

By: Representative Ellington

To: Conservation and
Water Resources

HOUSE BILL NO. 1228

1 AN ACT TO AMEND SECTION 49-17-30, MISSISSIPPI CODE OF 1972,
2 TO REVISE THE METHOD BY WHICH TITLE V PERMIT FEES ARE CALCULATED
3 AND TO SPECIFY THE MINIMUM AND MAXIMUM FEE; TO AMEND SECTION
4 49-17-14, MISSISSIPPI CODE OF 1972, TO AUTHORIZE THE USE OF TITLE
5 V FEES RETAINED IN THE AIR OPERATING PERMIT FEE TRUST FUND IN
6 SUCCEEDING FISCAL YEARS; AND FOR RELATED PURPOSES.

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

8 SECTION 1. Section 49-17-30, Mississippi Code of 1972, is
9 amended as follows:

10 **[Until July 1, 2000, this section will read as follows:]**

11 49-17-30. (1) As a condition of any air operating permit
12 required under Title V of the federal Clean Air Act, the owner or
13 operator of any stationary source shall pay to the Department of
14 Environmental Quality an annual permit fee. The commission shall
15 establish the amount of each fee to cover the costs of the Title V
16 program as provided in Section 49-17-14.

17 (2) To facilitate the proper administration of the Title V
18 program, the commission is authorized to assess and collect fees
19 from Title V program permittees. The commission is further
20 authorized to promulgate such rules and regulations as are
21 necessary for the development and administration of the Title V
22 program and the assessment and collection of Title V program fees.

23 (a) For purposes of fee assessment and collection, the
24 maximum emission rate of each pollutant used in the calculation of
25 fees shall be four thousand (4,000) tons per year per facility.

26 (b) For purposes of fee assessment and collection, the
27 permit holder shall elect for actual or allowable emissions to be
28 used in determining the annual quantity of emissions unless the

29 commission determines by order that the method chosen by the
30 applicant for calculating actual emissions fails to reasonably
31 represent actual emissions. Such order of the commission shall be
32 subject to appeal in the manner provided in Section 49-17-41.
33 Actual emissions shall be calculated using emission monitoring
34 data or direct emissions measurements for the pollutant(s); mass
35 balance calculations such as the amounts of the pollutant(s)
36 entering and leaving process equipment and where mass balance
37 calculations can be supported by direct measurement of process
38 parameters, such direct measurement data shall be supplied;
39 published emission factors such as those relating release
40 quantities to throughput or equipment type (e.g., air emission
41 factors); or other approaches such as engineering calculations
42 (e.g. estimating volatilization using published mathematical
43 formulas) or best engineering judgments where such judgments are
44 derived from process and/or emission data which supports the
45 estimates of maximum actual emissions.

46 If the commission determines that there is not sufficient
47 information available on a facility's emissions, the determination
48 of the fee shall be based upon the permitted allowable emissions
49 until such time as an adequate determination of actual emissions
50 is made.

51 (c) A minimum annual fee of Two Hundred Fifty Dollars
52 (\$250.00) shall be assessed to and collected from the owner or
53 operator of each facility that is required to hold a Title V
54 permit. The maximum annual fee shall be Two Hundred Fifty
55 Thousand Dollars (\$250,000.00) per facility.

56 (3) (a) Prior to the date of full implementation of the
57 Title V program in Mississippi, the fee assessed shall be Four
58 Dollars (\$4.00) per ton of emissions of each air pollutant for
59 which fees can be assessed under the Title V program, not to
60 exceed Fifty Thousand Dollars (\$50,000.00) per facility.

61 (b) Following the date of full implementation of the
62 Title V program in Mississippi, the fee schedule for Title V
63 permit fees for any subsequent calendar year shall be set by order
64 of the commission in an amount sufficient to cover the reasonable
65 costs of development and administration of the Title V program.

