

An Act

ENROLLED HOUSE
BILL NO. 3430

By: Pfeiffer of the House

and

Quinn of the Senate

An Act relating to the Corporation Commission; amending 17 O.S. 2011, Sections 301, 302, as amended by Section 1, Chapter 155, O.S.L. 2016, 303, as amended by Section 2, Chapter 155, O.S.L. 2016, 304, 304.1, 306, 307, 308, 308.1, 309, 310, 311, 312, 313, 314, 315, as amended by Section 61, Chapter 304, O.S.L. 2012, 316, 318, 319, 322, as amended by Section 62, Chapter 304, O.S.L. 2012, 324, 325, 330 and 340 (17 O.S. Supp. 2017, Sections 302, 303, 315 and 322), which relate to administration of the Petroleum Storage Tank Regulation Act; providing for short title; enacting the Oklahoma Petroleum Storage Tank Consolidation Act; imposing duties upon the 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 powers and duties of the Petroleum Storage Tank Division; modifying references to corrective actions; modifying references to certain substances; modifying provisions related to releases from certain storage tanks; providing for deposit of certain revenues into the Oklahoma Leaking Underground Storage Tank Revolving Fund; modifying procedures; prescribing procedures related to corrective actions; providing for notice and opportunity to be heard; prescribing procedures for lien enforcement; modifying provisions related to licensing of certain professionals with respect to storage tanks;

modifying provisions related to Director of Petroleum Storage Tank Division; providing for powers and duties; modifying provisions related to expenditures from the Petroleum Storage Tank Indemnity Fund; requiring reports; imposing supermajority voting requirement with respect to certain legislation affecting distribution of revenues; providing exceptions; defining terms; providing for imposition of assessment; prescribing assessment amount; stating purposes of assessment; providing for exemptions; providing for distribution of assessment revenues; prescribing procedures with respect to remittance; requiring records; providing for reimbursements from the Petroleum Storage Tank 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 323, as amended by Section 63, Chapter 304, O.S.L. 2012, 350, 351, 352, 353, as amended by Section 1, Chapter 355, O.S.L. 2012, 353.1, as amended by Section 1, Chapter 319, O.S.L. 2013, 354, as last amended by Section 9, Chapter 15, O.S.L. 2013, 355, 356, 356.1, 357, 358, as amended by Section 2, Chapter 319, O.S.L. 2013, 359, 360, 361, 365, as amended by Section 64, Chapter 304, O.S.L. 2012 and

620 (17 O.S. Supp. 2017, Sections 323, 353, 353.1, 354, 358 and 365), which relate to administration of certain programs by the Corporation Commission; repealing 47 O.S. 2011, Sections 461, 462, 463, 464, 465, 466, 467, 468, 469 and 470, which relate to regulation of antifreeze; repealing 52 O.S. 2011, Sections 321, 324.1, 324.6, 324.7, 325, as amended by Section 1, Chapter 23, O.S.L. 2012, 327, 328, 330, 332, 334, 346 and 347 (52 O.S. Supp. 2017, Section 325), which relate to regulation of certain substances; repealing 83 O.S. 2011, Sections 111, as amended by Section 1, Chapter 295, O.S.L. 2015, and as renumbered by Section 7, Chapter 295, O.S.L. 2015, 112, as amended by Section 2, Chapter 295, O.S.L. 2015, and as renumbered by Section 7, Chapter 295, 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.

SUBJECT: Corporation Commission

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:

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

B. For the purposes of implementing the Oklahoma Petroleum Storage Tank Regulation Consolidation Act, there is hereby ~~created~~ recognized the Oklahoma Petroleum Storage Tank Regulation Program

administered by the Petroleum Storage Tank Division of the Oklahoma Corporation Commission.

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

D. The Petroleum Storage Tank Division shall maintain, operate and administer the Petroleum Storage Tank Indemnity Fund (Indemnity Fund) and shall include, but not be limited to, processing, reviewing and paying claims for corrective action costs resulting from a release of regulated substances and mitigate environmental, health and safety threats to the public. The Administrator of the Indemnity Fund shall maintain, operate and administer the Indemnity Fund, and process, review and pay claims to those individuals deemed eligible for reimbursement for corrective action at eligible petroleum release sites.

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

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

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

Section 302. A. The Legislature finds that the release of ~~petroleum~~ regulated substances from storage tanks into the surface water, groundwater, air and subsurface soils of this state poses a potential threat to the ~~natural resources~~ environment, health,

safety and welfare of the residents of this state ~~and to the economy of this state.~~

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

B. The purpose of the Oklahoma Petroleum Storage Tank Consolidation Act is to provide for the administration of the various programs within the Oklahoma Corporation Commission regulating the release or spilling of regulated substances from petroleum storage tanks and to utilize financial resources for petroleum storage regulatory services, administration and reimbursement of claims for environmental corrective action by the Petroleum Storage Tank Indemnity Fund.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~6. "Closed case" means a previously active case which had a confirmed release and the Commission has issued a closure letter advising that no further corrective action is necessary on the site~~

"Administrator" means the person hired by the Director of the Petroleum Storage Tank Division of the Corporation Commission to administer the Indemnity Fund;

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

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

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

6. "Biodiesel" for the purpose of prescribing specifications for the quality of biodiesel shall mean a fuel comprised of mono-alkyl esters of long chain fatty acids derived from vegetable oils or animal fats, designated as B100, and meeting the requirements of the American Society for Testing and Materials (ASTM) D6751 standards. A biodiesel blend is a blend of biodiesel fuels meeting the ASTM D6751 standards with a petroleum-based diesel fuel, which is designated "Bxx", with "xx" representing the volume percentage of biodiesel fuel in the blend;

7. "Commission" means the Corporation Commission;

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

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

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

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

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

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

12. "Distributor" means:

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

importing motor fuel only in the supply tank of a vehicle originally provided by the manufacturer of the motor vehicle as a container for motor fuel or diesel fuel to propel such motor vehicle, nor does distributor mean persons only importing motor fuel, diesel fuel or blending material into the state under circumstances requiring that they be licensed as "Motor Fuel/Diesel Fuel Importers for Use" as defined in paragraph 7 of Section 601 of Title 68 of the Oklahoma Statutes and who are actually so licensed,

- b. any person producing, refining, preparing, distilling, blending, manufacturing, or compounding motor fuel or blending material in this state for use, distribution or sale and delivery in this state,
- c. any person within this state producing or collecting what is commonly known as drip, casing head or natural gasoline,
- d. any person who has in his or her possession or buys for sale or use motor fuel, diesel fuel or blending material from any person other than a licensed distributor, retailer or dealer,
- e. any person other than a retailer or dealer who sells motor fuel, diesel fuel or blending material to anyone except a licensed distributor,
- f. any person who makes bulk sales of motor fuel, diesel fuel or blending material, and
- g. any other person, including a retailer or dealer, who has filed an application for and has procured a distributor's license in the manner provided by the Oklahoma Motor Fuel/Diesel Fuel Importers for Use Tax Code, Section 601 et seq. of Title 68 of the Oklahoma Statutes;

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

14. "Eligible person" means ~~the party who has made application to the Petroleum Storage Tank Indemnity Fund and met applicable~~

~~criteria to receive Petroleum Storage Tank Indemnity Fund reimbursement on a confirmed release:~~

