

## **The Code of Alabama 1975**

Title 22 HEALTH, MENTAL HEALTH, AND ENVIRONMENTAL CONTROL.

Chapter 35 ALABAMA UNDERGROUND STORAGE TANK TRUST FUND.

### **Section 22-35-1**

#### **Legislative findings and intent.**

The Legislature of the State of Alabama finds and declares that certain lands of Alabama constitute unique and delicately balanced resources; that the protection of these resources is vital to the economy of this state; and that the preservation of waters is a matter of the highest urgency and priority as these waters provide a primary source of potable water in this state; that such use can only be served effectively by maintaining the quality of waters in as close to a comparable previous condition as possible, taking into account multiple use accommodations necessary to provide the broadest possible promotion of public and private interests.

The Legislature further finds that where contamination of soils or waters has occurred, remedial measures have often been delayed for long periods while determinations as to liability and the extent of liability are made; that such delays result in the continuation and intensification of the threat to the public health, safety, and welfare, in greater damages to the environment, and in significantly higher costs to contain and remove the contamination; and that adequate financial resources must be readily available to provide for the expeditious supply of safe and reliable alternative sources of potable water to affected persons and to provide a means for investigation and clean-up at contamination sites without delay.

The Legislature intends for this chapter to provide evidence of financial responsibility for owners and operators of underground and aboveground storage tanks under the Resource Conservation and Recovery Act, Subtitle I, the Superfund Amendments and Reauthorization Act of 1986 and other federal laws. Owners and operators of underground and aboveground storage tanks may choose to participate in the fund created by this chapter as one of several available alternatives to provide such evidence of financial responsibility as required under said federal laws. Participation in the fund is voluntary; however, in order to participate in the fund, owners and operators must comply with the provisions of this chapter.

*(Acts 1988, No. 88-378, p. 557, §1; Acts 1993, No. 93-628, p. 1062, §1; Act 2002-495, p. 1265, §1.)*

### **Section 22-35-2**

#### **Short title.**

This chapter may be cited as the "Alabama Underground and Aboveground Storage Tank Trust Fund Act."

*(Acts 1988, No. 88-378, p. 557, §2; Acts 1993, No. 93-628, p. 1062, §2.)*

### **Section 22-35-3**

#### **Definitions.**

For the purposes of this chapter, unless otherwise indicated, the following terms shall have the meanings respectively ascribed to them by this section:

(1) ABOVEGROUND STORAGE TANK. Any one or combination of stationary tanks affixed permanently to the ground or other support structure (including pipes connected thereto) used to contain an accumulation of motor fuels, the volume of which (including pipes connected thereto) is greater than 90 percent above the surface of the ground.

The terms "Underground Storage Tank" and "Aboveground Storage Tank" do not include any:

- a. Farm or residential tank of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes;
- b. Tank used for storing heating oil for consumptive use on the premises where stored;
- c. Septic tank;
- d. Pipeline facility (including gathering lines) regulated under:
  1. The Natural Gas Pipeline Safety Act of 1968,
  2. The Hazardous Liquid Pipeline Safety Act of 1979, and
  3. An intrastate pipeline facility regulated under state laws comparable to the provisions of law in subparagraphs 1. or 2. of this paragraph;
- e. Surface impoundment, pit, pond, or lagoon;
- f. Stormwater or wastewater collection system;
- g. Flow-through process tank;
- h. Liquid trap or associated gathering lines directly related to oil or gas production and gathering operations;
- i. Storage tank situated in an underground area (such as a basement, cellar, mineworking, drift, shaft, or tunnel) if the storage tank is situated upon or above the surface of the floor; and
- j. Other underground storage tanks exempted by the administrator of the Federal Environmental Protection Agency.
- k. Piping connected to any of the above exemptions.
- l. Pipeline terminals, refinery terminals, rail and barge terminals and tanks associated with each.

(2) BULK FACILITY. A facility, including pipeline terminals, refinery terminals, motor fuel distribution terminals, rail and barge terminals, and associated tanks, connected or separate, from which motor fuels are withdrawn from bulk and delivered into a cargo tank used to transport these materials.

(3) CARGO TANK. An assembly that is used for transporting, hauling, or delivering liquids and that consists of a tank having one or more compartments mounted on a wagon, truck, or trailer.

(4) COMMISSION. The Alabama Environmental Management Commission.

