

By: Representative Franks

To: Conservation and Water  
ResourcesCOMMITTEE SUBSTITUTE  
FOR  
HOUSE BILL NO. 963

1 AN ACT TO REQUIRE THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO  
2 CHARGE FEES WHERE NO PROVISION OF LAW SETS A FEE; TO PROVIDE THAT  
3 THE LEGISLATURE MAY REVOKE ANY FEE BY DULY ADOPTED LAW; TO AMEND  
4 SECTION 49-17-86, MISSISSIPPI CODE OF 1972, TO REVISE HOW THE  
5 WATER POLLUTION CONTROL EMERGENCY LOAN FUND IS ADMINISTERED BY THE  
6 COMMISSION; TO AMEND SECTION 49-17-407, MISSISSIPPI CODE OF 1972,  
7 TO REVISE HOW ENVIRONMENTAL FEES ON MOTOR FUELS ARE ASSESSED; TO  
8 AMEND SECTION 49-17-421, MISSISSIPPI CODE OF 1972, TO AUTHORIZE  
9 THE COMMISSION TO SET TANK REGULATORY FEES; TO AMEND SECTION  
10 49-17-507, MISSISSIPPI CODE OF 1972, TO REVISE THE POWERS AND  
11 DUTIES OF THE COMMISSION REGULATING LEAD-BASED PAINT ACTIVITIES;  
12 TO AMEND SECTION 49-17-525, MISSISSIPPI CODE OF 1972, TO REVISE  
13 HOW THE LEAD-BASED PAINT PROGRAM OPERATIONS FUND IS ADMINISTERED  
14 BY THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF ENVIRONMENTAL  
15 QUALITY; AND FOR RELATED PURPOSES.

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

17 **SECTION 1.** (1) Beginning on July 1, 2005, in all instances  
18 where no provision of law sets a fee, the Department of  
19 Environmental Quality shall charge a fee for any general permit  
20 that it issues to any permittee. For any other permit, any  
21 activity associated with the monitoring of the activities of a  
22 permittee or any other service provided to a private entity, where  
23 no provision of law sets a fee, the department shall charge a fee.  
24 All revenues collected from fees charged under the authority of  
25 this section shall be used by the Department of Environmental  
26 Quality to carry out the duties of the department.

27 (2) Any fee set by the Department of Environmental Quality  
28 shall be published and provided to the Mississippi Legislature by  
29 the first day of the regular legislative session immediately  
30 following the creation or modification of the fee, and shall  
31 remain effective unless the fee is revoked by law duly adopted by  
32 the Mississippi Legislature during the regular legislative session  
33 immediately following the creation or modification of the fee.

34 (3) This section shall stand repealed July 1, 2007.

35 **SECTION 2.** Section 49-17-86, Mississippi Code of 1972, is  
36 amended as follows:

37 49-17-86. (1) (a) There is created a fund in the State  
38 Treasury to be designated as the "Water Pollution Control  
39 Emergency Loan Fund" hereinafter referred to as "emergency fund."

40 (b) The emergency fund may receive appropriations, bond  
41 proceeds, grants, gifts, donations or funds from any source,  
42 public or private. The emergency fund shall be credited with all  
43 repayments of principal and interest derived from loans made from  
44 the emergency fund.

45 (c) The monies in the emergency fund may be expended  
46 only in amounts appropriated by the Legislature.

47 (d) The emergency fund shall be maintained in  
48 perpetuity for the purposes established in Sections 49-17-81  
49 through 49-17-89. Unexpended amounts remaining in the emergency  
50 fund at the end of a fiscal year shall not lapse into the State  
51 General Fund. Any interest earned on amounts in the emergency  
52 fund shall be deposited to the credit of the fund.

53 (2) The commission shall establish a loan program to assist  
54 political subdivisions in making emergency improvements such as  
55 repairs to or replacement of machinery, equipment, materials,  
56 structures or devices in existing water pollution abatement  
57 projects or such other emergency water pollution abatement  
58 projects as the commission deems necessary. Loans from the  
59 emergency fund may be made to political subdivisions as set forth  
60 in a loan agreement in amounts not exceeding one hundred percent  
61 (100%) of eligible project costs as established by the commission.  
62 The commission may require local participation or funding from  
63 other sources, or otherwise limit the percentage of costs covered  
64 by loans from the emergency fund. The commission may establish a  
65 maximum amount for any loan not to exceed Three Hundred Fifty  
66 Thousand Dollars (\$350,000.00).