66 The commission's order shall follow:

67 (i) Receipt of the report and recommendations of
68 the Advisory Council; and

69 (ii) A public hearing to be held not earlier than
70 thirty (30) days following receipt by the commission of the report
71 and recommendations of the Advisory Council. The commission may
72 proceed with entry of the order on fees if the Advisory Council
73 fails to submit its report in a timely manner. The order of the
74 commission may be appealed in the manner set forth in Section
75 49-17-41. The determination of the fee shall be by order of the
76 commission and shall not be considered the promulgation of a
77 regulation by the commission. The record of the public hearing
78 shall be included in the record upon which the order is based and
79 shall become a part of the appellate records for all appeals taken
80 from the order of the commission establishing or modifying Title V
81 permit fees. Any undisputed amount due from an appellant must be
82 paid according to the appellant's payment schedule during the
83 pendency of the appeal.

84 (4) Any person required to pay the Title V permit fee set
85 forth under this chapter who disagrees with the calculation or
86 applicability of the person's fee may petition the commission in
87 writing for a hearing in accordance with Section 49-17-35. Such
88 hearing shall be in accordance with Section 49-17-33. Any
89 disputed portion of the fee for which a hearing has been requested
90 will not incur any penalty or interest from and after the receipt
91 by the commission of the hearing petition. The decision of the
92 commission may be appealed in the manner set forth in Section
93 49-17-41.

94 (5) All fees collected pursuant to this section shall be
95 deposited into the "Air Operating Permit Program Fee Trust Fund"
96 established in Section 49-17-14.

97 **[From and after July 1, 2000, this section will read as**
98 **follows:]**

99 49-17-30. (1) As a condition of any air operating permit
100 required under Title V of the federal Clean Air Act, the owner or
101 operator of any stationary source shall pay to the Department of
102 Environmental Quality an annual permit fee. The commission shall
103 establish the amount of each fee to cover the costs of the Title V
104 program as provided in Section 49-17-14.

105 (2) To facilitate the proper administration of the Title V
106 program, the commission is authorized to assess and collect fees
107 from Title V program permittees. The commission is further
108 authorized to promulgate such rules and regulations as are
109 necessary for the development and administration of the Title V
110 program and the assessment and collection of Title V program fees.

111 (a) For purposes of fee assessment and collection, the
112 maximum emission rate of each pollutant used in the calculation of
113 fees shall be four thousand (4,000) tons per year per facility.

114 (b) For purposes of fee assessment and collection, the
115 permit holder shall elect for actual or allowable emissions to be
116 used in determining the annual quantity of emissions unless the
117 commission determines by order that the method chosen by the
118 applicant for calculating actual emissions fails to reasonably
119 represent actual emissions. Such order of the commission shall be
120 subject to appeal in the manner provided in Section 49-17-41.
121 Actual emissions shall be calculated using emission monitoring
122 data or direct emissions measurements for the pollutant(s); mass
123 balance calculations such as the amounts of the pollutant(s)
124 entering and leaving process equipment and where mass balance
125 calculations can be supported by direct measurement of process
126 parameters, such direct measurement data shall be supplied;
127 published emission factors such as those relating release
128 quantities to throughput or equipment type (e.g., air emission
129 factors); or other approaches such as engineering calculations
130 (e.g. estimating volatilization using published mathematical
131 formulas) or best engineering judgments where such judgments are

132 derived from process and/or emission data which supports the
133 estimates of maximum actual emissions.

134 If the commission determines that there is not sufficient
135 information available on a facility's emissions, the determination
136 of the fee shall be based upon the permitted allowable emissions
137 until such time as an adequate determination of actual emissions
138 is made.

139 (c) The commission shall assess and collect a fee from
140 each facility that is required to hold a Title V permit. The
141 commission shall set a minimum fee of Two Hundred Fifty Dollars
142 (\$250.00). This minimum fee shall be assessed to each Title V
143 facility for which the potential or actual emissions, as
144 calculated under subsection (2)(b) of this action, otherwise
145 subject the facility to a fee of less than Two Hundred Fifty
146 Dollars (\$250.00). The commission shall not assess and collect a
147 fee greater than Two Hundred Fifty Thousand Dollars (\$250,000.00)
148 from any one (1) Title V facility.

149 (3) (a) Prior to the date of full implementation of the
150 Title V program in Mississippi, the fee assessed shall be Four
151 Dollars (\$4.00) per ton of emissions of each air pollutant for
152 which fees can be assessed under the Title V program, not to
153 exceed Fifty Thousand Dollars (\$50,000.00) per facility.

