HOUSE BILL NO. 863

AN ACT TO AMEND SECTIONS 53-7-5, 53-7-7, 53-7-17 THROUGH 53-7-21 AND 53-7-25 THROUGH 53-7-47, 53-7-65, 53-7-67, 53-7-73 AND 53-7-75, MISSISSIPPI CODE OF 1972, TO REVISE THE MISSISSIPPI SURFACE MINING AND RECLAMATION LAW; TO TRANSFER NONCOAL PERMITTING AUTHORITY TO THE ENVIRONMENTAL QUALITY PERMIT BOARD; TO ELIMINATE TEMPORARY AUTOMATIC PERMITS AFTER MAILING OF AN APPLICATION; TO ELIMINATE A TEN DAY GRACE PERIOD FOR VIOLATIONS OF THIS LAW; AND TO REPEAL SECTION 53-7-23, MISSISSIPPI CODE OF 1972, WHICH CREATES THE DUTIES FOR THE OPERATOR OF CERTAIN MATERIALS UNDER THE LAW; AND FOR RELATED PURPOSES.

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

SECTION 1. Section 53-7-5, Mississippi Code of 1972, is amended as follows:

53-7-5. For the purposes of this chapter, the following terms shall have the meanings respectively ascribed to them, except where the context or subject matter otherwise requires:

(a) "Commission" means the Mississippi Commission on Environmental Quality as created by Section 49-2-5;

(b) (i) "Class I materials" means bentonite, metallic ore, mineral clay, dolomite and phosphate;

(ii) "Class II materials" means sand, gravel, soil, clay, sand clay, clay gravel, limestone and chalk;

(iii) "Materials" means all Class I materials and all Class II materials and such other materials as shall be designated by the commission either as a Class I or Class II material;

(c) "Affected area" means the area of land from which any materials are to be removed in a surface mining operation and upon which any materials are to be deposited and shall include all lands affected by the construction of new roads or the improvement.
or use of existing roads other than public roads to gain access
and to haul materials;

(d) "Department" means the Mississippi Department of
Environmental Quality, as established by Section 49-2-7;

(e) "Exploration activity" means the disturbance of the
surface or subsurface for the purpose of determining the location,
quantity or quality of a deposit of any material, except the
drilling of test holes or core holes of twelve (12) inches or less
in diameter;

(f) "Fund" means the Land Reclamation Fund created by
Section 53-7-69;

(g) "Highwall" means the vertical wall created by the
cutting of a bench in the contour mining process, and shall have
no application to open pit, box cut, strip drift or any other type
of mining process except contour mining;

(h) "Nearest approximate original contour" means that
surface configuration achieved by backfilling and grading of the
surface-mined area so that it substantially resembles the surface
configuration of the land prior to mining and blends into and
complements the drainage pattern of the surrounding terrain, with
all highwalls, spoil piles and water-collecting depression
eliminated;

(i) "Notice of intent" means the notice of intent to
surface mine Class II materials required by Section 53-7-21;

(j) "Operator" means the person, including any public
or governmental agency, not otherwise exempted by this chapter,
that is to engage or that is engaged in a surface mining
operation, whether on a permanent, continuous basis, or for a
limited period of time and for a specific or ancillary purpose,
including any individual or entity whose permit has expired or
been suspended or revoked;

(k) "Overburden" means all earth and other materials
which are removed to gain access to the material in the process of
surface mining and shall mean such material before or after its
removal by surface mining;

   (l) "Permit area" means all the area designated as such
in the permit application and shall include all land affected by
the surface mining operations during the term of the permit and
may include any contiguous area which the operator proposes to
surface mine thereafter;

   (m) "Permit Board" means the Mississippi Environmental
Quality Permit Board as created in Section 49-17-28;

   (n) "Person" means any individual, corporation,
partnership, company, firm, association, business, joint-stock
company, society, association executor, receiver, trustee,
administrator guardian, fiduciary, or other legal person or
entity, and any governmental agency, including the State of
Mississippi, any agency thereof or political subdivision thereof,
or any organization or association of citizens;

   (o) "Reclamation" means work necessary to restore an
area of land affected by surface mining to a useful, productive
and beneficial purpose, the entire process being designed to
restore the land to a useful, productive and beneficial purpose,
suitable and amenable to surrounding land and consistent with
local environmental conditions in accordance with the standards
set forth in Section 53-7-35 and other provisions of this chapter;

   (p) "Spoil pile" means the overburden and other mined
waste material as it is piled or deposited in the process of
surface mining;

   (q) "Surface mining" and "mining" means the extraction
of materials from the ground or water or from waste or stock piles
or from pits or banks or natural occurrences by methods including,
but not limited to, strip drift, open pit, contour or auger
mining, dredging, placer mining, quarrying and leaching, and
activities related thereto, which will, in effect, consume, delete
or alter the surface estate, and also those aspects of underground
mining having significant effects on the surface;

(r) "Surface mining operation" and "operation" means
the activities conducted at a mining site, including extraction,
storage, processing and shipping of materials and reclamation of
the affected area. This term shall not include the following:
the dredging and removal of oyster shells from navigable bodies of
water; the dredging and removal of any materials from the bed of
navigable streams, when such activity is regulated and permitted
by the United States Corps of Engineers; the extraction of
hydrocarbons in a liquid or gaseous state by means of wells, pipe,
or on-site methods, or geothermal steam; or off-site
transportation;

(s) "Topsoil" means the organic or inorganic matter
naturally present on the surface of the earth which has been
subjected to and influenced by genetic and environmental factors
of parent material, climate, macroorganisms and microorganisms,
and topography, all acting over a period of time, and that is
necessary for the growth and regeneration of vegetation on the
surface of the earth; and

(t) "Toxic material" means any substance present in
sufficient concentration or amount to cause injury or illness to
plant, animal, aquatic or human life.