67           (3) Except as otherwise provided in this section, the  
68 emergency fund may be used only:

69           (a) To make loans on the condition that:

70                   (i) Loans are made at or below market interest  
71 rates, at terms not to exceed ten (10) years after project  
72 completion; the interest rate may vary from time to time and from  
73 loan to loan at the discretion of the commission.

74                   (ii) Periodic principal and interest payments will  
75 commence when required by the commission but not later than one  
76 (1) year after project completion and all loans will be fully  
77 amortized when required by the commission but not later than ten  
78 (10) years after project completion.

79                   (iii) The recipient of a loan shall establish a  
80 dedicated source of revenue for repayment of loans. In addition,  
81 the commission may require any loan recipient to impose a per  
82 connection surcharge on each customer for repayment of any loan  
83 funds provided under this section.

84                   (iv) The recipient of the loan is not in arrears  
85 in repayments to the Water Pollution Control Revolving Fund, the  
86 Water Pollution Control Emergency Loan Fund or under the Water  
87 Pollution Abatement Loan Program.

88           (b) To provide financial assistance to political  
89 subdivisions in making emergency improvements such as repairs to  
90 or replacement of machinery, equipment, materials, structures or  
91 devices in existing water pollution abatement projects or such  
92 other emergency water pollution abatement projects as the  
93 commission deems necessary.

94           (c) To defray the reasonable costs of administering the  
95 emergency fund and conducting activities under this section,  
96 subject to annual appropriation by the Legislature.

97           (4) The commission shall establish a system of evaluating  
98 the eligibility of projects, including a determination of the  
99 emergency nature of a situation for which funding is sought.

100 (5) The fund will be credited with all payments of principal  
101 and interest derived from the fund uses described in subsection  
102 (3) of this section. However, notwithstanding any other provision  
103 of law to the contrary, all or any portion of payments of  
104 principal and interest derived from the fund uses described in  
105 subsection (3) of this section may be designated or pledged for  
106 repayment of a loan as provided for in Section 31-25-28 in  
107 connection with a loan from the Mississippi Development Bank.

108 (6) In addition to any amounts allowed under subsection  
109 (3)(c), the commission may establish and collect fees to further  
110 defray the \* \* \* costs of administering the emergency fund.  
111 Any \* \* \* fees may be included in loan amounts to political  
112 subdivisions for the purpose of facilitating payment to the  
113 commission \* \* \*. The commission may also use administrative fees  
114 collected pursuant to Section 49-17-85 to defray the reasonable  
115 costs of administering the emergency fund.

116 (7) This section shall stand repealed July 1, 2007.

117 **SECTION 3.** Section 49-17-407, Mississippi Code of 1972, is  
118 amended as follows:

119 49-17-407. (1) (a) An environmental protection fee  
120 assessed and collected by the commission is hereby levied upon any  
121 bonded distributor, as defined by Sections 49-17-401 through  
122 49-17-433, who sells or delivers motor fuels to a retailer or user  
123 in this state.

124 (b) Every person, other than a bonded distributor, who  
125 shall purchase or acquire motor fuels within this state on which  
126 the environmental protection fee has not accrued, shall be liable  
127 for the environmental protection fee.

128 (c) The environmental protection fee shall be  
129 imposed \* \* \*.

130 (d) The environmental protection fee shall be collected  
131 by the State Tax Commission and shall be designated separately  
132 from the excise taxes on fuels.

133           (e) Any person liable for the environmental protection  
134 fee shall be subject to the same requirements and penalties as  
135 distributors under the provisions of the Mississippi Special Fuel  
136 Tax Law.

137           (f) Any person liable for the environmental protection  
138 fee shall file a report and remit any fees due at the same time  
139 provided for filing reports under Section 27-55-523, on forms  
140 prescribed by the State Tax Commission.

141           (g) The State Tax Commission is hereby authorized and  
142 empowered to promulgate all rules and regulations necessary for  
143 the administration of the environmental protection fee.

144           (2) (a) On or before the fifteenth day of each month the  
145 environmental protection fees collected during the previous month  
146 shall be deposited into the Mississippi Groundwater Protection  
147 Trust Fund established in Section 49-17-405. When the unobligated  
148 balance in the fund reaches or exceeds Ten Million Dollars  
149 (\$10,000,000.00), the administrator of the fund shall notify the  
150 Executive Director of the Department of Environmental Quality and  
151 distribute such excess monies to the department for operation of  
152 the department. All environmental protection fees accrued shall  
153 be reported and paid.

