



OKLAHOMA CORPORATION COMMISSION PETROLEUM STORAGE TANK DIVISION INDEMNITY FUND

Performance Audit

For the period July 1, 2018 through June 30, 2020

Cindy Byrd, CPA
State Auditor & Inspector

**Audit Report of the
Oklahoma Corporation Commission
Petroleum Storage Tank Division Indemnity Fund**

**For the Period
July 1, 2018 through June 30, 2020**



Oklahoma Corporation Commission
Performance Audit Report
Petroleum Storage Tank Division
Indemnity Fund

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ENGAGEMENT BACKGROUND & OBJECTIVES

This audit was conducted at the request of the Commissioners of the Oklahoma Corporation Commission (OCC), pursuant to 74 O.S. § 213.2(B). The focus of this audit was the Petroleum Storage Tank Division. The objectives of the audit were as follows:

1. Determine whether the Petroleum Storage Tank Division Director has complied with 17 O.S. § 322 (C)(1) and (C)(2)(a) - (g) - Duties of Director.
2. Determine whether internal controls are operating effectively for the expenditure process of making payment from the Petroleum Storage Tank Indemnity Fund as defined by the Government Accountability Office (GAO) *Standards for Internal Controls* and that the expenditure complied with 17 O.S. § 324 - Expenditures of Petroleum Storage Tank Indemnity Fund - Administrator.
3. Determine whether reimbursement claims made from the Petroleum Storage Tank Indemnity Fund complied with 17 O.S. § 327.3 - Requirements for Reimbursement Claims.

Details of the statutes are in Appendix B

WHAT WE FOUND

- The Petroleum Storage Tank Division Director has **complied** with 17 O.S. § 322 (C)(1) and (C)(2)(a)-(g).
- **Internal controls are operating effectively** for the expenditure process of making payments from the Petroleum Storage Tank Indemnity Fund as defined by the Government Accountability Office (GAO) *Standards for Internal Controls* and that the expenditure complied with 17 O.S. § 324.
- Reimbursement claims made from the Petroleum Storage Tank Indemnity Fund **complied** with 17 O.S. § 327.3.

See full report online at <http://www.sai.ok.gov>



Cindy Byrd, CPA | State Auditor & Inspector

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March 29, 2022

**TO THE OKLAHOMA CORPORATION COMMISSIONERS AND DIRECTOR OF
ADMINISTRATION**

We present the audit report of the Oklahoma Corporation Commission, Petroleum Storage Tank Division Indemnity Fund, for the period July 1, 2018 through June 30, 2020. The goal of the State Auditor and Inspector is to promote accountability and fiscal integrity in state and local government. Maintaining our independence as we provide this service to the taxpayers of Oklahoma is of utmost importance.

We wish to take this opportunity to express our appreciation for the assistance and cooperation extended to our office during our engagement.

This report is a public document pursuant to the Oklahoma Open Records Act (51 O.S. § 24A.1 et seq.) and shall be open to any person for inspection and copying.

Sincerely,

A handwritten signature in blue ink that reads "Cindy Byrd".

CINDY BYRD, CPA
OKLAHOMA STATE AUDITOR & INSPECTOR



**Commission
Background**

The Oklahoma Corporation Commission (OCC or Commission) exercises a unique combination of executive, legislative, and judicial power with broad authority over several critical sectors of Oklahoma’s economy as wide-ranging as telecommunications, transportation, transmission of electricity and natural gas, and natural resource extraction.

The OCC presently regulates public utilities and telecommunications, except those under federal or municipal jurisdictions or exempt from regulation (Public Utilities Division – PUD); oil and gas drilling, production and environmental protection (Oil and Gas Conservation Division or OGCD); aspects of motor carrier, rail and pipeline transportation; most taxis, limousine and for-hire buses; transportation networks (e.g. Lyft, Uber); towing companies performing non-consensual tows; cotton gins; pipeline transportation; and private water companies.

This vast and diverse regulatory authority lends itself to complex operations that require specific expertise, resulting in isolated regulatory jurisdictions. The challenge is in developing communication and information systems that successfully integrate the regulatory and adjudicatory functions of the Commission to ensure the efficient and effective regulation of industries representing, directly or indirectly, roughly half of Oklahoma’s gross state product.

The Commission’s Petroleum Storage Tank Division (PSTD) has the responsibility to ensure proper operation of fuel dispensing units (i.e., gas pumps) at all retail filling stations, and the remediation of groundwater and soil pollution caused by leaking petroleum storage tanks.