(5) DEPARTMENT. The Alabama Department of Environmental Management.

(6) DIRECTOR. The Director of the Alabama Department of Environmental Management.

(7) MOTOR FUELS. All grades of gasoline including gasohol or any gasoline blend, any components used in any gasoline blend, ethanol, number 1 diesel, number 2 diesel, or any diesel blend, biodiesel, kerosene, and all aviation fuels.

(8) OCCURRENCE. A release from an aboveground or underground storage tank system for which the department has assigned a unique release identification number.

(9) OPERATOR. Any person in control of, or having responsibility for, the daily operation of an underground or aboveground storage tank.

(10) OWNERS OF AN UNDERGROUND OR ABOVEGROUND STORAGE TANK:

a. In the case of an underground storage tank in use on November 8, 1984, or brought into use after that date, or in the case of an aboveground storage tank in use on August 1, 1993, or brought into use after August 1, 1993, any person who owns an underground or aboveground storage tank used for the storage, use, or dispensing of motor fuels, and

b. In the case of an underground storage tank in use before November 8, 1984, but no longer in use on that date, or an aboveground storage tank in use before August 1, 1993, but no longer in use on that date, the present owner of such tank used for storage, use, or dispensing of motor fuels, and any person who owned such tank immediately before the discontinuation of its use.

c. For the purposes of this chapter, the person who registers the underground or aboveground storage tank is, and shall be considered the owner.

(11) PERSON. Any natural person, any firm, association, partnership, corporation, trust, the State of Alabama and any agency of the State of Alabama, governmental entity, a consortium, a joint venture, a commercial entity, and any other legal entity.

(12) RELEASE. Any spilling, leaking, emitting, discharge, escaping, leaching, or disposing from any underground or aboveground storage tank into ground water, surface water, or subsurface soils.

(13) RESPONSE ACTION. Any activity, including evaluation, planning, design, engineering, construction, and ancillary services, which is carried out in response to any discharge, release, or threatened release of motor fuels.

(14) **RESPONSE ACTION CONTRACTORS.** A person who has been approved by the department who is carrying out any response action, including a person retained or hired by such person to provide services relating to a response action.

(15) **SUBSTANTIAL COMPLIANCE.** An owner or operator of an underground or aboveground storage tank has registered that tank with the department, has timely paid the annual fee, if any, has made a good faith effort to comply with the state and federal laws applicable to underground or aboveground storage tanks, and the rules and regulations adopted pursuant thereto, and shall have met the financial responsibility requirements imposed by Section 22-35-7, and shall have promptly notified the director of any third-party claim or suit made against him. The determination of substantial compliance shall be made by the director.

(16) **THIRD PARTY.** A person other than the owner or operator, the landlord of the owner or operator, or employees or agents of an owner or operator. Such term shall not include any person who prevents, impedes, delays, obstructs, or hinders environmental response actions on any land, including private property, impacted by a release from an underground storage tank; it being the intent of this limitation to disallow recovery to any person who interferes with prompt remediation of impacted soils and groundwater. Such term shall not include any person to whom property is sold, given, or abandoned after discovery of a release or in anticipation of damage due to a release.

(17) **THIRD-PARTY CLAIM.** Any civil action brought or asserted by any third party against any owner or operator of any underground or aboveground storage tank who is in substantial compliance as stated in this chapter for bodily injury or property damage which damages are the direct result of an accidental release arising from the operation of motor fuel underground or aboveground storage tanks covered under this chapter. The assessment of punitive damages shall not constitute a third-party claim recoverable against the fund, nor shall punitive damages be assessed against the fund.

(18) **UNDERGROUND STORAGE TANK.** Any one or combination of tanks (including pipes connected thereto) used to contain an accumulation of motor fuels, and the volume of which (including the volume of the underground pipes connected thereto) is 10 percent or more beneath the surface of the ground.

(19) **WATERS.** All waters of any river, stream, water course, pond, lake, coastal, ground, or surface waters wholly or partially within the state, natural or artificial.

(20) **WITHDRAWAL FROM BULK.** The removal of a motor fuel or a combination of motor fuels from bulk facility storage tanks directly into a cargo tank to be transported to a location in this state. The underground and aboveground storage tank trust fund charge shall not be assessed on motor fuel withdrawn from bulk the ultimate destination of which is outside the State of Alabama. Withdrawal of different grades of motor fuel into separate compartments of a cargo tank does not constitute separate withdrawals from bulk.

