

By: Senator(s) Burton

To: Environment Prot, Cons
and Water Res; Appropriations

SENATE BILL NO. 2208

1 AN ACT TO ENACT THE MISSISSIPPI ABOVEGROUND 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
8 ABOVEGROUND STORAGE TANKS; TO PROVIDE CERTAIN OBLIGATIONS OF
9 OWNERS AND OPERATORS OF ABOVEGROUND STORAGE TANKS; TO AUTHORIZE
10 THE COMMISSION TO TAKE TIMELY AND EFFECTIVE CORRECTIVE ACTION IN
11 USING 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 ABOVEGROUND 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 Aboveground 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) "Aboveground 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 aboveground
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 aboveground 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 aboveground
111 storage tank.

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

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



117 (ii) In the case of an aboveground storage tank in
118 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 aboveground 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 aboveground
144 storage tank for damages to person or property which damages are
145 the direct result of a release of motor fuels from an aboveground
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 aboveground 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 aboveground 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 aboveground 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 aboveground 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 aboveground 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 cleanup, 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 aboveground
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 aboveground
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 aboveground storage tanks. To encourage early
259 detection, reporting and response action of contamination from
260 aboveground 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 aboveground
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 aboveground 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 aboveground 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 the remediation, the owner or operator shall be eligible for
297 reimbursement from the fund for the costs of the 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 the remediation,
302 and the owner or operator complied with the Commission Agreed
303 Order and expended funds to pay costs associated with the
304 remediation; or in the alternative, the voluntary payment of costs
305 of the remediation by the owner or operator without any issue of
306 the Commission Agreed Order.

307 (d) The commission may determine, in its discretion,
308 that the owner of an aboveground 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 aboveground
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
322 aboveground 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 aboveground storage tanks, which shall
328 include, but not be limited to:

329 (a) Notification of abandoned aboveground storage
330 tanks;

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

333 (c) Standards for aboveground 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 aboveground 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 aboveground 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
366 aboveground storage tank shall, upon the request of any duly
367 authorized representative of the commission: furnish information
368 relating to such tanks, including tank equipment and contents;
369 conduct monitoring or testing; and permit the designated
370 representative at all reasonable times to have access to and to
371 copy all records relating to such tanks. For the purposes of
372 identifying the source of known or suspected pollution, developing
373 or assisting in the development of any regulation, conducting any
374 study, or enforcing the provisions of Section 49-17-437 et seq.,
375 any duly authorized representatives of the commission are
376 authorized:

377 (a) To enter at reasonable times any establishment or
378 place where an aboveground storage tank is located.

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

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

384 **SECTION 9.** The following shall be codified as Section
385 49-17-453, Mississippi Code of 1972:

386 49-17-453. Nothing contained in the Mississippi Aboveground
387 Storage Tank Act of 2013 (Sections 49-17-437 through 49-17-465)



388 shall prevent the commission from requiring any owner of an
389 aboveground storage tank from taking timely and effective response
390 action.

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

400 **SECTION 10.** The following shall be codified as Section
401 49-17-455, Mississippi Code of 1972:

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



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



438 owner. Monies collected under this section shall be deposited in
439 a special fund which is created in the State Treasury. Unexpended
440 amounts remaining in the special fund at the end of the fiscal
441 year shall not lapse into the General Fund and any interest earned
442 on amounts in the special fund shall be credited to the special
443 fund by the Treasurer. The special fund may receive monies from
444 any available public or private source, including, but not limited
445 to, collection of fees, interest, grants, taxes, public or private
446 donations and judicial actions. Monies in this special fund shall
447 be expended by annual appropriation approved by the Legislature to
448 administer Sections 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 Aboveground 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 aboveground 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 aboveground
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 Section 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
574 aboveground storage tank after July 1, 2015, without first having
575 been 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 Aboveground Storage Tank Act of 2013.

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

