SENATE BILL NO. 2972

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

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

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

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

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

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

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

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

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

SECTION 2. Section 49-17-43, Mississippi Code of 1972, is amended as follows:
49-17-43. (a) Any person found by the commission violating any of the provisions of Sections 49-17-1 through 49-17-43, or any rule or regulation or written order of the commission in pursuance thereof or any condition or limitation of a permit, except a permit required under the Solid Wastes Disposal Law of 1974 (Sections 17-17-1 through 17-17-47), shall be subject to a civil penalty of not more than Twenty-five Thousand Dollars ($25,000.00), for each violation, such penalty to be assessed and levied by the commission after a hearing as provided hereinabove. Appeals from the imposition of the civil penalty may be taken to the chancery court in the same manner as appeals from orders of the commission. If the appellant desires to stay the execution of a civil penalty assessed by the commission, he shall give bond with sufficient resident sureties of one or more guaranty or surety companies authorized to do business in this state, payable to the State of Mississippi, in an amount equal to double the amount of any civil penalty assessed by the commission, as to which the stay of execution is desired, conditioned, if the judgment shall be affirmed, to pay all costs of the assessment entered against the appellant. Each day upon which a violation occurs shall be deemed a separate and additional violation.

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

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

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

(d) Any person who owns or operates facilities which,
through misadventure, happenstance or otherwise, cause pollution
necessitating immediate remedial or clean-up action shall be
liable for the cost of such remedial or clean-up action and the
commission may recover the cost of same by a civil action brought
in the circuit court of the county in which venue may lie. This
penalty may be recovered in lieu of or in addition to the
penalties provided in subsection (a), (b) and/or (c) of this
section.
In the event of the necessity for immediate remedial or clean-up action, the commission may contract for same and advance funds from the Pollution Emergency Fund to pay the costs thereof, such advancements to be repaid to the Pollution Emergency Fund upon recovery by the commission as provided above.

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

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

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

(i) The willfulness of the violation;

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

(iii) Costs of restoration and abatement;

(iv) Economic benefit as a result of noncompliance;
(v) The seriousness of the violation, including any harm to the environment and any hazard to the health, safety and welfare of the public; and

(vi) Past performance history.

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

SECTION 3. Section 49-17-427, Mississippi Code of 1972, is amended as follows:

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

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

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

(a) The willfulness of the violation;

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

(c) Costs of restoration or abatement;

(d) Economic benefit as a result of noncompliance;
(e) The seriousness of the violation, including any harm to the environment and any hazard to the health, safety and welfare of the public; and

(f) Past performance history.

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

SECTION 4. Section 17-17-29, Mississippi Code of 1972, is amended as follows:

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

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

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

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

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

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

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

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

(a) The willfulness of the violation;
(b) Any damage to air, water, land or other natural resources of the state or their uses;
(c) Costs of restoration and abatement;
(d) Economic benefit as a result of noncompliance;
(e) The seriousness of the violation, including any harm to the environment and any hazard to the health, safety and welfare of the public; and
(f) Past performance history.

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

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

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