

By: Representative Franks

To: Conservation and Water
Resources

HOUSE BILL NO. 963

1 AN ACT TO BRING FORWARD SECTION 49-2-13, MISSISSIPPI CODE OF
2 1972, RELATING TO THE POWERS AND DUTIES OF THE EXECUTIVE DIRECTOR
3 OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY; TO BRING FORWARD
4 SECTION 49-17-30, MISSISSIPPI CODE OF 1972, RELATING TO TITLE 5
5 PERMIT FEES; TO BRING FORWARD SECTION 49-17-32, MISSISSIPPI CODE
6 OF 1972, RELATING TO COLLECTION OF TITLE 5 FEES; TO BRING FORWARD
7 SECTION 49-17-36, MISSISSIPPI CODE OF 1972, RELATING TO PENALTIES
8 FOR VIOLATION OF TITLE 5 REGULATIONS; TO BRING FORWARD SECTION
9 49-17-43, MISSISSIPPI CODE OF 1972, RELATING TO PENALTIES FOR
10 SOLID WASTE VIOLATIONS; TO BRING FORWARD SECTION 49-17-85,
11 MISSISSIPPI CODE OF 1972, RELATING TO THE WATER POLLUTION CONTROL
12 REVOLVING FUND ADMINISTERED BY THE COMMISSION ON ENVIRONMENTAL
13 QUALITY; TO BRING FORWARD SECTION 49-17-86, MISSISSIPPI CODE OF
14 1972, RELATING TO THE WATER POLLUTION CONTROL EMERGENCY LOAN FUND
15 ADMINISTERED BY THE COMMISSION; TO BRING FORWARD SECTION
16 49-17-407, MISSISSIPPI CODE OF 1972, RELATING TO ENVIRONMENTAL
17 FEES ON MOTOR FUELS; TO BRING FORWARD SECTION 49-17-421,
18 MISSISSIPPI CODE OF 1972, RELATING TO TANK REGULATORY FEES; TO
19 BRING FORWARD SECTION 49-17-427, MISSISSIPPI CODE OF 1972,
20 RELATING TO CIVIL PENALTIES FOR VIOLATIONS OF UNDERGROUND STORAGE;
21 TO BRING FORWARD SECTION 49-17-507, MISSISSIPPI CODE OF 1972,
22 RELATING TO THE POWERS AND DUTIES OF THE COMMISSION REGULATING
23 LEAD-BASED PAINT ACTIVITIES; TO BRING FORWARD SECTION 49-17-525,
24 MISSISSIPPI CODE OF 1972, RELATING TO THE LEAD-BASED PAINT PROGRAM
25 OPERATIONS FUND ADMINISTERED BY THE EXECUTIVE DIRECTOR OF THE
26 DEPARTMENT OF ENVIRONMENTAL QUALITY, FOR PURPOSES OF AMENDMENT;
27 AND FOR RELATED PURPOSES.

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

29 **SECTION 1.** Section 49-2-13, Mississippi Code of 1972, is
30 brought forward as follows:

31 49-2-13. The executive director shall have the following
32 powers and duties:

33 (a) To administer the policies of the commission within
34 the authority granted by the commission;

35 (b) To supervise and direct all administrative and
36 technical activities of the department;

37 (c) To organize the administrative units of the
38 department in accordance with the plan adopted by the commission
39 and, with commission approval, alter such organizational plan and

40 reassign responsibilities as he may deem necessary to carry out
41 the policies of the commission;

42 (d) To coordinate the activities of the various offices
43 of the department;

44 (e) To employ, subject to the approval of the
45 commission, qualified professional personnel in the subject matter
46 or fields of each office, and such other technical and clerical
47 staff as may be required for the operation of the department;

48 (f) To recommend to the commission such studies and
49 investigations as he may deem appropriate, and to carry out the
50 approved recommendations in conjunction with the various offices;

51 (g) To merge and coordinate functions and duties where
52 possible to eliminate the possibility of two (2) separate
53 organizational entities performing the same or similar functions,
54 including, but not limited to, functions of audit, inspection,
55 collection, personnel, motor vehicles, accounting, data
56 processing, payroll and any other such administrative, procedural
57 or enforcement function;

58 (h) To coordinate all studies in the State of
59 Mississippi concerned with the supply, development, use and
60 conservation of natural resources within the jurisdiction of the
61 department;

62 (i) To prepare and deliver to the Legislature and the
63 Governor on or before January 1 of each year, and at such other
64 times as may be required by the Legislature or Governor, a full
65 report of the work of the department and the offices thereof,
66 including a detailed statement of expenditures of the department
67 and any recommendations the commission may have;

68 (j) To issue, modify or revoke any and all orders under
69 authority granted by the commission which include, but are not
70 limited to those which (i) prohibit, control or abate discharges
71 of contaminants and wastes into the air and waters of the state;

72 (ii) require the construction of new disposal systems or

73 air-cleaning devices or any parts thereof, or the modification,
74 extension or alteration of existing disposal systems or
75 air-cleaning devices or any parts thereof, or the adoption of
76 other remedial measures to prevent, control or abate air and water
77 pollution or to cause the proper management of solid wastes; (iii)
78 impose penalties pursuant to Section 17-17-29 and Section 49-17-43
79 which have been agreed upon with alleged violators; and (iv)
80 require compliance with the conditions of any permit issued by the
81 Permit Board created in Section 49-17-28 and all regulations of
82 the commission; and

83 (k) With the approval of the commission, to enter into
84 contracts, grants and cooperative agreements with any federal or
85 state agency or subdivision thereof, or any public or private
86 institution located inside or outside the State of Mississippi, or
87 any person, corporation or association in connection with carrying
88 out the provisions of this chapter, provided the agreements do not
89 have a financial cost in excess of the amounts appropriated for
90 such purposes by the Legislature.

