

By: Representative Upshaw

To: Conservation and Water Resources

HOUSE BILL NO. 713

1 AN ACT TO ENACT THE MISSISSIPPI ABOVE GROUND STORAGE TANK ACT  
 2 OF 2013; TO PROVIDE DEFINITIONS FOR THE ACT; TO PROVIDE THAT FUNDS  
 3 SHOULD BE EXPENDED FROM THE MISSISSIPPI GROUNDWATER PROTECTION  
 4 TRUST FUND FOR CERTAIN PURPOSES OF THE ACT; TO AUTHORIZE THE  
 5 MISSISSIPPI COMMISSION ON ENVIRONMENTAL QUALITY TO ESTABLISH  
 6 REQUIREMENTS FOR REPORTS ON CONTAMINATION INCIDENTS; TO DIRECT THE  
 7 COMMISSION TO PROMULGATE RULES AND REGULATIONS GOVERNING ABOVE  
 8 GROUND STORAGE TANKS; TO PROVIDE CERTAIN OBLIGATIONS OF OWNERS AND  
 9 OPERATORS OF ABOVE GROUND STORAGE TANKS; TO AUTHORIZE THE  
 10 COMMISSION TO TAKE TIMELY AND EFFECTIVE CORRECTIVE ACTION IN USING  
 11 THE POLLUTION EMERGENCY FUND; TO AUTHORIZE THE COMMISSION TO  
 12 ASSESS AND COLLECT A TANK REGULATORY FEE TO USE FOR THE  
 13 ADMINISTRATION OF THIS ACT; TO ESTABLISH THE ABOVE GROUND STORAGE  
 14 TANK ADVISORY COUNCIL; TO PROVIDE A CIVIL PENALTY FOR VIOLATIONS  
 15 OF THIS ACT; TO AMEND SECTION 49-17-405, MISSISSIPPI CODE OF 1972,  
 16 TO CONFORM; AND FOR RELATED PURPOSES.

17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

18 **SECTION 1.** The following shall be codified as Section  
 19 49-17-437, Mississippi Code of 1972:

20 49-17-437. Sections 49-17-437 through 49-17-465 shall be  
 21 known as the Mississippi Above Ground Storage Tank Act of 2013.

22 **SECTION 2.** The following shall be codified as Section  
 23 49-17-439, Mississippi Code of 1972:



24           49-17-439. For the purposes of Sections 49-17-437 through  
25 49-17-465, the following words and phrases shall have the meaning  
26 ascribed in this section:

27           (a) "Above Ground Storage Tank" or "AST" means any one  
28 (1) or more combination of containers including tanks, vessels,  
29 enclosures or structures together with appurtenances thereto used  
30 to contain an accumulation of motor fuels, and the volume of  
31 which, including the volume of the pipes connected thereto, is  
32 more than ninety percent (90%) above the surface of the ground.  
33 Such term does not include any:

34           (i) Tank that meets the definition of an  
35 "Underground Storage Tank" as defined in Section 49-17-403;

36           (ii) Tanks utilized exclusively for farming,  
37 agricultural, residential or construction related purposes;

38           (iii) Tanks used for storing motor fuel that is  
39 not intended for commercial resale;

40           (iv) Tanks utilized for the temporary bulk storage  
41 of motor fuels at bulk terminals;

42           (v) Tanks used for storing heating oil for  
43 consumptive use on the premises where stored;

44           (vi) Septic tanks;

45           (vii) Pipeline facilities (including gathering  
46 lines regulated under:



47                   1. The Natural Gas Pipeline Safety Act of  
48 1968, Public Law No. 90-481, 49 USCS 1671-1684, as amended and  
49 extended,

50                   2. The Hazardous Liquid Pipeline Safety Act  
51 of 1979, Public Law No. 96-129, 49 USCS 2001 et seq., as amended  
52 and extended, or

53                   3. An intrastate pipeline facility regulated  
54 under state laws comparable to the provisions of law in item 1 or  
55 2 of this subparagraph);

56                   (viii) Surface impoundments, pits, ponds or  
57 lagoons;

58                   (ix) Storm water or wastewater collection systems;

59                   (x) Flow-through process tanks;

60                   (xi) Tanks, liquid traps and associated gathering  
61 lines directly related to oil or gas production and gathering  
62 operation;

63                   (xii) Tanks under the jurisdiction of the State  
64 Oil and Gas Board created by Section 53-1-5; and

65                   (xiii) Piping connected to any of the above  
66 exemptions.

