliance with state

1 statutes regarding the Indemnity Fund, internal control procedures,
2 adequacy of claim process expenditures from and debits of the
3 Indemnity Fund regarding administration, personnel, operating and
4 other expenses charged by the Corporation Commission; the duties
5 performed in detail by agency personnel and Indemnity Fund personnel
6 for which payment is made from the Indemnity Fund, and
7 recommendations for improving claim processing, equipment needed for
8 claim processing, internal control or structure for administering
9 the Indemnity Fund; and such other areas deemed necessary by the
10 State Auditor and Inspector.

11 F. The cost of the audit shall be borne by the Indemnity Fund.

12 G. Copies of the audit shall be submitted to the State Auditor
13 and Inspector, the Governor, the Speaker of the House of
14 Representatives, the President Pro Tempore of the Senate and the
15 Chairs of the Appropriation Committees of both the Oklahoma House of
16 Representatives and the Oklahoma State Senate.

17 SECTION 24. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 327 of Title 17, unless there is
19 created a duplication in numbering, reads as follows:

20 A. Any Petroleum Storage Tank Indemnity Fund bill which would
21 change the distribution of the assessment imposed pursuant to the
22 provisions of Section 25 of this act and decrease the amount
23 required to be deposited in the Petroleum Storage Tank Indemnity
24

1 Fund shall require approval of not less than two-thirds (2/3) of the
2 membership of each House of the Legislature to become law.

3 B. The provisions of subsection A of this section shall not
4 apply to any Petroleum Storage Tank Indemnity Fund bill that
5 appropriates monies from the Petroleum Storage Tank Indemnity Fund
6 for purposes of increasing the costs of administering the Indemnity
7 Fund or related administrative functions of the Corporation
8 Commission.

9 C. For purposes of this section, a "Petroleum Storage Tank
10 Indemnity Fund bill" shall mean any bill which amends any or all of
11 Section 30 of this act or any bill that impacts the distribution of
12 the assessment set forth in Section 30 of this act of the Oklahoma
13 Statutes.

14 SECTION 25. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 327.1 of Title 17, unless there
16 is created a duplication in numbering, reads as follows:

17 A. Except as otherwise provided by this section, there shall be
18 an assessment of one cent (\$0.01) per gallon upon the sale of each
19 gallon of motor fuel used or consumed in this state. The assessment
20 imposed pursuant to the provisions of this section shall be for the
21 purposes of providing revenue to:

22 1. The Corporation Commission Revolving Fund pursuant to
23 paragraph 1 of subsection C of this section;

24

1 2. The Petroleum Storage Tank Indemnity Fund pursuant to
2 paragraphs 3 and 4 of subsection C of this section;

3 3. The State Transportation Fund pursuant to subparagraph b of
4 paragraph 5 of subsection C of this section;

5 4. The Corporation Commission Storage Tank Revolving Fund
6 pursuant to subparagraph a of paragraph 5 of subsection C of this
7 section;

8 5. The Department of Environmental Quality Revolving Fund
9 pursuant to paragraph 2 of subsection C of this section; and

10 6. The Weigh Station Improvement Revolving Fund pursuant to
11 paragraph 3 of subsection C of this section.

12 The assessment shall be imposed at the time of the sale of the
13 motor fuel and shall be precollected and remitted to the Oklahoma
14 Tax Commission in accordance with Section 500.1 et seq. of Title 68
15 of the Oklahoma Statutes and as provided by Section 26 of this act.

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

- 18 a. the state government,
- 19 b. the federal government,
- 20 c. Class I and Class II railroads, and
- 21 d. sales for exportation outside of this state by a
22 licensed exporter.

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

- 1 a. motor fuel used solely and exclusively in district-
2 owned or leased public school buses, FFA and 4-H club
3 trucks for the purposes of legally transporting public
4 school children, or in the operation of vehicles used
5 in driver training,
- 6 b. motor fuels used solely and exclusively to propel
7 motor vehicles on the public roads and highways of
8 this state when leased or owned and being operated for
9 the sole benefit of a county, city, town, volunteer
10 fire department with a state certification and rating,
11 rural electric cooperative, rural water and sewer
12 district, rural ambulance service district, or
13 federally recognized Indian tribe as specified by
14 Section 500.10 of Title 68 of the Oklahoma Statutes,
- 15 c. motor fuel to counties and cities and towns,
- 16 d. diesel fuel for off-road purposes specified by Section
17 500.10 of Title 68 of the Oklahoma Statutes,
- 18 e. motor fuel used for agricultural purposes specified by
19 Section 500.10 of Title 68 of the Oklahoma Statutes,
20 and
- 21 f. motor fuel used in aircraft or in aircraft engines
22 pursuant to Section 500.10 of Title 68 of the Oklahoma
23 Statutes.
24

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

3 1. The first One Million Dollars (\$1,000,000.00) collected
4 during each fiscal year shall be deposited into the Corporation
5 Commission Revolving Fund created in Section 180.7 of Title 17 of
6 the Oklahoma Statutes;

7 2. After deduction of the amount required pursuant to paragraph
8 1 of this subsection, eight percent (8%) of the remainder of the
9 revenue collected during each fiscal year shall be deposited into
10 the Department of Environmental Quality Revolving Fund created in
11 Section 2-3-401 of Title 27A of the Oklahoma Statutes;

12 3. Until the total amount deposited since July 1, 2008, in the
13 Weigh Station Improvement Revolving Fund totals Eighty-one Million
14 Dollars (\$81,000,000.00), Five Hundred Thousand Dollars
15 (\$500,000.00) per month of all revenue from the assessment received
16 over the amount required by paragraphs 1 and 2 of this subsection
17 shall be deposited in the Weigh Station Improvement Revolving Fund,
18 created in Section 1167 of Title 47 of the Oklahoma Statutes and
19 shall be used solely for the purpose of constructing weigh stations;

20 4. After the total amount deposited in the Weigh Station
21 Improvement Revolving Fund totals Eighty-one Million Dollars
22 (\$81,000,000.00), any revenue from the assessment received over the
23 amounts required in paragraphs 1 and 2 of this subsection shall be
24 deposited in the Petroleum Storage Tank Indemnity Fund created in

1 Section 22 of this act in amounts necessary to maintain the
2 maintenance level of the Indemnity Fund pursuant to subsection D of
3 this section; and

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

7 a. the first One Million Dollars (\$1,000,000.00)
8 collected during each fiscal year shall be deposited
9 in the Corporation Commission Storage Tank Revolving
10 Fund for the purpose of implementing the provisions of
11 the Oklahoma Petroleum Storage Tank Consolidation Act
12 and the rules promulgated thereunder, and

13 b. the balance of the monies collected during each fiscal
14 year shall be deposited in the State Transportation
15 Fund and shall be used solely for the purpose of
16 matching Federal-Aid funds for the construction of
17 highways and roads in this state.

18 D. 1. If at any time the Petroleum Storage Tank Indemnity Fund
19 falls below the required maintenance level on or before December 31,
20 2032, the Administrator shall notify the Tax Commission that the
21 Indemnity Fund has fallen below the required maintenance level and
22 that the assessment is to be deposited into the Indemnity Fund for
23 at least three (3) calendar months pursuant to the provisions of
24 paragraph 2 of this subsection.