91 **SECTION 2.** Section 49-17-30, Mississippi Code of 1972, is
92 brought forward as follows:

93 49-17-30. (1) As a condition of any air operating permit
94 required under Title V of the federal Clean Air Act, the owner or
95 operator of any stationary source shall pay to the Department of
96 Environmental Quality an annual permit fee. The commission shall
97 establish the amount of each fee to cover the costs of the Title V
98 program as provided in Section 49-17-14.

99 (2) To facilitate the proper administration of the Title V
100 program, the commission is authorized to assess and collect fees
101 from Title V program permittees. The commission is further
102 authorized to promulgate such rules and regulations as are
103 necessary for the development and administration of the Title V
104 program and the assessment and collection of Title V program fees.

105 (a) For purposes of fee assessment and collection, the
106 maximum emission rate of each pollutant used in the calculation of
107 fees shall be four thousand (4,000) tons per year per facility.

108 (b) For purposes of fee assessment and collection, the
109 permit holder shall elect for actual or allowable emissions to be
110 used in determining the annual quantity of emissions unless the
111 commission determines by order that the method chosen by the
112 applicant for calculating actual emissions fails to reasonably
113 represent actual emissions. Such order of the commission shall be
114 subject to appeal in the manner provided in Section 49-17-41.
115 Actual emissions shall be calculated using emission monitoring
116 data or direct emissions measurements for the pollutant(s); mass
117 balance calculations such as the amounts of the pollutant(s)
118 entering and leaving process equipment and where mass balance
119 calculations can be supported by direct measurement of process
120 parameters, such direct measurement data shall be supplied;
121 published emission factors such as those relating release
122 quantities to throughput or equipment type (e.g., air emission
123 factors); or other approaches such as engineering calculations
124 (e.g., estimating volatilization using published mathematical
125 formulas) or best engineering judgments where such judgments are
126 derived from process and/or emission data which supports the
127 estimates of maximum actual emissions.

128 If the commission determines that there is not sufficient
129 information available on a facility's emissions, the determination
130 of the fee shall be based upon the permitted allowable emissions
131 until such time as an adequate determination of actual emissions
132 is made.

133 (c) A minimum annual fee of Two Hundred Fifty Dollars
134 (\$250.00) shall be assessed to and collected from the owner or
135 operator of each facility that is required to hold a Title V
136 permit. The maximum annual fee shall be Two Hundred Fifty
137 Thousand Dollars (\$250,000.00) per facility.

138 (3) (a) Prior to the date of full implementation of the
139 Title V program in Mississippi, the fee assessed shall be Four
140 Dollars (\$4.00) per ton of emissions of each air pollutant for
141 which fees can be assessed under the Title V program, not to
142 exceed Fifty Thousand Dollars (\$50,000.00) per facility.

143 (b) Following the date of full implementation of the
144 Title V program in Mississippi, the fee schedule for Title V
145 permit fees for any subsequent calendar year shall be set by order
146 of the commission in an amount sufficient to cover the reasonable
147 costs of development and administration of the Title V program.

148 The commission's order shall follow:

149 (i) Receipt of the report and recommendations of
150 the Advisory Council; and

151 (ii) A public hearing to be held not earlier than
152 thirty (30) days following receipt by the commission of the report
153 and recommendations of the Advisory Council. The commission may
154 proceed with entry of the order on fees if the Advisory Council
155 fails to submit its report in a timely manner. The order of the
156 commission may be appealed in the manner set forth in Section
157 49-17-41. The determination of the fee shall be by order of the
158 commission and shall not be considered the promulgation of a
159 regulation by the commission. The record of the public hearing
160 shall be included in the record upon which the order is based and
161 shall become a part of the appellate records for all appeals taken
162 from the order of the commission establishing or modifying Title V
163 permit fees. Any undisputed amount due from an appellant must be
164 paid according to the appellant's payment schedule during the
165 pendency of the appeal.

166 (4) Any person required to pay the Title V permit fee set
167 forth under this chapter who disagrees with the calculation or
168 applicability of the person's fee may petition the commission in
169 writing for a hearing in accordance with Section 49-17-35. Such
170 hearing shall be in accordance with Section 49-17-33. Any

171 disputed portion of the fee for which a hearing has been requested
172 will not incur any penalty or interest from and after the receipt
173 by the commission of the hearing petition. The decision of the
174 commission may be appealed in the manner set forth in Section
175 49-17-41.

