

By: Dearing

To: Environment Prot,
Cons and Water ResCOMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 2965

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 AMEND SECTION 49-2-71, MISSISSIPPI CODE OF 1972, TO CLARIFY THE
4 EVIDENTIARY PRIVILEGE GRANTED TO ENVIRONMENTAL SELF-EVALUATION
5 REPORTS; TO REQUIRE THE PERSON ASSERTING THE PRIVILEGE TO PROVE
6 THE APPLICABILITY OF THE PRIVILEGE; TO EXPRESSLY STATE THAT THE
7 ENVIRONMENTAL SELF-EVALUATION REPORT PRIVILEGE DOES NOT APPLY TO
8 CRIMINAL PROCEEDINGS; TO AMEND SECTIONS 17-17-29, 49-17-43 AND
9 49-17-427, MISSISSIPPI CODE OF 1972, TO REVISE THE CONDITIONS
10 PLACED ON THE REDUCTION OF PENALTIES FOR NONCOMPLIANCE DISCOVERED
11 AND REPORTED AS THE RESULT OF A VOLUNTARY SELF-EVALUATION; AND FOR
12 RELATED PURPOSES.

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

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

16 49-2-2. For purposes of this chapter, the following words
17 and phrases shall have the meanings ascribed herein, unless the
18 context otherwise requires:

19 (a) "Department" means the Mississippi Department of
20 Environmental Quality.

21 (b) "Commission" means the Mississippi Commission on
22 Environmental Quality.

23 (c) "Office" means an administrative subdivision of the
24 department.

25 (d) "Executive director" means the chief officer of the
26 department.

27 (e) "Environmental self-evaluation report" means any
28 document or set of documents prepared as a result of a voluntary
29 self-evaluation, and labeled "ENVIRONMENTAL SELF-EVALUATION REPORT
30 PRIVILEGED DOCUMENT," that may include any audit, report, finding,
31 communication, or opinion or any draft of an audit, report,

32 finding, communication or opinion, prepared solely as a part of or
33 in connection with a voluntary self-assessment that is done in
34 good faith, which report is kept and maintained solely within the
35 confines of the evaluated party.

36 (f) "Voluntary self-evaluation" means a self-initiated
37 internal assessment, audit, or review, not otherwise expressly
38 required by environmental law, of a facility or an activity at a
39 facility, or management systems related to a facility or an
40 activity. A voluntary self-evaluation shall be designed to
41 identify and prevent noncompliance with environmental laws, and
42 improve compliance with environmental laws. In addition, a
43 voluntary self-evaluation must be conducted by an owner or
44 operator of a facility or an employee of the owner or operator or
45 by a private contractor engaged by the owner or operator. The
46 voluntary self-evaluation shall have a definite beginning date and
47 a definite completion date.

48 (g) "Environmental law" means any federal, state or
49 local statute, rule or regulation, or any order, award, agreement,
50 release, permit, license, standard or notice from or issued by a
51 federal, state or local court, agency or governmental authority in
52 pursuance thereof.

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

55 49-2-71. (1) An environmental self-evaluation report, as
56 defined in Section 49-2-2, is privileged and is not admissible or
57 subject to compelled production through rules of discovery or by
58 subpoena in any * * * civil * * * or administrative
59 proceeding * * *, unless:

60 (a) The person for whom the environmental
61 self-evaluation report was prepared, irrespective of whether the
62 self-evaluation report was conducted and/or prepared by a private
63 contractor hired by the person, expressly waives the provisions of
64 this section;

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

68 (i) The environmental self-evaluation report shows

69 evidence that the person for which the environmental
70 self-evaluation report was prepared is not or was not in
71 compliance with an environmental law; and

72 (ii) The person did not initiate appropriate
73 efforts to achieve compliance with the environmental law or
74 complete any necessary permit application promptly after the
75 noncompliance with the environmental law was discovered and, as a
76 result, the person did not or will not achieve compliance with the
77 environmental law or complete the necessary permit application
78 within a reasonable amount of time.

79 (iii) For the purposes of paragraphs (b)(i) and
80 (b)(ii) only, if the evidence shows noncompliance by a person with
81 more than one (1) environmental law, the person may demonstrate
82 that appropriate efforts to achieve compliance were or are being
83 taken by instituting a comprehensive program that establishes a
84 phased schedule of actions to be taken to bring the person into
85 compliance with all of such environmental laws.