*(Acts 1988, No. 88-378, p. 557, §3; Acts 1993, No. 93-628, p. 1062, §3; Acts 1993, 1st Ex. Sess., No. 93-891, p. 165, §1; Act 2002-495, p. 1265, §1; Act 2009-589, p. 1734, §1.)*

#### **Section 22-35-4**

##### **Alabama Underground and Aboveground Storage Tank Trust Fund.**

There is hereby created the Alabama Underground and Aboveground Storage Tank Trust Fund, hereinafter referred to as the "fund," to be administered by the Secretary-Treasurer of the Retirement Systems of Alabama. The fund shall be used by the department as a revolving fund for carrying out the purposes of this chapter. The fund is not an insurance company and the laws relating to the conduct of business in this state by an insurance company do not apply to the fund. A decision that underground or aboveground storage tanks are ineligible for benefits under the fund does not expose the fund, the director, department, or commission to a claim of bad faith as such terms are used in general insurance law. Further, in no event shall combined claims against the fund for payment of response actions and third-party claims exceed the per occurrence indemnification limit set by the commission. Under no circumstances shall monies from the fund be expended to pay punitive damages. To the fund shall be credited all tank fee and Underground and Aboveground Storage Tank Trust Fund charge revenues levied, collected, and credited pursuant to this chapter. Charges against the fund shall be made in accordance with the provisions of this chapter.

(1) Whenever in the director's determination incidents of soil or water contamination related to the storage of motor fuels in underground storage tanks discovered and reported to the department on or after October 1, 1988, and in aboveground storage tanks discovered and reported to the department on or after August 1, 1993, may pose a threat to the environment or the public health, safety, or welfare, and the owner or operator of the underground or aboveground storage tank has been found to be in substantial compliance, the department shall obligate moneys available in the fund to provide for:

- a. Investigation and assessment of contamination sites;
- b. The interim replacement and permanent restoration of potable water supplies;
- c. Rehabilitation of contamination sites, which may consist of cleanup of affected soil and groundwater, using cost effective alternatives that are technologically feasible and reliable, and that provide adequate protection of the public health, safety, and welfare and minimize environmental damage, in accordance with the site selection and cleanup criteria established by the department, except that nothing herein shall be construed to authorize the department to obligate funds for payment of costs which may be associated with, but are not integral to, site rehabilitation, such as the cost for retrofitting or replacing underground and aboveground storage tanks. The moneys expended from the fund for any of the above approved costs shall be spent only up to such sum as will cause the Resource Conservation and Recovery Act, Subtitle I, the Superfund Amendments and Reauthorization Act of 1986, and any other federal laws governing disbursement of federal funds for cleanup and/or third-party claims to come into effect. The total amount of reimbursement available from the fund as a result of a release from underground or aboveground tanks shall not exceed under any circumstance the per occurrence indemnification limit set by the commission, less the applicable deductible. The indemnification limit of the fund shall be determined by the commission upon recommendation of the Trust Fund Management Board, on an annual basis, which shall not be greater than two million dollars (\$2,000,000), nor less than one million dollars (\$1,000,000). Provided that, beginning May 20, 2009, this amount shall remain at its current level of one million dollars (\$1,000,000) and may be changed, if at all, for the first time for the year beginning October 1, 2009. If the

indemnification limit of the fund is increased, such increased limit shall be available for response action costs or third party claims, or both, as to those existing sites that are eligible for trust fund benefits, but such increased limits shall not be available to existing sites where the department has previously issued a No Further Action Letter.

(2) In addition, the department shall obligate moneys available in the fund for payments of judgments or settlements for third-party claims entered against the fund under this chapter.

(3) Whenever costs have been incurred by the department for taking response action or enforcement action with respect to the release of motor fuels from an underground or aboveground storage tank, or the department has expended funds from the fund created by this chapter, the owner of the underground storage tank shall be liable to the department for such costs if such release was discovered or reported prior to October 1, 1988, and the owner of the aboveground storage tank shall be liable to the department for such costs if such release was discovered or reported prior to August 1, 1993, or if such owner or operator was not in substantial compliance on the date of discovery of the release of motor fuels which necessitates the cleanup or such owner or operator fails to maintain substantial compliance thereafter; otherwise liability is limited to the provisions contained in Section 22-35-7.

