

By: Representative Smith

To: Ways and Means

HOUSE BILL NO. 813

1 AN ACT TO AMEND SECTION 49-17-403, MISSISSIPPI CODE OF 1972,
 2 TO INCLUDE CERTAIN UNDERGROUND STORAGE TANKS WITHIN THE DEFINITION
 3 OF AN ACTIVE SITE UNDER THE MISSISSIPPI UNDERGROUND STORAGE TANK
 4 ACT OF 1988; TO AMEND SECTION 49-17-421, MISSISSIPPI CODE OF 1972,
 5 TO INCREASE THE CAP ON THE ANNUAL TANK REGULATORY FEE ASSESSED BY
 6 THE COMMISSION ON ENVIRONMENTAL QUALITY; TO REQUIRE THAT THE
 7 COMMISSION SET THE AMOUNT OF THE FEE BY ORDER; TO ESTABLISH
 8 CERTAIN REQUIREMENTS FOR THE ORDER DETERMINING THE FEE; TO
 9 AUTHORIZE A PUBLIC HEARING TO BE HELD REGARDING THE FEE; TO CREATE
 10 NEW SECTION 49-17-422, MISSISSIPPI CODE OF 1972, TO CREATE THE
 11 UNDERGROUND STORAGE TANK ADVISORY COUNCIL; TO REQUIRE THE COUNCIL
 12 TO CONDUCT AN INDEPENDENT STUDY OF THE COSTS RELATED TO THE
 13 UNDERGROUND STORAGE TANK PROGRAM; TO REQUIRE THAT THE COUNCIL
 14 RECOMMEND AN EQUITABLE FEE SYSTEM FOR THE PROGRAM; AND FOR RELATED
 15 PURPOSES.

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

17 **SECTION 1.** Section 49-17-403, Mississippi Code of 1972, is
 18 amended as follows:

19 49-17-403. For the purposes of Sections 49-17-401 through
 20 49-17-433, the following * * * shall have the meaning ascribed in
 21 this section:

22 (a) "Active site" means a site of an underground
 23 storage tank where an owner can be identified and where the tank
 24 is * * * available for use * * * in the management and handling of



25 motor fuels, including tanks currently in service, tanks
26 temporarily closed and tanks temporarily out of service.

27 (b) "Bonded distributor" means any person holding a
28 distributor's permit issued under either Section 27-55-7 or
29 Section 27-55-507.

30 (c) "Commission" means the Mississippi Commission on
31 Environmental Quality.

32 (d) "Contamination" means the presence or discharge of
33 regulated substances in or on the land or in the waters of the
34 state.

35 (e) "Department" means the Mississippi Department of
36 Environmental Quality.

37 (f) "Director" means the Executive Director of the
38 Mississippi Department of Environmental Quality.

39 (g) "Groundwater" means water located beneath the land
40 surface located wholly or partially within the boundaries of the
41 state.

42 (h) "Motor fuels" means gasoline and aviation gasoline
43 as defined in Section 27-55-5 and special fuel as defined in
44 Section 27-55-505, except for those "motor fuels" used in electric
45 power generating plants for the commercial production of
46 electricity.

47 (i) "Operator" means any person in control of, or
48 having responsibility for, the daily operation of an underground
49 storage tank.



50 (j) "Owner of an underground storage tank" means:

51 (i) In the case of an underground storage tank in
52 use on November 8, 1984, or brought into use after that date, any
53 person who owns an underground storage tank used for the storage,
54 use or dispensing of regulated substances; and

55 (ii) In the case of an underground storage tank in
56 use before November 8, 1984, but no longer in use on that date,
57 any person who owned such tank immediately before the
58 discontinuation of its use.

59 (k) "Person" means an individual, trust, firm,
60 joint-stock company, federal agency, corporation, state
61 municipality, commission, political subdivision of a state, any
62 interstate body, a consortium, a joint venture, a commercial
63 entity or the United States government.

64 (l) "Regulated substance" means:

65 (i) Any substance defined in Section 101(14) of
66 the Comprehensive Environmental Response, Compensation and
67 Liability Act of 1980, Public Law No. 96-510, as amended and
68 extended (but not including any substance regulated as a hazardous
69 waste under Section 17-17-1 et seq., Mississippi Code of 1972);
70 and

71 (ii) Petroleum, including crude oil or any
72 fraction thereof, which is liquid at standard conditions of
73 temperature and pressure (sixty (60) degrees Fahrenheit and



74 fourteen and seven-tenths (14-7/10) pounds per square inch
75 absolute).

