

By: Senator(s) Dawkins

To: Environment Prot, Cons
and Water Res

SENATE BILL NO. 2863

1 AN ACT TO CONFORM TO THE UNIFIED NATIONAL STRATEGY FOR ANIMAL
2 FEEDING OPERATIONS PROPOSED BY THE UNITED STATES DEPARTMENT OF
3 AGRICULTURE AND THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY;
4 TO AMEND SECTION 49-17-29, MISSISSIPPI CODE OF 1972, TO PROVIDE
5 THAT PERSONS WHO EXERCISE SUBSTANTIAL CONTROL OVER A SWINE
6 CONCENTRATED FEEDING OPERATION MUST BE A CO-PERMITTEE; TO DEFINE
7 "SUBSTANTIAL CONTROL"; TO PROVIDE THAT SUCH PERSONS SHALL BE
8 JOINTLY AND SEVERALLY LIABLE FOR VIOLATIONS AND POLLUTION FROM
9 SUCH OPERATION; AND FOR RELATED PURPOSES.

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

11 SECTION 1. The legislature finds that in response to a need
12 to develop a national strategy to minimize water quality and
13 public health impacts of animal feeding operations, the United
14 States Department of Agriculture and the United States
15 Environmental Protection Agency, in a coordinated effort,
16 developed a Unified National Strategy for Animal Feeding
17 Operations. The federal strategy proposes that states should
18 address integrator liability. The guidance manual for
19 concentrated animal feeding operations of the EPA states that
20 corporate entities that exercise substantial operational control
21 over a confined animal feeding operation are considered operators
22 and should be co-permitted along with the confined animal feeding
23 operation operator. This act is to conform with the unified
24 national strategy and guidance manual recommendations and to
25 address public health concerns about swine concentrated feeding
26 operations in Mississippi.

27 SECTION 2. Section 49-17-29, Mississippi Code of 1972, is
28 amended as follows:

29 49-17-29. (1) (a) Except as in compliance with paragraph
30 (b) of this subsection, it is unlawful for any person to cause
31 pollution of the air in the state or to place or cause to be
32 placed any wastes or other products or substances in a location
33 where they are likely to cause pollution of the air. It is also
34 unlawful to discharge any wastes, products or substances into the
35 air of the state which exceed standards of performance, hazardous
36 air pollutant standards, other emission standards set by the
37 commission, or which reduce the quality of the air below the air
38 quality standards or increments established by the commission or
39 prevent attainment or maintenance of those air quality standards.
40 Any such action is hereby declared to be a public nuisance.

41 (b) It is unlawful for any person to build, erect,
42 alter, replace, use or operate any equipment which will cause the
43 issuance of air contaminants unless that person holds a permit
44 from the Permit Board (except repairs or maintenance of equipment
45 for which a permit has been previously issued), or unless that
46 person is exempted from holding a permit by a regulation
47 promulgated by the commission. Concentrated animal feeding
48 operations may be a source or a category of sources exempted under
49 this paragraph. However, no new or existing applications relating
50 to swine concentrated animal feeding operations within a county
51 shall be exempted from regulations and ordinances which have been
52 duly passed by the county's board of supervisors and which are in
53 force on June 1, 1998.

54 (2) (a) Except as in compliance with paragraph (b) of this
55 subsection, it is unlawful for any person to cause pollution of
56 any waters of the state or to place or cause to be placed any
57 wastes in a location where they are likely to cause pollution of
58 any waters of the state. It is also unlawful to discharge any
59 wastes into any waters of the state which reduce the quality of
60 those waters below the water quality standards established by the
61 commission; or to violate any applicable pretreatment standards or

62 limitations, technology-based effluent limitations, toxic
63 standards or any other limitations established by the commission.
64 Any such action is declared to be a public nuisance.

65 (b) It is unlawful for any person to carry on any of
66 the following activities, unless that person holds a current
67 permit for that activity from the Permit Board as may be required
68 for the disposal of all wastes which are or may be discharged into
69 the waters of the state, or unless that person is exempted from
70 holding a permit by a regulation promulgated by the commission:

71 (i) the construction, installation, modification or operation of
72 any disposal system or part thereof or any extension or addition
73 thereto, including, but not limited to, systems serving
74 agricultural operations; (ii) the increase in volume or strength
75 of any wastes in excess of the permissive discharges specified
76 under any existing permit; (iii) the construction, installation or
77 operation of any industrial, commercial or other establishment,
78 including irrigation projects or any extension or modification
79 thereof or addition thereto, the operation of which would cause an
80 increase in the discharge of wastes into the waters of the state
81 or would otherwise alter the physical, chemical or biological
82 properties of any waters of the state in any manner not already
83 lawfully authorized; (iv) the construction or use of any new
84 outlet for the discharge of any wastes into the waters of the
85 state. However, no new or existing applications relating to swine
86 concentrated animal feeding operations within a county shall be
87 exempted from regulations and ordinances which have been duly
88 passed by the county's board of supervisors and which are in force
89 on June 1, 1998.