(4) The indemnification limit of the fund with respect to satisfaction of third-party claims shall be the following amounts:

a. For owners or operators of motor fuels underground and aboveground storage tanks that are located at petroleum marketing facilities, or that handle an average of more than 10,000 gallons of motor fuels per month based on annual throughput for the previous calendar year; one million dollars (\$1,000,000) per occurrence.

b. For all other owners or operators of motor fuels underground and aboveground storage tanks; five hundred thousand dollars (\$500,000) per occurrence.

c. For owners or operators of 1 to 100 motor fuels underground and aboveground storage tanks; one million dollars (\$1,000,000) annual aggregate.

d. For owners or operators of 101 or more motor fuels underground and aboveground storage tanks; two million dollars (\$2,000,000) annual aggregate.

*(Acts 1988, No. 88-378, p. 557, §4; Acts 1993, No. 93-628, §4; Acts 1993, 1st Ex. Sess., No. 93-891, p. 165, §1; Act 2002-495, p. 1265, §1; Act 2003-483, 2nd Sp. Sess., p. 1486, §1; Act 2009-589, p. 1734, §1.)*

### **Section 22-35-5**

#### **Fee; withdrawals; disposition of funds; liability for clean-up costs; audit.**

(a) Every owner of an underground or aboveground storage tank as defined in this chapter shall pay an Underground and Aboveground Storage Tank Trust Fund fee as established by the provisions of this chapter to be paid to the department. During the first year next following October 1, 1988, the amount of

the annual Underground and Aboveground Storage Tank Trust Fund fee shall be one hundred dollars (\$100). Thereafter, the commission, upon recommendation of the management board, shall set such an amount not to exceed one hundred fifty dollars (\$150) per year per regulated tank. Should the fund become depleted due to claims being greater than amounts provided by tank fees, the commission shall be empowered to make special assessments of tank fees to protect the financial integrity of the fund. Provided the total tank fees and special assessments for any fiscal year do not exceed one hundred fifty dollars (\$150) per regulated tank. The failure to pay Underground and Aboveground Storage Tank Trust Fund fees within the time prescribed by the department shall make the owner or operator of such underground or aboveground storage tank liable for a late charge penalty in an amount not to exceed one hundred dollars (\$100) per tank for each day such payment is delinquent, subject to the discretion of the director. The director, for good cause shown, may abate all or part of the penalty. Any efforts to collect delinquent tank fees must be instituted within two years of the date when the fees first become delinquent, or their collection shall be barred forever.

(b) An Underground and Aboveground Storage Tank Trust Fund charge is imposed on the first withdrawal from bulk in this state. However, this charge shall not be imposed upon any withdrawal from bulk of fuel oil to be used in the generation of electricity.

(1) Each operator of a bulk facility from which a first withdrawal from bulk is made shall, on the first withdrawal from bulk, either retain or collect from the person who ordered the fuel a fee, as determined by the commission upon recommendation of the Trust Fund Management Board, on an annual basis, based on invoiced gallons in an amount which shall be not greater than \$0.02 per gallon, nor less than \$0.003 per gallon. Provided that, beginning May 20, 2009, the per gallon fee shall remain at the current level of \$0.01 per gallon and may be increased, if at all, for the first time for the year beginning October 1, 2009. Provided further, that the fee shall be set at the same time each year, and the commission upon the recommendation of the management board will determine the amount of the fee per gallon to be levied upon the first withdrawal of motor fuel from bulk. Once determined, the rate shall become effective on the first day of the third month following the month in which the Department of Revenue is first notified of any change in fee.

When a withdrawal from bulk occurs outside of this state, for delivery, by means of cargo tank, of motor fuel inside the state, an Underground and Aboveground Storage Tank Trust Fund charge is imposed on the delivery in this state. The owner of such motor fuel being delivered shall be responsible for the collection and remittance of the applicable Underground and Aboveground Storage Tank Trust Fund charge.

(2) Each operator of a bulk facility from which a first withdrawal from bulk is made and importers of motor fuels into the State of Alabama as identified in subsection (b)(1) above, shall file an application with the Department of Revenue for a permit to deliver motor fuel into a cargo tank destined for delivery into storage tanks, regardless of whether these tanks are exempted from the definition of underground or aboveground storage tank hereinabove. All applications shall be filed utilizing a form furnished by the Department of Revenue. A permit issued under this subsection is valid on and after the date of its issuance and until the permit is surrendered by the holder or canceled by the Department of Revenue.

