

By: Ellington

To: Conservation and
Water Resources;
Judiciary A

HOUSE BILL NO. 1484

1 AN ACT TO AMEND SECTION 49-2-2, MISSISSIPPI CODE OF 1972, TO
2 REVISE THE DEFINITION OF ENVIRONMENTAL SELF-EVALUATION REPORT TO
3 INCLUDE IN THAT DEFINITION ANY DOCUMENTS PREPARED BY AN OWNER OR
4 OPERATOR OF A FACILITY AS A RESULT OF A SELF-EVALUATION; TO AMEND
5 SECTION 49-2-71, MISSISSIPPI CODE OF 1972, TO EXPAND THE
6 EVIDENTIARY PRIVILEGE GRANTED TO ENVIRONMENTAL SELF-EVALUATION
7 REPORTS; TO EXPAND THE TYPES OF PROCEEDINGS IN WHICH SUCH REPORTS
8 ARE PRIVILEGED AND NOT ADMISSIBLE FROM CIVIL, CRIMINAL OR
9 ADMINISTRATIVE PROCEEDINGS TO ANY PROCEEDING WHATSOEVER WHERE A
10 GOVERNMENTAL OR PRIVATE ENTITY IS SEEKING THE ASSESSMENT OF A
11 CIVIL OR ADMINISTRATIVE PENALTY; TO PROVIDE THAT SUCH REPORTS ARE
12 NOT SUBJECT TO COMPELLED PRODUCTION THROUGH LEGAL RULES OF
13 DISCOVERY OR BY SUBPOENA; TO ALLOW THE PRIVILEGE TO APPLY TO
14 CERTAIN INFORMATION REQUIRED OR DEVELOPED PURSUANT TO
15 ENVIRONMENTAL LAWS OR REGULATIONS; TO REQUIRE THE PERSON ASSERTING
16 THE PRIVILEGE TO PROVE THE APPLICABILITY OF THE PRIVILEGE; TO
17 EXPRESSLY STATE THAT THE ENVIRONMENTAL SELF-EVALUATION REPORT
18 PRIVILEGE DOES NOT APPLY TO CRIMINAL PROCEEDINGS; TO AMEND
19 SECTIONS 17-17-29, 49-17-43 AND 49-17-427, MISSISSIPPI CODE OF
20 1972, TO REVISE THE CONDITIONS PLACED ON THE REDUCTION OF
21 PENALTIES WHEN NONCOMPLIANCE IS DISCOVERED AND REPORTED AS THE
22 RESULT OF A VOLUNTARY SELF-EVALUATION; AND FOR RELATED PURPOSES.

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

24 SECTION 1. Section 49-2-2, Mississippi Code of 1972, is
25 amended as follows:[MS1]

26 49-2-2. For purposes of this chapter, the following words
27 and phrases shall have the meanings ascribed herein, unless the
28 context otherwise requires:

29 (a) "Department" means the Mississippi Department of
30 Environmental Quality.

31 (b) "Commission" means the Mississippi Commission on
32 Environmental Quality.

33 (c) "Office" means an administrative subdivision of the
34 department.

35 (d) "Executive director" means the chief officer of the
36 department.

37 (e) "Environmental self-evaluation report" means any
38 document or set of documents prepared as a result of a voluntary
39 self-evaluation, and labeled "ENVIRONMENTAL SELF-EVALUATION REPORT
40 PRIVILEGED DOCUMENT," that may include any audit, report, finding,
41 communication, or opinion or any draft of an audit, report,
42 finding, communication or opinion, prepared solely as a part of or
43 in connection with a voluntary self-assessment that is done in
44 good faith, which report is kept and maintained solely within the
45 confines of the evaluated party.

46 (f) "Voluntary self-evaluation" means a self-initiated
47 internal assessment, audit, or review, not otherwise expressly
48 required by environmental law, of a facility or an activity at a
49 facility, or management systems related to a facility or an
50 activity. A voluntary self-evaluation shall be designed to
51 identify and prevent noncompliance with environmental laws, and
52 improve compliance with environmental laws. In addition, a
53 voluntary self-evaluation must be conducted by an owner or
54 operator of a facility or an employee of the owner or operator or
55 by a private contractor engaged by the owner or operator.

