To: Environment Prot, Cons and Water Res

MISSISSIPPI LEGISLATURE
REGULAR SESSION 2002
By: Senator(s) Dawkins

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

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

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

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

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

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

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

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

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

(3) (a) Except as otherwise provided in this section, the Permit Board created by Section 49-17-28 shall be the exclusive administrative body to make decisions on permit issuance, reissuance, denial, modification or revocation of air pollution control and water pollution control permits and permits required under the Solid Wastes Disposal Law of 1974 (Title 17, Chapter
17), and all other permits within the jurisdiction of the Permit Board. After consideration of alternative waste treatment technologies available to control air and water pollution and odor, including appropriate siting criteria, the commission may promulgate regulations establishing conditions, limitations and exemptions under which the Permit Board shall make these decisions. Regulations promulgated by the commission which establish exemptions as authorized under Senate Bill No. 2895, 1998 Regular Session [Laws, 1998, Ch. 537], shall apply to any applicable facility in operation on the effective date of that regulation and to any applicable facility constructed or operated after the effective date of that regulation. The Permit Board may issue multiple permits for the same facility or operation simultaneously or in the sequence that it deems appropriate consistent with the commission's regulations. Except as otherwise provided in this paragraph, the Permit Board, under any conditions that the board may prescribe, may authorize the Executive Director of the Department of Environmental Quality to make decisions on permit issuance, reissuance, denial, modification or revocation. The executive director shall not be authorized to make decisions on permit issuance, reissuance, denial, modification or revocation for a commercial hazardous waste management facility or a municipal solid waste landfill or incinerator. A decision by the executive director shall be a decision of the Permit Board and shall be subject to formal hearing and appeal as provided in this section. The executive director shall report all permit decisions to the Permit Board at its next regularly scheduled meeting and those decisions shall be recorded in the minutes of the Permit Board. The decisions of the Permit Board shall be recorded in minutes of the Permit Board and shall be kept separate and apart from the minutes of the commission. The decision of the Permit Board or the executive director to issue, reissue, deny, modify or...
revoke permits shall not be construed to be an order or other
action of the commission.

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

(c) All persons required to obtain an air pollution
control or water pollution control permit, a permit under the
Solid Wastes Disposal Law of 1974 (Title 17, Chapter 17) or any
other permit within the jurisdiction of the Permit Board shall
make application for that permit with the Permit Board. The
Permit Board, under any regulations as the commission may
prescribe, may require the submission of those plans,
specifications and other information as it deems necessary to
carry out Sections 49-17-1 through 49-17-43 and Title 17, Chapter
17, or to carry out the commission's regulations adopted under
those sections. The Permit Board, based upon any information as
it deems relevant, shall issue, reissue, deny, modify or revoke
air pollution control or water pollution control permit or permits
required under the Solid Wastes Disposal Law of 1974 (Title 17,
Chapter 17) or any other permit within the jurisdiction of the
Permit Board under any conditions as it deems necessary that are
consistent with the commission's regulations. The Permit Board's
action of issuance, reissuance, denial, modification or revocation
of a permit as recorded in its minutes shall constitute a complete
decision of the board. All permits issued by the Permit Board
shall remain in full force and effect until the board makes a
final determination regarding any reissuance, modification, or
revocation thereof. The Permit Board shall take action upon an
application within one hundred eighty (180) days following its
receipt in the board's principal office. No action which affects
revocation of an existing permit shall take effect until the
thirty (30) days mentioned in paragraph (4)(b) of this section has
expired or until a formal hearing as prescribed in that paragraph
is held, whichever is later.
(d) The Permit Board may adopt rules of practice and
procedure governing its proceedings that are consistent with the
commission's regulations. All hearings in connection with permits
issued, reissued, denied, modified or revoked and all appeals from
decisions of the Permit Board shall be as provided in this
section.
(e) Upon any conditions that are consistent with the
commission's regulations and subject to those procedures for
public notice and hearings as provided by law, not inconsistent
with federal law and regulations, the Permit Board may issue
general permits and, where appropriate, may consolidate multiple
permits for the same facility or operation into a single permit.
(f) The Permit Board shall not issue any permit for a
new swine concentrated animal feeding operation or the expansion
of an existing swine concentrated animal feeding operation before
January 1, 2000, unless the department received the application
for that operation's new or modified permit before February 28,
1998, or except as provided in this paragraph (f). In issuing or
modifying any permit for which the department received an
application before February 28, 1998, the Permit Board shall apply
those siting criteria adopted or used by the commission before
February 28, 1998, unless federal law or regulations require more
stringent criteria. The moratorium established in this paragraph
shall not apply to the issuance of any permit for a new swine
concentrated animal feeding operation or the expansion of an
existing swine concentrated animal feeding operation that uses an
animal waste management system which the applicant demonstrates to
the Permit Board is innovative in significantly reducing the
effects of the operation on the public health, welfare or the
environment and which is approved by the Permit Board. The Permit Board shall not issue or modify more than five (5) permits under this innovative animal waste management system technology exemption to the moratorium.

