

1 STATE OF OKLAHOMA

2 1st Session of the 54th Legislature (2013)

3 HOUSE BILL 1774

By: Russ

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5
6 AS INTRODUCED

7 An Act relating to petroleum storage tanks; amending
8 17 O.S. 2011, Section 352, which relates to the
9 Oklahoma Petroleum Storage Tank Release Indemnity
Program; clarifying statutory language; and providing
an effective date.

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

13 SECTION 1. AMENDATORY 17 O.S. 2011, Section 352, is
14 amended to read as follows:

15 Section 352. As used in the Oklahoma Petroleum Storage Tank
16 Release Indemnity Program:

17 1. "Administrator" means the person hired by the Director of
18 the Petroleum Storage Tank Division of the Corporation Commission to
19 administer the Petroleum Storage Tank Indemnity Fund and the
20 Oklahoma Petroleum Storage Tank Release Indemnity Program;

21 2. "Administrative application" means an application for
22 eligibility and reimbursement made to the Petroleum Storage Tank
23 Indemnity Fund by the Director of the Petroleum Storage Tank
24 Division on behalf of an unavailable or unwilling applicant;

1 3. "Assignment of benefits" means a written directive from the
2 applicant of record instructing the Commission to pay reimbursement
3 directly to the named assignee including, but not limited to, an
4 environmental contractor;

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

8 5. "Distributor" means:

9 a. every person importing or causing to be imported into
10 this state any motor fuel, diesel fuel or blending
11 material for use, distribution, or sale and
12 distribution, or sale and delivery after the same
13 reaches this state. "Distributor" does not mean
14 persons importing motor fuel only in the supply tank
15 of a vehicle originally provided by the manufacturer
16 of the motor vehicle as a container for motor fuel or
17 diesel fuel to propel such motor vehicle, nor does
18 "distributor" mean persons only importing motor fuel,
19 diesel fuel or blending material into the state under
20 circumstances requiring that they be licensed as
21 "Motor Fuel/Diesel Fuel Importers for Use" as defined
22 in paragraph 7 of Section 601 of Title 68 of the
23 Oklahoma Statutes and who are actually so licensed,
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- 1 b. any person producing, refining, preparing, distilling,
2 blending, manufacturing, or compounding motor fuel or
3 blending material in this state for use, distribution
4 or sale and delivery in this state,
5 c. any person within this state producing or collecting
6 what is commonly known as drip, casinghead or natural
7 gasoline,
8 d. any person who has in his or her possession or buys
9 for sale or use motor fuel, diesel fuel or blending
10 material from any person other than a licensed
11 distributor, retailer or dealer,
12 e. any person other than a retailer or dealer who sells
13 motor fuel, diesel fuel or blending material to anyone
14 except a licensed distributor,
15 f. any person who makes bulk sales of motor fuel, diesel
16 fuel or blending material, and
17 g. any other person, including a retailer or dealer, who
18 has filed an application for and has procured a
19 distributor's license in the manner provided by the
20 Oklahoma Motor Fuel/Diesel Fuel Importers for Use Tax
21 Code, Section 601 et seq. of Title 68 of the Oklahoma
22 Statutes;

23 6. "Eligible person" means any:
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- 1 a. owner or operator of a storage tank system who has
2 incurred liability as a result of an eligible release,
3 and who meets the requirements specified in Section
4 356 of this title, or
- 5 b. person who on or after November 8, 1984, purchases
6 property on which a storage tank system is located if:
- 7 (1) the storage tank system was located on the
8 property on November 8, 1984,
- 9 (2) such person could not have known that such
10 storage tank system existed. The burden shall be
11 upon such purchaser to show that such purchaser
12 did not know or should not have known of the
13 existence of such storage tank system,
- 14 (3) the owner or operator of the storage tank system
15 responsible for the system cannot be determined
16 by the Corporation Commission or the
17 Administrator, or the owner or operator of the
18 storage tank system responsible for the system is
19 incapable, in the judgment of the Corporation
20 Commission, of properly carrying out any
21 necessary corrective action, and
- 22 (4) either funds are unavailable from the Oklahoma
23 Leaking Underground Storage Tank Trust Fund or
24 the storage tank system is not eligible for

1 corrective action taken pursuant to Section 365
2 of this title,

3 c. person who acquired ownership of a tank through
4 inheritance as denoted in an Order Allowing Final
5 Account and Determination of Heirship and Decree of
6 Final Distribution or is responsible for a release by
7 reason of owning the real property through inheritance
8 within which a tank or a release is or was located if:

9 (1) the storage tank system of the release was
10 located on the real property on November 8, 1984,