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

- b. any person who on or after November 8, 1984, purchases or acquires property by any means on which a storage tank system is located if:
 - (1) the storage tank system was located on the property on November 8, 1984,

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

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

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

- c. any person who acquired ownership of a tank system through inheritance or other means or is responsible for a release by reason of owning the real property within which a tank or a release is or was located if:
 - (1) the storage tank system of the release was located on the real property on November 8, 1984,

- (2) the operator of the storage tank system responsible for the system or responsible for a release cannot be determined or found by the Corporation Commission, or the operator of the storage tank system responsible for the system or responsible for the release is incapable, in the judgment of the Corporation Commission, of properly carrying out any necessary corrective action,
 - (3) either funds are unavailable from the LUST Trust Fund or the underground storage tank system or release is not eligible for corrective action taken pursuant to Section 30 of this act,
 - (4) the person did not participate or was not responsible in any manner, directly or indirectly, in the management of the storage tank system or for the release and otherwise is not engaged in petroleum production, refining or marketing, and
 - (5) the person meets the requirements specified in Section 27 of this act, or
- (d) any person who is an impacted party, adjacent owner or town, city or political subdivision as determined by the Commission and who willingly submits to the regulations of the Commission governing petroleum storage tank system owners, operators or agents;

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

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

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

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

19. "Impacted party" means an owner whose property has been impacted by a release from an on-site or off-site petroleum storage tank system which the impacted person did not own or operate and for which the impacted person has had no responsibility under Commission rules. An impacted party may apply for an eligibility determination for reimbursement from the Indemnity Fund. An impacted party is not subject to the Indemnity Fund co-pay;

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

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

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

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

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

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

~~20-~~ 26. "Operator" means any person in control of or having responsibility for the daily operation of the storage tank system, whether by lease, contract, or other form of agreement. The term "operator" also includes a past operator at the time of a release, tank closure, or a violation of the Oklahoma Petroleum Storage Tank Regulation Consolidation Act or of a rule promulgated thereunder;

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

- a. in the case of a storage tank system in use on November 8, 1984, or brought into use after that date, any person who holds title to real estate, controls, or possesses an interest in a storage tank system or property where a storage tank system is located used for the storage, use, or dispensing of regulated substances, or
- b. in the case of a storage tank system in use before November 8, 1984, but no longer in service on that date, any person who ~~holds~~ held title to, ~~controls~~ controlled, or ~~possesses~~ possessed an interest in a storage tank system immediately before the discontinuation of its use.

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

~~22.~~ 28. "Pay-for-performance" means a process by which an environmental consultant guarantees, by executing a contract pursuant to the provisions of this paragraph, that a release of a regulated substance will be remediated to levels agreed to by the Commission, the eligible person and the consultant. Such levels must be protective of human health, safety and the environment. The performance-based process encompasses several steps including, but not limited to, the development of a contract signed by an officer/owner of the environmental consultant, the eligible person and the Indemnity Fund Administrator. The contract shall contain any agreed-upon reasonable price for the work to be performed. Scheduled payments shall be distributed only as performance-based goals are attained;

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

~~23.~~ 30. "Person" means any individual, trust, firm, joint stock company or corporation, limited liability company, partnership, association, any representative appointed by order of a court, the state, any municipality, county, school district or other political subdivision or agency of the state, or any interstate body. The term also includes a consortium, a joint venture, a commercial

entity, the United States Government, a federal agency, including a government corporation, or any other legal entity;

~~24.~~ 31. "Petroleum" means antifreeze, new or used motor oil, gasoline, kerosene, diesel, aviation fuel or blended fuel including, but not limited to, gasoline, diesel, and aviation fuel that is blended with biodiesel, ethanol, Methyl Tertiary Butyl Ether (MTBE) or other additive for purposes of fueling a combustion engine;

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

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

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

~~27.~~ 33. "Purchase order" means a performance-based agreement negotiated between an environmental consultant and the Petroleum Storage Tank Division stipulating a scope of work to be performed by a target date, for which the Petroleum Storage Tank Indemnity Fund will reimburse a specified amount;

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

~~28.~~ 35. "Reimbursement" means either:

- a. repayment of an approved claim to an eligible person for allowable costs resulting from an eligible release, or
- b. payment of an approved claim submitted on behalf of an eligible person for incurred allowable costs resulting from an eligible release;

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

~~29.~~ 37. "Remediation" means a process or technique used to reduce concentration levels of chemicals of concern in the soil and groundwater, and/or to reduce the presence of free product in the environment to levels that are protective of human health, safety and the environment;

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

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

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

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

34. 39. "Sale" means every gallon of motor fuel, diesel fuel, or blending materials sold, or stored and distributed, or withdrawn from storage, within the state, for sale or use. No gallon of motor

fuel, diesel fuel, or blending materials shall be the basis more than once of the assessment imposed by Section 25 of this act;

40. "Storage tank" is a permanent trade fixture and means a stationary vessel designed to contain an accumulation of regulated substances. It includes the individual compartments within a compartmentalized tank, any aboveground or underground connected piping, and is a trade fixture. A storage tank that has ten percent (10%) or more of its volume beneath the surface of the ground is considered an underground storage tank;

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

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

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

~~37.~~ 42. "Synthetic diesel" for the purpose of prescribing specifications for the quality of synthetic diesel shall mean a hydrocarbon made up of hydrocarbons that are primarily aliphatic in character with the number of carbon atoms ranging from C-10 to C-20. The hydrocarbons are produced from carbon monoxide and hydrogen, synthesis gas, by passing the synthesis gas over a catalyst under temperature and pressure, commonly known as the Fischer-Tropsch process. Synthetic diesel shall meet all ASTM D975 specifications with or without the use of lubrication additives. A synthetic diesel blend is a blend of synthetic diesel fuel with a petroleum-based diesel fuel, which is designated "Sxx", with "xx" representing the volume percentage of synthetic diesel fuel in the blend;

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

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

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

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

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

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

1. Septic tank systems;
2. Pipeline facilities;
3. Surface impoundments, pits, ponds or lagoons;
4. Stormwater and wastewater collection systems;
5. Flow-through process tank systems;
6. Liquid trap or associated gathering lines directly related to oil or gas production and gathering operations;
7. Hydraulic lift tank systems;
8. Storage tank systems with a capacity of less than one hundred ten (110) gallons;
9. Fleet and commercial aboveground storage tanks with an individual capacity of two thousand one hundred (2,100) gallons or less;
10. Storage tank systems with a de minimus concentration of regulated substances ~~including but not limited to swimming pools and coffins;~~

11. Storage tank systems that serve as emergency backup tanks, provided that such backup tanks hold regulated substances for only a short period of time and are expeditiously emptied after each use. The provisions of this paragraph shall not prevent Corporation Commission notification requirements and such other restrictions as may be deemed necessary by the Commission to protect the environment;

12. Farm or residential underground storage tanks with an individual capacity of one thousand one hundred (1,100) gallons or less used for noncommercial purposes;

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

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

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

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

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

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

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

D. Any rules promulgated by the Corporation Commission governing the design and labeling of aboveground storage tanks shall be amended to allow storage tanks designed and built for underground use to be used as aboveground storage tanks if used with secondary containment and if the storage tanks were installed for that use prior to July 1, 2007. Any rules promulgated by the Commission shall not be more stringent than any Environmental Protection Agency standards or regulations relating to aboveground storage tank design.