76 (m) "Release" means any spilling, leaking, emitting,
77 discharging, escaping, leaching or disposing from an underground
78 storage tank into groundwater, surface water or subsurface soils.

79 (n) "Response action" means any activity, including
80 evaluation, planning, design, engineering, construction and
81 ancillary services, which is carried out in response to any
82 discharge, release or threatened release of motor fuels.

83 (o) "Response action contractor" means a person who has
84 been approved by the commission and is carrying out any response
85 action, including a person retained or hired by such person to
86 provide services relating to a response action.

87 (p) "Retailer" means any person other than a bonded
88 distributor who sells motor fuel as defined in this section.

89 (q) "Substantial compliance" means that an owner or
90 operator of an underground storage tank has registered that tank
91 with the department, and has made a good-faith effort to comply
92 with the law; and the rules and regulations adopted pursuant
93 thereto.

94 (r) "Third-party claim" means any civil action brought
95 or asserted by any person against any owner of any underground
96 storage tank for damages to person or property which damages are
97 the direct result of a release of motor fuels from an underground
98 storage tank.



99 (s) "Underground storage tank" means any one (1) or
100 combination of containers including tanks, vessels, enclosures or
101 structures together with appurtenances thereto used to contain an
102 accumulation of regulated substances, and the volume of which,
103 including the volume of the underground pipes connected thereto,
104 is ten percent (10%) or more beneath the surface of the ground.
105 Such term does not include any:

106 (i) Farm or residential tanks of one thousand one
107 hundred (1,100) gallons or less capacity used for storing motor
108 fuel for noncommercial purposes;

109 (ii) Tanks used for storing heating oil for
110 consumptive use on the premises where stored;

111 (iii) Septic tanks;

112 (iv) Pipeline facilities (including gathering
113 lines regulated under:

114 1. The Natural Gas Pipeline Safety Act of
115 1968, Public Law No. 90-481, 49 USCS 1671-1684, as amended and
116 extended,

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

120 3. An intrastate pipeline facility regulated
121 under state laws comparable to the provisions of law in Clause 1
122 or 2 of this subparagraph);

123 (v) Surface impoundments, pits, ponds or lagoons;



124 (vi) Storm water or wastewater collection systems;
125 (vii) Flow-through process tanks;
126 (viii) Liquid traps or associated gathering lines
127 directly related to oil or gas production and gathering operation;
128 (ix) Storage tanks situated in an underground area
129 such as a basement, cellar, mine working, drift, shaft or tunnel
130 if the storage tank is situated upon or above the surface of the
131 floor;
132 (x) Other tanks exempted by the Administrator of
133 the federal Environmental Protection Agency; and
134 (xi) Piping connected to any of the above
135 exemptions.
136 (t) "User" means any person who purchases or acquires
137 motor fuels as defined in this section for consumption.

138 **SECTION 2.** Section 49-17-421, Mississippi Code of 1972, is
139 amended as follows:

140 49-17-421. (1) After receiving the annual report and
141 recommendation of the Underground Storage Tank (UST) Advisory
142 Council, the commission may assess and collect * * * an annual
143 tank regulatory fee in an amount sufficient to administer Sections
144 49-17-401 through 49-17-435, but not to exceed * * * Two Hundred
145 Dollars (\$200.00) per tank. The fee, as set by the commission,
146 shall be assessed per tank per year and shall be collected from
147 the owner of each underground storage tank * * * available for use
148 in Mississippi on July 1, 1988, or brought into use or available



149 for use after that date, as provided in the Mississippi
150 Underground Storage Tank Act of 1988 (Sections 49-17-401 through
151 49-17-435). The * * * fee assessed under this section is a debt
152 due by the owner of each * * * tank in use in Mississippi on July
153 1, 1988, or brought into use after that date.

154 (2) The commission shall establish the amount of the tank
155 regulatory fee to cover the costs of the underground storage tank
156 program. The fee for each state fiscal year shall be set by order
157 of the commission, which shall include:

158 (a) A receipt of the report and recommendations of the
159 UST Advisory Council, and

160 (b) A public notice to allow the public a period of at
161 least thirty (30) days to provide comments regarding the
162 underground storage tank fee report and recommendation, or to
163 request a public hearing in accordance with Section
164 49-17-29(4) (a).

