

By: Representative McInnis

To: Conservation and  
Water Resources;  
Appropriations

## HOUSE BILL NO. 646

1 AN ACT TO CREATE A NEW CODE SECTION TO BE CODIFIED AS SECTION  
2 17-17-155, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT ANY  
3 COMMERCIAL HAZARDOUS WASTE MANAGEMENT FACILITY BUILT IN THE STATE  
4 SHALL BE CONSTRUCTED, OWNED AND OPERATED BY THE STATE OF  
5 MISSISSIPPI; TO PROVIDE THAT THE STATE FACILITY MAY ACCEPT  
6 HAZARDOUS WASTES FROM OUT OF STATE GENERATORS FOR PURPOSES OTHER  
7 THAN STORAGE; TO PROVIDE THAT THE DEPARTMENT OF ENVIRONMENTAL  
8 QUALITY SHALL ESTABLISH REGULATIONS GOVERNING THE ACCEPTANCE OF  
9 HAZARDOUS WASTES; TO AMEND SECTIONS 17-17-151, 17-17-153, 17-17-3,  
10 17-17-9, 17-17-15, 17-17-27, 17-17-53, 17-17-101, 17-17-103,  
11 17-17-501, 17-17-503, 17-17-505, 17-18-5, 17-18-25, 17-18-29,  
12 17-18-31, 17-18-33 AND 17-18-35, MISSISSIPPI CODE OF 1972, IN  
13 CONFORMITY THERETO; TO REPEAL SECTION 17-18-27, MISSISSIPPI CODE  
14 OF 1972, WHICH AUTHORIZES THE DEPARTMENT OF FINANCE AND  
15 ADMINISTRATION TO SELL REAL PROPERTY FOR A FACILITY SITE TO A  
16 NONGOVERNMENTAL ENTITY; AND FOR RELATED PURPOSES.

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

18 SECTION 1. The following shall be codified as Section  
19 17-17-155, Mississippi Code of 1972:

20 17-17-155. (1) Except as provided in subsection (2) of this  
21 section, no person shall construct or operate any commercial  
22 hazardous waste management facility, nor shall any person store,  
23 treat, process, recover or dispose of any hazardous waste except  
24 as otherwise authorized by law.

25 (2) The State of Mississippi may construct, own and operate  
26 a commercial hazardous waste management facility within the state  
27 in order to meet the needs of generators of hazardous waste from  
28 within the state. The Department of Environmental Quality shall  
29 determine, in accordance with Sections 17-17-151 and 17-17-153,  
30 the needs of the state in respect to any facility, and it shall  
31 promulgate rules and regulations governing the construction and  
32 operation of any facility.

33 (3) To obtain maximum utilization of any hazardous waste

management facility constructed and operated within the state, hazardous wastes shall be accepted for disposal, treatment and processing from generators located outside the State of Mississippi. However, the facility shall not accept for storage on a temporary basis or for a period of years any hazardous wastes from any person outside the state.

(4) The Department of Environmental Quality shall establish rules and regulations for the acceptance of hazardous wastes from generators within and without the state. Such rules and regulations may be more stringent than the requirements of applicable state and federal laws, but in no event shall the rules and regulations conflict with those laws.

SECTION 2. Section 17-17-151, Mississippi Code of 1972, is amended as follows:

17-17-151. (1) A determination by the State of Mississippi to construct, operate and own a commercial hazardous waste management facility shall be supported by a demonstration of need for the facility \* \* \*.

(2) The demonstration of need shall be specific as to the types of hazardous waste to be managed and shall include, but not be limited to:

(a) Documentation of the available capacity at existing commercial hazardous waste management facilities in the area to be served by the facility;

(b) Documentation of the current volume of hazardous waste generated in the area to be served by the facility and the volume of hazardous waste reasonably expected to be generated in the area to be served over the next twenty (20) years; and

(c) A description of any additional factors, such as physical limitations on the transportation of the hazardous waste or the existence of additional capacity outside the area to be served which may satisfy the projected need.

(3) The Department of Environmental Quality shall consider

the following factors in evaluating the need for the proposed facility:

(a) The extent to which the proposed commercial hazardous waste management facility is in conformance with the Mississippi Capacity Assurance Plan and any interstate or regional agreements associated therewith;

(b) An approximate service area for the proposed facility which takes into account the economics of hazardous waste collection, transportation, treatment, storage and disposal;

(c) The quantity of hazardous waste generated within the anticipated service area suitable for treatment, storage or disposal at the proposed facility;

(d) The design capacity of existing commercial hazardous waste management facilities located within the anticipated service area of the proposed facility; and

(e) The extent to which the proposed facility is needed to replace other facilities, if the need for a proposed commercial hazardous waste management facility cannot be established under paragraphs (a) through (d).

(4) Based on the needs of the State of Mississippi, it is the intent of the Legislature that there shall not be a proliferation of unnecessary facilities in any one (1) county of the state.

(5) If the Department of Environmental Quality determines that a proposed commercial hazardous waste management facility is inconsistent with or contradictory to the factors set forth in subsection (3), the department is hereby empowered to deny construction of the facility.

(6) The commission shall develop and adopt criteria and standards to be considered in location and permitting of commercial hazardous waste management facilities. The standards and criteria shall be developed through public participation, shall be enforced by the department and shall include, in addition

to all applicable state and federal rules and regulations,  
consideration of:

(a) Hydrological and geological factors such as flood  
plains, depth to water table, soil composition and permeability,  
cavernous bedrock, seismic activity, and slope;

(b) Natural resource factors such as wetlands,  
endangered species habitats, proximity to parks, forests,  
wilderness areas and historical sites, and air quality;

(c) Land use factors such as local land use, whether  
residential, industrial, commercial, recreational or agricultural,  
proximity to public water supplies, and proximity to incompatible  
structures such as schools, churches and airports;

(d) Transportation factors, such as proximity to waste  
generators and to population, route safety and method of  
transportation; and

(e) Aesthetic factors such as the visibility,  
appearance and noise level of the facility.

SECTION 3. Section 17-17-153, Mississippi Code of 1972, is  
amended as follows:

17-17-153. (1) The Legislature finds that:

(a) The beauty and quality of Mississippi's environment  
and the public health, safety and welfare of the citizens of the  
State of Mississippi must be protected from unsound waste  
management practices which might result from lack of access to  
proper hazardous waste management facilities.

