MISSISSIPPI LEGISLATURE

By: Representative Ellington

To: Conservation and Water Resources

HOUSE BILL NO. 1398

AN ACT TO REVISE THE "MISSISSIPPI SURFACE MINING AND RECLAMATION LAW"; TO AMEND SECTION 53-7-5, MISSISSIPPI CODE OF 1972, TO DEFINE CERTAIN TERMS; TO AMEND SECTION 53-7-7, MISSISSIPPI CODE OF 1972, TO REQUIRE A PERMIT BEFORE BEGINNING A SURFACE MINING OPERATION AND TO CLARIFY EXEMPTIONS FROM THIS ACT; TO AMEND SECTION 53-7-21, MISSISSIPPI CODE OF 1972, TO TRANSFER PERMIT DUTIES TO THE PERMIT BOARD; TO AMEND SECTION 53-7-23, MISSISSIPPI CODE OF 1972, TO AUTHORIZE THE ISSUANCE OF A GENERAL PERMIT AND TO ELIMINATE TEMPORARY PERMITS; TO REVISE SURFACE MINING ADMINISTRATIVE PROCEDURES CONSISTENT WITH THE DEPARTMENT OF ENVIRONMENTAL QUALITY ADMINISTRATIVE PROCEDURES; TO REQUIRE COMPLIANCE WITH THE MISSISSIPPI ADMINISTRATIVE PROCEDURES LAW; TO CONFORM THE SURFACE MINING LAW TO REORGANIZATION NOMENCLATURE; TO REVISE PENALTIES FOR VIOLATIONS; TO AMEND SECTIONS 53-7-1, 53-7-3, 53-7-9, 53-7-11, 53-7-17, 53-7-19, 53-7-25, 53-7-27, 53-7-29, 53-7-31, 53-7-35 THROUGH 53-7-71 AND 53-7-75, MISSISSIPPI CODE OF 1972, IN CONFORMITY THERETO; TO REPEAL SECTION 53-7-13, MISSISSIPPI CODE OF 1972, WHICH REQUIRES THE BOARD OF THE GEOLOGICAL, ECONOMIC AND TOPOGRAPHICAL SURVEY TO ESTABLISH REGULATIONS ON SURFACE MINING; TO REPEAL SECTION 53-7-15, MISSISSIPPI CODE OF 1972, WHICH REQUIRES THE BOARD OF THE GEOLOGICAL, ECONOMIC AND TOPOGRAPHICAL SURVEY TO HOLD CERTAIN HEARINGS; TO REPEAL SECTION 53-7-33, MISSISSIPPI CODE OF 1972, WHICH REQUIRES SOIL AND WATER CONSERVATION COMMISSIONERS TO SUBMIT WRITTEN RECOMMENDATIONS ON RECLAMATION PLANS AFFECTING THEIR DISTRICTS; TO REPEAL SECTION 53-7-73, MISSISSIPPI CODE OF 1972, WHICH PROVIDES A TEMPORARY SUSPENSION FOR AN OPERATOR TO SUSPEND MINING OPERATIONS FOR TWO YEARS AND TO RESUME OPERATIONS AFTER GIVING NOTICE; AND FOR RELATED PURPOSES.

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

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

53-7-1. This chapter shall be known and may be cited as the "Mississippi Surface Mining and Reclamation Act."

SECTION 2. Section 53-7-3, Mississippi Code of 1972, is amended as follows:

53-7-3. (1) The Legislature of the State of Mississippi finds and declares that:
(a) Mississippi is endowed with abundant varied natural resources which serve as a source of recreation and economic benefit to our people;

(b) The extraction of materials by surface mining is a significant economic activity and is an integral part of the growth and development of this state;

(c) The process of surface mining necessarily involves the alteration of the face of the land;

(d) The process of surface mining must be accomplished in a manner to reduce the undesirable effects of surface mining to a bare minimum, and to protect and preserve our land which is one of our greatest natural resources; and

(e) The land whose face has been altered by surface mining requires reclamation to prevent permanent damage to surface water and the land so that it may be used by future generations, to protect the safety and welfare of Mississippians, and to preserve available natural resources.

(2) The Legislature, recognizing its duty and obligation to foster the economic well-being of the state and nation, to encourage the development of its natural resources and to preserve the beauty of its lands, declares that the purpose of this chapter is to:

(a) Provide for the regulation and control of surface mining so as to minimize its injurious effects by requiring proper reclamation of surface-mined lands;

(b) Establish a regulatory system of permits and reclamation standards, supplemented by the knowledge, expertise and concerns of mining operators, landowners and the general public which is designed to achieve an acceptable, workable balance between the economic necessities of developing our natural resources and the public interest in protecting our birthright of natural beauty and a pristine environment; and
(c) Establish a regulatory system of uniform standards and procedures to govern the mining and reclamation of land, accepting the proposition that varied types of mining, varied types of materials being mined and varied geographical and ecological areas of this state may require variations in methods of surface mining and reclamation, but any variation shall be designed to restore the affected area to a useful, productive and beneficial purpose.

SECTION 3. 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 ascribed in this section, except where the context otherwise requires:

(a) "Affected area" means any area from which any materials are removed or are to be removed in a surface mining operation and upon which any materials are to be deposited. The affected area includes all areas 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.

(b) "Appeal" means an appeal to an appropriate court of the state taken from a final decision of the Permit Board or commission made after a formal hearing before that body.

(c) "As recorded in the minutes of the Permit Board" means the date of the Permit Board meeting at which the action concerned is taken by the Permit Board.

(d) "Commission" means the Mississippi Commission on Environmental Quality.

(e) "Department" means the Mississippi Department of Environmental Quality, acting through the Office of Geology and Energy Resources or a successor office.

(f) "Executive director" means the Executive Director of the Mississippi Department of Environmental Quality.
(g) "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.

(h) "Formal hearing" means a hearing on the record, as recorded and transcribed by a court reporter, before the commission or Permit Board where all parties to the hearing are allowed to present witnesses, cross-examine witnesses and present evidence for inclusion into the record, as appropriate under rules promulgated by the commission or Permit Board.

(i) "Fund" means the Surface Mining and Reclamation Fund created by Section 53-7-69.

(j) "General permit" means general permit as defined in Section 49-17-5.

(k) "Highwall" means a wall created by mining having a slope steeper than two (2) to one (1).

(l) "Interested party" means interested party as provided under Section 49-17-29.

(m) "Material" means bentonite, metallic ore, mineral clay, dolomite, phosphate, sand, gravel, soil, clay, sand clay, clay gravel, stone, chalk, and any other materials designated by the commission.

(n) "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 before mining and blends into and complements the drainage pattern of the surrounding terrain, with all highwalls, spoil piles and water-collecting depressions eliminated, to the extent practicable, unless contained in an approved reclamation plan.

(o) "Operator" means the person 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
can be for a specific or ancillary purpose, including any person whose
permit or coverage under a general permit has expired or been
suspended or revoked.  

