

By: Senator(s) Nunnelee

To: Environment Prot, Cons  
and Water Res

SENATE BILL NO. 2001

1 AN ACT TO AMEND SECTION 49-2-71, MISSISSIPPI CODE OF 1972, TO  
2 PROVIDE THAT THE ENVIRONMENTAL SELF-AUDIT PRIVILEGE IS NOT  
3 AVAILABLE IN CRIMINAL CASES; TO AMEND SECTIONS 49-17-43, 49-17-427  
4 AND 17-17-29, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT SELF-AUDIT  
5 PENALTY MITIGATION IS NOT AVAILABLE TO CERTAIN REPEAT OFFENDERS;  
6 TO FURTHER AMEND SECTION 17-17-29, MISSISSIPPI CODE OF 1972, TO  
7 REMOVE ENVIRONMENTAL FELONY PENALTY; TO CREATE SECTION 17-17-67,  
8 MISSISSIPPI CODE OF 1972, TO RECODIFY THE ENVIRONMENTAL FELONY  
9 PROVISION REMOVED FROM SECTION 17-17-29, MISSISSIPPI CODE OF 1972;  
10 AND FOR RELATED PURPOSES.

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

12 **SECTION 1.** Section 49-2-71, Mississippi Code of 1972, is  
13 amended as follows:

14 49-2-71. (1) An environmental self-evaluation report, as  
15 defined in Section 49-2-2, is privileged and is not admissible in  
16 any legal or investigative action in any civil \* \* \* or  
17 administrative proceeding and is not subject to any discovery  
18 pursuant to the rules of civil procedure \* \* \* or administrative  
19 procedure, unless:

20 (a) The person for whom the environmental  
21 self-evaluation report was prepared, irrespective of whether the  
22 self-evaluation report was conducted and/or prepared by a private  
23 contractor hired by the person, expressly waives the provisions of  
24 this section;

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

28 (i) The environmental self-evaluation report shows  
29 evidence that the person for which the environmental  
30 self-evaluation report was prepared is not or was not in  
31 compliance with an environmental law; and



32                   (ii) The person did not initiate appropriate  
33 efforts to achieve compliance with the environmental law or  
34 complete any necessary permit application promptly after the  
35 noncompliance with the environmental law was discovered and, as a  
36 result, the person did not or will not achieve compliance with the  
37 environmental law or complete the necessary permit application  
38 within a reasonable amount of time.

39                   (iii) For the purposes of paragraphs (b)(i) and  
40 (b)(ii) only, if the evidence shows noncompliance by a person with  
41 more than one (1) environmental law, the person may demonstrate  
42 that appropriate efforts to achieve compliance were or are being  
43 taken by instituting a comprehensive program that establishes a  
44 phased schedule of actions to be taken to bring the person into  
45 compliance with all of such environmental laws.

46                   (c) The court of record or hearing officer, who shall  
47 be neutral and independent, after an in camera review, determines  
48 that the privilege is being asserted for a fraudulent purpose or  
49 that the environmental self-evaluation report was prepared to  
50 avoid disclosure of information in an investigative,  
51 administrative, or judicial proceeding that was underway, or for  
52 which the person had been provided written notification that an  
53 investigation into a specific violation had been initiated; or

54                   (d) The court of record or hearing officer, who shall  
55 be neutral and independent, determines that even if subject to the  
56 privilege, it is found that a condition exists that demonstrates  
57 an imminent and substantial hazard or endangerment to the public  
58 health and safety or the environment.

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

61                   (a) Documents or information required to be developed,  
62 maintained or reported pursuant to any environmental law or any  
63 other law or regulation; or



64 (b) Documents or other information required to be made  
65 available or furnished to a regulatory agency pursuant to any  
66 environmental law or any other law or regulation; or

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

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

73 (e) Documents existing prior to the commencement of and  
74 independent of the voluntary self-evaluation with the exception of  
75 evidence establishing a request for compliance assistance to the  
76 appropriate government agency or authority.