56 (g) "Environmental law" means any federal, state or
57 local statute, rule or regulation, or any order, award, agreement,
58 release, permit, license, standard or notice from or issued by a
59 federal, state or local court, agency or governmental authority in
60 pursuance thereof.

61 SECTION 2. Section 49-2-71, Mississippi Code of 1972, is
62 amended as follows:[MS2]

63 49-2-71. (1) An environmental self-evaluation report, as
64 defined in Section 49-2-2, is privileged and is not admissible or
65 subject to compelled production through legal rules of discovery
66 or by subpoena in any * * * proceeding where a governmental or
67 private entity is seeking the assessment of a civil or
68 administrative penalty, unless:

69 (a) The person for whom the environmental

70 self-evaluation report was prepared, irrespective of whether the
71 self-evaluation report was conducted and/or prepared by a private
72 contractor hired by the person, expressly waives the provisions of
73 this section;

74 (b) The court of record, or hearing officer, who shall
75 be neutral and independent, after in camera review, determines
76 that:

77 (i) The environmental self-evaluation report shows
78 evidence that the person for which the environmental
79 self-evaluation report was prepared is not or was not in
80 compliance with an environmental law; and

81 (ii) The person did not initiate appropriate
82 efforts to achieve compliance with the environmental law or
83 complete any necessary permit application promptly after the
84 noncompliance with the environmental law was discovered and, as a
85 result, the person did not or will not achieve compliance with the
86 environmental law or complete the necessary permit application
87 within a reasonable amount of time.

88 (iii) For the purposes of paragraphs (b)(i) and
89 (b)(ii) only, if the evidence shows noncompliance by a person with
90 more than one (1) environmental law, the person may demonstrate
91 that appropriate efforts to achieve compliance were or are being
92 taken by instituting a comprehensive program that establishes a
93 phased schedule of actions to be taken to bring the person into
94 compliance with all of such environmental laws.

95 (c) The court of record or hearing officer, who shall
96 be neutral and independent, after an in camera review, determines
97 that the privilege is being asserted for a fraudulent purpose or
98 that the environmental self-evaluation report was prepared to
99 avoid disclosure of information in an investigative,
100 administrative, or judicial proceeding that was underway, or for
101 which the person had been provided written notification that an
102 investigation into a specific violation had been initiated; or

103 (d) The court of record or hearing officer, who shall
104 be neutral and independent, determines that even if subject to the
105 privilege, it is found that a condition exists that demonstrates
106 an actual or imminent, and substantial hazard or endangerment to
107 the public health and safety or the environment.

108 (2) The self-evaluation privilege created by this section
109 does not apply to:

110 (a) Documents * * * required to be developed,
111 maintained or reported pursuant to any environmental law or any
112 other law or regulation; or

113 (b) Documents * * * required to be made available or
114 furnished to a regulatory agency pursuant to any environmental law
115 or any other law or regulation; or

116 (c) Documents reflecting information in the possession
117 of a regulatory agency obtained through observation, sampling,
118 monitoring or otherwise and which is subject to public disclosure
119 pursuant to the Mississippi Public Records Act of 1983; or

120 (d) Documents reflecting information obtained through
121 any source independent of the environmental self-evaluation
122 report; or

123 (e) Documents existing prior to the commencement of and
124 independent of the voluntary self-evaluation with the exception of
125 evidence establishing a request for compliance assistance to the
126 appropriate government agency or authority.