(p) "Overburden" means all *** materials which are
removed to gain access to other materials in the process of
surface mining, including the material before or after its removal
by surface mining.  

(q) "Permit" means a permit to conduct surface mining
and reclamation operations under this chapter.  

(r) "Permit area" means all the area designated ***
in the permit application or application for coverage under a
general permit 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.  

(s) "Permit Board" means the Permit Board created by
Section 49-17-28.  

(t) "Person" means any individual, trust, firm,
joint-stock company, public or private corporation, joint venture,
partnership, association, cooperative, state, or any agency or
institution thereof, municipality, commission, political
subdivision of a state or any interstate body, and includes any
officer or governing or managing body of any municipality,
political subdivision, or the United States or any officer or
employee of the United States.  

(u) "Public hearing" means a public forum organized by
the commission, department or Permit Board for the purpose of
providing information to the public regarding a surface mining and
reclamation operation and at which members of the public are
allowed to make comments or ask questions or both of the
commission, department or the Permit Board regarding a proposed
operation or permit.
(v) "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 this chapter.

(w) "State" means the State of Mississippi.

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

(y) "Surface mining" or "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, placering, quarrying and leaching, and activities related thereto, which will alter the surface.

(z) "Surface mining operation" or "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 does 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 the activity is regulated and permitted under an individual permit by the United States Corps of Engineers; the extraction of hydrocarbons in a liquid or gaseous state by means of wells, pipe, or other on-site methods; the off-site transportation of materials; exploration activities; construction activities at a construction site; or any other exception adopted by the commission in its regulations.

(aa) "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.

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

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

53-7-7. (1) Except as provided in this section, it is unlawful to commence an operation or operate a surface mine without a permit or coverage under a general permit as provided by this chapter.

(2) Except as expressly provided in this section, this chapter shall not apply to:

(a) Excavations made by the owner of land for the owner's own use and not for commercial purposes, where the materials removed do not exceed one thousand (1,000) cubic yards per year and where one (1) acre or less of land is affected;

(b) Excavations made by a public agency on a one-time basis for emergency use at an emergency site if:

(i) The excavation lies in the vicinity of the emergency site and affects less than one-fourth (1/4) acre of mined surface area;

(ii) The landowner has signed a statement giving approval for the removal of the materials and acknowledging that no reclamation will be required; and

(iii) The public agency has notified the department as required by the commission before the removal of any materials.

(c) Operations for any materials on any affected area conducted before April 15, 1978, but this chapter shall apply to
any additional land which the operation extended to or encompassed
after April 15, 1978;

(d) Operations for any materials that affected four (4) acres or less and were greater than one thousand three hundred twenty (1,320) feet from any other affected area if:

(i) The operation began before July 1, 2002; and

(ii) The operator notified the commission of the commencement, expansion or resumption of the operation before July 1, 2002; and

(e) Operations for any materials that affect four (4) acres or less, are greater than one thousand three hundred twenty (1,320) feet from any other affected area and commenced after July 1, 2002, if the operator notifies the department at least seven (7) calendar days before commencement or expansion of the operation as required in regulations adopted by the commission, except as provided in this paragraph.

If the operator agrees in the notification to reclaim the mine site in accordance with minimum standards adopted by the commission or if the exempted operation is conducted for Mississippi Department of Transportation projects or state aid road construction projects funded in whole or in part by public funds the operator may begin after notification of the department.

Exempt operations conducted under those projects shall be reclaimed in accordance with the requirements of the Mississippi Standard Specifications for Road and Bridge Construction, Mississippi Department of Transportation or Division of State Aid Road Construction, as applicable. If a landowner refuses to allow the operator to complete reclamation in accordance with minimum standards or interferes with or authorizes a third party to disturb or interfere with reclamation in accordance with minimum standards, the landowner shall assume the exempt notice and shall be responsible for any reclamation.
(3) All operations exempted under Sections 53-7-7(2)(d) and 53-7-7(2)(e) shall be subject to the prohibitions on mining in certain areas contained in Sections 53-7-49 and 53-7-51 and may be subject to the penalties in Section 53-7-59(2) for any violation of those sections.

(4) Any operator conducting operations exempted under Section 53-7-7(2)(b) or 53-7-7(2)(e) failing to notify the department in accordance with the regulations of the commission, may be subject to penalties provided in Section 53-7-59(2). Any operator exempted under Section 53-7-7(2)(e) who agrees in the notification to reclaim and fails to reclaim in accordance with that paragraph may be subject to penalties provided in Section 53-7-59(2).

SECTION 5. Section 53-7-9, Mississippi Code of 1972, is amended as follows:

53-7-9. The department is designated as the agency to administer this chapter. The commission is designated as the body to enforce this chapter, including, but not limited to, the issuance of administrative and penalty orders, promulgation of regulations regarding matters addressed in this chapter, and designation of lands unsuitable for surface mining. The Permit Board is designated as the body to issue, deny, modify, revoke, transfer, cancel, rescind, suspend and reissue permits under this chapter.

SECTION 6. Section 53-7-11, Mississippi Code of 1972, is amended as follows:

53-7-11. (1) * * * The commission may adopt, modify, repeal, after due notice and hearing, and where not otherwise prohibited by federal or state law, make exceptions to and grant exemptions and variances from and may enforce rules and regulations pertaining to surface mining and reclamation operations to implement the provisions of this chapter.
Adopting rules and regulations, the commission shall comply with the Mississippi Administrative Procedures Law, and in addition, may hold a public hearing. Notice of the date, time, place and purpose of the hearing shall be given thirty (30) days before the scheduled date of the hearing as follows:

(a) By mail to:
   (i) All operators known by the commission to be actively engaged in surface mining in the state;
   (ii) Persons who request notification of proposed actions regarding rules and regulations and any other person the commission deems appropriate; and
   (iii) The Mississippi Soil and Water Conservation Commission, the Mississippi Department of Environmental Quality, Mississippi Department of Wildlife, Fisheries and Parks, Mississippi Forestry Commission, Mississippi Department of Archives and History, Mississippi Department of Transportation and the Mississippi Department of Agriculture and Commerce.

(b) By publication once weekly for three (3) consecutive weeks in a newspaper having general circulation in the State of Mississippi.

Any person may submit written comments or appear and offer oral comments at the public hearing. The commission shall consider all comments and relevant data presented at the hearing before final adoption of rules and regulations under this chapter. The failure of any person to submit comments within a time period as established by the commission shall not preclude action by the commission.

