

By: Senator(s) Nunnelee

To: Environment Prot, Cons  
and Water Res

SENATE BILL NO. 2971

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

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

12 SECTION 1. Section 49-2-2, Mississippi Code of 1972, is  
13 amended as follows:

14 49-2-2. For purposes of this chapter, the following words  
15 and phrases shall have the meanings ascribed herein, unless the  
16 context otherwise requires:

17 (a) "Department" means the Mississippi Department of  
18 Environmental Quality.

19 (b) "Commission" means the Mississippi Commission on  
20 Environmental Quality.

21 (c) "Office" means an administrative subdivision of the  
22 department.

23 (d) "Executive director" means the chief officer of the  
24 department.

25 (e) "Environmental self-evaluation report" means any  
26 document or set of documents prepared as a result of a voluntary  
27 self-evaluation, bearing a designation reflecting preparation as a  
28 result of a voluntary self-evaluation, that may include any audit,  
29 report, finding, communication, or opinion or any draft of an  
30 audit, report, finding, communication or opinion, prepared solely

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

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

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

50 SECTION 2. Section 49-2-71, Mississippi Code of 1972, is  
51 amended as follows:

52 49-2-71. (1) An environmental self-evaluation report, as  
53 defined in Section 49-2-2, is privileged and is not  
54 admissible \* \* \* in any civil \* \* \* or administrative proceeding  
55 or any civil or administrative investigation and is not subject to  
56 compelled production or any other discovery concerning the  
57 environmental self-evaluation report pursuant to the rules of  
58 civil procedure \* \* \* or administrative procedure or by subpoena  
59 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; \* \* \*

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; and

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; or

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 a  
97 substantial hazard or endangerment to the public health and safety  
98 or the environment that actually exists currently, existed  
99 previously or is imminent to occur in the future.

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

102 (a) Documents or information required to be developed,  
103 maintained or reported pursuant to any environmental law or any  
104 other law or regulation; or

105 (b) Documents or other information required to be made  
106 available or furnished to a regulatory agency pursuant to any  
107 environmental law or any other law or regulation; or

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

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

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

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

129 environmental self-evaluation report for the purposes specified in  
130 this subsection (3) upon those conditions that may be necessary to  
131 protect the confidentiality of the environmental self-evaluation  
132 report. If the court or hearing officer ultimately determines  
133 that the document is privileged, a moving party who obtains access  
134 to an environmental self-evaluation report for the purposes  
135 specified in this subsection (3) may not divulge any information  
136 from the report except as specifically allowed by the court or  
137 hearing officer.

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

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

154 (5) A person asserting a voluntary self-evaluation privilege  
155 has the burden of proving a prima facie case as to the  
156 applicability of the privilege. A party seeking disclosure of an  
157 environmental self-evaluation report has the burden of proving  
158 that such privilege does not exist under this section.

159 (6) All environmental self-evaluation reports that are  
160 protected by the self-evaluation privilege created by this act  
161 shall be privileged and exempt from the provisions of the

162 Mississippi Public Records Act in accordance with Section  
163 25-61-11, Mississippi Code of 1972.

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

170 SECTION 3. Section 17-17-29, Mississippi Code of 1972, is  
171 amended as follows:

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

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

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

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

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

227 penalties provided in subsection (1), (2) and/or (3) of this  
228 section.

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

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

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

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

259 (a) The willfulness of the violation;



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

262 (c) Costs of restoration and abatement;

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

264 (e) The seriousness of the violation, including any  
265 harm to the environment and any hazard to the health, safety and  
266 welfare of the public;

267 (f) Past performance history; and

268 (g) Whether the noncompliance was discovered and  
269 disclosed as the result of a voluntary self-evaluation. If a  
270 person discovers as a result of a voluntary self-evaluation,  
271 information related to noncompliance with an environmental law and  
272 voluntarily discloses that information to the department,  
273 commission or any employee thereof, the commission shall, to the  
274 greatest extent possible, reduce a penalty, other than a criminal  
275 penalty imposed under subsection (5), if any, determined by the  
276 commission, except for economic benefit as a result of  
277 noncompliance, to a de minimis amount if all of the following are  
278 true concerning the noncompliance discovered and disclosed as a  
279 result of a voluntary self-evaluation:

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

282 (ii) The person making the disclosure initiates  
283 the appropriate corrective actions and pursues those corrective  
284 actions with due diligence and has either completed the corrective  
285 action or is in compliance with a schedule for conduct of the  
286 corrective action approved by the commission or the department;

287 (iii) The person making the disclosure cooperates  
288 with the commission and the department regarding investigation of  
289 the issues identified in the disclosure;