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

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

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

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

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

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

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

6. Have the right to access to any property which has or may have had a petroleum storage tank system, a suspicion of release or a confirmed release from a petroleum storage tank system on the premises, and inspect any monitoring stations equipment, samples, or conduct sampling or tests to identify any actual or suspected release of a regulated substance;

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

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

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

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

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

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

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

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

- a. submit such reports and information concerning the storage tank system as may be determined necessary by the Commission pursuant to the provisions of the Oklahoma Petroleum Storage Tank Regulation Consolidation Act or rules promulgated pursuant thereto,
- b. perform tests, install release detection devices, and where appropriate, monitor the environment to ensure that ~~pollution~~ a petroleum release is not occurring,
- c. make timely reports to the Commission of ~~pollution~~ contamination, releases, or testing and sampling events at or above Commission action levels,

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

15. Establish and enforce administrative penalties against any person or entity for violations pursuant to the provisions of the Oklahoma Petroleum Storage Tank Regulation Consolidation Act, requirements, rules promulgated thereunder, or orders issued therefrom, including issuance of field citations by designated personnel for violations of the Oklahoma Petroleum Storage Tank Regulation Consolidation Act, including but not limited to the authority to ~~close a facility~~ shut down a storage tank system found to pose an imminent threat to the health, safety or the environment, to be operating a storage tank system for which permit fees have not been paid, or to be operating a storage tank system with an outstanding unpaid field citation or fine, or violation of a Commission requirement, rule or order. The Commission shall promulgate rules specifying the events that provide for storage tank system shutdown. Issuance or payment of field citations shall in no way preclude other enforcement proceedings, administrative penalties, fines or order of the Commission if an owner or operator fails to correct a violation or abate a threat to health, safety or the environment in a reasonable manner, as determined by the Commission. If a citation is issued or a facility is closed under the provisions of the Oklahoma Petroleum Storage Tank Regulation Consolidation Act, the owner or operator of the facility on

application and notice of hearing to the Commission shall be afforded a hearing within ten (10) days of filing an application. Any penalties or fines assessed pursuant to this section shall be established by the Commission by rules promulgated pursuant to the Administrative Procedures Act;

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

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

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

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

20. When necessary, economically advantageous, reasonable and integral to a ~~remediation~~ corrective action effort or to establish an alternative water supply, the Petroleum Storage Tank Division may, in the exercise of its powers for the performance of its duties as authorized by this section, purchase real property and easements, and if an owner/operator is unwilling, unknown, unavailable or financially unable, the Petroleum Storage Tank Division may arrange for the design, construction and operation of an alternative water supply system conjunctive with a ~~remediation~~ corrective action effort and/or the establishment of an alternative water supply with funds from the ~~Petroleum Storage Tank Indemnity Fund~~. Provided, no

real property shall be purchased by the Commission pursuant to this paragraph which will impose liability on the Commission, Petroleum Storage Tank Division, the Indemnity Fund or on the state for environmental claims or hazards. Disposition of property purchased by the Petroleum Storage Tank Indemnity Fund shall be made pursuant to the provisions of Section 129.4 of Title 74 of the Oklahoma Statutes by the Petroleum Storage Tank Division and the Office of Management and Enterprise Services. Proceeds from any sale shall be deposited to the credit of the Petroleum Storage Tank Indemnity Fund;

21. Acquire and sell personal property which has been purchased or obtained by a pay-for-performance contract pursuant to Section 27 of this act. Surplus personal property shall be disposed of by the Petroleum Storage Tank Division and the Office of Management and Enterprise Services pursuant to the Oklahoma Surplus Property Act. The proceeds of the sale shall be deposited in the Petroleum Storage Tank Indemnity Fund;

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

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

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

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

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

27. Develop standards for pipeline terminal and refinery delivery point metering and calibration and provide for appropriate inspection and regulation of such meters where the metered product is to be delivered to petroleum storage tanks; and

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

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

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

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

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

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

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

5. An enforcement program;

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

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

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

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

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

C. The Commission may promulgate rules establishing different requirements for different areas or regions of the state if the Commission finds that more stringent rules are necessary:

1. To protect specific waters of the state including but not limited to those waters of the state designated for additional protection in Oklahoma's water quality standards; or

2. Because conditions peculiar to that area or region require different standards to protect public health, safety, welfare or the environment.

D. In promulgating rules pursuant to the provisions of the Oklahoma Petroleum Storage Tank Regulation Consolidation Act, the Commission shall consider all relevant federal standards and regulations on storage tank systems. If the Commission promulgates any rule that is more stringent than a federal standard or regulation on the same subject, the Commission shall clearly express the deviation from the federal standard or regulation and the reasons for the deviation at a public hearing or at time of adoption of the rule.

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

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

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

- a. does not contain or has not contained a regulated substance, or
- b. has been permanently closed or has not been in operation since January 1, 1974.

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

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

D. ~~The application form for a permit shall be provided by and filed with the Commission.~~ A storage tank registration form must be

provided to and approved by the Commission before a permit is issued. In addition to other information requested by the Commission, the ~~application~~ registration form shall include the type of financial responsibility coverage utilized to comply with the requirements of the Oklahoma Petroleum Storage Tank Regulation Consolidation Act and by rule of the Commission and the type of leak detection method employed.

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

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

3. Any permittee ~~or applicant for permit~~ subject to the provisions of the Oklahoma Petroleum Storage Tank Regulation Consolidation Act shall be deemed to have given consent to any duly authorized employee or agent of the Commission to access, enter, inspect or monitor, the tank system or facility in accordance with the provisions of the Oklahoma Petroleum Storage Tank Regulation Consolidation Act. Refusal to allow such access, entry, or inspection may constitute grounds for the denial, nonrenewal, suspension, or revocation of a permit. Upon refusal of access, entry, inspection, sampling or copying pursuant to this section, the Director may make application for and obtain an administrative warrant or an order from the Commission after notice and hearing to allow such entry, inspection, testing, sampling or copying.

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

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

G. The Commission may deny approval of a ~~permit application~~ storage tank registration, or refuse to reissue, suspend or revoke a permit issued pursuant to the Oklahoma Petroleum Storage Tank Regulation Consolidation Act if the Commission finds, after notice and a hearing ~~conducted in accordance with the provisions of Section~~

~~314 of Title 75 of the Oklahoma Statutes,~~ pursuant to Section 311 of this title that the applicant or permittee has:

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

2. Failed to comply with any order of the Commission, provision or requirement of this act or any rules promulgated by the Commission in accordance with the provisions of the Oklahoma Petroleum Storage Tank Regulation Consolidation Act; or

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

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

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

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

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

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

2. ~~Suspension~~ Storage tank system shutdown, suspension or nonrenewal of the permit to operate such system issued by the

Commission until payment of such fees or penalty, or both, so assessed; or

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

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

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

B. The owner or operator of a storage tank system shall immediately take all reasonable corrective actions necessary to prevent a release or a threatened release of regulated substances from a storage tank system and to abate and remove any such releases subject to applicable federal and state requirements. The Corporation Commission shall require that any corrective action taken by a storage tank system owner or operator or authorized by the Commission shall be in compliance with all applicable state statutes and rules and federal laws and regulations for the protection of air quality and water quality and for the transportation and disposal of any waste.

