

By: Representative Ellis

To: Conservation and Water Resources

HOUSE BILL NO. 938

1 AN ACT TO AMEND SECTION 49-17-29, MISSISSIPPI CODE OF 1972,  
2 TO PROVIDE THAT THE MISSISSIPPI PUBLIC UTILITIES STAFF SHALL MAKE  
3 AN ECONOMIC VIABILITY DETERMINATION ON NEW WASTEWATER SYSTEMS AND  
4 CERTIFY SAME TO THE DEPARTMENT OF ENVIRONMENTAL QUALITY; AND FOR  
5 RELATED PURPOSES.

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

7 **SECTION 1.** Section 49-17-29, Mississippi Code of 1972, is  
8 amended as follows:

9 49-17-29. (1) (a) Except as in compliance with paragraph  
10 (b) of this subsection, it is unlawful for any person to cause  
11 pollution of the air in the state or to place or cause to be  
12 placed any wastes or other products or substances in a location  
13 where they are likely to cause pollution of the air. It is also  
14 unlawful to discharge any wastes, products or substances into the  
15 air of the state which exceed standards of performance, hazardous  
16 air pollutant standards, other emission standards set by the  
17 commission, or which reduce the quality of the air below the air  
18 quality standards or increments established by the commission or  
19 prevent attainment or maintenance of those air quality standards.  
20 Any such action is hereby declared to be a public nuisance.

21 (b) It is unlawful for any person to build, erect,  
22 alter, replace, use or operate any equipment which will cause the  
23 issuance of air contaminants unless that person holds a permit  
24 from the Permit Board (except repairs or maintenance of equipment  
25 for which a permit has been previously issued), or unless that  
26 person is exempted from holding a permit by a regulation  
27 promulgated by the commission. Concentrated animal feeding  
28 operations may be a source or a category of sources exempted under



29 this paragraph. However, no new or existing applications relating  
30 to swine concentrated animal feeding operations within a county  
31 shall be exempted from regulations and ordinances which have been  
32 duly passed by the county's board of supervisors and which are in  
33 force on June 1, 1998.

34 (2) (a) Except as in compliance with paragraph (b) of this  
35 subsection, it is unlawful for any person to cause pollution of  
36 any waters of the state or to place or cause to be placed any  
37 wastes in a location where they are likely to cause pollution of  
38 any waters of the state. It is also unlawful to discharge any  
39 wastes into any waters of the state which reduce the quality of  
40 those waters below the water quality standards established by the  
41 commission; or to violate any applicable pretreatment standards or  
42 limitations, technology-based effluent limitations, toxic  
43 standards or any other limitations established by the commission.  
44 Any such action is declared to be a public nuisance.

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

51 (i) the construction, installation, modification or operation of  
52 any disposal system or part thereof or any extension or addition  
53 thereto, including, but not limited to, systems serving  
54 agricultural operations; (ii) the increase in volume or strength  
55 of any wastes in excess of the permissive discharges specified  
56 under any existing permit; (iii) the construction, installation or  
57 operation of any industrial, commercial or other establishment,  
58 including irrigation projects or any extension or modification  
59 thereof or addition thereto, the operation of which would cause an  
60 increase in the discharge of wastes into the waters of the state  
61 or would otherwise alter the physical, chemical or biological



62 properties of any waters of the state in any manner not already  
63 lawfully authorized; (iv) the construction or use of any new  
64 outlet for the discharge of any wastes into the waters of the  
65 state. However, no new or existing applications relating to swine  
66 concentrated animal feeding operations within a county shall be  
67 exempted from regulations and ordinances which have been duly  
68 passed by the county's board of supervisors and which are in force  
69 on June 1, 1998.