The Commission is comprised of three Commissioners who are elected by a statewide vote of the people to serve a six-year term. The terms are staggered so one Commissioner vacancy occurs every two years. Commission members as of January 2022 are:

Dana Murphy Chair
Bob Anthony Vice-Chair
Todd Hiatt Commissioner

**Scope and
Methodology**

Our audit was requested by the Commission in accordance with 74 O.S. § 213.2(B), which authorizes the State Auditor and Inspector to examine all books and accounts of all public entities specified by statute, upon receiving a written request by the chief executive officer of the governmental entity or another authorized requestor.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Based on assessment of materiality and risk for the period, we focused on the internal control process for expenditures made from Petroleum Storage Tank Division (PSTD or Division) Indemnity Fund (IF) and ensured those expenditures complied with significant state laws for the period July 1, 2018 through June 30, 2020.

Our procedures included inquiries of appropriate personnel, inspections of documents and records, observation of the division's operations and administrative procedures, and review of relevant state laws, Oklahoma Administrative Code, PSTD Policy manual, Petroleum Information Management System (PIMS) database, PSTD Imaging, agency Human Resource records and corresponding data. Further details regarding our methodology are included in Appendix A.

We utilized sampling of transactions and to ensure the samples were representative of the population and provided sufficient, appropriate evidence, the random sample methodology was used.

Because of the inherent limitations of an audit, combined with the inherent limitations of internal control, errors or fraud may occur and not be detected. Also, projections of any evaluation of internal control to future periods are subject to the risk that conditions may change or compliance with policies and procedures may deteriorate.

Internal Control Considerations

The Government Accountability Office (GAO) emphasizes the importance of internal controls at all levels of government entities. Their *Standards for Internal Control*¹ outline the five overarching components of internal control: the control environment, risk assessment, information and communication, monitoring, and detailed control activities. Any

¹ *Standards for Internal Control in the Federal Government*, or the "Green Book," sets standards and the overall framework for an effective internal control system in federal agencies and is treated as best practices for other levels of government. Last update 2014, accessible online at <https://www.gao.gov/products/GAO-14-704G>.

component considered significant to our audit objectives is assessed during our procedures and included as appropriate in this report.

The *Standards for Internal Control* underscore that an internal control system is effective only when the five components of internal control are operating together in an integrated manner. They also stress that documentation is a necessary part of an effective internal control system and is required to demonstrate its design, implementation, and operating effectiveness.

**Petroleum
Storage Tank
Division
Background**

The mission of the PSTD is to protect human health, safety and the environment by preventing releases of petroleum products from aboveground and underground storage tanks; and reduce, mitigate and eliminate the threats posed by petroleum products released from storage tanks.

The Division enforces state and federal regulations which pertain to above ground and underground storage tanks that contain antifreeze, motor oil, motor fuel, gasoline, kerosene, diesel and aviation fuel.

The Division is comprised of four departments: Accounting, Administration, Compliance and Inspection and Enforcement, and Technical Regulatory. The Division administers the federal Underground Storage Tank (UST) program, the Oklahoma Leaking Underground Storage Trust Fund (LUST Trust) and the Petroleum Storage Tank Release Indemnity Fund (PST IF).

PSTD Fuel Inspectors check the calibration of fuel pumps to ensure customers are receiving the accurate amount of fuel at each purchase. Inspectors also check octane levels and assist tank owners with proper release detection methods.

The primary focus of this audit was the Petroleum Storage Tank Release Indemnity Fund (PSTD IF).

Indemnity Fund

The PST IF was created by the Oklahoma Legislature in 1989 and established by 17 O.S. § 353² to financially assist petroleum storage tank owners meet a requirement associated with clean up actions necessitated by leaking tanks at release sites.

The PSTD has jurisdiction over releases and spills from petroleum storage tank and is responsible for the administration of the IF. The PSTD Director's duties³ are to provide for the administration of the Division and hire IF Administrator (Fund Administrator) and all other employees of the PSTD.

The IF reimburses allowable costs incurred for the assessment and remediation of contaminated sites where petroleum storage tank systems have released pollutants into the environment determined eligible by the Fund Administrator.

²Repealed effective November 1, 2018 to the Oklahoma Petroleum Storage Tank Consolidation Act 17 O.S. § 301 - 347.1

The Fund Administrator also ensures there is enough money available for these required corrective actions needed to mitigate environmental, health, and safety threats to the public, and oversees all expenditures for eligible claims seeking reimbursement.