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

1. Issue an administrative order stating the existence of an emergency and requiring that such action be taken as the Commission deems necessary to meet the emergency. Such order shall be effective immediately. Any person to whom such an order is directed shall comply with the order immediately but on application to the Commission shall be afforded a hearing within ten (10) days after receipt of the administrative order. On the basis of such hearing, the Commission shall continue such order in effect, revoke it, or modify it. Any person aggrieved by such order continued after the hearing provided for in this subsection may appeal to the Supreme Court as provided in Section 318 of Title 75 of the Oklahoma

Statutes. Such appeal when docketed shall have priority over all cases pending on the docket; and

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

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

- a. an owner or operator of the storage tank system cannot be identified,
- b. an identified owner or operator cannot or will not comply with the order issued pursuant to subsection C of this section,
- c. an administrative or judicial proceeding on an order issued pursuant to subsection C of this section is pending and the Commission determines corrective action is necessary to protect the public health, safety and welfare or the environment until the administrative or judicial proceeding is resolved, or
- d. the Commission determines that the release constitutes a danger requiring immediate action to prevent, minimize or mitigate damage to the public health and welfare or the environment. Before taking an action under this paragraph, the Commission shall make all reasonable efforts, taking into consideration the urgency of the situation, to afford an owner or operator notice and hearing to take a corrective action and notify the owners or occupants of adjacent or affected real property as specified by Section 310 of this title.

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

- a. the owner or operator has failed to take a corrective action ~~ordered~~ required by the Commission and the Commission has taken the corrective action, or

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

3. Reasonable and necessary expenses incurred by the Commission, the Oklahoma Leaking Underground Storage Tank Trust Fund, or the Oklahoma Leaking Underground Storage Tank Revolving Fund, in taking a corrective action, including costs of investigating a release and administrative and legal expenses, may be recovered from the Indemnity Fund by application to the Commission with notice and hearing pursuant to Section 311 of this title. The Commission's certification of costs incurred is prima facie evidence that the costs incurred are reasonable and necessary. The Commission shall be entitled to apply for and receive payment from the Indemnity Fund ~~Program on behalf of an eligible person for an eligible release~~ upon any site upon which the Commission has taken corrective action. ~~Such payments shall be deemed to be reimbursement of the eligible person.~~ Costs incurred that are recovered under this subsection shall be deposited in the Corporation Commission Storage Tank Regulation Revolving Fund. Costs reimbursed by the Indemnity Fund for Oklahoma Leaking Underground Storage Tank Trust Fund or Oklahoma Leaking Underground Storage Tank Revolving Fund expenditures shall be deposited in the Oklahoma Leaking Underground Storage Tank Revolving Fund.

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

1. This subsection does not:

- a. prohibit a person who may be liable from entering an agreement by which the person is insured, held harmless, or indemnified for part or all of the liability,
- b. prohibit the enforcement of an insurance, hold harmless, or indemnification agreement, or

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

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

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

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

B. 1. If action or corrective action is not taken in response to the notice issued pursuant to subsection A of this section, the Commission shall initiate proceedings and hold a hearing to determine if:

- a. the alleged violator should be found in contempt or in violation of Commission rules, requirements, enabling statutes, and/or Commission orders,
- b. ~~the alleged violator should be found to be in violation of the provisions of the Oklahoma Storage Tank Regulation Act,~~
- e. ~~the~~ any permit or license issued to the alleged violator should be suspended, revoked or not reissued,
- d. ~~the application for a permit should be denied,~~ or
- e. c. whether any other appropriate relief should be granted.

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

3. After hearing, the Commission shall make findings of fact and conclusions of law, and enter its order reflecting its decision in the matter. The order of the Commission shall become final and binding on all parties unless appealed to the Supreme Court as provided in Section 318 of Title 75 of the Oklahoma Statutes within sixty (60) days of the Commission's order. Except as otherwise provided by this section, Sections 319 through 322 of Title 75 of the Oklahoma Statutes shall be applicable to such appeals.

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

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

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

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

~~a. the surface owner of real property where any corrective action is to be taken if such person is not the owner or operator of the storage tank system, and~~

~~b. the owner of real property adjacent to the location of the corrective action if such real property owner will be adversely affected by the corrective action.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

B. The Division may bring an action before an administrative law judge of the Commission, or in a court of competent jurisdiction for equitable relief to redress or restrain a violation by any person of a provision of the Oklahoma Petroleum Storage Tank Regulation Consolidation Act or any rule promulgated or order issued pursuant to the act. The administrative law judge or court has

jurisdiction to determine the action, and to grant the necessary or appropriate relief, including but not limited to:

1. Enjoining further releases;
2. Ordering the design, construction, installation or operation of alternate facilities;
3. Ordering the removal of facilities, contaminated soils and the restoration of the environment;
4. Fixing and ordering compensation for any public or private property destroyed, damaged or injured;
5. Except as otherwise provided by law, assessing and awarding punitive damages pursuant to the Oklahoma Petroleum Storage Tank Regulation Consolidation Act; and
6. Ordering reimbursement to any agency of federal, state or local government from any person whose acts caused governmental expenditures if not already reimbursed by any other state or federal reimbursement program.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 316. No county, incorporated or nonincorporated municipality, state agency or political subdivision shall enact ordinances or promulgate any rules, ordinances ~~or~~, regulations or requirements governing any aspect of petroleum storage ~~tanks~~ system regulation within the State of Oklahoma that shall be in conflict with any of the provisions of the Oklahoma Petroleum Storage Tank ~~Regulation~~ Consolidation Act, or any rules promulgated

or any orders issued by the Corporation Commission pursuant to the provisions of the Oklahoma Petroleum Storage Tank Regulation Consolidation Act.

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

Section 318. A. 1. The Corporation Commission is authorized to ~~develop and~~ implement a program for the licensing of petroleum storage tank professionals. Persons licensed by the Commission as ~~petroleum storage tank professionals shall be environmental professionals possessing such~~ environmental consultants must have the training, education and experience as may be required by the Commission. Environmental professionals from different fields possessing equal levels of education and experience, and maintaining or holding professional license, certification or registration, whether from a state agency or a recognized private organization, shall be subject to the same requirements to become licensed. Persons seeking to become licensed may be required to demonstrate knowledge, experience and expertise of soil and water protection and remediation techniques and the regulation of petroleum storage tanks.

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

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

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

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

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

5. A person whose license has been revoked in a proceeding brought pursuant to this section may apply for a new license after the expiration of a term of no less than one (1) year and no more than five (5) years from the date of revocation, depending on the decision of the Director of the Petroleum Storage Tank Division of the Corporation Commission. Upon a subsequent determination of violation of:

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

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

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

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

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

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

C. Operators of underground storage tanks shall complete a training program commensurate with their responsibility for the operation of underground storage tanks. The training program shall be approved by the Commission and encompass training for persons

with three levels of responsibility for storage tank operation as follows:

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

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

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

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

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

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

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

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

Section 322. A. 1. Effective July 1, 1998, there is hereby established the Petroleum Storage Tank Division within the

Corporation Commission, which shall have separate budget activities and subactivities from any other division of the Commission.

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

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

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

- a. the Oklahoma Petroleum Storage Tank ~~Regulation~~ Consolidation Act,
- b. ~~the Oklahoma Petroleum Storage Tank Release Indemnity Program,~~
- e. the Oklahoma Petroleum Storage Tank ~~Release~~ Environmental Cleanup Indemnity Fund,
- ~~d.~~ c. the Oklahoma Petroleum Storage Tank ~~Regulation~~ Revolving Fund,
- ~~e.~~ d. the Oklahoma Leaking Underground Storage Tank Trust Fund,
- ~~f.~~ Fuel
- e. the Oklahoma Leaking Underground Storage Tank Trust Revolving Fund,
- f. Compliance and Inspection ~~and Fuel Laboratory,~~ and
- g. Petroleum Storage Tank Registration, Licensing, and
- h. Antifreeze.

