AN ACT

To amend and reenact R.S. 30:2194(B)(1), (3) and (6), 2194.1, 2195(C), (E), (F)(1), and the introductory paragraph of (3) and (3)(e), 2195.2(A)(1)(c)(ii), (2), (3), and (5), 2195.3(A)(1)(b), (6), and (10), 2195.4(A)(2) and (3) and (B)(1), 2195.8(A) and (C), 2195.9(B), 2195.10(C), 2195.12(A), and to enact R.S. 30:2194(B)(8)(c) and 2195.12(E), relative to underground storage tanks; to provide certain prohibitions; to provide for monies deposited in the Tank Trust Fund; to provide certain reporting requirements; to provide for monies received from certain payments; to provide for certain third-party claims; to require the maintaining of certain documents and records; to provide for the membership of the Motor Fuels Underground Storage Tank Trust Fund Advisory Board; to provide for certain reimbursement eligibility requirements; to provide for the issuance of loans relative to the delivery of motor fuels; to provide terms, conditions, and requirements; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 30:2194(B)(1), (3) and (6), 2194.1, 2195(C), (E), (F)(1), and the introductory paragraph of (3) and (3)(e), 2195.2(A)(1)(c)(ii), (2), (3), and (5), 2195.3(A)(1)(b), (6), and (10), 2195.4(A)(2), (3), and (B)(1), 2195.8(A) and (C), 2195.9 (B), 2195.10(C), 2195.12(A) are hereby amended and reenacted and R.S. 30:2194(B)(8)(c), and 2195.12(E) are hereby enacted to read as follows:

§2194. Underground storage tanks; registration

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B. As used in R.S. 30:2194 through 2195.11, the following terms shall have the meaning ascribed to them in this Subsection, unless the context clearly indicates otherwise:

(1) (a) "Bulk facility" means 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tanks, connected or separate, from which motor fuels are withdrawn from bulk and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 or a barge used to transport these materials.

(b) "Bulk facility" shall also mean a broker, reseller, or other person
that does not sell motor fuels to any person other than another bulk facility and
has registered and obtained a certificate from the department.

(3) "Date of release" means the specific date in which evidence indicates that
a release (leak) is occurring or has occurred. If a tank is taken out-of-service, the date
of release is the last date of operation. If no specific date is determined, the "date
of release" is the date the release is reported to the department.

(6) "Motor fuels" shall be defined as all grades of gasoline including but not
limited to gasohol, No. 1 diesel, No. 2 diesel, kerosene, and all aviation fuels. Liquid
petroleum (LP) gas shall not be included in this definition of motor fuel. Effective
September 6, 1991, this term shall include new and used motor oil that is used
for lubricating engines of motor vehicles. If, however, used oil is determined to be
a hazardous waste by the United States Environmental Protection Agency, used oil
shall no longer be included in this term. "Motor fuels" may include, as determined
by the secretary, any product, petroleum or petroleum blend, biofuel or any
new fuel that may emerge for the propulsion of motor vehicles. However, liquid
petroleum (LP) gas, compressed natural gas (CNG), and liquefied natural gas
(LNG) shall not be included in this definition of motor fuels.

(8) "Regulated substance" means:

(c) Any motor fuels as determined by the secretary.

§2194.1. Prohibitions

On or after January 1, 1996, no person shall place or dispense a regulated
substance into an underground storage tank that has not been registered with the

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Louisiana Department of Environmental Quality and that does not have a current registration certificate.

§2195. Motor Fuels Underground Storage Tank Trust Fund

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C. Monies so deposited in the Environmental Trust Fund shall be used to defray the cost to the state of administering the underground storage tank program and the cost of investigation, testing, containment, control, and cleanup of releases from underground storage tanks containing regulated substances. Only monies recovered pursuant to R.S. 30:2195.2(A)(2) and deposited in the Tank Trust Fund may be used for the loans authorized by R.S. 30:2195.12(E). These monies shall also be used to provide money or services as the state share of matching funds for federal grants involving underground storage tanks. At the end of each fiscal year, all monies that were deposited into the Environmental Trust Fund from the fees established in R.S. 30:2195.3(A)(1)(a) and (B) which remain unspent, including all accrued interest, shall be transferred to the Tank Trust Fund.