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

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

SECTION 8. Section 53-7-19, Mississippi Code of 1972, is amended as follows:

53-7-19. The commission shall have the following powers and duties regarding surface mining:

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

(b) To hold public and formal hearings, to issue notices of hearing, to administer oaths or affirmations, to issue subpoenas requiring the appearance of witnesses requested by any party and compel their attendance, and to 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 and to take testimony as deemed necessary;

(c) To issue, modify or revoke orders requiring an operator to take any actions necessary to comply with this chapter, rules and regulations adopted under this chapter or any permit or coverage under a general permit required by this chapter;

(d) To enter on and inspect for the purpose of assuring compliance with the terms of this chapter, in person or by an authorized agent of the department, any surface mining operation subject to this chapter;

(e) To conduct, or cause to be conducted, encourage, request and participate in studies, surveys, investigations, research, experiments, training and demonstrations by contract, grant or otherwise; to prepare and require permittees to prepare...
reports; and to collect information and disseminate to the
public *** information such as is deemed reasonable and
necessary for the proper enforcement of this chapter;

(f) To apply for, receive and expend any grants, gifts, loans or other funds made available from any source for the
purpose of this chapter ***;

(g) To advise, consult, cooperate with, or enter into
contracts or grants with federal, state and local boards and
agencies having pertinent expertise for the purpose of obtaining
professional and technical services necessary to carry out ***
this chapter;

(h) To enter into contracts with persons to reclaim
land under this chapter;

***

(i) To order the immediate cessation of any ongoing
surface mining operation being conducted with or without a permit
or coverage under a general permit if it finds that the operation
endangers the health or safety of the public or creates imminent
and significant environmental harm;

***

(j) To institute and maintain all *** court
actions *** necessary to obtain the enforcement of any written
order of the commission;

(k) To recognize the differences in the various
materials ***, taking into consideration the commercial value of
the material and the nature and size of operation necessary to
extract the deposit, in regulating surface mining operations;

(l) To authorize the executive director *** to
discharge or exercise any power or duty granted to the commission
by *** this chapter; and

(m) To perform any other duties and acts *** required
or provided for by this chapter.

***
SECTION 9. Section 53-7-21, Mississippi Code of 1972, is amended as follows:

53-7-21. (1) Unless exempted under Section 53-7-7, no operator shall engage in surface mining without having first obtained coverage under a general permit or having obtained from the Permit Board a permit for each operation. The permit or coverage under a general permit shall authorize the operator to engage in surface mining upon the area of land described in the application for a period of either five (5) years or longer period of time as deemed appropriate by the Permit Board from the date of issuance or until reclamation of the affected area is completed and the reclamation bond is finally released, whichever comes first.

(2) Each operator holding a permit shall annually, before the anniversary date of the permit, file with the department a certificate of compliance in which the operator, under oath, shall declare that the operator is following the approved mining and reclamation plan and is abiding by this chapter and the rules and regulations adopted under this chapter.

SECTION 10. Section 53-7-23, Mississippi Code of 1972, is amended as follows:

53-7-23. (1) The Permit Board may issue general permits consistent with regulations adopted by the commission to cover those surface mining operations deemed appropriate by the Permit Board. Conditions in any general permit shall provide that no operation shall be conducted on lands designated as unsuitable for mining and that each operator shall submit a proposed initial reclamation plan and a performance bond in an amount sufficient to properly reclaim the permit area. The Permit Board may include other conditions as required by the rules and regulations of the commission.
(2) Before commencing any operation for which coverage under a general permit may be obtained, each applicant for coverage under a general permit shall submit to the department an application in the form and containing the information as the department shall specify, including a copy of the proposed initial reclamation plan and except as otherwise provided by this section, a performance bond in an amount proposed by the applicant to be sufficient to properly reclaim the permit area. As the operation progresses, the applicant may revise the reclamation plan and submit the revised plan to the department for approval. The amount of the proposed performance bond shall not be less than the minimum provided in Section 53-7-37.

(3) The Permit Board shall issue a general permit for surface mining operations having a permitted area of more than four (4) acres but less than ten (10) acres which are conducted for projects funded in whole or in part by public funds for the Mississippi Department of Transportation or the Division of State Aid Road Construction. The general permit issued under this subsection shall require that all materials obtained from an operation covered under this general permit shall be used exclusively on the Mississippi Department of Transportation or Division of State Aid Road Construction project and that no materials from an operation covered under this permit may be provided or sold for any other purpose. The Permit Board shall consult with the Mississippi Department of Transportation on the development of this general permit. An applicant for a coverage under a general permit issued under this subsection shall submit an application for coverage and a proposed initial reclamation plan as required by this section, but the applicant shall not be required to post a performance bond under this section, if the applicant submits a copy of the bond posted with the Mississippi Department of Transportation or the Division of State Aid Road Construction. The Mississippi Department of Transportation or the
Division of State Aid Road Construction shall not release the bond until all reclamation requirements of the general permit issued under this section have been met. No operation conducted under a general permit issued under this subsection shall be conducted in lands designated as unsuitable for mining under Sections 53-7-49 or 53-7-51. The Permit Board may include other conditions as required by the rules and regulations of the commission in the general permit issued under this section.

(4) Within three (3) working days after receiving the application for coverage under a general permit, the department shall review the application, determine if the proposed surface mining operation is eligible for coverage under a general permit, and notify the applicant in writing accordingly. Operations may commence at the mining site after the operator receives notice of coverage.

SECTION 11. Section 53-7-25, Mississippi Code of 1972, is amended as follows:

53-7-25. (1) Each application for a surface mining permit and for coverage under a general permit shall be accompanied by an ** application fee in accordance with a published fee schedule adopted by the commission. The application fee shall not be less than One Hundred Dollars ($100.00) plus Ten Dollars ($10.00) per acre included in the application. The total application fee shall not exceed Five Hundred Dollars ($500.00). The commission, in considering regulations on the fee schedule, shall recognize the difference in the various materials, taking into consideration the commercial value of the material and the nature and size of operation necessary to extract it.

(2) All state agencies, political subdivisions of the state, and local governing bodies shall be exempt from all fees required by this chapter.
(3) Upon submission of the certificate of compliance required under Section 53-7-21, each operator shall pay a fee of Fifty Dollars ($50.00).

SECTION 12. Section 53-7-27, Mississippi Code of 1972, is amended as follows:

53-7-27. (1) Before commencing any operation for which a permit is required, each applicant for a permit shall submit to the Permit Board an application, a proposed initial reclamation plan and a performance bond in an amount proposed to be sufficient by the applicant to reclaim the permit area.

(2) The application shall be in the form prescribed by the commission and shall contain the following information:

(a) A legal description of the tract or tracts of land in the affected area and one or more maps or plats of adequate scale to clearly portray the location of the affected area. The description shall contain sufficient information so that the affected area may be located and distinguished from other lands and shall identify the access from the nearest public road;

(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) The name and address of any person holding 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 exterior limits of the permit area;

(e) The name and address of any person 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 * * * 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) A notarized statement showing 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 by
the operations 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 sufficient to provide a
reasonably clear and accurate portrayal of the existing surface
conditions and the proposed mining operations;

(l) If the surface and mineral estates, or any part of
those estates, 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 of those lands, 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) Except for governmental agencies, 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 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
occurrence; and

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

The policy shall be maintained in full force and effect
during the term of the permit, including the length of all
reclamation operations.