154           (b) When the fund balance is reduced below Six Million  
155 Dollars (\$6,000,000.00), the fee shall again be imposed at a rate  
156 set by the commission and until such time as the fund shall reach  
157 or exceed Ten Million Dollars (\$10,000,000.00). The administrator  
158 of the fund shall notify, no later than the twenty-fifth day of  
159 the month, the State Tax Commission to reimpose the environmental  
160 protection fee. The imposition of the fee shall become effective  
161 on the first day of the second month succeeding the month in which  
162 the notice to reimpose the fee was given.

163           (3) This fund shall be used for the purposes set forth by  
164 the commission and for no other \* \* \* purposes, no portion hereof  
165 shall ever be available to borrow from by any branch of

166 government; it being the intent of the Legislature that this fund  
167 and its increments shall remain intact and inviolate. Any  
168 interest earned on monies in this fund shall remain in this fund.

169 (4) Monies held in the fund established under Sections  
170 49-17-401 through 49-17-435 shall be used only at an active site  
171 and shall be disbursed in accordance with the commission  
172 requirements and as follows:

173 (a) Payments shall be made to any third party who  
174 brings a third-party claim against any owner of an underground  
175 storage tank and the commission as trustee of the Mississippi  
176 Groundwater Protection Trust Fund and who obtains a final judgment  
177 in such action which is valid and enforceable in this state  
178 against such parties. Payment shall be paid to the third party  
179 upon filing by such party an application with the department  
180 attaching the original or a certified copy of the final judgment.

181 (b) Payments shall be made in reasonable amounts to  
182 approved response action contractors and other parties involved in  
183 the site study and cleanup. Payment shall be made to the party  
184 incurring the costs by filing of a sworn application with the  
185 department indicating the fair and reasonable value of the costs  
186 of site rehabilitation, subject to the regulations and limitations  
187 as set by the department.

188 (5) Payments from the fund are limited as follows:

189 (a) For cleanup purposes, a maximum of One Million  
190 Dollars (\$1,000,000.00) may be disbursed from the fund for any one  
191 (1) site, per confirmed release occurrence.

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

195 (c) Nothing in Sections 49-17-401 through 49-17-435  
196 shall establish or create any liability or responsibility on the  
197 part of the department or the State of Mississippi to pay any

198 cleanup costs or third-party claims if the fund created herein is  
199 insufficient to do so.

200 (6) Monies held in the fund established under Sections  
201 49-17-401 through 49-17-435 shall not be used for purchases of  
202 equipment needed to assist in cleanup operations.

203 (7) Nothing in Sections 49-17-401 through 49-17-435 shall  
204 serve to limit any recovery against an owner of an underground  
205 storage tank in excess of One Million Dollars (\$1,000,000.00).

206 (8) Substantial compliance shall in no way be construed to  
207 be an absolute defense to civil liability.

208 (9) This section shall stand repealed July 1, 2007.

209 **SECTION 4.** Section 49-17-421, Mississippi Code of 1972, is  
210 amended as follows:

211 49-17-421. The commission may assess and collect a tank  
212 regulatory fee in an amount sufficient to administer Sections  
213 49-17-401 through 49-17-435 \* \* \* from the owner of each  
214 underground storage tank in use in Mississippi on July 1, 1988, or  
215 brought into use after that date, as provided in the Mississippi  
216 Underground Storage Tank Act of 1988 (Sections 49-17-401 through  
217 49-17-435). The tank regulatory fee assessed under this section  
218 is a debt due by the owner of each underground storage tank in use  
219 in Mississippi on July 1, 1988, or brought into use after that  
220 date. The tank regulatory fee shall be due on a date established  
221 by the commission. If any part of the tank regulatory fee is not  
222 paid within thirty (30) days after the due date, a penalty of  
223 fifty percent (50%) of the amount due shall accrue at once and be  
224 added to the fee, unless the owner of the underground storage tank  
225 demonstrates to the commission that the failure to make timely  
226 payment was unavoidable due to financial hardship or otherwise  
227 beyond the control of the owner. Monies collected under this  
228 section shall be deposited in a special fund which is created in  
229 the State Treasury. Unexpended amounts remaining in the special  
230 fund at the end of the fiscal year shall not lapse into the

231 General Fund and any interest earned on amounts in the special  
232 fund shall be credited to the special fund by the Treasurer. The  
233 fund may receive monies from any available public or private  
234 source, including, but not limited to, collection of fees,  
235 interest, grants, taxes, public or private donations and judicial  
236 actions. Monies in this special fund shall be expended by annual  
237 appropriation approved by the Legislature to administer Sections  
238 49-17-401 through 49-17-435.