(b) Inefficient and improper methods of managing waste  
create hazards to public health, cause pollution of the lands, air  
and water resources, and constitute a waste of natural resources.

(c) It is the policy of the State of Mississippi that  
the generation of waste should be reduced or eliminated at the  
source, whenever feasible; waste that is generated should be  
recycled or reused, whenever feasible; waste that cannot be  
reduced, recycled or reused should be treated in an

environmentally safe manner; and disposal should be employed only as a last resort and should be conducted in an environmentally safe manner.

(d) It is a requirement under Section 104(c)(9) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, Pub. L. No. 96-510, 94 Stat. 2767, 42 U.S.C. 9601 et seq., as amended, and the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499, 100 Stat. 1613, as amended, as a condition of receiving nonemergency federal remedial action funding after October 17, 1989, that each state assure that it has adequate capacity to manage the hazardous waste generated in the state and expected to be generated in the state for the next twenty (20) years.

(e) In response to the federal requirement for hazardous waste capacity assurance, the State of Mississippi has developed and submitted its Capacity Assurance Plan to the U.S. Environmental Protection Agency. The Capacity Assurance Plan sets out the state's need with respect to the types of hazardous waste management required by the state and the proposal for siting needed facilities.

(2) It is the intent of the Legislature that state-owned facilities must be sited as needed for the management of hazardous waste to meet the needs of Mississippi generators, and allow maximum effective use of regional hazardous waste management facilities. \* \* \*

SECTION 4. Section 17-17-3, Mississippi Code of 1972, is amended as follows:

17-17-3. For purposes of this chapter, the following words shall have the definitions ascribed herein unless the context requires otherwise:

(a) "Agency" means any controlling agency, public or private, elected, appointed or volunteer, controlling and supervising the collection and/or disposal of solid wastes.

(b) "Ashes" means the solid residue from burning of wood, coal, coke or other combustible materials used for heating, or from incineration of solid wastes, but excepting solid residue the storage or disposition of which is controlled by other agencies.

(c) "Commercial hazardous waste management facility" means any facility engaged in the storage, treatment, recovery or disposal of hazardous waste for a fee and which accepts hazardous waste from more than one (1) generator. A facility (i) which is designed principally for treatment of aqueous hazardous wastes and residue; and (ii) which is situated within an industrial park or area; and (iii) which disposes of no hazardous waste within the State of Mississippi shall not constitute a commercial hazardous waste management facility for purposes of Section 17-17-151(3)(a) only. Any commercial hazardous waste management facility situated within the State of Mississippi shall be constructed, owned and operated by the state.

(d) "Commercial nonhazardous solid waste management facility" means any facility engaged in the storage, treatment, processing or disposal of nonhazardous solid waste for compensation or which accepts nonhazardous solid waste from more than one (1) generator not owned by the facility owner.

(e) "Commercial oil field exploration and production waste disposal" means storage, treatment, recovery, processing, disposal or acceptance of oil field exploration and production waste from more than one (1) generator or for a fee.

(f) "Commercial purpose" means for the purpose of economic gain.

(g) "Commission" means the Mississippi Commission on Environmental Quality.

(h) "Composting or compost plant" means an officially controlled method or operation whereby putrescible solid wastes are broken down through microbic action to a material offering no

hazard or nuisance factors to public health or well-being.

(i) "Department" means the Mississippi Department of Environmental Quality.

(j) "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking or placing of any solid waste or hazardous waste into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including groundwaters.

(k) "Executive director" means the Executive Director of the Mississippi Department of Environmental Quality.

(l) "Garbage" means putrescible animal and vegetable wastes resulting from the handling, preparation, cooking and consumption of food, including wastes from markets, storage facilities, handling and sale of produce and other food products, and excepting such materials that may be serviced by garbage grinders and handled as household sewage.

(m) "Hazardous wastes" means any waste or combination of waste of a solid, liquid, contained gaseous, or semisolid form which because of its quantity, concentration or physical, chemical or infectious characteristics, may (i) cause, or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or (ii) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of, or otherwise managed which are listed by the Environmental Protection Agency as hazardous wastes which exceed the threshold limits set forth in the Environmental Protection Agency regulations for classifying hazardous waste. Such wastes include, but are not limited to, those wastes which are toxic, corrosive, flammable, irritants, strong sensitizers, or which generate pressure through decomposition, heat or other means. Such wastes do not include those radioactive materials regulated pursuant to

232 the Mississippi Radiation Protection Law of 1976, appearing in  
233 Section 45-14-1 et seq.

234 (n) "Hazardous waste management" means the systematic  
235 control of the collection, source separation, storage,  
236 transportation, processing, treatment, recovery and disposal of  
237 hazardous waste.

238 (o) "Head" means the head of the Office of Pollution  
239 Control of the Mississippi Department of Environmental Quality or  
240 his designee.

241 (p) "Health department" means the Mississippi State  
242 Health Department and every county or district health department.  
243 "Health officer" means the state or affected county health  
244 officer or his designee.

245 (q) "Manifest" means the form used for identifying the  
246 quantity, composition, origin, routing and destination of  
247 hazardous waste during its transport.

248 (r) "Office" means the Office of Pollution Control of  
249 the Mississippi Department of Environmental Quality.

250 (s) "Open dump" means any officially recognized place,  
251 land or building which serves as a final depository for solid  
252 wastes, whether or not burned or buried, which does not meet the  
253 minimum requirements for a sanitary landfill, except approved  
254 incinerators, compost plants and salvage yards.

255 (t) "Permit board" means the permit board created by  
256 Section 49-17-28.

257 (u) "Person" means any individual, trust, firm,  
258 joint-stock company, public or private corporation (including a  
259 government corporation), partnership, association, state, or any  
260 agency or institution thereof, municipality, commission, political  
261 subdivision of a state or any interstate body, and includes any  
262 officer or governing or managing body of any municipality,  
263 political subdivision, or the United States or any officer or  
264 employee thereof.



(v) "Pollution Emergency Fund" means the fund created under Section 49-17-68.