1 2. At least fifteen (15) days prior to the calendar month in
2 which the assessment is to be collected for credit to the Indemnity
3 Fund, the Tax Commission, upon notification by the Administrator
4 that the Indemnity Fund has fallen below the required maintenance
5 level, shall notify the suppliers, licensed importers or other
6 appropriate persons that the assessment is being imposed for
7 purposes of maintaining the Indemnity Fund. The notice shall
8 include a date certain upon which to begin collecting the assessment
9 for credit to the Indemnity Fund and a date certain for ending the
10 assessment for credit to the Indemnity Fund. Upon notice by the Tax
11 Commission that the assessment imposed is for credit to the
12 Indemnity Fund, the supplier, licensed importer or other appropriate
13 person shall also assess, for the specified period required by the
14 Tax Commission, the sales of:

- 15 a. motor fuel used solely and exclusively in district-
16 owned or leased public school buses, FFA and 4-H Club
17 trucks for the purposes of legally transporting public
18 school children or in the operation of vehicles used
19 in driver's training,
- 20 b. motor fuels used solely and exclusively to propel
21 motor vehicles on the public roads and highways of the
22 state when leased or owned and being operated for the
23 sole benefit of a county, city or town, volunteer fire
24 department with a state certification and rating,

- 1 rural electric cooperative, rural water and sewer
2 district, rural ambulance service district, or
3 federally recognized Indian tribe as specified by
4 Section 500.10 of Title 68 of the Oklahoma Statutes,
5 c. motor fuel to counties and cities and towns,
6 d. diesel fuel for off-road purposes specified by Section
7 500.10 of Title 68 of the Oklahoma Statutes,
8 e. motor fuel used for agricultural purposes specified by
9 Section 500.10 of Title 68 of the Oklahoma Statutes,
10 and
11 f. motor fuel used in aircraft and aircraft engines
12 pursuant to Section 500.10 of Title 68 of the Oklahoma
13 Statutes.

14 3. After the collection period required by this subsection has
15 expired, the revenue collected from the assessment shall be again
16 deposited in the Corporation Commission Storage Tank Revolving Fund
17 and the State Transportation Fund as provided in paragraph 5 of
18 subsection C of this section.

19 SECTION 26. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 327.2 of Title 17, unless there
21 is created a duplication in numbering, reads as follows:

22 A. It shall be the duty of every supplier, licensed importer or
23 any other appropriate person under this act to precollect and remit
24 any assessment so precollected pursuant to the provisions of this

1 act and Section 25 of this act and make and submit an assessment
2 collection report as required by this section.

3 B. 1. The assessment imposed pursuant to the provision of
4 Section 25 of this act shall be collected and remitted to the
5 Oklahoma Tax Commission at the same time and in the same manner as
6 provided by law for the collection and remission of tax levies upon
7 the sale of gasoline within this state. The basis for computation
8 of the amount due shall be one hundred percent (100%) of the net
9 gallonage reported to the Tax Commission for assessment.

10 2. Each supplier, licensed importer or other appropriate person
11 shall make and submit for each calendar month that the assessment is
12 imposed an itemized and verified assessment collection report
13 showing:

14 a. the name of the supplier, licensed importer or other
15 appropriate person collecting the assessment,

16 b. the total amount of motor fuel, diesel fuel and
17 blending materials sold during the preceding month,

18 c. the total amount of assessments collected by the
19 supplier, licensed importer or other appropriate
20 person during the preceding month, and

21 d. such further information the Tax Commission may
22 require to enable it to compute correctly and collect
23 the assessment made pursuant to this act.

24

1 The reports shall be filed at the same time and in like manner
2 as required for gasoline tax reports pursuant to this act.

3 C. Every supplier, licensed importer or other appropriate
4 person shall keep and preserve suitable records of the gross sales
5 of motor fuel, diesel fuel and blending materials, the assessment
6 collected and such other pertinent records and documents which may
7 be necessary to determine the amount of assessment due as will
8 substantiate and prove the accuracy of the reports. All the records
9 shall be preserved for a period of three (3) years, unless the Tax
10 Commission, in writing, has authorized their destruction or disposal
11 at an earlier date. The records shall be open for examination by
12 employees of the Tax Commission, the Corporation Commission or the
13 Oklahoma Department of Transportation in the performance of their
14 duties pursuant to law.

15 D. Any supplier, licensed importer or other appropriate person
16 who fails to comply with any provisions of this section shall pay a
17 penalty imposed by the Tax Commission. Any monies collected for
18 payment of the penalty shall be deposited in the same manner as the
19 assessments pursuant to the provisions of subsection B of Section 25
20 of this act. The penalty shall be equal to ten percent (10%) of the
21 gross amount of the assessments received by the supplier, licensed
22 importer or other appropriate person for the report period that the
23 supplier, licensed importer or other appropriate person failed to
24

1 timely mail the required report or remit any monies collected
2 pursuant to the provisions of this act.

3 E. The Tax Commission shall keep a separate accounting of all
4 the monies received pursuant to this section and together with any
5 interests and penalties thereon shall deposit such monies monthly as
6 provided in subsection B of Section 25 of this act.

7 SECTION 27. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 327.3 of Title 17, unless there
9 is created a duplication in numbering, reads as follows:

10 A. The Oklahoma Petroleum Storage Tank Indemnity Program shall
11 provide reimbursement to eligible persons for allowable costs
12 resulting from an eligible release pursuant to the provisions of
13 this section.

14 B. 1. The Oklahoma Petroleum Storage Tank Indemnity Fund:

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

1 b. shall require that an eligible person or a property
2 owner whose off-site property has been contaminated by
3 a release shall not retain an environmental consultant
4 to conduct the remediation of the release in which the
5 eligible person, property owner or impacted party has
6 more than a ten percent (10%) interest ownership, is
7 an employee, or is an officer of the environmental
8 consultant, and

9 c. may require the owner or operator to submit
10 documentation evidencing proof of such competitive
11 bidding.

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

19 3. Professional engineering, geological, land surveying and
20 other professional services or services provided by a Commission-
21 licensed storage tank environmental consultant required for
22 investigation and the preparation of corrective action plans or
23 proposed corrective action plans and oversight of corrective action
24 shall be selected based upon professional qualifications and

1 technical experience of the consultant at a fair and reasonable fee
2 as negotiated between the eligible person and his or her
3 environmental consultant.

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

20 D. 1. a. The Administrator shall deny or approve and pay, in
21 whole or in part, the application for reimbursement on
22 behalf of or to eligible persons and shall complete
23 initial reimbursement within ninety (90) days after
24 receipt of the complete application including but not

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

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

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

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

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

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

15 4. For eligible releases requiring extensive corrective action,
16 the Administrator is authorized to make an initial payment and
17 periodic supplemental payments for reimbursements to eligible
18 persons for ongoing reimbursable costs actually incurred. An
19 eligible person intending to file for supplemental payments for
20 reimbursement shall submit work plans for implementation of the
21 corrective action plan approved by the Commission's regulatory
22 program pursuant to the Oklahoma Petroleum Storage Tank
23 Consolidation Act, or for other work which is proposed to be
24 performed. Such work plans shall include, but not be limited to,

1 the work to be completed, schedule of actions to be taken and
2 estimates of costs to be reimbursed. Such information may be
3 submitted with the application for reimbursement or whenever
4 appropriate. Such work plans shall be submitted for informational
5 purposes only. After approval of the application, the Administrator
6 shall have thirty (30) days from the date of receipt of a claim for
7 supplemental payment in which to approve and pay or deny the
8 supplemental claim. The thirty-day time for review may be extended
9 by the Administrator for an additional thirty (30) days upon giving
10 the applicant written notice of such intent to extend no later than
11 twenty (20) days from the date of receipt of the claim. If the
12 claim for payment is included with the application for
13 reimbursement, paragraph 1 of this subsection shall control.

