AN ACT TO CREATE AN ENVIRONMENTAL EQUITY PROGRAM TO BE ADMINISTERED BY THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO ENSURE THAT HAZARDOUS WASTE FACILITIES ARE NOT DISPROPORTIONATELY CONCENTRATED IN MINORITY OR LOW-INCOME COMMUNITIES; TO AMEND SECTIONS 17-17-15, 17-17-27, 17-17-151, 49-17-25, 49-17-29, 25-43-5 AND 25-43-7, MISSISSIPPI CODE OF 1972, IN CONFORMITY TO THE PROVISIONS OF THIS ACT; AND FOR RELATED PURPOSES.

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

SECTION 1. This act shall be known and may be cited as the "Mississippi Environmental Equity Act."

SECTION 2. It is in the interest of the citizens of Mississippi to ensure equal environmental protection for all people regardless of race, ethnicity, or socio-economic status. There is an urgent need to collect, analyze and report regularly data on environmental quality and related public health measures by race, ethnicity and socio-economic status, and to develop policies and programs that prevent and reduce the disproportionately greater exposures to potentially hazardous substances experienced by racial minority, ethnic minority and low-income populations. It is the intent of the Legislature to ensure equitable processes and outcomes in the prevention and reduction of human exposure to potentially harmful substances, to enhance the authority of the Department of Environmental Quality to investigate and make siting recommendations of hazardous waste facilities.

SECTION 3. As used in this act, the following words and phrases shall have the meanings respectively ascribed herein unless the context clearly indicates otherwise:
(a) "Environmental equity" means ensuring equitable processes and outcomes in the:

(i) Prevention and reduction of releases of potentially harmful substances to the environment;

(ii) Prevention and reduction of human exposure to potentially harmful substances in the environment;

(iii) Distribution of environmental services among population groups, including racial minority, ethnic minority and low-income groups; and

(iv) Sharing by all economic levels and ethnic groups of the negative and positive impact of actions proposed by individuals, corporations and public agencies which are found to affect the quality of the environment.

(b) "Low-income community" means any area in which one of the following conditions exist:

(i) Twenty percent (20%) or more of the citizens are persons or families who require financial assistance from any federal or state assistance program due to insufficient personal or family income; or

(ii) Twenty percent (20%) or more of the citizens are persons or families with income below the poverty level as reported in the most recent federal decennial census; or

(c) "Minority community" means an area where fifty percent (50%) or more of the residents are Asian, Black, Hispanic or Native American, according to the following definitions:

(i) "Asian" means a person having origins in any of the original people of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands.

(ii) "Black" means a person having origins in any Black racial group of Africa.

(iii) "Hispanic" means a person of Spanish or Portuguese culture with origins in Mexico, South or Central America or the Caribbean Islands, regardless of race.
(iv) "Native American" means a person having origins in any of the original people of North America, including American Indians, Eskimos and Aleuts.

(d) "Potentially harmful substance" means:
   (i) Any hazardous substance;
   (ii) Any air pollutant as defined under the Clean Air Act;
   (iii) Any extremely hazardous substance as defined under the Superfund Amendments and Reauthorization Act;
   (iv) Any hazardous chemical for which a material safety data sheet is required to be prepared under the Occupational Safety and Health Act of 1970 or regulations promulgated under that act;
   (v) Any toxic chemical under the Superfund Act;
   (vi) Any pesticide as defined under the federal Insecticide, Fungicide and Rodenticide Act; and
   (vii) Chemicals subject to restrictive orders under the Toxic Substances Control Act.

(e) "Release" or "releases" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing into the environment (including abandonment or discarding of barrels, containers and other collapsed receptacles containing any potentially harmful substance), but excludes any release that results in exposure to persons solely within a workplace, the normal application of fertilizer and releases during routine use of a product that do not result in exposure to individuals who are not present in the residence or facility where the product is to be used.

(f) "State" refers to the State of Mississippi.

(g) "Task force" means the Environmental Equity Task Force established under Section 5 of this act.
SECTION 4. (1) The Department of Environmental Quality shall promulgate regulations providing for a comprehensive assessment, on a continuing basis, of the extent to which identifiable populations are disproportionately exposed to potentially harmful substances in the environment on the basis of race, ethnicity or socio-economic status, and the development and implementation, on a continuing basis, of state regulations, policies, programs and enforcement priorities that prevent and reduce any such disproportionate exposure.

