

By: Senator(s) Nunnelee

To: Environment Prot, Cons
and Water Res

SENATE BILL NO. 2001
(As Sent to Governor)

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 PROVIDE THAT, IF AN ENVIRONMENTAL
4 SELF-EVALUATION REPORT IS MADE ON OR AFTER THE EFFECTIVE DATE OF
5 THIS ACT, THE REPORT SHALL BE ADMISSIBLE IN A CIVIL OR
6 ADMINISTRATIVE PROCEEDING IF THE COURT FINDS THAT A CONDITION
7 EXISTS OR EXISTED AT THE TIME OF THE REPORT THAT DEMONSTRATES OR
8 DEMONSTRATED AN IMMINENT AND SUBSTANTIAL HAZARD OR ENDANGERMENT TO
9 THE PUBIC HEALTH AND SAFETY OR THE ENVIRONMENT; TO AMEND SECTIONS
10 49-17-43, 49-17-427 AND 17-17-29, MISSISSIPPI CODE OF 1972, TO
11 PROVIDE THAT SELF-AUDIT PENALTY MITIGATION IS NOT AVAILABLE TO
12 CERTAIN REPEAT OFFENDERS; TO FURTHER AMEND SECTION 17-17-29,
13 MISSISSIPPI CODE OF 1972, TO REMOVE THE ENVIRONMENTAL FELONY
14 PENALTY; TO CREATE SECTION 17-17-67, MISSISSIPPI CODE OF 1972, TO
15 RECODIFY THE ENVIRONMENTAL FELONY PROVISION REMOVED FROM SECTION
16 17-17-29, MISSISSIPPI CODE OF 1972; AND FOR RELATED PURPOSES.

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

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

20 49-2-71. (1) An environmental self-evaluation report, as
21 defined in Section 49-2-2, is privileged and is not admissible in
22 any legal or investigative action in any civil * * * or
23 administrative proceeding and is not subject to any discovery
24 pursuant to the rules of civil procedure * * * or administrative
25 procedure, unless:

26 (a) The person for whom the environmental
27 self-evaluation report was prepared, irrespective of whether the
28 self-evaluation report was conducted and/or prepared by a private
29 contractor hired by the person, expressly waives the provisions of
30 this section;

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



34 (i) The environmental self-evaluation report shows
35 evidence that the person for which the environmental
36 self-evaluation report was prepared is not or was not in
37 compliance with an environmental law; * * *

38 (ii) The person did not initiate appropriate
39 efforts to achieve compliance with the environmental law or
40 complete any necessary permit application promptly after the
41 noncompliance with the environmental law was discovered and, as a
42 result, the person did not or will not achieve compliance with the
43 environmental law or complete the necessary permit application
44 within a reasonable amount of time;

45 (iii) For the purposes of paragraphs (b)(i) and
46 (b)(ii) only, if the evidence shows noncompliance by a person with
47 more than one (1) environmental law, the person may demonstrate
48 that appropriate efforts to achieve compliance were or are being
49 taken by instituting a comprehensive program that establishes a
50 phased schedule of actions to be taken to bring the person into
51 compliance with all of such environmental laws;

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

60 (d) (i) For environmental self-evaluation reports made
61 before the effective date of this act, the court of record or
62 hearing officer, who shall be neutral and independent, determines
63 that even if subject to the privilege, it is found that a
64 condition exists that demonstrates an imminent and substantial
65 hazard or endangerment to the public health and safety or the
66 environment;



67 (ii) For an environmental self-evaluation report
68 that was made on or after the effective date of this act, the
69 court of record or hearing officer, who shall be neutral and
70 independent, determines that even if subject to the privilege, it
71 is found that a condition exists or existed at the time of the
72 report that demonstrates or demonstrated an imminent and
73 substantial hazard or endangerment to the public health and safety
74 or the environment.

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

77 (a) Documents or information required to be developed,
78 maintained or reported pursuant to any environmental law or any
79 other law or regulation; or

80 (b) Documents or other information required to be made
81 available or furnished to a regulatory agency pursuant to any
82 environmental law or any other law or regulation; or

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

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

89 (e) Documents existing prior to the commencement of and
90 independent of the voluntary self-evaluation with the exception of
91 evidence establishing a request for compliance assistance to the
92 appropriate government agency or authority.