290 (iv) The person is not otherwise required by an  
291 environmental law to make the disclosure to the commission or the  
292 department;

293 (v) The information was not obtained through any  
294 source independent of the voluntary self-evaluation or by the  
295 department through observation, sampling or monitoring; \* \* \*

296 (vi) The noncompliance did not result in a  
297 substantial hazard or endangerment threatening the public health  
298 and safety \* \* \* or the environment that actually exists  
299 currently, existed previously, or is imminent to occur in the  
300 future;

301 (vii) The noncompliance shall not be a violation  
302 of an administrative order from the commission or the United  
303 States Environmental Protection Agency or of a judicial order;

304 (viii) This subparagraph (viii) shall be limited  
305 to the one-year period immediately before disclosure of the  
306 noncompliance described herein and shall be based solely on the  
307 compliance history of the specific facility or property that is  
308 the subject of the noncompliance described herein. Within this  
309 one-year period and at this single facility or property, the owner  
310 or operator of a facility or property shall not have committed  
311 significant violations of environmental laws that 1. constitute a  
312 pattern of continuous or repeated significant violations of a.  
313 environmental laws, b. administrative orders from or settlement  
314 agreements with the commission or the United States Environmental  
315 Protection Agency settling alleged significant violations of  
316 environmental laws, or c. judicial orders settling alleged  
317 significant violations of environmental laws; and 2. arose from  
318 either a. events giving rise to these alleged or actual  
319 significant violations that are separate and distinct from the  
320 significant violation noncompliance that is disclosed, or b.  
321 multiple administrative orders from or settlement agreements with  
322 the commission or the United States Environmental Protection  
323 Agency concerning the same significant violation noncompliance  
324 that is disclosed; and

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

327           (8) Any provision of this section and chapter regarding  
328 liability for the costs of cleanup, removal, remediation or  
329 abatement of any pollution, hazardous waste or solid waste shall  
330 be limited as provided in Section 49-17-42 and rules adopted  
331 thereto.

332           (9) If a person asserts the environmental self-evaluation  
333 report privilege, the commission shall not consider or hold such  
334 assertion against the person when the commission determines the  
335 amount of any penalty.

336           SECTION 4. Section 49-17-43, Mississippi Code of 1972, is  
337 amended as follows:

338           49-17-43. (a) Any person found by the commission violating  
339 any of the provisions of Sections 49-17-1 through 49-17-43, or any  
340 rule or regulation or written order of the commission in pursuance  
341 thereof or any condition or limitation of a permit, except a  
342 permit required under the Solid Wastes Disposal Law of 1974  
343 (Sections 17-17-1 through 17-17-47), shall be subject to a civil  
344 penalty of not more than Twenty-five Thousand Dollars  
345 (\$25,000.00), for each violation, such penalty to be assessed and  
346 levied by the commission after a hearing as provided hereinabove.  
347 Appeals from the imposition of the civil penalty may be taken to  
348 the chancery court in the same manner as appeals from orders of  
349 the commission. If the appellant desires to stay the execution of  
350 a civil penalty assessed by the commission, he shall give bond  
351 with sufficient resident sureties of one or more guaranty or  
352 surety companies authorized to do business in this state, payable  
353 to the State of Mississippi, in an amount equal to double the  
354 amount of any civil penalty assessed by the commission, as to  
355 which the stay of execution is desired, conditioned, if the  
356 judgment shall be affirmed, to pay all costs of the assessment

357 entered against the appellant. Each day upon which a violation  
358 occurs shall be deemed a separate and additional violation.

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

364 (b) In lieu of, or in addition to, the penalty provided in  
365 paragraph (a) of this section, the commission shall have power to  
366 institute and maintain in the name of the state any and all  
367 proceedings necessary or appropriate to enforce the provisions of  
368 Sections 49-17-1 through 49-17-43, rules and regulations in force  
369 pursuant thereto, and orders and permits made and issued under  
370 those sections, in the appropriate circuit, chancery, county or  
371 justice court of the county in which venue may lie. The  
372 commission may obtain mandatory or prohibitory injunctive relief,  
373 either temporary or permanent, and in cases of a substantial  
374 hazard or endangerment to the public health and safety or the  
375 environment that actually exists currently, existed previously or  
376 is imminent to occur in the future as set forth in Section  
377 49-17-27, it shall not be necessary in such cases that the state  
378 plead or prove: (i) that irreparable damage would result if the  
379 injunction did not issue; (ii) that there is no adequate remedy at  
380 law; or (iii) that a written complaint or commission order has  
381 first been issued for the alleged violation.

