To: Conservation and Water Resources

MISSISSIPPI LEGISLATURE REGULAR SESSION 2002

By: Representative Ellington

HOUSE BILL NO. 1364

AN ACT TO AUTHORIZE THE MISSISSIPPI COMMISSION ON ENVIRONMENTAL QUALITY TO ESTABLISH FEES NECESSARY TO SUPPLEMENT THE COSTS OF SPECIFIC PERMITS, PROGRAMS AND ACTIVITIES ADMINISTERED BY THE COMMISSION, THE MISSISSIPPI ENVIRONMENTAL QUALITY PERMIT BOARD AND THE MISSISSIPPI DEPARTMENT OF ENVIRONMENTAL QUALITY; TO AMEND SECTIONS 49-2-9, 49-31-25, 51-3-31, 51-5-1, 53-7-21, 53-7-25, 53-7-43 AND 53-7-69, MISSISSIPPI CODE OF 1972, TO ALLOW THE COMMISSION TO SET PROGRAM FEES AND TO DEPOSIT SUCH FEES IN THE SPECIAL FUND CREATED IN THIS ACT AND DESIGNATED AS THE "DEPARTMENT OF ENVIRONMENTAL QUALITY PROGRAM FUND"; AND FOR RELATED PURPOSES.

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

SECTION 1. (1) (a) The commission may establish and collect reasonable fees in amounts sufficient to supplement the actual direct and indirect costs associated with the development and administration of all programs and activities within the jurisdiction of the commission, the Mississippi Department of Environmental Quality or the Mississippi Environmental Quality Permit Board created by Section 49-17-28. The fees shall be set by the commission at a moderate amount designed to supplement, at a maximum, the expenses borne by the state, exclusive of federal funding, in carrying out the duties of the commission, department and permit board. The amount sufficient to supplement the costs associated with a permit, program or activity shall be that amount in excess of the portion of funds appropriated by the Legislature, for the fiscal year in which the fees are to apply, that is designated for such specific permit, program or activity. Funds generated by fees collected by the commission pursuant to this section may be expended only to defray the costs associated with the specific permits, programs or activities for which the fees have been collected. The commission may assess fees either as an
annual amount to be paid by a facility or person or as an annual amount reflecting the supplement to the costs of certain activities, including, but not limited to, permit application review and processing. The commission shall review and revise its fees at least once each year, after the final passage of the legislative appropriation for the commission, department or permit board, as the case may be, for the fiscal year in which the fees will be assessed to supplement the costs of specific permits, programs or activities. Commission fees may be set by order of the commission or by regulation adopted by the commission. In setting fees by order or by adopting a regulation, the commission shall consider, at a minimum, the following factors:

(i) The fees charged by adjoining states for similar permits, programs or activities;

(ii) The actual cost to the commission, the department or the permit board of the activity for which a fee is to be charged;

(iii) The amount appropriated by the Legislature, for the fiscal year in which the fees will be assessed, that is designated for issuing the permits or conducting the programs or activities; and

(iv) The amount of fees remaining in the Department of Environmental Quality Program Fund at the end of each fiscal year that are available to be credited against the costs borne by the commission, the department or the permit board in conducting activities for which fees are charged.

(b) The commission shall file a report by July 31 of each year with the Governor, the Lieutenant Governor and the Speaker of the House describing the type and amount of fees collected by the commission for the preceding fiscal year.

(c) It is the intent of the Legislature that fees collected pursuant to this section shall supplement the costs associated with certain permits, programs and activities, but
shall not supplant or reduce in any way the General Fund appropriation to the Department of Environmental Quality.

(2) There is created in the State Treasury a special fund to be known as the "Department of Environmental Quality Program Fund," hereinafter referred to in this section as the "fund." Unexpended amounts remaining in the fund at the end of a fiscal year shall not lapse into the State General Fund, and any interest earned on amounts in the fund shall be deposited to the credit of the fund. The fund may receive monies from any available public or private source, including, but not limited to, collection of fees, interest, grants, public and private donations, and judicial actions.

(3) All fees collected under this section shall be deposited into the fund. Monies in the fund may be expended only upon appropriation of the Legislature, and only for the limited purposes related to supplementing the costs associated with the specific permits, programs or activities, for which the fees deposited in the fund have been collected.