SECTION 2. Section 53-7-7, Mississippi Code of 1972, is
amended as follows:
53-7-7. (1) The provisions of this chapter shall apply to
all operations except those operations conducted for the mining of
Class II materials that affect four (4) acres or less of land;
provided, however, that the department shall be notified by the
operator of the commencement, expansion or resumption of any such
exempt operations through the filing of a notice of intent in a
form determined by the department; provided, further, there is
hereby exempted from such notice requirement the excavations made
by the owner of land for his own use, not commercial purposes, where the materials removed do not exceed one thousand (1,000) cubic yards per year and one (1) acre or less of land is affected. No exempted area of four (4) acres or less shall be closer than one thousand three hundred and twenty (1,320) feet to another exempted area of four (4) acres or less. Before conducting any activities that would cause any such operation shall exceed four (4) acres, the operator shall apply for a permit and shall comply with the provisions of this chapter; and, if the department has reason to believe that any such operation for which a notice of intent has not been submitted does, in fact, exceed four (4) acres, it may investigate such operations to ensure that permits will be obtained when required and that there will be compliance with the provisions of this chapter.

Any person who resides in the county of any surface mining operation which is exempted by this subsection may file a petition with the commission to request that the exemption be reviewed or revoked and that the operator be required to apply for a surface mining permit and to comply with the provisions of this chapter. The exemption may be revoked if the operation is affecting more than four (4) acres of land or is mining Class I materials. The commission may conduct a public hearing, prior to ruling on the petition, in accordance with the provisions of Section 53-7-45.

(2) The provisions of this chapter shall not apply to operations for any materials on any lands whereupon the operations were being conducted before April 15, 1978. If the operation extends to or encompasses additional land after April 15, 1978, then the newly mined land shall be subject to the provisions of this chapter.

SECTION 3. Section 53-7-17, Mississippi Code of 1972, is amended as follows:

53-7-17. On passage of any federal surface mining legislation, the commission shall take steps necessary to
establish the exclusive jurisdiction of the commission, Permit Board and department over the regulation of surface mining and reclamation operations in this state.

SECTION 4. Section 53-7-19, Mississippi Code of 1972, is amended as follows:

53-7-19. The commission shall administer and enforce the provisions of this chapter and shall have the following powers and duties:

(a) To develop a statewide, comprehensive policy and plan for the regulation of surface mining and reclamation consistent with the provisions of this chapter;

(b) To conduct public hearings pursuant to the provisions of Section 53-7-45 for the purpose of which it may administer oaths or affirmations, subpoena witnesses requested by any party and compel their attendance, take evidence and require production of any books, papers, correspondence, memoranda, agreements or other documents or records that are relevant or material to the administration of this chapter;

(c) To issue orders requiring an operator to take such actions as are necessary to comply with this chapter and regulations adopted hereunder, and to issue orders modifying prior orders;

(d) To hire employees, to adopt standards for employment of such persons, and to employ contractors to assist in carrying out the provisions of this chapter;

(e) To enter on and inspect for the purpose of assuring compliance with the terms of this chapter, in person or by its agents, any surface mining operation that is subject to the provisions of this chapter;

(f) To conduct, encourage, request and participate in studies, surveys, investigations, research, experiments, training and demonstrations by contract, grant or otherwise; to prepare and

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require permittees to prepare reports; and to collect information
and disseminate to the public such information as is deemed
reasonable and necessary for the proper enforcement of this
chapter;

(g) To accept, receive and administer any grants,
gifts, loans or other funds made available from any source for the
purpose of this chapter, and any money received by the commission
shall be deposited in the fund;

(h) To enter into contracts with federal, state and
local boards and agencies having pertinent expertise for the
purpose of obtaining professional and technical services necessary
to carry out the provisions of this chapter;

(i) To enter into contracts with persons to reclaim
land pursuant to the provisions of this chapter;

(j) To issue special rules and regulations in
connection with granting a permit to an operator where the sole
purpose of the operation covered by the permit is to conduct an
exploration activity. Such rules and regulations shall provide
for notice to the department of any exploration activity and for
protection of all confidential information acquired;

(k) To order the immediate cessation of an ongoing
surface mining operation for which a notice of intent has been
filed or a permit has been issued if it finds that such operation
endangers the health or safety of the public or creates imminent
and significant environmental harm;

(l) To order the immediate cessation of any operation
that requires the filing of a notice of intent, but has been
started without the filing of a notice of intent, or requires a
permit, but has been started or continued without a permit;

(m) To institute and prosecute all such court actions
as may be necessary to obtain the enforcement of any order issued
by the commission;
To recognize the differences in the various materials set out herein, taking into consideration the commercial value of such material and the nature and size of operation necessary to extract the deposit, in regulating surface mining operations;

To authorize the **executive director** of the department, to discharge or exercise any power or duty granted to the commission by the provisions of this chapter;

To perform such other duties and acts as are required and provided for by this chapter; and

To issue special rules and regulations in connection with granting approval to an operator where the sole purpose of the operation is to remove materials from the unprotected side of the levee to effect emergency repairs of the levee system.