93 (3) (a) Upon a showing by any party, based upon independent
94 knowledge, that probable cause exists to believe that an exception
95 to the self-evaluation privilege under subsection (1) of this
96 section is applicable to an environmental self-evaluation report
97 or that the privilege does not apply to the environmental
98 self-evaluation report pursuant to the provisions of subsection
99 (2) of this section, then a court of record or hearing officer,



100 who shall be neutral and independent, may allow such party limited
101 access to the environmental self-evaluation report for the
102 purposes of an in camera review only. The court of record or the
103 hearing officer may grant limited access to all or part of the
104 environmental self-evaluation report under the provisions of this
105 subsection (3) upon such conditions as may be necessary to protect
106 the confidentiality of the environmental self-evaluation report.
107 A moving party who obtains access to an environmental
108 self-evaluation report pursuant to the provisions of this
109 subsection (3) may not divulge any information from the report
110 except as specifically allowed by the court or hearing officer.

111 (b) If any party divulges all or any part of the
112 information contained in an environmental self-evaluation report
113 in violation of the provisions of paragraph (a) of this subsection
114 (3) or if any other person knowingly divulges or disseminates all
115 or any part of the information contained in an environmental
116 self-evaluation report that was provided to such person in
117 violation of the provisions of paragraph (a) of this subsection
118 (3), such party or other person is liable for any damages caused
119 by the divulgence or dissemination of the information that are
120 incurred by the person for which the environmental self-evaluation
121 report was prepared. The court or hearing officer also may issue
122 such contempt orders and sanctions against the offending party or
123 such party's legal counsel as may be necessary to ensure
124 compliance.

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

127 (5) A person asserting a voluntary self-evaluation privilege
128 has the burden of proving a prima facie case as to the privilege.
129 A party seeking disclosure of an environmental self-evaluation
130 report has the burden of proving that such privilege does not
131 exist under this section.



132 (6) All environmental self-evaluation reports that are
133 protected by the self-evaluation privilege created by this section
134 shall be privileged and exempt from the provisions of the
135 Mississippi Public Records Act in accordance with Section
136 25-61-11, Mississippi Code of 1972.

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

139 49-17-43. (1) Any person found by the commission violating
140 any of the provisions of Sections 49-17-1 through 49-17-43, or any
141 rule or regulation or written order of the commission in pursuance
142 thereof or any condition or limitation of a permit, except a
143 permit required under the Solid Wastes Disposal Law of 1974
144 (Sections 17-17-1 through 17-17-47), shall be subject to a civil
145 penalty of not more than Twenty-five Thousand Dollars
146 (\$25,000.00), for each violation, such penalty to be assessed and
147 levied by the commission after a hearing as provided hereinabove.
148 Appeals from the imposition of the civil penalty may be taken to
149 the chancery court in the same manner as appeals from orders of
150 the commission. If the appellant desires to stay the execution of
151 a civil penalty assessed by the commission, he shall give bond
152 with sufficient resident sureties of one or more guaranty or
153 surety companies authorized to do business in this state, payable
154 to the State of Mississippi, in an amount equal to double the
155 amount of any civil penalty assessed by the commission, as to
156 which the stay of execution is desired, conditioned, if the
157 judgment shall be affirmed, to pay all costs of the assessment
158 entered against the appellant. Each day upon which a violation
159 occurs shall be deemed a separate and additional violation.

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



165 (2) In lieu of, or in addition to, the penalty provided in
166 subsection (1) of this section, the commission shall have power to
167 institute and maintain in the name of the state any and all
168 proceedings necessary or appropriate to enforce the provisions of
169 Sections 49-17-1 through 49-17-43, rules and regulations in force
170 pursuant thereto, and orders and permits made and issued under
171 those sections, in the appropriate circuit, chancery, county or
172 justice court of the county in which venue may lie. The
173 commission may obtain mandatory or prohibitory injunctive relief,
174 either temporary or permanent, and in cases of imminent and
175 substantial hazard or endangerment as set forth in Section
176 49-17-27, it shall not be necessary in such cases that the state
177 plead or prove: (a) that irreparable damage would result if the
178 injunction did not issue; (b) that there is no adequate remedy at
179 law; or (c) that a written complaint or commission order has first
180 been issued for the alleged violation.

181 (3) Any person who violates any of the provisions of, or
182 fails to perform any duty imposed by, Sections 49-17-1 through
183 49-17-43 or any rule or regulation issued hereunder, or who
184 violates any order or determination of the commission promulgated
185 pursuant to such sections, and causes the death of fish or other
186 wildlife shall be liable, in addition to the penalties provided in
187 subsections (1) and (2) of this section, to pay to the state an
188 additional amount equal to the sum of money reasonably necessary
189 to restock such waters or replenish such wildlife as determined by
190 the commission after consultation with the Mississippi Commission
191 on Wildlife, Fisheries and Parks. Such amount may be recovered by
192 the commission on behalf of the state in a civil action brought in
193 the appropriate county or circuit court of the county in which
194 venue may lie.

