

By: Senator(s) Dawkins

To: Environment Prot, Cons
and Water Res

SENATE BILL NO. 2709

1 AN ACT TO CREATE AN ENVIRONMENTAL EQUITY PROGRAM TO BE
2 ADMINISTERED BY THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO ENSURE
3 THAT HAZARDOUS WASTE FACILITIES ARE NOT DISPROPORTIONATELY
4 CONCENTRATED IN MINORITY OR LOW-INCOME COMMUNITIES; TO AMEND
5 SECTIONS 17-17-15, 17-17-27, 17-17-151, 49-17-25, 49-17-29,
6 25-43-5 AND 25-43-7, MISSISSIPPI CODE OF 1972, IN CONFORMITY TO
7 THE PROVISIONS OF THIS ACT; AND FOR RELATED PURPOSES.

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

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

11 SECTION 2. It is in the interest of the citizens of
12 Mississippi to ensure equal environmental protection for all
13 people regardless of race, ethnicity or socio-economic status.
14 There is an urgent need to collect, analyze and report regularly
15 data on environmental quality and related public health measures
16 by race, ethnicity and socio-economic status, and to develop
17 policies and programs that prevent and reduce the
18 disproportionately greater exposures to potentially hazardous
19 substances experienced by racial minority, ethnic minority and
20 low-income populations. It is the intent of the Legislature to
21 ensure equitable processes and outcomes in the prevention and
22 reduction of human exposure to potentially harmful substances, to
23 enhance the authority of the Department of Environmental Quality
24 to investigate and make siting recommendations of facilities that
25 manufacture, process, store or release to the environment any
26 potentially hazardous substance.

27 SECTION 3. As used in this act, the following words and
28 phrases shall have the meanings respectively ascribed herein
29 unless the context clearly indicates otherwise:

30 (a) "Environmental equity" means ensuring equitable
31 processes and outcomes in the:

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

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

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

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

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

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

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

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

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

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

60 (iii) "Hispanic" means a person of Spanish or
61 Portuguese culture with origins in Mexico, South or Central
62 America or the Caribbean Islands, regardless of race.

63 (iv) "Native American" means a person having
64 origins in any of the original people of North America, including
65 American Indians, Eskimos and Aleuts.

66 (d) "Potentially harmful substance" means:

67 (i) Any hazardous substance;

68 (ii) Any air pollutant as defined under the Clean
69 Air Act;

70 (iii) Any extremely hazardous substance as defined
71 under the Superfund Amendments and Reauthorization Act;

72 (iv) Any hazardous chemical for which a material
73 safety data sheet is required to be prepared under the
74 Occupational Safety and Health Act of 1970 or regulations
75 promulgated under that act;

76 (v) Any toxic chemical under the Superfund Act;

77 (vi) Any pesticide as defined under the federal
78 Insecticide, Fungicide and Rodenticide Act; and

79 (vii) Chemicals subject to restrictive orders
80 under the Toxic Substances Control Act.

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

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

93 (g) "Task force" means the Environmental Equity Task
94 Force established under Section 5 of this act.

95 **SECTION 4.** (1) The Department of Environmental Quality
96 shall promulgate regulations providing for a comprehensive
97 assessment, on a continuing basis, of the extent to which
98 identifiable populations are disproportionately exposed to
99 potentially harmful substances in the environment on the basis of
100 race, ethnicity or socio-economic status. The Department of
101 Environmental Quality shall promulgate regulations providing for
102 the development and implementation, on a continuing basis, of
103 state regulations, policies, programs and enforcement priorities
104 that prevent and reduce any such disproportionate exposure.

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

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

115 (2) The Department of Environmental Quality also shall:

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

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

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

- 127 (d) Implement the environmental equity research
128 program;
- 129 (e) Develop and implement a strategy for preventing
130 pollution and encouraging sustainable development that is
131 consistent with the provisions of this act;
- 132 (f) Develop and implement a comprehensive information
133 management plan;
- 134 (g) Develop and implement a public participation,
135 communication and education strategy to ensure public
136 participation and public access to data and reports;
- 137 (h) Develop and implement a plan for assisting other
138 federal, state and local government agencies in examining
139 environmental equity concerns;
- 140 (i) Provide environmental equity awareness training;
- 141 (j) Provide technical assistance and training to aid
142 other public and private entities in the promotion of
143 environmental equity;
- 144 (k) Prepare a report by January 15, 2005, and each year
145 thereafter, on the status of environmental equity activities;
- 146 (l) Ensure that the department provides for the
147 function of an ombudsman with the department.