(w) "Rubbish" means nonputrescible solid wastes (excluding ashes) consisting of both combustible and noncombustible wastes. Combustible rubbish includes paper, rags, cartons, wood, furniture, rubber, plastics, yard trimmings, leaves and similar materials. Noncombustible rubbish includes glass, crockery, metal cans, metal furniture and like materials which will not burn at ordinary incinerator temperatures (not less than 1600 degrees F.).

(x) "Sanitary landfill" means a controlled area of land upon which solid waste is deposited, and is compacted and covered with no on-site burning of wastes, and so located, contoured, drained and operated so that it will not cause an adverse effect on public health or the environment.

(y) "Solid wastes" means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant or air pollution control facility and other discarded material, including solid, liquid, semisolid or contained gaseous material resulting from industrial, commercial, mining and agricultural operations, and from community activities, but does not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under Section 402 of the Federal Water Pollution Control Act, as amended (86 Stat. 880), or source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954.

(z) "Storage" means the containment of wastes, either on a temporary basis or for a period of years, except as provided in 40 C.F.R. 263.12, in such a manner as not to constitute disposal of such wastes.

(aa) "Transport" means the movement of wastes from the point of generation to any intermediate points, and finally to the

point of ultimate storage or disposal.

(bb) "Treatment" means any method, technique or process, including neutralization, designed to change the physical, chemical or biological character or composition of any solid waste in order to neutralize such character or composition of any solid waste, neutralize such waste or render such waste, safer for transport, amenable for recovery, amenable for storage or reduced in volume.

(cc) "Treatment facility" means a location at which waste is subjected to treatment and may include a facility where waste has been generated.

(dd) "Unauthorized dump" means any collection of solid wastes either dumped or caused to be dumped or placed on any property either public or private, whether or not regularly used. An abandoned automobile, large appliance, or similar large item of solid waste shall be considered as forming an unauthorized dump within the meaning of this chapter, but not the careless, scattered littering of smaller individual items as tires, bottles, cans and the like. An unauthorized dump shall also mean any solid waste disposal site which does not meet the regulatory provisions of this chapter.

SECTION 5. Section 17-17-9, Mississippi Code of 1972, is amended as follows:

17-17-9. No garbage, or rubbish containing garbage or other putrescible materials, or hazardous wastes shall be burned except in approved incinerators meeting the necessary temperature requirements and air pollution controls as now established or may later be established. Any incinerator engaged in the disposal of commercial hazardous wastes shall be constructed, owned and operated by the State of Mississippi. The open burning of rubbish shall be permitted only under controlled circumstances where sanitary landfill and landfill is not feasible, and not in proximity to sanitary landfill or landfill operations where spread

of fire to these operations may be a hazard in the opinion of the controlling agency.

SECTION 6. Section 17-17-15, Mississippi Code of 1972, is amended as follows:

17-17-15. (1) Commercial hazardous wastes shall not be handled or disposed of along with or in the same site or adjoining site as ordinary wastes unless specifically approved as exempted waste by the department. These shall be disposed of by special incinerators, separate landfills, or other means built, owned and operated by the state. The particularities of the hazardous waste involved shall dictate the means of the handling and disposal of hazardous wastes, as determined by the department or other responsible agency. The department may, in its discretion, maintain a field office at any treatment or disposal facility that receives hazardous wastes directly or indirectly from more than one (1) generator. \* \* \* The department shall maintain a field office at any commercial off-site multiuser hazardous waste incinerator designed to incinerate multiple nonhomogeneous types of wastes. \* \* \* The field office, when required, shall be located in adequate accommodations \* \* \* and shall be staffed with department regulatory personnel as deemed necessary by the department. In exercising its discretion to determine the need for a field office, regulatory staff and support equipment, the department shall consider, at a minimum, the type and amount of hazardous waste received and also the type of facility. All fees shall be established by the department and shall be in addition to any other fees provided by law. The fee prescribed by the department shall be in an amount not less than the actual operating expenses of the permanent field office and shall be in addition to any other fees required by law.

(2) In addition to considering all applicable state and federal laws and regulations, the Mississippi Pollution Control Permit Board shall not issue a permit for the establishment or

operation of a commercial hazardous waste landfill for the disposal of hazardous waste (as defined by Section 17-17-3, Mississippi Code of 1972), in the State of Mississippi until the Environmental Protection Agency makes a final determination, pursuant to the Federal Hazardous and Solid Waste Amendments of 1984, P.L. No. 98-616, that each waste to be placed in such landfill is suitable for land disposal.

SECTION 7. Section 17-17-27, Mississippi Code of 1972, is amended as follows:

17-17-27. (1) The department shall exercise such supervision over restrictions, equipment, methodology and personnel in the management of solid wastes as may be necessary to enforce sanitary requirements; and the commission shall adopt such rules and regulations as may be needed to specify methodology and procedures to meet the requirements of this chapter, which shall include at a minimum:

(a) Criteria for the determination of whether any waste or combination of wastes is hazardous for the purposes of this chapter;

(b) Rules and regulations for the storage, treatment and disposal of solid wastes;

(c) Rules and regulations for the transportation, containerization and labeling of hazardous wastes, which rules shall be consistent with those issued by the United States Department of Transportation;

(d) Rules and regulations specifying the terms and conditions under which the permit board shall issue, modify, suspend, revoke or deny such permits as may be required by this chapter. Such rules and regulations shall include, and not by way of limitation, specific authority for the permit board to consider the financial capability and performance history of an applicant;

(e) Rules and regulations establishing standards and procedures for the safe storage or transportation of hazardous

waste and for the safe operation and maintenance of hazardous waste treatment or disposal facilities or sites or equipment;

(f) A listing of those wastes or combinations of wastes which are not compatible, and which may not be stored or disposed of together;

(g) Procedures and requirements for the use of a manifest during the transport of hazardous wastes;

(h) Standards for financial responsibility to cover the liability, closure and post-closure of any site and perpetual care of a commercial hazardous waste landfill. Rules and regulations promulgated hereunder may include, and not by way of limitation, requirements for maintaining liability insurance coverage if such coverage is not required under rules and regulations promulgated by the United States Environmental Protection Agency;

(i) Rules and regulations establishing minimum distances within which any hazardous waste disposal facility may be located from any municipality, school, residence, church or health care facility;

(j) Other rules and regulations as the commission deems necessary to manage hazardous wastes in the state, provided that such rules and regulations shall be equivalent to the United States Environmental Protection Agency's rules and regulations.