* * *

E. Annually, the department shall prepare a report for the House Committee on Natural Resources and Environment and the Senate Committee on Environmental Quality of all disbursements of monies from the Tank Trust Fund and the Environmental Trust Fund. The report shall include all loans made from the Tank Trust Fund, the number of sites actively seeking reimbursement from the Tank Trust Fund as of June thirtieth of each year, the number of sites deemed eligible for the Tank Trust Fund during the previous fiscal year, and the number of sites that have been granted "No Further Action", and the department has received the last application for reimbursement during the previous fiscal year. Regarding disbursements from the Tank Trust Fund as provided by R.S. 30:2195.2, the report shall include a list of all reimbursements, all pending reimbursements, the date the application was made for reimbursement, and the date reimbursement was made by the department. The report shall be delivered to the respective legislative committees no later than March first of each year.
F.(1) Beginning July 1, 2001, all interest monies earned by the Motor Fuels Underground Storage Tank Trust Fund shall and all monies received from payments that are the result of cost recovery efforts shall be used for the closure of abandoned motor fuel underground storage tanks, and assessment and remediation of property contaminated by abandoned motor fuel underground storage tanks, and the loans authorized by R.S. 30:2195.12(E).

(3) A site tank may be declared to be an abandoned motor fuel underground storage tank site by the secretary upon a finding that all of the following apply to the site:

* * *

(e) The release at the site is not eligible for the Motor Fuels Underground Storage Tank Trust Fund or the secretary has determined that action by the department is the most timely and efficient way to address conditions at the site.

§2195.2. Uses of the Tank Trust Fund

A. The department shall administer the Tank Trust Fund and shall make disbursements from the fund for all necessary and appropriate expenditures. Pursuant to the authorization in R.S. 30:2195, the secretary of the Department of Environmental Quality shall use the Tank Trust Fund as follows:

(1) Whenever in the secretary's determination incidence of surface water, groundwater, or soils contamination resulting from the storage of motor fuels may pose a threat to the environment or the public health, safety, and welfare and the owner of the motor fuel underground storage tank has been found to be an eligible participant, the department shall obligate monies available in the Tank Trust Fund to provide for the following response actions:

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(c)(i) * * *

(ii) The monies expended from the Tank Trust Fund for any of the above approved costs shall be spent only up to such sums as that which is necessary to satisfy federal petroleum underground storage tank financial responsibility
requirements (40 CFR 280.93) or one million five hundred thousand dollars, whichever is greater. This amount shall include any third-party claim arising from the release of motor fuels from a motor fuel underground storage tank.

(2) Whenever costs have been incurred by the department for taking response actions with respect to the release of motor fuels from an underground storage tank or the department has expended funds from the Tank Trust Fund for response costs or third-party liability claims, the owner of the motor fuel underground storage tank shall be liable to the department for such costs only if the owner was not an eligible participant on the date of discharge of the motor fuels which necessitates the cleanup; otherwise liability is limited to the provisions contained in R.S. 30:2195.9 and 2195.10. The expenditure of funds to reimburse any party for costs otherwise authorized by this Subsection shall be expressly prohibited if the costs were incurred as the result of a release of motor fuels, excluding new and used motor oil, which occurred prior to July 15, 1988. For new and used motor oil releases, the expenditure of funds to reimburse any party for costs otherwise authorized by this Subsection shall be expressly prohibited for any costs relating to a release which occurred prior to September 6, 1991, unless such release is determined by the secretary to have been from an abandoned motor fuel underground storage tank. Nothing contained herein shall be construed so as to authorize the expenditure from the Tank Trust Fund on behalf of any owner of an underground storage tank who is not an eligible participant at the time of the release for any third-party liability.