127 (3) (a) Upon a showing by any party, based upon independent
128 knowledge, that probable cause exists to believe that an exception
129 to the self-evaluation privilege under subsection (1) of this
130 section is applicable to an environmental self-evaluation report
131 or that the privilege does not apply to the environmental
132 self-evaluation report pursuant to the provisions of subsection
133 (2) of this section, then a court of record or hearing officer,
134 who shall be neutral and independent, may allow such party limited
135 access to the environmental self-evaluation report for the

136 purposes of an in camera review only. The court of record or the
137 hearing officer may grant limited access to all or part of the
138 environmental self-evaluation report under * * * this subsection
139 (3) upon those conditions as may be necessary to protect the
140 confidentiality of the environmental self-evaluation report, in
141 case the court or hearing officer ultimately determines that the
142 document is privileged. If the court or hearing officer
143 ultimately determines that the document is privileged, a moving
144 party who obtains access to an environmental self-evaluation
145 report under this subsection (3) may not divulge any information
146 from the report except as specifically allowed by the court or
147 hearing officer.

148 (b) If any party divulges all or any part of the
149 information contained in an environmental self-evaluation report
150 in violation of the provisions of paragraph (a) of this subsection
151 (3) or if any other person knowingly divulges or disseminates all
152 or any part of the information contained in an environmental
153 self-evaluation report that was provided to such person in
154 violation of the provisions of paragraph (a) of this subsection
155 (3), such party or other person is liable for any damages caused
156 by the divulgence or dissemination of the information that are
157 incurred by the person for which the environmental self-evaluation
158 report was prepared. The court or hearing officer also may issue
159 such contempt orders and sanctions against the offending party or
160 such party's legal counsel as may be necessary to ensure
161 compliance.

162 (4) Nothing in this section limits, waives or abrogates the
163 scope or nature of any statutory or common law privilege.

164 (5) A person asserting a voluntary self-evaluation privilege
165 has the burden of proving the applicability of the privilege. A
166 party seeking disclosure of an environmental self-evaluation
167 report has the burden of proving that such privilege does not
168 exist under this section.

169 (6) All environmental self-evaluation reports that are
170 protected by the self-evaluation privilege created by this section
171 shall be privileged and exempt from the provisions of the
172 Mississippi Public Records Act in accordance with Section
173 25-61-11, Mississippi Code of 1972.

174 (7) The privilege created by this section does not apply to
175 criminal investigations or proceedings. If an environmental
176 self-evaluation report is obtained, reviewed or used in a criminal
177 proceeding, the privilege created by this section applicable to
178 administrative or civil proceedings is not waived or eliminated.

179 SECTION 3. Section 17-17-29, Mississippi Code of 1972, is
180 amended as follows:[MS3]

181 17-17-29. (1) Any person found by the commission violating
182 any of the provisions of Sections 17-17-1 through 17-17-47, or any
183 rule or regulation or written order of the commission in pursuance
184 thereof, or any condition or limitation of a permit, shall be
185 subject to a civil penalty of not more than Twenty-five Thousand
186 Dollars (\$25,000.00) for each violation, such penalty to be
187 assessed and levied by the commission after a hearing. Appeals
188 from the imposition of the civil penalty may be taken to the
189 chancery court in the same manner as appeals from orders of the
190 commission. If the appellant desires to stay the execution of a
191 civil penalty assessed by the commission, he shall give bond with
192 sufficient resident sureties of one or more guaranty or surety
193 companies authorized to do business in this state, payable to the
194 State of Mississippi, in an amount equal to double the amount of
195 any civil penalty assessed by the commission, as to which the stay
196 of execution is desired, conditioned, if the judgment shall be
197 affirmed, to pay all costs of the assessment entered against the
198 appellant. Each day upon which such violation occurs shall be
199 deemed a separate and additional violation.

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

202 power to institute and maintain in the name of the state any and
203 all proceedings necessary or appropriate to enforce the provisions
204 of Sections 17-17-1 through 17-17-47, rules and regulations in
205 force pursuant thereto, and orders and permits made and issued
206 under those sections, in the appropriate circuit, chancery, county
207 or justice court of the county in which venue may lie. The
208 commission may obtain mandatory or prohibitory injunctive relief,
209 either temporary or permanent, and in cases of imminent and
210 substantial hazard as set forth in Section 17-17-27, subsection
211 (4), it shall not be necessary in such cases that the state plead
212 or prove (a) that irreparable damage would result if the
213 injunction did not issue; (b) that there is no adequate remedy at
214 law; or (c) that a written complaint or commission order has first
215 been issued for the alleged violation.