(2) In complying with this section the commission shall consider the variations within this state in climate, geology, population density and such other factors as may be relevant to the management of hazardous wastes. It is the intent of the Legislature that commercial hazardous waste landfills be located on those sites which, by virtue of their geologic conditions, provide a high degree of environmental protection. In carrying out the intent of this provision, the commission is authorized to adopt siting criteria for commercial hazardous waste landfills which are more stringent or extensive in scope, coverage and effect than the rules and regulations promulgated by the United

430 States Environmental Protection Agency.

431       (3) Except as hereinafter provided, hazardous wastes shall  
432 not be disposed of in this state by the use of underground  
433 injection methods, as herein defined according to 40 CFR  
434 260.10(74) to mean "subsurface emplacement of fluids through a  
435 bored, drilled, or driven well, or through a dug well, where the  
436 depth of the dug well is greater than the largest surface  
437 dimension." This prohibition shall not apply to the disposal on  
438 the generation site of hazardous wastes generated in the  
439 production of oil or gas or in a commercial or manufacturing  
440 operation. Commercial hazardous waste underground injection wells  
441 designed or intended to dispose of multiple nonhomogeneous types  
442 of wastes from multiple sources other than the owner of the well  
443 are hereby prohibited in the State of Mississippi.

444       A commercial hazardous waste landfill shall not be located on  
445 the same site or within one thousand (1,000) feet of an existing  
446 or abandoned ordinary waste disposal site, unless the hazardous  
447 waste to be disposed of in said commercial landfill is  
448 specifically approved as exempted.

449       (4) After promulgation of the regulations required under  
450 this section, no person shall construct, substantially alter or  
451 operate any solid waste treatment or disposal facility or site,  
452 nor shall the state or any person store, treat or dispose of any  
453 hazardous waste without first obtaining a permit from the permit  
454 board for such facility, site or activity. The state shall not  
455 construct any new hazardous waste treatment or disposal facility  
456 or site or substantially alter any such existing facility or site,  
457 nor shall the permit board issue a permit for any such  
458 construction or alteration, until the commission has promulgated  
459 rules and regulations under the provisions of subsection (1)(j) of  
460 this section. Said rules and regulations shall be equivalent to  
461 counterpart rules and regulations of the Environmental Protection  
462 Agency whether now in effect or hereinafter promulgated. \* \* \*

(5) Any permit issued under this section may be revoked by the issuing agency at any time when the permittee fails to comply with the terms and conditions of the permit. Where the obtaining of or compliance with any permit required under this section would, in the judgment of the department, cause undue or unreasonable hardship to any person, the department may issue a variance from these requirements. In no case shall the duration of any such variance exceed one (1) year. Renewals or extensions may be given only after an opportunity has been given for public comment on each such renewal or extension.

(6) Information obtained by the commission concerning environmental protection including but not limited to information contained in applications for solid or hazardous waste disposal permits shall be public information and shall be made available upon proper request. Other information obtained by the commission, department, or permit board in the administration of Sections 17-17-1 through 17-17-47 concerning trade secrets, including, but not limited to, marketing or financial information, treatment, transportation, storage or disposal processes or devices, methods of manufacture, or production capabilities or amounts shall be kept confidential if and only if: (a) a written confidentiality claim is made when the information is supplied; (b) such confidentiality claim allows disclosure to authorized department employees and/or the United States Environmental Protection Agency (EPA); and (c) such confidentiality claim is determined by the commission to be valid. If the confidentiality claim is denied, the information sought to be covered thereby shall not be released or disclosed, except to the Environmental Protection Agency, until the claimant has been notified in writing and afforded an opportunity for a hearing and appeal therefrom, as with other orders of the commission. Disclosure of confidential information by the EPA shall be governed by federal law and EPA regulations. Misappropriation of a trade secret shall be governed

496 by the Mississippi Uniform Trade Secrets Act, Sections 75-26-1  
497 through 75-26-19.

498 (7) Anyone making unauthorized disclosure of information  
499 determined to be confidential as herein provided shall be liable  
500 in a civil action for damages arising therefrom and shall also be  
501 guilty of a misdemeanor punishable as provided by law.

502 (8) Notwithstanding any other provision of this chapter, the  
503 executive director, upon receipt of information that the  
504 generation, storage, transportation, treatment or disposal of any  
505 solid waste may present an imminent and substantial hazard to the  
506 public health or to the environment, may take any legal, equitable  
507 or other action, including injunctive relief, necessary to protect  
508 the health of such persons or the environment.

509 SECTION 8. Section 17-17-53, Mississippi Code of 1972, is  
510 amended as follows:

511 17-17-53. (1) On or before July 15 of each year, each  
512 commercial hazardous waste management facility shall file with the  
513 State Tax Commission \* \* \* a statement, verified by oath, showing  
514 by category the total amounts of hazardous waste managed for a fee  
515 at the facility during the preceding calendar year, and shall at  
516 the same time transfer to the State Tax Commission a sum equal to:

517 (a) Ten Dollars (\$10.00) per ton for hazardous waste  
518 generated and disposed of in the state by landfilling or any other  
519 means of land disposal and for hazardous waste generated and  
520 stored for one (1) year or more in the state;

521 (b) Two Dollars (\$2.00) per ton for hazardous waste  
522 generated and treated in the state and for hazardous waste  
523 generated and stored for less than one (1) year in the state; and

524 (c) One Dollar (\$1.00) per ton for hazardous waste  
525 generated and recovered in the state.

526 (2) For all hazardous waste generated outside of the state  
527 and received at a commercial hazardous waste management facility  
528 during the preceding calendar year, each \* \* \* commercial



hazardous waste management facility shall transfer to the State Tax Commission an amount equal to the per-ton fee imposed on the management of out-of-state waste by the state from which the hazardous waste originated, but in any event no less than the per-ton fees described in subsection (1) of this section.

(3) Repealed.

(4) All monies received by the State Tax Commission hereunder shall be appropriated and utilized as follows:

(a) Thirty-five percent (35%) shall be remitted to the Department of Environmental Quality to be held for the perpetual care and maintenance account of commercial facilities for the management of hazardous or nonhazardous solid waste.