382 (c) Any person who violates any of the provisions of, or  
383 fails to perform any duty imposed by, Sections 49-17-1 through  
384 49-17-43 or any rule or regulation issued hereunder, or who  
385 violates any order or determination of the commission promulgated  
386 pursuant to such sections, and causes the death of fish or other  
387 wildlife shall be liable, in addition to the penalties provided in  
388 paragraphs (a) and/or (b) of this section, to pay to the state an  
389 additional amount equal to the sum of money reasonably necessary

390 to restock such waters or replenish such wildlife as determined by  
391 the commission after consultation with the Mississippi Commission  
392 on Wildlife, Fisheries and Parks. Such amount may be recovered by  
393 the commission on behalf of the state in a civil action brought in  
394 the appropriate county or circuit court of the county in which  
395 venue may lie.

396 (d) Any person who owns or operates facilities which,  
397 through misadventure, happenstance or otherwise, cause pollution  
398 necessitating immediate remedial or cleanup action shall be liable  
399 for the cost of such remedial or cleanup action and the commission  
400 may recover the cost of same by a civil action brought in the  
401 circuit court of the county in which venue may lie. This penalty  
402 may be recovered in lieu of or in addition to the penalties  
403 provided in paragraphs (a), (b) and/or (c) of this section.

404 In the event of the necessity for immediate remedial or  
405 cleanup action, the commission may contract for same and advance  
406 funds from the Pollution Emergency Fund to pay the costs thereof,  
407 such advancements to be repaid to the Pollution Emergency Fund  
408 upon recovery by the commission as provided above.

409 (e) It is unlawful for any person to: (1) discharge  
410 pollutants in violation of Section 49-17-29 or in violation of any  
411 condition or limitation included in a permit issued under Section  
412 49-17-29 or (2) introduce pollutants into publicly owned treatment  
413 works in violation of pretreatment standards or in violation of  
414 toxic effluent standards; and, upon conviction thereof, such  
415 person shall be punished by a fine of not less than Two Thousand  
416 Five Hundred Dollars (\$2,500.00) nor more than Twenty-five  
417 Thousand Dollars (\$25,000.00) per day of violation. The  
418 provisions in paragraph (g)(vii) that authorize the commission to  
419 reduce a penalty in certain cases involving voluntary  
420 self-evaluation disclosure shall not apply to this paragraph.

421 (f) All fines, penalties and other sums recovered or  
422 collected by the commission for and in behalf of the state under

423 this section shall be deposited in the Pollution Emergency Fund  
424 established under this chapter, and the commission is authorized  
425 to receive and accept, from any funds and all available sources  
426 whatsoever, additional funds to be deposited in such fund and  
427 expended for the purpose of remedial, cleanup or abatement actions  
428 involving pollution of the land, air or waters of the state in  
429 violation of Sections 49-17-1 through 49-17-43, any rule or  
430 regulation or written order of the commission in pursuance  
431 thereof, or any condition or limitation of a permit.

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

434 (i) The willfulness of the violation;

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

437 (iii) Costs of restoration and abatement;

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

439 (v) The seriousness of the violation, including any  
440 harm to the environment and any hazard to the health, safety and  
441 welfare of the public;

442 (vi) Past performance history; and

443 (vii) Whether the noncompliance was discovered and  
444 reported as the result of a voluntary self-evaluation. If a  
445 person discovers as a result of a voluntary self-evaluation,  
446 information related to noncompliance with an environmental law and  
447 voluntarily discloses that information to the department,  
448 commission or any employee thereof, the commission shall, to the  
449 greatest extent possible, reduce a penalty, other than a criminal  
450 penalty imposed under paragraph (g), if any, determined by the  
451 commission, except for economic benefit as a result of  
452 noncompliance, to a de minimis amount if all of the following are  
453 true concerning the noncompliance discovered and disclosed as a  
454 result of a voluntary self-evaluation:

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

457                   2. The person making the disclosure initiates the  
458 appropriate corrective actions and pursues those corrective  
459 actions with due diligence;

460                   3. The person making the disclosure cooperates  
461 with the commission and the department regarding investigation of  
462 the issues identified in the disclosure;

463                   4. The person is not otherwise required by an  
464 environmental law to make the disclosure to the commission or the  
465 department;

466                   5. The information was not obtained through any  
467 source independent of the voluntary self-evaluation or by the  
468 department through observation, sampling or monitoring; \* \* \*

469                   6. The noncompliance did not result in a  
470 substantial hazard or endangerment threatening the public health  
471 and safety \* \* \* or the environment that actually exists  
472 currently, existed previously or is imminent to occur in the  
473 future;

474                   7. Terms used in this subparagraph (vii) shall  
475 have the meanings ascribed in Section 49-2-2.