90 (3) (a) Except as otherwise provided in this section, the
91 Permit Board created by Section 49-17-28 shall be the exclusive
92 administrative body to make decisions on permit issuance,
93 reissuance, denial, modification or revocation of air pollution
94 control and water pollution control permits and permits required

95 under the Solid Wastes Disposal Law of 1974 (Title 17, Chapter
96 17), and all other permits within the jurisdiction of the Permit
97 Board. After consideration of alternative waste treatment
98 technologies available to control air and water pollution and
99 odor, including appropriate siting criteria, the commission may
100 promulgate regulations establishing conditions, limitations and
101 exemptions under which the Permit Board shall make these
102 decisions. Regulations promulgated by the commission which
103 establish exemptions as authorized under Senate Bill No. 2895,
104 1998 Regular Session [Laws, 1998, ch. 537], shall apply to any
105 applicable facility in operation on the effective date of that
106 regulation and to any applicable facility constructed or operated
107 after the effective date of that regulation. The Permit Board may
108 issue multiple permits for the same facility or operation
109 simultaneously or in the sequence that it deems appropriate
110 consistent with the commission's regulations. Except as otherwise
111 provided in this paragraph, the Permit Board, under any conditions
112 that the board may prescribe, may authorize the Executive Director
113 of the Department of Environmental Quality to make decisions on
114 permit issuance, reissuance, denial, modification or revocation.
115 The executive director shall not be authorized to make decisions
116 on permit issuance, reissuance, denial, modification or revocation
117 for a commercial hazardous waste management facility or a
118 municipal solid waste landfill or incinerator. A decision by the
119 executive director shall be a decision of the Permit Board and
120 shall be subject to formal hearing and appeal as provided in this
121 section. The executive director shall report all permit decisions
122 to the Permit Board at its next regularly scheduled meeting and
123 those decisions shall be recorded in the minutes of the Permit
124 Board. The decisions of the Permit Board shall be recorded in
125 minutes of the Permit Board and shall be kept separate and apart
126 from the minutes of the commission. The decision of the Permit
127 Board or the executive director to issue, reissue, deny, modify or

128 revoke permits shall not be construed to be an order or other
129 action of the commission.

130 (b) The Executive Director of the Department of
131 Environmental Quality shall also be the Executive Director of the
132 Permit Board and shall have available to him, as Executive
133 Director of the Permit Board, all resources and personnel
134 otherwise available to him as executive director of the
135 department.

136 (c) All persons required to obtain an air pollution
137 control or water pollution control permit, a permit under the
138 Solid Wastes Disposal Law of 1974 (Title 17, Chapter 17) or any
139 other permit within the jurisdiction of the Permit Board shall
140 make application for that permit with the Permit Board. The
141 Permit Board, under any regulations as the commission may
142 prescribe, may require the submission of those plans,
143 specifications and other information as it deems necessary to
144 carry out Sections 49-17-1 through 49-17-43 and Title 17, Chapter
145 17, or to carry out the commission's regulations adopted under
146 those sections. The Permit Board, based upon any information as
147 it deems relevant, shall issue, reissue, deny, modify or revoke
148 air pollution control or water pollution control permit or permits
149 required under the Solid Wastes Disposal Law of 1974 (Title 17,
150 Chapter 17) or any other permit within the jurisdiction of the
151 Permit Board under any conditions as it deems necessary that are
152 consistent with the commission's regulations. The Permit Board's
153 action of issuance, reissuance, denial, modification or revocation
154 of a permit as recorded in its minutes shall constitute a complete
155 decision of the board. All permits issued by the Permit Board
156 shall remain in full force and effect until the board makes a
157 final determination regarding any reissuance, modification, or
158 revocation thereof. The Permit Board shall take action upon an
159 application within one hundred eighty (180) days following its
160 receipt in the board's principal office. No action which affects

161 revocation of an existing permit shall take effect until the
162 thirty (30) days mentioned in paragraph (4)(b) of this section has
163 expired or until a formal hearing as prescribed in that paragraph
164 is held, whichever is later.