216 (3) Any person who violates any of the provisions of, or
217 fails to perform any duty imposed by, Sections 17-17-1 through
218 17-17-47, or any rule or regulation issued hereunder, or who
219 violates any order or determination of the commission promulgated
220 pursuant to such sections, and causes the death of wildlife shall
221 be liable, in addition to the penalties provided in subsection (1)
222 and/or (2) of this section, to pay to the state an additional
223 amount equal to the sum of money reasonably necessary to replenish
224 such wildlife as determined by the commission after consultation
225 with the Mississippi Commission on Wildlife, Fisheries and Parks.
226 Such amount may be recovered by the commission on behalf of the
227 state in a civil action brought in the appropriate county or
228 circuit court of the county in which venue may lie.

229 (4) Any person creating, or responsible for creating,
230 through misadventure, happenstance, or otherwise, an immediate
231 necessity for remedial or clean-up action involving solid waste
232 shall be liable for the cost of such remedial or clean-up action
233 and the commission may recover the cost of same by a civil action
234 brought in the circuit court of the county in which venue may lie.

235 This penalty may be recovered in lieu of or in addition to the
236 penalties provided in subsection (1), (2) and/or (3) of this
237 section.

238 In the event of the necessity for immediate remedial or
239 clean-up action, the commission may contract for same and advance
240 funds from the Pollution Emergency Fund to pay the costs thereof,
241 such advancements to be repaid to the Pollution Emergency Fund
242 upon recovery by the commission as provided herein.

243 (5) Any person who knowingly violates any provision of this
244 chapter or violates any order issued by the commission under the
245 authority of this chapter shall, upon conviction, be guilty of a
246 misdemeanor and shall be subject to a fine of not more than
247 Twenty-five Thousand Dollars (\$25,000.00) for each day of
248 violation or to imprisonment not to exceed one (1) year, or both.
249 Each day's violation shall constitute a separate offense.

250 (6) All fines, penalties and other sums recovered or
251 collected by the commission for and in behalf of the state under
252 this section shall be deposited in the Pollution Emergency Fund
253 established by Sections 49-17-61 through 49-17-70, and the
254 commission is authorized to receive and accept, from any and all
255 available sources whatsoever, additional funds to be deposited in
256 such fund and expended for the purpose of remedial, clean-up or
257 abatement actions involving the introduction of solid waste upon
258 or into the land, air or waters of this state in violation of
259 Sections 17-17-1 through 17-17-47, any rule or regulation or
260 written order of the commission in pursuance thereof, or any
261 condition or limitation of a permit.

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

- 264 (a) The willfulness of the violation;
- 265 (b) Any damage to air, water, land or other natural
266 resources of the state or their uses;
- 267 (c) Costs of restoration and abatement;

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

269 (e) The seriousness of the violation, including any
270 harm to the environment and any hazard to the health, safety and
271 welfare of the public;

272 (f) Past performance history; and

273 (g) Whether the noncompliance was discovered and
274 reported as the result of a voluntary self-evaluation. If a
275 person discovers as a result of a voluntary self-evaluation,
276 information related to noncompliance with an environmental law and
277 voluntarily discloses that information to the department,
278 commission or any employee thereof, the commission shall, to the
279 greatest extent possible, reduce a penalty, if any, determined by
280 the commission, except for economic benefit as a result of
281 noncompliance, to a de minimis amount if all of the following are
282 true:

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

285 (ii) The person making the disclosure initiates
286 the appropriate corrective actions and pursues those corrective
287 actions with due diligence completes the corrective actions, and
288 takes all reasonable and prudent action necessary to prevent
289 recurrence of the noncompliance;

290 (iii) The person making the disclosure cooperates
291 with the commission and the department regarding investigation of
292 the issues identified in the disclosure;