176 (5) All fees collected pursuant to this section shall be
177 deposited into the "Air Operating Permit Program Fee Trust Fund"
178 established in Section 49-17-14.

179 **SECTION 3.** Section 49-17-32, Mississippi Code of 1972, is
180 brought forward as follows:

181 49-17-32. (1) The commission may delegate to the Department
182 of Environmental Quality the responsibility for the collection of
183 the Title V program fees.

184 (2) The air operating permit fee shall be due September 1 of
185 each year. Any facility which proposes to use actual emissions as
186 the basis for the fee calculation shall submit by July 1 of each
187 year an inventory of emissions for the previous calendar year.
188 For facilities using actual emissions as the basis of the fee, the
189 fee shall be calculated based upon emissions during the previous
190 calendar year. For facilities using allowable emissions as the
191 basis for the fee, the fee shall be calculated based upon the
192 allowable emissions contained in the permit on the date of the
193 invoice. A permit holder may elect a quarterly payment method of
194 four (4) equal payments with the payments due September 1,
195 December 1, March 1, and June 1. The permit holder shall notify
196 the Department of Environmental Quality that the quarterly payment
197 method will be used by September 1.

198 (3) If any part of the air operating permit fee imposed is
199 not paid within thirty (30) days after the due date, a penalty of
200 ten percent (10%) of the amount due shall at once accrue and be
201 added thereto, unless the permittee demonstrates to the commission
202 that the failure to make timely payment was unavoidable due to
203 financial hardship or otherwise beyond the permittee's control.

204 If the fee is not paid in full, including any penalty within sixty
205 (60) days of the due date, the Environmental Quality Permit Board
206 may revoke the permit upon proper notice and hearing as required
207 by law. Any penalty collected under this section shall be
208 deposited into the "Air Operating Permit Program Fee Trust Fund."

209 (4) It is the intent of the Legislature that fees collected
210 pursuant to Sections 49-17-1 through 49-17-45 shall not supplant
211 or reduce in any way the General Fund appropriation to the
212 Department of Environmental Quality.

213 **SECTION 4.** Section 49-17-36, Mississippi Code of 1972, is
214 brought forward as follows:

215 49-17-36. (1) It is unlawful for any person to knowingly:
216 (a) fail to pay any fee assessed by the commission for
217 administration of the federal air operating permit program; (b)
218 fail to satisfy any air operating permit filing requirement; (c)
219 make any false statement, representation of certification in any
220 notice or report required by an air operating permit; or (d)
221 render inaccurate any air monitoring device or method required by
222 an air operating permit; and, upon conviction thereof, such person
223 shall be punished by a fine of not less than Two Thousand Five
224 Hundred Dollars (\$2,500.00) nor more than Twenty-five Thousand
225 Dollars (\$25,000.00) per day of violation.

226 (2) In determining the amount of penalty under this section,
227 the following shall be considered at a minimum:

- 228 (a) The willfulness of the violation;
- 229 (b) Any damage to air, water, land or other natural
230 resources of the state or their uses;
- 231 (c) Costs of restoration or abatement;
- 232 (d) Economic benefit as a result of noncompliance;
- 233 (e) The seriousness of the violation, including any
234 harm to the environment and any hazard to the health, safety and
235 welfare of the public; and
- 236 (f) Past performance history.

237 (3) All fines collected by the commission under this section
238 shall be deposited into the Pollution Emergency Fund established
239 under Section 49-17-68, Mississippi Code of 1972.

240 **SECTION 5.** Section 49-17-43, Mississippi Code of 1972, is
241 brought forward as follows:

242 49-17-43. (1) Any person found by the commission violating
243 any of the provisions of Sections 49-17-1 through 49-17-43, or any
244 rule or regulation or written order of the commission in pursuance
245 thereof or any condition or limitation of a permit, except a
246 permit required under the Solid Wastes Disposal Law of 1974
247 (Sections 17-17-1 through 17-17-47), shall be subject to a civil
248 penalty of not more than Twenty-five Thousand Dollars
249 (\$25,000.00), for each violation, such penalty to be assessed and
250 levied by the commission after a hearing as provided hereinabove.
251 Appeals from the imposition of the civil penalty may be taken to
252 the chancery court in the same manner as appeals from orders of
253 the commission. If the appellant desires to stay the execution of
254 a civil penalty assessed by the commission, he shall give bond
255 with sufficient resident sureties of one or more guaranty or
256 surety companies authorized to do business in this state, payable
257 to the State of Mississippi, in an amount equal to double the
258 amount of any civil penalty assessed by the commission, as to
259 which the stay of execution is desired, conditioned, if the
260 judgment shall be affirmed, to pay all costs of the assessment
261 entered against the appellant. Each day upon which a violation
262 occurs shall be deemed a separate and additional violation.

263 Any person violating any provision of the Solid Wastes
264 Disposal Law of 1974 (Sections 17-17-1 through 17-17-47), any rule
265 or regulation made pursuant to that law, or any order issued by
266 the commission under the authority of that law shall be subject to
267 the penalties provided in Section 17-17-29.