(2) The Permit Board shall have the following powers and duties:

(a) To issue, modify, revoke, transfer, suspend and reissue permits and to require, modify or release performance bonds in the manner prescribed in this chapter and by the regulations adopted by the commission in this chapter; and

(b) To authorize the executive director of the department to discharge or exercise any power or duty granted to the Permit Board by the provisions of this chapter.

**SECTION 5.** Section 53-7-21, Mississippi Code of 1972, is amended as follows:

53-7-21. (1) From and after April 15, 1978, no operator shall engage in surface mining without having first obtained a surface mining permit from the Permit Board unless the surface mining operation is exempted from the provisions of this chapter by Section 53-7-7. The approved permit shall authorize the operator to engage in surface mining upon the area of land described in his application for a period of five (5) years from...
the date of its issuance, unless the permit applicant requests and
the Permit Board agrees to a shorter term.

In addition to the permit, each operator holding a permit
shall annually, on the anniversary date of the permit, file with
the department a certificate of compliance in which the operator,
under oath, shall declare that he is following his approved mining
and reclamation plan and is abiding by the provisions of this
chapter and the rules and regulations of the commission. A fee of
Twenty-five Dollars ($25.00) shall accompany the certificate of
compliance.

(2) Before a Class I permit may be issued, a public hearing
shall be conducted, and all Class I permit applicants shall
publish notice pursuant to Section 53-7-45.

SECTION 6. Section 53-7-25, Mississippi Code of 1972, is
amended as follows:

53-7-25. Each application for a surface mining permit and
each notice of intent shall be accompanied by an initial *** fee
in accordance with a published fee schedule adopted by the
commission, but in no event less than One Hundred Dollars
($100.00) plus Ten Dollars ($10.00) per acre included in the
application, not to exceed a total sum of Five Hundred Dollars
($500.00). The commission, in considering regulations pertaining
to the fee schedule, shall recognize the differences in the
various materials set out herein, taking into consideration the
commercial value of the material and the nature and size of
operation necessary to extract it. All state agencies, political
subdivisions of the state, and local governing bodies shall be
exempt from all fees required by this chapter.

SECTION 7. Section 53-7-27, Mississippi Code of 1972, is
amended as follows:

53-7-27. Upon application to the Permit Board for a surface
mining permit ***, an operator shall submit one (1) copy thereof
to the Permit Board in care of the department and one (1) copy to
the soil and water conservation commissioners of the district in
which any part of the land is located. The application shall be
on a form prescribed by the commission which shall contain the
following information and such other information as the commission
or Permit Board reasonably deems necessary:

(a) A legal description of the tract or tracts of land
in the affected area and a description giving sufficient
information so that it may be located and distinguished from other
lands, identification of the access from the nearest public road,
and one (1) or more maps or plats of adequate scale to clearly
portray the location of the affected area of the operation;

(b) The approximate location and depth of the deposit
in the permit area and the total number of acres in the permit
area;

(c) The name, address and management officers of the
permit applicant and any affiliated persons who shall be engaged
in the operations;

(d) Legal and equitable interests of record, if
reasonably ascertainable, in the surface estate of the permit area
and in the surface estate of land located within five hundred
(500) feet of the permit area;

(e) Persons residing on the property of the permit area
at the time of application;

(f) Current or previous surface mining permits held by
the applicant, including any revocations, suspensions or bond
forfeitures;

(g) The type and method of operation, the engineering
techniques, and the equipment that is proposed to be used,
including mining schedules, the nature and expected amount of
overburden to be removed, the depth of excavations, a description
of the affected area and permit area, the anticipated hydrologic
consequences of the mining operation, and the proposed use of
explosives for blasting, including the nature of the explosive,
the proposed location of the blasting and the expected effect of
the blasting;
(h) The applicant's legal right to surface mine the
affected area;
(i) The names and locations of all lakes, rivers,
reservoirs, streams, creeks, and other bodies of water in the
vicinity of the contemplated operations which may be affected
thereby and the types of existing vegetative cover on the area
affected thereby and on adjoining lands within five hundred (500)
feet of the exterior limits of the affected area;
(j) A topographical survey map showing the surface
drainage plan on and away from the permit area;
(k) The surface location and extent of all existing and
proposed waste and spoil piles, cuts, pits, tailing dumps, ponds,
borrow pits, evaporation and settling basins, roads, buildings,
access ways, workings and installations such as to provide a
reasonably clear and accurate portrayal of the existing surface
conditions and the proposed mining operations;
(l) In cases where the surface and mineral estates, or
any part thereof, in land covered by the application, have been
severed and are owned by separate owners, the applicant shall
provide a notarized statement subscribed to by each surface owner
and lessee thereof, unless the lease or other conveyance to the
applicant specifically states the material to be mined by the
operator granting consent for the applicant to initiate and
conduct surface mining, exploration and reclamation activities on
the land;
(m) A certificate of insurance certifying that the
applicant has in force a public liability insurance policy issued
by an insurance company authorized to conduct business in the
State of Mississippi covering all operations of the applicant in
this state and affording bodily injury protection and property
damage protection in an amount not less than the following:
(i) One Hundred Thousand Dollars ($100,000.00) for all damages because of bodily injury sustained by one (1) person as the result of any one (1) occurrence, and Three Hundred Thousand Dollars ($300,000.00) for all damages because of bodily injury sustained by two (2) or more persons as the result of any one (1) occurrence;

(ii) One Hundred Thousand Dollars ($100,000.00) for all claims arising out of damage to property as the result of any one (1) occurrence including completed operations;

Such policy shall be maintained in full force and effect during the term of the permit or any renewal, including the length of all reclamation operations;

(n) A copy of a reclamation plan prepared pursuant to Section 53-7-31; and

(o) A copy of the notice to be published in compliance with the requirements of Section 53-7-45, if so required.