The department shall publish a notice of proposed rulemaking, not later than one hundred eighty (180) days after the effective date of this act, and provide a public comment period of sixty (60) days after the publication of the notice of proposed rulemaking; and publish its adopted regulations not later than forty-five (45) days after the public comment period.

The rules promulgated under this section shall be promulgated in accordance with the Administrative Procedures Law to the extent that the Administrative Procedures Act does not conflict with this section.

(2) The Department of Environmental Quality also shall:

(a) Review statutory authority, regulations and policies for the purpose of determining whether there are any deficiencies or inconsistencies therein that are a barrier to full compliance with the provisions of this act;

(b) Review, on a continuing basis, programs administered, mandated, delegated or funded by the state to ensure that they are in compliance with the provisions of this act;

(c) Develop decision criteria for use in the rulemaking, permitting and enforcement programs to ensure that the state's activities are in compliance with the provisions of this act;

(d) Implement the environmental equity research program;
(e) Develop and implement a strategy for preventing pollution and encouraging sustainable development that is consistent with the provisions of this act;

(f) Develop and implement a comprehensive information management plan;

(g) Develop and implement a public participation, communication and educations strategy to ensure public participation and public access to data and reports;

(h) Develop and implement a plan for assisting other federal, state and local government agencies in examining environmental equity concerns;

(i) Provide environmental equity awareness training;

(j) Provide technical assistance and training to aid other public and private entities in the promotion of environmental equity;

(k) Prepare a report by January 15, 1998, and each year thereafter, on the status of environmental equity activities;

(l) Ensure that the department provides for the function of an ombudsman with the department.

SECTION 5. (1) There shall be an Environmental Equity Task Force that will consist of fifteen (15) voting members to be appointed by the leadership of the Legislative Black Caucus, State House of Representatives, State Senate, Department of Environmental Quality, Governor's Office and Southern Echo Environmental Group, as provided in this section. Seven (7) of the voting members shall be minority members of the state Legislature appointed as follows: two (2) members shall be appointed by the President Pro Tempore of the Senate, two (2) members shall be appointed by the Speaker Pro Tempore of the House, and the final three (3) members shall be appointed by the leadership of the Legislative Black Caucus. The remaining eight (8) voting members of the task force shall be appointed as follows: four (4) members shall be appointed by the Governor's
Office, three (3) members shall be appointed by the Department of Environmental Quality and one (1) member shall be appointed by Southern Echo Environmental Group. Nonvoting members of the task force shall include members of the House Conservation and Water Resources Committee and Senate Environmental Protection, Conservation and Water Resources Committee, environmental advocacy organizations, such as the Sierra Club, and other grassroots organizations, all of whom shall be selected by the chairman of the task force. The terms of the voting members of the task force shall be as follows: five (5) of the initial members shall be appointed for terms of four (4) years, five (5) of the initial members shall be appointed for terms of three (3) years and five (5) of the initial members shall be appointed for terms of two (2) years, respectively, from the date of their appointment. After the expiration of the initial terms provided for under this subsection, all subsequent appointments shall be for terms of four (4) years from the expiration date of the previous term.

The chairman shall be elected from the fifteen (15) voting members of the task force. Members of the task force shall receive no compensation for their services, but the voting members of the task force shall be reimbursed for their actual and necessary expenses incurred in the performance of their official duties as provided in Section 25-3-41.

(2) The task force shall have the following powers and duties:

(a) To litigate;

(b) To make and execute contracts and all other instruments necessary or convenient for the exercise of its powers and function under this act;

(c) To assist the Department of Environmental Quality with holding public hearings and to contract for professional and technical assistance and advice;
(d) To contract for and to accept assistance, including, but not limited to, gifts, grants or loans of funds or of property from the federal or state government, or from any other public or private source and to comply with the terms or conditions thereof, subject to the applicable general policies;

(e) To encourage individuals, corporations, associations, organizations and public agencies to consider the environmental interests of the minority or low-income communities in its decision-making process;

(f) To provide local governments and the private sector with improved liaison, interpretation and focus relative to a variety of state and federal programs which bear on environmental equity;

(g) To conduct systematic and thorough research to be made available to the public on environmental issues that relate to minority or low-income communities, including, but not limited to, lead, occupational hazards, siting of polluting facilities and access to parks and other open spaces;

(h) To conduct community outreach and produce materials to educate the public about issues related to environmental equity; and

(i) To exercise and perform such other powers and duties as shall have been or may be from time to time conveyed or imposed by law.