268 (2) In lieu of, or in addition to, the penalty provided in
269 subsection (1) of this section, the commission shall have power to

270 institute and maintain in the name of the state any and all
271 proceedings necessary or appropriate to enforce the provisions of
272 Sections 49-17-1 through 49-17-43, rules and regulations in force
273 pursuant thereto, and orders and permits made and issued under
274 those sections, in the appropriate circuit, chancery, county or
275 justice court of the county in which venue may lie. The
276 commission may obtain mandatory or prohibitory injunctive relief,
277 either temporary or permanent, and in cases of imminent and
278 substantial hazard or endangerment as set forth in Section
279 49-17-27, it shall not be necessary in such cases that the state
280 plead or prove: (a) that irreparable damage would result if the
281 injunction did not issue; (b) that there is no adequate remedy at
282 law; or (c) that a written complaint or commission order has first
283 been issued for the alleged violation.

284 (3) Any person who violates any of the provisions of, or
285 fails to perform any duty imposed by, Sections 49-17-1 through
286 49-17-43 or any rule or regulation issued hereunder, or who
287 violates any order or determination of the commission promulgated
288 pursuant to such sections, and causes the death of fish or other
289 wildlife shall be liable, in addition to the penalties provided in
290 subsections (1) and (2) of this section, to pay to the state an
291 additional amount equal to the sum of money reasonably necessary
292 to restock such waters or replenish such wildlife as determined by
293 the commission after consultation with the Mississippi Commission
294 on Wildlife, Fisheries and Parks. Such amount may be recovered by
295 the commission on behalf of the state in a civil action brought in
296 the appropriate county or circuit court of the county in which
297 venue may lie.

298 (4) Any person who owns or operates facilities which,
299 through misadventure, happenstance or otherwise, cause pollution
300 necessitating immediate remedial or cleanup action shall be liable
301 for the cost of such remedial or cleanup action and the commission
302 may recover the cost of same by a civil action brought in the

303 circuit court of the county in which venue may lie. This penalty
304 may be recovered in lieu of or in addition to the penalties
305 provided in subsections (1), (2) and (3) of this section.

306 In the event of the necessity for immediate remedial or
307 cleanup action, the commission may contract for same and advance
308 funds from the Pollution Emergency Fund to pay the costs thereof,
309 such advancements to be repaid to the Pollution Emergency Fund
310 upon recovery by the commission as provided above.

311 (5) It is unlawful for any person to: (a) discharge
312 pollutants in violation of Section 49-17-29 or in violation of any
313 condition or limitation included in a permit issued under Section
314 49-17-29 or (b) introduce pollutants into publicly owned treatment
315 works in violation of pretreatment standards or in violation of
316 toxic effluent standards; and, upon conviction thereof, such
317 person shall be punished by a fine of not less than Two Thousand
318 Five Hundred Dollars (\$2,500.00) nor more than Twenty-five
319 Thousand Dollars (\$25,000.00) per day of violation.

320 (6) All fines, penalties and other sums recovered or
321 collected by the commission for and in behalf of the state under
322 this section shall be deposited in the Pollution Emergency Fund
323 established under this chapter, and the commission is authorized
324 to receive and accept, from any funds and all available sources
325 whatsoever, additional funds to be deposited in such fund and
326 expended for the purpose of remedial, cleanup or abatement actions
327 involving pollution of the land, air or waters of the state in
328 violation of Sections 49-17-1 through 49-17-43, any rule or
329 regulation or written order of the commission in pursuance
330 thereof, or any condition or limitation of a permit.

331 (7) In determining the amount of any penalty under this
332 chapter, the commission shall consider at a minimum:

333 (a) The willfulness of the violation;

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

336 (c) Costs of restoration and abatement;

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

338 (e) The seriousness of the violation, including any
339 harm to the environment and any hazard to the health, safety and
340 welfare of the public;

341 (f) Past performance history; and

342 (g) Whether the noncompliance was discovered and
343 reported as the result of a voluntary self-evaluation. If a
344 person discovers as a result of a voluntary self-evaluation,
345 information related to noncompliance with an environmental law and
346 voluntarily discloses that information to the department,
347 commission or any employee thereof, the commission shall, to the
348 greatest extent possible, reduce a penalty, if any, determined by
349 the commission, except for economic benefit as a result of
350 noncompliance, to a de minimis amount if all of the following are
351 true:

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

354 (ii) The person making the disclosure initiates
355 the appropriate corrective actions and pursues those corrective
356 actions with due diligence;

357 (iii) The person making the disclosure cooperates
358 with the commission and the department regarding investigation of
359 the issues identified in the disclosure;

360 (iv) The person is not otherwise required by an
361 environmental law to make the disclosure to the commission or the
362 department;

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

366 (vi) The noncompliance did not result in a
367 substantial endangerment threatening the public health, safety or
368 welfare or the environment; and

369 (vii) The noncompliance is not a repeat violation
370 occurring at the same facility within a period of three (3) years.
371 "Repeat violation" in this subparagraph means a second or
372 subsequent violation, after the first violation has ceased, of the
373 same statutory provision, regulation, permit condition, or
374 condition in an order of the commission.

375 (8) Any provisions of this section and chapter regarding
376 liability for the costs of cleanup, removal, remediation or
377 abatement of any pollution, hazardous waste or solid waste shall
378 be limited as provided in Section 49-17-42 and rules adopted
379 thereto.