14 E. 1. For reimbursement to any person the following conditions
15 apply:

- 16 a. the person claiming reimbursement must be an eligible
17 person,
- 18 b. the eligible person must have been in substantial
19 compliance with the applicable rules promulgated
20 pursuant to the provisions of the Oklahoma Petroleum
21 Storage Tank Indemnity Fund and the Oklahoma Storage
22 Tank Consolidation Act at the time of the reporting of
23 the release,

24

- 1 c. allowable costs resulting from a release must have
- 2 been incurred on or after December 23, 1988,
- 3 d. the Commission determined that the release no longer
- 4 poses a threat to the public health and welfare or the
- 5 environment,
- 6 e. the Commission was given adequate notice by such owner
- 7 or operator of the release pursuant to Section 309 of
- 8 Title 17 of the Oklahoma Statutes, and
- 9 f. such owner or operator, to the extent possible, fully
- 10 cooperated with the Commission in responding to the
- 11 release.

12 A person seeking reimbursement who has not been in substantial
13 compliance with the applicable rules as required in subparagraph b
14 of this paragraph or who failed to give adequate notice as required
15 in subparagraph e of this paragraph will remain ineligible until all
16 corrective action ordered by the Commission has been accomplished
17 and all fines paid. Payment of fines and documentation of
18 corrective action shall be shown by a certification signed by the
19 Director of the Petroleum Storage Tank Division. The certificate
20 must state that all fines resulting from noncompliance have been
21 paid and any required corrective action has been completed and no
22 additional enforcement actions are required.

23 2. For reimbursement to any person, the following conditions
24 apply:

- 1 a. the person claiming reimbursement must be an eligible
2 person,
3 b. the person, to the extent possible, has fully
4 cooperated with the Commission, and
5 c. allowable costs for any corrective action must have
6 been incurred on or after December 23, 1988.

7 F. Except as otherwise provided by the Oklahoma Petroleum
8 Storage Tank Indemnity Fund, a reimbursement shall not be made to
9 any eligible person who has received or is eligible for payment or
10 reimbursement from any other state or federal agency or other third
11 party payor for the corrective action taken or the damages or the
12 injuries associated with a release. If a state or federal agency or
13 other third-party payor does not fully compensate the eligible
14 person, then the eligible person may seek compensation for the
15 uncompensated amount from the Indemnity Fund.

16 G. 1. An eligible person shall be reimbursed from the
17 Indemnity Fund for allowable costs in excess of the copayment of one
18 percent (1%) of the reimbursable costs for the corrective action.
19 Copayments shall not exceed a maximum of Five Thousand Dollars
20 (\$5,000.00). The Indemnity Fund shall charge the eligible person
21 directly for an initial one-thousand-dollar copayment and thereafter
22 in one-thousand-dollar increments as warranted by the progressive
23 total case costs. When the total case cost is finalized, the
24 Petroleum Storage Tank Indemnity Fund shall reimburse the eligible

1 person any overpayment of the one-percent copayment. For releases
2 that occurred prior to June 4, 2004, eligible persons shall pay the
3 five-thousand-dollar deductible as a copayment which may be paid in
4 installments.

5 2. An impacted party whose on-site or off-site property has
6 been contaminated by a release who elects the procedure authorized
7 by this subsection shall not be required to remit copayments in
8 order to receive reimbursement from the Petroleum Storage Tank
9 Indemnity Fund. The impacted party or adjacent owner submits to the
10 jurisdiction of the Commission by applying for Indemnity Fund
11 reimbursement.

12 3. Reimbursements shall not exceed:

13 a. Two Million Five Hundred Thousand Dollars
14 (\$2,500,000.00) per occurrence, and

15 (1) Four Million Dollars (\$4,000,000.00) annual
16 aggregate for owners of one to one hundred
17 storage tank systems, or

18 (2) Five Million Dollars (\$5,000,000.00) annual
19 aggregate for owners of more than one hundred
20 storage tank systems, or

21 b. the reimbursement limits in this paragraph shall not
22 include funds expended on city, county, state or
23 political subdivision property where the city, county,
24

1 state or political subdivision is an impacted party or
2 adjacent property owner.

3 4. Reimbursement shall not be made from the Petroleum Storage
4 Tank Indemnity Fund pursuant to this section until the Administrator
5 has determined that the costs for which reimbursement is requested
6 were actually incurred and were reasonable.

7 H. The Petroleum Storage Tank Indemnity Fund shall cover
8 corrective action taken and other actual physical damage caused by
9 an eligible release. The Petroleum Storage Tank Indemnity Fund
10 shall also cover any medical injuries incurred as a result of the
11 eligible release to persons other than employees of the eligible
12 person of the storage tank system or their agents and independent
13 contractors retained to perform any such corrective action. The
14 Petroleum Storage Tank Indemnity Fund shall not be used to:

15 1. Recover payments for loss of time;

16 2. Recover payment of costs which may be associated with but
17 are not integral to corrective action such as the cost of
18 renovating, removing or disposing of storage tanks unless the
19 removing of any petroleum storage tanks, concrete, concrete
20 accessories, lines, dispensers or other site improvements is
21 necessary as required by a corrective action plan approved by the
22 Commission's regulatory program;

23 3. Pay for punitive damages from any civil action resulting
24 from the eligible release;

1 4. Recover costs for loss of business and taking of property
2 associated with the corrective action; or

3 5. Pay legal expenses.

4 I. The right to apply for reimbursement and the receipt of
5 reimbursement does not limit the liability of an owner or operator
6 for damages, injuries or the costs incurred as a result of an
7 eligible release.

8 J. The right to file the initial application, supplemental
9 claims, and resubmittals for reimbursement and the right to certify
10 that costs are true, correct and actually incurred shall not be
11 assigned to a person rendering services for corrective action on the
12 subject site.

13 K. Any person who prevails in an action brought pursuant to the
14 Oklahoma Petroleum Storage Tank Indemnity Fund to recover disallowed
15 claims upon an application, supplemental claim or resubmittal
16 requesting reimbursement shall be entitled to recover interest, the
17 costs of the action and attorney fees. Costs of the action shall
18 include filing fees, administrative costs, witness fees and expenses
19 related to the proceeding.

20 L. 1. In any case that has been determined to be eligible for
21 reimbursement from the Petroleum Storage Tank Indemnity Fund, a
22 property owner whose property has been contaminated by an eligible
23 release may remediate his or her own property and make direct
24

1 application to and receive reimbursement from the Petroleum Storage
2 Tank Indemnity Fund for any of the following:

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

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

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

23 N. 1. Claims for reimbursement pursuant to the Petroleum
24 Storage Tank Indemnity Fund must be made within two (2) years of

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

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

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

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

22 2. If:
23
24

1 a. an owner or operator is not available and a storage
2 tank system has made a release into the environment,
3 or

4 b. where there is a suspicion of a release onto any
5 property where tanks are located and/or onto property
6 proximate thereto, or where tanks are located and a
7 site assessment is necessary to confirm a release or
8 perform tank closure, and

9 c. such property is located within the limits of the
10 town, city or political subdivision,

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

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

20 4. If the town, city or political subdivision has title to the
21 property or is the recipient of proceeds from a sale or auction of
22 the property, the town or city shall reimburse the Petroleum Storage
23 Tank Indemnity Fund for any required copayment within three (3)
24 years from the closure of the case.