~~All of the powers and duties associated with the administration of these programs, funds and services are hereby transferred to the~~

~~Petroleum Storage Tank Division, together with all unexpended funds, property, records and any outstanding financial obligations and encumbrances related to the activities of each.~~

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

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

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

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

- a. develop the organizational framework of the Petroleum Storage Tank Division,
- b. define duties and set salaries of employees, to employ a sufficient number of employees to accomplish the duties and responsibilities of the programs, funds and services of the Petroleum Storage Tank Division, including but not limited to such assistants, chemists, geologists, hydrologists, storage tank professionals, engineers, administrative, clerical and technical personnel, investigators, aides and such other personnel, either on a full-time, part-time, fee or contractual basis, as in the judgment and discretion of the Director shall be deemed necessary, expedient, convenient or appropriate to the performance or carrying out of any of the purposes, objectives, responsibilities or statutory provisions relating to the Petroleum Storage Tank Division,
- c. establish internal policies and procedures for the proper and efficient administration of the Division,
- d. clearly delineate the duties and responsibilities of the various programs as prescribed by law within the jurisdiction of the division,
- e. create and implement an internal coordinated management system among the Storage Tank Regulation Program and the ~~Oklahoma Petroleum Storage Tank Release Indemnity Program Fund~~, and
- f. the Indemnity Fund Administrator and all other employees of the Indemnity Fund shall be hired by the Director of the Petroleum Storage Tank Division of the Corporation Commission,
- g. Indemnity Fund employees shall be in the unclassified service and shall be exempt from the agency full-time-equivalent limit. All employees involved in reviewing and approving claims and in the approval and issuance of payments shall be employees of the Indemnity Fund under the supervision of the Director or Director's designee,

- h. the Director is authorized to employ temporary workers, contract labor, or to contract with a private company as may be prudent to properly administer the Indemnity Fund, and
- i. exercise all incidental powers which are necessary and proper to implement the purposes of the Division pursuant to the Oklahoma Petroleum Storage Tank ~~Reform~~ Consolidation Act and to implement all programs within the Division's jurisdiction.

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

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

1. Reimbursements to eligible persons, unless duly assigned to another, for eligible expenses including the costs to identify and confirm the existence of a suspected release when so instructed by the ~~regulatory program of the~~ Petroleum Storage Tank Division or when such expenses ~~were~~ as determined by the Petroleum Storage Tank Division as necessary and appropriate to protect the health, safety and welfare of the public and the environment;

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

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

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

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

4. Reimbursement of actual costs incurred by the Petroleum Storage Tank Division for the administration of the Indemnity Fund and costs incurred for the purpose of evaluating claims and determining whether specific claims qualify for payment or reimbursement from the Indemnity Fund. Any costs incurred by and reimbursed to the Commission pursuant to the provisions of the Indemnity Fund shall not exceed the actual expenditures made by the Commission to implement the provisions of the Indemnity Fund; and

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

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

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

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

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

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

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

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

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

E. The Indemnity Fund shall consist of:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

C. The Oklahoma Department of Transportation shall submit an annual report to the Speaker of the House of Representatives and the President Pro Tempore of the Senate detailing the expenditures made

from the revenue received from the assessment levied pursuant to Section 25 of this act.

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

E. By December 1, 1998, and every year thereafter, the State Auditor and Inspector shall conduct an independent audit of the books, records, files and other such documents of the Corporation Commission pertaining to and which relate to the administration of the Petroleum Storage Tank Indemnity Fund. The audit shall include but shall not be limited to a review of agency compliance with state statutes regarding the Indemnity Fund, internal control procedures, adequacy of claim process expenditures from and debits of the Indemnity Fund regarding administration, personnel, operating and other expenses charged by the Corporation Commission; the duties performed in detail by agency personnel and Indemnity Fund personnel for which payment is made from the Indemnity Fund, and recommendations for improving claim processing, equipment needed for claim processing, internal control or structure for administering the Indemnity Fund; and such other areas deemed necessary by the State Auditor and Inspector.

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

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

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

A. Any Petroleum Storage Tank Indemnity Fund bill which would change the distribution of the assessment imposed pursuant to the provisions of Section 25 of this act and decrease the amount required to be deposited in the Petroleum Storage Tank Indemnity Fund shall require approval of not less than two-thirds (2/3) of the membership of each House of the Legislature to become law.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- a. motor fuel used solely and exclusively in district-owned or leased public school buses, FFA and 4-H Club trucks for the purposes of legally transporting public school children, or in the operation of vehicles used in driver training,
- b. motor fuels used solely and exclusively to propel motor vehicles on the public roads and highways of this state when leased or owned and being operated for the sole benefit of a county, city, town, volunteer fire department with a state certification and rating, rural electric cooperative, rural water and sewer district, rural ambulance service district, or federally recognized Indian tribe as specified by Section 500.10 of Title 68 of the Oklahoma Statutes,
- c. motor fuel to counties and cities and towns,
- d. diesel fuel for off-road purposes specified by Section 500.10 of Title 68 of the Oklahoma Statutes,
- e. motor fuel used for agricultural purposes specified by Section 500.10 of Title 68 of the Oklahoma Statutes, and
- f. motor fuel used in aircraft or in aircraft engines pursuant to Section 500.10 of Title 68 of the Oklahoma Statutes.

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

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

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

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

4. After the total amount deposited in the Weigh Station Improvement Revolving Fund totals Eighty-one Million Dollars (\$81,000,000.00), any revenue from the assessment received over the amounts required in paragraphs 1 and 2 of this subsection shall be deposited in the Petroleum Storage Tank Indemnity Fund created in Section 22 of this act in amounts necessary to maintain the maintenance level of the Indemnity Fund pursuant to subsection D of this section; and

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

- a. the first One Million Dollars (\$1,000,000.00) collected during each fiscal year shall be deposited in the Corporation Commission Storage Tank Revolving Fund for the purpose of implementing the provisions of the Oklahoma Petroleum Storage Tank Consolidation Act and the rules promulgated thereunder, and
- b. the balance of the monies collected during each fiscal year shall be deposited in the State Transportation

Fund and shall be used solely for the purpose of matching Federal-Aid funds for the construction of highways and roads in this state.

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

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

- a. motor fuel used solely and exclusively in district-owned or leased public school buses, FFA and 4-H Club trucks for the purposes of legally transporting public school children or in the operation of vehicles used in driver's training,
- b. motor fuels used solely and exclusively to propel motor vehicles on the public roads and highways of the state when leased or owned and being operated for the sole benefit of a county, city or town, volunteer fire department with a state certification and rating, rural electric cooperative, rural water and sewer district, rural ambulance service district, or federally recognized Indian tribe as specified by Section 500.10 of Title 68 of the Oklahoma Statutes,
- c. motor fuel to counties and cities and towns,

- d. diesel fuel for off-road purposes specified by Section 500.10 of Title 68 of the Oklahoma Statutes,
- e. motor fuel used for agricultural purposes specified by Section 500.10 of Title 68 of the Oklahoma Statutes, and
- f. motor fuel used in aircraft and aircraft engines pursuant to Section 500.10 of Title 68 of the Oklahoma Statutes.

