

By: Senator(s) Nunnelee

To: Environment Prot, Cons
and Water Res

SENATE BILL NO. 2944
(As Passed the Senate)

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 FELONY PENALTY; TO CREATE SECTION 17-17-67, MISSISSIPPI
8 CODE OF 1972, TO RECODIFY THE FELONY PROVISION REMOVED FROM
9 SECTION 17-17-29, MISSISSIPPI CODE OF 1972; AND FOR RELATED
10 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, * * *
26 after in camera review, determines that:

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



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

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

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

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

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

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



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

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

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

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

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

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



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

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

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

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

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

122 49-17-43. (1) Any person found by the commission violating
123 any of the provisions of Sections 49-17-1 through 49-17-43, or any
124 rule or regulation or written order of the commission in pursuance
125 thereof or any condition or limitation of a permit, except a
126 permit required under the Solid Wastes Disposal Law of 1974
127 (Sections 17-17-1 through 17-17-47), shall be subject to a civil
128 penalty of not more than Twenty-five Thousand Dollars



129 (\$25,000.00), for each violation, such penalty to be assessed and
130 levied by the commission after a hearing * * *. Appeals from the
131 imposition of the civil penalty may be taken to the chancery court
132 in the same manner as appeals from orders of the commission. If
133 the appellant desires to stay the execution of a civil penalty
134 assessed by the commission, he shall give bond with sufficient
135 resident sureties of one or more guaranty or surety companies
136 authorized to do business in this state, payable to the State of
137 Mississippi, in an amount equal to double the amount of any civil
138 penalty assessed by the commission, as to which the stay of
139 execution is desired, conditioned, if the judgment shall be
140 affirmed, to pay all costs of the assessment entered against the
141 appellant. Each day upon which a violation occurs shall be deemed
142 a separate and additional violation.

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

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



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

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

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

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

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



195 49-17-29 or (b) introduce pollutants into publicly owned treatment
196 works in violation of pretreatment standards or in violation of
197 toxic effluent standards; and, upon conviction thereof, such
198 person shall be punished by a fine of not less than Two Thousand
199 Five Hundred Dollars (\$2,500.00) nor more than Twenty-five
200 Thousand Dollars (\$25,000.00) per day of violation.

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

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

214 (a) The willfulness of the violation;

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

217 (c) Costs of restoration and abatement;

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

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

222 (f) Past performance history; and

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



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

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

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

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

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

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

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

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

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



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

263 49-17-427. (1) Whenever the commission or an employee
264 thereof has reason to believe that a violation of any provision of
265 this chapter, or of any order of the commission, or of any
266 regulation promulgated pursuant to this chapter has occurred, the
267 commission shall initiate proceedings in the same manner as
268 provided in Sections 49-17-31 through 49-17-41, Mississippi Code
269 of 1972.

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

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

279 (a) The willfulness of the violation;

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

282 (c) Costs of restoration or abatement;

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

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

287 (f) Past performance history; and

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



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

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

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

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

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

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

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

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

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



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

328 17-17-29. (1) Any person found by the commission violating
329 any of the provisions of Sections 17-17-1 through 17-17-47, or any
330 rule or regulation or written order of the commission in pursuance
331 thereof, or any condition or limitation of a permit, shall be
332 subject to a civil penalty of not more than Twenty-five Thousand
333 Dollars (\$25,000.00) for each violation, such penalty to be
334 assessed and levied by the commission after a hearing. Appeals
335 from the imposition of the civil penalty may be taken to the
336 chancery court in the same manner as appeals from orders of the
337 commission. If the appellant desires to stay the execution of a
338 civil penalty assessed by the commission, he shall give bond with
339 sufficient resident sureties of one or more guaranty or surety
340 companies authorized to do business in this state, payable to the
341 State of Mississippi, in an amount equal to double the amount of
342 any civil penalty assessed by the commission, as to which the stay
343 of execution is desired, conditioned, if the judgment shall be
344 affirmed, to pay all costs of the assessment entered against the
345 appellant. Each day upon which such violation occurs shall be
346 deemed a separate and additional violation.

347 (2) In lieu of, or in addition to, the penalty provided in
348 subsection (1) of this section, the commission shall have the
349 power to institute and maintain in the name of the state any and
350 all proceedings necessary or appropriate to enforce the provisions
351 of Sections 17-17-1 through 17-17-47, rules and regulations in
352 force pursuant thereto, and orders and permits made and issued
353 under those sections, in the appropriate circuit, chancery, county
354 or justice court of the county in which venue may lie. The
355 commission may obtain mandatory or prohibitory injunctive relief,
356 either temporary or permanent, and in cases of imminent and
357 substantial hazard as set forth in Section 17-17-27, * * * it
358 shall not be necessary in such cases that the state plead or prove



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

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

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

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

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



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

397 * * *

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

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

412 (a) The willfulness of the violation;

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

415 (c) Costs of restoration and abatement;

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

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

420 (f) Past performance history; and

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



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

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

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

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

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

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

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

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

454 (8) Any provision of this section and chapter regarding
455 liability for the costs of clean-up, removal, remediation or
456 abatement of any pollution, hazardous waste or solid waste shall



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

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

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

464 17-17-67. (1) Any person who purposely or recklessly
465 disposes of any hazardous waste in violation of this chapter which
466 contaminates a drinking water source to the extent that it is
467 unsafe for human consumption, as determined by the state agency
468 charged with the responsibility of regulating safe drinking water
469 for human consumption; or any person who purposely or recklessly
470 disposes of any hazardous waste in violation of this chapter and
471 who knows that he places another person in imminent danger of
472 death or serious bodily injury shall, upon conviction, be guilty
473 of a felony, and shall be subject to imprisonment for a term of
474 not less than one (1) year nor more than ten (10) years, and shall
475 also be subject to a fine of not less than Five Thousand Dollars
476 (\$5,000.00) nor more than Fifty Thousand Dollars (\$50,000.00) for
477 each day of violation or both fine and imprisonment. The fine
478 shall not exceed a total of One Million Dollars (\$1,000,000.00).

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

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

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

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



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

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

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