SECTION 8. Section 53-7-29, Mississippi Code of 1972, is amended as follows:

53-7-29. (1) The department shall file a copy of each application ** for public inspection with the chancery clerk at the county courthouse of the county where any and all portion of the mining is proposed to occur after deleting the confidential information according to Section 53-7-75.

(2) The department shall immediately submit copies, excluding all confidential information, of the permit application or notice of intent to the State Soil and Water Conservation Commission, Mississippi Department of Wildlife, Fisheries and Parks, Mississippi Forestry Commission, Mississippi Department of Environmental Quality, Board of Trustees of the Department of Archives and History, Mississippi Transportation Commission, State Oil and Gas Board and the Mississippi Agricultural and Forestry Experiment Station, to any other state agency whose jurisdiction the commission feels the particular mining operation may affect.
and to any person who requests the notification thereof upon payment of a reasonable fee established by the department. Each such agency shall review the permit application and notice of intent and submit, within thirty (30) days of receipt of the application, such comments, recommendations and evaluations as the agency deems necessary and proper based only upon the effect of the proposed operation on matters within the agency's jurisdiction. Such comments shall include an enumeration of permits or licenses required under the agency's jurisdiction. Such comments and recommendations shall be made a part of the record and one (1) copy shall be furnished to the operator.

SECTION 9. Section 53-7-31, Mississippi Code of 1972, is amended as follows:

53-7-31. (1) A reclamation plan shall be developed in a manner consistent with local, physical, environmental and climatological conditions and current mining and reclamation technology. A reclamation plan submitted as part of a permit application shall include the following information:

(a) The identification of the entire area to be mined and affected thereby over the estimated life of the mining operation, accompanied by a detailed topographic map on such scale as the commission shall require by regulation showing:

(i) The affected area, the location of the stream or streams or any standing body of water into which the area drains, the location of drainways and the planned siltation traps and other impoundments, and the location of haul or other access roads to be prepared or used by the operator in the mining operation;

(ii) The location of any buildings, cemeteries, public highways, railroad tracks, gas and oil wells, publicly owned land, sanitary landfills, officially designated scenic areas, utility lines, underground mines, transmission lines or
pipelines within the affected area or within five hundred (500) feet thereof;

(iii) The approximate location of the cuts or excavations to be made in the surface and the estimated location and height of spoil banks, and the total number of acres involved in the affected area;

(iv) The date the map was prepared, together with a certification as to its accuracy by the person responsible for its preparation.

(b) The condition of the land to be covered by the permit prior to any mining, including:

(i) The uses existing at the time of the application, and if the land has a history of previous mining, the uses, if reasonably ascertainable, which immediately preceded any mining, and

(ii) The capability of the land prior to any mining to support a variety of uses, giving consideration to soil and foundation characteristics, topography and vegetative cover.

(c) The capacity of the land to support its anticipated use following reclamation, including a discussion of the capacity of the reclaimed land to support alternative uses.

(d) A description of how the proposed postmining land condition is to be achieved and the necessary support activities that may be needed to achieve the condition, including an estimate of the cost per acre of the reclamation.

(e) The steps taken to comply with applicable air and water quality and water rights laws and regulations and any applicable health and safety standards, including copies of any pertinent permit applications.

(f) A general timetable that the operator estimates will be necessary for accomplishing the major events contained in the reclamation plan.
(g) Such other information as the commission, by regulation, shall determine to be reasonably necessary to effectuate the purposes of this chapter.

(2) The Permit Board may, in its discretion, permit the operator of an operation for Class II materials to reclaim lands in lieu of the lands included in the application; provided, however, that the acreage of the lieu lands reclaimed shall not be less than the acreage of the lands in the application. If the operator proposes to reclaim lands in lieu of those lands included in the application, he shall so state and shall submit the reclamation plan accordingly. The Permit Board shall not approve the reclamation of lieu lands unless the operator submits with the reclamation plan a notarized statement of each surface owner and lessee thereof as to all lands included in the application to surface mine, which statement shall contain the consent of each such surface owner and lessee thereof for the reclamation of the lieu lands. If the Permit Board does not approve the reclamation of the lieu lands, the operator shall submit a reclamation plan for the lands contained in the application.

SECTION 10. Section 53-7-33, Mississippi Code of 1972, is amended as follows:

53-7-33. The commissioners of the soil and water conservation districts affected may submit written comments, recommendations and evaluations of such reclamation plans to the Permit Board within thirty (30) days after filing of such plan from the operator as required by Section 53-7-27. Such comments, recommendations and evaluations shall become a part of the record.