380 **SECTION 6.** Section 49-17-85, Mississippi Code of 1972, is
381 brought forward as follows:

382 49-17-85. (1) There is established in the State Treasury a
383 fund to be known as the "Water Pollution Control Revolving Fund"
384 which shall be administered by the commission acting through the
385 department. The revolving fund may receive bond proceeds and
386 funds appropriated or otherwise made available by the Legislature
387 in any manner and funds from any other source, public or private.
388 The revolving fund shall be maintained in perpetuity for the
389 purposes established in this section.

390 (2) There is established in the State Treasury a fund to be
391 known as the "Water Pollution Control Hardship Grants Fund," which
392 shall be administered by the commission acting through the
393 department. The grants fund shall be maintained in perpetuity for
394 the purposes established in this section. Any interest earned on
395 monies in the grants fund shall be credited to that fund.

396 (3) The commission shall promulgate regulations for the
397 administration of the revolving fund program, the hardship grants
398 program and for related programs authorized under this section.
399 The regulations shall be in accordance with the federal Water
400 Quality Act of 1987, as amended and regulations and guidance
401 issued under that act. The commission may enter into

402 capitalization grant agreements with the United States
403 Environmental Protection Agency and may accept capitalization
404 grant awards made under Title VI of the Water Quality Act of 1987,
405 as amended.

406 (4) The commission shall establish a loan program which
407 shall commence after October 1, 1988, to assist political
408 subdivisions in the construction of water pollution control
409 projects. Loans from the revolving fund may be made to political
410 subdivisions as set forth in a loan agreement in amounts not
411 exceeding one hundred percent (100%) of eligible project costs as
412 established by the commission. Notwithstanding loan amount
413 limitations set forth in Section 49-17-61, the commission may
414 require local participation or funding from other sources, or
415 otherwise limit the percentage of costs covered by loans from the
416 revolving fund. The commission may establish a maximum amount for
417 any loan in order to provide for broad and equitable participation
418 in the program.

419 (5) The commission shall establish a hardship grants program
420 for rural communities, which shall commence after July 1, 1997, to
421 assist severely economically disadvantaged small rural political
422 subdivisions in the construction of water pollution control
423 projects. The commission may receive and administer state or
424 federal funds, or both, appropriated for the operation of this
425 grants program and may take all actions necessary to implement the
426 program in accordance with the federal hardship grants program.
427 The hardship grants program shall operate in conjunction with the
428 revolving loan program administered under this section.

429 (6) The commission shall act for the state in all matters
430 and with respect to all determinations under Title VI of the
431 federal Water Quality Act of 1987, as amended and the federal
432 Omnibus Appropriations and Recision Act of 1996.

433 (7) Except as otherwise provided in this section, the
434 revolving fund may be used only:

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

436 (i) The loans are made at or below market interest
437 rates, at terms not to exceed twenty (20) years after project
438 completion; the interest rate and term may vary from time to time
439 and from loan to loan at the discretion of the commission;

440 (ii) Periodic principal and interest payments will
441 commence when required by the commission but not later than one
442 (1) year after project completion and all loans will be fully
443 amortized when required by the commission but not later than
444 twenty (20) years after project completion;

445 (iii) The recipient of a loan will establish a
446 dedicated source of revenue for repayment of loans;

447 (b) To buy or refinance the debt obligation of
448 political subdivisions at or below market rates, where the debt
449 obligations were incurred after March 7, 1985, and where the
450 projects were constructed in compliance with applicable federal
451 and state regulations;

452 (c) To guarantee, or purchase insurance for,
453 obligations of political subdivisions where the action would
454 improve credit market access or reduce interest rates;

455 (d) To provide loan guarantees for similar revolving
456 funds established by municipalities or intermunicipal agencies;

457 (e) To earn interest on fund accounts;

458 (f) To establish nonpoint source pollution control
459 management programs;

460 (g) To establish estuary conservation and management
461 programs;

462 (h) For the reasonable costs of administering the
463 revolving fund and conducting activities under this act, subject
464 to the limitations established in Section 603(d)(7) of Title VI of
465 the federal Clean Water Act, as amended, and subject to annual
466 appropriation by the Legislature; and

467 (i) In connection with the issuance, sale and purchase
468 of bonds under Section 31-25-1 et seq., related to the funding of
469 projects, to provide security or a pledge of revenues for the
470 repayment of the bonds.

471 (8) The hardship grants program shall be used only to
472 provide hardship grants consistent with the federal hardship
473 grants program for rural communities, regulations and guidance
474 issued by the United States Environmental Protection Agency,
475 subsections (3) and (5) of this section and regulations
476 promulgated and guidance issued by the commission under this
477 section.

478 (9) The commission shall establish by regulation a system of
479 priorities and a priority list of projects eligible for funding
480 with loans from the revolving fund.

481 (10) The commission may provide a loan from the revolving
482 fund only with respect to a project if that project is on the
483 priority list established by the commission.