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

- 12 a. twenty percent (20%) of the total contract price for
13 the first twenty-five percent (25%) reduction in
14 contamination to be accomplished by such system,
- 15 b. an additional twenty percent (20%) of the total
16 contract price, for a total of forty percent (40%) for
17 the next twenty-five percent (25%), for a total of
18 fifty percent (50%) reduction, in contamination to be
19 accomplished by such system,
- 20 c. an additional twenty percent (20%) of the total
21 contract price, for a total of sixty percent (60%) for
22 next first twenty-five percent (25%), for a total of
23 seventy-five percent (75%) reduction in contamination
24 to be accomplished by such system,

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

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

- 20 a. paid in advance by the Indemnity Fund, and
21 b. allocated for a pay-for-performance site.

22 P. The Oklahoma Petroleum Storage Tank Indemnity Fund is
23 authorized to enter into purchase orders for the performance of
24 corrective action or various tasks or scopes of work to be performed

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

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

21 R. 1. When a claim submitted for first reimbursement
22 consideration is disallowed in whole or in part by the Administrator
23 of the Petroleum Storage Tank Indemnity Fund, an applicant shall
24 have ninety (90) days to resubmit the disallowed claim for

1 reconsideration. Unless otherwise authorized by the Administrator
2 of the Petroleum Storage Tank Indemnity Fund, resubmittal of a claim
3 that has been disallowed in whole or in part shall only be allowed
4 one time.

5 2. Except as otherwise provided by this paragraph, if the
6 disallowed claim is not resubmitted within ninety (90) days from the
7 date of the disallowance, the claim shall no longer be eligible for
8 reimbursement from the Petroleum Storage Tank Indemnity Fund. An
9 action by the applicant disputing a disallowed claim shall be
10 commenced within one (1) year of the date of the last disallowance
11 and shall be brought for an administrative hearing before the
12 Commission.

13 3. Any applicant that, prior to November 1, 2004, has incurred
14 a disallowance of a claim in whole or in part and has not
15 resubmitted the disallowed claim for further consideration has until
16 February 28, 2005, to resubmit the disallowed claim for such
17 consideration. After February 28, 2005, the claim shall be deemed
18 denied and shall no longer be eligible for reconsideration or
19 reimbursement from the Petroleum Storage Tank Indemnity Fund.

20 4. The Director of the Petroleum Storage Tank Division may
21 consider hardship exceptions such as, but not limited to, active
22 military duty, to the time limits contained in this subsection.
23
24

1 SECTION 28. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 327.4 of Title 17, unless there
3 is created a duplication in numbering, reads as follows:

4 Upon a showing satisfactory to the Corporation Commission by any
5 person that records, reports or information, or a particular part
6 thereof, if made public, would divulge production or sales figures
7 or methods, processes or production unique to such person or would
8 otherwise tend to affect adversely the competitive position of such
9 person by revealing trade secrets, the Commission shall consider
10 such record, report or information, or particular portion thereof,
11 confidential.

12 SECTION 29. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 327.5 of Title 17, unless there
14 is created a duplication in numbering, reads as follows:

15 A. Payment of any claim from the Indemnity Fund shall be
16 subject to the Indemnity Fund acquiring by subrogation the right to
17 recover from any person any amounts paid by the Indemnity Fund to or
18 on behalf of any eligible person which may be determined to be
19 fraudulent, reimbursable by other sources, or excessive. The
20 Administrator shall bring an action on behalf of the Indemnity Fund
21 to recover any such monies in the district court where the property
22 is located or where the person from whom recovery is sought resides.
23 The prevailing party in such cases shall be entitled to recover
24 interest, costs of the action and attorney fees. Costs of the

1 action shall include filing fees, administrative costs, witness fees
2 and expenses related to the proceeding.

3 B. The Administrator is authorized to represent and protect the
4 Indemnity Fund in any state or federal judicial or administrative
5 proceeding.

6 C. Any person who is a party to a lawsuit and who may request
7 any payment or reimbursement payable from the Indemnity Fund as a
8 result of such lawsuit shall notify the Administrator upon being
9 served with notice of the lawsuit. The Administrator is authorized
10 to establish and enforce such third party claim requirements as are
11 necessary to implement and comply with the provisions of this
12 section.

13 SECTION 30. NEW LAW A new section of law to be codified
14 in the Oklahoma Statutes as Section 328 of Title 17, unless there is
15 created a duplication in numbering, reads as follows:

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

23 B. There is hereby created in the State Treasury a revolving
24 fund for the Corporation Commission to be designated the "Oklahoma

1 Leaking Underground Storage Tank Revolving Fund". The fund shall be
2 a continuing fund, not subject to fiscal year limitations, and shall
3 consist of monies from public or private sources, and any monies
4 collected pursuant to the provisions of this section.

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

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

22 E. For the purpose of immediately responding to emergency
23 situations created by leaking underground storage tanks having
24 potentially critical environmental or public health or safety

1 impact, the Corporation Commission may take whatever action it deems
2 necessary without notice or hearing, including the expenditure of
3 monies from either the Oklahoma Leaking Underground Storage Tank
4 Trust Fund or the Oklahoma Leaking Underground Storage Tank
5 Revolving Fund or from both such funds to promptly respond to the
6 emergency.

7 F. 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 Underground Storage Tank Revolving Fund
11 or from both such funds. All monies received by the Corporation
12 Commission as reimbursement or penalties relating to expenditures
13 made from the Oklahoma Leaking Underground Storage Tank Trust Fund
14 or Oklahoma Leaking Underground Storage Tank Revolving Fund shall be
15 transferred for deposit to the credit of the Oklahoma Leaking
16 Underground Storage Tank Revolving Fund. All monies received by the
17 Corporation Commission as reimbursement or penalties relating to
18 expenditures made from the Corporation Commission Storage Tank
19 Revolving Fund shall be transferred for deposit to the Corporation
20 Commission Storage Tank 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 Petroleum Storage Tank Division has taken
5 corrective action in an 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 Oklahoma Leaking Underground Storage Tank
13 Revolving Fund.

14 G. Any owner or operator of an underground storage tank who
15 fails to comply with any order issued by the Corporation Commission
16 for corrective or enforcement actions may be subject to an
17 administrative penalty not to exceed Twenty-five Thousand Dollars
18 (\$25,000.00) for each underground tank for each day of violation.

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

23 SECTION 31. AMENDATORY 17 O.S. 2011, Section 330, is
24 amended to read as follows:

1 Section 330. A. In every case requiring the exercise of its
2 adjudicative authority pursuant to the Oklahoma Petroleum Storage
3 ~~Tank Regulation Consolidation Act, Sections 301 through 317 of Title~~
4 ~~17 of the Oklahoma Statutes and the Oklahoma Petroleum Storage Tank~~
5 ~~Release Indemnity Program, Sections 350 through 358 of Title 17 of~~
6 ~~the Oklahoma Statutes,~~ the Corporation Commission shall:

7 1. Require that any person protesting a case shall file a
8 response or notice of protest at least five (5) days prior to the
9 scheduled hearing date. The Corporation Commission may extend the
10 time for filing ~~or grant leave to file out of time~~ upon a showing of
11 exigent or extraordinary circumstances;

12 2. Require that each case shall be heard within one hundred
13 eighty (180) days of the date of filing unless all parties actively
14 participating in the case agree otherwise or as otherwise provided
15 in this section and due to this time constraint, all Petroleum
16 Storage Tank Division cases, regardless of type of matter, shall be
17 given priority on that day's docket;

18 3. Provide for the issuance of subpoenas pursuant to the
19 provisions of Section 2004.1 of Title 12 of the Oklahoma Statutes;
20 and

21 4. Provide that discovery be conducted pursuant to the
22 provisions of the Oklahoma Discovery Code, Sections 3224 through
23 3237 of Title 12 of the Oklahoma Statutes.

