HOUSE BILL NO. 570
(As Sent to Governor)

AN ACT TO REENACT SECTION 91-9-9, MISSISSIPPI CODE OF 1972, WHICH PROVIDES FOR THE POWERS OF FIDUCIARIES TO PROMOTE COMPLIANCE WITH ENVIRONMENTAL LAWS; TO AMEND REENACTED SECTION 91-9-9, MISSISSIPPI CODE OF 1972, TO EXTEND THE REPEALER; AND FOR RELATED PURPOSES.

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

SECTION 1. Section 91-9-9, Mississippi Code of 1972, is reenacted and amended as follows:

91-9-9. (1) In addition to powers, remedies and rights which may be set forth in any will, trust agreement or other document which is the source of authority, a trustee, executor, administrator, guardian, or one acting in any other fiduciary capacity, whether an individual, corporation or other entity ("fiduciary") shall have the following powers, rights and remedies whether or not set forth in the will, trust agreement or other document which is the source of authority:

(a) To inspect, investigate or cause to be inspected and investigated, property held by the fiduciary, including interests in sole proprietorships, partnerships, or corporations and any assets owned by any such business enterprise, for the purpose of determining compliance with any environmental law affecting such property and to respond to any actual or potential violation of any environmental law affecting property held by the fiduciary;

(b) To take on behalf of the estate or trust, any action necessary to prevent, abate, or otherwise remedy any actual or potential violation of any environmental law affecting property held by the fiduciary;
held by the fiduciary, either before or after the initiation of an
enforcement action by any governmental body;

(c) To refuse to accept property in trust if the
fiduciary determines that any property to be donated or conveyed
to the trust either is contaminated by any hazardous substance, or
is being used or has been used for any activity directly or
indirectly involving any hazardous substance, which could result
in liability to the trust or otherwise impair the value of the
assets held therein;

(d) To settle or compromise at any time any and all
claims against the trust or estate which may be asserted by any
governmental body or private party involving the alleged violation
of any environmental law affecting property held in trust or in an
estate;

(e) To disclaim any power granted by any document,
statute, or rule of law which, in the sole discretion of the
fiduciary, may cause the fiduciary to incur personal liability
under any environmental law;

(f) To decline to serve as a fiduciary, if the
fiduciary reasonably believes that there is or may be a conflict
of interest between the fiduciary in its or his fiduciary capacity
and in its or his individual capacity, because of potential claims
or liabilities which may be asserted against the fiduciary on
behalf of the trust or estate due to the type or condition of
assets held therein.

(2) An administrator, executor, guardian or conservator is
not relieved under this chapter from obtaining court approval for
any actions which otherwise are required to be approved by a
court.

(3) The fiduciary shall be entitled to charge the cost of
any inspection, investigation, review, abatement, response,
cleanup, or remedial action authorized herein against the income
or principal of the trust or estate. A fiduciary shall not be
personally liable to any beneficiary or other party for any
decrease in value of assets in trust or in an estate by reason of
the fiduciary's compliance or efforts to comply with any
environmental law, specifically including any reporting
requirement under such law. Neither the acceptance by the
fiduciary of property or a failure by the fiduciary to inspect or
investigate property shall be deemed to create any inference as to
whether there is or may be any liability under any environmental
law with respect to such property.

(4) For purposes of this section, "environmental law" means
any federal, state, or local law, rule, regulation, or ordinance
relating to protection of the environment or human health. For
purposes of this section, "hazardous substances" means any
substance defined as hazardous or toxic or otherwise regulated by
any environmental law.

(5) A fiduciary in its or his individual capacity shall not
be considered an owner or operator of any property of the trust or
estate for the purposes of any environmental law.

(6) Notwithstanding any other provision of this chapter, the
fiduciary is subject at all times to the provisions of the Prudent
Man Standard in all its dealings.

(7) The provisions of this section shall stand repealed from
and after July 1, 2008.

SECTION 2. This act shall take effect and be in force from
and after July 1, 2002.