(n) A copy of a proposed initial reclamation plan
prepared under Section 53-7-31; and

(o) Any other information needed to clarify the
required parts of the application.

SECTION 13. Section 53-7-29, Mississippi Code of 1972, is
amended as follows:

53-7-29. (1) The department shall file a copy of each
permit application for public inspection with the chancery
clerk of the county where any portion of the operation
is proposed to occur after deleting the confidential information
according to Section 53-7-75.
(2) The department shall submit copies, excluding all confidential information, of the permit application as soon as possible to: (a) the Mississippi Soil and Water Conservation Commission, Mississippi Department of Wildlife, Fisheries and Parks, Mississippi Forestry Commission, Mississippi Department of Environmental Quality, Mississippi Department of Archives and History, Mississippi Department of Transportation, Mississippi State Oil and Gas Board and Mississippi Department of Agriculture and Commerce; (b) any other state agency whose jurisdiction the department believes the particular mining operation may affect; and (c) any person who requests in writing a copy of the application; and (d) the owner of the land. The department shall require payment of a reasonable fee established by the commission for reimbursement of the costs of reproducing and providing the copy.

(3) Each agency shall review the permit application and submit, within ten (10) days of receipt of the application, any 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. The comments shall include a listing of permits or licenses required under the agency's jurisdiction. Comments and recommendations shall be made a part of the record and one (1) copy shall be furnished to the applicant. All comments and recommendations shall be considered by, but shall not be binding upon, the Permit Board. The failure of any agency to submit comments shall not preclude action by the Permit Board.

SECTION 14. 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 proposed initial reclamation plan submitted as part of a permit application shall include the following information:

(a) The identification of the proposed affected area, accompanied by a detailed topographic map on a scale required by regulation showing:

(i) The proposed affected area, the location of any stream or standing body of water into which the area drains, the location of drainways and any planned siltation traps and other impoundments, and the location of 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 of the exterior limits of the affected area;

(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 and a statement of its accuracy by the person responsible for its preparation.

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

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

(ii) The capability of the land before 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 applicant estimates will be necessary for accomplishing the major events contained in the reclamation plan.

(g) Any other information as the Permit Board shall determine to be reasonably necessary to effectuate the purposes of this chapter.

(2) The Permit Board may, in its discretion, authorize the reclamation of lands in lieu of the lands included in the permit application. The acreage of the authorized lieu lands reclaimed shall not be less than the acreage of the lands in the permit application. Any applicant who proposes to reclaim lands in lieu of those lands included in the permit application shall state that fact in the application or subsequent or amended application and shall submit the reclamation plan accordingly. The Permit Board shall not authorize the reclamation of lieu lands unless the applicant submits with the reclamation plan a notarized statement of each surface owner and lessee of all lands included in the permit application. The statement shall contain the consent of each surface owner and lessee for the reclamation of the proposed lieu lands. If the Permit Board does not authorize the reclamation of the lieu lands, the applicant shall
SECTION 15. Section 53-7-35, Mississippi Code of 1972, is amended as follows:

53-7-35. (1) Any permit issued under this chapter shall require operations to comply with 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 require the operator at 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, if they are ecologically stable. Stockpiling shall be subject to rules and regulations adopted by the commission;

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

(c) Conduct water drainage and silt control for the affected area to strictly control soil erosion, damage to adjacent lands and pollution of waters of the state, 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 impound water to provide wetlands, lakes or ponds of approved design for wildlife, recreational or water supply purposes, if it is a part of the approved reclamation plan;
(d) Remove or cover 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 eliminate all highwalls and spoil piles, except as provided in an approved reclamation plan. Lakes, ponds or wetlands may be constructed, if part of an approved reclamation plan;

(f) Stabilize and protect all ** affected areas ** sufficiently to control erosion and attendant air and water pollution;

(g) Remove the topsoil, if any, from the affected area in a separate layer, and place it on any authorized lieu lands to be reclaimed or replace it on the backfill area. If not utilized immediately, the topsoil shall be segregated in a separate pile from other spoil. If the topsoil is not replaced on a backfill area of authorized lieu lands within a time short enough to avoid deterioration, the topsoil shall be protected by a successful cover of plants or by other means approved by the Permit Board. 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 may petition the Permit Board for permission to be exempt from the requirements for the removal, segregation and preservation of topsoil and to remove, segregate and preserve in a like manner ** other strata which is best able to support vegetation or to mix strata ** if that mixing can be shown to be equally suitable for revegetation requirements;

(h) Replace, if required ** , available topsoil or the best available subsoil ** on top of the land to be reclaimed or on top of authorized lieu lands being reclaimed;

**

(i) Minimize the disturbances to the prevailing hydrologic balance at the mine site and in associated off-site

H. B. No. 1398

02/HR03/R1528

PAGE 23 (TB\LN)
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

using measures such as, but not limited to:

1. Preventing or removing water from contact
   with toxic-material producing deposits;

2. Treating drainage to reduce toxic material
   content; and

3. 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 to prevent

unreasonable additional levels of suspended solids to streamflow
or runoff outside the permit area above natural levels under
seasonal flow conditions;

(iii) Removing temporary or large

siltation structures from drainways, consistent with good water
conservation practices, after disturbed areas are revegetated and
stabilized;

(iv) Performing any other actions as the

commission may prescribe under rules and regulations adopted under
this chapter;

(j) Stabilize any waste piles;

(k) Incorporate current engineering practices for

the design and construction of water retention structures for the
disposal of mine wastes, processing wastes or other liquid or
solid wastes which, at a minimum, shall be compatible with the
requirements of applicable state and federal laws and
regulations, insure that leachate will not pollute surface or
ground water, and locate water retention structures so as not to
endanger public health and safety should failure occur;
(l) 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;

(m) Insure that construction, maintenance and postmining conditions of access roads into and across the permit area will minimize erosion and siltation, pollution of air and water, damage to fish or wildlife or their habitat, or public or private property. The Permit Board may authorize the retention after mining of certain access roads if compatible with the approved reclamation plan;

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

(o) Revegetate the affected area with plants, approved by the department, to attain a useful, productive and beneficial purpose, including an agricultural, grazing, industrial, commercial, residential or recreational purpose, including lakes, ponds, wetlands, wildlife habitat or other natural or forested areas;

(p) Assume responsibility for successful revegetation for a period of two (2) years beyond the date of initial bond release on any bond or deposit held by the department as provided by Section 53-7-67;

(q) Assure with respect to permanent impoundments of water as part of the approved reclamation plan 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 applicable state and 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;

(v) • • • Water impoundments will not result in the diminution of the quality or quantity of water utilized by adjacent or surrounding landowners; and

(r) Protect off-site 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 the 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 may promulgate appropriate rules and regulations for use of the alternative method.