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

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

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

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

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

(4) (a) Except as required by this section, before the issuance, reissuance, denial, modification or revocation of any air pollution control or water pollution control permit, permit required under the Solid Wastes Disposal Law of 1974 (Title 17, Chapter 17) or any other permit within its jurisdiction, the Permit Board, in its discretion, may hold a public hearing or meeting to obtain comments from the public on its proposed action. Before the issuance, reissuance, denial, modification pertaining to the expansion of a facility, transfer or revocation of a permit for a commercial hazardous waste management facility or a commercial municipal solid waste landfill or incinerator, the
Permit Board shall conduct a public hearing or meeting to obtain comments from the public on the proposed action. That hearing or meeting shall be informal in nature and conducted under those procedures as the Permit Board may deem appropriate consistent with the commission's regulations.

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

The Permit Board shall fix the time and place of the formal hearing and shall notify the permittee of that time and place. In conducting the formal hearing, the Permit Board shall have the same full powers as to subpoenaing witnesses, administering oaths, examining witnesses under oath and conducting the hearing, as is now vested by law in the Mississippi Public Service Commission, as to the hearings before it, with the additional power that the Executive Director of the Permit Board may issue all subpoenas at the instance of the Permit Board or at the instance of any interested party. Any subpoenas shall be served by any lawful officer in any county to whom the subpoena is directed and return made thereon as provided by law, with the cost of service being paid by the party on whose behalf the subpoena was issued. Witnesses summoned to appear at the hearing shall be entitled to the same per diem and mileage as witnesses attending the circuit court and shall be paid by the person on whose behalf the witness was called. Sufficient sureties for the cost of service of the subpoena and witness fees shall be filed with the Executive Director of the Permit Board at the time that issuance
of the subpoena is requested. At a hearing, any interested party may present witnesses and submit evidence and cross-examine witnesses.

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

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

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

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

(b) Any person who is aggrieved by any decision of the Permit Board issuing, reissuing, denying, revoking or modifying a permit after a formal hearing may appeal that decision within the period specified in subsection (4)(c) of this section to the chancery court of the county of the situs in whole or in part of the subject matter. The appellant shall give a cost bond with
sufficient sureties, payable to the state in the sum of not less than One Hundred Dollars ($100.00) nor more than Five Hundred Dollars ($500.00), to be fixed by the Permit Board and to be filed with and approved by the Executive Director of the Permit Board, who shall forthwith certify the filing of the bond together with a certified copy of the record of the Permit Board in the matter to the chancery court to which the appeal is taken, which shall thereupon become the record of the cause. An appeal to the chancery court as provided in this section shall not stay the decision of the Permit Board. The aggrieved party may, within twenty (20) days following the date the board's decision after a formal hearing is entered on the board's minutes, petition the chancery court for an appeal with supersedeas and the chancellor shall grant a hearing on that petition. Upon good cause shown, the chancellor may grant that appeal with supersedeas. If granted, the appellant shall be required to post a bond with sufficient sureties according to law in an amount to be determined by the chancellor. Appeals shall be considered only upon the record as made before the Permit Board. The chancery court shall always be deemed open for hearing of an appeal and the chancellor may hear the same in termtime or in vacation at any place in the chancellor's district, and the appeal shall have precedence over all civil cases, except election contests. The chancery court shall review all questions of law and of fact. If no prejudicial error is found, the matter shall be affirmed. If prejudicial error is found the decision of the board shall be reversed and the chancery court shall remand the matter to the Permit Board for appropriate action as may be indicated or necessary under the circumstances. Appeals may be taken from the chancery court to the Supreme Court in the manner as now required by law, except that if a supersedeas is desired by the party appealing to the chancery court, that party may apply for a supersedeas to the chancellor of that court, who shall award a writ of supersedeas,
without additional bond, if in the chancellor's judgment material damage is not likely to result thereby; but otherwise, the chancellor shall require a supersedeas bond as the chancellor deems proper, which shall be liable to the state for any damage.

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

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

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