484 (11) The revolving fund shall be credited with all payments
485 of principal and interest derived from the fund uses described in
486 subsection (7) of this section. However, notwithstanding any
487 other provision of law to the contrary, all or any portion of
488 payments of principal and interest derived from the fund uses
489 described in subsection (7) of this section may be designated or
490 pledged for repayment of a loan as provided for in Section
491 31-25-28 in connection with a loan from the Mississippi
492 Development Bank.

493 (12) The commission may establish and collect fees to defray
494 the reasonable costs of administering the revolving fund if it
495 determines that the administrative costs will exceed the
496 limitations established in Section 603(d)(7) of Title VI of the
497 federal Clean Water Act, as amended. The administration fees may
498 be included in loan amounts to political subdivisions for the

499 purpose of facilitating payment to the commission. The fees may
500 not exceed five percent (5%) of the loan amount.

501 **SECTION 7.** Section 49-17-86, Mississippi Code of 1972, is
502 brought forward as follows:

503 49-17-86. (1) (a) There is created a fund in the State
504 Treasury to be designated as the "Water Pollution Control
505 Emergency Loan Fund" hereinafter referred to as "emergency fund."

506 (b) The emergency fund may receive appropriations, bond
507 proceeds, grants, gifts, donations or funds from any source,
508 public or private. The emergency fund shall be credited with all
509 repayments of principal and interest derived from loans made from
510 the emergency fund.

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

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

519 (2) The commission shall establish a loan program to assist
520 political subdivisions in making emergency improvements such as
521 repairs to or replacement of machinery, equipment, materials,
522 structures or devices in existing water pollution abatement
523 projects or such other emergency water pollution abatement
524 projects as the commission deems necessary. Loans from the
525 emergency fund may be made to political subdivisions as set forth
526 in a loan agreement in amounts not exceeding one hundred percent
527 (100%) of eligible project costs as established by the commission.
528 The commission may require local participation or funding from
529 other sources, or otherwise limit the percentage of costs covered
530 by loans from the emergency fund. The commission may establish a

531 maximum amount for any loan not to exceed Three Hundred Fifty
532 Thousand Dollars (\$350,000.00).

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

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

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

540 (ii) Periodic principal and interest payments will
541 commence when required by the commission but not later than one
542 (1) year after project completion and all loans will be fully
543 amortized when required by the commission but not later than ten
544 (10) years after project completion.

545 (iii) The recipient of a loan shall establish a
546 dedicated source of revenue for repayment of loans. In addition,
547 the commission may require any loan recipient to impose a per
548 connection surcharge on each customer for repayment of any loan
549 funds provided under this section.

550 (iv) The recipient of the loan is not in arrears
551 in repayments to the Water Pollution Control Revolving Fund, the
552 Water Pollution Control Emergency Loan Fund or under the Water
553 Pollution Abatement Loan Program.

554 (b) To provide financial assistance to political
555 subdivisions in making emergency improvements such as repairs to
556 or replacement of machinery, equipment, materials, structures or
557 devices in existing water pollution abatement projects or such
558 other emergency water pollution abatement projects as the
559 commission deems necessary.

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

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

566 (5) The fund will be credited with all payments of principal
567 and interest derived from the fund uses described in subsection
568 (3) of this section. However, notwithstanding any other provision
569 of law to the contrary, all or any portion of payments of
570 principal and interest derived from the fund uses described in
571 subsection (3) of this section may be designated or pledged for
572 repayment of a loan as provided for in Section 31-25-28 in
573 connection with a loan from the Mississippi Development Bank.

574 (6) In addition to any amounts allowed under subsection
575 (3)(c), the commission may establish and collect fees to further
576 defray the reasonable costs of administering the emergency fund.
577 Any administrative fees may be included in loan amounts to
578 political subdivisions for the purpose of facilitating payment to
579 the commission; fees may not exceed five percent (5%) of the loan
580 amount. The commission may also use administrative fees collected
581 pursuant to Section 49-17-85 to defray the reasonable costs of
582 administering the emergency fund.

583 **SECTION 8.** Section 49-17-407, Mississippi Code of 1972, is
584 brought forward as follows:

585 49-17-407. (1) (a) An environmental protection fee of
586 Four-tenths of One Cent (4/10 of 1¢) per gallon is hereby levied
587 upon any bonded distributor, as defined by Sections 49-17-401
588 through 49-17-433, who sells or delivers motor fuels to a retailer
589 or user in this state.

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

594 (c) The environmental protection fee shall be imposed
595 only one (1) time on motor fuels sold in the state.

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

599 (e) Any person liable for the environmental protection
600 fee shall be subject to the same requirements and penalties as
601 distributors under the provisions of the Mississippi Special Fuel
602 Tax Law.

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

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

610 (2) (a) On or before the fifteenth day of each month the
611 environmental protection fees collected during the previous month
612 shall be deposited into the Mississippi Groundwater Protection
613 Trust Fund established in Section 49-17-405. When the unobligated
614 balance in the fund reaches or exceeds Ten Million Dollars
615 (\$10,000,000.00), the administrator of the fund shall notify in
616 writing the State Tax Commission no later than the twenty-fifth
617 day of the month to abate the environmental protection fee. The
618 abatement shall become effective on the last day of the month
619 succeeding the month in which such notice was given. All
620 environmental protection fees accrued shall be reported and paid.