(b) Thirty-five percent (35%) shall be remitted to the department to defray costs of the waste minimization program and evaluation of uncontrolled sites.

(c) Subject to the provisions of Section 17-17-55, all other funds shall be paid to the general fund of the municipality or county within which the facility is located.

(5) All administrative provisions of the Mississippi Sales Tax Law, including those which fix damages, penalties and interest for nonpayment of taxes and for noncompliance with the provisions of such chapter, and all other duties and requirements imposed upon taxpayers, shall apply to all persons liable for fees under the provisions of this chapter, and the Tax Commissioner shall exercise all the power and authority and perform all the duties with respect to taxpayers under this chapter as are provided in the Mississippi Sales Tax Law except where there is a conflict, then the provisions of this chapter shall control.

(6) Each generator of greater than two hundred twenty (220) pounds of hazardous waste in any calendar month and each transporter of hazardous waste \* \* \* shall report annually by a date determined by the department on forms provided by the department the types and amounts of hazardous waste

generated \* \* \* and/or shipped during the preceding calendar year.

To the extent practicable, the department shall adopt forms consistent with biennial report forms used by the United States Environmental Protection Agency.

SECTION 9. Section 17-17-101, Mississippi Code of 1972, is amended as follows:

17-17-101. It is the intent of the Legislature by the passage of Sections 17-17-101 through 17-17-135 to authorize municipalities to acquire, own and lease a project for the purpose of promoting the construction and installation of projects for the collection, treatment, processing, reprocessing, generation, distribution, recycling, elimination, or disposal of solid \* \* \* waste products, as hereinafter defined, by inducing manufacturing and industrial enterprises, qualified persons, firms, or corporations to locate and construct said projects in this state.

It is intended that each project be self-liquidating. Sections 17-17-101 through 17-17-135 shall be construed to conform with its intent. The powers hereby conferred upon the municipalities shall be exercised only after such municipality has obtained a certificate of public convenience and necessity from the Mississippi Board of Economic Development as provided in Sections 57-1-19, 57-1-21, 57-1-23 and 57-1-27; provided, however, that if a project is constructed solely with revenue bonds the board shall not be required to adjudicate that there are adequate property values and suitable financial conditions so that the total bonded indebtedness of the municipality, solely for the purposes authorized by Sections 17-17-101 through 17-17-135, shall not exceed twenty percent (20%) of the total assessed valuation of the property in the municipality.

SECTION 10. Section 17-17-103, Mississippi Code of 1972, is amended as follows:

17-17-103. Unless the context clearly requires otherwise, the definitions which follow govern the construction and meaning

595 of the terms used in Sections 17-17-101 through 17-17-135:

596           (a) "Bonds" shall include notes, bonds and other  
597 written obligations authorized to be issued under Sections  
598 17-17-101 through 17-17-135.

599           (b) "Governing board" shall mean the governing bodies  
600 of the several counties and incorporated municipalities of the  
601 state as now or hereafter constituted, acting jointly or  
602 severally, and in the event that a project is located in more than  
603 one (1) county, the term "governing board" shall also refer to the  
604 governing bodies of the several counties wherein such project is  
605 located.

606           (c) "Municipality" shall mean one or more counties or  
607 incorporated municipalities of this state, or any combination  
608 thereof, acting jointly or severally.

609           (d) "Project" shall mean any real, personal or mixed  
610 property of any and every kind that can be used or that will be  
611 useful in controlling, collecting, storing, removing, handling,  
612 reducing, disposing of, treating and otherwise concerning  
613 solid \* \* \* waste, including without limitation, property that can  
614 be used or that will be useful in extracting and converting waste  
615 to energy, encompassing the acquisition, handling, storage, and  
616 utilization of coal, lignite or any other fuel or water that can  
617 be used or that will be useful in converting waste to energy, and  
618 distributing such energy to users thereof, or otherwise separating  
619 and preparing waste for reuse.

620           (e) "Solid wastes" shall mean any garbage, refuse,  
621 sludge from a waste treatment plant, water supply treatment plant  
622 or air pollution control facility and other discarded material,  
623 including solid, liquid, semisolid or contained gaseous material  
624 resulting from industrial, commercial, mining and agricultural  
625 operations, and from community activities, but does not include  
626 solid or dissolved material in domestic sewage, or solid or  
627 dissolved materials in irrigation return flows or industrial

628 discharges which are point sources subject to permits under  
629 Section 402 of the Federal Water Pollution Control Act, as amended  
630 (86 Stat. 880), or source, special nuclear or by-product material  
631 as defined by the Atomic Energy Act of 1954.

632 \* \* \*

633       (f) "Industry" shall mean any person, firm or  
634 corporation operating any enterprise or facility for the  
635 collection, treatment, processing, reprocessing, generation,  
636 distributing, recycling, elimination or disposal of any type of  
637 solid waste product from which operation conditions result in or  
638 pose a substantial present, future or potential hazard to human  
639 health or the environment when improperly treated, stored,  
640 transported or disposed of or otherwise managed.

641       (g) "Authority" shall mean the Mississippi Department  
642 of Natural Resources.

643       (h) "Lease/sale" shall mean any agreement without  
644 limitation whereby a municipality may lease and/or convey title of  
645 a project to an industry, made by and between the governing board  
646 and such industry by which such industry agrees to pay to (and to  
647 secure if so required) the municipality, or to any assignee  
648 thereof, as the case may be, the sums required to meet the payment  
649 of the principal, interest and redemption premium, if any, on any  
650 bonds, and/or the expenses, if any, of operation by such  
651 municipality or county.

652       (i) "Board" shall mean the Mississippi Board of  
653 Economic Development.

654       SECTION 11. Section 17-17-501, Mississippi Code of 1972, is  
655 amended as follows:

656       17-17-501. The following words and phrases shall have the  
657 meanings ascribed herein unless the context clearly indicates  
658 otherwise:

659       (a) "Applicant" means any person except a public agency  
660 applying for a permit to operate and/or construct a commercial

661 nonhazardous solid waste management facility. If a public agency  
662 applies for a permit and proposes to operate a facility by  
663 contract, the contractor shall also be required to file a  
664 disclosure statement as described in Section 17-17-503 and the  
665 permit board shall evaluate such statement as described in Section  
666 17-17-505.

667 (b) "Business concern" means any corporation,  
668 association, firm, partnership, trust, joint venture or other form  
669 of commercial organization.

