

By: Representative Bowles

To: Conservation and Water Resources

HOUSE BILL NO. 518

1 AN ACT TO AMEND SECTION 49-17-29, MISSISSIPPI CODE OF 1972,  
2 TO REINSTATE UNTIL JANUARY 1, 2004, THE PROVISION OF LAW THAT  
3 PROHIBITS THE ENVIRONMENTAL QUALITY PERMIT BOARD FROM ISSUING  
4 CERTAIN PERMITS FOR CONSTRUCTING A NEW SWINE CONCENTRATED ANIMAL  
5 FEEDING OPERATION OR EXPANDING AN EXISTING OPERATION; AND FOR  
6 RELATED PURPOSES.

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

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

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

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



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

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

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

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



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

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



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

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

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



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

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

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

157 (f) The Permit Board shall not issue any permit for a  
158 new swine concentrated animal feeding operation or the expansion  
159 of an existing swine concentrated animal feeding operation before  
160 January 1, 2004, unless the department received the application  
161 for that operation's new or modified permit before February 28,



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

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

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



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

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

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

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



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

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

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

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

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





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



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

304       **SECTION 2.** This act shall take effect and be in force from  
305 and after July 1, 2003.