86 (c) The court of record or hearing officer, who shall
87 be neutral and independent, after an in camera review, determines
88 that the privilege is being asserted for a fraudulent purpose or
89 that the environmental self-evaluation report was prepared to
90 avoid disclosure of information in an investigative,
91 administrative, or judicial proceeding that was underway, or for
92 which the person had been provided written notification that an
93 investigation into a specific violation had been initiated; * * *

94 (d) The court of record or hearing officer, who shall
95 be neutral and independent, determines that even if subject to the
96 privilege, it is found that a condition exists that demonstrates
97 an actual or imminent, and substantial hazard or endangerment to
98 the public health and safety or the environment; or

99 (e) The court of record or hearing officer finds that
100 the self-evaluation report shows evidence of noncompliance with
101 environmental law and the noncompliance caused or resulted in

102 serious harm to public health or the environment.

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

105 (a) Documents or information required to be developed,
106 maintained or reported pursuant to any environmental law or any
107 other law or regulation; or

108 (b) Documents or other information required to be made
109 available or furnished to a regulatory agency pursuant to any
110 environmental law or any other law or regulation; or

111 (c) Information in the possession of a regulatory
112 agency obtained through observation, sampling, monitoring or
113 otherwise and which is subject to public disclosure pursuant to
114 the Mississippi Public Records Act of 1983; or

115 (d) Information obtained through any source independent
116 of the environmental self-evaluation report; or

117 (e) Documents existing prior to the commencement of and
118 independent of the voluntary self-evaluation with the exception of
119 evidence establishing a request for compliance assistance to the
120 appropriate government agency or authority.

121 (3) (a) Upon a showing by any party, based upon independent
122 knowledge, that probable cause exists to believe that an exception
123 to the self-evaluation privilege under subsection (1) of this
124 section is applicable to an environmental self-evaluation report
125 or that the privilege does not apply to the environmental
126 self-evaluation report pursuant to the provisions of subsection
127 (2) of this section, then a court of record or hearing officer,
128 who shall be neutral and independent, may allow such party limited
129 access to the environmental self-evaluation report for the
130 purposes of an in camera review only. The court of record or the
131 hearing officer may grant limited access to all or part of the
132 environmental self-evaluation report under * * * this subsection
133 (3) upon those conditions as may be necessary to protect the
134 confidentiality of the environmental self-evaluation report, in

135 case the court or hearing officer ultimately determines that the
136 document is privileged. If the court or hearing officer
137 ultimately determines that the document is privileged, a moving
138 party who obtains access to an environmental self-evaluation
139 report under this subsection (3) may not divulge any information
140 from the report except as specifically allowed by the court or
141 hearing officer.

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

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

158 (5) A person asserting a voluntary self-evaluation privilege
159 has the burden of proving the applicability of the privilege. A
160 party seeking disclosure of an environmental self-evaluation
161 report has the burden of proving that such privilege does not
162 exist under this section.

163 (6) All environmental self-evaluation reports that are
164 protected by the self-evaluation privilege created by this section
165 shall be privileged and exempt from the provisions of the
166 Mississippi Public Records Act in accordance with Section
167 25-61-11, Mississippi Code of 1972.

168 (7) The privilege created by this section does not apply to
169 criminal investigations or proceedings. If an environmental
170 self-evaluation report is obtained, reviewed or used in a criminal
171 proceeding, the privilege created by this section applicable to
172 administrative or civil proceedings is not waived or eliminated.

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

175 17-17-29. (1) Any person found by the commission violating
176 any of the provisions of Sections 17-17-1 through 17-17-47, or any
177 rule or regulation or written order of the commission in pursuance
178 thereof, or any condition or limitation of a permit, shall be
179 subject to a civil penalty of not more than Twenty-five Thousand
180 Dollars (\$25,000.00) for each violation, such penalty to be
181 assessed and levied by the commission after a hearing. Appeals
182 from the imposition of the civil penalty may be taken to the
183 chancery court in the same manner as appeals from orders of the
184 commission. If the appellant desires to stay the execution of a
185 civil penalty assessed by the commission, he shall give bond with
186 sufficient resident sureties of one or more guaranty or surety
187 companies authorized to do business in this state, payable to the
188 State of Mississippi, in an amount equal to double the amount of
189 any civil penalty assessed by the commission, as to which the stay
190 of execution is desired, conditioned, if the judgment shall be
191 affirmed, to pay all costs of the assessment entered against the
192 appellant. Each day upon which such violation occurs shall be
193 deemed a separate and additional violation.