621 (b) When the fund balance is reduced below Six Million
622 Dollars (\$6,000,000.00), the fee shall again be imposed at the
623 rate of Four-tenths of One Cent (4/10 of 1¢) per gallon until such
624 time as the fund shall reach or exceed Ten Million Dollars
625 (\$10,000,000.00). The administrator of the fund shall notify, no
626 later than the twenty-fifth day of the month, the State Tax
627 Commission to reimpose the environmental protection fee. The
628 imposition of the fee shall become effective on the first day of

629 the second month succeeding the month in which the notice to
630 reimpose the fee was given.

631 (3) This fund shall be used for the purposes set forth in
632 Sections 49-17-401 through 49-17-435 and for no other governmental
633 purposes, nor shall any portion hereof ever be available to borrow
634 from by any branch of government; it being the intent of the
635 Legislature that this fund and its increments shall remain intact
636 and inviolate. Any interest earned on monies in this fund shall
637 remain in this fund.

638 (4) Monies held in the fund established under Sections
639 49-17-401 through 49-17-435 shall be used only at an active site
640 and shall be disbursed in accordance with the commission
641 requirements and as follows:

642 (a) Payments shall be made to any third party who
643 brings a third-party claim against any owner of an underground
644 storage tank and the commission as trustee of the Mississippi
645 Groundwater Protection Trust Fund and who obtains a final judgment
646 in such action which is valid and enforceable in this state
647 against such parties. Payment shall be paid to the third party
648 upon filing by such party an application with the department
649 attaching the original or a certified copy of the final judgment.

650 (b) Payments shall be made in reasonable amounts to
651 approved response action contractors and other parties involved in
652 the site study and cleanup. Payment shall be made to the party
653 incurring the costs by filing of a sworn application with the
654 department indicating the fair and reasonable value of the costs
655 of site rehabilitation, subject to the regulations and limitations
656 as set by the department.

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

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

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

664 (c) Nothing in Sections 49-17-401 through 49-17-435
665 shall establish or create any liability or responsibility on the
666 part of the department or the State of Mississippi to pay any
667 cleanup costs or third-party claims if the fund created herein is
668 insufficient to do so.

669 (6) Monies held in the fund established under Sections
670 49-17-401 through 49-17-435 shall not be used for purchases of
671 equipment needed to assist in cleanup operations.

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

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

677 **SECTION 9.** Section 49-17-421, Mississippi Code of 1972, is
678 brought forward as follows:

679 49-17-421. The commission may assess and collect a tank
680 regulatory fee in an amount sufficient to administer Sections
681 49-17-401 through 49-17-435 but not to exceed One Hundred Dollars
682 (\$100.00) per tank per year from the owner of each underground
683 storage tank in use in Mississippi on July 1, 1988, or brought
684 into use after that date, as provided in the Mississippi
685 Underground Storage Tank Act of 1988 (Sections 49-17-401 through
686 49-17-435). The tank regulatory fee assessed under this section
687 is a debt due by the owner of each underground storage tank in use
688 in Mississippi on July 1, 1988, or brought into use after that
689 date. The tank regulatory fee shall be due July 1 of each year.
690 If any part of the tank regulatory fee is not paid within thirty
691 (30) days after the due date, a penalty of fifty percent (50%) of
692 the amount due shall accrue at once and be added to the fee,
693 unless the owner of the underground storage tank demonstrates to

694 the commission that the failure to make timely payment was
695 unavoidable due to financial hardship or otherwise beyond the
696 control of the owner. Monies collected under this section shall
697 be deposited in a special fund which is created in the State
698 Treasury. Unexpended amounts remaining in the special fund at the
699 end of the fiscal year shall not lapse into the General Fund and
700 any interest earned on amounts in the special fund shall be
701 credited to the special fund by the Treasurer. The fund may
702 receive monies from any available public or private source,
703 including, but not limited to, collection of fees, interest,
704 grants, taxes, public or private donations and judicial actions.
705 Monies in this special fund shall be expended by annual
706 appropriation approved by the Legislature to administer Sections
707 49-17-401 through 49-17-435.

708 **SECTION 10.** Section 49-17-427, Mississippi Code of 1972, is
709 brought forward as follows:

710 49-17-427. (1) Whenever the commission or an employee
711 thereof has reason to believe that a violation of any provision of
712 this chapter, or of any order of the commission, or of any
713 regulation promulgated pursuant to this chapter has occurred, the
714 commission shall initiate proceedings in the same manner as
715 provided in Sections 49-17-31 through 49-17-41, Mississippi Code
716 of 1972.

717 (2) Any person found by the commission violating any of the
718 provisions of Sections 49-17-401 through 49-17-433, or any rule or
719 regulation or written order of the commission shall be subject to
720 a civil penalty of not more than Twenty-five Thousand Dollars
721 (\$25,000.00) for each violation per day, such penalty to be
722 assessed and levied by the commission as provided in Sections
723 49-17-1 through 49-17-43, Mississippi Code of 1972.