70 (3) (a) Except as otherwise provided in this section, the  
71 Permit Board created by Section 49-17-28 shall be the exclusive  
72 administrative body to make decisions on permit issuance,  
73 reissuance, denial, modification or revocation of air pollution  
74 control and water pollution control permits and permits required  
75 under the Solid Wastes Disposal Law of 1974 (Title 17, Chapter  
76 17), and all other permits within the jurisdiction of the Permit  
77 Board. After consideration of alternative waste treatment  
78 technologies available to control air and water pollution and  
79 odor, including appropriate siting criteria, the commission may  
80 promulgate regulations establishing conditions, limitations and  
81 exemptions under which the Permit Board shall make these  
82 decisions. Regulations promulgated by the commission which  
83 establish exemptions as authorized under this section shall apply  
84 to any applicable facility in operation on the effective date of  
85 that regulation and to any applicable facility constructed or  
86 operated after the effective date of that regulation. The Permit  
87 Board may issue multiple permits for the same facility or  
88 operation simultaneously or in the sequence that it deems  
89 appropriate consistent with the commission's regulations. Except  
90 as otherwise provided in this paragraph, the Permit Board, under  
91 any conditions that the board may prescribe, may authorize the  
92 Executive Director of the Department of Environmental Quality to  
93 make decisions on permit issuance, reissuance, denial,  
94 modification or revocation. The executive director shall not be



95 authorized to make decisions on permit issuance, reissuance,  
96 denial, modification or revocation for a commercial hazardous  
97 waste management facility or a municipal solid waste landfill or  
98 incinerator. A decision by the executive director shall be a  
99 decision of the Permit Board and shall be subject to formal  
100 hearing and appeal as provided in this section. The executive  
101 director shall report all permit decisions to the Permit Board at  
102 its next regularly scheduled meeting and those decisions shall be  
103 recorded in the minutes of the Permit Board. The decisions of the  
104 Permit Board shall be recorded in minutes of the Permit Board and  
105 shall be kept separate and apart from the minutes of the  
106 commission. The decision of the Permit Board or the executive  
107 director to issue, reissue, deny, modify or revoke permits shall  
108 not be construed to be an order or other action of the commission.

109 (b) The Executive Director of the Department of  
110 Environmental Quality shall also be the Executive Director of the  
111 Permit Board and shall have available to him, as Executive  
112 Director of the Permit Board, all resources and personnel  
113 otherwise available to him as executive director of the  
114 department.

115 (c) All persons required to obtain an air pollution  
116 control or water pollution control permit, a permit under the  
117 Solid Wastes Disposal Law of 1974 (Title 17, Chapter 17) or any  
118 other permit within the jurisdiction of the Permit Board shall  
119 make application for that permit with the Permit Board. The  
120 Permit Board, under any regulations as the commission may  
121 prescribe, may require the submission of those plans,  
122 specifications and other information as it deems necessary to  
123 carry out Sections 49-17-1 through 49-17-43 and Title 17, Chapter  
124 17, or to carry out the commission's regulations adopted under  
125 those sections. The Permit Board, based upon any information as  
126 it deems relevant, shall issue, reissue, deny, modify or revoke  
127 air pollution control or water pollution control permit or permits



128 required under the Solid Wastes Disposal Law of 1974 (Title 17,  
129 Chapter 17) or any other permit within the jurisdiction of the  
130 Permit Board under any conditions as it deems necessary that are  
131 consistent with the commission's regulations. The Permit Board's  
132 action of issuance, reissuance, denial, modification or revocation  
133 of a permit as recorded in its minutes shall constitute a complete  
134 decision of the board. All permits issued by the Permit Board  
135 shall remain in full force and effect until the board makes a  
136 final determination regarding any reissuance, modification, or  
137 revocation thereof. The Permit Board shall take action upon an  
138 application within one hundred eighty (180) days following its  
139 receipt in the board's principal office. No action which affects  
140 revocation of an existing permit shall take effect until the  
141 thirty (30) days mentioned in paragraph (4)(b) of this section has  
142 expired or until a formal hearing as prescribed in that paragraph  
143 is held, whichever is later.