670 (c) "Key employee" means any person employed by an  
671 applicant in a management capacity and empowered to make  
672 operational or financial management decisions with respect to  
673 solid waste \* \* \* management operations of the business concern as  
674 determined by the commission, but shall not include employees  
675 primarily engaged in the physical or mechanical treatment,  
676 processing, storage or disposal of solid \* \* \* waste.

677 (d) "Public agency" means any incorporated city or  
678 town, county, political subdivision, governmental district or  
679 unit, public corporation, public institution of higher learning,  
680 community college district, planning and development district or  
681 governmental agency created under the laws of the state.

682 SECTION 12. Section 17-17-503, Mississippi Code of 1972, is  
683 amended as follows:

684 17-17-503. (1) Every applicant for issuance, reissuance or  
685 transfer of a permit for the treatment, processing, storage or  
686 disposal of solid waste at a commercial nonhazardous solid waste  
687 management facility \* \* \* shall file with the permit board at the  
688 time the application is filed a disclosure statement. The  
689 disclosure statement shall be sworn to or affirmed and subscribed  
690 and dated by the applicant. The disclosure statement shall be  
691 filed on forms supplied by the department and shall contain the  
692 following information:

693 (a) (i) If the applicant is an individual, the full

694 name, business address, date of birth and Social Security number  
695 of the applicant; or

696                   (ii) If the applicant is a business concern, the  
697 full name, business address, date of establishment, and federal  
698 employer identification number of the business concern, and the  
699 full names, business addresses, dates of birth and Social Security  
700 numbers of any officers, directors, partners or key employees  
701 thereof and all persons or business concerns holding equity in  
702 that business concern, or if the business concern is a publicly  
703 traded corporation, an individual holding more than five percent  
704 (5%), individuals related within third degree holding a cumulative  
705 of five percent (5%) or more or business concerns holding more  
706 than five percent (5%) of the equity in that business concern,  
707 except where the equity is held by an investment company which is  
708 publicly traded or a chartered lending institution, in which case  
709 the applicant need only supply the name and business address of  
710 the investment company or lending institution;

711                   (b) The full names, business addresses, dates of birth  
712 and Social Security numbers of all officers, directors or partners  
713 of any business concern disclosed in the statement and the name  
714 and addresses of all persons holding any equity in any business  
715 concern so disclosed, if the business concern is a publicly traded  
716 corporation, an individual holding more than five percent (5%),  
717 individuals related within third degree holding a cumulative of  
718 five percent (5%) or more or business concerns holding more than  
719 five percent (5%) of the equity in that business concern, except  
720 where the equity is held by an investment company which is  
721 publicly traded or a chartered lending institution, in which case  
722 the applicant need only supply the name and business address of  
723 the investment company which is publicly traded or lending  
724 institution;

725                   (c) A listing of all persons or business concerns  
726 holding debt liability in a non-publicly traded applicant business

concern. If the applicant business concern is publicly traded, a listing of all individuals or business concerns holding more than five percent (5%), or individuals related within the third degree holding a cumulative of five (5%) or more debt liability in the applicant business concern. In accordance with the debt liability disclosure requirements for applicants, any business concern disclosed pursuant to paragraph (b) shall provide a listing of debt liability holders. The listing of debt liability holders shall include for each person or business concern the full name, business address, federal employer identification number, amount of debt liability held in U.S. dollars and the percentage of the total debt liability held. For the purposes of this section, individuals and business concerns disclosed pursuant to this paragraph are not subject to further disclosure requirements and shall not be considered a "disclosed business concern" unless expressly requested by the permit board;

(d) The full name and business address of any company which collects, transports, treats, processes, stores or disposes of solid \* \* \* waste in which the applicant holds an equity interest of five percent (5%) or more;

(e) A description of the business experience and credentials, including any past or present permits or licenses for the treatment, processing, storage or disposal of solid \* \* \* waste possessed by the applicant, or if the applicant is a business concern, by the key employees, officers, directors or partners thereof;

(f) A listing and explanation of any notices of violation, prosecutions, administrative orders (whether by consent or otherwise) or license or permit suspensions or revocations, or enforcement actions of any sort by any state or federal authority within the five-year period immediately preceding the filing of the application, which are pending or have concluded in a finding of violation or entry of a consent agreement regarding any

760 allegation of civil or criminal violation of any law, regulation  
761 or requirement related to the treatment, processing, storage or  
762 disposal of solid \* \* \* waste by any person required to be  
763 disclosed in the statement and an itemized list by any person  
764 required to be disclosed in the statement of all final convictions  
765 of and pleas of guilty or nolo contendere to any crime punishable  
766 as a felony in any jurisdiction within the five-year period  
767 immediately preceding the filing of the application for the  
768 issuance, reissuance or transfer of a permit;

769           (g) A listing of any agencies outside of Mississippi  
770 which had regulatory responsibility over the applicant in  
771 connection with its treatment, processing, storage or disposal of  
772 solid \* \* \* waste; and

773           (h) Any other information the permit board may require  
774 related to the disclosure statement as described above or the  
775 evaluation of such statement as described in Section 17-17-505.

776           (2) The disclosure statement shall be updated as required by  
777 the permit board, but not more frequently than annually.

778           (3) The provisions of subsections (6) and (7) of Section  
779 17-17-27 shall be applicable to information submitted by the  
780 applicant to the permit board under this section.

781           (4) (a) The provisions of this subsection shall apply only  
782 to applicants for permits involving the storage, treatment,  
783 processing or disposal of nonhazardous solid waste only.

784           (b) The Commission on Environmental Quality may waive  
785 the filing of disclosure information required by this section if  
786 the information regards the holder of less than five percent (5%)  
787 of the equity of the applicant or the holder of less than five  
788 percent (5%) of the equity in any business concern which holds  
789 equity in the applicant.

790           (c) In order to apply for the waiver, the applicant  
791 shall file a sworn petition requesting such waiver and allege  
792 either (i) that the information cannot be ascertained after



793 reasonable and diligent search and inquiry, setting forth in the  
794 petition the facts and circumstances alleged to constitute the  
795 reasonable and diligent search and inquiry to obtain the  
796 information or (ii) the information required is not relevant or  
797 material, setting forth in the petition the facts and  
798 circumstances in support of the irrelevancy or immateriality of  
799 the information.