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

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

A. It shall be the duty of every supplier, licensed importer or any other appropriate person under this act to precollect and remit any assessment so precollected pursuant to the provisions of this act and Section 25 of this act and make and submit an assessment collection report as required by this section.

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

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

- a. the name of the supplier, licensed importer or other appropriate person collecting the assessment,
- b. the total amount of motor fuel, diesel fuel and blending materials sold during the preceding month,

- c. the total amount of assessments collected by the supplier, licensed importer or other appropriate person during the preceding month, and
- d. such further information the Tax Commission may require to enable it to compute correctly and collect the assessment made pursuant to this act.

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

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

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

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

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

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

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

- a. may require that any corrective action taken as a result of an eligible release, other than corrective action taken in an emergency situation, may be made by the competitive bid of at least two bidders. Acquisition or contracts or subcontracts for corrective action or for labor or equipment comprising a single task or scope of work which exceeds Two Thousand Five Hundred Dollars (\$2,500.00) from any one vendor or subcontractor for any one site shall be awarded to the lowest and best bidder,
- b. shall require that an eligible person or a property owner whose off-site property has been contaminated by a release shall not retain an environmental consultant to conduct the remediation of the release in which the eligible person, property owner or impacted party has more than a ten-percent interest ownership, is an employee, or is an officer of the environmental consultant, and
- c. may require the owner or operator to submit documentation evidencing proof of such competitive bidding.

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

3. Professional engineering, geological, land surveying and other professional services or services provided by a Commission-licensed storage tank environmental consultant required for investigation and the preparation of corrective action plans or proposed corrective action plans and oversight of corrective action

shall be selected based upon professional qualifications and technical experience of the consultant at a fair and reasonable fee as negotiated between the eligible person and his or her environmental consultant.

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

D. 1. a. The Administrator shall deny or approve and pay, in whole or in part, the application for reimbursement on behalf of or to eligible persons and shall complete initial reimbursement within ninety (90) days after receipt of the complete application including but not limited to all requisite supporting documents, unless the time for review is extended by the Administrator giving the applicant written notice of intent to extend no later than eighty (80) days from the date of receipt of the application. The total review period shall not be extended beyond one hundred twenty (120) days from the date of receipt of the complete application including but not limited to all requisite supporting documents, unless otherwise extended by written mutual agreement of the applicant and the Administrator.

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

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

2. Disposition of an application shall be provided to the applicant in writing, accompanied by a written explanation setting forth in detail the reason or reasons for the approval or denial of a claim, in whole or in part. If the Administrator fails to make a determination on an application or payment within the time provided or denies an application, or if a dispute otherwise arises with regard to reimbursement, the applicant may seek appropriate legal remedies.

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

4. For eligible releases requiring extensive corrective action, the Administrator is authorized to make an initial payment and periodic supplemental payments for reimbursements to eligible persons for ongoing reimbursable costs actually incurred. An eligible person intending to file for supplemental payments for reimbursement shall submit work plans for implementation of the corrective action plan approved by the Commission's regulatory program pursuant to the Oklahoma Petroleum Storage Tank Consolidation Act, or for other work which is proposed to be performed. Such work plans shall include, but not be limited to, the work to be completed, schedule of actions to be taken and estimates of costs to be reimbursed. Such information may be submitted with the application for reimbursement or whenever appropriate. Such work plans shall be submitted for informational purposes only. After approval of the application, the Administrator shall have thirty (30) days from the date of receipt of a claim for supplemental payment in which to approve and pay or deny the supplemental claim. The thirty-day time for review may be extended by the Administrator for an additional thirty (30) days upon giving the applicant written notice of such intent to extend no later than

twenty (20) days from the date of receipt of the claim. If the claim for payment is included with the application for reimbursement, paragraph 1 of this subsection shall control.

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

- a. the person claiming reimbursement must be an eligible person,
- b. the eligible person must have been in substantial compliance with the applicable rules promulgated pursuant to the provisions of the Oklahoma Petroleum Storage Tank Indemnity Fund and the Oklahoma Storage Tank Consolidation Act at the time of the reporting of the release,
- c. allowable costs resulting from a release must have been incurred on or after December 23, 1988,
- d. the Commission determined that the release no longer poses a threat to the public health and welfare or the environment,
- e. the Commission was given adequate notice by such owner or operator of the release pursuant to Section 309 of Title 17 of the Oklahoma Statutes, and
- f. such owner or operator, to the extent possible, fully cooperated with the Commission in responding to the release.

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

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

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

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

G. 1. An eligible person shall be reimbursed from the Indemnity Fund for allowable costs in excess of the copayment of one percent (1%) of the reimbursable costs for the corrective action. Copayments shall not exceed a maximum of Five Thousand Dollars (\$5,000.00). The Indemnity Fund shall charge the eligible person directly for an initial one-thousand-dollar copayment and thereafter in one-thousand-dollar increments as warranted by the progressive total case costs. When the total case cost is finalized, the Petroleum Storage Tank Indemnity Fund shall reimburse the eligible person any overpayment of the one-percent copayment. For releases that occurred prior to June 4, 2004, eligible persons shall pay the five-thousand-dollar deductible as a copayment which may be paid in installments.

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

3. Reimbursements shall not exceed Two Million Five Hundred Thousand Dollars (\$2,500,000.00) per occurrence, and:

- a. Four Million Dollars (\$4,000,000.00) annual aggregate for owners of one to one hundred storage tank systems, or
- b. Five Million Dollars (\$5,000,000.00) annual aggregate for owners of more than one hundred storage tank systems.

The reimbursement limits in this paragraph shall not include funds expended on city, county, state or political subdivision property where the city, county, state or political subdivision is an impacted party or adjacent property owner.

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

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

1. Recover payments for loss of time;

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

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

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

5. Pay legal expenses.

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

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

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

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

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

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

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

N. 1. Claims for reimbursement pursuant to the Petroleum Storage Tank Indemnity Fund must be made within two (2) years of June 9, 1998, or two (2) years after site closure, whichever is later.

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

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

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

2. If:

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

b. where there is a suspicion of a release onto any property where tanks are located and/or onto property

proximate thereto, or where tanks are located and a site assessment is necessary to confirm a release or perform tank closure, and

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

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

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

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

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

- a. twenty percent (20%) of the total contract price for the first twenty-five-percent reduction in contamination to be accomplished by such system,
- b. an additional twenty percent (20%) of the total contract price, for a total of forty percent (40%) for the next twenty-five percent (25%), for a total fifty-percent reduction in contamination to be accomplished by such system,

- c. an additional twenty percent (20%) of the total contract price, for a total of sixty percent (60%) for the next first twenty-five percent (25%), for a total seventy-five-percent reduction in contamination to be accomplished by such system,
- d. an additional twenty percent (20%) of the total contract price, for a total of eighty percent (80%) for the next first twenty-five percent (25%), for a total one-hundred-percent reduction in contamination to be accomplished by such system, and
- e. with a final payment of the remaining twenty percent (20%) of the contract price to be paid after the site remains clean for six (6) months.