SECTION 11. Section 53-7-35, Mississippi Code of 1972, is amended as follows:

53-7-35. (1) Any permit issued pursuant to this chapter to conduct operations shall require that such operations will meet all applicable reclamation standards of this chapter. Reclamation standards shall apply to all operations, exploration activities
and reclamation operations covered by this chapter and shall, unless inapplicable, require the operator as a minimum to:

(a) Conduct operations in a manner consistent with prudent mining practice, so as to maximize the utilization and conservation of the resource being recovered; and, in keeping with the intent of maximizing the value of mined land, stockpiles of commercially valuable material may remain, provided they are ecologically stable. Such stockpiling shall be subject to such rules and regulations the commission may adopt;

(b) Restore the affected area so that it may be used for a useful, productive and beneficial purpose, including an agricultural, grazing, industrial, recreational, residential or commercial purpose or lakes or ponds or a wildlife, natural or forested area;

(c) Conduct water drainage and silt control for all the affected areas so as to strictly control soil erosion, damage to adjacent lands and pollution of streams and other waters, both during and following the mining operations. Before, during and for a reasonable period after mining, all drainways for the affected area shall be protected with silt traps or dams of approved design as directed by the regulations. The operator may elect to impound water to provide lakes or ponds of approved design for wildlife, recreational or water supply purposes, if it is a part of the approved reclamation plan;

(d) Removal or covering of all metal, lumber and other refuse, except vegetation resulting from the operation;

(e) Regrade the area to the nearest approximate original contour or rolling topography, and elimination of all highwalls, spoil piles and water-collecting depressions; provided, however, lakes or ponds may be constructed if part of an approved reclamation plan;
(f) Stabilize and protect all surface areas affected by the mining and reclamation operation sufficiently to control erosion and attendant air and water pollution;

(g) Remove the topsoil, if any, from the land in a separate layer, and place it on any lieu lands to be reclaimed or replace it on the backfill area, or if not utilized immediately, segregate it in a separate pile from other spoil and when the topsoil is not replaced on a backfill area of lieu lands within a time short enough to avoid deterioration of the topsoil, maintain a successful cover by plants approved by the commission, or other means thereafter so that the topsoil is preserved from wind and water erosion, remains free of any contamination by acid or other toxic material, and so that the topsoil is in a usable condition for sustaining vegetation when restored during reclamation. If topsoil is of insufficient quantity or of poor quality for sustaining vegetation and if other strata can be shown to be as suitable for vegetation requirements, then the operator shall petition the commission for permission to be exempt from the requirement and to remove, segregate and preserve in a like manner such other strata which is best able to support vegetation or to mix strata if such mixing can be shown to be equally suitable for revegetation requirements;

(h) Replace, if required to do so, the topsoil if any, and if there is no topsoil, replace the best available subsoil, if any, on top of the land to be reclaimed or on top of lieu lands being reclaimed;

(i) Fill any auger holes with an impervious material in order to prevent drainage;

(j) Minimize the disturbances to the prevailing hydrologic balance at the mine site and in associated offsite areas and to the quality and quantity of water in surface and groundwater systems both during and after surface mining operations and during reclamation by:
(i) Avoiding acid or other toxic mine drainage by such measures as, but not limited to:

(A) Preventing or removing water from contact with toxic material producing deposits;

(B) Treating drainage to reduce toxic material content; and

(C) Casing, sealing or otherwise managing boreholes, shafts and wells to keep acid or other toxic material drainage from entering ground and surface waters;

(ii) Conducting operations so as to prevent unreasonable additional contributions of suspended solids to streamflow or runoff outside the permit area above natural levels under seasonal flow conditions;

(iii) Consistent with good water conservation practices, removing such temporary or large siltation structures from drainways after disturbed areas are revegetated and stabilized;

(iv) Such other actions as the commission may prescribe pursuant to rules or regulations adopted in accordance with this chapter;

(k) Stabilize any waste piles;

(l) With respect to the use of impoundments for the disposal of mine wastes, processing wastes or other liquid or solid wastes, incorporate current engineering practices for the design and construction of water retention facilities which, at a minimum, shall be compatible with the requirements of Mississippi law and applicable federal laws, insure that leachate will not pollute surface or ground water, and locate impoundments so as not to endanger public health and safety should failure occur;

(m) Insure that all debris, acid-forming materials, toxic materials or materials constituting a fire hazard are treated or disposed of in a manner designed to prevent contamination of ground or surface waters or combustion;
(n) Insure that construction, maintenance and postmining conditions of access roads into and across the site of operations will minimize erosion and siltation, pollution of air and water, damage to fish or wildlife or their habitat, or public or private property; provided that the commission may permit the retention after mining of certain access roads if compatible with the approved reclamation plan;

(o) Refrain from the construction of roads or other access ways up a stream bed or drainage channel or in proximity to such channel where such construction would seriously alter the normal flow of water;

(p) Revegetation of the affected area with plants, approved by the commission, to attain a useful, productive and beneficial purpose, including an agricultural, grazing, industrial, recreational, residential or commercial purpose or lakes or ponds or a wildlife, natural or forested area;

(q) Assume responsibility for successful revegetation for a period of two (2) years beyond the date on which the ninety percent (90%) of the required bond is released as provided by Section 53-7-67;

(r) With respect to permanent impoundments of water as part of the approved reclamation plan, insure that:

   (i) The size of the impoundment and the availability of water are adequate for its intended purpose,

   (ii) The impoundment dam construction will meet the requirements of Mississippi law and applicable federal laws,

   (iii) The quality of impounded water will be suitable on a permanent basis for its intended use and the discharges from the impoundment will not degrade the water quality in the receiving stream,

   (iv) Final grading will provide adequate safety and access for anticipated water users, and
(v) Such water impoundments will not result in the diminution of the quality or quantity of water utilized by adjacent or surrounding landowners; and

(s) Protect offsite areas from slides or damage occurring during the surface mining and reclamation operations, and not deposit spoil material or locate any part of the operations or waste accumulations outside the permit area.