293 (iv) The person is not otherwise required by an
294 environmental law to make the disclosure to the commission or the
295 department;

296 (v) The information was not obtained through any
297 source independent of the voluntary self-evaluation or by the
298 department through observation, sampling or monitoring; * * *

299 (vi) The noncompliance did not result in actual or
300 imminent, and substantial hazard or endangerment threatening the

301 public health, safety or welfare or the environment and did not
302 result in the necessary expenditure of environmental abatement or
303 restoration costs for abatement or restoration outside the
304 confines of the noncomplying facility by any party;

305 (vii) The noncompliance (or closely related
306 noncompliance) has not occurred previously within the past three
307 (3) years at the same facility, or is not part of a pattern of
308 federal, state or local violations by the facility's owner,
309 operator or parent organization (if any), which have occurred
310 within the past five (5) years; and

311 (viii) Terms used in this paragraph (g) shall have
312 the meanings ascribed in Section 49-2-2.

313 (8) Any provision of this section and chapter regarding
314 liability for the costs of clean-up, removal, remediation or
315 abatement of any pollution, hazardous waste or solid waste shall
316 be limited as provided in Section 49-17-42 and rules adopted
317 thereto.

318 SECTION 4. Section 49-17-43, Mississippi Code of 1972, is
319 amended as follows:[MS4]

320 49-17-43. (a) Any person found by the commission violating
321 any of the provisions of Sections 49-17-1 through 49-17-43, or any
322 rule or regulation or written order of the commission in pursuance
323 thereof or any condition or limitation of a permit, except a
324 permit required under the Solid Wastes Disposal Law of 1974
325 (Sections 17-17-1 through 17-17-47), shall be subject to a civil
326 penalty of not more than Twenty-five Thousand Dollars
327 (\$25,000.00), for each violation, such penalty to be assessed and
328 levied by the commission after a hearing as provided hereinabove.

329 Appeals from the imposition of the civil penalty may be taken to
330 the chancery court in the same manner as appeals from orders of
331 the commission. If the appellant desires to stay the execution of
332 a civil penalty assessed by the commission, he shall give bond
333 with sufficient resident sureties of one or more guaranty or

334 surety companies authorized to do business in this state, payable
335 to the State of Mississippi, in an amount equal to double the
336 amount of any civil penalty assessed by the commission, as to
337 which the stay of execution is desired, conditioned, if the
338 judgment shall be affirmed, to pay all costs of the assessment
339 entered against the appellant. Each day upon which a violation
340 occurs shall be deemed a separate and additional violation.

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

346 (b) In lieu of, or in addition to, the penalty provided in
347 subsection (a) of this section, the commission shall have power to
348 institute and maintain in the name of the state any and all
349 proceedings necessary or appropriate to enforce the provisions of
350 Sections 49-17-1 through 49-17-43, rules and regulations in force
351 pursuant thereto, and orders and permits made and issued under
352 those sections, in the appropriate circuit, chancery, county or
353 justice court of the county in which venue may lie. The
354 commission may obtain mandatory or prohibitory injunctive relief,
355 either temporary or permanent, and in cases of actual or imminent,
356 and substantial hazard or endangerment as set forth in Section
357 49-17-27, it shall not be necessary in such cases that the state
358 plead or prove: (i) that irreparable damage would result if the
359 injunction did not issue; (ii) that there is no adequate remedy at
360 law; or (iii) that a written complaint or commission order has
361 first been issued for the alleged violation.

362 (c) Any person who violates any of the provisions of, or
363 fails to perform any duty imposed by, Sections 49-17-1 through
364 49-17-43 or any rule or regulation issued hereunder, or who
365 violates any order or determination of the commission promulgated
366 pursuant to such sections, and causes the death of fish or other

367 wildlife shall be liable, in addition to the penalties provided in
368 subsection (a) and/or (b) of this section, to pay to the state an
369 additional amount equal to the sum of money reasonably necessary
370 to restock such waters or replenish such wildlife as determined by
371 the commission after consultation with the Mississippi Commission
372 on Wildlife, Fisheries and Parks. Such amount may be recovered by
373 the commission on behalf of the state in a civil action brought in
374 the appropriate county or circuit court of the county in which
375 venue may lie.

