

By: Senator(s) Dearing

To: Environment Prot,
Cons and Water Res

SENATE BILL NO. 2983
(As Passed the Senate)

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 MAXIMUM PER TON FEE AND THE MINIMUM AND MAXIMUM
4 TOTAL FEE; TO AMEND SECTION 49-17-14, MISSISSIPPI CODE OF 1972, TO
5 AUTHORIZE THE USE OF TITLE V FEES RETAINED IN THE AIR OPERATING
6 PERMIT FEE TRUST FUND IN SUCCEEDING FISCAL YEARS; AND FOR RELATED
7 PURPOSES.

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

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

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

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

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

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

27 (b) For purposes of fee assessment and collection, the
28 permit holder shall elect for actual or allowable emissions to be

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

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

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

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

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

66 costs of development and administration of the Title V program.

67 The commission's order shall follow:

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

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

85 (4) Any person required to pay the Title V permit fee set
86 forth under this chapter who disagrees with the calculation or
87 applicability of the person's fee may petition the commission in
88 writing for a hearing in accordance with Section 49-17-35. Such
89 hearing shall be in accordance with Section 49-17-33. Any
90 disputed portion of the fee for which a hearing has been requested
91 will not incur any penalty or interest from and after the receipt
92 by the commission of the hearing petition. The decision of the
93 commission may be appealed in the manner set forth in Section
94 49-17-41.

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

98 **[From and after July 1, 2000, this section will read as**

99 **follows:]**

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

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

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

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

132 formulas) or best engineering judgments where such judgments are
133 derived from process and/or emission data which supports the
134 estimates of maximum actual emissions.

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

140 (c) The commission shall assess and collect a fee from
141 each facility that is required to hold a Title V permit. The fee
142 assessed under this section shall not exceed Twenty-two Dollars
143 (\$22.00) per ton of emissions of each air pollutant for which fees
144 can be assessed under the Title V program. The commission shall
145 set a minimum fee of Two Hundred Fifty Dollars (\$250.00). This
146 minimum fee shall be assessed to each Title V facility for which
147 the potential or actual emissions, as calculated under subsection
148 (2)(b) of this section, otherwise subject the facility to a fee of
149 less than Two Hundred Fifty Dollars (\$250.00). The commission
150 shall not assess and collect a fee greater than Two Hundred Fifty
151 Thousand Dollars (\$250,000.00) from any one (1) Title V facility.

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

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

162 The commission's order shall follow:

163 (i) Receipt of the report and recommendations of
164 the Advisory Council; and

165 (ii) A public hearing to be held not earlier than
166 thirty (30) days following receipt by the commission of the report
167 and recommendations of the Advisory Council. The commission may
168 proceed with entry of the order on fees if the Advisory Council
169 fails to submit its report in a timely manner. The order of the
170 commission may be appealed in the manner set forth in Section
171 49-17-41. The determination of the fee shall be by order of the
172 commission and shall not be considered the promulgation of a
173 regulation by the commission. The record of the public hearing
174 shall be included in the record upon which the order is based and
175 shall become a part of the appellate records for all appeals taken
176 from the order of the commission establishing or modifying Title V
177 permit fees. Any undisputed amount due from an appellant must be
178 paid according to the appellant's payment schedule during the
179 pendency of the appeal.

180 (4) Any person required to pay the Title V permit fee set
181 forth under this chapter who disagrees with the calculation or
182 applicability of the person's fee may petition the commission in
183 writing for a hearing in accordance with Section 49-17-35. Such
184 hearing shall be in accordance with Section 49-17-33. Any
185 disputed portion of the fee for which a hearing has been requested
186 will not incur any penalty or interest from and after the receipt
187 by the commission of the hearing petition. The decision of the
188 commission may be appealed in the manner set forth in Section
189 49-17-41.

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

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

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

196 49-17-14. (1) "Title V program" means, as used in Sections
197 49-17-1 through 49-17-45, the air operating permit program

198 mandated in Title V of the 1990 amendments to the federal Clean
199 Air Act, codified in 42 USCS Section 7661 et seq.

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

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

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

210 (5) To facilitate the proper administration of the fund, the
211 commission is authorized to promulgate rules and regulations for
212 the administration of the fund.

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

219 (a) Preparing generally applicable regulations or
220 guidance regarding the permit program or its implementation or
221 enforcement;

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

226 (c) Administering the permit program, including the
227 supporting and tracking of permit applications, compliance
228 certification, and related data entry;

229 (d) Implementing and enforcing the terms of any Title V
230 permit (not including any court costs or other costs associated

231 with an enforcement action), including adequate resources to
232 determine which sources are subject to the program;

233 (e) Emissions and ambient monitoring;

234 (f) Modeling, analyses, or demonstrations;

235 (g) Preparing inventories and tracking emissions;

236 (h) Providing direct and indirect support to sources

237 under the Small Business Stationary Source Technical and

238 Environmental Compliance Assistance Program under Section 507 of

239 the federal Clean Air Act in determining and meeting their

240 obligations under this section; and

241 (i) Providing funding to the Advisory Council created

242 in Section 49-17-16 in an amount reasonably sufficient to meet the

243 Advisory Council's obligations under Sections 49-17-1 through

244 49-17-45.

245 (7) Monies in the fund at the end of the fiscal year shall

246 be retained in the fund for use in the next succeeding fiscal

247 year. If the annual fees collected exceed the cost of

248 administering the Title V program for that fiscal year, then the

249 excess shall be applied to the cost of administering the program

250 for the succeeding fiscal year. In the succeeding fiscal year,

251 the total to be collected from fees shall be reduced by the excess

252 retained in the fund and the assessment rates shall be adjusted

253 proportionately.

254 (8) No such fees shall be utilized by the Department of

255 Environmental Quality or any other person for any purpose or

256 purposes other than those purposes required by Sections 49-17-1

257 through 49-17-45.

258 **[From and after July 1, 2000, this section will read as**

259 **follows:]**

260 49-17-14. (1) "Title V program" means, as used in Sections

261 49-17-1 through 49-17-45, the air operating permit program

262 mandated in Title V of the 1990 amendments to the federal Clean

263 Air Act, codified in 42 USCS Section 7661 et seq.

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

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

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

274 (5) To facilitate the proper administration of the fund, the
275 commission is authorized to promulgate rules and regulations for
276 the administration of the fund.

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

283 (a) Preparing generally applicable regulations or
284 guidance regarding the permit program or its implementation or
285 enforcement;

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

290 (c) Administering the permit program, including the
291 supporting and tracking of permit applications, compliance
292 certification, and related data entry;

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

297 (e) Emissions and ambient monitoring;
298 (f) Modeling, analyses, or demonstrations;
299 (g) Preparing inventories and tracking emissions;
300 (h) Providing direct and indirect support to sources
301 under the Small Business Stationary Source Technical and
302 Environmental Compliance Assistance Program under Section 507 of
303 the federal Clean Air Act in determining and meeting their
304 obligations under this section; and

305 (i) Providing funding to the Advisory Council created
306 in Section 49-17-16 in an amount reasonably sufficient to meet the
307 Advisory Council's obligations under Sections 49-17-1 through
308 49-17-45.

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

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

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