There are four types of revenue deposited into the Indemnity Fund.

- Motor Fuel Assessment⁴ - The largest portion of the funds come from a \$0.01 assessment on the sale of each gallon of gasoline, diesel fuel and blending materials collected at the wholesale level after apportionments are applied.
- Investments⁵ - Investment of monies held in the Indemnity Fund.
- Licensing and Permit Fees⁶ - i.e., \$100 application fee for IF docket.
- Co-Payments⁷ - Payments from facility owners for eligible releases requiring corrective action.

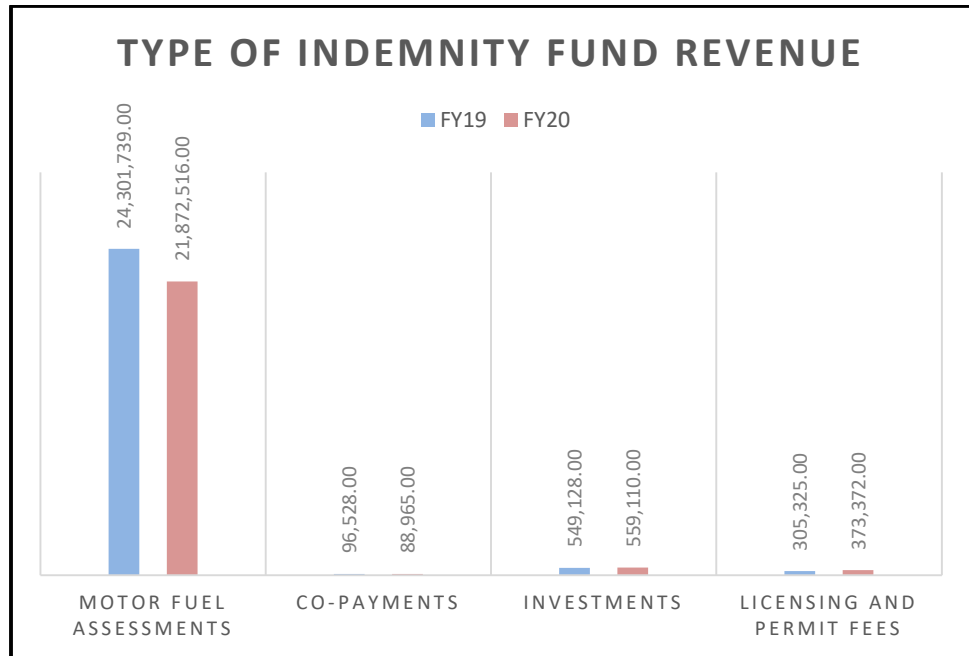
⁴ **17 O.S. § 327.1 (A)(2) A.** Except as otherwise provided by this section, there shall be an assessment of one cent (\$0.01) per gallon upon the sale of each gallon of motor fuel used or consumed in this state. The assessment imposed pursuant to the provisions of this section shall be for the purposes of providing revenue to: 2. The Petroleum Storage Tank Indemnity Fund pursuant to paragraphs 3 and 4 of subsection C of this section

⁵ **17 O.S. § 353(D)(2) D.** The Indemnity Fund shall consist of: 2. Interest attributable to investment of money in the Indemnity Fund;

⁶ **OAC 165:3-2 (b)** Fees for the Petroleum Storage Tank Division. Lists all PSTD fees and amounts.

