

**\*\*\*Adopted\*\*\***  
**AMENDMENT No. 1 PROPOSED TO**

**House Bill NO. 1161**

**By Senator(s) Committee**

**Amend by striking all after the enacting clause and inserting  
in lieu thereof the following:**

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

by the divulgence or dissemination of the information that are incurred by the person for which the environmental self-evaluation report was prepared. The court or hearing officer also may issue such contempt orders and sanctions against the offending party or such party's legal counsel as may be necessary to ensure compliance.

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

(5) A person asserting a voluntary self-evaluation privilege has the burden of proving a prima facie case as to the privilege.

A party seeking disclosure of an environmental self-evaluation report has the burden of proving that such privilege does not exist under this section.

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

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

49-17-43. (1) 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 \* \* \*. 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.

(2) In lieu of, or in addition to, the penalty provided in subsection (1) 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: (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 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 (1) and/or (2) 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.

(4) 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 (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 above.

(5) It is unlawful for any person to: (a) 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 (b) 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.

(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 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.

(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;

(f) Past performance history; and

(g) Whether the noncompliance was discovered and reported as the result of a voluntary self-evaluation. If a person discovers as a result of a voluntary self-evaluation, information related to noncompliance with an environmental law and voluntarily discloses that information to the department, commission or any employee thereof, the commission shall, to the greatest extent possible, reduce a penalty, if any, determined by the commission, except for economic benefit as a result of noncompliance, to a de minimis amount if all of the following are true:

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

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

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

(iv) The person is not otherwise required by an

environmental law to make the disclosure to the commission or the department;

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

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

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

(8) Any provisions of this section and chapter regarding liability for the costs of cleanup, 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.



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; \* \* \*

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

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

(4) Any provisions of this section and chapter regarding liability for the costs of cleanup, 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.

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.

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;

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

same statutory provision, regulation, permit condition, or  
condition in an order of the commission.

(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.

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

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

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

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

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

(b) If the element involves the attendant circumstances, he is aware of the existence of such circumstances 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.

**Further, amend by striking the title in its entirety and  
inserting in lieu thereof the following:**

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.