194 (2) In lieu of, or in addition to, the penalty provided in
195 subsection (1) of this section, the commission shall have the
196 power to institute and maintain in the name of the state any and
197 all proceedings necessary or appropriate to enforce the provisions
198 of Sections 17-17-1 through 17-17-47, rules and regulations in
199 force pursuant thereto, and orders and permits made and issued
200 under those sections, in the appropriate circuit, chancery, county

201 or justice court of the county in which venue may lie. The
202 commission may obtain mandatory or prohibitory injunctive relief,
203 either temporary or permanent, and in cases of imminent and
204 substantial hazard as set forth in Section 17-17-27, subsection
205 (4), it shall not be necessary in such cases that the state plead
206 or prove (a) that irreparable damage would result if the
207 injunction did not issue; (b) that there is no adequate remedy at
208 law; or (c) that a written complaint or commission order has first
209 been issued for the alleged violation.

210 (3) Any person who violates any of the provisions of, or
211 fails to perform any duty imposed by, Sections 17-17-1 through
212 17-17-47, or any rule or regulation issued hereunder, or who
213 violates any order or determination of the commission promulgated
214 pursuant to such sections, and causes the death of wildlife shall
215 be liable, in addition to the penalties provided in subsection (1)
216 and/or (2) of this section, to pay to the state an additional
217 amount equal to the sum of money reasonably necessary to replenish
218 such wildlife as determined by the commission after consultation
219 with the Mississippi Commission on Wildlife, Fisheries and Parks.
220 Such amount may be recovered by the commission on behalf of the
221 state in a civil action brought in the appropriate county or
222 circuit court of the county in which venue may lie.

223 (4) Any person creating, or responsible for creating,
224 through misadventure, happenstance, or otherwise, an immediate
225 necessity for remedial or clean-up action involving solid waste
226 shall be liable for the cost of such remedial or clean-up action
227 and the commission may recover the cost of same by a civil action
228 brought in the circuit court of the county in which venue may lie.
229 This penalty may be recovered in lieu of or in addition to the
230 penalties provided in subsection (1), (2) and/or (3) of this
231 section.

232 In the event of the necessity for immediate remedial or
233 clean-up action, the commission may contract for same and advance

234 funds from the Pollution Emergency Fund to pay the costs thereof,
235 such advancements to be repaid to the Pollution Emergency Fund
236 upon recovery by the commission as provided herein.

237 (5) Any person who knowingly violates any provision of this
238 chapter or violates any order issued by the commission under the
239 authority of this chapter shall, upon conviction, be guilty of a
240 misdemeanor and shall be subject to a fine of not more than
241 Twenty-five Thousand Dollars (\$25,000.00) for each day of
242 violation or to imprisonment not to exceed one (1) year, or both.
243 Each day's violation shall constitute a separate offense. The
244 voluntary self-evaluation provisions in paragraph (7)(g) shall not
245 apply to this subsection.

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

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

- 260 (a) The willfulness of the violation;
- 261 (b) Any damage to air, water, land or other natural
262 resources of the state or their uses;
- 263 (c) Costs of restoration and abatement;
- 264 (d) Economic benefit as a result of noncompliance;
- 265 (e) The seriousness of the violation, including any
266 harm to the environment and any hazard to the health, safety and

267 welfare of the public;

268 (f) Past performance history; and

269 (g) Whether the noncompliance was discovered and

270 reported as the result of a voluntary self-evaluation. If a

271 person discovers as a result of a voluntary self-evaluation,

272 information related to noncompliance with an environmental law and

273 voluntarily discloses that information to the department,

274 commission or any employee thereof, the commission shall, to the

275 greatest extent possible, reduce a penalty, if any, determined by

276 the commission, except for economic benefit as a result of

277 noncompliance, to a de minimis amount if all of the following are

278 true:

279 (i) The disclosure is made promptly after

280 knowledge of the information disclosed is obtained by the person;

281 (ii) The person making the disclosure initiates

282 the appropriate corrective actions and pursues those corrective

283 actions with due diligence completes the corrective actions, and

284 takes all reasonable and prudent action necessary to prevent

285 recurrence of the noncompliance;

286 (iii) The person making the disclosure cooperates

287 with the commission and the department regarding investigation of

288 the issues identified in the disclosure;

289 (iv) The person is not otherwise required by an

290 environmental law to make the disclosure to the commission or the

291 department;

292 (v) The information was not obtained through any

293 source independent of the voluntary self-evaluation or by the

294 department through observation, sampling or monitoring; * * *

295 (vi) The noncompliance did not result in actual or

296 imminent, and substantial hazard or endangerment threatening the

297 public health, safety or welfare or the environment and did not

298 result in the necessary expenditure of environmental abatement or

299 restoration costs for abatement or restoration outside the

300 confines of the noncomplying facility by any party;

301 (vii) The noncompliance did not result in serious
302 harm to the public health or the environment;

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

309 (ix) Terms used in this paragraph (g) shall have
310 the meanings ascribed in Section 49-2-2.