67                   (b) "Active site" means a site of an above ground  
68 storage tank where an owner can be identified and where the tank  
69 can be used for management and handling of motor fuels.



70           (c) "Biofuel" means an oxygenated fuel comprised of  
71 mono-alkyl esters of long chain fatty acids from biologically  
72 derived oil and fats.

73           (d) "Bulk plant" means a distributor or supplier  
74 facility that is utilized for the temporary storage of motor fuels  
75 prior to the distribution of these products to retail, commercial  
76 or consumer outlets.

77           (e) "Bulk terminal" means a facility that typically  
78 consists of very large, field erected tanks utilized for the  
79 temporary storage of motor fuels. These facilities typically  
80 receive bulk delivery of product from pipelines, tankers, barges  
81 or directly from a nearby refinery.

82           (f) "Commercial resale" means the selling again of  
83 purchased motor fuels for sale to the consuming public.

84           (g) "Commission" means the Mississippi Commission on  
85 Environmental Quality.

86           (h) "Contamination" means the presence or discharge of  
87 motor fuels from an above ground storage tank in or on the land or  
88 in the waters of the state.

89           (i) "Department" means the Mississippi Department of  
90 Environmental Quality.

91           (j) "Director" means the Executive Director of the  
92 Mississippi Department of Environmental Quality.



93           (k) "Groundwater" means water located beneath the land  
94 surface located wholly or partially within the boundaries of the  
95 state.

96           (l) "Leak" means any unintended spilling, leaking,  
97 emitting, discharging, escaping, leaching or disposing from an AST  
98 system. A leak may or may not result in a release to the  
99 environment. A leak from a single-walled AST system will normally  
100 result in a release to the environment. A leak from the primary  
101 containment of a secondarily contained AST system may or may not  
102 result in a release to the environment depending upon the  
103 integrity of the secondary containment.

104           (m) "Motor fuels" means gasoline and aviation gasoline  
105 as defined in Section 27-55-5 and special fuel as defined in  
106 Section 27-55-505 and biofuels, except for those "motor fuels"  
107 used in electric power generating plants for the commercial  
108 production of electricity.

109           (n) "Operator" means any person in control of, or  
110 having responsibility for, the daily operation of an above ground  
111 storage tank.

112           (o) "Owner of an above ground storage tank" means:

113                   (i) In the case of an above ground storage tank in  
114 use on July 1, 2013, or brought into use after that date, any  
115 person who owns an above ground storage tank used for the storage,  
116 use or dispensing of motor fuel; and



117 (ii) In the case of an above ground storage tank  
118 in use before July 1, 2013, but no longer in use on that date, any  
119 person who owned such tank immediately before the discontinuation  
120 of its use.

121 (p) "Person" means an individual, trust, firm,  
122 joint-stock company, federal agency, corporation, state,  
123 municipality, commission, political subdivision of a state, any  
124 interstate body, a consortium, a joint venture, a commercial  
125 entity or the United States government.

126 (q) "Release" means a leak from an AST system or  
127 resulting from the operation of the AST system that reaches the  
128 environment.

129 (r) "Response action" means any activity, including  
130 evaluation, planning, design, engineering, construction and  
131 ancillary services, which is carried out in response to any,  
132 release, or threatened release of motor fuels.

133 (s) "Response action contractor" means a person who has  
134 been approved by the commission and is carrying out any response  
135 action, including a person retained or hired by such person to  
136 provide services relating to a response action.

137 (t) "Substantial compliance" means that an owner or  
138 operator of an above ground storage tank has registered that tank  
139 with the department, has paid applicable tank fees and has made a  
140 good-faith effort to comply with the law; and the rules and  
141 regulations adopted pursuant thereto.



142 (u) "Third-party claim" means any civil action brought  
143 or asserted by any person against any owner of any above ground  
144 storage tank for damages to person or property which damages are  
145 the direct result of a release of motor fuels from an above ground  
146 storage tank.