195 (4) Any person who owns or operates facilities which,
196 through misadventure, happenstance or otherwise, cause pollution
197 necessitating immediate remedial or clean-up action shall be



198 liable for the cost of such remedial or clean-up action and the
199 commission may recover the cost of same by a civil action brought
200 in the circuit court of the county in which venue may lie. This
201 penalty may be recovered in lieu of or in addition to the
202 penalties provided in subsections (1), (2) and (3) of this
203 section.

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

209 (5) It is unlawful for any person to: (a) discharge
210 pollutants in violation of Section 49-17-29 or in violation of any
211 condition or limitation included in a permit issued under Section
212 49-17-29 or (b) introduce pollutants into publicly owned treatment
213 works in violation of pretreatment standards or in violation of
214 toxic effluent standards; and, upon conviction thereof, such
215 person shall be punished by a fine of not less than Two Thousand
216 Five Hundred Dollars (\$2,500.00) nor more than Twenty-five
217 Thousand Dollars (\$25,000.00) per day of violation.

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

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



231 (a) The willfulness of the violation;
232 (b) Any damage to air, water, land or other natural
233 resources of the state or their uses;
234 (c) Costs of restoration and abatement;
235 (d) Economic benefit as a result of noncompliance;
236 (e) The seriousness of the violation, including any
237 harm to the environment and any hazard to the health, safety and
238 welfare of the public;
239 (f) Past performance history; and
240 (g) Whether the noncompliance was discovered and
241 reported as the result of a voluntary self-evaluation. If a
242 person discovers as a result of a voluntary self-evaluation,
243 information related to noncompliance with an environmental law and
244 voluntarily discloses that information to the department,
245 commission or any employee thereof, the commission shall, to the
246 greatest extent possible, reduce a penalty, if any, determined by
247 the commission, except for economic benefit as a result of
248 noncompliance, to a de minimis amount if all of the following are
249 true:
250 (i) The disclosure is made promptly after
251 knowledge of the information disclosed is obtained by the person;
252 (ii) The person making the disclosure initiates
253 the appropriate corrective actions and pursues those corrective
254 actions with due diligence;
255 (iii) The person making the disclosure cooperates
256 with the commission and the department regarding investigation of
257 the issues identified in the disclosure;
258 (iv) The person is not otherwise required by an
259 environmental law to make the disclosure to the commission or the
260 department;
261 (v) The information was not obtained through any
262 source independent of the voluntary self-evaluation or by the
263 department through observation, sampling or monitoring; * * *



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

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

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

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

280 49-17-427. (1) Whenever the commission or an employee
281 thereof has reason to believe that a violation of any provision of
282 this chapter, or of any order of the commission, or of any
283 regulation promulgated pursuant to this chapter has occurred, the
284 commission shall initiate proceedings in the same manner as
285 provided in Sections 49-17-31 through 49-17-41, Mississippi Code
286 of 1972.

287 (2) Any person found by the commission violating any of the
288 provisions of Sections 49-17-401 through 49-17-433, or any rule or
289 regulation or written order of the commission shall be subject to
290 a civil penalty of not more than Twenty-five Thousand Dollars
291 (\$25,000.00) for each violation per day, such penalty to be
292 assessed and levied by the commission as provided in Sections
293 49-17-1 through 49-17-43, Mississippi Code of 1972.

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

296 (a) The willfulness of the violation;



297 (b) Any damage to air, water, land or other natural
298 resources of the state or their uses;
299 (c) Costs of restoration or abatement;
300 (d) Economic benefit as a result of noncompliance;
301 (e) The seriousness of the violation, including any
302 harm to the environment and any hazard to the health, safety and
303 welfare of the public;
304 (f) Past performance history; and
305 (g) Whether the noncompliance was discovered and
306 reported as the result of a voluntary self-evaluation. If a
307 person discovers as a result of a voluntary self-evaluation,
308 information related to noncompliance with an environmental law and
309 voluntarily discloses that information to the department,
310 commission or any employee thereof, the commission shall, to the
311 greatest extent possible, reduce a penalty, if any, determined by
312 the commission, except for economic benefit as a result of
313 noncompliance, to a de minimis amount if all of the following are
314 true:
315 (i) The disclosure is made promptly after
316 knowledge of the information disclosed is obtained by the person;
317 (ii) The person making the disclosure initiates
318 the appropriate corrective actions and pursues those corrective
319 actions with due diligence;
320 (iii) The person making the disclosure cooperates
321 with the commission and the department regarding investigation of
322 the issues identified in the disclosure;
323 (iv) The person is not otherwise required by an
324 environmental law to make the disclosure to the commission or the
325 department;
326 (v) The information was not obtained through any
327 source independent of the voluntary self-evaluation or by the
328 department through observation, sampling or monitoring; * * *