1 B. No more than two continuances shall be granted by the
2 Corporation Commission in any case unless the continuance is agreed
3 to by all of the parties actively participating in the case or as
4 otherwise provided in this section.

5 C. The Corporation Commission may grant ~~leaves~~ permission to
6 file out of time or an extension of time or continuance contrary to
7 the provisions of subsections A and B of this section upon the
8 showing of exigent or extraordinary circumstances.

9 SECTION 32. AMENDATORY 17 O.S. 2011, Section 340, is
10 amended to read as follows:

11 Section 340. A. 1. There is hereby created within the
12 Corporation Commission the Storage Tank Advisory Council. The
13 Council shall consist of eleven (11) members.

14 2. Three members shall be appointed by the Governor, four
15 members shall be appointed by the Speaker of the House of
16 Representatives and four members shall be appointed by the President
17 Pro Tempore of the Senate.

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

22 4. Members shall continue to serve until their successors are
23 appointed.

24

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

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

8 7. Six members shall constitute a quorum.

9 B. The Council shall be composed as follows:

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

11 a. one member shall be a petroleum storage tank owner,
12 operator, or agent, and

13 b. two members may include:

14 (1) a petroleum storage tank owner, operator or
15 agent, or

16 (2) an engineer who holds a ~~remediation~~ an
17 environmental consultant's license issued by the
18 Petroleum Storage Tank Division or works for a
19 company that performs petroleum storage tank
20 services, or

21 (3) a licensed ~~remediation~~ environmental consultant,
22 or

23 (4) an owner-operator of an environmental company;
24

1 2. The President Pro Tempore of the Senate shall appoint four
2 members as follows:

3 a. one member shall be a petroleum storage tank owner,
4 operator or agent,

5 b. one member shall be a petroleum storage tank operator
6 or agent for an agricultural cooperative, and

7 c. two members may include:

8 (1) a petroleum storage tank owner, operator or
9 agent, or

10 (2) an engineer who holds a ~~remediation~~ an
11 environmental consultant's license issued by the
12 Petroleum Storage Tank Division or works for a
13 company that performs petroleum storage tank
14 services, or

15 (3) a licensed ~~remediation~~ environmental consultant,
16 or

17 (4) an owner-operator of an environmental company;
18 and

19 3. The Speaker of the House of Representatives shall appoint
20 four members as follows:

21 a. one member shall be a petroleum storage tank owner,
22 operator or agent,
23
24

1 b. one member shall be a county commissioner or a
2 petroleum storage tank operator or agent for a county
3 commissioner, and

4 c. two members may include:

5 (1) a petroleum storage tank owner, operator or
6 agent, or

7 (2) an engineer who holds a ~~remediation~~ an
8 environmental consultant's license issued by the
9 Petroleum Storage Tank Division or works for a
10 company that performs petroleum storage tank
11 services, or

12 (3) a licensed ~~remediation~~ environmental consultant,
13 or

14 (4) an owner-operator of an environmental company.

15 C. The Council shall elect a chair and a vice-chair from among
16 its members. The Council shall meet as required for rule
17 development, review and recommendation and for such other purposes
18 specified by law. Special meetings may be called by the chair or by
19 the concurrence of any five members.

20 D. The Storage Tank Advisory Council shall:

21 1. Have authority to recommend to the Commission rules to
22 implement the Oklahoma Petroleum Storage Tank ~~Regulation~~
23 Consolidation Act and the Petroleum Storage Tank Indemnity Fund.

24 The staff of the storage tank regulatory program and the Petroleum

1 Storage Tank Indemnity Fund shall not have standing to recommend to
2 the Commission proposed permanent rules or changes to such rules
3 which have not previously been submitted to the Council for action
4 prior to the hearing for adoption of the rules by the Commission;

5 2. Before recommending any permanent rules to the Commission,
6 give public notice, offer opportunity for public comment and conduct
7 a public rulemaking hearing when required by the Administrative
8 Procedures Act and rules of the Commission;

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

12 4. Have the authority to provide a public forum for the
13 discussion of issues it considers relevant to its area of
14 jurisdiction, and to:

15 a. pass nonbinding resolutions expressing the sense of
16 the Council, and

17 b. make recommendations to the Commission and its
18 regulatory programs and the Petroleum Storage Tank
19 Indemnity Fund concerning the need and the
20 desirability of conducting public meetings, workshops
21 and seminars.

22 E. The Council shall not recommend rules for promulgation by
23 the Commission unless all applicable requirements of the
24 Administrative Procedures Act and rules of the Commission have been

1 followed, including but not limited to notice, rule impact statement
2 and rule-making hearings. All actions of the Council with regard to
3 rule-making shall be deemed actions of the Commission for the
4 purposes of complying with the Administrative Procedures Act and
5 rules of the Commission. The Council shall advise the Commission on
6 initiating and conducting rule-making proceedings pursuant to the
7 Oklahoma Petroleum Storage Tank ~~Reform~~ Consolidation Act, ~~Oklahoma~~
8 ~~Storage Tank Regulation Act~~ and the Oklahoma Petroleum Storage Tank
9 ~~Release Indemnity Program~~.

10 F. Members of the Council shall serve without compensation but
11 may be reimbursed expenses incurred in the performance of their
12 duties, as provided in the State Travel Reimbursement Act. The
13 Council is authorized to utilize the conference rooms of the
14 Commission and obtain administrative assistance from the Commission,
15 as required.

16 G. 1. The Commission is specifically charged with the duty of
17 promulgating rules which will implement the duties and
18 responsibilities of the Oklahoma Petroleum Storage Tank ~~Regulation~~
19 Consolidation Act and the Oklahoma Petroleum Storage Tank ~~Release~~
20 ~~Indemnity Program~~.

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

24

1 3. The Commission may promulgate emergency rules without the
2 advice of the Council when the time constraints of the emergency, as
3 determined by the Commission, do not permit timely development of
4 recommendations by the Council.

5 4. If the Commission adopts any proposed permanent rules
6 without the advice of the Council or not in accord with the advice
7 of the Council, the Commission shall detail the reasons on the rule
8 report submitted to the Governor and the Legislature pursuant to
9 Article I of the Administrative Procedures Act.

10 SECTION 33. NEW LAW A new section of law to be codified
11 in the Oklahoma Statutes as Section 341 of Title 17, unless there is
12 created a duplication in numbering, reads as follows:

13 It shall be unlawful for any person, firm or corporation in the
14 State of Oklahoma to sell, offer for sale, use or consume any
15 regulated substances manufactured in this state or brought into it
16 unless the same complies with the rules of the Corporation
17 Commission and the laws of the State of Oklahoma.

18 SECTION 34. NEW LAW A new section of law to be codified
19 in the Oklahoma Statutes as Section 341.1 of Title 17, unless there
20 is created a duplication in numbering, reads as follows:

21 For the purpose of enforcing the fuel inspection laws of the
22 State of Oklahoma, the Corporation Commission Petroleum Storage Tank
23 Division shall appoint and assign fuel inspection and compliance
24 personnel sufficient to discharge the duties and obligations of the

1 Commission regarding the inspection, testing, calibration and
2 compliance of fuel and fuel storage facilities pursuant to the
3 Oklahoma Petroleum Storage Tank Consolidation Act.