165 (d) The Permit Board may adopt rules of practice and
166 procedure governing its proceedings that are consistent with the
167 commission's regulations. All hearings in connection with permits
168 issued, reissued, denied, modified or revoked and all appeals from
169 decisions of the Permit Board shall be as provided in this
170 section.

171 (e) Upon any conditions that are consistent with the
172 commission's regulations and subject to those procedures for
173 public notice and hearings as provided by law, not inconsistent
174 with federal law and regulations, the Permit Board may issue
175 general permits and, where appropriate, may consolidate multiple
176 permits for the same facility or operation into a single permit.

177 (f) The Permit Board shall not issue any permit for a
178 new swine concentrated animal feeding operation or the expansion
179 of an existing swine concentrated animal feeding operation before
180 January 1, 2000, unless the department received the application
181 for that operation's new or modified permit before February 28,
182 1998, or except as provided in this paragraph (f). In issuing or
183 modifying any permit for which the department received an
184 application before February 28, 1998, the Permit Board shall apply
185 those siting criteria adopted or used by the commission before
186 February 28, 1998, unless federal law or regulations require more
187 stringent criteria. The moratorium established in this paragraph
188 shall not apply to the issuance of any permit for a new swine
189 concentrated animal feeding operation or the expansion of an
190 existing swine concentrated animal feeding operation that uses an
191 animal waste management system which the applicant demonstrates to
192 the Permit Board is innovative in significantly reducing the
193 effects of the operation on the public health, welfare or the

194 environment and which is approved by the Permit Board. The Permit
195 Board shall not issue or modify more than five (5) permits under
196 this innovative animal waste management system technology
197 exemption to the moratorium.

198 (g) In addition to the owner, any person who exercises
199 substantial control over a swine concentrated animal feeding
200 operation required to be permitted under this section shall be
201 considered an operator and shall be a co-permittee with the swine
202 concentrated animal feeding operation owner. A person exercises
203 substantial control if the person:

204 (i) Establishes management or production standards
205 for the care, maintenance, feeding, medication of the swine; or

206 (ii) Directs the activity of persons working at
207 the concentrated animal feeding operation either through a
208 contract or direct supervision of activities at the facility; or

209 (iii) Owns or has an ownership interest in the
210 swine. An ownership interests includes a right or option to
211 purchase the swine.

212 This requirement shall apply to permits for new swine
213 concentrated animal feeding operations and to the reissuance,
214 modification, or transfer of permits for existing swine
215 concentrated animal feeding operations.

216 (4) (a) Except as required by this section, before the
217 issuance, reissuance, denial, modification or revocation of any
218 air pollution control or water pollution control permit, permit
219 required under the Solid Wastes Disposal Law of 1974 (Title 17,
220 Chapter 17) or any other permit within its jurisdiction, the
221 Permit Board, in its discretion, may hold a public hearing or
222 meeting to obtain comments from the public on its proposed action.
223 Before the issuance, reissuance, denial, modification pertaining
224 to the expansion of a facility, transfer or revocation of a permit
225 for a commercial hazardous waste management facility or a
226 commercial municipal solid waste landfill or incinerator, the

227 Permit Board shall conduct a public hearing or meeting to obtain
228 comments from the public on the proposed action. That hearing or
229 meeting shall be informal in nature and conducted under those
230 procedures as the Permit Board may deem appropriate consistent
231 with the commission's regulations.

232 (b) Within thirty (30) days after the date the Permit
233 Board takes action upon permit issuance, reissuance, denial,
234 modification or revocation, as recorded in the minutes of the
235 Permit Board, any interested party aggrieved by that action may
236 file a written request for a formal hearing before the Permit
237 Board. An interested party is any person claiming an interest
238 relating to the property or project which is the subject of the
239 permit action, and who is so situated that the person may be
240 affected by the disposition of that action.

241 The Permit Board shall fix the time and place of the formal
242 hearing and shall notify the permittee of that time and place.

243 In conducting the formal hearing, the Permit Board shall have
244 the same full powers as to subpoenaing witnesses, administering
245 oaths, examining witnesses under oath and conducting the hearing,
246 as is now vested by law in the Mississippi Public Service
247 Commission, as to the hearings before it, with the additional
248 power that the Executive Director of the Permit Board may issue
249 all subpoenas at the instance of the Permit Board or at the
250 instance of any interested party. Any subpoenas shall be served
251 by any lawful officer in any county to whom the subpoena is
252 directed and return made thereon as provided by law, with the cost
253 of service being paid by the party on whose behalf the subpoena
254 was issued. Witnesses summoned to appear at the hearing shall be
255 entitled to the same per diem and mileage as witnesses attending
256 the circuit court and shall be paid by the person on whose behalf
257 the witness was called. Sufficient sureties for the cost of
258 service of the subpoena and witness fees shall be filed with the
259 Executive Director of the Permit Board at the time that issuance

260 of the subpoena is requested. At a hearing, any interested party
261 may present witnesses and submit evidence and cross-examine
262 witnesses.

