

By: Representative Ellington

To: Conservation and Water Resources

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 1052

1 AN ACT TO AMEND SECTION 49-17-29, MISSISSIPPI CODE OF 1972,
2 TO SPECIFY THE TYPE OF PERMITS REQUIRING A PUBLIC HEARING; AND FOR
3 RELATED PURPOSES.

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

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

7 49-17-29. (1) (a) Except as in compliance with paragraph
8 (b) of this subsection, it is unlawful for any person to cause
9 pollution of the air in the state or to place or cause to be
10 placed any wastes or other products or substances in a location
11 where they are likely to cause pollution of the air. It is also
12 unlawful to discharge any wastes, products or substances into the
13 air of the state which exceed standards of performance, hazardous
14 air pollutant standards, other emission standards set by the
15 commission, or which reduce the quality of the air below the air
16 quality standards or increments established by the commission or
17 prevent attainment or maintenance of those air quality standards.
18 Any such action is hereby declared to be a public nuisance.

19 (b) It is unlawful for any person to build, erect,
20 alter, replace, use or operate any equipment which will cause the
21 issuance of air contaminants unless that person holds a permit
22 from the Permit Board (except repairs or maintenance of equipment
23 for which a permit has been previously issued), or unless that
24 person is exempted from holding a permit by a regulation
25 promulgated by the commission. Concentrated animal feeding
26 operations may be a source or a category of sources exempted under
27 this paragraph. However, no new or existing applications relating



28 to swine concentrated animal feeding operations within a county
29 shall be exempted from regulations and ordinances which have been
30 duly passed by the county's board of supervisors and which are in
31 force on June 1, 1998.

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

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

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



61 lawfully authorized; (iv) the construction or use of any new
62 outlet for the discharge of any wastes into the waters of the
63 state. However, no new or existing applications relating to swine
64 concentrated animal feeding operations within a county shall be
65 exempted from regulations and ordinances which have been duly
66 passed by the county's board of supervisors and which are in force
67 on June 1, 1998.

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



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

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

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



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

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

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

154 (f) The Permit Board shall not issue any permit for a
155 new swine concentrated animal feeding operation or the expansion
156 of an existing swine concentrated animal feeding operation before
157 January 1, 2000, unless the department received the application
158 for that operation's new or modified permit before February 28,
159 1998, or except as provided in this paragraph (f). In issuing or



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

175 (4) (a) Except as required by this section, before the
176 issuance, reissuance, denial, modification or revocation of any
177 air pollution control or water pollution control permit, permit
178 required under the Solid Wastes Disposal Law of 1974 (Title 17,
179 Chapter 17) or any other permit within its jurisdiction, the
180 Permit Board, in its discretion, may hold a public hearing or
181 meeting to obtain comments from the public on its proposed action.
182 Before the issuance, reissuance, denial, modification pertaining
183 to the expansion of a facility, transfer or revocation of: (i)
184 any permit for a commercial hazardous waste management facility or
185 (ii) a solid waste management permit for a commercial municipal
186 solid waste landfill or incinerator, the Permit Board shall
187 conduct a public hearing or meeting to obtain comments from the
188 public on the proposed action. That hearing or meeting shall be
189 informal in nature and conducted under those procedures as the
190 Permit Board may deem appropriate consistent with the commission's
191 regulations. All public notices regarding any permit for a
192 commercial hazardous waste management facility or for a solid



193 waste management permit for a commercial municipal solid waste
194 landfill or incinerator shall be posted on the department's
195 official Internet website for the period of public notice and
196 comment required by the Administrative Procedures Law or any
197 applicable federal law.

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

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

209 In conducting the formal hearing, the Permit Board shall have
210 the same full powers as to subpoenaing witnesses, administering
211 oaths, examining witnesses under oath and conducting the hearing,
212 as is now vested by law in the Mississippi Public Service
213 Commission, as to the hearings before it, with the additional
214 power that the Executive Director of the Permit Board may issue
215 all subpoenas at the instance of the Permit Board or at the
216 instance of any interested party. Any subpoenas shall be served
217 by any lawful officer in any county to whom the subpoena is
218 directed and return made thereon as provided by law, with the cost
219 of service being paid by the party on whose behalf the subpoena
220 was issued. Witnesses summoned to appear at the hearing shall be
221 entitled to the same per diem and mileage as witnesses attending
222 the circuit court and shall be paid by the person on whose behalf
223 the witness was called. Sufficient sureties for the cost of
224 service of the subpoena and witness fees shall be filed with the
225 Executive Director of the Permit Board at the time that issuance



226 of the subpoena is requested. At a hearing, any interested party
227 may present witnesses and submit evidence and cross-examine
228 witnesses.

229 The Permit Board may designate a hearing officer to conduct
230 the formal hearing on all or any part of the issues on behalf of
231 the Permit Board. The hearing officer shall prepare the record of
232 the formal hearing conducted by that officer for the Permit Board
233 and shall submit the record to the Permit Board.

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

244 (c) Within twenty (20) days after the date the Permit
245 Board takes action upon permit issuance, reissuance, denial,
246 modification or revocation after a formal hearing under this
247 subsection as recorded in the minutes of the Permit Board, any
248 person aggrieved of that action may appeal the action as provided
249 in subsection (5) of this section.

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

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



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



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

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