239 This section shall stand repealed July 1, 2007.

240 **SECTION 5.** Section 49-17-507, Mississippi Code of 1972, is  
241 amended as follows:

242 49-17-507. In addition to any other powers and duties  
243 authorized by law, the commission shall have the following powers  
244 and duties regarding lead-based paint activities:

245 (a) To adopt, modify, repeal and promulgate, after due  
246 notice and hearing, and where not otherwise prohibited by federal  
247 or state law, to make exceptions to and grant exemptions and  
248 variances from, and to enforce rules and regulations implementing  
249 or effectuating the powers and duties of the commission under  
250 Sections 49-17-501 through 49-17-531;

251 (b) To issue, reissue, suspend, revoke or deny the  
252 issuance or reissuance of accreditation for lead-based paint  
253 activity training programs and to require the modification of  
254 those training programs;

255 (c) To issue, reissue, suspend, revoke or deny the  
256 issuance or reissuance of certificates for risk assessors, project  
257 designers, supervisors, inspectors and workers involved in  
258 lead-based paint activities;

259 (d) To develop and require the use of work practice  
260 standards for lead-based paint activities and to monitor  
261 compliance with those work practice standards;

262 (e) To enforce and assess penalties for violations of  
263 Sections 49-17-501 through 49-17-531;

264 (f) To assess and collect fees \* \* \*;  
265 (g) To develop an examination and grading system for  
266 testing applicants to be administered by accredited training  
267 programs;  
268 (h) To establish requirements and procedures for the  
269 administration of a third-party certification examination;  
270 (i) To enter into reciprocal agreements for  
271 accreditation of training programs and certification of risk  
272 assessors, project designers, supervisors, inspectors and workers  
273 with other states that have established accreditation and  
274 certification programs that meet or exceed the accreditation and  
275 certification requirements adopted under Sections 49-17-501  
276 through 49-17-531;  
277 (j) To apply for, receive and expend any contributions,  
278 gifts, devises, bequests or funds from any source relating to  
279 Sections 49-17-501 through 49-17-531;  
280 (k) To enter into, and to authorize the executive  
281 director to execute with the approval of the commission,  
282 contracts, grants and cooperative agreements, except as limited  
283 under Section 49-2-9, with any federal or state agency or  
284 subdivision thereof, any public or private institution, or any  
285 other person in connection with carrying out Sections 49-17-501  
286 through 49-17-531; and  
287 (l) To discharge other duties, responsibilities and  
288 powers necessary to implement Sections 49-17-501 through  
289 49-17-531.  
290 (m) This section shall stand repealed July 1, 2007.

291 **SECTION 6.** Section 49-17-525, Mississippi Code of 1972, is  
292 amended as follows:

293 49-17-525. (1) (a) There is created in the State Treasury  
294 a fund to be designated as the Lead-Based Paint Program Operations  
295 Fund, referred to in this section as "fund," to be administered by

296 the executive director and expended by appropriation approved by  
297 the Legislature.

298 (b) Monies in the fund shall be utilized to pay  
299 reasonable direct and indirect costs associated with the  
300 administration and enforcement of the lead-based paint activity  
301 accreditation and certification program.

302 (c) Expenditures may be made from the fund upon  
303 requisition by the executive director.

304 (d) The fund shall be treated as a special trust fund.  
305 Interest earned on the principal therein shall be credited by the  
306 Treasurer to the fund.

307 (e) The fund may receive monies from any available  
308 public or private source, including, but not limited to,  
309 collection of fees, interest, grants, taxes, public and private  
310 donations, judicial actions and appropriated funds.

311 (f) Monies in the fund at the end of the fiscal year  
312 shall be retained in the fund for use in the next succeeding  
313 fiscal year to be expended by appropriation approved by the  
314 Legislature.

315 (2) (a) The commission shall set by order a schedule of  
316 fees \* \* \*.

317 (b) All monies collected under this section shall be  
318 deposited into the fund.

319 (c) The commission may delegate to the department  
320 responsibility for the collection of fees under this section.

321 (d) Any person required to pay a fee under this section  
322 who disagrees with the calculation or applicability of the fee may  
323 petition the commission for a hearing in accordance with Section  
324 49-17-35, Mississippi Code of 1972. Any hearing shall be in  
325 accordance with the provisions of Section 49-17-33, Mississippi  
326 Code of 1972.

327 \* \* \*

328 (3) This section shall stand repealed July 1, 2007.

329           **SECTION 7.** This act shall take effect and be in force from  
330 and after July 1, 2005.