147 **SECTION 3.** The following shall be codified as Section  
148 49-17-441, Mississippi Code of 1972:

149 49-17-441. (1) Notwithstanding any provision within this  
150 chapter to the contrary, funds shall be expended from the  
151 Mississippi Groundwater Protection Trust Fund, established under  
152 Sections 49-17-401 through 49-17-435, hereinafter referred to as  
153 the "fund," for the following costs associated with response  
154 action of releases from above ground storage tanks. These  
155 expenditures from the fund shall be in addition to the  
156 expenditures from the fund that are authorized by Sections  
157 49-17-401 through 49-17-435. However, the limitations on payments  
158 from the fund as provided in Section 49-17-443(2) shall not be  
159 exceeded at any site. The commission shall adopt regulations for  
160 administering these additional expenditures from this fund for the  
161 response action of releases from above ground storage tanks; and  
162 the director of the department shall administer such expenditures.  
163 Whenever in the executive director's determination a release of  
164 motor fuels from an above ground storage tank may pose a threat to  
165 the environment or the public health, safety or welfare, the



166 department shall obligate monies available in the fund to provide  
167 for:

168 (a) Investigation and assessment of contamination  
169 sites;

170 (b) Restoration or replacement of potable water  
171 supplies;

172 (c) Rehabilitation of contamination sites, which may  
173 consist of response action of affected soil, groundwater and  
174 inland surface waters, using cost effective alternatives that are  
175 technologically feasible and reliable, and that provide adequate  
176 protection of the public health, safety and welfare and minimize  
177 environmental damage, in accordance with the site selection and  
178 response action criteria established by the commission, except  
179 that nothing herein shall be construed to authorize the commission  
180 to obligate funds for payment of costs which may be associated  
181 with, but are not integral to, site rehabilitation, such as the  
182 cost for retrofitting or replacing above ground storage tanks.

183 (2) Whenever the commission has expended funds from the fund  
184 established under Sections 49-17-401 through 49-17-435, the owner  
185 of the above ground storage tank shall not be liable to the  
186 department for such costs if the owner was in substantial  
187 compliance on the date on which the release of the motor fuels  
188 which necessitates the response action was reported to the  
189 department, provided that such release of motor fuels occurred  
190 after the enactment of Sections 49-17-437 through 49-17-465 or





191 otherwise provided for under Section 49-17-445. The owner shall  
192 not be liable to the department so long as the owner remains in  
193 substantial compliance. Otherwise owners are responsible for  
194 reimbursement and the reimbursed monies shall go back into the  
195 fund. In such circumstances the commission is authorized to take  
196 any necessary action to recover these monies from responsible  
197 owners.

198 (3) Any provisions of this section and chapter regarding  
199 liability for the costs of clean-up, removal, remediation or  
200 abatement of any pollution, hazardous waste or solid waste shall  
201 be limited as provided in Section 49-17-42 and rules adopted  
202 thereto.

203 **SECTION 4.** The following shall be codified as Section  
204 49-17-443, Mississippi Code of 1972:

205 49-17-443. (1) Monies held in the fund established under  
206 Sections 49-17-401 through 49-17-435 shall be used only at an  
207 active site or otherwise provided for under Section 49-17-445 and  
208 shall be disbursed in accordance with the commission requirements  
209 and as follows:

210 (a) Payments shall be made to any third party who  
211 brings a third-party claim against any owner of an above ground  
212 storage tank and the commission as trustee of the Mississippi  
213 Groundwater Protection Trust Fund and who obtains a final judgment  
214 in such action which is valid and enforceable in this state  
215 against such parties, provided that such release of motor fuels



216 occurred after the enactment of Sections 49-17-437 through  
217 49-17-465. Payment shall be paid to the third party upon filing  
218 by such party an application with the department attaching the  
219 original or a certified copy of the final judgment.

220 (b) Payments shall be made in reasonable amounts to  
221 approved response action contractors and other parties involved in  
222 the response action. Payment shall be made to the party incurring  
223 the costs by filing of a sworn application with the department  
224 indicating the fair and reasonable value of the site  
225 rehabilitation costs from contamination, subject to the  
226 regulations and limitations as set by the department.

227 (c) These expenditures from the fund shall be in  
228 addition to the expenditures from the fund that are authorized by  
229 Sections 49-17-401 through 49-17-435. However, the limitations on  
230 payments from the fund as provided in subsection (2) of this  
231 section shall not be exceeded at any site.