(3) All invoices or transaction statements issued by operators of bulk facilities for the transfer of motor fuels into a cargo tank shall clearly indicate whether or not the transaction was a withdrawal from bulk as defined herein.

(4) Each operator of a bulk facility from which a first withdrawal from bulk is made shall list, as a separate line item on an invoice, the amount of the fees due under this section, and on or before the twentieth day of the month following the end of each calendar month, file a report with the Department of Revenue and remit the amount of fees required to be collected or paid during the preceding month. The reports shall be filed on a form furnished by the Department of Revenue. The Department of Revenue shall deposit in the trust fund immediately all Underground and Aboveground Storage Tank Trust Fund charge revenues collected by it.

(5) All invoices, reports, and any other records required under this section as well as rules adopted by the department and the Department of Revenue pursuant to this section, or copies thereof, shall be retained for a period of four years after the date on which the document is prepared. The Department of Revenue shall have authority to audit the records of all persons required to collect and remit the Underground and Aboveground Storage Tank Trust Fund charge established herein in order to ensure proper enforcement thereof.

(6) In the event an owner or operator seeks to provide evidence of financial responsibility under the Resource Conservation and Recovery Act, Subtitle I, the Superfund Amendments and Reauthorization Act of 1986 and other federal laws, by means other than participation in the Alabama Underground and Aboveground Storage Tank Trust Fund, the owner or operator shall continue to pay the trust fund charge as to all underground and aboveground storage tanks registered in Alabama when such owner or operator has a trust fund eligible site with current and ongoing investigative or remedial activities at a trust fund site of such owner or operator.

Sites determined to be trust fund eligible at the time the subject tanks are taken out of service will remain trust fund eligible, without resuming payments to the fund.

(c) The proceeds from the tank fees and Underground and Aboveground Storage Tank Trust Fund charge imposed by this chapter shall be deposited into the Alabama Underground and Aboveground Storage Tank Trust Fund established in Section 22-35-4. The unobligated balance of the fund shall be invested by the Retirement Systems of Alabama in its sole discretion, for the benefit of the fund.

(d) This fund shall be used for the purposes set forth in this chapter only for releases discovered and reported to the department on or after October 1, 1988, with regard to underground storage tanks, and only for releases discovered and reported to the department on or after August 1, 1993, with regard to aboveground storage tanks in service as of August 1, 1993, and for no other governmental purposes, nor shall any portion hereof ever be available to borrow from by any branch of government; it being the intent of the Legislature that this fund and its increments shall remain intact and inviolate for the purposes set out in this chapter. Any interest or earnings on the fund shall be credited only to the fund.

(e) Moneys held in the fund established under this chapter shall be disbursed for the following purposes:

(1) Payments shall be made to third parties who bring suit against the fund and the owner or operator of an underground or aboveground motor fuel storage tank who is in substantial compliance as stated in this

chapter and such third party obtains a final judgment or a settlement approved by the Attorney General in that action enforceable in this state. The owner or operator above stated shall pay the first five thousand dollars (\$5,000) of the judgment or settlement and after that payment has been made, the fund will pay the remainder of the judgment or settlement up to the indemnification limit established under this chapter. With respect to the owner or operator of an aboveground motor fuel storage tank who is in substantial compliance, the owner or operator shall pay the first ten thousand dollars (\$10,000) of the judgment or settlement and after that payment has been made, the fund will pay the remainder of the judgment or settlement up to the indemnification limit established under this chapter. Under no circumstances shall the fund be responsible for paying punitive damages. The Attorney General of the State of Alabama is hereby responsible to appear in the suit for the fund and the fund is a necessary party in any suit that is brought by any third party which would allow that third party to collect from this fund; and the fund must be made a party to the initial proceedings. The costs of defending these suits by the Attorney General or those assistants employed by the department, or appointed by the Attorney General to assist shall be recovered from the fund. Owners and operators shall be separately responsible for defending third-party claims against them, and shall cooperate and coordinate such defense with the fund. The costs of defending an owner or operator who is in substantial compliance as stated in this chapter against third-party claims shall be recovered from the fund pursuant to such guidelines and procedures and subject to such limits as the Alabama Underground and Aboveground Storage Tank Trust Fund Management Board shall provide. The amount of money in this fund, shall not be admissible in evidence in any trial where suit is brought when the judgment rendered could affect the fund. In any litigation asserting a third-party claim, the court shall not make a determination of substantial compliance for the purpose of establishing participation in the fund, nor shall the court submit such question for jury determination; rather the determination of substantial compliance shall be made by the director. In no event shall combined claims against the fund for response actions and third-party claims exceed the per occurrence indemnification limit set by the commission.