376 (d) Any person who owns or operates facilities which,
377 through misadventure, happenstance or otherwise, cause pollution
378 necessitating immediate remedial or clean-up action shall be
379 liable for the cost of such remedial or clean-up action and the
380 commission may recover the cost of same by a civil action brought
381 in the circuit court of the county in which venue may lie. This
382 penalty may be recovered in lieu of or in addition to the
383 penalties provided in subsection (a), (b) and/or (c) of this
384 section.

385 In the event of the necessity for immediate remedial or
386 clean-up action, the commission may contract for same and advance
387 funds from the Pollution Emergency Fund to pay the costs thereof,
388 such advancements to be repaid to the Pollution Emergency Fund
389 upon recovery by the commission as provided above.

390 (e) It is unlawful for any person to: (1) discharge
391 pollutants in violation of Section 49-17-29 or in violation of any
392 condition or limitation included in a permit issued under Section
393 49-17-29 or (2) introduce pollutants into publicly owned treatment
394 works in violation of pretreatment standards or in violation of
395 toxic effluent standards; and, upon conviction thereof, such
396 person shall be punished by a fine of not less than Two Thousand
397 Five Hundred Dollars (\$2,500.00) nor more than Twenty-five
398 Thousand Dollars (\$25,000.00) per day of violation.

399 (f) All fines, penalties and other sums recovered or

400 collected by the commission for and in behalf of the state under
401 this section shall be deposited in the Pollution Emergency Fund
402 established under this chapter, and the commission is authorized
403 to receive and accept, from any funds and all available sources
404 whatsoever, additional funds to be deposited in such fund and
405 expended for the purpose of remedial, clean-up or abatement
406 actions involving pollution of the land, air or waters of the
407 state in violation of Sections 49-17-1 through 49-17-43, any rule
408 or regulation or written order of the commission in pursuance
409 thereof, or any condition or limitation of a permit.

410 (g) In determining the amount of any penalty under this
411 chapter, the commission shall consider at a minimum:

412 (i) The willfulness of the violation;

413 (ii) Any damage to air, water, land or other natural
414 resources of the state or their uses;

415 (iii) Costs of restoration and abatement;

416 (iv) Economic benefit as a result of noncompliance;

417 (v) The seriousness of the violation, including any
418 harm to the environment and any hazard to the health, safety and
419 welfare of the public;

420 (vi) Past performance history; and

421 (vii) Whether the noncompliance was discovered and
422 reported as the result of a voluntary self-evaluation. If a
423 person discovers as a result of a voluntary self-evaluation,
424 information related to noncompliance with an environmental law and
425 voluntarily discloses that information to the department,
426 commission or any employee thereof, the commission shall, to the
427 greatest extent possible, reduce a penalty, if any, determined by
428 the commission, except for economic benefit as a result of
429 noncompliance, to a de minimis amount if all of the following are
430 true:

431 1. The disclosure is made promptly after knowledge
432 of the information disclosed is obtained by the person;

433 2. The person making the disclosure initiates the
434 appropriate corrective actions and pursues those corrective
435 actions with due diligence, completes the corrective actions, and
436 takes all reasonable and prudent action necessary to prevent
437 recurrence of the noncompliance;

438 3. The person making the disclosure cooperates
439 with the commission and the department regarding investigation of
440 the issues identified in the disclosure;

441 4. The person is not otherwise required by an
442 environmental law to make the disclosure to the commission or the
443 department;

444 5. The information was not obtained through any
445 source independent of the voluntary self-evaluation or by the
446 department through observation, sampling or monitoring; * * *

447 6. The noncompliance did not result in actual or
448 imminent, and substantial hazard or endangerment threatening the
449 public health, safety or welfare or the environment, and did not
450 result in the necessary expenditure of environmental abatement or
451 restoration costs for abatement or restoration outside the
452 confines of the noncomplying facility by any party;

453 (7) The noncompliance (or closely related
454 noncompliance) has not occurred previously within the past three
455 (3) years at the same facility, or is not part of a pattern of
456 federal, state or local violations by the facility's owner,
457 operator or parent organization (if any), which have occurred
458 within the past five (5) years; and

459 (8) Terms used in this subparagraph (vii) shall
460 have the meanings ascribed in Section 49-2-2.