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

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

156 (f) The Permit Board shall not issue any permit for a  
157 new swine concentrated animal feeding operation or the expansion  
158 of an existing swine concentrated animal feeding operation before  
159 January 1, 2000, unless the department received the application  
160 for that operation's new or modified permit before February 28,



161 1998, or except as provided in this paragraph (f). In issuing or  
162 modifying any permit for which the department received an  
163 application before February 28, 1998, the Permit Board shall apply  
164 those siting criteria adopted or used by the commission before  
165 February 28, 1998, unless federal law or regulations require more  
166 stringent criteria. The moratorium established in this paragraph  
167 shall not apply to the issuance of any permit for a new swine  
168 concentrated animal feeding operation or the expansion of an  
169 existing swine concentrated animal feeding operation that uses an  
170 animal waste management system which the applicant demonstrates to  
171 the Permit Board is innovative in significantly reducing the  
172 effects of the operation on the public health, welfare or the  
173 environment and which is approved by the Permit Board. The Permit  
174 Board shall not issue or modify more than five (5) permits under  
175 this innovative animal waste management system technology  
176 exemption to the moratorium.

177 (g) Each applicant for a permit for a new outlet for  
178 the discharge of wastes into the waters of the state who is  
179 required to obtain a certificate of public convenience and  
180 necessity from the Public Service Commission for such wastewater  
181 system shall submit financial and managerial information as  
182 required by the Public Utilities Staff. Following review of that  
183 information, the Executive Director of the Public Utilities Staff  
184 shall certify in writing to the executive director of the  
185 department, the financial and managerial viability of the system  
186 if the Executive Director of the Public Utilities Staff determines  
187 the system is viable. The Permit Board shall not issue the permit  
188 until the certification is received.

189 (4) (a) Except as required by this section, before the  
190 issuance, reissuance, denial, modification or revocation of any  
191 air pollution control or water pollution control permit, permit  
192 required under the Solid Wastes Disposal Law of 1974 (Title 17,  
193 Chapter 17) or any other permit within its jurisdiction, the



194 Permit Board, in its discretion, may hold a public hearing or  
195 meeting to obtain comments from the public on its proposed action.  
196 Before the issuance, reissuance, denial, modification pertaining  
197 to the expansion of a facility, transfer or revocation of a permit  
198 for a commercial hazardous waste management facility or a  
199 commercial municipal solid waste landfill or incinerator, the  
200 Permit Board shall conduct a public hearing or meeting to obtain  
201 comments from the public on the proposed action. That hearing or  
202 meeting shall be informal in nature and conducted under those  
203 procedures as the Permit Board may deem appropriate consistent  
204 with the commission's regulations.

205 (b) Within thirty (30) days after the date the Permit  
206 Board takes action upon permit issuance, reissuance, denial,  
207 modification or revocation, as recorded in the minutes of the  
208 Permit Board, any interested party aggrieved by that action may  
209 file a written request for a formal hearing before the Permit  
210 Board. An interested party is any person claiming an interest  
211 relating to the property or project which is the subject of the  
212 permit action, and who is so situated that the person may be  
213 affected by the disposition of that action.

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

216 In conducting the formal hearing, the Permit Board shall have  
217 the same full powers as to subpoenaing witnesses, administering  
218 oaths, examining witnesses under oath and conducting the hearing,  
219 as is now vested by law in the Mississippi Public Service  
220 Commission, as to the hearings before it, with the additional  
221 power that the Executive Director of the Permit Board may issue  
222 all subpoenas at the instance of the Permit Board or at the  
223 instance of any interested party. Any subpoenas shall be served  
224 by any lawful officer in any county to whom the subpoena is  
225 directed and return made thereon as provided by law, with the cost  
226 of service being paid by the party on whose behalf the subpoena



227 was issued. Witnesses summoned to appear at the hearing shall be  
228 entitled to the same per diem and mileage as witnesses attending  
229 the circuit court and shall be paid by the person on whose behalf  
230 the witness was called. Sufficient sureties for the cost of  
231 service of the subpoena and witness fees shall be filed with the  
232 Executive Director of the Permit Board at the time that issuance  
233 of the subpoena is requested. At a hearing, any interested party  
234 may present witnesses and submit evidence and cross-examine  
235 witnesses.