800 (d) The commission may waive the filing of such  
801 information if the commission finds and declares such information  
802 either (i) to be unobtainable after reasonable and diligent search  
803 and inquiry or (ii) to be irrelevant or immaterial to the review  
804 of the application and (iii) unnecessary to the discharge of its  
805 responsibilities with regard to such permit as set forth by law.

806 (e) Any applicant, other person or interested party  
807 aggrieved by an order of the commission waiving the filing of such  
808 information may appeal the decision of the commission in the  
809 manner provided in Section 49-17-41.

810 SECTION 13. Section 17-17-505, Mississippi Code of 1972, is  
811 amended as follows:

812 17-17-505. (1) The permit board may refuse to issue,  
813 reissue or transfer a permit for the treatment, processing,  
814 storage or disposal of solid waste at a commercial nonhazardous  
815 solid waste management facility \* \* \* if the permit board finds  
816 that the applicant or any person required to be listed in the  
817 disclosure statement:

818 (a) Has misrepresented or concealed any material fact  
819 in the disclosure statement;

820 (b) Has obtained a permit from the permit board by  
821 misrepresentation or concealment of a material fact;

822 (c) Has been convicted of a felony or pleaded guilty or  
823 nolo contendere to a felony involving any federal or state laws,  
824 including environmental laws, within the five-year period  
825 immediately preceding the filing of the application for the

826 issuance, reissuance or transfer of a permit;

827           (d) Has habitually violated any provisions of federal  
828 or state environmental laws, rules or regulations related to the  
829 management of solid \* \* \* waste within the five-year period  
830 immediately preceding the filing of the application for the  
831 issuance, reissuance or transfer of a permit;

832           (e) Has been adjudicated in contempt of an order of any  
833 court enforcing any state or federal environmental laws within the  
834 five-year period immediately preceding the filing of the  
835 application for the issuance, reissuance or transfer of a permit;

836           (f) Has been convicted of or pleaded guilty or nolo  
837 contendere to bribery or attempting to bribe a public officer or  
838 employee of the federal government, or any state or local  
839 government in the United States, in the public officer's or  
840 employee's official capacity within the five-year period  
841 immediately preceding the filing of the application for the  
842 issuance, reissuance or transfer of a permit; or

843           (g) Has been convicted of or pleaded guilty or nolo  
844 contendere to collusion among bidders or prospective bidders in  
845 restraint of freedom of competition by agreement to bid a fixed  
846 price within the five-year period immediately preceding the filing  
847 of the application for the issuance, reissuance or transfer of a  
848 permit.

849           (2) In determining whether to issue, reissue or transfer a  
850 permit for the treatment, processing, storage or disposal of solid  
851 waste at a commercial nonhazardous solid waste management  
852 facility, \* \* \* the permit board shall consider the facts and any  
853 mitigating factors including:

854           (a) The relevance of the offense to the business for  
855 which a permit is sought or the nature and responsibilities of the  
856 position which a convicted individual would hold;

857           (b) The nature and seriousness of the offense;

858           (c) The circumstances under which the offense occurred;

859                   (d) The date of the offense;  
860                   (e) The ownership and management structure in place at  
861 the time of the offense.

862           (3) The permit board shall allow the applicant to submit  
863 evidence of rehabilitation and shall consider the applicant's  
864 efforts to prevent recurrence of unlawful activity in its  
865 determination under subsection (2) of this section. Items to be  
866 considered by the permit board shall include:

867                   (a) The applicant's record and history of implementing  
868 successful corrective actions undertaken to prevent or minimize  
869 the likelihood of recurrence of the offense;

870                   (b) Whether the offense was an isolated or repeated  
871 incident;

872                   (c) Whether the applicant cooperated with governmental  
873 bodies during investigations or voluntarily provided information  
874 regarding any offense under consideration;

875                   (d) The number and types of permits held by the  
876 applicant, and the experience of the applicant in conducting its  
877 business;

878                   (e) Implementation by the applicant of formal policies,  
879 training programs, or management controls to substantially  
880 minimize or prevent the occurrence of future violations or  
881 unlawful activities;

882                   (f) Implementation by the applicant of an environmental  
883 compliance auditing program to assess and monitor compliance with  
884 environmental laws, rules, regulations and permit conditions; and

885                   (g) The applicant's discharge of individuals or  
886 severance of the interest of or affiliation with responsible  
887 parties, who would otherwise cause the permit board to deny a  
888 permit.

889           (4) If the permit board finds pursuant to this section that  
890 mitigating factors exist or that the applicant has demonstrated  
891 rehabilitation, the permit board may issue, reissue or transfer

892 the permit for the treatment, processing, storage or disposal of  
893 solid waste at a commercial nonhazardous solid waste management  
894 facility. \* \* \*

895 SECTION 14. Section 17-18-5, Mississippi Code of 1972, is  
896 amended as follows:

897 17-18-5. For purposes of this chapter the following terms  
898 shall have the meanings ascribed to them in this section unless  
899 the context clearly indicates otherwise:

900 (a) "Advisory committee" means the designated site  
901 local advisory committee created under Section 17-18-35.

902 (b) "Authority" means the Hazardous Waste Facility  
903 Siting Authority created under Section 17-18-7.

904 (c) "Committee" means the Hazardous Waste Technical  
905 Siting Committee created under Section 17-18-11.

906 (d) "Department" means the Department of Finance and  
907 Administration.

908 (e) "Hazardous waste" means hazardous waste as defined  
909 under Section 17-17-3.

910 (f) "Local governmental unit" means any town,  
911 municipality or county.

912 (g) "State commercial hazardous waste management  
913 facility" means a facility constructed, owned and operated by the  
914 State of Mississippi that receives hazardous wastes directly or  
915 indirectly from more than one (1) generator for the storage,  
916 processing, treatment, recycling, recovery or disposal of  
917 hazardous wastes for a fee and is authorized under this chapter.

918 SECTION 15. Section 17-18-25, Mississippi Code of 1972, is  
919 amended as follows:

920 17-18-25. The department may actively seek a qualified  
921 private contractor or contractors to design and construct \* \* \*  
922 the state commercial hazardous waste management facility. A  
923 single contractor may design and construct \* \* \* the facility. If  
924 the department does not negotiate and execute a contract or

contracts for the design, construction and operation of the state commercial hazardous waste management facility, \* \* \* the executive director of the department shall certify to the Governor in writing that the department \* \* \* shall design, construct and operate the state commercial hazardous waste management facility.