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

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

P. The Oklahoma Petroleum Storage Tank Indemnity Fund is authorized to enter into purchase orders for the performance of corrective action or various tasks or scopes of work to be performed upon a site as is prudent. Each purchase order shall establish an amount to be paid for the completion of a particular corrective action, task or scope of work. Such purchase orders shall be entered into between the Petroleum Storage Tank Indemnity Fund and the eligible person or his or her environmental consultant. The Indemnity Fund and the eligible person or his or her consultant shall conduct negotiations in good faith. Rules promulgated to implement this subsection shall not place any restrictions upon the negotiation process by limiting the number of revisions which may be

submitted or restricting the time period during which they may be submitted.

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

R. 1. When a claim submitted for first reimbursement consideration is disallowed in whole or in part by the Administrator of the Petroleum Storage Tank Indemnity Fund, an applicant shall have ninety (90) days to resubmit the disallowed claim for reconsideration. Unless otherwise authorized by the Administrator of the Petroleum Storage Tank Indemnity Fund, resubmittal of a claim that has been disallowed in whole or in part shall only be allowed one time.

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

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

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

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

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

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

A. Payment of any claim from the Indemnity Fund shall be subject to the Indemnity Fund acquiring by subrogation the right to recover from any person any amounts paid by the Indemnity Fund to or on behalf of any eligible person which may be determined to be fraudulent, reimbursable by other sources, or excessive. The Administrator shall bring an action on behalf of the Indemnity Fund to recover any such monies in the district court where the property is located or where the person from whom recovery is sought resides. The prevailing party in such cases shall be entitled to recover interest, costs of the action and attorney fees. Costs of the action shall include filing fees, administrative costs, witness fees and expenses related to the proceeding.

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

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

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

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

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

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

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

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

F. 1. The Corporation Commission shall seek reimbursement from the responsible person, firm or corporation for all expenditures made from either the Oklahoma Leaking Underground Storage Tank Trust Fund or the Oklahoma Leaking Underground Storage Tank Revolving Fund or from both such funds. All monies received by the Corporation Commission as reimbursement or penalties relating to expenditures made from the Oklahoma Leaking Underground Storage Tank Trust Fund or Oklahoma Leaking Underground Storage Tank Revolving Fund shall be transferred for deposit to the credit of the Oklahoma Leaking Underground Storage Tank Revolving Fund. All monies received by the Corporation Commission as reimbursement or penalties relating to expenditures made from the Corporation Commission Storage Tank Revolving Fund shall be transferred for deposit to the Corporation Commission Storage Tank Revolving Fund.

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

- a. the owner or operator has failed to take a corrective action ordered by the Commission and the Commission has taken the corrective action, or
- b. the Petroleum Storage Tank Division has taken corrective action in an emergency.

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

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

The administrative penalties assessed and collected by the Corporation Commission shall be deposited to the Oklahoma Leaking

Underground Storage Tank Revolving Fund to be disbursed by the Commission in support of relevant agency activities.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7. Six members shall constitute a quorum.

B. The Council shall be composed as follows:

1. The Governor shall appoint three members as follows:

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

b. two members may include:

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

(2) an engineer who holds a ~~remediation~~ an environmental consultant's license issued by the

Petroleum Storage Tank Division or works for a company that performs petroleum storage tank services, or

- (3) a licensed ~~remediation~~ environmental consultant, or
- (4) an owner-operator of an environmental company;

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

- a. one member shall be a petroleum storage tank owner, operator or agent,
- b. one member shall be a petroleum storage tank operator or agent for an agricultural cooperative, and
- c. two members may include:
 - (1) a petroleum storage tank owner, operator or agent, or
 - (2) an engineer who holds a ~~remediation~~ an environmental consultant's license issued by the Petroleum Storage Tank Division or works for a company that performs petroleum storage tank services, or
 - (3) a licensed ~~remediation~~ environmental consultant, or
 - (4) an owner-operator of an environmental company; and

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

- a. one member shall be a petroleum storage tank owner, operator or agent,
- b. one member shall be a county commissioner or a petroleum storage tank operator or agent for a county commissioner, and

c. two members may include:

- (1) a petroleum storage tank owner, operator or agent, or
- (2) an engineer who holds a ~~remediation~~ an environmental consultant's license issued by the Petroleum Storage Tank Division or works for a company that performs petroleum storage tank services, or
- (3) a licensed ~~remediation~~ environmental consultant, or
- (4) an owner-operator of an environmental company.

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

D. The Storage Tank Advisory Council shall:

1. Have authority to recommend to the Commission rules to implement the Oklahoma Petroleum Storage Tank ~~Regulation~~ Consolidation Act and the Petroleum Storage Tank Indemnity Fund. The staff of the storage tank regulatory program and the Petroleum Storage Tank Indemnity Fund shall not have standing to recommend to the Commission proposed permanent rules or changes to such rules which have not previously been submitted to the Council for action prior to the hearing for adoption of the rules by the Commission;

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

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

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

- a. pass nonbinding resolutions expressing the sense of the Council, and
- b. make recommendations to the Commission and its regulatory programs and the Petroleum Storage Tank Indemnity Fund concerning the need and the desirability of conducting public meetings, workshops and seminars.

E. The Council shall not recommend rules for promulgation by the Commission unless all applicable requirements of the Administrative Procedures Act and rules of the Commission have been followed, including but not limited to notice, rule impact statement and rule-making hearings. All actions of the Council with regard to rule-making shall be deemed actions of the Commission for the purposes of complying with the Administrative Procedures Act and rules of the Commission. The Council shall advise the Commission on initiating and conducting rule-making proceedings pursuant to the ~~Oklahoma Petroleum Storage Tank Reform Consolidation Act, Oklahoma Storage Tank Regulation Act and the Oklahoma Petroleum Storage Tank Release Indemnity Program.~~

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

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

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

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

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

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

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

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

For the purpose of enforcing the fuel inspection laws of the State of Oklahoma, the Corporation Commission Petroleum Storage Tank Division shall appoint and assign fuel inspection and compliance personnel sufficient to discharge the duties and obligations of the Commission regarding the inspection, testing, calibration and compliance of fuel and fuel storage facilities pursuant to the Oklahoma Petroleum Storage Tank Consolidation Act.

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

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

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

If any section, paragraph, sentence, or phrase of Sections 33 through 46 of this act shall be declared unconstitutional or void, for any reason, by any court of final jurisdiction, such decision shall not in any way invalidate or affect any other section,

paragraph, sentence, or phrase of this act, but the same shall continue in full force and effect.

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

A. Jurisdiction is conferred upon the Corporation Commission, and the same is authorized and empowered, to prescribe and promulgate rules and specifications for safety and quality with reference to regulated substances as it may deem proper from time to time. The Corporation Commission shall prescribe rules governing the test for octane rating on motor fuels and prescribe the rating.

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

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

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

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

C. If any person shall sell, or offer for sale, any regulated substances or mixtures or combinations, without having had the same inspected as herein provided, he or she shall be guilty of a misdemeanor and be subject to a fine of Five Hundred Dollars (\$500.00) per day per violation and imprisonment for ninety (90) days, or both, for each offense.

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

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

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

A. The Corporation Commission is hereby authorized and directed to promulgate such tests, standards, specifications and rules necessary to carry out the provisions of this act and to ensure that all measuring devices shall be of the highest degree of accuracy reasonably consistent with the nature of the substance measured, and for such purpose the Commission shall have authority to prescribe such maximum limits of allowable error for such measuring devices as the Commission deems necessary to prevent fraud resulting from inaccurate measurement.