(2) The purpose of this section is to cause the affected area to be restored to a useful, productive and beneficial purpose. A method of reclamation other than that provided in this section may be approved by the Permit Board if the Permit Board determines that the method of reclamation required by this section is not practical and that such alternative method will provide for the affected area to be restored to a useful, productive and beneficial purpose. If an alternative method of reclamation is generally applicable to all operations involving a particular material, the commission shall promulgate appropriate rules and regulations therefor.

(3) Each operator, unless he shall receive an exemption from the Permit Board, shall perform reclamation work concurrently with the conduct of the mining operation where practical. The fact that an operator will likely redisturb an area shall be cause for the Permit Board to grant an exception from the requirement of concurrent reclamation.

(4) The operator and, in case of bond forfeiture, the commission, shall have the continuing right to enter the affected area included in the reclamation plan and to perform thereon the reclamation measures required properly to complete the reclamation plan.

(5) If at any time the commission finds that reclamation of the affected area is not proceeding in accordance with the reclamation plan and that the operator has failed within thirty (30) days after notice to commence corrective action, or if the
commission finds that revegetation has not been properly completed in conformance with the reclamation plan within two (2) years or longer, if required by the commission, after termination of mining operations or upon revocation of the permit, the commission shall initiate proceedings against the bond or other security filed by the operator. Such proceedings shall not be commenced with respect to a surety bond until the surety has been given sixty (60) days to commence and a reasonable opportunity to begin and complete corrective action. The commission, shall initiate such proceedings in the chancery court of the county where the greater portion of the land is situated. In such proceedings the damages shall be the cost of reclamation according to the reclamation plan together with a reasonable attorney’s fee; provided, however, that the damages shall not be limited to the reasonable value of the land prior to the surface mining. All damages, less than the attorney’s fee, collected as a result of such proceedings shall be placed in the fund created by Section 53-7-69.

SECTION 12. Section 53-7-37, Mississippi Code of 1972, is amended as follows:

53-7-37. After a permit application for surface mining is issued, the applicant shall file with the Permit Board on a form prescribed by the commission a bond for performance payable to the State of Mississippi and conditioned on full and satisfactory performance of all the requirements of this act and the permit. The bond shall not be less than Five Hundred Dollars ($500.00) nor more than Two Thousand Five Hundred Dollars ($2,500.00) for each estimated acre of the affected area of the respective operation. The bond shall cover that area of land within the permit area on which the operator will initiate and conduct surface mining and reclamation operations. The bond shall be executed by the operator and a corporate surety licensed to do business in the State of Mississippi, except that the operator may
elect to deposit cash or negotiable securities acceptable to the
commission, or assign real or personal property acceptable to the
commission or an assignment of a savings account in a Mississippi
bank in accordance with the commission's regulations. The cash
deposit or market value of such substitute collateral shall be
equal to or greater than the amount of the bond required for the
bonded area. Cash or other substitute collateral shall be
deposited on the same terms as the terms on which surety bonds may
be deposited. The amount of the bond or deposit required and the
terms of acceptance of the applicant's bond or substitute
collateral may be increased or decreased from time to time to
reflect changes in the cost of future reclamation of land mined or
to be mined subject to the limitations on the amount of the bond
set forth in this section.

All state agencies, political subdivisions of the state and
local governing bodies shall be exempt from the bonding
requirements set out herein.

SECTION 13. Section 53-7-39, Mississippi Code of 1972, is
amended as follows:

53-7-39. (1) An on-the-ground inspection of the proposed
affected area shall be made by the commission's field inspectors
or by a representative of the local soil and water conservation
district before a permit for a Class I operation is approved and
issued, and within thirty (30) days after the date of filing of
the issuance of a permit for a Class II operation.

(2) No application * * * shall be approved by the Permit
Board if there is found, on the basis of the information set forth
in the application or by on-the-ground inspection, or by clear and
convincing evidence submitted at an evidentiary hearing, that the
requirements of this chapter, or regulations stemming therefrom,
will not or cannot be observed, or that there is clear and
convincing evidence that the proposed method of operation, road
system construction, shaping or revegetation of the affected area

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cannot be carried out in a manner consistent with the provisions of this chapter and applicable air and water quality standards of this state.

SECTION 14. Section 53-7-41, Mississippi Code of 1972, is amended as follows:

53-7-41. The permit shall be granted if the Permit Board determines that the application complies with the requirements of this chapter. The Permit Board shall deny a permit if:

(a) The Permit Board finds that the reclamation as required by this chapter cannot be accomplished by means of the proposed reclamation plan;

(b) Any part of the proposed operation lies within an area designated as unsuitable for surface mining as designated by Section 53-7-49;

(c) The Permit Board finds that the proposed mining operation will cause pollution of any water of the state or of the ambient air of the state in violation of the laws of this state or the federal government;

(d) The applicant has had any other permit issued hereunder revoked, or any bond posted to comply with this chapter forfeited, and the conditions causing the permit to be revoked or the bond to be forfeited have not been corrected to the satisfaction of the Permit Board;

(e) The Permit Board determines that the proposed operation will endanger the health and safety of the public or will create imminent environmental harm;

(f) The operation will adversely affect any public highway or road; or

(g) The operator is unable to meet the public liability insurance or bonding requirements of this chapter.