(2) Payments as approved by the department shall be made in reasonable amounts to approved response action contractors when vouchers are submitted to the Secretary-Treasurer of the Retirement Systems of Alabama from the director requesting payment. Response action contractors shall submit proposals for response action services for approval to the director. The department shall approve or disapprove that portion(s) of such proposals dealing with the scope of remedial action or clean-up work within 120 days of receipt of the proposal. Response action contractors may act on proposals as if approved by the department, if the department does not notify the response action contractor that the scope of work recommended in the proposal is disapproved within 120 days of receipt of the proposal. The director shall pay for response action services conducted by a response action contractor consistent with any proposal that was not disapproved within 120 days of receipt by the department.

(f) Payments from the fund may be obtained by following this procedure:

Under subdivision (e)(1) of this section by filing an application with the department attaching the original or a certified copy of the final judgment, or settlement approved by the Attorney General, together with proof of payment of the first five thousand dollars (\$5,000), or in connection with judgments against owners or operators of aboveground tanks, with proof of payment of the first ten thousand dollars (\$10,000).

(g) Nothing in this chapter shall establish or create any liability or responsibility on the part of the department or the State of Alabama to pay any clean-up costs or third-party claims from any source than the fund created by this chapter, nor shall the department or the State of Alabama have any liability or responsibility to make any payments for clean-up costs or third-party claims if the fund created herein is insufficient to do so. In the event the fund is insufficient to make the payments at the time the claim is filed, such claims shall be paid in the order of filing at such time as moneys are paid into the fund.

(h) The fund shall be audited annually by the Department of Examiners of Public Accounts.

(i) The records and information required to be filed with the Department of Revenue pursuant to this section and this chapter shall be available for public inspection.

*(Acts 1988, No. 88-378, p. 557, §5; Acts 1993, No. 93-628, p. 1062, §5; Acts 1993, 1st Ex. Sess., No. 93-891, p. 165, §1; Acts 1995, No. 95-255, p. 427, §1; Act 2002-495, p. 1265, §1; Act 2003-483, 2nd Sp. Sess., p. 1486, §1; Act 2009-589, p. 1734, §1.)*

### **Section 22-35-6**

#### **Alabama Underground and Aboveground Storage Tank Trust Fund Management Board created; composition; powers and duties; compensation.**

(a) There is hereby created the Alabama Underground and Aboveground Storage Tank Trust Fund Management Board, hereinafter referred to as the "management board," comprised of nine voting members: One member appointed by the Governor for a three-year term, one member appointed by the Lieutenant Governor for a three-year term, one member appointed by the Senate President Pro Tempore for a two-year term, one member appointed by the Speaker of the House of Representatives for a two-year term, and one member appointed by the Speaker Pro Tempore for a one-year term, all of whom are from a list of qualified individuals for each position provided by the governing body of the Petroleum and Convenience Marketers of Alabama; and additionally, one member appointed by the Speaker of the House of Representatives for a one-year term from a list of qualified individuals provided by the governing body of the Southern Gasoline Retailers and Automotive Services Association; one member appointed by the Governor for a three-year term from the Alabama Petroleum Council; one member appointed by the Governor for a one-year term from a list of qualified individuals nominated by the governing body of the Alabama Petroleum Equipment Contractors Association who represent a company that is a vendor of petroleum dispensing equipment; and one member appointed by the Lieutenant Governor for a two-year term from the list of approved trust fund contractors who represent a company that is a response action contractor. Each shall be a bona fide resident of the State of Alabama.

The membership of the committee shall reflect the racial, ethnic, gender, urban/rural, and economic diversity of the state, if possible.

(b) Initial board members shall be appointed within 30 days of September 30, 2003, and shall begin serving immediately upon appointment, until confirmed or rejected by the Senate. Subsequent board members shall serve three-year terms. Each term shall expire on September 30th. Board members are eligible for appointment to more than one term. Each board member shall be subject to confirmation by

the Senate and shall serve after the expiration of his or her term until his or her successor shall be duly appointed and qualified.