311 (8) If a person asserts the environmental self-evaluation
312 report privilege, the commission shall not consider or hold such
313 assertion against the person when the commission determines the
314 amount of any penalty.

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

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

322 49-17-43. (1) Any person found by the commission violating
323 any of the provisions of Sections 49-17-1 through 49-17-43, or any
324 rule or regulation or written order of the commission in pursuance
325 thereof or any condition or limitation of a permit, except a
326 permit required under the Solid Wastes Disposal Law of 1974
327 (Sections 17-17-1 through 17-17-47), shall be subject to a civil
328 penalty of not more than Twenty-five Thousand Dollars
329 (\$25,000.00), for each violation, such penalty to be assessed and
330 levied by the commission after a hearing as provided hereinabove.

331 Appeals from the imposition of the civil penalty may be taken to
332 the chancery court in the same manner as appeals from orders of

333 the commission. If the appellant desires to stay the execution of
334 a civil penalty assessed by the commission, he shall give bond
335 with sufficient resident sureties of one or more guaranty or
336 surety companies authorized to do business in this state, payable
337 to the State of Mississippi, in an amount equal to double the
338 amount of any civil penalty assessed by the commission, as to
339 which the stay of execution is desired, conditioned, if the
340 judgment shall be affirmed, to pay all costs of the assessment
341 entered against the appellant. Each day upon which a violation
342 occurs shall be deemed a separate and additional violation.

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

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

364 (3) Any person who violates any of the provisions of, or
365 fails to perform any duty imposed by, Sections 49-17-1 through

366 49-17-43 or any rule or regulation issued hereunder, or who
367 violates any order or determination of the commission promulgated
368 pursuant to such sections, and causes the death of fish or other
369 wildlife shall be liable, in addition to the penalties provided in
370 subsection (1) and/or (2) of this section, to pay to the state an
371 additional amount equal to the sum of money reasonably necessary
372 to restock such waters or replenish such wildlife as determined by
373 the commission after consultation with the Mississippi Commission
374 on Wildlife, Fisheries and Parks. Such amount may be recovered by
375 the commission on behalf of the state in a civil action brought in
376 the appropriate county or circuit court of the county in which
377 venue may lie.

378 (4) Any person who owns or operates facilities which,
379 through misadventure, happenstance or otherwise, cause pollution
380 necessitating immediate remedial or clean-up action shall be
381 liable for the cost of such remedial or clean-up action and the
382 commission may recover the cost of same by a civil action brought
383 in the circuit court of the county in which venue may lie. This
384 penalty may be recovered in lieu of or in addition to the
385 penalties provided in subsection (1), (2) and/or (3) of this
386 section.

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

392 (5) It is unlawful for any person to: (a) discharge
393 pollutants in violation of Section 49-17-29 or in violation of any
394 condition or limitation included in a permit issued under Section
395 49-17-29 or (b) introduce pollutants into publicly owned treatment
396 works in violation of pretreatment standards or in violation of
397 toxic effluent standards; and, upon conviction thereof, such
398 person shall be punished by a fine of not less than Two Thousand

399 Five Hundred Dollars (\$2,500.00) nor more than Twenty-five
400 Thousand Dollars (\$25,000.00) per day of violation. The voluntary
401 self-evaluation provisions in paragraph (7)(g) shall not apply to
402 this subsection.

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

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

416 (a) The willfulness of the violation;

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

419 (c) Costs of restoration and abatement;

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

421 (e) The seriousness of the violation, including any
422 harm to the environment and any hazard to the health, safety and
423 welfare of the public;

424 (f) Past performance history; and

425 (g) Whether the noncompliance was discovered and
426 reported as the result of a voluntary self-evaluation. If a
427 person discovers as a result of a voluntary self-evaluation,
428 information related to noncompliance with an environmental law and
429 voluntarily discloses that information to the department,
430 commission or any employee thereof, the commission shall, to the
431 greatest extent possible, reduce a penalty, if any, determined by

432 the commission, except for economic benefit as a result of
433 noncompliance, to a de minimis amount if all of the following are
434 true:

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

437 (ii) The person making the disclosure initiates
438 the appropriate corrective actions and pursues those corrective
439 actions with due diligence, completes the corrective actions, and
440 takes all reasonable and prudent action necessary to prevent
441 recurrence of the noncompliance;