SECTION 15. Section 53-7-43, Mississippi Code of 1972, is amended as follows:
53-7-43. (1) Amendments to the surface mining plan or reclamation plan may be made in accordance with the regulations of the commission. The Permit Board shall conduct a hearing on the proposed amendments to Class I permits, and may order a hearing on the proposed amendments to Class II permits. Notice shall be published by the Class I operator as provided in Section 53-7-45, and the hearing shall be conducted in accordance with the provisions of Section 53-7-45.

(2) In the event the operator seeks to renew his permit for another term, he shall notify the Permit Board of such intent no later than six (6) months prior to the permit's expiration date. Upon the submission of such notification to the Permit Board, the Permit Board may, in its discretion, order a public hearing to be held in accordance with the provisions of Section 53-7-45 prior to the expiration of the permit.

(3) Permits may be transferred, in the discretion of the Permit Board, pursuant to rules and regulations adopted by the commission which rules and regulations shall be based upon the criteria of the approval of permit applications and the issuance of permits.

(4) The fee for an amendment of a permit shall be Fifty Dollars ($50.00), unless a hearing is ordered in which case the fee shall be One Hundred Fifty Dollars ($150.00). The fee for a renewal of a permit shall not be more than the original permit fee.

SECTION 16. Section 53-7-45, Mississippi Code of 1972, is amended as follows:

53-7-45. (1) All applicants for a Class I permit and operators of a Class I operation requesting an amendment shall publish notice that the application or request for amendment has been filed, describing by name the specific type of application or request and setting forth the ownership, location and boundaries of the permit area sufficient so that the proposed or existing
area of operation may be easily located by local residents, and
the location where the application is available for public
inspection. Such notice shall be placed in a newspaper of general
circulation in the county of the proposed or existing operation
one (1) time within ten (10) days after filing the application or
request for amendment.

(2) Public hearings may be held at the office of the Permit
Board in Hinds County, Mississippi, or in the county in which the
greater portion of the affected area is located, in the discretion
of the Permit Board. The Permit Board shall give thirty (30)
days' notice of the date, time and place of any such hearing to
(a) the operator involved, (b) the local soil and water
conservation districts, local governing bodies, the State Soil and
Water Conservation Commission, the Mississippi Department of
Environmental Quality, the Mississippi Department of Wildlife,
Fisheries and Parks, Mississippi Forestry Commission, Board of
Trustees of the Mississippi Department of Archives and History,
Mississippi Transportation Commission, Mississippi Agricultural
and Forestry Experiment Station and to any other state agency
whose jurisdiction the Permit Board feels the mining operation may
affect, (c) the owners of record of all surface areas in the
permit area and within five hundred (500) feet thereof, notifying
them of the subject matter of such hearing, and (d) other
interested parties by publication once weekly for three (3)
consecutive weeks in the newspaper of general circulation in the
county where such operation may be conducted or is being
conducted. The last publication of such notice shall be not less
than ten (10) days prior to the date of the hearing.

(3) The Permit Board shall issue and furnish all of the
parties to the administrative proceedings with its written
findings based on the record, issuing, denying or modifying the
application in whole or in part and stating the reasons therefore,
not later than thirty (30) days after the hearings.
(4) (a) Any party to the administrative proceedings whose interest is or may be adversely affected by any ruling, order, decision or other act of the Permit Board may request an evidentiary hearing or further appeal of the Permit Board's decision under Section 49-17-29(4)(b), (4)(c) and (5).

***(b) The court shall hear such complaint solely on the record made before the commission. The findings of the commission, if supported by substantial evidence on the record considered as a whole, shall be upheld.**

(c) The court may, under such conditions as it may prescribe, grant such temporary relief as it deems appropriate pending final determination of the proceedings.

(d) The commencement of an appeal under this section shall not, unless specifically ordered by the court, operate as a stay of the action, order or decision of the commission.

(e) Any action arising under this chapter shall be given precedence by the court.

SECTION 17. Section 53-7-47, Mississippi Code of 1972, is amended as follows:

53-7-47. No operation to mine any material shall commence or operate on lands which are part of a national park, national monument, national historic landmark, any property listed on the National Register of Historic Places, national forest, national wilderness area, national wildlife refuge, national wild or scenic river, state park, state wildlife refuge, state forest, recorded state historical landmark, state historic site, state archaeological landmark or city or county park, forest or historical area. The Permit Board, for good cause shown after a public hearing held in accordance with the provisions of Section 53-7-45, may make an exception to this subsection.

SECTION 18. Section 53-7-65, Mississippi Code of 1972, is amended as follows:
53-7-65. (1) Upon the filing of a complaint by any person with the commission alleging that any person or operator is in violation of this chapter or regulations of the commission, the commission shall conduct an investigation of the complaint and upon finding a basis for such complaint shall enter such order as it deems appropriate, which order may include a civil penalty in an amount not to exceed One Thousand Dollars ($1,000.00) for each violation. If such order is not complied with, the commission may commence proceedings under Sections 53-7-59 through 53-7-63.

(2) Any party may appeal any order of the commission under Section 49-17-41.

(3) The provisions of this section shall in no way be construed to limit any action at law to which any party might be otherwise legally entitled.