(c) The board shall oversee the operation and review the implementation of the fund to accomplish the intended purposes and advise the Legislature and the department as appropriate; shall review and make recommendations to the department on determinations of fund ineligibility; shall review and make recommendations to the department on compensation and performance of response action contractors and oversee the claims process; and may incur expenses to carry out the duties imposed in this chapter. Prior to the promulgation of any proposed regulation dealing with the administration of the fund, the department shall receive the approval of the management board. The board shall provide the department a response to its request for approval within 60 days of receipt of such request unless such other time is mutually agreed upon by the department and the management board.

(d) The board shall elect annually a chair, vice chair, and a secretary-treasurer from its members. A majority of the board shall constitute a quorum for the transaction of business. The board may employ personnel and arrange for assistance, services, and supplies as it requires for the performance of its duties.

(e) Each member of the board shall receive a per diem consistent with the per diem allowed by other comparable boards and consistent with applicable state laws for attending sessions of the board or its subcommittees and for the time spent in necessary travel to attend meetings of the board or its subcommittees. In addition, each member of the board shall be reimbursed for travel and clerical expenses incurred in carrying out this chapter. Expenses certified by the board as properly and necessarily incurred in the discharge of its duties, including, but not limited to, authorized compensation, additional legal services, experts, clerks, and supplies, shall be paid out of the fund.

*(Acts 1988, No. 88-378, p. 557, §6; Acts 1993, No. 93-628, p. 1062, §6; Acts 1993, 1st Ex. Sess., No. 93-891, p. 165, §1; Act 2003-483, 2nd Sp. Sess., p. 1486, §1.)*

#### **Section 22-35-7**

#### **Financial responsibility requirements for taking response action.**

(a) The financial responsibility requirements for taking response action by underground motor fuel storage tank owners or operators shall be set at five thousand dollars (\$5,000) per occurrence, and for aboveground tank owners or operators the financial responsibility requirements shall be set at ten thousand dollars (\$10,000) per occurrence. The financial responsibility for third-party claims is five thousand dollars (\$5,000). The commission may increase the clean-up and third party damage liability per occurrence to owners or operators when recommended by the management board.

(b) Financial responsibility may be established by any one or combination of the following: Insurance, guarantee, surety bond, letter of credit, or qualification as a self-insurer. A person may qualify as a self-insurer by showing tangible net worth in the amount of twenty-five thousand dollars (\$25,000).

*(Acts 1988, No. 88-378, p. 557, §7; Acts 1993, No. 93-628, p. 1062, §7; Act 2003-483, 2nd Sp. Sess., p. 1486, §1.)*

## **Section 22-35-8**

### **Rehabilitation of contamination sites.**

(a) The Legislature finds that in order to provide for the expeditious rehabilitation of contamination sites, voluntary rehabilitation of contamination sites should be encouraged, provided that such rehabilitation is conducted in a manner and to a level of completion which will protect the public health, safety, and welfare and will minimize damage to the environment. To accomplish this purpose, the commission shall promulgate rules and regulations for the approval and compensation of response action contractors or through the use of their own personnel. The state shall not be party to contracts established between an owner or operator and a response action contractor and nothing in this chapter shall be construed as a state contract but to the contrary, it is expressly manifest that these are not state contracts and are expressly exempt from any competitive bid laws.

(b) Nothing in this chapter shall be deemed to prohibit a person from conducting site rehabilitation through approved response action contractors.

(c) In the event the director determines that environmental response actions are required, the director may delegate to an approved response action contractor the authority to enter private property, under the supervision of the department, for the purpose of taking investigative and corrective action.