(4) The commission may take any administrative or legal action necessary to collect any fees assessed under this section owed to the commission and to collect attorney's fees and costs related to the collection of any fee. The commission may impose, by regulation or order, a late fee for any fee not paid to the commission in a timely fashion and may issue an order directing the holder of a permit who has not paid its fees within ninety (90) days of the fee due date to cease and desist its operations under the permit. The commission may adopt regulations allowing the Mississippi Environmental Quality Permit Board to revoke any permit for which fees due under commission regulations have not been paid within ninety (90) days of the due date.

SECTION 2. Section 49-2-9, Mississippi Code of 1972, is amended as follows:
49-2-9.  * * * The commission shall have the following powers and duties:

(a) To formulate the policy of the department regarding natural resources within the jurisdiction of the department;

(b) To adopt, modify, repeal, and promulgate, after due notice and hearing, and where not otherwise prohibited by federal or state law, to make exceptions to and grant exemptions and variances from, and to enforce rules and regulations implementing or effectuating the powers and duties of the commission under any and all statutes within the commission's jurisdiction, and as the commission may deem necessary to prevent, control and abate existing or potential pollution;

(c) To apply for, receive and expend any federal or state funds or contributions, gifts, devises, bequests or funds from any other source;

(d) To commission or conduct studies designed to determine alternative methods of managing or using the natural resources of this state, in a manner to insure efficiency and maximum productivity;

(e) To enter into, and to authorize the executive director to execute with the approval of the commission, contracts, grants and cooperative agreements with any federal or state agency or subdivision thereof, or any public or private institution located inside or outside the State of Mississippi, or any person, corporation or association in connection with carrying out the provisions of this chapter; but this authority under this chapter and under any and all statutes within the commission's jurisdiction, except those statutes relating to the Bureau of Recreation and Parks, shall not include contracts, grants or cooperative agreements which do not develop data or information usable by the commission, or which provide goods, services or facilities to the commission or any of its bureaus, and shall
exclude any monies for special interest groups for purposes of lobbying or otherwise promoting their special interests; * * *

(f) To establish and collect fees pursuant to Section 1 of this act; and

(g) To discharge such other duties, responsibilities and powers as are necessary to implement the provisions of this chapter or any other law within the jurisdiction of the commission.

SECTION 3. Section 49-31-25, Mississippi Code of 1972, is amended as follows:

49-31-25. (1) There is imposed upon each large quantity generator and each small quantity generator that is regulated under the Mississippi hazardous waste management regulations and each facility operator, a pollution prevention fee. The fee upon each large quantity generator and each small quantity generator shall be measured by the quantity of hazardous waste which that generator generates annually. The fee upon each facility operator shall be measured by the quantity of chemicals which each facility releases annually and reports pursuant to Section 313 of EPCRA. For a fee payer that is both a large quantity hazardous waste generator and a facility operator, the fee shall be measured by adding the quantity of fugitive and stack air emissions reported under Section 313 of EPCRA plus the quantity of hazardous waste generated annually. For a fee payer that is both a small quantity hazardous waste generator and a facility operator, the fee shall be measured by the quantity of chemicals released as reported pursuant to Section 313 of EPCRA. The fee shall be assessed in an amount pursuant to the provisions of Section 1 of this act.

* * *

The fee shall be due and payable to the department not later than September 1 of each year, or not later than a date specified by the department in the invoice which shall be no less than thirty (30) days following receipt of an invoice from the department.
department, whichever is later. The fee shall be based on the
quantity of hazardous waste generated and/or chemicals released
during the preceding calendar year. The department shall annually
prepare an invoice for the amount of the pollution prevention fee
due from each generator or facility operator and furnish it to
each generator or facility operator. * * *

(2) From and after July 1, 1995, the department shall
exclude from the calculation of the pollution prevention fee any
hazardous waste recycled on-site or shipped off-site for recycling
as reported on the Mississippi Annual Hazardous Waste Report or
its equivalent and any chemicals recycled on-site or shipped
off-site for recycling as reported under Section 313 of EPCRA.
The hazardous waste generator or the facility operator shall
submit any information the department deems necessary to
substantiate that the hazardous waste or chemicals were recycled.