4 SECTION 35. NEW LAW A new section of law to be codified
5 in the Oklahoma Statutes as Section 341.2 of Title 17, unless there
6 is created a duplication in numbering, reads as follows:

7 The employees of the Petroleum Storage Tank Division shall not
8 engage in any job or business in an industry or engage in a
9 profession in any area or field regulated by the Petroleum Storage
10 Tank Division of the Corporation Commission.

11 SECTION 36. NEW LAW A new section of law to be codified
12 in the Oklahoma Statutes as Section 341.3 of Title 17, unless there
13 is created a duplication in numbering, reads as follows:

14 If any section, paragraph, sentence, or phrase of Sections 33
15 through 46 of this act shall be declared unconstitutional or void,
16 for any reason, by any court of final jurisdiction, such decision
17 shall not in any way invalidate or affect any other section,
18 paragraph, sentence, or phrase of this act, but the same shall
19 continue in full force and effect.

20 SECTION 37. NEW LAW A new section of law to be codified
21 in the Oklahoma Statutes as Section 342 of Title 17, unless there is
22 created a duplication in numbering, reads as follows:

23 A. Jurisdiction is conferred upon the Corporation Commission,
24 and the same is authorized and empowered, to prescribe and

1 promulgate rules and specifications for safety and quality with
2 reference to regulated substances as it may deem proper from time to
3 time. The Corporation Commission shall prescribe rules governing
4 the test for octane rating on motor fuels and prescribe the rating.

5 B. All specifications as may be prescribed and promulgated by
6 the Corporation Commission shall be accepted as statutory enactments
7 and shall be received as prima facie evidence by any court of
8 competent jurisdiction within the State of Oklahoma.

9 SECTION 38. NEW LAW A new section of law to be codified
10 in the Oklahoma Statutes as Section 343 of Title 17, unless there is
11 created a duplication in numbering, reads as follows:

12 A. It shall be unlawful for any person to sell, or offer for
13 sale, any regulated substance without first having had the same
14 inspected and any liquid intended to be mixed with any regulated
15 substance to form a mixture designed to be used as in internal
16 combustion engines.

17 B. It shall be unlawful for any person to sell, or offer for
18 sale, any mixtures or combinations of any two or more regulated
19 substances without first having had such mixture or combination
20 inspected as herein provided. It shall not be an excuse or defense
21 to a prosecution therefor that the component liquids had previously
22 been inspected.

23 C. If any person shall sell, or offer for sale, any regulated
24 substances or mixtures or combinations, without having had the same

1 inspected as herein provided, he shall be guilty of a misdemeanor
2 and be subject to a fine of Five Hundred Dollars (\$500.00) per day
3 per violation and imprisonment for ninety (90) days, or both, for
4 each offense.

5 SECTION 39. NEW LAW A new section of law to be codified
6 in the Oklahoma Statutes as Section 344 of Title 17, unless there is
7 created a duplication in numbering, reads as follows:

8 Any dealer in or manufacturer or other person in possession of
9 regulated substances who refuses to admit an inspector upon the
10 premises to perform the duties of the inspector shall, for each
11 refusal to admit on his or her premises, or obstruction offered to
12 inspector, be guilty of a misdemeanor and be subject to a fine of
13 Five Hundred Dollars (\$500.00) per day per violation and
14 imprisonment for ninety (90) days, or both, for each offense.

15 SECTION 40. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 345 of Title 17, unless there is
17 created a duplication in numbering, reads as follows:

18 A. The Corporation Commission is hereby authorized and directed
19 to promulgate such tests, standards, specifications and rules
20 necessary to carry out the provisions of this act and to ensure that
21 all measuring devices shall be of the highest degree of accuracy
22 reasonably consistent with the nature of the substance measured, and
23 for such purpose the Commission shall have authority to prescribe
24 such maximum limits of allowable error for such measuring devices as

1 the Commission deems necessary to prevent fraud resulting from
2 inaccurate measurement.

3 B. The Commission is authorized to promulgate rules as
4 necessary to establish a voluntary calibration program for tanks and
5 containers used in this state to transport motor fuel, diesel fuel
6 or blending material; provided, however, this shall not include the
7 fuel supply tanks of a motor vehicle. The Commission is further
8 authorized to establish a fee not to exceed Fifty Dollars (\$50.00)
9 for the calibration of these tanks and containers. The fees are to
10 cover the costs necessary for the enforcement of this act.

11 C. Any tank or container calibrated by the manufacturer,
12 officials of another state, the Tax Commission or the Corporation
13 Commission shall not be subject to further calibration testing by
14 the Commission unless the physical shape or size of the tank or
15 container has been altered by accident or design. A Certificate of
16 Measurement shall be issued by the Commission for tanks and
17 containers which are calibrated by the manufacturer, another state
18 or the Commission. Nothing herein shall prohibit the Commission
19 from ordering the mandatory calibration testing of any tank,
20 container or metering device which the Commission has good reason to
21 believe is inaccurate and is being utilized to defraud any person,
22 firm or corporation.

23
24

1 D. Fees collected under the provisions of this act shall be
2 deposited in the State Treasury to the credit of the Corporation
3 Commission Revolving Fund.

4 SECTION 41. NEW LAW A new section of law to be codified
5 in the Oklahoma Statutes as Section 346 of Title 17, unless there is
6 created a duplication in numbering, reads as follows:

7 A. It shall be the duty of the Petroleum Storage Tank Division
8 to inspect all fueling facilities where regulated substances are
9 kept or stored, for the purpose of determining whether or not such
10 products comply with the orders, rules and specifications of the
11 Corporation Commission and the laws of the state. The Petroleum
12 Storage Tank Division may take samples from any and all places where
13 such products are kept or stored, and shall test the same or have
14 the same tested to determine whether or not the owner or other
15 person in charge of the fueling facility where regulated substances
16 are kept or stored is complying with the orders, rules and
17 specifications of the Corporation Commission and the laws of this
18 state.

19 B. It shall be the further duty of the Petroleum Storage Tank
20 Division whenever they find a dispenser or receptacle used for
21 delivering regulated substances which do not meet the minimum
22 specifications required by the rules of the Corporation Commission
23 and the laws of the state immediately to seal and lock the dispenser
24 or receptacle. The seal will be removed when the violation is

1 corrected. The owner has the right to apply for a hearing before
2 the Corporation Commission.

3 The Petroleum Storage Tank Division shall make such reports to
4 the Corporation Commission as required.

5 SECTION 42. NEW LAW A new section of law to be codified
6 in the Oklahoma Statutes as Section 346.1 of Title 17, unless there
7 is created a duplication in numbering, reads as follows:

8 It shall be the duty of the Corporation Commission Petroleum
9 Storage Tank Division to inspect all measuring devices in this state
10 for the purpose of determining whether or not such measuring devices
11 comply with the tests, standards, specifications and rules of the
12 Commission promulgated under authority of this act; and it shall be
13 the further duty of the Commission whenever it finds a measuring
14 device which does not meet or comply with the tests, standards,
15 specifications or rules to immediately report the facts and
16 circumstances and place a seal or label on the measuring device,
17 stating that the measuring device does not meet or comply with the
18 required tests, standards, specifications or rules, and immediately
19 to seal and lock the measuring device; provided, that the owner or
20 operator thereof shall have the right to make application to the
21 Commission for an order removing the sign, label, lock or seal,
22 which application shall be heard by the Commission without
23 unnecessary delay, and no notice of hearing shall be required.