(3) Each operator, except as authorized by 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 department or its designee, shall have the continuing right to enter and inspect the affected area • • • in the reclamation plan and to perform any reclamation measures required properly to complete the reclamation plan.
(5) (a) If * * * the commission finds that (i) 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 * * * (ii) 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, or if the Permit Board revokes a permit, the commission may initiate proceedings against the bond or deposit filed by the operator. The 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. * * *

(b) A forfeiture proceeding against any performance bond or deposit shall be commenced and conducted according to Sections 49-17-31 through 49-17-41.

(c) If the commission orders forfeiture of any performance bond or deposit, the entire sum of the performance bond or deposit shall be forfeited to the department. The funds from the forfeited performance bond or deposit shall be placed in the appropriate account in the fund and used to pay for reclamation of the permit area and remediation of any off-site damages resulting from the operation. Any surplus performance bond or deposit funds shall be refunded to the operator or corporate surety.

(d) Forfeiture proceedings shall be before the commission and an order of the commission under this subsection is a final order. If the commission determines that forfeiture of the performance bond or deposit should be ordered, the department shall have the immediate right to all funds of any performance bond or deposit, subject only to review and appeals allowed under Section 49-17-41.
(e) If the operator cannot be located for purposes of notice, the department shall send notice of the forfeiture proceeding, certified mail, return receipt requested, to the operator's last known address. The department shall also publish notice of the forfeiture proceeding in a manner as required in regulation by the commission. Any formal hearing on the bond forfeiture shall be set at least thirty (30) days after the last notice publication.

(f) If the performance bond or deposit is insufficient to cover the costs of reclamation of the permit area in accordance with the approved reclamation plan or remediation of any off-site damages, the commission may initiate a civil action to recover the deficiency amount in the county in which the surface mining operation is located.

(g) If the commission initiates a civil action under this section, the commission shall be entitled to any sums necessary to complete reclamation of the permit area in accordance with the approved reclamation plan and remediate any off-site damages resulting from that operation.

(6) If a landowner, upon termination or expiration of a lease, refuses to allow the operator to enter onto the property designated as the affected area to conduct or complete reclamation in accordance with the approved reclamation plan, or if the landowner interferes with or authorizes a third party to disturb or interfere with reclamation in accordance with the approved reclamation plan, the landowner shall assume the permit and shall file a reclamation plan and post a performance bond as required under this chapter.

SECTION 16. Section 53-7-37, Mississippi Code of 1972, is amended as follows:

53-7-37. (1) *** Before *** a permit is issued by the Permit Board, the applicant shall file with the department in the manner and form required by the commission a bond for performance
payable to the commission and conditioned on full and satisfactory performance of *** the requirements of this chapter 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 permit area of the respective operation. ***

(2) The bond shall be executed by the applicant and a corporate surety licensed to do business in the state. The applicant may elect to deposit the following in lieu of the surety bond: cash, negotiable bonds of the United States government or the state, assignment of real or personal property or a savings account acceptable to the department, negotiable certificates of deposit or a letter of credit of any bank organized or transacting business in the state and insured by the Federal Deposit Insurance Corporation (FDIC) or the Federal Savings and Loan Insurance Corporation (FSLIC) or a similar federal banking or savings and loan insurance organization. The cash deposit or market value of the securities shall be equal to or greater than the amount of the bond required for the permit area. Cash, negotiable bonds, negotiable certificates of deposit, letter of credit, assignment of real or personal property or a savings account or other securities shall be deposited on the same terms as the terms on which surety bonds may be deposited.

(3) The amount of the bond or deposit required and the terms of acceptance of the applicant’s bond or deposit may be increased or decreased by the Permit Board 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.

(4) All state agencies, political subdivisions of the state and local governing bodies shall be exempt from the bonding requirements of this section.
SECTION 17. Section 53-7-39, Mississippi Code of 1972, is amended as follows:

53-7-39. (1) The department shall conduct an initial review of a completed permit application within thirty (30) days following receipt of the completed application. The department shall make a recommendation to the Permit Board on the permit application no later than the next regularly scheduled Permit Board meeting following the thirty-day initial review period, unless a public hearing is held on the application or the applicant agrees in writing to an additional time frame. If a public hearing is held, the department shall make its recommendation at the next regularly scheduled Permit Board meeting following the public hearing, if practicable.

(2) An on-site inspection of the proposed affected area shall be made by the department within the thirty-day time period specified in subsection (1) of this section, and before a permit is issued.

SECTION 18. Section 53-7-41, Mississippi Code of 1972, is amended as follows:

53-7-41. (1) The Permit Board, based upon the provisions of this chapter, may issue, reissue, deny, modify, revoke, cancel, rescind, suspend or transfer a permit for a surface mining operation. The head of the Office of Geology and Energy Resources shall abstain in any action taken by the Permit Board under this chapter.

(2) The Permit Board shall issue a permit if the Permit Board determines that the applicant and completed application comply with the requirements of this chapter.

(3) The Permit Board may 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 or 53-7-51;

(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 applicable state and federal laws and regulations;

(d) The applicant has had any other permit issued under this chapter revoked, or any bond or deposit posted to comply with this chapter forfeited, and the conditions causing the permit to be revoked or the bond or deposit 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 likely adversely affect any public highway or road unless the operation is intended to stabilize or repair the public road or highway; or

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

(4) The Permit Board shall deny a permit if the Permit Board finds by clear and convincing evidence on the basis of the information contained in the permit application or obtained by on-site inspection that the proposed operation cannot comply with this chapter or rules and regulations adopted under this chapter or that the proposed method of operation, road system construction, shaping or revegetation of the affected area cannot be carried out in a manner consistent with this chapter and applicable state and federal laws, rules and regulations.

(5) The Permit Board may hold a public hearing to obtain comments from the public on its proposed action. If the Permit...
Board holds a public hearing, the Permit Board shall publish
notice and conduct the hearing as provided in Section 49-17-29.

(6) The Permit Board may authorize the executive director,
derived from the Permit Board may prescribe, to make
decisions on permit issuance, reissuance, modification, rescission
or cancellation under this chapter. A decision by the executive
director is a decision of the Permit Board and shall be subject to
formal hearing and appeal as provided in Section 49-17-29. The
executive director shall report all permit decisions to the Permit
Board at its next regularly scheduled meeting and those decisions
shall be deemed as recorded in the minutes of the Permit Board at
that time.

(7) The Permit Board may cancel a permit at the request of
the operator, if the operator does not commence operations under
the permit by stripping, grubbing or mining any part of the permit
area. The Permit Board may rescind a permit, if, because of a
change in post-mining use of the land by the landowner, the
completion of the approved reclamation plan by the operator is no
longer feasible. If a permit is canceled or rescinded, the
remaining portion of the bond or deposit required under Section
53-7-37 shall be returned to the operator as soon as possible.

SECTION 19. Section 53-7-43, Mississippi Code of 1972, is
amended as follows:

53-7-43. (1) Applications for the modification, transfer or
reissuance of any surface mining permit issued under this chapter
may be filed with the department. The Permit Board may modify any
surface mining permit to increase or decrease the permit area and
shall require an increase in the performance bond and a modified
reclamation plan for any expanded area.