232 (2) Payments from the fund are limited as follows:

233 (a) For response action purposes, a maximum of One  
234 Million Five Hundred Thousand Dollars (\$1,500,000.00) may be  
235 disbursed from the fund for any one (1) site, per confirmed  
236 release occurrence.

237 (b) For third-party judgments, a maximum of One Million  
238 Dollars (\$1,000,000.00) may be disbursed from the fund for any one  
239 (1) site, per confirmed release occurrence.



240 (c) Nothing in Sections 49-17-437 through 49-17-465  
241 shall establish or create any liability or responsibility on the  
242 part of the department or the State of Mississippi to pay any  
243 response action costs or third-party claims if the fund created  
244 herein is insufficient to do so.

245 (3) Monies held in the fund established under Sections  
246 49-17-401 through 49-17-435 shall not be used for purchases of  
247 equipment needed to assist in response action operations.

248 (4) Nothing in Sections 49-17-437 through 49-17-465 shall  
249 serve to limit any recovery against an owner of an above ground  
250 storage tank in excess of the fund payment limits established  
251 under this section.

252 (5) Substantial compliance shall in no way be construed to  
253 be an absolute defense to civil liability.

254 **SECTION 5.** The following shall be codified as Section  
255 49-17-445, Mississippi Code of 1972:

256 49-17-445. The commission is authorized to establish  
257 requirements for the written reporting of motor fuel contamination  
258 incidents from above ground storage tanks. To encourage early  
259 detection, reporting and response action of contamination from  
260 above ground storage tanks containing motor fuel, the department  
261 shall within the guidelines established in this section, conduct  
262 an incentive program which shall provide for a general grace  
263 period beginning on July 1, 2013, and ending June 30, 2015.

264 Pursuant thereto the commission may establish requirements for the



265 written reporting of motor fuel contamination incidents. Sites  
266 involving incidents of motor fuel releases from above ground  
267 storage tanks that occurred prior to July 1, 2013, reported to the  
268 department any time on or before June 30, 2015, shall be qualified  
269 sites for expenditure of funds from the Mississippi Groundwater  
270 Protection Trust Fund created by Sections 49-17-401 through  
271 49-17-433, provided that a written report is filed with respect  
272 thereto. Sites involving incidents of motor fuel releases from  
273 above ground storage tanks that occurred after July 1, 2013, where  
274 the owner of such tanks is in substantial compliance and files a  
275 written report with the commission of such incident, shall be  
276 qualified sites for expenditure of funds from the Mississippi  
277 Groundwater Protection Trust Fund created by Sections 49-17-401  
278 through 49-17-435. Any funds so expended shall be absorbed at the  
279 expense of the fund, without recourse to reimbursement or recovery  
280 from any above ground storage tank owner, subject to the following  
281 exceptions:

282 (a) The provisions of this section shall not apply to  
283 any AST site where the department has initiated any response  
284 action or civil enforcement action prior to the passage of  
285 Sections 49-17-437 through 49-17-465.

286 (b) The provisions of this section shall not apply to  
287 any AST site where the department has been denied site access to  
288 implement the provisions of Sections 49-17-437 through 49-17-465.



289 (c) Reimbursement from the fund for costs expended  
290 prior to the passage of Sections 49-17-437 through 49-17-465 shall  
291 be limited to the following circumstances:

292 At sites where remediation costs were expended prior to the  
293 passage of Sections 49-17-437 through 49-17-465 and where there  
294 was a demonstration of good faith cooperation with the department  
295 by the owner or operator in assuming responsibility for the costs  
296 of such remediation, such owner or operator shall be eligible for  
297 reimbursement from the fund for the costs of such remediation. A  
298 demonstration of good faith cooperation with the department, as  
299 used in this subsection, shall mean the execution of a Commission  
300 Agreed Order by the owner or operator, prior to the passage of  
301 Sections 49-17-437 through 49-17-465, to conduct such remediation,  
302 and the owner or operator complied with the Commission Agreed  
303 Order and expended funds to pay costs associated with such  
304 remediation; or in the alternative, the voluntary payment of costs  
305 of such remediation by the owner or operator without any issue of  
306 Commission Agreed Order.