(3) In the event funds have been expended by the secretary on behalf of an owner who was not an eligible participant, and the Tank Trust Fund is entitled to reimbursement of those funds so expended, the secretary shall use any and all administrative and judicial remedies, including the filing of a lien with the same ranking as that provided in R.S. 30:2195(F)(2), which may be necessary for recovery of the expended funds plus legal interest from the date of payment by the secretary and all costs associated with the recovery of the funds. The secretary may expend the recovered funds for any use authorized under this Section.

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(5) The Tank Trust Fund may be used to make payments to a third party who brings a third-party claim against the secretary of the department and any owner of a motor fuel underground storage tank because of damages sustained by a release into the groundwater, surface waters, or soils and who obtains a final judgment in said action enforceable in this state against the owner and the secretary if and only if it has been satisfactorily demonstrated that the owner was an eligible participant at the time that the release occurred as defined in R.S. 30:2194(B)(3). The indemnification limit of the trust with respect to satisfaction of third-party claims shall be that which is necessary to satisfy federal petroleum underground storage tank financial responsibility requirements.

§2195.3. Source of funding; limitations on disbursements from the Tank Trust Fund; limit on amount in Tank Trust Fund

A.(1)(a) *

(b) However, those persons ordering the withdrawal of motor fuel from a bulk facility into a cargo tank which is directly transported and completely unloaded into either tanks exempted from registration requirements as provided by R.S. 30:2194(C), those underground storage tanks exempted from taxation pursuant to R.S. 47:715 and 720, or those underground storage tanks identified in R.S. 30:2195.2(B)(1)(a) and (b) shall not be required to pay the fees established by this Paragraph. These fees shall also not apply to exchanges between registered and certified bulk facilities.

(6) 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 by R.S. 30:2194(B)(13). R.S. 30:2194. All records documenting transfers to and from bulk facilities shall be maintained for four years and be available for inspection by the department upon request.
(10) Fees imposed by Subparagraph (A)(1)(a) of this Section shall not be collected or required to be paid on or after the first day of the second month following a determination that has been made by the board that the unobligated balance in the Tank Trust Fund equals or exceeds twenty forty million dollars. If the board determines that the unobligated balance in the Tank Trust Fund falls below ten million dollars, the fee shall be reinstated effective on the first day of the second month following this determination. For these purposes, the unobligated balance in the Tank Trust Fund shall be determined by subtracting from the cash balance in the board of eligible payment requests pending review and the outstanding balance of the estimated costs to be incurred associated with correction action plans approved by the department investigations, corrective action plans, and activities authorized under this Section.

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§2195.4. Procedures for disbursements from the Tank Trust Fund

A. Monies held in the Tank Trust Fund established hereunder shall be disbursed by the secretary in the following manner:

* * *

(2) The owner or the owner's authorized agent and response action contractor shall file a sworn application with the department indicating fair and reasonable value of the cost of site assessment and remediation, subject to those regulations and limitations as set by the department. Proof of payment of the financial responsibility amounts required by R.S. 30:2195.9 and 2195.10, or a certified copy of the lien authorized in this Section, shall be provided with the initial application for reimbursement.

(3)(a) Except in cases of emergency, no disbursement from the Tank Trust Fund may be made by the secretary until such time that the secretary obtains verification that the owner applicant is an eligible participant in compliance with the law.

(b) Except as otherwise provided in Subparagraph (c), no disbursements
from the Motor Fuels Underground Storage Tank Trust Fund may be made by the secretary when the application for reimbursement is filed with the department more than two years after the date that the response action work is performed.

(c)(i) When the initial site assessment has not been completed within two years, the applicant will have ninety days from the completion of the initial site assessment to submit the reimbursement application. Initial assessments shall be initiated within two years from the receipt of a request for assessment made by the secretary to be eligible for disbursement from the Tank Trust Fund.

(d)(ii) When the department's action results in a reimbursement application not being submitted within two years of the date the work was performed, the applicant will have ninety days from the date the issue is resolved to submit the reimbursement application.