148 **SECTION 5.** (1) There shall be an Environmental Equity Task
149 Force that will consist of fifteen (15) voting members to be
150 appointed by the leadership of the Legislative Black Caucus, State
151 House of Representatives, State Senate, Department of
152 Environmental Quality, Governor's Office and Southern Echo
153 Environmental Group, as provided in this section. Seven (7) of
154 the voting members shall be minority members of the state
155 Legislature appointed as follows: two (2) members shall be
156 appointed by the President Pro Tempore of the Senate, two (2)
157 members shall be appointed by the Speaker Pro Tempore of the
158 House, and the final three (3) members shall be appointed by the
159 leadership of the Legislative Black Caucus. The remaining eight

160 (8) voting members of the task force shall be appointed as
161 follows: four (4) members shall be appointed by the Governor's
162 Office, three (3) members shall be appointed by the Department of
163 Environmental Quality and one (1) member shall be appointed by
164 Southern Echo Environmental Group. Nonvoting members of the task
165 force shall include members of the House Conservation and Water
166 Resources Committee and Senate Environmental Protection,
167 Conservation and Water Resources Committee, environmental advocacy
168 organizations, such as the Sierra Club, and other grassroots
169 organizations, all of whom shall be selected by the chairman of
170 the task force. The terms of the voting members of the task force
171 shall be as follows: five (5) of the initial members shall be
172 appointed for terms of four (4) years, five (5) of the initial
173 members shall be appointed for terms of three (3) years and five
174 (5) of the initial members shall be appointed for terms of two (2)
175 years, respectively, from the date of their appointment. After
176 the expiration of the initial terms provided for under this
177 subsection, all subsequent appointments shall be for terms of four
178 (4) years from the expiration date of the previous term.

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

185 (2) The task force shall have the power and duty to
186 determine the issuance of moratoriums on the siting or permitting
187 of facilities that manufacture, process, store or release to the
188 environment any potentially harmful substance in accordance with
189 Section 6 of this act.

190 **SECTION 6.** Where it is determined by the task force that a
191 minority or low-income community is disproportionately exposed to
192 any potentially harmful substance, the task force shall issue a

193 moratorium on the siting or permitting of any facility that
194 proposes to manufacture, process, store and/or release to the
195 environment any potentially harmful substance in close
196 geographical proximity to the disproportionately exposed minority
197 or low-income community. The moratorium shall continue in effect
198 until the task force determines, upon petition of any interested
199 party, that there is no longer a disproportionate exposure of the
200 minority or low-income community to any potentially hazardous
201 substance as a result of pollution reduction.

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

204 17-17-15. (1) Hazardous wastes shall not be handled or
205 disposed of along with or in the same site or adjoining site as
206 ordinary wastes unless specifically approved as exempted waste by
207 the department. These shall be disposed of by special
208 incinerators, separate landfills, or other means dictated by the
209 particularities of the hazardous waste involved, as determined by
210 the department or other responsible agency. The department may,
211 in its discretion, maintain a field office at any treatment or
212 disposal facility that receives hazardous wastes directly or
213 indirectly from more than one (1) generator. However, the
214 department shall maintain a field office at any commercial
215 off-site multiuser hazardous waste incinerator designed to
216 incinerate multiple nonhomogeneous types of wastes, and the cost
217 of operating such field office shall be borne by the owner of such
218 commercial hazardous waste incinerator. The field office, when
219 required, shall be located in adequate accommodations provided by
220 the facility owner and shall be staffed with department regulatory
221 personnel as deemed necessary by the department. In exercising
222 its discretion to determine the need for a field office,
223 regulatory staff and support equipment, the department shall
224 consider, at a minimum, the type and amount of hazardous waste
225 received and also the type of facility. All fees shall be

226 established by the department and shall be in addition to any
227 other fees provided by law. The fee prescribed by the department
228 shall be in an amount not less than the actual operating expenses
229 of the permanent field office and shall be in addition to any
230 other fees required by law.