307 (d) The commission may determine, in its discretion,  
308 that the owner of an above ground storage tank is not in  
309 substantial compliance for the purposes of this section and  
310 Sections 49-17-405 and 49-17-441, if such owner of an above ground  
311 storage tank has been delinquent in the payment of tank regulatory  
312 fees for more than three (3) months after such fee is due and  
313 payable.



314 (e) Any provisions of this section and chapter  
315 regarding liability for the costs of response action, removal,  
316 remediation or abatement of any pollution, hazardous waste or  
317 solid waste shall be limited as provided in Section 49-17-42 and  
318 rules adopted thereto.

319 **SECTION 6.** The following shall be codified as Section  
320 49-17-447, Mississippi Code of 1972:

321 49-17-447. No person shall own, install or operate an above  
322 ground storage tank without complying with the applicable  
323 regulations of the commission.

324 **SECTION 7.** The following shall be codified as Section  
325 49-17-449, Mississippi Code of 1972:

326 49-17-449. (1) The commission shall promulgate rules and  
327 regulations governing above ground storage tanks, which shall  
328 include, but not be limited to:

329 (a) Notification of abandoned above ground storage  
330 tanks;

331 (b) Registration of above ground storage tanks at  
332 active sites;

333 (c) Standards for above ground storage tanks. The  
334 commission shall distinguish in such standards between  
335 requirements appropriate for new tanks, for tanks in existence on  
336 the date of the promulgation of the standards and for abandoned  
337 tanks. These standards shall include, but not be limited to,



338 design, construction, installation, upgrade, repair, release or  
339 leak detection, and compatibility standards;

340 (d) Release or leak detection, prevention, and  
341 corrective action;

342 (e) Tank closure requirements;

343 (f) Standards for monitoring, testing, reporting and  
344 record keeping; and

345 (g) Requirements for financial responsibility. The  
346 commission shall adopt requirements to insure financial  
347 responsibility for corrective action and compensation of third  
348 parties required by releases arising from the operation of an  
349 above ground storage tank. Financial responsibility may be  
350 established by any one (1) or combination of the following:  
351 insurance; guarantee; surety bond; letter of credit; qualification  
352 as a self-insurer; for owners of above ground storage tanks  
353 containing motor fuels, use of the Mississippi Groundwater  
354 Protection Trust Fund established under Sections 49-17-401 through  
355 49-17-435.

356 (2) Variances and temporary emergency variances may be  
357 granted by the commission from any regulation adopted pursuant to  
358 Section 49-17-437 et seq.

359 **SECTION 8.** The following shall be codified as Section  
360 49-17-451, Mississippi Code of 1972:

361 49-17-451. For the purposes of identifying the source of  
362 known or suspected contamination, developing or assisting in the



363 development of any regulation, conducting any study, taking  
364 corrective action or enforcing the provisions of Sections  
365 49-17-437 through 49-17-465, any owner or operator of an above  
366 ground storage tank shall, upon the request of any duly authorized  
367 representative of the commission: furnish information relating to  
368 such tanks, including tank equipment and contents; conduct  
369 monitoring or testing; and permit the designated representative at  
370 all reasonable times to have access to and to copy all records  
371 relating to such tanks. For the purposes of identifying the  
372 source of known or suspected pollution, developing or assisting in  
373 the development of any regulation, conducting any study, or  
374 enforcing the provisions of Sections 49-17-437 et seq., any duly  
375 authorized representatives of the commission are authorized:

376 (a) To enter at reasonable times any establishment or  
377 place where an above ground storage tank is located;

378 (b) To inspect and obtain samples of any motor fuel  
379 contained in such tank; and

380 (c) To conduct monitoring or testing of such tanks,  
381 associated equipment, contents or surrounding soils, air, surface  
382 water or groundwater.

383 **SECTION 9.** The following shall be codified as Section  
384 49-17-453, Mississippi Code of 1972:

385 49-17-453. Nothing contained in the Mississippi Above Ground  
386 Storage Tank Act of 2013 (Sections 49-17-437 through 49-17-465)  
387 shall prevent the commission from requiring any owner of an above





388 ground storage tank from taking timely and effective response  
389 action.