77 (3) (a) Upon a showing by any party, based upon independent  
78 knowledge, that probable cause exists to believe that an exception  
79 to the self-evaluation privilege under subsection (1) of this  
80 section is applicable to an environmental self-evaluation report  
81 or that the privilege does not apply to the environmental  
82 self-evaluation report pursuant to the provisions of subsection  
83 (2) of this section, then a court of record or hearing officer,  
84 who shall be neutral and independent, may allow such party limited  
85 access to the environmental self-evaluation report for the  
86 purposes of an in camera review only. The court of record or the  
87 hearing officer may grant limited access to all or part of the  
88 environmental self-evaluation report under the provisions of this  
89 subsection (3) upon such conditions as may be necessary to protect  
90 the confidentiality of the environmental self-evaluation report.  
91 A moving party who obtains access to an environmental  
92 self-evaluation report pursuant to the provisions of this  
93 subsection (3) may not divulge any information from the report  
94 except as specifically allowed by the court or hearing officer.

95 (b) If any party divulges all or any part of the  
96 information contained in an environmental self-evaluation report



97 in violation of the provisions of paragraph (a) of this subsection  
98 (3) or if any other person knowingly divulges or disseminates all  
99 or any part of the information contained in an environmental  
100 self-evaluation report that was provided to such person in  
101 violation of the provisions of paragraph (a) of this subsection  
102 (3), such party or other person is liable for any damages caused  
103 by the divulgence or dissemination of the information that are  
104 incurred by the person for which the environmental self-evaluation  
105 report was prepared. The court or hearing officer also may issue  
106 such contempt orders and sanctions against the offending party or  
107 such party's legal counsel as may be necessary to ensure  
108 compliance.

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

111 (5) A person asserting a voluntary self-evaluation privilege  
112 has the burden of proving a prima facie case as to the privilege.  
113 A party seeking disclosure of an environmental self-evaluation  
114 report has the burden of proving that such privilege does not  
115 exist under this section.

116 (6) All environmental self-evaluation reports that are  
117 protected by the self-evaluation privilege created by this section  
118 shall be privileged and exempt from the provisions of the  
119 Mississippi Public Records Act in accordance with Section  
120 25-61-11, Mississippi Code of 1972.

121 **SECTION 2.** Section 49-17-43, Mississippi Code of 1972, is  
122 amended as follows:

123 49-17-43. (1) Any person found by the commission violating  
124 any of the provisions of Sections 49-17-1 through 49-17-43, or any  
125 rule or regulation or written order of the commission in pursuance  
126 thereof or any condition or limitation of a permit, except a  
127 permit required under the Solid Wastes Disposal Law of 1974  
128 (Sections 17-17-1 through 17-17-47), shall be subject to a civil  
129 penalty of not more than Twenty-five Thousand Dollars



130 (\$25,000.00), for each violation, such penalty to be assessed and  
131 levied by the commission after a hearing \* \* \*. Appeals from the  
132 imposition of the civil penalty may be taken to the chancery court  
133 in the same manner as appeals from orders of the commission. If  
134 the appellant desires to stay the execution of a civil penalty  
135 assessed by the commission, he shall give bond with sufficient  
136 resident sureties of one or more guaranty or surety companies  
137 authorized to do business in this state, payable to the State of  
138 Mississippi, in an amount equal to double the amount of any civil  
139 penalty assessed by the commission, as to which the stay of  
140 execution is desired, conditioned, if the judgment shall be  
141 affirmed, to pay all costs of the assessment entered against the  
142 appellant. Each day upon which a violation occurs shall be deemed  
143 a separate and additional violation.

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

149 (2) In lieu of, or in addition to, the penalty provided in  
150 subsection (1) of this section, the commission shall have power to  
151 institute and maintain in the name of the state any and all  
152 proceedings necessary or appropriate to enforce the provisions of  
153 Sections 49-17-1 through 49-17-43, rules and regulations in force  
154 pursuant thereto, and orders and permits made and issued under  
155 those sections, in the appropriate circuit, chancery, county or  
156 justice court of the county in which venue may lie. The  
157 commission may obtain mandatory or prohibitory injunctive relief,  
158 either temporary or permanent, and in cases of imminent and  
159 substantial hazard or endangerment as set forth in Section  
160 49-17-27, it shall not be necessary in such cases that the state  
161 plead or prove: (a) that irreparable damage would result if the  
162 injunction did not issue; (b) that there is no adequate remedy at



163 law; or (c) that a written complaint or commission order has first  
164 been issued for the alleged violation.