165 The department may conduct a public hearing on the tank
166 regulatory fee when a significant level of public interest exists
167 or when warranted by other factors. Notwithstanding the
168 provisions of this subsection (2), the commission may proceed with
169 entry of the order if the UST Advisory Council fails to submit its
170 report in a timely manner.

171 The tank regulatory fee shall be due July 1 of each
172 year * * *, and if any part of the * * * fee is not paid within
173 thirty (30) days after the due date, a penalty of fifty percent



174 (50%) of the amount due shall accrue at once and be added to the
175 fee, unless the owner of the underground storage tank demonstrates
176 to the commission that the failure to make timely payment was
177 unavoidable due to financial hardship or otherwise beyond the
178 control of the owner.

179 Monies collected under this section shall be deposited in a
180 special fund which is created in the State Treasury. Unexpended
181 amounts remaining in the special fund at the end of the fiscal
182 year shall not lapse into the General Fund and any interest earned
183 on amounts in the special fund shall be credited to the special
184 fund by the Treasurer. The fund may receive monies from any
185 available public or private source, including, but not limited to,
186 collection of fees, interest, grants, taxes, public or private
187 donations and judicial actions. Monies in this special fund shall
188 be expended by annual appropriation approved by the Legislature to
189 administer Sections 49-17-401 through 49-17-435.

190 **SECTION 3.** The following shall be codified as Section
191 49-17-422, Mississippi Code of 1972:

192 49-17-422. (1) An Underground Storage Tank (UST) Advisory
193 Council is created to consult with the commission on all matters
194 relating to the UST program, to conduct an independent study of
195 the development and administration costs of the program and to
196 conduct an annual review of administering such program. The costs
197 to be included in the study for the program shall be those costs
198 as provided in Section 49-17-421. The council shall include in



199 the study the type and quantity of underground storage tanks in
200 the state that are covered by the program. After completing a
201 study of the needs and costs of the program, the council shall
202 recommend an equitable fee system for the program that is based on
203 the type and quantity of underground storage tanks. The annual
204 review for the program shall determine if the fee system is
205 collecting sufficient funds to meet program needs and include any
206 recommendation by the council regarding changes to the fee system.
207 Each annual review report shall be due January 1 of each year to
208 the commission and the executive director of the department.

209 (2) The UST Advisory Council shall be comprised of the
210 following five (5) members:

211 (a) The President of the Mississippi Petroleum
212 Marketers and Convenience Store Association (MPMCSA) or his or her
213 designee;

214 (b) A member of the MPMCSA appointed by the Board of
215 Directors of the MPMCSA for a term of four (4) years;

216 (c) A representative appointed by the President of the
217 Mississippi Engineering Society, experienced in the assessment and
218 remediation of petroleum contamination, for a term of four (4)
219 years;

220 (d) A representative appointed by the Governor, of any
221 company doing business in Mississippi in the installation, closure
222 and/or testing of underground storage tanks; and



223 (e) A representative appointed by the Lieutenant
224 Governor, of any company doing business in Mississippi in the
225 installation, closure and/or testing of underground storage tanks.

226 The council members who are appointed by the Governor and
227 Lieutenant Governor shall have terms that are concurrent with the
228 term of the appointing official.

229 (3) Original appointments to the UST Advisory Council must
230 be made no later than January 1, 2019, and vacancies on the
231 council shall be filled by appointment in the same manner as the
232 original appointments. The council shall convene within sixty
233 (60) days following the date of the appointment of the members,
234 and must select from their membership a chairperson to preside
235 over meetings and a vice chairperson to preside in the absence of
236 the chairperson or when the chairperson is excused. The council
237 shall adopt procedures governing the manner of conducting its
238 business. A majority of the members constitutes a quorum to do
239 business.

240 (4) Members of the UST Advisory Council shall serve without
241 salary, but shall be entitled to receive a reimbursement of their
242 actual travel and expenses, as provided in Section 25-3-41, that
243 are incurred while performing in the scope of their duties as
244 council members. These expenses are to be paid on an itemized
245 statement that is approved by the State Fiscal Officer from fees
246 collected under Section 49-17-421.



247 (5) The executive director of the department shall provide
248 technical, clerical and other support services, including service
249 by contract, as the council requires in the performance of its
250 functions.

251 **SECTION 4.** This act shall take effect and be in force from
252 and after July 1, 2018.