390 The commission may use the Pollution Emergency Fund for  
391 emergency or remedial response action of above ground storage tank  
392 leaks or releases when the tank owner will not take timely and  
393 effective action. In the event of the necessity for such  
394 immediate response action, the commission may contract for same  
395 and advance funds from the Pollution Emergency Fund to pay the  
396 costs thereof, such advancements to be repaid to the Pollution  
397 Emergency Fund upon recovery by the commission from the tank  
398 owner.

399 **SECTION 10.** The following shall be codified as Section  
400 49-17-455, Mississippi Code of 1972:

401 49-17-455. The commission may assess and collect a tank  
402 regulatory fee in an amount sufficient to administer Sections  
403 49-17-437 through 49-17-465. A minimum annual tank regulatory fee  
404 of Five Hundred Dollars (\$500.00) per tank compartment but not to  
405 exceed One Thousand Dollars (\$1,000.00) per tank compartment per  
406 year shall be collected from the owner of each above ground  
407 storage tank available for use in Mississippi on July 1, 2013, or  
408 brought into use or available for use after that date, as provided  
409 in the Mississippi Above Ground Storage Tank Act of 2013 (Sections  
410 49-17-437 through 49-17-465). The commission shall establish the  
411 amount of each annual tank fee to cover the above ground storage  
412 tank program costs. Following the date of full implementation of



413 the above ground storage tank program in Mississippi, the above  
414 ground storage tank annual tank fee for any subsequent state  
415 fiscal year shall be set by order of the commission in an amount  
416 sufficient to cover the above ground storage tank program. The  
417 commission's order shall follow: (1) receipt of the report and  
418 recommendations of the Above Ground Storage Tank (AST) Advisory  
419 Council and (2) a public notice to allow the general public a  
420 period of at least thirty (30) days to provide comment regarding  
421 the annual tank fee or to request a public hearing in accordance  
422 with Section 49-17-29(4) (a). The department may conduct a public  
423 hearing for the annual tank fee when a significant level of public  
424 interest exists or where warranted by other factors. The  
425 commission may proceed with entry of the order on fees if the AST  
426 Advisory Council fails to submit its report in a timely manner.  
427 The tank regulatory fee assessed under this section is a debt due  
428 by the owner of each above ground storage tank available for use  
429 in Mississippi on July 1, 2013, or brought into use after that  
430 date. The tank regulatory fee shall be due January 31 of each  
431 year. If any part of the tank regulatory fee is not paid within  
432 thirty (30) days after the due date, a penalty of fifty percent  
433 (50%) of the amount due shall accrue at once and be added to the  
434 fee, unless the owner of the above ground storage tank  
435 demonstrates to the commission that the failure to make timely  
436 payment was unavoidable due to financial hardship or otherwise  
437 beyond the control of the owner. Monies collected under this



438 section shall be deposited in a special fund which is created in  
439 the State Treasury. Unexpended amounts remaining in the special  
440 fund at the end of the fiscal year shall not lapse into the  
441 General Fund and any interest earned on amounts in the special  
442 fund shall be credited to the special fund by the Treasurer. The  
443 special fund may receive monies from any available public or  
444 private source, including, but not limited to, collection of fees,  
445 interest, grants, taxes, public or private donations and judicial  
446 actions. Monies in this special fund shall be expended by annual  
447 appropriation approved by the Legislature to administer Sections  
448 49-17-437 through 49-17-465.

449       **SECTION 11.** The following shall be codified as Section  
450 49-17-457, Mississippi Code of 1972:

451       49-17-457. (1) An Above Ground Storage Tank (AST) Advisory  
452 Council, hereinafter referred to as "AST Advisory Council," is  
453 created to conduct an independent study of the costs for the  
454 development and administration of the AST program within the  
455 department and to conduct an annual review of the costs of  
456 administering such programs. The costs to be included within the  
457 study for the AST program shall be those costs set forth in  
458 Section 49-17-455. The AST Advisory Council shall include within  
459 the study the type and quantity of above ground storage tanks  
460 within the state that are covered by the AST program. After  
461 completing a study of the program needs and costs, the AST  
462 Advisory Council shall recommend an equitable fee system for the



463 AST program that is based on the type and quantity of above ground  
464 storage tanks. The annual review for the AST program shall  
465 determine if the fee system is collecting sufficient funds to meet  
466 AST program needs. Each annual review report shall be due July 1  
467 of each year to the commission and the director of the department.