154 (b) Following the date of full implementation of the
155 Title V program in Mississippi, the fee schedule for Title V
156 permit fees for any subsequent calendar year shall be set by order
157 of the commission in an amount sufficient to cover the reasonable
158 costs of development and administration of the Title V program.
159 The commission's order shall follow:

160 (i) Receipt of the report and recommendations of
161 the Advisory Council; and

162 (ii) A public hearing to be held not earlier than
163 thirty (30) days following receipt by the commission of the report
164 and recommendations of the Advisory Council. The commission may

165 proceed with entry of the order on fees if the Advisory Council
166 fails to submit its report in a timely manner. The order of the
167 commission may be appealed in the manner set forth in Section
168 49-17-41. The determination of the fee shall be by order of the
169 commission and shall not be considered the promulgation of a
170 regulation by the commission. The record of the public hearing
171 shall be included in the record upon which the order is based and
172 shall become a part of the appellate records for all appeals taken
173 from the order of the commission establishing or modifying Title V
174 permit fees. Any undisputed amount due from an appellant must be
175 paid according to the appellant's payment schedule during the
176 pendency of the appeal.

177 (4) Any person required to pay the Title V permit fee set
178 forth under this chapter who disagrees with the calculation or
179 applicability of the person's fee may petition the commission in
180 writing for a hearing in accordance with Section 49-17-35. Such
181 hearing shall be in accordance with Section 49-17-33. Any
182 disputed portion of the fee for which a hearing has been requested
183 will not incur any penalty or interest from and after the receipt
184 by the commission of the hearing petition. The decision of the
185 commission may be appealed in the manner set forth in Section
186 49-17-41.

187 (5) All fees collected pursuant to this section shall be
188 deposited into the "Air Operating Permit Program Fee Trust Fund"
189 established in Section 49-17-14.

190 SECTION 2. Section 49-17-14, Mississippi Code of 1972, is
191 amended as follows:

192 **[Until July 1, 2000, this section will read as follows:]**

193 49-17-14. (1) "Title V program" means, as used in Sections
194 49-17-1 through 49-17-45, the air operating permit program
195 mandated in Title V of the 1990 amendments to the federal Clean
196 Air Act, codified in 42 USCS Section 7661 et seq.

197 (2) There is created in the State Treasury a fund to be

198 designated as the "Air Operating Permit Program Fee Trust Fund,"
199 referred to hereinafter as the "fund."

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

203 (4) The fund may receive monies from any available public or
204 private source including, but not limited to, collection of fees,
205 interest, grants, taxes, public and private donations and judicial
206 actions.

207 (5) To facilitate the proper administration of the fund, the
208 commission is authorized to promulgate rules and regulations for
209 the administration of the fund.

210 (6) The commission shall expend or utilize monies in the
211 fund by an annual appropriation approved by the Legislature to pay
212 all reasonable direct and indirect costs associated with the
213 development and administration of the Title V program including,
214 but not limited to, the reasonable costs of the following
215 activities as they relate to the Title V program:

216 (a) Preparing generally applicable regulations or
217 guidance regarding the permit program or its implementation or
218 enforcement;

219 (b) Reviewing and acting on any application for a
220 permit, permit modification or permit renewal, including the
221 development of an applicable requirement as part of the processing
222 of a permit, or permit modification or renewal;

223 (c) Administering the permit program, including the
224 supporting and tracking of permit applications, compliance
225 certification, and related data entry;

226 (d) Implementing and enforcing the terms of any Title V
227 permit (not including any court costs or other costs associated
228 with an enforcement action), including adequate resources to
229 determine which sources are subject to the program;

230 (e) Emissions and ambient monitoring;

231 (f) Modeling, analyses, or demonstrations;
232 (g) Preparing inventories and tracking emissions;
233 (h) Providing direct and indirect support to sources
234 under the Small Business Stationary Source Technical and
235 Environmental Compliance Assistance Program under Section 507 of
236 the federal Clean Air Act in determining and meeting their
237 obligations under this section; and

238 (i) Providing funding to the Advisory Council created
239 in Section 49-17-16 in an amount reasonably sufficient to meet the
240 Advisory Council's obligations under Sections 49-17-1 through
241 49-17-45.