24

1 SECTION 43. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 346.2 of Title 17, unless there
3 is created a duplication in numbering, reads as follows:

4 The provisions of Section 33 of this act shall not apply to
5 regulated substances brought into this state in transit for shipment
6 to and consumption in other states or territories.

7 SECTION 44. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 346.3 of Title 17, unless there
9 is created a duplication in numbering, reads as follows:

10 Any person, firm or corporation who sells, offers for sale, uses
11 or consumes any regulated substance within the State of Oklahoma
12 which does not comply with the rules and specifications of the
13 Corporation Commission and the laws of the State of Oklahoma, or any
14 person who tampers with, alters, defaces or destroys any sign, lock
15 or seal mentioned in this chapter shall be guilty of a misdemeanor
16 and upon conviction or upon a finding of contempt be punished by an
17 administrative fine of not more than Five Hundred Dollars (\$500.00).
18 Each day on which any person, firm or corporation violates any of
19 such orders and rules shall be deemed a separate and distinct
20 offense.

21 SECTION 45. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 346.4 of Title 17, unless there
23 is created a duplication in numbering, reads as follows:

24

1 Any person who owns or has custody or control of any measuring
2 device which does not meet or comply with the tests, standards,
3 specifications and rules of the Corporation Commission or any person
4 who tampers with, alters, defaces or destroys any sign, label, seal
5 or lock mentioned in Section 41 of this act, without having first
6 secured an order permitting the removal of such sign, label, seal or
7 lock, as provided in Section 41 of this act, or any person who
8 violates any rule or order of the Commission promulgated under
9 authority of this act, shall be guilty of a misdemeanor and upon
10 conviction thereof shall be punished by a fine of not more than Two
11 Hundred Fifty Dollars (\$250.00), administrative penalties as set
12 forth in Section 311 of Title 17 of the Oklahoma Statutes, and/or
13 punitive damages as set forth in Section 312 of Title 17 of the
14 Oklahoma Statutes; and each day on which any person, firm or
15 corporation violates any of such orders or rules shall be deemed a
16 separate offense. The court may order restitution for any actual
17 damages incurred.

18 SECTION 46. NEW LAW A new section of law to be codified
19 in the Oklahoma Statutes as Section 347 of Title 17, unless there is
20 created a duplication in numbering, reads as follows:

21 A. No person shall sell or offer for sale motor fuel from a
22 motor fuel dispenser supplied by a storage tank into which motor
23 fuel that contains a mixture of at least one percent (1%) by volume
24 of ethanol or methanol has been delivered within the sixty-day

1 period preceding the date of sale or offer of sale unless the person
2 prominently displays on the dispenser from which the mixture is sold
3 a label that complies with subsection B of this section.

4 B. A label as required in subsection A of this section shall:

5 1. Be displayed on each face of the motor fuel dispenser on
6 which the price of the motor fuel mixture sold from the dispenser is
7 displayed;

8 2. State "Contains Ethanol" or "Contains Methanol", as
9 applicable;

10 3. Appear in contrasting colors with block letters at least
11 one-half (1/2) inch high and one-fourth (1/4) inch wide; and

12 4. Be displayed in a clear, conspicuous and prominent manner,
13 visible to customers using either side of the dispenser.

14 C. If a motor fuel dispenser is supplied by a storage tank into
15 which motor fuel containing at least ten percent (10%) ethanol by
16 volume or at least five percent (5%) methanol by volume is delivered
17 in the sixty-day period preceding the date of the sale or offer of
18 sale, the sign as required in subsection A of this section shall
19 also state the percentage of ethanol or methanol by volume, to the
20 nearest whole percent, of the motor fuel having the highest
21 percentage of ethanol or methanol delivered into that storage tank
22 during that period.

1 D. On request by a motor fuel user, a person selling or
2 offering for sale motor fuel from a motor fuel dispenser shall
3 reveal:

4 1. The percentage of ethanol contained in the motor fuel being
5 sold;

6 2. The percentage of methanol contained in the motor fuel being
7 sold; and

8 3. If the motor fuel contains methanol, the types and
9 percentages of associated cosolvents contained in the motor fuel
10 being sold.

11 E. The provisions of this section shall not prohibit the
12 posting of any other alcohol or additive information. Other alcohol
13 or additive information and any relevant posting shall be subject to
14 regulation by the Corporation Commission.

15 F. The Corporation Commission shall promulgate rules as
16 necessary to implement the provisions of this section.

17 SECTION 47. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 347.1 of Title 17, unless there
19 is created a duplication in numbering, reads as follows:

20 Except as otherwise provided in this section, retail facilities
21 that sell motor fuel shall not be required to post information
22 regarding fuel additives on the motor fuel dispenser or anywhere
23 else on the premises of the facilities. Motor fuel sold at regional
24 or smaller airports in the state for fueling aircraft shall be

1 | labeled with the percent of alcohol, if any, in the fuel. The
2 | Corporation Commission shall promulgate rules consistent with the
3 | provisions of this section.

4 | SECTION 48. NEW LAW A new section of law to be codified
5 | in the Oklahoma Statutes as Section 348 of Title 17, unless there is
6 | created a duplication in numbering, reads as follows:

7 | As used in this act, unless the context or subject matters
8 | otherwise requires:

9 | 1. "Antifreeze" shall include all substances and preparations
10 | intended for use as the cooling medium, or to be added to the
11 | cooling liquid, in the cooling system of internal combustion engines
12 | to prevent freezing of the cooling liquid or to lower its freezing
13 | point; and

14 | 2. "Person" shall include individuals, partnerships,
15 | corporations, companies and associations.

16 | SECTION 49. NEW LAW A new section of law to be codified
17 | in the Oklahoma Statutes as Section 348.1 of Title 17, unless there
18 | is created a duplication in numbering, reads as follows:

19 | An antifreeze shall be deemed to be adulterated:

20 | 1. If it consists in whole or in part of any substance which
21 | will render it injurious to the cooling system of an internal
22 | combustion engine or will make the operation of the engine dangerous
23 | to the user; or
24 |

1 2. If its strength, quality or purity falls below the professed
2 standard of strength, quality or purity under which it is sold.

3 SECTION 50. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 348.2 of Title 17, unless there
5 is created a duplication in numbering, reads as follows:

6 An antifreeze shall be deemed to be misbranded:

7 1. If its labeling is false or misleading in any particular; or

8 2. If in package form it does not bear a label containing the
9 name and place of business of the manufacturer, packer, seller or
10 distributor and an accurate statement of the quantity of contents in
11 terms of weight or measure, and these facts are not stated plainly
12 and correctly on the outside of the package; or

13 3. If the product is to be diluted with another substance for
14 use and does not bear on the label, or in an accompanying
15 instruction sheet, folder or booklet, a statement or chart showing
16 appropriate amounts of each substance to be used to provide
17 protection from freezing at various degrees of temperature down to
18 at least thirty degrees below zero Fahrenheit (-30°F).