*(Acts 1988, No. 88-378, p. 557, §8; Acts 1993, No. 93-628, p. 1062, §8; Act 2002-495, p. 1265, §1.)*

## **Section 22-35-9**

### **Administration cost of chapter; annual budgets for administration.**

(a) Administration cost of all the provisions of this chapter shall be charged to the fund. Annual budgets for administration are to be included as part of the regular department budget, except that the annual budget of the management board shall not be a part of the department budget. There is hereby appropriated to the department by the Legislature, for the fiscal year ending September 30, 1994, and for each following fiscal year, the department's actual cost, not to exceed 8 percent of total fees and charges collected annually or a maximum of seven hundred five thousand dollars (\$705,000) per year, whichever is less, excluding any legal expenses incurred by the department in discharging its duties under the provisions of this chapter. In no event shall the department's budget provisions for this activity in any given year be less than four hundred thousand dollars (\$400,000). Provided, however, the Legislature may make additional appropriations to the department from the fund upon a showing of the need for such additional monies in the administration of the fund. The department shall provide the management board with an assessment of its needs no less than 45 days prior to requesting additional appropriations from the Legislature. Such additional monies shall not exceed in any given fiscal year five percent of the total fees and charges collected annually by the fund. Any additional appropriation authorized by the Legislature shall be for only that fiscal year for which it was authorized.

(b) As a first charge against revenues collected under the provisions of this chapter, to offset its initial costs in administering such collections, there is hereby appropriated to the Department of Revenue for the

fiscal year ending September 30, 1994, the sum of one hundred fifty thousand dollars (\$150,000). The Department of Revenue shall be appropriated for each fiscal year by the Legislature the amount of money necessary to pay its actual costs in administering and enforcing this chapter, not to exceed one hundred fifty thousand dollars (\$150,000) per annum, which money shall be deducted, as a first charge thereon, from the revenues collected under the provisions of this chapter. After payment of the aforesaid expenses, the balance of the revenues collected under the provisions of this chapter shall be deposited as directed elsewhere in this chapter.

*(Acts 1988, No. 88-378, p. 557, §9; Acts 1993, No. 93-628, p. 1062, §9; Acts 1993, 1st Ex. Sess., No. 93-891, p. 165, §1; Act 2003-483, 2nd Sp. Sess., p. 1486, §1.)*

### **Section 22-35-10**

#### **Rules and regulations; department may require owner or operator to provide information.**

(a) Rules and regulations pertaining to this chapter shall be adopted by the commission in accordance with applicable state and federal laws. The commission shall not adopt any rules or regulations pertaining to underground or aboveground storage tanks under the provisions of this chapter that are more stringent than those provided by federal rules or regulations.

(b) The department may require the owner or operator of an aboveground storage tank to provide to the department information concerning the aboveground storage tank which may include, but is not limited to the name of the owner, the name of the operator, the location, and description of the facility at which the aboveground storage tank is located, regulated substances and quantities of regulated substances used or stored.

*(Acts 1988, No. 88-378, p. 557, §10; Acts 1993, No. 93-628, p. 1062, §10.)*

### **Section 22-35-11**

#### **Notice to underground and aboveground storage tank owners of provisions of chapter.**

No later than 90 days after October 1, 1988, with regard to underground storage tank owners and no later than 90 days after August 1, 1993, with regard to aboveground storage tank owners, the department shall notify said tank owners of the privileges of this chapter, the required timely payment of fees, the deadlines for payment thereof, and the manner in which late charges may be applied. This notification shall be accomplished by publication in newspapers published at least once per week in each county of the state. In the event a county does not have a newspaper which is published at least once a week, the publication in a newspaper published at least once a week in an adjoining county shall be sufficient. Registration of aboveground storage tanks as provided herein shall occur no later than January 31, 1994.

*(Acts 1988, No. 88-378, p. 557, §12; Acts 1993, No. 93-628, p. 1062, §11.)*

**Section 22-35-12**

**Liability of underground and aboveground storage tank owner.**

This chapter is to assist the underground and aboveground storage tank owner to the extent provided for in this chapter, but not to relieve the owner of any liability that cannot be satisfied by the provisions of this chapter.

*(Acts 1988, No. 88-378, p. 557, §13; Acts 1993, No. 93-628, p. 1062, §12.)*

**Section 22-35-13**

**No disbursements from fund until adoption of rules and regulations governing disbursements.**

Disbursements from the fund for the purpose of paying clean-up costs or satisfying third party liability claims shall not be made until rules and regulations establishing administrative guidelines and procedures which shall govern the manner in which disbursements are made are effective. Rules and regulations establishing these administrative procedures shall be effective no later than June 1, 1989. Rules and regulations establishing these administrative procedures for aboveground storage tanks shall be effective no later than June 1, 1994.

*(Acts 1988, No. 88-378, p. 557, §14; Acts 1993, No. 93-628, p. 1062, §13; Acts 1993, 1st Ex. Sess., No. 93-891, p. 165, §1.)*