

By: Dawkins

To: Judiciary

SENATE BILL NO. 3109

1 AN ACT TO REPEAL SECTION 49-2-71, MISSISSIPPI CODE OF 1972,  
2 WHICH PROVIDES THAT AN ENVIRONMENTAL SELF-EVALUATION REPORT IS  
3 PRIVILEGED AND NOT ADMISSIBLE IN ANY CIVIL, CRIMINAL OR  
4 ADMINISTRATIVE PROCEEDING; TO AMEND SECTIONS 49-2-2, 49-17-43,  
5 49-17-427 AND 17-17-29, MISSISSIPPI CODE OF 1972, TO CONFORM; AND  
6 FOR RELATED PURPOSES.

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

8 SECTION 1. Section 49-2-2, Mississippi Code of 1972, is  
9 amended as follows:[LTR1]

10 49-2-2. For purposes of this chapter, the following words  
11 and phrases shall have the meanings ascribed herein, unless the  
12 context otherwise requires:

13 (a) "Department" means the Mississippi Department of  
14 Environmental Quality.

15 (b) "Commission" means the Mississippi Commission on  
16 Environmental Quality.

17 (c) "Office" means an administrative subdivision of the  
18 department.

19 (d) "Executive director" means the chief officer of the  
20 department.

21 \* \* \*

22 (e) "Environmental law" means any federal, state or  
23 local statute, rule or regulation, or any order, award, agreement,  
24 release, permit, license, standard or notice from or issued by a  
25 federal, state or local court, agency or governmental authority in  
26 pursuance thereof.

27 SECTION 2. Section 49-17-43, Mississippi Code of 1972, is  
28 amended as follows:[LTR2]

29           49-17-43. (a) Any person found by the commission violating  
30 any of the provisions of Sections 49-17-1 through 49-17-43, or any  
31 rule or regulation or written order of the commission in pursuance  
32 thereof or any condition or limitation of a permit, except a  
33 permit required under the Solid Wastes Disposal Law of 1974  
34 (Sections 17-17-1 through 17-17-47), shall be subject to a civil  
35 penalty of not more than Twenty-five Thousand Dollars  
36 (\$25,000.00), for each violation, such penalty to be assessed and  
37 levied by the commission after a hearing as provided hereinabove.

38 Appeals from the imposition of the civil penalty may be taken to  
39 the chancery court in the same manner as appeals from orders of  
40 the commission. If the appellant desires to stay the execution of  
41 a civil penalty assessed by the commission, he shall give bond  
42 with sufficient resident sureties of one or more guaranty or  
43 surety companies authorized to do business in this state, payable  
44 to the State of Mississippi, in an amount equal to double the  
45 amount of any civil penalty assessed by the commission, as to  
46 which the stay of execution is desired, conditioned, if the  
47 judgment shall be affirmed, to pay all costs of the assessment  
48 entered against the appellant. Each day upon which a violation  
49 occurs shall be deemed a separate and additional violation.

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

55           (b) In lieu of, or in addition to, the penalty provided in  
56 subsection (a) of this section, the commission shall have power to  
57 institute and maintain in the name of the state any and all  
58 proceedings necessary or appropriate to enforce the provisions of  
59 Sections 49-17-1 through 49-17-43, rules and regulations in force  
60 pursuant thereto, and orders and permits made and issued under  
61 those sections, in the appropriate circuit, chancery, county or

62 justice court of the county in which venue may lie. The  
63 commission may obtain mandatory or prohibitory injunctive relief,  
64 either temporary or permanent, and in cases of imminent and  
65 substantial hazard or endangerment as set forth in Section  
66 49-17-27, it shall not be necessary in such cases that the state  
67 plead or prove: (i) that irreparable damage would result if the  
68 injunction did not issue; (ii) that there is no adequate remedy at  
69 law; or (iii) that a written complaint or commission order has  
70 first been issued for the alleged violation.