476           (h) Any provisions of this section and chapter regarding  
477 liability for the costs of cleanup, removal, remediation or  
478 abatement of any pollution, hazardous waste or solid waste shall  
479 be limited as provided in Section 49-17-42 and rules adopted  
480 thereto.

481           (i) If a person asserts the environmental self-evaluation  
482 report privilege, the commission shall not consider or hold such  
483 assertion against the person when the commission determines the  
484 amount of any penalty.

485           SECTION 5. Section 49-17-427, Mississippi Code of 1972, is  
486 amended as follows:

487           49-17-427. (1) Whenever the commission or an employee  
488 thereof has reason to believe that a violation of any provision of  
489 this chapter, or of any order of the commission, or of any  
490 regulation promulgated pursuant to this chapter has occurred, the  
491 commission shall initiate proceedings in the same manner as  
492 provided in Sections 49-17-31 through 49-17-41, Mississippi Code  
493 of 1972.

494           (2) Any person found by the commission violating any of the  
495 provisions of Sections 49-17-401 through 49-17-433, or any rule or  
496 regulation or written order of the commission shall be subject to  
497 a civil penalty of not more than Twenty-five Thousand Dollars  
498 (\$25,000.00) for each violation per day, such penalty to be  
499 assessed and levied by the commission as provided in Sections  
500 49-17-1 through 49-17-43, Mississippi Code of 1972.

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

503                 (a) The willfulness of the violation;

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

506                 (c) Costs of restoration or abatement;

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

508                 (e) The seriousness of the violation, including any  
509 harm to the environment and any hazard to the health, safety and  
510 welfare of the public;

511                 (f) Past performance history; and

512                 (g) Whether the noncompliance was discovered and  
513 reported as the result of a voluntary self-evaluation. If a  
514 person discovers as a result of a voluntary self-evaluation,  
515 information related to noncompliance with an environmental law and  
516 voluntarily discloses that information to the department,  
517 commission or any employee thereof, the commission shall, to the  
518 greatest extent possible, reduce a penalty, if any, determined by  
519 the commission, except for economic benefit as a result of



520 noncompliance, to a de minimis amount if all of the following are  
521 true:

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

524 (ii) The person making the disclosure initiates  
525 the appropriate corrective actions and pursues those corrective  
526 actions with due diligence;

527 (iii) The person making the disclosure cooperates  
528 with the commission and the department regarding investigation of  
529 the issues identified in the disclosure;

530 (iv) The person is not otherwise required by an  
531 environmental law to make the disclosure to the commission or the  
532 department;

533 (v) The information was not obtained through any  
534 source independent of the voluntary self-evaluation or by the  
535 department through observation, sampling or monitoring; \* \* \*

536 (vi) The noncompliance did not result in a  
537 substantial hazard or endangerment threatening the public health  
538 and safety \* \* \* or the environment that actually exists  
539 currently, existed previously or is imminent to occur in the  
540 future;

541 (vii) The noncompliance shall not be a violation  
542 of an administrative order from the commission or the United  
543 States Environmental Protection Agency or of a judicial order;

544 (viii) This subparagraph (viii) shall be limited  
545 to the one-year period immediately before disclosure of the  
546 noncompliance described herein and shall be based solely on the  
547 compliance history of the specific facility or property that is  
548 the subject of the noncompliance described herein. Within this  
549 one-year period and at this single facility or property, the owner  
550 or operator of a facility or property shall not have committed  
551 significant violations of environmental laws that 1. constitute a  
552 pattern of continuous or repeated significant violations of a.

553 environmental laws, b. administrative orders from or settlement  
554 agreements with the commission or the United States Environmental  
555 Protection Agency settling alleged significant violations of  
556 environmental laws, or c. judicial orders settling alleged  
557 significant violations of environmental laws; and 2. arose from  
558 either a. events giving rise to these alleged or actual  
559 significant violations that are separate and distinct from the  
560 significant violation noncompliance that is disclosed, or b.  
561 multiple administrative orders from or settlement agreements with  
562 the commission or the United States Environmental Protection  
563 Agency concerning the same significant violation noncompliance  
564 that is disclosed; and

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

567 (4) Any provisions of this section and chapter regarding  
568 liability for the costs of cleanup, removal, remediation or  
569 abatement of any pollution, hazardous waste or solid waste shall  
570 be limited as provided in Section 49-17-42 and rules adopted  
571 thereto.

572 (5) If a person asserts the environmental self-evaluation  
573 report privilege, the commission shall not consider or hold such  
574 asserting against the person when the commission determines the  
575 amount of the penalty.

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