(3) At the discretion of the commission, a generator or
facility operator shall be liable for a penalty not to exceed
three (3) times the amount of the fee due and payable for failure
to pay the fee on or before the due date, plus the amount
necessary to reimburse the cost of collection.

(4) From and after July 1, 1995, the department shall
exclude from any calculation of pollution prevention fee any
hazardous waste or chemical for which a Title V permit fee is
assessed to the same generator or facility operator.

SECTION 4. Section 51-3-31, Mississippi Code of 1972, is
amended as follows:

51-3-31. Any person desiring to use water for a beneficial
purpose shall apply to the board for a permit for such use on a
form prescribed by the board for such purpose. * * * The
application shall provide such information as deemed appropriate
by the board to its decision to issue such permit.

* * *
SECTION 5. Section 51-5-1, Mississippi Code of 1972, is amended as follows:

51-5-1. (1) Every person, firm and corporation desiring to engage in the business of drilling wells for underground water in the State of Mississippi shall file an application with the State Board of Water Commissioners for a drilling license, using forms prepared by the board, setting out qualifications therefor and such other information, including any examination, oral or written, as may be required by the board.

(2) All licenses shall expire on June 30 of each year and shall not be transferable and shall be renewable annually, without qualifying examination, upon payment of the required fee.

(3) Nothing in this chapter shall prevent a person who has not obtained a license pursuant thereto from constructing a water well on his own or leased property intended for use only in a single family house which is his permanent residence, or intended for use only for watering livestock on his farm, and where the waters to be produced are not intended for use by the public or any residence other than his own. However, such person shall comply with all rules and regulations as to the construction of wells as set out by the provisions of this chapter.

(4) This section shall not apply to any person who performs labor or services at the direction and under the personal supervision of a licensed well contractor.

(5) A license may be renewed and shall be renewable without examination for the ensuing year by making an application not later than the expiration date and paying the applicable fee. Such application shall have the effect of extending the validity of the current license until the new license is received or the applicant is notified by the board that it has refused his license. On application made after June 30 of each year, the license will be renewed only upon payment of the applicable fee, plus a penalty of Ten Dollars ($10.00) for each month or fraction...
thereof the application is delinquent. Delinquency in excess of one (1) year may, in the discretion of the State Board of Water Commissioners, be deemed as a waiver of the driller's right for renewal; and if he should apply thereafter, the board may require that he be considered as a new applicant, including the requirement for examination.

(6) Any person whose license has been revoked may, upon application for a new license, be required, in the discretion of the board, to take the examination and in all other ways be considered as a new applicant.

SECTION 6. 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 submitted a notice of intent or having obtained from the commission a permit for each operation. 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.

In addition to the permit, each operator holding a permit shall annually, on the anniversary date of the permit, file with the commission 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. The commission may establish a fee for filing the certificate of compliance.

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

SECTION 7. Section 53-7-25, Mississippi Code of 1972, is amended as follows:
Each application for a surface mining permit and each notice of intent shall be accompanied by an initial application fee established by the commission. The commission, in considering regulations pertaining to the application fee, may 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.

SECTION 8. 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 commission 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 commission of such intent no later than six (6) months prior to the permit's expiration date on a form prescribed by the commission. Upon the submission of such notification to the commission, the commission 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 commission, 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.
SECTION 9. Section 53-7-69, Mississippi Code of 1972, is amended as follows:

53-7-69. (1) All sums received through the payment of loans, grants, penalties and bond damages, less attorney's fees, shall be deposited in the State Treasury to the credit of a special fund to be designated the Land Reclamation Fund which is hereby created in the State Treasury. When appropriated in accordance with Section 27-103-29, Mississippi Code of 1972, this fund shall be available to the commission and may be expended for the administration and enforcement of this chapter and for the reclamation of lands affected by operations. All fees collected shall be deposited in the Department of Environmental Quality Program Fund.

(2) Proceeds from the suits on bonds, collateral or deposits and penalties recovered shall be available to be expended to reclaim, in accordance with the provisions of this chapter, lands with respect to which the bonds, collateral or deposits were provided and penalties assessed. Any unused funds may be used to reclaim other unreclaimed lands.

SECTION 10. The provisions of Section 1 of this act shall be codified in Chapter 2, Title 49, Mississippi Code of 1972.

SECTION 11. This act shall take effect and be in force from and after July 1, 2002.