(2) Any permit issued under this chapter shall carry with it
the right of successive reissuance upon expiration for areas
within the boundaries of the existing permit. The operator may
apply for reissuance and that permit shall be reissued, except as
provided in this subsection. On application for reissuance the
burden of proving that the permit should not be reissued shall be
on the opponents of reissuance or the department. If the
opponents to reissuance or the department establish and the Permit
Board finds, in writing, that the operator is not satisfactorily
meeting the terms and conditions of the existing permit or the
present surface mining and reclamation operation is not in
compliance with this chapter and the rules and regulations issued
under this chapter, the Permit Board shall not reissue the permit.

(3) Any permit reissuance shall be for a term not to exceed
the term of the original permit established by this chapter.
Application for permit reissuance shall be filed with the Permit
Board at least sixty (60) days before the expiration of the
permit. If an application for reissuance is timely filed, the
operator may continue surface mining operations under the existing
permit until the Permit Board takes action on the reissuance
application.

SECTION 20. Section 53-7-45, Mississippi Code of 1972, is
amended as follows:

53-7-45. Any interested party may seek a review or an appeal
of any action or decision of the Permit Board under Sections
53-7-41 and 53-7-43 as provided in Section 49-17-29.

SECTION 21. Section 53-7-47, Mississippi Code of 1972, is
amended as follows:

53-7-47. To the extent that the commission, the Permit Board
and the department may exercise jurisdiction over the areas
specified in this section, no surface mining operation * * * shall
be conducted 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. * * * For good cause shown and after any public
hearing the commission may elect to hold, the commission may make
an exception to this section.

**SECTION 22.** Section 53-7-49, Mississippi Code of 1972, is
amended as follows:

53-7-49. (1) With the assistance of the Mississippi
Commission on Wildlife, Fisheries and Parks and the Mississippi
Department of Marine Resources, the commission shall identify and
designate as unsuitable certain lands for all or certain types of
surface mining * * *. The commission shall adopt rules and
regulations to provide reasonable notice to prospective operators
and any other interested parties of areas which might be
designated as unsuitable for surface mining. The commission may
designate areas as unsuitable for surface mining lands if the
commission determines:

(a) The operations will result in significant damage to
important areas of historic, cultural or archaeological value or
to important natural systems;

(b) The operations will affect renewable resource lands
resulting in a substantial loss or reduction of long-range
productivity of water supply or food or fiber products, including
aquifers and aquifer recharge areas;

(c) The operations are located in areas of unstable
geological formations and may reasonably be expected to endanger
life and property;

(d) The operations will damage ecologically sensitive
areas;

(e) The operations will significantly and adversely
affect any national park, national monument, national historic
landmark, property listed on the national register of historic
places, national forest, national wilderness area, national
wildlife refuge, national wild or scenic river area, state park,
state wildlife refuge, state forest, recorded state historical
landmark, state historic site, state archaeological landmark, or
city or county park;

(f) The operations will endanger any public road,
public building, cemetery, school, church or similar structure or
existing dwelling outside the permit area; or

(g) The operations and the affected area cannot be
reclaimed feasibly under the requirements of this chapter * * *.

(2) Unless an operation is exempted under Section
53-7-7(2)(a) or 53-7-7(2)(b), it is unlawful to conduct surface
mining operations within an area designated as unsuitable for
surface mining under Section 53-7-49 or this section or to conduct
surface mining operations in rivers, lakes, bayous, intermittent
or perennial streams or navigable waterways, natural or manmade,
without a permit or coverage under a general permit issued or
reissued consistent with regulations adopted by the commission.

SECTION 23. Section 53-7-51, Mississippi Code of 1972, is
amended as follows:

53-7-51. (1) The commission, upon petition, may designate,
modify or terminate the designation of an area as unsuitable for
surface mining. The commission, upon its own motion, may
terminate the designation of an area as unsuitable for surface
mining. The commission may conduct a public hearing on its
proposed action in accordance with Section 49-17-33. Before
terminating an area as unsuitable for surface mining, the
commission shall provide notice as required under Section 53-7-11.

(2) A petition shall contain allegations of facts with
supporting evidence. The commission shall make a determination
based upon the validity of the facts contained in the petition,
and may designate, modify or terminate the designation of the
lands included in the petition as unsuitable for mining.

(3) Any person aggrieved by an action of the commission
under this section may appeal as provided in Section 49-17-41.
SECTION 24. Section 53-7-53, Mississippi Code of 1972, is amended as follows:

53-7-53. The Permit Board shall require each permittee to:

(a) Establish and maintain appropriate records;

(b) Make reports, the frequency and nature of which shall be prescribed by the commission; and

(c) Install, use and maintain any necessary monitoring equipment for the purpose of observing and determining relevant surface or subsurface effects of the mining operation or reclamation program.

SECTION 25. Section 53-7-55, Mississippi Code of 1972, is amended as follows:

53-7-55. (1) Authorized representatives of the department, on presentation of appropriate credentials, may enter and inspect any operation or any premises in which records required to be maintained under Section 53-7-53 are located and may at reasonable times, and without delay, have access to and copy any records and inspect any monitoring equipment or method of operation required under this chapter.

(2) Inspections of operations with or without a permit by the department shall occur on an irregular basis at a frequency necessary to insure compliance with this chapter, rules and regulations and the terms and conditions of any permit. Inspections shall occur only during normal operating hours if practical, may occur without prior notice to the permittee or the agents or employees of the permittee, and shall include the filing of an inspection report. The department shall make those reports part of the record and shall provide one (1) copy of the report to the operator. The department shall, as practical, establish a system of rotation of field inspectors.

(3) Each field inspector, on detection of each violation of this chapter, rules and regulations adopted under this chapter or the permit for the operation, shall inform the
operator or the operator's agent orally at the time of the
inspection and subsequently in writing and shall report * * *
any * * * violation in writing to the commission.

SECTION 26. Section 53-7-57, Mississippi Code of 1972, is
amended as follows:

53-7-57. Any representative of the local soil and water
conservation district, upon presentation of appropriate
credentials may enter and inspect the operation for the purpose of
making recommendations regarding reclamation activities * * *.
The representative shall make any recommendations on the progress
of reclamation activities in writing to the Permit Board.

SECTION 27. Section 53-7-59, Mississippi Code of 1972, is
amended as follows:

53-7-59. (1) Any person who violates, or fails or refuses
to comply with this chapter, any rule or regulation or written
order of the commission adopted or issued under this chapter or
any condition of a permit or coverage under a general permit
issued under this chapter may be subject to a civil penalty to be
assessed and levied by the commission after notice and opportunity
for a formal hearing. In addition to assessing civil penalties
under this section, the commission may submit a written statement
to the Permit Board recommending that the Permit Board revoke the
permit for any operation which is subject to the maximum penalty
of Twenty-five Thousand Dollars ($25,000.00). Appeals of any
action or decision of the commission may be taken as provided in
Section 49-17-41.