71 (c) Any person who violates any of the provisions of, or  
72 fails to perform any duty imposed by, Sections 49-17-1 through  
73 49-17-43 or any rule or regulation issued hereunder, or who  
74 violates any order or determination of the commission promulgated  
75 pursuant to such sections, and causes the death of fish or other  
76 wildlife shall be liable, in addition to the penalties provided in  
77 subsection (a) and/or (b) of this section, to pay to the state an  
78 additional amount equal to the sum of money reasonably necessary  
79 to restock such waters or replenish such wildlife as determined by  
80 the commission after consultation with the Mississippi Commission  
81 on Wildlife, Fisheries and Parks. Such amount may be recovered by  
82 the commission on behalf of the state in a civil action brought in  
83 the appropriate county or circuit court of the county in which  
84 venue may lie.

85 (d) Any person who owns or operates facilities which,  
86 through misadventure, happenstance or otherwise, cause pollution  
87 necessitating immediate remedial or clean-up action shall be  
88 liable for the cost of such remedial or clean-up action and the  
89 commission may recover the cost of same by a civil action brought  
90 in the circuit court of the county in which venue may lie. This  
91 penalty may be recovered in lieu of or in addition to the  
92 penalties provided in subsection (a), (b) and/or (c) of this  
93 section.

94 In the event of the necessity for immediate remedial or

95 clean-up action, the commission may contract for same and advance  
96 funds from the Pollution Emergency Fund to pay the costs thereof,  
97 such advancements to be repaid to the Pollution Emergency Fund  
98 upon recovery by the commission as provided above.

99 (e) It is unlawful for any person to: (1) discharge  
100 pollutants in violation of Section 49-17-29 or in violation of any  
101 condition or limitation included in a permit issued under Section  
102 49-17-29 or (2) introduce pollutants into publicly owned treatment  
103 works in violation of pretreatment standards or in violation of  
104 toxic effluent standards; and, upon conviction thereof, such  
105 person shall be punished by a fine of not less than Two Thousand  
106 Five Hundred Dollars (\$2,500.00) nor more than Twenty-five  
107 Thousand Dollars (\$25,000.00) per day of violation.

108 (f) All fines, penalties and other sums recovered or  
109 collected by the commission for and in behalf of the state under  
110 this section shall be deposited in the Pollution Emergency Fund  
111 established under this chapter, and the commission is authorized  
112 to receive and accept, from any funds and all available sources  
113 whatsoever, additional funds to be deposited in such fund and  
114 expended for the purpose of remedial, clean-up or abatement  
115 actions involving pollution of the land, air or waters of the  
116 state in violation of Sections 49-17-1 through 49-17-43, any rule  
117 or regulation or written order of the commission in pursuance  
118 thereof, or any condition or limitation of a permit.

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

- 121 (i) The willfulness of the violation;
- 122 (ii) Any damage to air, water, land or other natural  
123 resources of the state or their uses;
- 124 (iii) Costs of restoration and abatement;
- 125 (iv) Economic benefit as a result of noncompliance;
- 126 (v) The seriousness of the violation, including any  
127 harm to the environment and any hazard to the health, safety and

128 welfare of the public; and

129 (vi) Past performance history. \* \* \*

130 \* \* \*

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

136 SECTION 3. Section 49-17-427, Mississippi Code of 1972, is  
137 amended as follows:[LTR3]

138 49-17-427. (1) Whenever the commission or an employee  
139 thereof has reason to believe that a violation of any provision of  
140 this chapter, or of any order of the commission, or of any  
141 regulation promulgated pursuant to this chapter has occurred, the  
142 commission shall initiate proceedings in the same manner as  
143 provided in Sections 49-17-31 through 49-17-41, Mississippi Code  
144 of 1972.

145 (2) Any person found by the commission violating any of the  
146 provisions of Sections 49-17-401 through 49-17-433, or any rule or  
147 regulation or written order of the commission shall be subject to  
148 a civil penalty of not more than Twenty-five Thousand Dollars  
149 (\$25,000.00) for each violation per day, such penalty to be  
150 assessed and levied by the commission as provided in Sections  
151 49-17-1 through 49-17-43, Mississippi Code of 1972.