SECTION 6. In order to determine if there are significant adverse impacts of environmental pollution on human health in environmental high-impact areas, minority or low-income communities, there shall be a moratorium on the siting or permitting of any new toxic chemical facility in any environmental high-impact area shown to emit toxic chemicals in quantities found to cause significant adverse impacts on human health. A new toxic chemical facility may be cited or permitted in such an environmental high-impact area during this period only if:
(a) The need for the activity is shown; and

(b) The facility demonstrates that it will minimize uncontrolled releases into the environment.

The moratorium shall continue in effect in such an environmental high-impact area until the task force determines, upon petition of any interested party, that the health-based levels identified have been attained in the area.

SECTION 7. Section 17-17-15, Mississippi Code of 1972, is amended as follows:

17-17-15. (1) Hazardous wastes shall not be handled or disposed of along with or in the same site or adjoining site as ordinary wastes unless specifically approved as exempted waste by the department. These shall be disposed of by special incinerators, separate landfills, or other means dictated by the particularities of the hazardous waste involved, as determined by the department or other responsible agency. The department may, in its discretion, maintain a field office at any treatment or disposal facility that receives hazardous wastes directly or indirectly from more than one (1) generator. However, the department shall maintain a field office at any commercial off-site multiuser hazardous waste incinerator designed to incinerate multiple nonhomogeneous types of wastes, and the cost of operating such field office shall be borne by the owner of such commercial hazardous waste incinerator. The field office, when required, shall be located in adequate accommodations provided by the facility owner and shall be staffed with department regulatory personnel as deemed necessary by the department. In exercising its discretion to determine the need for a field office, regulatory staff and support equipment, the department shall consider, at a minimum, the type and amount of hazardous waste received and also the type of facility. All fees shall be established by the department and shall be in addition to any other fees provided by law. The fee prescribed by the department...
shall be in an amount not less than the actual operating expenses
of the permanent field office and shall be in addition to any
other fees required by law.

(2) In addition to considering all applicable state and
federal laws and regulations, the Mississippi Pollution Control
Permit Board shall not issue a permit for the establishment or
operation of a commercial hazardous waste landfill for the
disposal of hazardous waste (as defined by Section 17-17-3,
Mississippi Code of 1972), in the State of Mississippi until the
Environmental Protection Agency makes a final determination,
pursuant to the federal Hazardous and Solid Waste Amendments of
1984, Public Law No. 98-616, that each waste to be placed in such
landfill is suitable for land disposal.

(3) No permit shall be issued pursuant to this section that
is in conflict with the provision of the Mississippi Environmental
Equity Act.

SECTION 8. Section 17-17-27, Mississippi Code of 1972, is
amended as follows:

17-17-27. (1) The department shall exercise such
supervision over restrictions, equipment, methodology and
personnel in the management of solid wastes as may be necessary to
enforce sanitary requirements; and the commission shall adopt such
rules and regulations as may be needed to specify methodology and
procedures to meet the requirements of this chapter, which shall
include at a minimum:

(a) Criteria for the determination of whether any waste
or combination of wastes is hazardous for the purposes of this
chapter;

(b) Rules and regulations for the storage, treatment
and disposal of solid wastes;

(c) Rules and regulations for the transportation,
containerization and labeling of hazardous wastes, which rules
shall be consistent with those issued by the United States Department of Transportation; 
(d) Rules and regulations specifying the terms and conditions under which the Permit Board shall issue, modify, suspend, revoke or deny such permits as may be required by this chapter. Such rules and regulations shall include, and not by way of limitation, specific authority for the Permit Board to consider the financial capability and performance history of an applicant. No permit shall be issued that is in conflict with the provisions of the Mississippi Environmental Equity Act; 
(e) Rules and regulations establishing standards and procedures for the safe storage or transportation of hazardous waste and for the safe operation and maintenance of hazardous waste treatment or disposal facilities or sites or equipment; 
(f) A listing of those wastes or combinations of wastes which are not compatible, and which may not be stored or disposed of together; 
(g) Procedures and requirements for the use of a manifest during the transport of hazardous wastes; 
(h) Standards for financial responsibility to cover the liability, closure and post-closure of any site and perpetual care of a commercial hazardous waste landfill. Rules and regulations promulgated hereunder may include, and not by way of limitation, requirements for maintaining liability insurance coverage if such coverage is not required under rules and regulations promulgated by the United States Environmental Protection Agency; 
(i) Rules and regulations establishing minimum distances within which any hazardous waste disposal facility may be located from any municipality, school, residence, church or health care facility; 
(j) Other rules and regulations as the commission deems necessary to manage hazardous wastes in the state, provided that
such rules and regulations shall be equivalent to the United
States Environmental Protection Agency's rules and regulations.