468 (2) The AST Advisory Council shall be composed of seven (7)  
469 persons as identified in the rules and regulations promulgated  
470 under Section 49-17-449. Members of the AST Advisory Council may  
471 designate an alternate member to act in their stead in performing  
472 any function of the AST Advisory Council. The length of the term  
473 for each member of the AST Advisory Council shall be four (4)  
474 years or less.

475 (3) Original appointments to the AST Advisory Council shall  
476 be made no later than January 1, 2014. Vacancies on the AST  
477 Advisory Council shall be filled by appointment in the same manner  
478 as the original appointments. The AST Advisory Council shall  
479 convene within sixty (60) days following the date of the  
480 appointment of the members.

481 The AST Advisory Council shall select from their membership a  
482 chairperson to preside over meetings and a vice chairperson to  
483 preside in the absence of the chairperson or when the chairperson  
484 shall be excused. The AST Advisory Council shall adopt procedures  
485 governing the manner of conducting its business. A majority of  
486 the members shall constitute a quorum to do business.



487 (4) Members of the AST Advisory Council shall serve without  
488 salary. The members of the AST Advisory Council shall be entitled  
489 to receive reimbursement of their actual travel and hotel expenses  
490 as provided in Section 25-3-41, incurred while in the performance  
491 of their duties as members of the AST Advisory Council to be paid  
492 on an itemized statement approved by the State Fiscal Officer.  
493 Expenses shall be paid from fees collected in accordance with  
494 Section 49-17-455.

495 (5) The director of the department shall provide technical,  
496 clerical and other support services, including services by  
497 contract, as the AST Advisory Council determines that it requires  
498 in the performance of its functions.

499 **SECTION 12.** The following shall be codified as Section  
500 49-17-459, Mississippi Code of 1972:

501 49-17-459. The disclosure of any records, reports or  
502 information obtained pursuant to Sections 49-17-437 et seq. shall  
503 be governed by the Mississippi Public Records Act of 1983, Section  
504 25-61-1 et seq., and Section 49-17-39, and the regulations of the  
505 commission promulgated thereunder.

506 **SECTION 13.** The following shall be codified as Section  
507 49-17-461, Mississippi Code of 1972:

508 49-17-461. (1) Whenever the commission or an employee  
509 thereof has reason to believe that a violation of any provision of  
510 this chapter, or of any order of the commission, or of any  
511 regulation promulgated pursuant to this chapter has occurred, the



512 commission shall initiate proceedings in the same manner as  
513 provided in Sections 49-17-31 through 49-17-41, Mississippi Code  
514 of 1972.

515 (2) Any person found by the commission violating any of the  
516 provisions of Sections 49-17-437 through 49-17-465, or any rule or  
517 regulation or written order of the commission shall be subject to  
518 a civil penalty of not more than Twenty-five Thousand Dollars  
519 (\$25,000.00) for each violation per day, such penalty to be  
520 assessed and levied by the commission as provided in Sections  
521 49-17-1 through 49-17-43.

522 (3) In determining the amount of any penalty under this  
523 chapter, the commission shall consider at a minimum:

524 (a) The willfulness of the violation;

525 (b) Any damage to air, water, land or other natural  
526 resources of the state or their uses;

527 (c) Costs of restoration or abatement;

528 (d) Economic benefit as a result of noncompliance;

529 (e) The seriousness of the violation, including any  
530 harm to the environment and any hazard to the health, safety and  
531 welfare of the public;

532 (f) Past performance history; and

533 (g) Whether the noncompliance was discovered and  
534 reported as the result of a voluntary self-evaluation. If a  
535 person discovers as a result of a voluntary self-evaluation,  
536 information related to noncompliance with an environmental law and



537 voluntarily discloses that information to the department,  
538 commission or any employee thereof, the commission shall, to the  
539 greatest extent possible, reduce a penalty, if any, determined by  
540 the commission, except for economic benefit as a result of  
541 noncompliance, to a de minimis amount if all of the following are  
542 true:

543 (i) The disclosure is made promptly after  
544 knowledge of the information disclosed is obtained by the person;

545 (ii) The person making the disclosure initiates  
546 the appropriate corrective actions and pursues those corrective  
547 actions with due diligence;