SECTION 19. Section 53-7-67, Mississippi Code of 1972, is amended as follows:

53-7-67. (1) Upon completion of the operation in the area covered by the permit, the operator may file an application with the Permit Board for the release of the bond, collateral or deposit. The application for bond release shall require a description of the results achieved pertaining to the operator's reclamation plan, which includes revegetation and end result plans, and any other information the commission may require in accordance with the provisions of this chapter. The Permit Board shall file a copy of the bond release application for public inspection with the chancery clerk at the county courthouse of the county where the surface mining and reclamation operation is located and give notice of a public hearing, to be held in accordance with Section 53-7-45, which shall be conducted after inspecting and evaluating the reclamation work as provided by subsection (2) of this section. The operator shall also notify
the commissioners of the local soil and water conservation district.

(2) On the filing of the notification and request, the Permit Board or the local soil and water district commissioners shall, within a reasonable time, not to exceed thirty (30) days, conduct an inspection and evaluation of the reclamation work involved. Such evaluation shall consider, among other things, whether pollution of surface and subsurface water is occurring, the probability of continuance or future occurrence of such pollution, and the estimated cost of abating such pollution. Results of such evaluation and findings of the Permit Board or the soil and water commissioners shall be supplied to the operator and other interested parties within thirty (30) days after the inspection. The evaluation and findings of the soil and water commissioners shall be forwarded to the commission prior to the end of such thirty (30) days.

(3) The Permit Board may release in whole or in part said bond, collateral or deposit if it is satisfied that reclamation covered by the bond, collateral or deposit or portion thereof has been accomplished as required by this chapter according to the following schedule:

(a) When the operator or surety completes required backfilling, regrading, and drainage control of a bonded area in accordance with his approved reclamation plan, the release of up to ninety percent (90%) of the bond, collateral or deposit for the applicable permit area; provided, however, that the amount of the unreleased portion of the bond, collateral or deposit shall not be less than the amount necessary to assure completion of the reclamation work by a third party in the event of default by the operator; and

(b) When the operator has successfully completed the remaining reclamation activities, but not before two (2) years beyond the date in which the initial portion of the required bond
is released as provided in paragraph (a), release the remaining portion of the bond, collateral or deposit; provided, however, that no bond, collateral or deposit shall be fully released until all reclamation requirements of this chapter are fully met.

(c) Notwithstanding the provisions of paragraphs (a) and (b) of this section, the Permit Board may release one hundred percent (100%) of the bond, collateral or deposit to private contractors surface mining on areas provided to them by the United States Army Corps of Engineers. Provided, however, the Permit Board may release such bond collateral or deposit only if such contractors have completed the reclamation work required in paragraph (a) of this subsection and the Corps of Engineers furnishes written assurance to the State of Mississippi that it accepts responsibility for restoration of the mined areas in accordance with all applicable reclamation standards of this chapter.

(4) If the Permit Board disapproves the application for release of the bond, collateral or deposit or portion thereof, it shall notify the operator, in writing, stating the reasons for disapproval and recommending corrective actions necessary to secure said release.

SECTION 20. Section 53-7-73, Mississippi Code of 1972, is amended as follows:

53-7-73. (1) In the case of a temporary suspension of mining operations expected to be of less than two (2) years' duration, the operator shall notify the Permit Board, within sixty (60) days following such suspension, and provide an estimated schedule of resumption of operations together with a brief summary of the status of the operation and lands. During the period of temporary suspension the operator shall conduct necessary maintenance in accordance with the provisions of this chapter.

(2) In the case of a temporary suspension of operations expected to extend for a period in excess of two (2) years when
the operator desires to retain the permit for resumption of mining
operations thereafter, the operator shall notify the Permit Board
within sixty (60) days following such suspension and shall provide
an estimated schedule for resuming operations, a brief summary of
the status of the operation and lands, and a status report of
performance under the reclamation plan and what maintenance, if
any, may be necessary or desirable during the suspension in
furtherance of the established reclamation objectives. The
operator shall request a continuance of the validity of the permit
during the period of such suspension. Upon receipt of such
notification the Permit Board shall cause an inspection to be made
of the property, and if it finds that the request for suspension
is made in good faith and with a bona fide intention of resuming
operations as set forth in the notice, the commission shall
approve the request for continuance of validity of the permit upon
such reasonable conditions as the Permit Board may require with
respect to such maintenance, if any, during the period of
suspension which it may deem necessary or desirable in the
furtherance of the established reclamation objectives.

(3) The operator shall notify the commission or Permit Board
upon resumption of operations following a temporary suspension
hereunder.

SECTION 21. Section 53-7-75, Mississippi Code of 1972, is
amended as follows:

53-7-75. Information submitted to the commission or Permit
Board and to local soil and water district commissioners
pertaining to deposits or materials, or information concerning
trade secrets or privileged commercial or financial information
that relates to the competitive rights of the applicant and
specifically identified as confidential by the applicant and which
is not essential for any public review as determined by the
commission, shall not be disclosed by any member, agency or
employee of the commission, Permit Board or local soil and water conservation district.

Any public officer or employee who shall violate the provisions of this section shall be guilty of a misdemeanor, and, upon conviction, shall be fined a sum not to exceed One Thousand Dollars ($1,000.00) and dismissed from public office or employment.

In addition to the criminal remedy set forth herein, remedies for misappropriation of a trade secret shall be governed by the Mississippi Uniform Trade Secrets Act, Sections 75-26-1 through 75-26-19.

SECTION 22. Section 53-7-23, Mississippi Code of 1972, which creates the duties of the operator regarding sand, gravel, soil, clay, sand clay, clay gravel, limestone and chalk under the Mississippi Surface Mining and Reclamation Law, is repealed.

SECTION 23. This act shall take effect and be in force from and after July 1, 2001.