SECTION 16. Section 17-18-29, Mississippi Code of 1972, is amended as follows:

17-18-29. (1) The department shall provide a written plan \* \* \* for the safe and proper closure of the facility. The \* \* \* site closure plan shall be subject to the approval \* \* \* of the Department of Environmental Quality in accordance with the rules and regulations of the Commission on Environmental Quality. The department may employ an independent contractor to properly close the state commercial hazardous waste management facility and to ensure the site is stabilized.

(2) The department shall provide for such post-closure physical surveillance and environmental monitoring of the state commercial hazardous waste management facility as may be required by the Department of Environmental Quality, the U.S. Environmental Protection Agency and by agreement with the host community.

(3) The department shall provide through its own personnel, private contractor, cooperative agreement with other governmental agencies or any combination thereof, any active maintenance or remedial actions that may be required. Payment for the costs thereof shall be made from the perpetual care fund established pursuant to this chapter.

SECTION 17. Section 17-18-31, Mississippi Code of 1972, is amended as follows:

17-18-31. (1) There is hereby created in the State Treasury a fund to be designated as the "Perpetual Care Fund," hereinafter referred to in this section as "fund," which may be used for:

(a) Administration of the fund;

(b) Emergency response and decontamination at the state

commercial hazardous waste management facility;

(c) Post-closure physical surveillance, environmental monitoring, maintenance, care, custody and remedial action at the state commercial hazardous waste management facility.

(2) Expenditures may be made from the fund upon requisition to the Treasurer by the executive director of the department.

(3) The fund shall be treated as a special trust fund. Interest earned on the principal therein shall be credited by the Treasurer to the fund.

(4) In addition to any money that may be appropriated or otherwise made available to it, the fund shall be maintained by user fees and other charges, including nonregulatory penalties, surcharges or other money paid to or recovered by or on behalf of the department.

(5) Fees and other charges shall at all times be sufficient to build and maintain the fund balance at a level determined by the department, in consultation with the Department of Environmental Quality.

(6) The establishment of this fund shall in no way be construed to relieve or reduce the liability of any \* \* \* person for damages resulting from the operation of the state commercial hazardous waste management facility.

SECTION 18. Section 17-18-33, Mississippi Code of 1972, is amended as follows:

17-18-33. (1) For the state commercial hazardous waste management facility the department, in consultation with the Department of Environmental Quality, shall establish and revise as necessary schedules of user fees and other charges, including nonregulatory penalties and surcharges. \* \* \*

(2) In establishing and revising such schedules of fees, the department shall consider and shall seek to recover, to the maximum extent possible, the following costs:

(a) Establishment and operation of the authority and

991 committee;

992           (b) Administrative costs of the department in support  
993 of its activities under this chapter;

994           (c) Establishment and administration of the Perpetual  
995 Care Fund;

996           (d) Repayment to the state with interest of all funds  
997 expended from the State General Fund in the development of the  
998 state commercial hazardous waste management facility;

999           (e) Compensation of contractors and consultants  
1000 employed by the department, authority and committee in furtherance  
1001 of the purposes of this chapter;

1002           (f) Other expenses incurred by the department, the  
1003 state or its agencies in furtherance of the purposes of this  
1004 chapter.

1005       (3) If revenues exceed all costs set out and all other costs  
1006 and charges for which the department is liable, such excess funds  
1007 shall be paid into a special fund hereby created in the State  
1008 Treasury to fund a portion of the costs of the Mississippi  
1009 Comprehensive Waste Minimization Program administered by the  
1010 Department of Environmental Quality, other programs which foster  
1011 multimedia waste prevention, reduction, reuse and recycling,  
1012 programs which provide assistance to small quantity generators and  
1013 other programs for environmental protection purposes.

1014       SECTION 19. Section 17-18-35, Mississippi Code of 1972, is  
1015 amended as follows:

1016       17-18-35. (1) Upon site designation for the state  
1017 commercial hazardous waste management facility, the governing body  
1018 of the local governmental unit wherein the site is designated may  
1019 appoint a designated site local advisory committee. The advisory  
1020 committee shall consist of seven (7) members representing insofar  
1021 as possible local government, environmental, health, engineering,  
1022 business and industry, agricultural, academic, public interest and  
1023 emergency response groups. If the designated site is in a

municipality, the governing body of the county in which the municipality is located may appoint two (2) of the seven (7) members of the advisory committee. The advisory committee shall elect a chairman, vice chairman and a secretary. Vacancies shall be filled by the governing body of the local governmental unit using the same criteria employed in the original appointments. The governing body of the local governmental unit shall provide the advisory committee with the necessary support staff.

(2) The designated site local advisory committee may:

(a) Study the costs and benefits associated with the state commercial hazardous waste management facility;

(b) Review all permit and license applications and related documents concerning the proposed facility;

(c) Hire program and technical consultants to assist in the review process;

(d) Assess the potential local environmental and socioeconomic impacts of the proposed facility;

(e) Promote public education, information and participation in the permitting process;

(f) Develop and propose agreements between the department, the state commercial hazardous waste management facility, \* \* \* local governments and other persons;

(g) Develop and present recommendations concerning permit conditions, operational requirements, compensation and incentives related to the proposed facility;

(h) Hire a mediator to facilitate negotiations between the department and the governing body of the local governmental unit;

(i) Reimburse the advisory committee members for reasonable and necessary expenses.

(3) An applicant for a permit to operate the state commercial hazardous waste management facility shall pay a one-time local application fee of One Hundred Thousand Dollars



1057 (\$100,000.00). \* \* \* If the applicant is the department, the  
1058 department shall pay and disburse the local application fee  
1059 directly to the governing body of the local governmental unit.

1060 SECTION 20. Section 17-18-27, Mississippi Code of 1972,  
1061 which authorizes the Department of Finance and Administration to  
1062 sell real property for a facility site to a nongovernmental  
1063 entity, is repealed.

1064 SECTION 21. This act shall take effect and be in force from  
1065 and after July 1, 1999.