165 (3) Any person who violates any of the provisions of, or  
166 fails to perform any duty imposed by, Sections 49-17-1 through  
167 49-17-43 or any rule or regulation issued hereunder, or who  
168 violates any order or determination of the commission promulgated  
169 pursuant to such sections, and causes the death of fish or other  
170 wildlife shall be liable, in addition to the penalties provided in  
171 subsections (1) and (2) of this section, to pay to the state an  
172 additional amount equal to the sum of money reasonably necessary  
173 to restock such waters or replenish such wildlife as determined by  
174 the commission after consultation with the Mississippi Commission  
175 on Wildlife, Fisheries and Parks. Such amount may be recovered by  
176 the commission on behalf of the state in a civil action brought in  
177 the appropriate county or circuit court of the county in which  
178 venue may lie.

179 (4) Any person who owns or operates facilities which,  
180 through misadventure, happenstance or otherwise, cause pollution  
181 necessitating immediate remedial or clean-up action shall be  
182 liable for the cost of such remedial or clean-up action and the  
183 commission may recover the cost of same by a civil action brought  
184 in the circuit court of the county in which venue may lie. This  
185 penalty may be recovered in lieu of or in addition to the  
186 penalties provided in subsections (1), (2) and (3) of this  
187 section.

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

193 (5) It is unlawful for any person to: (a) discharge  
194 pollutants in violation of Section 49-17-29 or in violation of any  
195 condition or limitation included in a permit issued under Section



196 49-17-29 or (b) introduce pollutants into publicly owned treatment  
197 works in violation of pretreatment standards or in violation of  
198 toxic effluent standards; and, upon conviction thereof, such  
199 person shall be punished by a fine of not less than Two Thousand  
200 Five Hundred Dollars (\$2,500.00) nor more than Twenty-five  
201 Thousand Dollars (\$25,000.00) per day of violation.

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

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

215 (a) The willfulness of the violation;

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

218 (c) Costs of restoration and abatement;

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

220 (e) The seriousness of the violation, including any  
221 harm to the environment and any hazard to the health, safety and  
222 welfare of the public;

223 (f) Past performance history; and

224 (g) Whether the noncompliance was discovered and  
225 reported as the result of a voluntary self-evaluation. If a  
226 person discovers as a result of a voluntary self-evaluation,  
227 information related to noncompliance with an environmental law and  
228 voluntarily discloses that information to the department,



229 commission or any employee thereof, the commission shall, to the  
230 greatest extent possible, reduce a penalty, if any, determined by  
231 the commission, except for economic benefit as a result of  
232 noncompliance, to a de minimis amount if all of the following are  
233 true:

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

236           (ii) The person making the disclosure initiates  
237 the appropriate corrective actions and pursues those corrective  
238 actions with due diligence;

239           (iii) The person making the disclosure cooperates  
240 with the commission and the department regarding investigation of  
241 the issues identified in the disclosure;

242           (iv) The person is not otherwise required by an  
243 environmental law to make the disclosure to the commission or the  
244 department;

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

248           (vi) The noncompliance did not result in a  
249 substantial endangerment threatening the public health, safety or  
250 welfare or the environment; and

251           (vii) The noncompliance is not a repeat violation  
252 occurring at the same facility within a period of three (3) years.  
253 "Repeat violation" in this subparagraph means a second or  
254 subsequent violation, after the first violation has ceased, of the  
255 same statutory provision, regulation, permit condition, or  
256 condition in an order of the commission.

257       (8) Any provisions of this section and chapter regarding  
258 liability for the costs of cleanup, removal, remediation or  
259 abatement of any pollution, hazardous waste or solid waste shall  
260 be limited as provided in Section 49-17-42 and rules adopted  
261 thereto.





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

264           49-17-427. (1) Whenever the commission or an employee  
265 thereof has reason to believe that a violation of any provision of  
266 this chapter, or of any order of the commission, or of any  
267 regulation promulgated pursuant to this chapter has occurred, the  
268 commission shall initiate proceedings in the same manner as  
269 provided in Sections 49-17-31 through 49-17-41, Mississippi Code  
270 of 1972.

271           (2) Any person found by the commission violating any of the  
272 provisions of Sections 49-17-401 through 49-17-433, or any rule or  
273 regulation or written order of the commission shall be subject to  
274 a civil penalty of not more than Twenty-five Thousand Dollars  
275 (\$25,000.00) for each violation per day, such penalty to be  
276 assessed and levied by the commission as provided in Sections  
277 49-17-1 through 49-17-43, Mississippi Code of 1972.

