

Administrative Procedures Act Rules

Title 11: Mississippi Department of Environmental Quality

Part 9: Pollution Emergency Response Regulations

Part 9, Chapter 1: Mississippi Commission on Environmental Quality Pollution Emergency Response Regulations

Rule 1.1 Definitions.

The words and phrases used in this Chapter shall have the meanings set forth in this rule.

- A. “Air pollution” means the presence in the outdoor atmosphere of one or more air contaminants in quantities, of characteristic, and of a duration which are materially injurious or can be reasonably expected to become materially injurious to human, plant or animal life or to property, or which unreasonably interfere with enjoyment of life or use of property throughout the state or throughout such area of the state as shall be affected thereby.
- B. “Commission” means the Mississippi Commission on Environmental Quality acting through the Office of Pollution Control of the Department of Environmental Quality.
- C. “Facility” means any and all sources that may cause pollution of the air or any waters of the state or may cause any wastes or other products or substances to be placed in a location where they are likely to cause pollution of the air or any waters of the state, including any building, structure, installation, house, business, vehicle, car, truck, train, bus, boat, ship, airplane, or any other means of transportation for persons or property.
- D. “Person” means the state or other agency or institution thereof, any municipality, political subdivision, public or private corporation, individual, partnership, association or other entity, and includes any officer or governing or managing body of any municipality, political subdivision, or public or private corporation, or the United States or any officer or employee thereof.
- E. “Pollution” means air pollution and/or water pollution and/or placing or causing to be placed any wastes in a location where they are likely to cause pollution of any waters of the state.
- F. “Pollution Emergency Fund” means the fund established under Miss. Code Ann. Section 49-17-68.
- G. “Responsible Party” or “RP” means the owner or operator of a facility that causes pollution necessitating immediate remedial or clean-up action.

H. “Wastes” means sewage, industrial wastes, oil field wastes, and all other liquid, gaseous, solid, radioactive, or other substances which may pollute or tend to pollute any waters of the state.

I. “Water Pollution” means such contamination, or other alteration of the physical, chemical or biological properties, of any waters of the state, including change in temperature, taste, color, turbidity, or odor of the waters, or such discharge of any liquid, gaseous, solid, radioactive, or other substance or leak into any waters of the state unless in compliance with a valid permit issued therefor by the Permit Board.

J. “Waters of the state” means all waters within the jurisdiction of this state, including all streams, lakes, ponds, impounding reservoirs, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, situated wholly or partly within or bordering upon the state, and such coastal waters as are within the jurisdiction of the state, except lakes, ponds or other surface waters which are wholly landlocked and privately owned, and which are not regulated under the Federal Clean Water Act (33 U.S.C. 1251 et seq).

Source: Miss. Code Ann. §§ 17-17-1, et seq., 49-2-1, et seq. and 49-17-1, et seq.

Rule 1.2

The Pollution Emergency Fund, created pursuant to Miss. Code Ann. § 49-17-68, may be used by the commission for the purpose of mitigation, abatement, clean-up, or other remedial actions and related technical investigations involving the introduction of pollutants upon or into the land, air or waters of this state and for related purposes. When funds from the Pollution Emergency Fund are used for such purposes, Responsible Parties are required to reimburse such costs to the Pollution Emergency Fund in accordance with the following statutory authority. The Mississippi Air and Water Pollution Control Law, Miss. Code Ann. §§ 49-17-1 through 49-17-43, provides a mechanism for ensuring that immediate remedial or clean-up action be completed when a party causes pollution requiring immediate remedial or clean-up action. Miss. Code Ann. § 49-17-43 (4) states the following:

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 subsections (1), (2) and (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.

Source: Miss. Code Ann. §§ 17-17-1, et seq., 49-2-1, et seq. and 49-17-1, et seq.

Rule 1.3

The Mississippi Solid Wastes Disposal Law of 1974, Miss. Code Ann. §§ 17-17-1, *et seq.*, provides essentially the same mechanism for ensuring that immediate remedial or clean-up action be completed when a party causes an immediate necessity for remedial or clean-up action involving solid waste. Miss. Code Ann. § 17-17-29 (4) states the following:

Any person creating, or responsible for creating, through misadventure, happenstance, or otherwise, an immediate necessity for remedial or clean-up action involving solid waste 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 subsections (1), (2) and (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.

Source: Miss. Code Ann. §§ 17-17-1, *et seq.*, 49-2-1, *et seq.* and 49-17-1, *et seq.*

Rule 1.4

In accordance with the above cited statutes, any person who owns or operates a facility which, through misadventure, happenstance or otherwise, causes 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.

Source: Miss. Code Ann. §§ 17-17-1, *et seq.*, 49-2-1, *et seq.* and 49-17-1, *et seq.*

Rule 1.5

If the Responsible Party (“RP”) is available at the site of a pollution event, or if MDEQ is able to communicate via telephone with the RP, then the RP shall make arrangements to pay the response contractor directly for necessary remedial or clean-up actions. If the RP is not available and if MDEQ is unable to contact the RP during the remedial or clean-up actions, then MDEQ will contract with the response contractor and advance funds from the Pollution Emergency Fund to pay the costs thereof. The RP shall pay the costs of the remedial or clean-up actions to MDEQ within 30 days of being invoiced for such remedial or clean-up actions by MDEQ. Upon receipt of such reimbursed funds from the RP, MDEQ will deposit the funds back into the Pollution Emergency Fund. If the RP is unwilling to assume responsibility for the pollution event and will not pay the invoice(s), MDEQ may seek cost recovery, penalties and an additional amount for the death of wildlife, if applicable, consistent with Miss. Code Ann. §§ 17-17-29 (3) and (4) and 49-17-43 (3) and (4) and the above Rule 1.3 and Rule 1.4. MDEQ may seek injunctive relief

pursuant to Miss. Code Ann. §§ 17-17-29(1), 49-17-27 and 49-17-43(2).

Source: Miss. Code Ann. §§ *17-17-1, et seq., 49-2-1, et seq. and 49-17-1, et seq.*