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

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

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

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

345 17-17-29. (1) Any person found by the commission violating
346 any of the provisions of Sections 17-17-1 through 17-17-47, or any
347 rule or regulation or written order of the commission in pursuance
348 thereof, or any condition or limitation of a permit, shall be
349 subject to a civil penalty of not more than Twenty-five Thousand
350 Dollars (\$25,000.00) for each violation, such penalty to be
351 assessed and levied by the commission after a hearing. Appeals
352 from the imposition of the civil penalty may be taken to the
353 chancery court in the same manner as appeals from orders of the
354 commission. If the appellant desires to stay the execution of a
355 civil penalty assessed by the commission, he shall give bond with
356 sufficient resident sureties of one or more guaranty or surety
357 companies authorized to do business in this state, payable to the
358 State of Mississippi, in an amount equal to double the amount of
359 any civil penalty assessed by the commission, as to which the stay
360 of execution is desired, conditioned, if the judgment shall be
361 affirmed, to pay all costs of the assessment entered against the



362 appellant. Each day upon which such violation occurs shall be
363 deemed a separate and additional violation.

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

380 (3) Any person who violates any of the provisions of, or
381 fails to perform any duty imposed by, Sections 17-17-1 through
382 17-17-47, or any rule or regulation issued hereunder, or who
383 violates any order or determination of the commission promulgated
384 pursuant to such sections, and causes the death of wildlife shall
385 be liable, in addition to the penalties provided in subsections
386 (1) and (2) of this section, to pay to the state an additional
387 amount equal to the sum of money reasonably necessary to replenish
388 such wildlife as determined by the commission after consultation
389 with the Mississippi Commission on Wildlife, Fisheries and Parks.
390 Such amount may be recovered by the commission on behalf of the
391 state in a civil action brought in the appropriate county or
392 circuit court of the county in which venue may lie.

393 (4) Any person creating, or responsible for creating,
394 through misadventure, happenstance, or otherwise, an immediate



395 necessity for remedial or clean-up action involving solid waste
396 shall be liable for the cost of such remedial or clean-up action
397 and the commission may recover the cost of same by a civil action
398 brought in the circuit court of the county in which venue may lie.
399 This penalty may be recovered in lieu of or in addition to the
400 penalties provided in subsections (1), (2) and (3) of this
401 section.

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

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

414 * * *

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



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

429 (a) The willfulness of the violation;

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

432 (c) Costs of restoration and abatement;

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

434 (e) The seriousness of the violation, including any
435 harm to the environment and any hazard to the health, safety and
436 welfare of the public;

437 (f) Past performance history; and

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

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

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

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

456 (iv) The person is not otherwise required by an
457 environmental law to make the disclosure to the commission or the
458 department;



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

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

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

471 (9) Any provision of this section and chapter regarding
472 liability for the costs of cleanup, removal, remediation or
473 abatement of any pollution, hazardous waste or solid waste shall
474 be limited as provided in Section 49-17-42 and rules adopted
475 thereto.

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

479 **SECTION 5.** The following shall be codified as Section
480 17-17-67, Mississippi Code of 1972:

481 17-17-67. (1) Any person who purposely or recklessly
482 disposes of any hazardous waste in violation of this chapter which
483 contaminates a drinking water source to the extent that it is
484 unsafe for human consumption, as determined by the state agency
485 charged with the responsibility of regulating safe drinking water
486 for human consumption; or any person who purposely or recklessly
487 disposes of any hazardous waste in violation of this chapter and
488 who knows that he places another person in imminent danger of
489 death or serious bodily injury shall, upon conviction, be guilty
490 of a felony, and shall be subject to imprisonment for a term of
491 not less than one (1) year nor more than ten (10) years, and shall



492 also be subject to a fine of not less than Five Thousand Dollars
493 (\$5,000.00) nor more than Fifty Thousand Dollars (\$50,000.00) for
494 each day of violation or both fine and imprisonment. The fine
495 shall not exceed a total of One Million Dollars (\$1,000,000.00).

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

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

501 (b) If the element involves the attendant
502 circumstances, he is aware of the existence of such circumstances
503 or he believes or hopes that they exist.

504 (3) For purposes of this section, a person acts recklessly
505 with respect to a material element of an offense when he
506 consciously disregards a substantial and unjustifiable risk that
507 the material element exists or will result from his conduct. The
508 risk must be of such a nature and degree that, considering the
509 nature and purpose of the actor's conduct and the circumstances
510 known to him, its disregard involves a gross deviation from the
511 standard of conduct that a law-abiding person would observe in the
512 actor's situation.

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

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