19 SECTION 51. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 348.3 of Title 17, unless there
21 is created a duplication in numbering, reads as follows:

22 Before any antifreeze shall be sold, exposed for sale or held
23 with intent to sell within this state, a sample thereof must be
24 analyzed pursuant to standards established by the Oklahoma

1 Corporation Commission and a certified analysis submitted to the
2 Petroleum Storage Tank Division for approval with the initial or
3 annual permit fee application. Upon the initial application of the
4 manufacturer, packer or distributor, and upon the payment of a fee
5 of One Hundred Dollars (\$100.00) for each brand of antifreeze
6 submitted, the Corporation Commission shall approve the analysis of
7 the antifreeze submitted and, if it meets the standards of the
8 Corporation Commission, and is not in violation of Sections 48
9 through 57 of this act, the Corporation Commission shall issue the
10 applicant an annual written permit, with an official permit number,
11 authorizing the sale of such antifreeze in this state for one (1)
12 fiscal year, July 1 to June 30, in which inspection fee is paid.
13 However, upon approval of an application for renewal of a permit,
14 the fee shall not exceed One Hundred Dollars (\$100.00). The
15 original permit and renewal issued by the Corporation Commission
16 shall bear the same number and shall not be transferable. If the
17 Corporation Commission shall at a later date find that the product
18 to be sold, exposed for sale or held with intent to sell has been
19 materially altered, without the written permission of the
20 Corporation Commission, adulterated, or a change has been made in
21 the name, brand or trademark under which the antifreeze is sold, or
22 it violated the provisions of Sections 48 through 57 of this act,
23 the Corporation Commission shall notify the applicant and the permit
24 shall be canceled.

1 SECTION 52. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 348.4 of Title 17, unless there
3 is created a duplication in numbering, reads as follows:

4 The Petroleum Storage Tank Division of the Oklahoma Corporation
5 Commission shall enforce the provisions of Sections 48 through 57 of
6 this act by certification, inspections, chemical analysis or any
7 other appropriate methods. All samples for inspection or analysis
8 shall be taken from stocks in this state or intended for sale in
9 this state, or the Corporation Commission through its agents shall
10 require the manufacturer or distributor applying for a permit for
11 antifreeze sale to supply a certified analysis of the antifreeze
12 with the permit application. The Corporation Commission, through
13 its agents, shall have free access by legal means during business
14 hours to all places of business, buildings, vehicles, cars and
15 vessels used in the manufacture, transportation, sale or storage of
16 any antifreeze, and it may open by legal means a box, carton,
17 parcel, or package containing or supposed to contain any antifreeze
18 and may take therefrom samples for analysis.

19 SECTION 53. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 348.5 of Title 17, unless there
21 is created a duplication in numbering, reads as follows:

22 The Oklahoma Corporation Commission shall have the authority to
23 promulgate such rules and regulations as are necessary to promptly
24

1 and effectively enforce the provisions of Sections 48 through 57 of
2 this act.

3 SECTION 54. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 348.6 of Title 17, unless there
5 is created a duplication in numbering, reads as follows:

6 The Petroleum Storage Tank Division of the Oklahoma Corporation
7 Commission may furnish upon request a list of the brands and
8 trademarks of antifreeze permitted and permit numbers issued by the
9 Corporation Commission during the calendar year which have been
10 found to be in accord with Sections 48 through 57 of this act.

11 SECTION 55. NEW LAW A new section of law to be codified
12 in the Oklahoma Statutes as Section 348.7 of Title 17, unless there
13 is created a duplication in numbering, reads as follows:

14 No advertising literature relating to any antifreeze sold or to
15 be sold in this state shall contain any statement that the
16 antifreeze advertised for sale has been approved by the Oklahoma
17 Corporation Commission unless the antifreeze has been permitted by
18 the Corporation Commission and found to meet the standards of the
19 Corporation Commission and not to be in violation of Sections 48
20 through 57 of this act, in which event such statement together with
21 the permit number of the wholesaler or distributor may be contained
22 in any labeling and advertising literature where such brand or
23 trademark or antifreeze is being advertised for sale.

24

1 SECTION 56. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 348.8 of Title 17, unless there
3 is created a duplication in numbering, reads as follows:

4 All fees collected by the Oklahoma Corporation Commission under
5 the provisions of Sections 48 through 57 of this act shall be
6 deposited with the State Treasurer to the credit of the Corporation
7 Commission Revolving Fund.

8 SECTION 57. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 348.9 of Title 17, unless there
10 is created a duplication in numbering, reads as follows:

11 Any person or persons violating the provisions of Sections 48
12 through 57 of this act shall be deemed guilty of a misdemeanor and
13 shall, upon conviction thereof, be punished by a fine of not less
14 than Three Hundred Dollars (\$300.00) nor more than Five Hundred
15 Dollars (\$500.00), or imprisonment for ninety (90) days or both for
16 each offense. In addition thereto, the Corporation Commission is
17 hereby authorized to punish any person or persons violating the
18 rules and regulations adopted by the Commission pursuant to Sections
19 48 through 57 of this act for contempt, and any person found guilty
20 of violating the rules and regulations of the Corporation Commission
21 adopted pursuant to Sections 48 through 57 of this act may be fined
22 any amount not exceeding Five Hundred Dollars (\$500.00) for each
23 offense.

24

1 SECTION 58. REPEALER 17 O.S. 2011, Sections 323, as
2 amended by Section 63, Chapter 304, O.S.L. 2012, 350, 351, 352, 353,
3 as amended by Section 1, Chapter 355, O.S.L. 2012, 353.1, as amended
4 by Section 1, Chapter 319, O.S.L. 2013, 354, as last amended by
5 Section 9, Chapter 15, O.S.L. 2013, 355, 356, 356.1, 357, 358, as
6 amended by Section 2, Chapter 319, O.S.L. 2013, 359, 360, 361, 365,
7 as amended by Section 64, Chapter 304, O.S.L. 2012 and 620 (17 O.S.
8 Supp. 2017, Sections 323, 353, 353.1, 354, 358 and 365), are hereby
9 repealed.

10 SECTION 59. REPEALER 47 O.S. 2011, Sections 461, 462,
11 463, 464, 465, 466, 467, 468, 469 and 470, are hereby repealed.

12 SECTION 60. REPEALER 52 O.S. 2011, Sections 321, 324.1,
13 324.6, 324.7, 325, as amended by Section 1, Chapter 23, O.S.L. 2012,
14 327, 328, 330, 332, 334, 346 and 347 (52 O.S. Supp. 2017, Section
15 325), are hereby repealed.

16 SECTION 61. REPEALER 83 O.S. 2011, Sections 111, as
17 amended by Section 1, Chapter 295, O.S.L. 2015, and as renumbered by
18 Section 7, Chapter 295, O.S.L. 2015, 112, as amended by Section 2,
19 Chapter 295, O.S.L. 2015, and as renumbered by Section 7, Chapter
20 295, O.S.L. 2015, 113, as amended by Section 3, Chapter 295, O.S.L.
21 2015, and as renumbered by Section 7, Chapter 295, O.S.L. 2015, 114,
22 as amended by Section 4, Chapter 295, O.S.L. 2015, and as renumbered
23 by Section 7, Chapter 295, O.S.L. 2015 and 117, as amended by
24 Section 5, Chapter 295, O.S.L. 2015, and as renumbered by Section 7,

1 Chapter 295, O.S.L. 2015 (52 O.S. Supp. 2017, Sections 325.1, 330.1,
2 332.1, 346.1 and 346.2), are hereby repealed.

3 SECTION 62. REPEALER 63 O.S. 2011, Section 4222, is
4 hereby repealed.

5 SECTION 63. This act shall become effective November 1, 2018.

6
7 COMMITTEE REPORT BY: COMMITTEE ON ENERGY AND NATURAL RESOURCES,
8 dated 03/05/2018 - DO PASS, As Amended and Coauthored.

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