442 (iii) The person making the disclosure cooperates
443 with the commission and the department regarding investigation of
444 the issues identified in the disclosure;

445 (iv) The person is not otherwise required by an
446 environmental law to make the disclosure to the commission or the
447 department;

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

451 (vi) The noncompliance did not result in actual or
452 imminent, and substantial hazard or endangerment threatening the
453 public health, safety or welfare or the environment, and did not
454 result in the necessary expenditure of environmental abatement or
455 restoration costs for abatement or restoration outside the
456 confines of the noncomplying facility by any party;

457 (vii) The noncompliance did not result in serious
458 harm to the public health or the environment;

459 (viii) The noncompliance (or closely related
460 noncompliance) has not occurred previously within the past three
461 (3) years at the same facility, or is not part of a pattern of
462 federal, state or local violations by the facility's owner,
463 operator or parent organization (if any), which has occurred
464 within the past five (5) years; and

465 (ix) Terms used in this paragraph (g) shall have
466 the meanings ascribed in Section 49-2-2.

467 (8) If a person asserts the environmental self-evaluation
468 report privilege, the commission shall not consider or hold such
469 assertion against the person when the commission determines the
470 amount of any penalty.

471 (9) Any provisions of this section and chapter regarding
472 liability for the costs of clean-up, removal, remediation or
473 abatement of any pollution, hazardous waste or solid waste shall
474 be limited as provided in Section 49-17-42 and rules adopted
475 thereto.

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

478 49-17-427. (1) Whenever the commission or an employee
479 thereof has reason to believe that a violation of any provision of
480 this chapter, or of any order of the commission, or of any
481 regulation promulgated pursuant to this chapter has occurred, the
482 commission shall initiate proceedings in the same manner as
483 provided in Sections 49-17-31 through 49-17-41, Mississippi Code
484 of 1972.

485 (2) Any person found by the commission violating any of the
486 provisions of Sections 49-17-401 through 49-17-433, or any rule or
487 regulation or written order of the commission shall be subject to
488 a civil penalty of not more than Twenty-five Thousand Dollars
489 (\$25,000.00) for each violation per day, such penalty to be
490 assessed and levied by the commission as provided in Sections
491 49-17-1 through 49-17-43, Mississippi Code of 1972.

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

494 (a) The willfulness of the violation;

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

497 (c) Costs of restoration or abatement;

498 (d) Economic benefit as a result of noncompliance;
499 (e) The seriousness of the violation, including any
500 harm to the environment and any hazard to the health, safety and
501 welfare of the public;
502 (f) Past performance history; and
503 (g) Whether the noncompliance was discovered and
504 reported as the result of a voluntary self-evaluation. If a
505 person discovers as a result of a voluntary self-evaluation,
506 information related to noncompliance with an environmental law and
507 voluntarily discloses that information to the department,
508 commission or any employee thereof, the commission shall, to the
509 greatest extent possible, reduce a penalty, if any, determined by
510 the commission, except for economic benefit as a result of
511 noncompliance, to a de minimis amount if all of the following are
512 true:

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

515 (ii) The person making the disclosure initiates
516 the appropriate corrective actions and pursues those corrective
517 actions with due diligence, completes the corrective actions, and
518 takes all reasonable and prudent action necessary to prevent
519 recurrence of the noncompliance;

520 (iii) The person making the disclosure cooperates
521 with the commission and the department regarding investigation of
522 the issues identified in the disclosure;

523 (iv) The person is not otherwise required by an
524 environmental law to make the disclosure to the commission or the
525 department;

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

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

531 public health, safety or welfare or the environment and did not
532 result in the necessary expenditure of environmental abatement or
533 restoration costs for abatement or restoration outside the
534 confines of the noncomplying facility by any party;

535 (vii) The noncompliance did not result in serious
536 harm to the public health or the environment;

537 (viii) The noncompliance (or closely related
538 noncompliance) has not occurred previously within the past three
539 (3) years at the same facility, or is not part of a pattern of
540 federal, state or local violation by the facility's owner,
541 operator or parent organization (if any), which has occurred
542 within the past five (5) years; and

543 (ix) Terms used in this paragraph (g) shall have
544 the meanings ascribed in Section 49-2-2.

545 (4) If a person asserts the environmental self-evaluation
546 report privilege, the commission shall not consider or hold such
547 assertion against the person when the commission determines the
548 amount of any penalty.

549 (5) Any provisions of this section and chapter regarding
550 liability for the costs of clean-up, removal, remediation or
551 abatement of any pollution, hazardous waste or solid waste shall
552 be limited as provided in Section 49-17-42 and rules adopted
553 thereto.

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