B.(1) Payments shall be made to third parties who bring suit against the secretary in his official capacity as representative of the Tank Trust Fund and the owner of an underground motor fuel storage tank, who is an eligible participant as stated in R.S. 30:2194(B)(3), and such third party obtains a final judgment for a third party claim which is enforceable in this state. The owner shall pay the amount required by R.S. 30:2195.9 toward the satisfaction of said judgment, and after that payment has been made, the Tank Trust Fund will pay the remainder of said judgment.

§2195.8. Advisory board

A. There shall be a Motor Fuels Underground Storage Tank Trust Fund Advisory Board, hereinafter referred to as the "board," to advise the secretary with regard to implementation of the Tank Trust Fund including investment of the trust, issuance of loans, changing of the trust ceiling if after a reasonable time this would be deemed appropriate and with regard to the minimum level of funding. The board shall annually review the "Louisiana Motor Fuels Underground Storage Tank Trust Fund Cost Control Guidance Document" and may make recommendations for changes. Prior to the promulgation of any proposed underground storage tank
regulations, the department shall provide proposed changes to the board for review.

The board shall also determine the role of the Tank Trust Fund in establishing financial responsibility as required by federal or state law, except that such requirement shall not exceed those established by the U.S. Environmental Protection Agency. The board shall additionally examine claims made and loss experience, make recommendations to the secretary regarding minimum levels of financial responsibility for underground storage tank owners, and the necessity for and contents of rules and regulations issued under the Environmental Quality Act in similar matters. The board may recommend standards for the qualification of response action contractors as defined herein. The board may recommend at any time that response action contractors be added to or deleted from the list. The board shall also have the authority to review applications for disbursements from the Tank Trust Fund.

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C. The board shall meet at least four times each year and each member, or his designee, shall have one vote concerning any matter coming before the board. The board shall elect its own chairman. The secretary shall provide notice of regularly held board meetings thirty days prior to the meeting. The board may meet at any other time upon twenty-four hour notice from the secretary, his designee, or any two of the board's members.

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§2195.9. Financial responsibility

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B. Financial responsibility required by the United States Environmental Protection Agency may be established by any one or combination of the following: insurance, participation in the Tank Trust Fund, 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 established by the U.S. Environmental Protection Agency.

§2195.10. Financial responsibility for noncompliance
C. The secretary or his designee may exclude from coverage by the Tank Trust Fund any underground storage tank system whose owner or operator has been found to have consistently failed to comply with the requirements enumerated in Subsection B of this Section as determined by the secretary after consultation with the board. Consistent failure is a failure to comply with more than three of the requirements enumerated in Subsection B or repeated releases from the same underground storage tank system accompanied by failure to comply with the regulations enumerated in Subsection B. Notwithstanding any provision to the contrary, the secretary or his designee may prohibit the delivery of fuel to any underground storage tank excluded from coverage under this provision until such time as the owner operator secures financial assurance that satisfies the federal petroleum underground storage tank financial responsibility requirements.

§2195.12. Alternate generated power capacity for motor fuel dispensing facilities; and other uses of the Tank Trust Fund

A. As used in this Section, the following terms and phrases shall have the following meanings unless the context clearly indicates otherwise:

(1) "Motor fuel" means any petroleum product, including any special fuel, that is used for the propulsion of motor vehicles.

(2)(1) "Retail outlet" means a facility, including land and improvements, where motor fuel is offered for sale, at retail, to the motoring public.

(2)(2) "Sale" or "sell" means any transfer, gift, sale, offer for sale, or advertisement for sale in any manner or by any means whatsoever, including any transfer of motor fuel from a person to itself or an affiliate at another level of distribution, but does not include product exchanges at the wholesale level or distribution.

(4)(3) "Completely rebuilt motor fuel retail outlet" means a newly constructed outlet built after the previous outlet on the same site has been completely razed.
E. The secretary may authorize use of any monies obtained in cost recovery actions or from interest on the Tank Trust Fund enumerated in R.S. 30:2195 to provide for loans necessary to nonpublic persons or entities, for upgrading or improving underground storage tanks to a standard dictated or recommended by federal or state environmental laws, regulations, or directives. The secretary shall promulgate regulations to govern the making and administration of such loans.