461 (h) Any provisions of this section and chapter regarding
462 liability for the costs of clean-up, removal, remediation or
463 abatement of any pollution, hazardous waste or solid waste shall
464 be limited as provided in Section 49-17-42 and rules adopted
465 thereto.

466 SECTION 5. Section 49-17-427, Mississippi Code of 1972, is
467 amended as follows:[MS5]

468 49-17-427. (1) Whenever the commission or an employee
469 thereof has reason to believe that a violation of any provision of
470 this chapter, or of any order of the commission, or of any
471 regulation promulgated pursuant to this chapter has occurred, the
472 commission shall initiate proceedings in the same manner as
473 provided in Sections 49-17-31 through 49-17-41, Mississippi Code
474 of 1972.

475 (2) Any person found by the commission violating any of the
476 provisions of Sections 49-17-401 through 49-17-433, or any rule or
477 regulation or written order of the commission shall be subject to
478 a civil penalty of not more than Twenty-five Thousand Dollars
479 (\$25,000.00) for each violation per day, such penalty to be
480 assessed and levied by the commission as provided in Sections
481 49-17-1 through 49-17-43, Mississippi Code of 1972.

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

484 (a) The willfulness of the violation;

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

487 (c) Costs of restoration or abatement;

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

489 (e) The seriousness of the violation, including any
490 harm to the environment and any hazard to the health, safety and
491 welfare of the public;

492 (f) Past performance history; and

493 (g) Whether the noncompliance was discovered and
494 reported as the result of a voluntary self-evaluation. If a
495 person discovers as a result of a voluntary self-evaluation,
496 information related to noncompliance with an environmental law and
497 voluntarily discloses that information to the department,
498 commission or any employee thereof, the commission shall, to the

499 greatest extent possible, reduce a penalty, if any, determined by
500 the commission, except for economic benefit as a result of
501 noncompliance, to a de minimis amount if all of the following are
502 true:

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

505 (ii) The person making the disclosure initiates
506 the appropriate corrective actions and pursues those corrective
507 actions with due diligence, completes the corrective actions, and
508 takes all reasonable and prudent action necessary to prevent
509 recurrence of the noncompliance;

510 (iii) The person making the disclosure cooperates
511 with the commission and the department regarding investigation of
512 the issues identified in the disclosure;

513 (iv) The person is not otherwise required by an
514 environmental law to make the disclosure to the commission or the
515 department;

516 (v) The information was not obtained through any
517 source independent of the voluntary self-evaluation or by the
518 department through observation, sampling or monitoring; * * *

519 (vi) The noncompliance did not result in actual or
520 imminent, and substantial hazard or endangerment threatening the
521 public health, safety or welfare or the environment and did not
522 result in the necessary expenditure of environmental abatement or
523 restoration costs for abatement or restoration outside the
524 confines of the noncomplying facility by any party;

525 (vii) The noncompliance (or closely related
526 noncompliance) has not occurred previously within the past three
527 (3) years at the same facility, or is not part of a pattern of
528 federal, state or local violation by the facility's owner,
529 operator or parent organization (if any), which have occurred
530 within the past five (5) years; and

531 (viii) Terms used in this paragraph (g) shall have

532 the meanings ascribed in Section 49-2-2.

533 (4) Any provisions of this section and chapter regarding
534 liability for the costs of clean-up, removal, remediation or
535 abatement of any pollution, hazardous waste or solid waste shall
536 be limited as provided in Section 49-17-42 and rules adopted
537 thereto.

538 SECTION 6. This act shall take effect and be in force from
539 and after its passage.