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

726 (a) The willfulness of the violation;

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

729 (c) Costs of restoration or abatement;

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

731 (e) The seriousness of the violation, including any
732 harm to the environment and any hazard to the health, safety and
733 welfare of the public;

734 (f) Past performance history; and

735 (g) Whether the noncompliance was discovered and
736 reported as the result of a voluntary self-evaluation. If a
737 person discovers as a result of a voluntary self-evaluation,
738 information related to noncompliance with an environmental law and
739 voluntarily discloses that information to the department,
740 commission or any employee thereof, the commission shall, to the
741 greatest extent possible, reduce a penalty, if any, determined by
742 the commission, except for economic benefit as a result of
743 noncompliance, to a de minimis amount if all of the following are
744 true:

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

747 (ii) The person making the disclosure initiates
748 the appropriate corrective actions and pursues those corrective
749 actions with due diligence;

750 (iii) The person making the disclosure cooperates
751 with the commission and the department regarding investigation of
752 the issues identified in the disclosure;

753 (iv) The person is not otherwise required by an
754 environmental law to make the disclosure to the commission or the
755 department;

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

759 (vi) The noncompliance did not result in a
760 substantial endangerment threatening the public health, safety or
761 welfare or the environment; and

762 (vii) The noncompliance is not a repeat violation
763 occurring at the same facility within a period of three (3) years.
764 "Repeat violation" in this subparagraph means a second or
765 subsequent violation, after the first violation has ceased, of the
766 same statutory provision, regulation, permit condition, or
767 condition in an order of the commission.

768 (4) Any provisions of this section and chapter regarding
769 liability for the costs of cleanup, removal, remediation or
770 abatement of any pollution, hazardous waste or solid waste shall
771 be limited as provided in Section 49-17-42 and rules adopted
772 thereto.

773 **SECTION 11.** Section 49-17-507, Mississippi Code of 1972, is
774 brought forward as follows:

775 49-17-507. In addition to any other powers and duties
776 authorized by law, the commission shall have the following powers
777 and duties regarding lead-based paint activities:

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

784 (b) To issue, reissue, suspend, revoke or deny the
785 issuance or reissuance of accreditation for lead-based paint
786 activity training programs and to require the modification of
787 those training programs;

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

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

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

797 (f) To assess and collect fees for the accreditation of
798 training programs, issuance and reissuance of certificates, and
799 lead-based paint abatement projects;

800 (g) To develop an examination and grading system for
801 testing applicants to be administered by accredited training
802 programs;

803 (h) To establish requirements and procedures for the
804 administration of a third-party certification examination;

805 (i) To enter into reciprocal agreements for
806 accreditation of training programs and certification of risk
807 assessors, project designers, supervisors, inspectors and workers
808 with other states that have established accreditation and
809 certification programs that meet or exceed the accreditation and
810 certification requirements adopted under Sections 49-17-501
811 through 49-17-531;

812 (j) To apply for, receive and expend any contributions,
813 gifts, devises, bequests or funds from any source relating to
814 Sections 49-17-501 through 49-17-531;

815 (k) To enter into, and to authorize the executive
816 director to execute with the approval of the commission,
817 contracts, grants and cooperative agreements, except as limited
818 under Section 49-2-9, with any federal or state agency or
819 subdivision thereof, any public or private institution, or any
820 other person in connection with carrying out Sections 49-17-501
821 through 49-17-531; and

822 (l) To discharge other duties, responsibilities and
823 powers necessary to implement Sections 49-17-501 through
824 49-17-531.

825 **SECTION 12.** Section 49-17-525, Mississippi Code of 1972, is
826 brought forward as follows:

827 49-17-525. (1) (a) There is created in the State Treasury
828 a fund to be designated as the Lead-Based Paint Program Operations
829 Fund, referred to in this section as "fund," to be administered by
830 the executive director and expended by appropriation approved by
831 the Legislature.

832 (b) Monies in the fund shall be utilized to pay
833 reasonable direct and indirect costs associated with the
834 administration and enforcement of the lead-based paint activity
835 accreditation and certification program.

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

838 (d) The fund shall be treated as a special trust fund.
839 Interest earned on the principal therein shall be credited by the
840 Treasurer to the fund.

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

845 (f) Monies in the fund at the end of the fiscal year
846 shall be retained in the fund for use in the next succeeding
847 fiscal year to be expended by appropriation approved by the
848 Legislature.

849 (2) (a) The commission shall set by order a schedule of
850 fees for the accreditation of training programs, issuance and
851 reissuance of certificates and lead-based paint abatement
852 projects. The commission shall graduate fee levels to reflect the
853 type of certificate and the size of the project, as the case may
854 be.

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

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

859 (d) Any person required to pay a fee under this section
860 who disagrees with the calculation or applicability of the fee may
861 petition the commission for a hearing in accordance with Section
862 49-17-35, Mississippi Code of 1972. Any hearing shall be in
863 accordance with the provisions of Section 49-17-33, Mississippi
864 Code of 1972.

865 (e) Fees collected under this section shall not
866 supplant or reduce in any way the general fund appropriation to
867 the department.

868 **SECTION 13.** This act shall take effect and be in force from
869 and after July 1, 2005.