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

280                   (a) The willfulness of the violation;

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

283                   (c) Costs of restoration or abatement;

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

285                   (e) The seriousness of the violation, including any  
286 harm to the environment and any hazard to the health, safety and  
287 welfare of the public;

288                   (f) Past performance history; and

289                   (g) Whether the noncompliance was discovered and  
290 reported as the result of a voluntary self-evaluation. If a  
291 person discovers as a result of a voluntary self-evaluation,  
292 information related to noncompliance with an environmental law and  
293 voluntarily discloses that information to the department,  
294 commission or any employee thereof, the commission shall, to the



295 greatest extent possible, reduce a penalty, if any, determined by  
296 the commission, except for economic benefit as a result of  
297 noncompliance, to a de minimis amount if all of the following are  
298 true:

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

301 (ii) The person making the disclosure initiates  
302 the appropriate corrective actions and pursues those corrective  
303 actions with due diligence;

304 (iii) The person making the disclosure cooperates  
305 with the commission and the department regarding investigation of  
306 the issues identified in the disclosure;

307 (iv) The person is not otherwise required by an  
308 environmental law to make the disclosure to the commission or the  
309 department;

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

313 (vi) The noncompliance did not result in a  
314 substantial endangerment threatening the public health, safety or  
315 welfare or the environment; and

316 (vii) The noncompliance is not a repeat violation  
317 occurring at the same facility within a period of three (3) years.  
318 "Repeat violation" in this subparagraph means a second or  
319 subsequent violation, after the first violation has ceased, of the  
320 same statutory provision, regulation, permit condition, or  
321 condition in an order of the commission.

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



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

329           17-17-29. (1) Any person found by the commission violating  
330 any of the provisions of Sections 17-17-1 through 17-17-47, or any  
331 rule or regulation or written order of the commission in pursuance  
332 thereof, or any condition or limitation of a permit, shall be  
333 subject to a civil penalty of not more than Twenty-five Thousand  
334 Dollars (\$25,000.00) for each violation, such penalty to be  
335 assessed and levied by the commission after a hearing. Appeals  
336 from the imposition of the civil penalty may be taken to the  
337 chancery court in the same manner as appeals from orders of the  
338 commission. If the appellant desires to stay the execution of a  
339 civil penalty assessed by the commission, he shall give bond with  
340 sufficient resident sureties of one or more guaranty or surety  
341 companies authorized to do business in this state, payable to the  
342 State of Mississippi, in an amount equal to double the amount of  
343 any civil penalty assessed by the commission, as to which the stay  
344 of execution is desired, conditioned, if the judgment shall be  
345 affirmed, to pay all costs of the assessment entered against the  
346 appellant. Each day upon which such violation occurs shall be  
347 deemed a separate and additional violation.

348           (2) In lieu of, or in addition to, the penalty provided in  
349 subsection (1) of this section, the commission shall have the  
350 power to institute and maintain in the name of the state any and  
351 all proceedings necessary or appropriate to enforce the provisions  
352 of Sections 17-17-1 through 17-17-47, rules and regulations in  
353 force pursuant thereto, and orders and permits made and issued  
354 under those sections, in the appropriate circuit, chancery, county  
355 or 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 imminent and  
358 substantial hazard as set forth in Section 17-17-27, \* \* \* it  
359 shall not be necessary in such cases that the state plead or prove



360 (a) that irreparable damage would result if the injunction did not  
361 issue; (b) that there is no adequate remedy at law; or (c) that a  
362 written complaint or commission order has first been issued for  
363 the alleged violation.

364 (3) Any person who violates any of the provisions of, or  
365 fails to perform any duty imposed by, Sections 17-17-1 through  
366 17-17-47, 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 wildlife shall  
369 be liable, in addition to the penalties provided in subsections  
370 (1) and (2) of this section, to pay to the state an additional  
371 amount equal to the sum of money reasonably necessary to replenish  
372 such wildlife as determined by the commission after consultation  
373 with the Mississippi Commission on Wildlife, Fisheries and Parks.  
374 Such amount may be recovered by the commission on behalf of the  
375 state in a civil action brought in the appropriate county or  
376 circuit court of the county in which venue may lie.