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

C. Any tank or container calibrated by the manufacturer, officials of another state, the Tax Commission or the Corporation Commission shall not be subject to further calibration testing by the Commission unless the physical shape or size of the tank or container has been altered by accident or design. A Certificate of Measurement shall be issued by the Commission for tanks and containers which are calibrated by the manufacturer, another state or the Commission. Nothing herein shall prohibit the Commission from ordering the mandatory calibration testing of any tank, container or metering device which the Commission has good reason to

believe is inaccurate and is being utilized to defraud any person, firm or corporation.

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

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

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

B. It shall be the further duty of the Petroleum Storage Tank Division whenever it finds a dispenser or receptacle used for delivering regulated substances which does not meet the minimum specifications required by the rules of the Corporation Commission and the laws of the state immediately to seal and lock the dispenser or receptacle. The seal will be removed when the violation is corrected. The owner has the right to apply for a hearing before the Corporation Commission.

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

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

It shall be the duty of the Corporation Commission Petroleum Storage Tank Division to inspect all measuring devices in this state for the purpose of determining whether or not such measuring devices comply with the tests, standards, specifications and rules of the Commission promulgated under authority of this act; and it shall be

the further duty of the Commission whenever it finds a measuring device which does not meet or comply with the tests, standards, specifications or rules to immediately report the facts and circumstances and place a seal or label on the measuring device, stating that the measuring device does not meet or comply with the required tests, standards, specifications or rules, and immediately to seal and lock the measuring device; provided, that the owner or operator thereof shall have the right to make application to the Commission for an order removing the sign, label, lock or seal, which application shall be heard by the Commission without unnecessary delay, and no notice of hearing shall be required.

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

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

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

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

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

Any person who owns or has custody or control of any measuring device which does not meet or comply with the tests, standards, specifications and rules of the Corporation Commission or any person who tampers with, alters, defaces or destroys any sign, label, seal or lock mentioned in Section 41 of this act, without having first

secured an order permitting the removal of such sign, label, seal or lock, as provided in Section 41 of this act, or any person who violates any rule or order of the Commission promulgated under authority of this act, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than Two Hundred Fifty Dollars (\$250.00), administrative penalties as set forth in Section 311 of Title 17 of the Oklahoma Statutes, and/or punitive damages as set forth in Section 312 of Title 17 of the Oklahoma Statutes; and each day on which any person, firm or corporation violates any of such orders or rules shall be deemed a separate offense. The court may order restitution for any actual damages incurred.

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

A. No person shall sell or offer for sale motor fuel from a motor fuel dispenser supplied by a storage tank into which motor fuel that contains a mixture of at least one percent (1%) by volume of ethanol or methanol has been delivered within the sixty-day period preceding the date of sale or offer of sale unless the person prominently displays on the dispenser from which the mixture is sold a label that complies with subsection B of this section.

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

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

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

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

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

C. If a motor fuel dispenser is supplied by a storage tank into which motor fuel containing at least ten percent (10%) ethanol by volume or at least five percent (5%) methanol by volume is delivered in the sixty-day period preceding the date of the sale or offer of sale, the sign as required in subsection A of this section shall

also state the percentage of ethanol or methanol by volume, to the nearest whole percent, of the motor fuel having the highest percentage of ethanol or methanol delivered into that storage tank during that period.

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

1. The percentage of ethanol contained in the motor fuel being sold;
2. The percentage of methanol contained in the motor fuel being sold; and
3. If the motor fuel contains methanol, the types and percentages of associated cosolvents contained in the motor fuel being sold.

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

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

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

Except as otherwise provided in this section, retail facilities that sell motor fuel shall not be required to post information regarding fuel additives on the motor fuel dispenser or anywhere else on the premises of the facilities. Motor fuel sold at regional or smaller airports in the state for fueling aircraft shall be labeled with the percent of alcohol, if any, in the fuel. The Corporation Commission shall promulgate rules consistent with the provisions of this section.

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

As used in this act, unless the context or subject matter otherwise requires:

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

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

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

An antifreeze shall be deemed to be adulterated:

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

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

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

An antifreeze shall be deemed to be misbranded:

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

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

3. If the product is to be diluted with another substance for use and does not bear on the label, or in an accompanying instruction sheet, folder or booklet, a statement or chart showing appropriate amounts of each substance to be used to provide

protection from freezing at various degrees of temperature down to at least thirty degrees below zero Fahrenheit (-30°F).

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

Before any antifreeze shall be sold, exposed for sale or held with intent to sell within this state, a sample thereof must be analyzed pursuant to standards established by the Oklahoma Corporation Commission and a certified analysis submitted to the Petroleum Storage Tank Division for approval with the initial or annual permit fee application. Upon the initial application of the manufacturer, packer or distributor, and upon the payment of a fee of One Hundred Dollars (\$100.00) for each brand of antifreeze submitted, the Corporation Commission shall approve the analysis of the antifreeze submitted and, if it meets the standards of the Corporation Commission, and is not in violation of Sections 48 through 57 of this act, the Corporation Commission shall issue the applicant an annual written permit, with an official permit number, authorizing the sale of such antifreeze in this state for one (1) fiscal year, July 1 to June 30, in which inspection fee is paid. However, upon approval of an application for renewal of a permit, the fee shall not exceed One Hundred Dollars (\$100.00). The original permit and renewal issued by the Corporation Commission shall bear the same number and shall not be transferable. If the Corporation Commission shall at a later date find that the product to be sold, exposed for sale or held with intent to sell has been materially altered, without the written permission of the Corporation Commission, adulterated, or a change has been made in the name, brand or trademark under which the antifreeze is sold, or it violated the provisions of Sections 48 through 57 of this act, the Corporation Commission shall notify the applicant and the permit shall be canceled.

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

The Petroleum Storage Tank Division of the Oklahoma Corporation Commission shall enforce the provisions of Sections 48 through 57 of this act by certification, inspections, chemical analysis or any other appropriate methods. All samples for inspection or analysis shall be taken from stocks in this state or intended for sale in

this state, or the Corporation Commission through its agents shall require the manufacturer or distributor applying for a permit for antifreeze sale to supply a certified analysis of the antifreeze with the permit application. The Corporation Commission, through its agents, shall have free access by legal means during business hours to all places of business, buildings, vehicles, cars and vessels used in the manufacture, transportation, sale or storage of any antifreeze, and it may open by legal means a box, carton, parcel, or package containing or supposed to contain any antifreeze and may take therefrom samples for analysis.

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

The Oklahoma Corporation Commission shall have the authority to promulgate such rules and regulations as are necessary to promptly and effectively enforce the provisions of Sections 48 through 57 of this act.

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

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

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

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

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

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

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

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

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

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

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

SECTION 61. REPEALER 83 O.S. 2011, Sections 111, as amended by Section 1, Chapter 295, O.S.L. 2015, and as renumbered by Section 7, Chapter 295, O.S.L. 2015, 112, as amended by Section 2, Chapter 295, O.S.L. 2015, and as renumbered by Section 7, Chapter 295, 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), are hereby repealed.

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

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

Passed the House of Representatives the 14th day of March, 2018.

Presiding Officer of the House
of Representatives

Passed the Senate the 9th day of April, 2018.

Presiding Officer of the Senate

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____

Approved by the Governor of the State of Oklahoma this _____

day of _____, 20_____, at _____ o'clock _____ M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____