548 (iii) The person making the disclosure cooperates  
549 with the commission and the department regarding investigation of  
550 the issues identified in the disclosure;

551 (iv) The person is not otherwise required by an  
552 environmental law to make the disclosure to the commission or the  
553 department;

554 (v) The information was not obtained through any  
555 source independent of the voluntary self-evaluation or by the  
556 department through observation, sampling or monitoring;

557 (vi) The noncompliance did not result in a  
558 substantial endangerment threatening the public health, safety or  
559 welfare or the environment; and

560 (vii) The noncompliance is not a repeat violation  
561 occurring at the same facility within a period of three (3) years.



562 "Repeat violation" in this subparagraph means a second or  
563 subsequent violation, after the first violation has ceased, of the  
564 same statutory provision, regulation, permit condition, or  
565 condition in an order of the commission.

566 (4) Any provisions of this section and chapter regarding  
567 liability for the costs of response action, removal, remediation  
568 or abatement of any contamination, hazardous waste or solid waste  
569 shall be limited as provided in Section 49-17-42 and rules adopted  
570 thereto.

571 **SECTION 14.** The following shall be codified as Section  
572 49-17-463, Mississippi Code of 1972:

573 49-17-463. No person may install, alter or remove an above  
574 ground storage tank after July 1, 2015, without first having been  
575 certified by the Commission on Environmental Quality. The  
576 commission shall adopt rules and regulations setting forth the  
577 requirements for such certification which shall include, but not  
578 be limited to, a certification examination.

579 **SECTION 15.** The following shall be codified as Section  
580 49-17-465, Mississippi Code of 1972:

581 49-17-465. Any person aggrieved by any decision by the  
582 commission or the director relating to any provision of Sections  
583 49-17-437 through 49-17-465 shall have the right to appeal as  
584 provided in Section 49-17-41.

585 **SECTION 16.** Section 49-17-405, Mississippi Code of 1972, is  
586 amended as follows:





587           49-17-405. (1) There is hereby created the Mississippi  
588 Groundwater Protection Trust Fund, hereinafter referred to as the  
589 "fund" to be administered by the Executive Director of the  
590 Department of \* \* \* Environmental Quality. The commission shall  
591 adopt regulations for administering this fund. Whenever in the  
592 executive director's determination a release of motor fuels at an  
593 active site may pose a threat to the environment or the public  
594 health, safety or welfare, the department shall obligate monies  
595 available in the fund to provide for:

596           (a) Investigation and assessment of contamination  
597 sites;

598           (b) Restoration or replacement of potable water  
599 supplies;

600           (c) Rehabilitation of contamination sites, which may  
601 consist of cleanup of affected soil, groundwater and inland  
602 surface waters, using cost effective alternatives that are  
603 technologically feasible and reliable, and that provide adequate  
604 protection of the public health, safety and welfare and minimize  
605 environmental damage, in accordance with the site selection and  
606 clean-up criteria established by the commission, except that  
607 nothing herein shall be construed to authorize the commission to  
608 obligate funds for payment of costs which may be associated with,  
609 but are not integral to, site rehabilitation, such as the cost for  
610 retrofitting or replacing underground storage tanks.



611 (2) Whenever the commission has expended funds from the fund  
612 created by Sections 49-17-401 through 49-17-433, the owner of the  
613 underground storage tank shall not be liable to the department for  
614 such costs if the owner was in substantial compliance on the date  
615 on which the discharge of the motor fuels which necessitates the  
616 cleanup was reported to the department. Otherwise owners are  
617 responsible for reimbursement and the reimbursed monies shall go  
618 back into the fund. In such circumstances the commission is  
619 authorized to take any necessary action to recover these monies  
620 from responsible owners.

621 (3) Any provisions of this section and chapter regarding  
622 liability for the costs of cleanup, removal, remediation or  
623 abatement of any pollution, hazardous waste or solid waste shall  
624 be limited as provided in Section 49-17-42 and rules adopted  
625 thereto.

626 (4) In addition, monies from the fund may be obligated as  
627 provided in the Mississippi Above Ground Storage Tank Act of 2013.

628 **SECTION 17.** This act shall take effect and be in force from  
629 and after July 1, 2013.