(2) Any civil penalty assessed against a permitted, covered
or exempt operation and levied by the commission under this
section shall not exceed Five Hundred Dollars ($500.00) for the
first violation; for subsequent violations committed within three
years of the first violation the maximum penalties are: Two
Thousand Five Hundred Dollars ($2,500.00) for the second
violation, Five Thousand Dollars ($5,000.00) for the third
violation and Twenty-five Thousand Dollars ($25,000.00) for the fourth and subsequent violations by the same operator. Multiple violations at a site during one (1) day shall not be cumulative. A separate penalty shall not be assessed for each violation and only one (1) penalty may be assessed for all violations occurring at a site during one (1) day. Each day of a continuing violation shall be a separate violation until corrective action is taken or the operator after notice of the violation is diligently pursuing efforts to achieve compliance in a timely manner. In assessing a penalty under this subsection, the commission shall not consider offenses occurring before July 1, 2002. In addition to the civil penalty authorized under this subsection, the commission may order an operator of a permitted, covered or exempt operation to reclaim the affected area.

(3) Any civil penalty assessed against an operator for mining without a permit and levied by the commission under this section shall not exceed Five Thousand Dollars ($5,000.00) for the first violation, Ten Thousand Dollars ($10,000.00) for the second violation and Twenty-five Thousand Dollars ($25,000.00) for the third and subsequent violations by an operator. In assessing a penalty under this subsection, the commission shall not consider violations occurring before July 1, 2002.

(4) In determining the amount of penalty under this chapter, the commission shall consider at a minimum:

(a) The willfulness of the violation;
(b) Any damage to air, water, land or other natural resources of the state or their uses;
(c) Costs of restoration and abatement;
(d) Economic benefit as a result of noncompliance;
(e) The seriousness of the violation, including any harm to the environment and any hazard to the health, safety and welfare of the public; and
(f) Past performance history.
(5) The commission may institute and maintain a civil action for relief, including a permanent or temporary injunction or any other appropriate order, in the chancery court of the county in which the majority of the surface mining operation is located. The chancery court shall have jurisdiction to provide relief as may be appropriate. Any relief granted by the court to enforce a written order of the commission shall continue in effect until the completion of all proceedings for review of that order under this chapter, unless the chancery court granting the relief sets it aside or modifies it before that time.

(6) Any provisions of this section and chapter regarding liability for the costs of cleanup, removal, remediation or abatement of any pollution, hazardous waste or solid waste shall be limited as provided in Section 49-17-42 and rules adopted under that section.

(7) Any violation of this law and the Mississippi Air and Water Pollution Control Law or the Solid Wastes Disposal Law of 1974 shall be assessed a civil penalty under only one (1) of these laws.

SECTION 28. Section 53-7-61, Mississippi Code of 1972, is amended as follows:

53-7-61. (1) Any person who knowingly makes any false statement, representation or certification, or knowingly fails to make any statement, representation or certification in any application, record, report, plan or other document filed or required to be maintained under this chapter is guilty of a misdemeanor and upon conviction, may be subject to a fine of not more than Five Thousand Dollars ($5,000.00).

(2) Any person who knowingly violates, or fails or refuses to comply with this chapter, any rule or regulation or written order of the commission adopted or issued under this chapter, or any condition of a permit issued under this chapter,
is guilty of a misdemeanor and, upon conviction, may be subject to a fine of not more than Five Thousand Dollars ($5,000.00).

SECTION 29. Section 53-7-63, Mississippi Code of 1972, is amended as follows:

53-7-63. (1) Unless otherwise expressly provided in this chapter, any interested party aggrieved by any action of the Permit Board taken under this chapter may request a formal hearing before the Permit Board as provided in Section 49-17-29. Any person aggrieved by any action of the commission taken under this chapter may request a formal hearing before the commission as provided in Section 49-17-41. Any person who participated as a party in a formal hearing before the Permit Board may appeal from a final decision of the Permit Board made under this chapter as provided in Section 49-17-29. Any person who participated as a party in a formal hearing before the commission may appeal from a final decision of the commission made under this chapter as provided in Section 49-17-41.

(2) (a) Any public hearing of the Permit Board provided for under this chapter shall be deemed to be the same hearing as otherwise afforded to any interested party by the Permit Board under Section 49-17-29. Any formal hearing of the Permit Board provided for under this chapter shall be deemed to be the same hearing as otherwise afforded to any interested party by the Permit Board under Section 49-17-29.

(b) Any public hearing of the commission provided for under this chapter shall be deemed to be the same hearing as afforded under Section 49-17-35. Any formal hearing of the commission provided for under this chapter shall be deemed to be the same hearing as afforded under Section 49-17-41.

(3) (a) In conducting any formal hearing under this chapter, the Permit Board shall have the same authority to subpoena witnesses, administer oaths, examine witnesses under oath and conduct the hearing as provided in Section 49-17-29.
(b) In conducting any formal hearing under this chapter the commission shall have the same authority to subpoena witnesses, administer oaths, examine witnesses under oath and conduct the hearing as provided in Section 49-17-41.

SECTION 30. Section 53-7-65, Mississippi Code of 1972, is amended as follows:

53-7-65. (1) When an employee of the department files a report alleging a violation or when any person files a complaint with the commission alleging that any other person is in violation of this chapter, any rule and regulation issued under this chapter, or any condition of a permit issued under this chapter, the commission shall notify the alleged violator and conduct an investigation of the complaint. Upon finding a basis for the complaint, the commission shall cause written notice of the complaint, specifying the section of law, rule, regulation or permit alleged to be violated and the facts of the alleged violations, to be served upon that person. The commission may require the person to appear before the commission at a time and place specified in the notice to answer the charges. The time of appearance before the commission shall be not less than twenty (20) days from the date of the mailing or service of the complaint, whichever is earlier. If the commission finds no basis for the complaint, the commission shall dismiss the complaint.

(2) The commission shall afford an opportunity for a formal hearing to the alleged violator at the time and place specified in the notice or at another time or place agreed to in writing by both the department and the alleged violator, and approved by the commission. On the basis of the evidence produced at the formal hearing, the commission may enter an order which in its opinion will best further the purposes of this chapter and shall give written notice of that order to the alleged violator and to any other persons which appeared at the formal hearing or made written request for notice of the order. The commission may assess
penalties as provided in Section 53-7-59. Any formal hearing under this section shall be of record.

(3) Except as otherwise expressly provided, any notice or other instrument issued by or under authority of the commission may be served on any affected person personally or by publication, and proof of that service may be made in the same manner as in case of service of a summons in a civil action. The proof of service shall be filed in the office of the commission. Service may also be made by mailing a copy of the notice, order, or other instrument by certified mail, directed to the person affected at the person's last known post office address as shown by the files or records of the commission. Proof of service may be made by the affidavit of the person who did the mailing and shall be filed in the office of the commission.