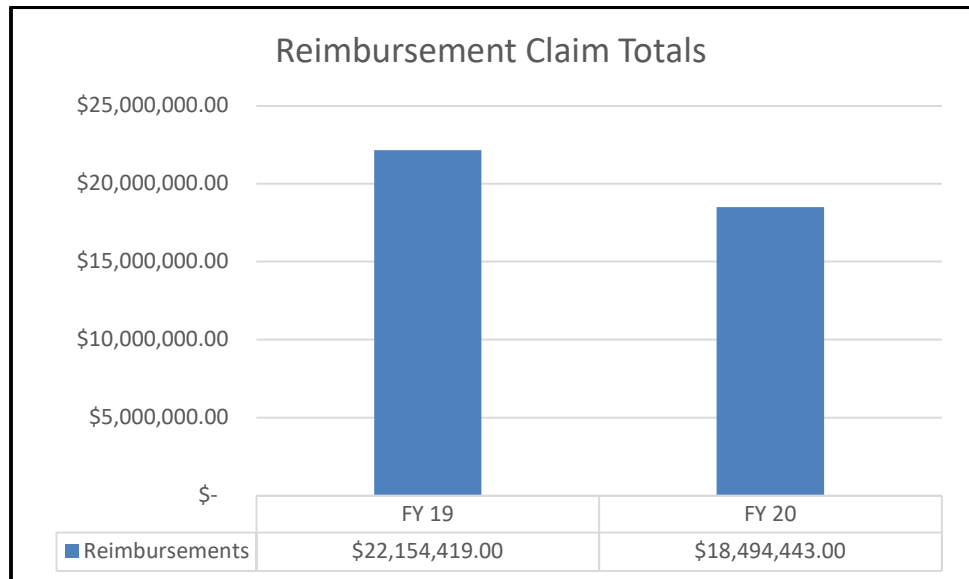
⁷ **17 O.S. § 327.3(G)(1) G. 1.** An eligible person shall be reimbursed from the Indemnity Fund for allowable costs in excess of the copayment of one percent (1%) of the reimbursable costs for the corrective action. Copayments shall not exceed a maximum of Five Thousand Dollars (\$5,000.00). The Indemnity 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.

The following graph illustrates the various types of revenue deposited into the indemnity fund during FY19 and FY20.



Source: Oklahoma Corporation Commission Annual Reports (unaudited information)

Reimbursement claims paid from the Indemnity Fund during FY2019 were based on 1,242 claims from 447 cases and during FY2020 were based on 1232 claims from 456 cases and during. The total amount reimbursed is illustrated in the graph below:



Source: Internal records from PST

OBJECTIVE I Determine whether the PSTD Director has complied with 17 O.S. § 322 (C)(1) and (C)(2)(a)-(g)

Conclusion The PSTD Director has complied with Director Duties as outlined in 17 O.S. § 322 (C)(1) and (C)(2)(a)-(g) - Duties of Director.

Objective Methodology

To accomplish our objective, we performed the following:

- Identified the PSTD Director’s responsibilities outlined in 17 O.S. § 322(C)(1) and (C)(2)(a)-(g).
- Reviewed PSTD Policies and Procedures Manual.
- Documented our understanding of the Director’s duties through discussion with management.
- Documented PSTD Director’s duties and processes as defined by statute, which included:
 - Reviewing staff organizational chart and job descriptions and responsibilities from the PSTD Policies and Procedures Manual.
 - Correspondence and interviews with the HR Manager, PSTD staff, and a variety of additional employees.
 - Reviewing approved HR documents for new hires including OMES HCM-92 and OPM -14.
- Reviewed documentation supporting decisions made by the Director.
- Reviewed HR records for 100% (five) of the PSTD employees hired during the audit period to ensure the Director approved the hire.

No findings were noted as a result of our procedures

OBJECTIVE II

Determine whether internal controls are operating effectively for the expenditure process of making payment from the Petroleum Storage Tank Indemnity Fund as defined by the Government Accountability Office (GAO) Standards for Internal Controls and that the expenditure complied with 17 O.S. § 324

Conclusion

Internal controls are operating effectively for the expenditure process for making payments from the Petroleum Storage Tank Indemnity Fund as defined by the Government Accountability Office for Internal Controls and expenditures complied with **17 O.S. § 324 - Expenditures of Petroleum Storage Tank Indemnity Fund – Administrator.**

Objective Methodology

To accomplish our objective, we performed the following:

- Documented and assessed agency-wide monitoring activities significant to this objective.
- Compared the Agency’s process to internal control standards outlined in the GAO Standards for Internal Control.
- Documented our understanding of the expenditure process through discussion with management and review of documentation.
- Evaluated those processes and identified and assessed significant internal controls related to our objective.
- Documented and tested operating effectiveness of significant internal controls and processes related to making expenditure payments from the Indemnity Fund, which included:
 - Selecting a sample of agency Fund 205 (cost recovery expenses paid from (IF)) expenditures to determine the expenditure and corresponding funding was reviewed and approved by the PSTD Director or IF Administrator prior to payment and the expenditure was allowable according to **17 O.S. § 324(F)(2)**.
 - FY20 - sampled 30 expenditure items totaling \$54,440 from a population of 640 expenditure items totaling \$648,271 (5% and 8% respectively)
 - FY19 - sampled 30 expenditure items totaling \$22,811 from a population of 675 expenditure items totaling \$479,703 (4% and 5% respectively)
 - Selecting a sample of monthly operating expenditure payments and related transfer requests from each fiscal year to determine the expenditure and corresponding funding were properly reviewed and approved prior to payment and complied with **17 O.S. § 324(F)(2)**.