236 The Permit Board may designate a hearing officer to conduct  
237 the formal hearing on all or any part of the issues on behalf of  
238 the Permit Board. The hearing officer shall prepare the record of  
239 the formal hearing conducted by that officer for the Permit Board  
240 and shall submit the record to the Permit Board.

241 Upon conclusion of the formal hearing, the Permit Board shall  
242 enter in its minutes the board's decision affirming, modifying or  
243 reversing its prior decision to issue, reissue, deny, modify or  
244 revoke a permit. The Permit Board shall prepare and record in its  
245 minutes findings of fact and conclusions of law supporting its  
246 decision. That decision, as recorded in its minutes with its  
247 findings of fact and conclusions of law, shall be final unless an  
248 appeal, as provided in this section, is taken to chancery court  
249 within twenty (20) days following the date the decision is entered  
250 in the board's minutes.

251 (c) Within twenty (20) days after the date the Permit  
252 Board takes action upon permit issuance, reissuance, denial,  
253 modification or revocation after a formal hearing under this  
254 subsection as recorded in the minutes of the Permit Board, any  
255 person aggrieved of that action may appeal the action as provided  
256 in subsection (5) of this section.

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



260 (b) Any person who is aggrieved by any decision of the  
261 Permit Board issuing, reissuing, denying, revoking or modifying a  
262 permit after a formal hearing may appeal that decision within the  
263 period specified in subsection (4)(c) of this section to the  
264 chancery court of the county of the situs in whole or in part of  
265 the subject matter. The appellant shall give a cost bond with  
266 sufficient sureties, payable to the state in the sum of not less  
267 than One Hundred Dollars (\$100.00) nor more than Five Hundred  
268 Dollars (\$500.00), to be fixed by the Permit Board and to be filed  
269 with and approved by the Executive Director of the Permit Board,  
270 who shall forthwith certify the filing of the bond together with a  
271 certified copy of the record of the Permit Board in the matter to  
272 the chancery court to which the appeal is taken, which shall  
273 thereupon become the record of the cause. An appeal to the  
274 chancery court as provided in this section shall not stay the  
275 decision of the Permit Board. The aggrieved party may, within  
276 twenty (20) days following the date the board's decision after a  
277 formal hearing is entered on the board's minutes, petition the  
278 chancery court for an appeal with supersedeas and the chancellor  
279 shall grant a hearing on that petition. Upon good cause shown,  
280 the chancellor may grant that appeal with supersedeas. If  
281 granted, the appellant shall be required to post a bond with  
282 sufficient sureties according to law in an amount to be determined  
283 by the chancellor. Appeals shall be considered only upon the  
284 record as made before the Permit Board. The chancery court shall  
285 always be deemed open for hearing of an appeal and the chancellor  
286 may hear the same in termtime or in vacation at any place in the  
287 chancellor's district, and the appeal shall have precedence over  
288 all civil cases, except election contests. The chancery court  
289 shall review all questions of law and of fact. If no prejudicial  
290 error is found, the matter shall be affirmed. If prejudicial  
291 error is found the decision of the board shall be reversed and the  
292 chancery court shall remand the matter to the Permit Board for



293 appropriate action as may be indicated or necessary under the  
294 circumstances. Appeals may be taken from the chancery court to  
295 the Supreme Court in the manner as now required by law, except  
296 that if a supersedeas is desired by the party appealing to the  
297 chancery court, that party may apply for a supersedeas to the  
298 chancellor of that court, who shall award a writ of supersedeas,  
299 without additional bond, if in the chancellor's judgment material  
300 damage is not likely to result thereby; but otherwise, the  
301 chancellor shall require a supersedeas bond as the chancellor  
302 deems proper, which shall be liable to the state for any damage.

303       **SECTION 2.** This act shall take effect and be in force from  
304 and after July 1, 2002.