(4) Any person who participated as a party in the formal hearing may appeal a decision of the commission under this section as provided in Section 49-17-41.

SECTION 31. Section 53-7-67, Mississippi Code of 1972, is amended as follows:

53-7-67. (1) Upon completion of the operation in the permit area, the operator may file an application with the Permit Board for the release of the performance bond or deposit. The application for performance bond release shall require a description of the results achieved in accordance with the operator's reclamation plan, which includes revegetation and end result plans, and any other information the Permit Board may require in accordance with this chapter. The Permit Board shall file a copy of the performance bond release application for public inspection with the chancery clerk of the county where the majority of the surface mining operation is located and with the local soil and water conservation district. The Permit Board shall give notice of the pending bond release application by publication in the form as the commission by
regulation may require after inspecting and evaluating the
reclamation work as provided by subsection (2) of this
section. * * *

(2) After receipt of the application for bond release, the
department shall, and the local soil and water district
commissioners may, within * * * thirty (30) days, conduct an
inspection and evaluation of the reclamation work involved. The
evaluation shall consider, among other things, the occurrence of
pollution of surface and subsurface water * * *, the probability
of continuance or future occurrence of * * * pollution, and the
estimated cost of abating the pollution. Results of the
evaluation and findings of the department or the soil and water
commissioners, or both, shall be provided within thirty (30) days
after the inspection to the operator and other interested parties
making written request for the evaluation and findings. The
evaluation and findings of the soil and water commissioners, if
any shall be forwarded to the department before the end of the
thirty (30) days.

(3) The Permit Board may release in whole or in part the
performance bond * * * or deposit if it is satisfied that
reclamation covered by the performance bond * * * 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 the approved reclamation plan, the Permit Board
may release * * * up to ninety percent (90%) of the performance
bond * * * or deposit for the applicable permit area. The amount
of the unreleased portion of the performance bond * * * 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 of the initial performance bond release, the Permit Board may release the remaining portion of the performance bond ** or deposit. No performance bond ** 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 performance bond ** or deposit to private contractors surface mining on areas provided to them by the United States Army Corps of Engineers. ** The Permit Board may release the performance bond ** or deposit only if the contractors have completed the reclamation work required in paragraph (a) of this subsection and the Corps of Engineers furnishes written assurance to the Permit Board 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 denies the application for release of the performance bond ** or deposit or portion thereof, it shall notify the operator, in writing, stating the reasons for denial and recommending corrective actions necessary to secure the release.

(5) The Permit Board shall authorize the executive director under those conditions the Permit Board may prescribe to administratively release any performance bond or deposit provided by an operator for coverage under a general permit issued under Section 53-7-23. A decision of the executive director is a decision of the Permit Board and shall be subject to review and appeal as provided in Section 49-17-29.

SECTION 32. Section 53-7-69, Mississippi Code of 1972, is amended as follows:
53-7-69. (1) There is created in the State Treasury a fund to be designated as the "Surface Mining and Reclamation Fund," referred to hereinafter as the "fund." There is created in the fund an account designated as the "Land Reclamation Account" and an account designated as the "Surface Mining Program Operations Account."

(2) The fund shall be treated as a special trust fund. Interest earned on the principal therein shall be credited by the Treasurer to the fund.

(3) The fund may receive monies from any available public or private sources, including, but not limited to, collection of fees, interest, grants, taxes, public and private donations, judicial actions, penalties and forfeited performance bonds. Any monies received from penalties, forfeited performance bonds, judicial actions and the interest thereon, less enforcement and collection costs, shall be credited to the Land Reclamation Account. Any monies received from the collection of fees, grants, taxes, public or private donations and the interest thereon shall be credited to the Surface Mining Program Operations Account.

(4) The commission shall expend or utilize monies in the fund by an annual appropriation by the Legislature as provided herein. Monies in the Land Reclamation Account may be used to defray any costs of reclamation of land affected by mining operations. Monies in the Surface Mining Program Operations Account may be used to defray the reasonable direct and indirect costs associated with the administration and enforcement of this chapter.

(5) Proceeds from the forfeiture of performance bonds or deposits and penalties recovered shall be available to be expended to reclaim, in accordance with this chapter, lands with respect to which the performance bonds or deposits were provided and penalties assessed. If the commission expends monies from the fund for which the cost of reclamation exceeded the...
proceeds from the forfeiture of performance bonds or deposits, the commission may seek to recover any monies expended from the fund from any responsible party.

SECTION 33. Section 53-7-71, Mississippi Code of 1972, is amended as follows:

53-7-71. In the reclamation of land affected by surface mining for which it has funds available, the commission may avail itself of any services which may be provided by other state agencies, political subdivisions or the federal government, and may compensate them for the services. The commission may cause the reclamation work to be done through contract with other governmental agencies or with qualified persons. The contracts shall be awarded as provided by state law and policies of the commission. Any person under contract to the commission may enter onto the land affected to carry out the reclamation.

SECTION 34. Section 53-7-75, Mississippi Code of 1972, is amended as follows:

53-7-75. (1) Information submitted to the department, commission, Permit Board or local soil and water conservation district pertaining to the deposits of materials, trade secrets or privileged commercial or financial information relating to the competitive rights of the applicant and which is specifically identified as confidential, shall not be available for public examination and shall not be considered as a public record if:

(a) The applicant submits a written confidentiality claim to the commission before submission of the information; and

(b) The commission determines the confidentiality claim to be valid.

(2) The confidentiality claim shall include a generic description of the nature of the information included in the submission. The commission shall adopt rules and regulations...
consistent with the Mississippi Public Records Act regarding access to confidential information. Any information for which a confidentiality claim is asserted shall not be disclosed pending the outcome of any formal hearing and all appeals.

(3) Any person knowingly and willfully making unauthorized disclosures of any information determined to be confidential shall be liable for civil damages arising from the unauthorized disclosure and, upon conviction, shall be guilty of a misdemeanor and shall be fined a sum not to exceed One Thousand Dollars ($1,000.00) and dismissed from public office or employment.

(4) This section shall be supplemental to remedies for misappropriation of a trade secret provided in the Mississippi Uniform Trade Secrets Act, Sections 75-26-1 through 75-26-19.

SECTION 35. Section 53-7-13, Mississippi Code of 1972, which requires the Board of the Geological, Economic and Topographical Survey to establish regulations on surface mining, is repealed.

SECTION 36. Section 53-7-15, Mississippi Code of 1972, which requires the Board of the Geological, Economic and Topographical Survey to hold certain hearings, is repealed.

SECTION 37. Section 53-7-33, Mississippi Code of 1972, which requires soil and water conservation commissioners to submit written recommendations on reclamation plans affecting their districts, is repealed.

SECTION 38. Section 53-7-73, Mississippi Code of 1972, which provides a temporary suspension for an operator to suspend mining operations for two (2) years and to resume operations after giving notice, is repealed.

SECTION 39. This act shall take effect and be in force from and after July 1, 2002.