(2) In complying with this section the commission shall
consider the variations within this state in climate, geology,
population density and such other factors as may be relevant to
the management of hazardous wastes. It is the intent of the
Legislature that commercial hazardous waste landfills be located
on those sites which, by virtue of their geologic conditions,
provide a high degree of environmental protection. In carrying
out the intent of this provision, the commission is authorized to
adopt siting criteria for commercial hazardous waste landfills
which are more stringent or extensive in scope, coverage and
effect than the rules and regulations promulgated by the United
States Environmental Protection Agency.

(3) Except as hereinafter provided, hazardous wastes shall
not be disposed of in this state by the use of underground
injection methods, as herein defined according to 40 CFR
260.10(74) to mean "subsurface emplacement of fluids through a
bored, drilled, or driven well, or through a dug well, where the
depth of the dug well is greater than the largest surface
dimension." This prohibition shall not apply to the disposal on
the generation site of hazardous wastes generated in the
production of oil or gas or in a commercial or manufacturing
operation. Commercial hazardous waste underground injection wells
designed or intended to dispose of multiple nonhomogeneous types
of wastes from multiple sources other than the owner of the well
are hereby prohibited in the State of Mississippi.

A commercial hazardous waste landfill shall not be located on
the same site or within one thousand (1,000) feet of an existing
or abandoned ordinary waste disposal site, unless the hazardous
waste to be disposed of in said commercial landfill is
specifically approved as exempted.
(4) After promulgation of the regulations required under this section, no person shall construct, substantially alter or operate any solid waste treatment or disposal facility or site, nor shall any person store, treat or dispose of any hazardous waste without first obtaining a permit from the Permit Board for such facility, site or activity. However, no person shall construct any new hazardous waste treatment or disposal facility or site or substantially alter any such existing facility or site, nor shall the Permit Board issue a permit for any such construction or alteration, until the commission has promulgated rules and regulations under the provisions of subsection (1)(j) of this section. Said rules and regulations shall be equivalent to counterpart rules and regulations of the Environmental Protection Agency whether now in effect or hereinafter promulgated. Any person who has made an application for a permit for an existing facility under this section shall be treated as having been issued such permit until such time as final administrative disposition of such application has been made unless the cause of such delay is the result of the failure of the applicant to furnish information reasonably required or requested in order to process the application.

(5) Any permit issued under this section may be revoked by the issuing agency at any time when the permittee fails to comply with the terms and conditions of the permit. Where the obtaining of or compliance with any permit required under this section would, in the judgment of the department, cause undue or unreasonable hardship to any person, the department may issue a variance from these requirements. In no case shall the duration of any such variance exceed one (1) year. Renewals or extensions may be given only after an opportunity has been given for public comment on each such renewal or extension.

(6) Information obtained by the commission concerning environmental protection including, but not limited to,
information contained in applications for solid or hazardous waste
disposal permits shall be public information and shall be made
available upon proper request. Other information obtained by the
commission, department, or Permit Board in the administration of
Sections 17-17-1 through 17-17-47 concerning trade secrets,
including, but not limited to, marketing or financial information,
treatment, transportation, storage or disposal processes or
devices, methods of manufacture, or production capabilities or
amounts shall be kept confidential if and only if: (a) a written
confidentiality claim is made when the information is supplied;
(b) such confidentiality claim allows disclosure to authorized
department employees and/or the United States Environmental
Protection Agency (EPA); and (c) such confidentiality claim is
determined by the commission to be valid. If the confidentiality
claim is denied, the information sought to be covered thereby
shall not be released or disclosed, except to the Environmental
Protection Agency, until the claimant has been notified in writing
and afforded an opportunity for a hearing and appeal therefrom, as
with other orders of the commission. Disclosure of confidential
information by the EPA shall be governed by federal law and EPA
regulations. Misappropriation of a trade secret shall be governed
by the Mississippi Uniform Trade Secrets Act, Sections 75-26-1
through 75-26-19.