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

154 (a) The willfulness of the violation;

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

157 (c) Costs of restoration or abatement;

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

159 (e) The seriousness of the violation, including any  
160 harm to the environment and any hazard to the health, safety and

161 welfare of the public; and

162 (f) Past performance history. \* \* \*

163 \* \* \*

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

169 SECTION 4. Section 17-17-29, Mississippi Code of 1972, is  
170 amended as follows:[LTR4]

171 17-17-29. (1) Any person found by the commission violating  
172 any of the provisions of Sections 17-17-1 through 17-17-47, or any  
173 rule or regulation or written order of the commission in pursuance  
174 thereof, or any condition or limitation of a permit, shall be  
175 subject to a civil penalty of not more than Twenty-five Thousand  
176 Dollars (\$25,000.00) for each violation, such penalty to be  
177 assessed and levied by the commission after a hearing. Appeals  
178 from the imposition of the civil penalty may be taken to the  
179 chancery court in the same manner as appeals from orders of the  
180 commission. If the appellant desires to stay the execution of a  
181 civil penalty assessed by the commission, he shall give bond with  
182 sufficient resident sureties of one or more guaranty or surety  
183 companies authorized to do business in this state, payable to the  
184 State of Mississippi, in an amount equal to double the amount of  
185 any civil penalty assessed by the commission, as to which the stay  
186 of execution is desired, conditioned, if the judgment shall be  
187 affirmed, to pay all costs of the assessment entered against the  
188 appellant. Each day upon which such violation occurs shall be  
189 deemed a separate and additional violation.

190 (2) In lieu of, or in addition to, the penalty provided in  
191 subsection (1) of this section, the commission shall have the  
192 power to institute and maintain in the name of the state any and  
193 all proceedings necessary or appropriate to enforce the provisions

194 of Sections 17-17-1 through 17-17-47, rules and regulations in  
195 force pursuant thereto, and orders and permits made and issued  
196 under those sections, in the appropriate circuit, chancery, county  
197 or justice court of the county in which venue may lie. The  
198 commission may obtain mandatory or prohibitory injunctive relief,  
199 either temporary or permanent, and in cases of imminent and  
200 substantial hazard as set forth in Section 17-17-27, subsection  
201 (4), it shall not be necessary in such cases that the state plead  
202 or prove (a) that irreparable damage would result if the  
203 injunction did not issue; (b) that there is no adequate remedy at  
204 law; or (c) that a written complaint or commission order has first  
205 been issued for the alleged violation.

206 (3) Any person who violates any of the provisions of, or  
207 fails to perform any duty imposed by, Sections 17-17-1 through  
208 17-17-47, or any rule or regulation issued hereunder, or who  
209 violates any order or determination of the commission promulgated  
210 pursuant to such sections, and causes the death of wildlife shall  
211 be liable, in addition to the penalties provided in subsection (1)  
212 and/or (2) of this section, to pay to the state an additional  
213 amount equal to the sum of money reasonably necessary to replenish  
214 such wildlife as determined by the commission after consultation  
215 with the Mississippi Commission on Wildlife, Fisheries and Parks.  
216 Such amount may be recovered by the commission on behalf of the  
217 state in a civil action brought in the appropriate county or  
218 circuit court of the county in which venue may lie.

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

227 section.

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

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

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

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

- 254 (a) The willfulness of the violation;
- 255 (b) Any damage to air, water, land or other natural  
256 resources of the state or their uses;
- 257 (c) Costs of restoration and abatement;
- 258 (d) Economic benefit as a result of noncompliance;
- 259 (e) The seriousness of the violation, including any



260 harm to the environment and any hazard to the health, safety and  
261 welfare of the public; and

262 (f) Past performance history. \* \* \*

263 \* \* \*

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

269 SECTION 5. Section 49-2-71, Mississippi Code of 1972, which  
270 provides that an environmental self-evaluation report is  
271 privileged and is not admissible in any legal or investigative  
272 action in any civil, criminal for administrative proceeding is  
273 repealed.

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