242 (7) Monies in the fund at the end of the fiscal year shall
243 be retained in the fund for use in the next succeeding fiscal
244 year. If the annual fees collected exceed the cost of
245 administering the Title V program for that fiscal year, then the
246 excess shall be applied to the cost of administering the program
247 for the succeeding fiscal year. In the succeeding fiscal year,
248 the total to be collected from fees shall be reduced by the excess
249 retained in the fund and the assessment rates shall be adjusted
250 proportionately.

251 (8) No such fees shall be utilized by the Department of
252 Environmental Quality or any other person for any purpose or
253 purposes other than those purposes required by Sections 49-17-1
254 through 49-17-45.

255 **[From and after July 1, 2000, this section will read as**
256 **follows:]**

257 49-17-14. (1) "Title V program" means, as used in Sections
258 49-17-1 through 49-17-45, the air operating permit program
259 mandated in Title V of the 1990 amendments to the federal Clean
260 Air Act, codified in 42 USCS Section 7661 et seq.

261 (2) There is created in the State Treasury a fund to be
262 designated as the "Air Operating Permit Program Fee Trust Fund,"
263 referred to hereinafter as the "fund."

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

267 (4) The fund may receive monies from any available public or
268 private source including, but not limited to, collection of fees,
269 interest, grants, taxes, public and private donations and judicial
270 actions.

271 (5) To facilitate the proper administration of the fund, the
272 commission is authorized to promulgate rules and regulations for
273 the administration of the fund.

274 (6) The commission shall expend or utilize monies in the
275 fund by an annual appropriation approved by the Legislature to pay
276 all reasonable direct and indirect costs associated with the
277 development and administration of the Title V program including,
278 but not limited to, the reasonable costs of the following
279 activities as they relate to the Title V program:

280 (a) Preparing generally applicable regulations or
281 guidance regarding the permit program or its implementation or
282 enforcement;

283 (b) Reviewing and acting on any application for a
284 permit, permit modification or permit renewal, including the
285 development of an applicable requirement as part of the processing
286 of a permit, or permit modification or renewal;

287 (c) Administering the permit program, including the
288 supporting and tracking of permit applications, compliance
289 certification, and related data entry;

290 (d) Implementing and enforcing the terms of any Title V
291 permit (not including any court costs or other costs associated
292 with an enforcement action), including adequate resources to
293 determine which sources are subject to the program;

294 (e) Emissions and ambient monitoring;

295 (f) Modeling, analyses, or demonstrations;

296 (g) Preparing inventories and tracking emissions;

297 (h) Providing direct and indirect support to sources
298 under the Small Business Stationary Source Technical and
299 Environmental Compliance Assistance Program under Section 507 of
300 the federal Clean Air Act in determining and meeting their
301 obligations under this section; and

302 (i) Providing funding to the Advisory Council created
303 in Section 49-17-16 in an amount reasonably sufficient to meet the
304 Advisory Council's obligations under Sections 49-17-1 through
305 49-17-45.

306 (7) Monies in the fund at the end of the fiscal year shall
307 be retained in the fund * * *. If the annual fees collected
308 exceed the cost of administering the Title V program for that
309 fiscal year, then the excess shall be applied to the cost of
310 administering the program for the succeeding fiscal year or, upon
311 the recommendation of the Air Advisory Council and the adoption of
312 that recommendation by the commission, for use over a designated
313 number of immediately succeeding fiscal years, not to exceed the
314 two (2) immediately succeeding fiscal years. In the succeeding
315 fiscal year or years, the total to be collected from fees shall be
316 reduced by the excess retained in the fund, in full or as
317 apportioned annually pursuant to the air advisory committee
318 recommendation or adopted by the commission, and the assessment
319 rates shall be adjusted proportionately.

320 (8) No such fees shall be utilized by the Department of
321 Environmental Quality or any other person for any purpose or
322 purposes other than those purposes required by Sections 49-17-1
323 through 49-17-45.

324 SECTION 3. This act shall take effect and be in force from
325 and after July 1, 1999.