(7) Anyone making unauthorized disclosure of information
determined to be confidential as herein provided shall be liable
in a civil action for damages arising therefrom and shall also be
guilty of a misdemeanor punishable as provided by law.

(8) Notwithstanding any other provision of this chapter, the
executive director, upon receipt of information that the
generation, storage, transportation, treatment or disposal of any
solid waste may present an imminent and substantial hazard to the
public health or to the environment, may take any legal, equitable
or other action, including injunctive relief, necessary to protect
the health of such persons or the environment.

SECTION 9. Section 17-17-151, Mississippi Code of 1972, is
amended as follows:

17-17-151. (1) Each application for the issuance of a
permit to operate a commercial hazardous waste management facility
shall be accompanied by a demonstration of need for that facility
in the anticipated service area, which shall be of the form and
content as the Permit Board may prescribe. Applications for the
reissuance, transfer or modification of previously issued permits,
except modifications seeking an increase in the volume of
hazardous waste to be managed on an annual basis, shall not be
subject to the requirements of this section.

(2) The demonstration of need shall be specific as to the
types of hazardous waste to be managed and shall include, but not
be limited to:

(a) Documentation of the available capacity at existing
commercial hazardous waste management facilities in the area to be
served by the facility;

(b) Documentation of the current volume of hazardous
waste generated in the area to be served by the facility and the
volume of hazardous waste reasonably expected to be generated in
the area to be served over the next twenty (20) years; and

(c) A description of any additional factors, such as
physical limitations on the transportation of the hazardous waste
or the existence of additional capacity outside the area to be
served which may satisfy the projected need.

(3) The Permit Board shall consider the following factors in
evaluating the need for the proposed facility:

(a) The extent to which the proposed commercial
hazardous waste management facility is in conformance with the
Mississippi Capacity Assurance Plan and any interstate or regional
agreements associated therewith;
(b) An approximate service area for the proposed facility which takes into account the economics of hazardous waste collection, transportation, treatment, storage and disposal;
(c) The quantity of hazardous waste generated within the anticipated service area suitable for treatment, storage or disposal at the proposed facility;
(d) The design capacity of existing commercial hazardous waste management facilities located within the anticipated service area of the proposed facility; and
(e) The extent to which the proposed facility is needed to replace other facilities, if the need for a proposed commercial hazardous waste management facility cannot be established under paragraphs (a) through (d).

(4) No permit shall be issued that is in conflict with the provisions of the Mississippi Environmental Equity Act.

(5) Based on the needs of the State of Mississippi, it is the intent of the Legislature that there shall not be a proliferation of unnecessary facilities in any one (1) county of the state.

(6) If the Permit Board determines that a proposed commercial hazardous waste management facility is inconsistent with or contradictory to the factors set forth in subsection (3), the Permit Board is hereby empowered to deny any permit for such facility.

(7) The commission shall develop and adopt criteria and standards to be considered in location and permitting of commercial hazardous waste management facilities. The standards and criteria shall be developed through public participation, shall be enforced by the Permit Board and shall include, in addition to all applicable state and federal rules and regulations, consideration of:
(a) Hydrological and geological factors such as flood plains, depth to water table, soil composition and permeability, cavernous bedrock, seismic activity, and slope;

(b) Natural resource factors such as wetlands, endangered species habitats, proximity to parks, forests, wilderness areas and historical sites, and air quality;

(c) Land use factors such as local land use, whether residential, industrial, commercial, recreational or agricultural, proximity to public water supplies, and proximity to incompatible structures such as schools, churches and airports;

(d) Transportation factors, such as proximity to waste generators and to population, route safety and method of transportation; and

(e) Aesthetic factors such as the visibility, appearance and noise level of the facility.

SECTION 10. Section 49-17-25, Mississippi Code of 1972, is amended as follows:

49-17-25. (1) Except as provided in subsection (4) of this section prior to the adoption, amendment or repeal of rules and regulations necessary to implement this chapter, Sections 17-17-1 through 17-17-47, Sections 21-27-201 through 21-27-221, Sections 37-138-1 through 37-138-31, and all other laws administered by the department, the commission shall conduct a public hearing or hearings thereon after public notice. Such notice shall be given by publication once a week for three (3) successive weeks in a newspaper having a general circulation throughout the state. The notice shall contain a description of the proposed regulation and the time, date and place of the hearing.