11 (2) the operator of the storage tank system
12 responsible for the system or responsible for a
13 release cannot be determined or found by the
14 Corporation Commission, or the operator of the
15 storage tank system responsible for the system or
16 responsible for the release is incapable, in the
17 judgment of the Corporation Commission, of
18 properly carrying out any necessary corrective
19 action,

20 (3) either funds are unavailable from the Oklahoma
21 Leaking Underground Storage Tank Trust Fund or
22 the storage tank system or release is not
23 eligible for corrective action taken pursuant to
24 Section 365 of this title,

1 (4) the person did not participate or was not
2 responsible in any manner, directly or
3 indirectly, in the management of the storage tank
4 system or for the release and otherwise is not
5 engaged in petroleum production, refining or
6 marketing, and

7 (5) the person meets the requirements specified in
8 Section 356 of this title, or

9 d. person who is an impacted party, adjacent owner or
10 town, city or political subdivision as determined by
11 the Commission and who willingly submits to the
12 regulations of the Commission governing petroleum
13 storage tank system owners, operators or agents;

14 7. "Disbursements" means funds expended or encumbered which are
15 attributable to a particular petroleum storage tank system release
16 or case;

17 8. "Eligible release" means a release for which allowable
18 costs, as determined by the Administrator, are reimbursable to or on
19 behalf of an eligible person;

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

1 on reimbursement from the Petroleum Storage Tank Indemnity Fund. An
2 impacted party is not subject to the Petroleum Storage Tank
3 Indemnity Fund deductible;

4 10. "Indemnity Fund" means the Petroleum Storage Tank Indemnity
5 Fund;

6 11. "Indemnity Fund Program" means the Oklahoma Petroleum
7 Storage Tank Release Indemnity Program established to administer the
8 Indemnity Fund;

9 12. "Investigation" means activities taken to identify,
10 confirm, monitor or delineate the physical extent of a release and
11 which result in the selection of an appropriate means to remediate a
12 release and specific design criteria for such remediation upon which
13 competitive bids may be reasonably based;

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

20 14. "Owner" means:

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

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

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

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

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

14 16. "Pay-for-performance" means a process by which an
15 environmental consultant guarantees, by executing a contract
16 pursuant to the provisions of this paragraph, that a release of a
17 regulated substance will be remediated to levels agreed to by the
18 Commission, the eligible person and the consultant. Such levels
19 must be protective of human health, safety and the environment. The
20 performance-based process encompasses several steps including, but
21 not limited to, the development of a contract signed by an
22 officer/owner of the environmental consultant, the eligible person
23 and the Administrator of the Petroleum Storage Tank Indemnity Fund.
24 The contract shall contain any agreed upon reasonable price for the

1 work to be performed. Scheduled payments shall be distributed only
2 as performance-based goals are attained;

3 17. "Person" means any individual, trust, firm, joint stock
4 company or corporation, corporation, limited liability company,
5 partnership, association, any representative appointed by order of
6 the court, municipality, county, school district, or other political
7 subdivision of the state, or any interstate body. The term also
8 includes a consortium, a joint venture, a commercial entity, or any
9 other legal entity. The term also refers to any agency of the State
10 of Oklahoma which purchases property containing storage tanks from
11 an owner or operator qualified to access the Indemnity Fund and upon
12 which an eligible release has occurred prior to the agency acquiring
13 the property;

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

19 19. "Reimbursement" means either:

20 a. repayment of an approved claim to an eligible person
21 for allowable costs resulting from an eligible
22 release, or
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1 b. payment of an approved claim submitted on behalf of an
2 eligible person for incurred allowable costs resulting
3 from an eligible release;

4 20. "Release" means any spilling, overfilling, leaching,
5 emitting, discharging, escaping, or unintentional disposing of the
6 petroleum from a storage tank system into the environment of the
7 state. The term release includes but is not limited to suspected
8 releases of regulated substance from a storage tank system,
9 identified as a result of sampling, testing or monitoring results,
10 or identified in any similarly reliable manner;

11 21. "Sale" means every gallon of motor fuel, diesel fuel, or
12 blending materials sold, or stored and distributed, or withdrawn
13 from storage, within the state, for sale or use. No gallon of motor
14 fuel, diesel fuel, or blending materials shall be the basis more
15 than once of the assessment imposed by Section 354 of this title;

16 22. "Storage tank" or "storage tank system" means a storage
17 system as such term is defined by the Oklahoma Storage Tank
18 Regulation Act; and

19 23. "Tax Commission" means the Oklahoma Tax Commission.

20 SECTION 2. This act shall become effective November 1, 2013.

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22 54-1-5800 KB 01/06/13
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