263 The Permit Board may designate a hearing officer to conduct
264 the formal hearing on all or any part of the issues on behalf of
265 the Permit Board. The hearing officer shall prepare the record of
266 the formal hearing conducted by that officer for the Permit Board
267 and shall submit the record to the Permit Board.

268 Upon conclusion of the formal hearing, the Permit Board shall
269 enter in its minutes the board's decision affirming, modifying or
270 reversing its prior decision to issue, reissue, deny, modify or
271 revoke a permit. The Permit Board shall prepare and record in its
272 minutes findings of fact and conclusions of law supporting its
273 decision. That decision, as recorded in its minutes with its
274 findings of fact and conclusions of law, shall be final unless an
275 appeal, as provided in this section, is taken to chancery court
276 within twenty (20) days following the date the decision is entered
277 in the board's minutes.

278 (c) Within twenty (20) days after the date the Permit
279 Board takes action upon permit issuance, reissuance, denial,
280 modification or revocation after a formal hearing under this
281 subsection as recorded in the minutes of the Permit Board, any
282 person aggrieved of that action may appeal the action as provided
283 in subsection (5) of this section.

284 (5) (a) Appeals from any decision or action of the Permit
285 Board shall be only to chancery court as provided in this
286 subsection.

287 (b) Any person who is aggrieved by any decision of the
288 Permit Board issuing, reissuing, denying, revoking or modifying a
289 permit after a formal hearing may appeal that decision within the
290 period specified in subsection (4)(c) of this section to the
291 chancery court of the county of the situs in whole or in part of
292 the subject matter. The appellant shall give a cost bond with

293 sufficient sureties, payable to the state in the sum of not less
294 than One Hundred Dollars (\$100.00) nor more than Five Hundred
295 Dollars (\$500.00), to be fixed by the Permit Board and to be filed
296 with and approved by the Executive Director of the Permit Board,
297 who shall forthwith certify the filing of the bond together with a
298 certified copy of the record of the Permit Board in the matter to
299 the chancery court to which the appeal is taken, which shall
300 thereupon become the record of the cause. An appeal to the
301 chancery court as provided in this section shall not stay the
302 decision of the Permit Board. The aggrieved party may, within
303 twenty (20) days following the date the board's decision after a
304 formal hearing is entered on the board's minutes, petition the
305 chancery court for an appeal with supersedeas and the chancellor
306 shall grant a hearing on that petition. Upon good cause shown,
307 the chancellor may grant that appeal with supersedeas. If
308 granted, the appellant shall be required to post a bond with
309 sufficient sureties according to law in an amount to be determined
310 by the chancellor. Appeals shall be considered only upon the
311 record as made before the Permit Board. The chancery court shall
312 always be deemed open for hearing of an appeal and the chancellor
313 may hear the same in termtime or in vacation at any place in the
314 chancellor's district, and the appeal shall have precedence over
315 all civil cases, except election contests. The chancery court
316 shall review all questions of law and of fact. If no prejudicial
317 error is found, the matter shall be affirmed. If prejudicial
318 error is found the decision of the board shall be reversed and the
319 chancery court shall remand the matter to the Permit Board for
320 appropriate action as may be indicated or necessary under the
321 circumstances. Appeals may be taken from the chancery court to
322 the Supreme Court in the manner as now required by law, except
323 that if a supersedeas is desired by the party appealing to the
324 chancery court, that party may apply for a supersedeas to the
325 chancellor of that court, who shall award a writ of supersedeas,

326 without additional bond, if in the chancellor's judgment material
327 damage is not likely to result thereby; but otherwise, the
328 chancellor shall require a supersedeas bond as the chancellor
329 deems proper, which shall be liable to the state for any damage.

330 SECTION 3. Any person, who exercises substantial control
331 over a swine concentrated animal feeding operation and who is a
332 co-permittee under Section 49-27-29, shall be jointly and
333 severally liable for compliance with and violations of
334 environmental laws, rules and regulations of the commission,
335 conditions of permits, and for damages, remediation and abatement
336 of pollution from the swine concentrated animal feeding operation.

337 SECTION 4. Section 3 of this act shall be codified in
338 Chapter 17 of Title 49, Mississippi Code of 1972.

339 SECTION 5. This act shall take effect and be in force from
340 and after its passage.