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

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

391 (5) Any person who knowingly violates any provision of this  
392 chapter or violates any order issued by the commission under the



393 authority of this chapter shall, upon conviction, be guilty of a  
394 misdemeanor and shall be subject to a fine of not more than  
395 Twenty-five Thousand Dollars (\$25,000.00) for each day of  
396 violation or to imprisonment not to exceed one (1) year, or both.  
397 Each day's violation shall constitute a separate offense.

398 \* \* \*

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

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

413 (a) The willfulness of the violation;

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

416 (c) Costs of restoration and abatement;

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

418 (e) The seriousness of the violation, including any  
419 harm to the environment and any hazard to the health, safety and  
420 welfare of the public;

421 (f) Past performance history; and

422 (g) Whether the noncompliance was discovered and  
423 reported as the result of a voluntary self-evaluation. If a  
424 person discovers as a result of a voluntary self-evaluation,  
425 information related to noncompliance with an environmental law and



426 voluntarily discloses that information to the department,  
427 commission or any employee thereof, the commission shall, to the  
428 greatest extent possible, reduce a penalty, if any, determined by  
429 the commission, except for economic benefit as a result of  
430 noncompliance, to a de minimis amount if all of the following are  
431 true:

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

434 (ii) The person making the disclosure initiates  
435 the appropriate corrective actions and pursues those corrective  
436 actions with due diligence;

437 (iii) The person making the disclosure cooperates  
438 with the commission and the department regarding investigation of  
439 the issues identified in the disclosure;

440 (iv) The person is not otherwise required by an  
441 environmental law to make the disclosure to the commission or the  
442 department;

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

446 (vi) The noncompliance did not result in a  
447 substantial endangerment threatening the public health, safety or  
448 welfare or the environment; and

449 (vii) The noncompliance is not a repeat violation  
450 occurring at the same facility within a period of three (3) years.  
451 "Repeat violation" in this subparagraph means a second or  
452 subsequent violation, after the first violation has ceased, of the  
453 same statutory provision, regulation, permit condition, or  
454 condition in an order of the commission.

455 (9) Any provision of this section and chapter regarding  
456 liability for the costs of cleanup, removal, remediation or  
457 abatement of any pollution, hazardous waste or solid waste shall



458 be limited as provided in Section 49-17-42 and rules adopted  
459 thereto.

460 (10) Any person who violates Section 49-17-603, shall, in  
461 addition to any other penalties, be subject to the penalties  
462 provided in this section.

463 **SECTION 5.** The following shall be codified as Section  
464 17-17-67, Mississippi Code of 1972:

465 17-17-67. (1) Any person who purposely or recklessly  
466 disposes of any hazardous waste in violation of this chapter which  
467 contaminates a drinking water source to the extent that it is  
468 unsafe for human consumption, as determined by the state agency  
469 charged with the responsibility of regulating safe drinking water  
470 for human consumption; or any person who purposely or recklessly  
471 disposes of any hazardous waste in violation of this chapter and  
472 who knows that he places another person in imminent danger of  
473 death or serious bodily injury shall, upon conviction, be guilty  
474 of a felony, and shall be subject to imprisonment for a term of  
475 not less than one (1) year nor more than ten (10) years, and shall  
476 also be subject to a fine of not less than Five Thousand Dollars  
477 (\$5,000.00) nor more than Fifty Thousand Dollars (\$50,000.00) for  
478 each day of violation or both fine and imprisonment. The fine  
479 shall not exceed a total of One Million Dollars (\$1,000,000.00).

480 (2) For purposes of this section, a person acts purposely  
481 with respect to a material element of an offense when:

482 (a) If the element involves the nature of his conduct  
483 or a result thereof, it is his conscious object to engage in  
484 conduct of that nature or to cause such a result; and

485 (b) If the element involves the attendant  
486 circumstances, he is aware of the existence of such circumstances  
487 or he believes or hopes that they exist.

488 (3) For purposes of this section, a person acts recklessly  
489 with respect to a material element of an offense when he  
490 consciously disregards a substantial and unjustifiable risk that



491 the material element exists or will result from his conduct. The  
492 risk must be of such a nature and degree that, considering the  
493 nature and purpose of the actor's conduct and the circumstances  
494 known to him, its disregard involves a gross deviation from the  
495 standard of conduct that a law-abiding person would observe in the  
496 actor's situation.

497 (4) This section shall not apply to any person holding a  
498 permit from the Department of Environmental Quality and acting  
499 within the scope of that permit.

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