(2) Additionally, the adoption, amendment or repeal of any rule or regulation under this chapter, Sections 17-17-1 through 17-17-47, Sections 21-27-201 through 21-27-221, Sections 37-138-1 through 37-138-31 and all other laws administered by the department shall be governed by the "Mississippi Administrative
Procedures Law." Any rule or regulation heretofore or hereafter adopted, amended or repealed in substantial compliance with the procedural requirements under Section 25-43-7 shall be valid. A proceeding to contest any rule or regulation on the ground of noncompliance with the procedural requirements of this section must be commenced within one (1) year from the effective date of the rule or regulation.

(3) Notice of rules and regulations adopted by the commission shall be published once in a newspaper having general circulation throughout the state.

(4) Any rules or regulations adopted pursuant to Section 4 of Senate Bill No. 2008, 2003 Regular Session, shall be governed by the provisions of that section and subsection (2) of this section.

SECTION 11. 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 this section 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) Each applicant for a permit for a new outlet for the discharge of wastes into the waters of the state who is required to obtain a certificate of public convenience and necessity from the Public Service Commission for such wastewater system shall submit financial and managerial information as required by the Public Utilities Staff. Following review of that information, the Executive Director of the Public Utilities Staff shall certify in writing to the executive director of the department, the financial and managerial viability of the system if the Executive Director of the Public Utilities Staff determines the system is viable. The Permit Board shall not issue the permit until the certification is received.

(h) The Permit Board shall not issue any permit that is in conflict with the Mississippi Environmental Equity Act.
(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 12. Section 25-43-5, Mississippi Code of 1972, is amended as follows:

25-43-5. (1) In addition to other rule-making authority and requirements imposed by law, each agency shall:

(a) Adopt as a rule a description of its organization, stating the general course and method of its operations and the methods whereby the public may obtain information or make submissions or requests.

(b) Adopt rules of practice setting forth the nature and requirements of all formal and informal procedures available, including all requirements respecting the filing of applications for any license and the licensing procedure employed by the agency and the method whereby persons desiring notice of pending applications may obtain such notice and request an opportunity to be heard.

(c) Allow public inspection of all rules and other written statements of policy or interpretations formulated, adopted or used by the agency in the discharge of its functions.
(d) Allow public inspection of all final orders, decisions and opinions.

(2) No agency rule, order or decision is valid or effective against any person or party, nor may it be invoked by the agency for any purpose, until it has been made available for public inspection as herein required. This provision is not applicable in favor of any person or party who has actual knowledge thereof.

(3) To the extent that any provision of this section conflicts with any provision of the Mississippi Environmental Equity Act, the provision(s) of the Mississippi Environmental Equity Act shall control.

SECTION 13. Section 25-43-7, Mississippi Code of 1972, is amended as follows:

25-43-7. (1) Prior to the adoption, amendment or repeal of any rule, the agency shall give at least thirty (30) days' notice of its intended action. The notice shall include a statement of either the terms or substance of the intended action or a description of the subjects and issues involved, and the manner in which interested persons may present their views thereon. The notice shall be filed with the office of the Secretary Of State and mailed by the agency to all persons who have made timely request of the agency for advance notice of its rule-making proceedings. The Secretary Of State shall furnish copies at the request of any person and shall be reimbursed by the requesting person for the expense of providing such service.

(2) If an agency finds that an imminent peril to the public health, safety or welfare requires adoption of a rule upon fewer than thirty (30) days' notice and states in writing its reasons for that finding, it may proceed without prior notice of hearing or upon any abbreviated notice and hearing that it finds practicable to adopt an emergency rule. The rule may be effective for a period of not longer than one hundred twenty (120) days, renewable once for a period not exceeding ninety (90) days, but
the adoption of an identical rule under subsection (1) of this section is not precluded.

(3) No rule hereafter adopted is valid unless adopted in substantial compliance with this section. A proceeding to contest any rule on the ground of noncompliance with the procedural requirements of this section must be commenced within one (1) year from the effective date of the rule.

(4) To the extent that any provision of this section conflicts with any provision of the Mississippi Environmental Equity Act, the provision(s) of the Mississippi Environmental Equity Act shall control.

SECTION 14. This act shall take effect and be in force from and after its passage.