- FY20 - sampled 9 expenditure transfer requests totaling \$390,510 from a population of 16 items totaling \$ 648,271 (56% and 60% respectively)
- FY19 - sampled 9 expenditure transfer requests totaling \$347,749 from a population of 13 items totaling \$479,703 (69% and 73% respectively)
- Selecting a sample of payroll documents for employees paid directly from fund 205 to determine the employee was a direct employee of PSTD.
 - FY20 - sampled 9 (13%) of 67 employees
 - FY19 - sampled 5 (8%) of 63 employees
- Selecting a sample of payroll transfer requests for indirect employees to determine the transfer was for the actual amount of the payroll expenditure to be paid.
 - FY20 - sampled 9 payroll transfers totaling \$1,007,626 from a population of 40 items totaling \$3,623,419 (23% and 28% respectively)
 - FY19 - sampled 5 payroll transfers totaling \$1,577,193 from a population of 17 items totaling \$4,010,897 (29% and 39% respectively)
- Evaluating the cost allocation process to ensure only allowable indirect costs were charged to PSTD as required by 17 O.S. § 324(F)(2).

No findings were noted as a result of our procedures

OBJECTIVE III Determine whether reimbursement claims made from the Petroleum Storage Tank Indemnity Fund complied with 17 O.S. § 327.3

Conclusion Reimbursement claims made from the Petroleum Storage Tank Indemnity Fund complied with **17 O.S. § 327.3 - Requirements for Reimbursement Claims.**

Objective Methodology

To accomplish our objective, we performed the following:

- Documented our understanding of the reimbursement process through discussion with management and review of documentation.
- Evaluated those processes and identified and assessed significant internal controls related to our objective.
- Documented and tested operating effectiveness of significant internal controls and processes related to making reimbursement claim payments from the Indemnity Fund, which included:
 - Selecting a sample of reimbursement claims and supporting documentation by Case Number to ensure they complied with **17 O.S. § 327.3**.
 - FY20 - sampled 9 reimbursement claims by case number totaling \$239,529 from a population of 456 items totaling \$18,494,444 (2% and 2% respectively)
 - FY19 - sampled 9 reimbursement claims by case number totaling \$336,775 from a population of 447 items totaling \$239,529 (2% and 1% respectively)

No findings were noted as a result of our procedures

APPENDIX A: Detailed Audit Methodology

In gaining an understanding of the Agency and developing our detailed objectives, in addition to routine discussions, surveys, analysis, and research, we performed the following:

- Performed an assessment of materiality by division for the audit period to assess the related financial processes and trends for any notable risks.
- Reviewed the Agency's HR All Actions Report from the State-Wide Accounting System to assess the changes that had a financial impact during the audit period.
- Reviewed revenue related data from the State-Wide Accounting System and gathered information from Agency staff to perform a data analysis of agency funds.
- Documented significant results collected from an anonymous PSTD employee survey which included analyzing survey responses from 26 PSTD employees. This is a response rate of 63.4% as we distributed the survey to 41 PSTD employees.

No significant risks or findings were identified as a result of these procedures. Additional areas were developed into objectives as reflected in the body of the report.

APPENDIX B: Statutes Related to Objectives

17 O.S. § 322 (C)(1) and (C)(2)(a) - (g) - Duties of Director

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

3. All positions in the Petroleum Storage Tank Division shall be unclassified. Those employees who are classified on the effective date of 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 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 Director of Administration of the Corporation Commission. All other employees of the Petroleum Storage Tank Division shall be hired by the Director of the Petroleum Storage Tank Division.

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 Indemnity Fund,
- 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 Consolidation Act and to implement all programs within the Division's jurisdiction.

17 O.S. § 324 – Expenditures of Petroleum Storage Tank Indemnity Fund – Administrator

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 Petroleum Storage Tank Division or when such expenses 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 Division for the administration of the Indemnity Fund;
3. Purchase real property, personal property and easements in conjunction with corrective action efforts and/or the establishment of an alternative water supply as provided for in [Section 306](#) of this title;
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.

17 O.S. § 327.3 – Requirements for Reimbursement Claims

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.

O·K·L·A·H·O·M·A
S·A·I
STATE AUDITOR & INSPECTOR



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