231 (2) In addition to considering all applicable state and
232 federal laws and regulations, the Mississippi Pollution Control
233 Permit Board shall not issue a permit for the establishment or
234 operation of a commercial hazardous waste landfill for the
235 disposal of hazardous waste (as defined by Section 17-17-3,
236 Mississippi Code of 1972), in the State of Mississippi until the
237 Environmental Protection Agency makes a final determination,
238 pursuant to the federal Hazardous and Solid Waste Amendments of
239 1984, Public Law No. 98-616, that each waste to be placed in such
240 landfill is suitable for land disposal.

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

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

246 17-17-27. (1) The department shall exercise such
247 supervision over restrictions, equipment, methodology and
248 personnel in the management of solid wastes as may be necessary to
249 enforce sanitary requirements; and the commission shall adopt such
250 rules and regulations as may be needed to specify methodology and
251 procedures to meet the requirements of this chapter, which shall
252 include at a minimum:

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

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

258 (c) Rules and regulations for the transportation,
259 containerization and labeling of hazardous wastes, which rules
260 shall be consistent with those issued by the United States
261 Department of Transportation;

262 (d) Rules and regulations specifying the terms and
263 conditions under which the Permit Board shall issue, modify,
264 suspend, revoke or deny such permits as may be required by this
265 chapter. Such rules and regulations shall include, and not by way
266 of limitation, specific authority for the Permit Board to consider
267 the financial capability and performance history of an applicant.
268 No permit shall be issued that is in conflict with the provisions
269 of the Mississippi Environmental Equity Act;

270 (e) Rules and regulations establishing standards and
271 procedures for the safe storage or transportation of hazardous
272 waste and for the safe operation and maintenance of hazardous
273 waste treatment or disposal facilities or sites or equipment;

274 (f) A listing of those wastes or combinations of wastes
275 which are not compatible, and which may not be stored or disposed
276 of together;

277 (g) Procedures and requirements for the use of a
278 manifest during the transport of hazardous wastes;

279 (h) Standards for financial responsibility to cover the
280 liability, closure and post-closure of any site and perpetual care
281 of a commercial hazardous waste landfill. Rules and regulations
282 promulgated hereunder may include, and not by way of limitation,
283 requirements for maintaining liability insurance coverage if such
284 coverage is not required under rules and regulations promulgated
285 by the United States Environmental Protection Agency;

286 (i) Rules and regulations establishing minimum
287 distances within which any hazardous waste disposal facility may
288 be located from any municipality, school, residence, church or
289 health care facility;

290 (j) Other rules and regulations as the commission deems
291 necessary to manage hazardous wastes in the state, provided that
292 such rules and regulations shall be equivalent to the United
293 States Environmental Protection Agency's rules and regulations.

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

306 (3) Except as hereinafter provided, hazardous wastes shall
307 not be disposed of in this state by the use of underground
308 injection methods, as herein defined according to 40 CFR
309 260.10(74) to mean "subsurface emplacement of fluids through a
310 bored, drilled, or driven well, or through a dug well, where the
311 depth of the dug well is greater than the largest surface
312 dimension." This prohibition shall not apply to the disposal on
313 the generation site of hazardous wastes generated in the
314 production of oil or gas or in a commercial or manufacturing
315 operation. Commercial hazardous waste underground injection wells
316 designed or intended to dispose of multiple nonhomogeneous types
317 of wastes from multiple sources other than the owner of the well
318 are hereby prohibited in the State of Mississippi.

319 A commercial hazardous waste landfill shall not be located on
320 the same site or within one thousand (1,000) feet of an existing
321 or abandoned ordinary waste disposal site, unless the hazardous

322 waste to be disposed of in said commercial landfill is
323 specifically approved as exempted.

324 (4) After promulgation of the regulations required under
325 this section, no person shall construct, substantially alter or
326 operate any solid waste treatment or disposal facility or site,
327 nor shall any person store, treat or dispose of any hazardous
328 waste without first obtaining a permit from the Permit Board for
329 such facility, site or activity. However, no person shall
330 construct any new hazardous waste treatment or disposal facility
331 or site or substantially alter any such existing facility or site,
332 nor shall the Permit Board issue a permit for any such
333 construction or alteration, until the commission has promulgated
334 rules and regulations under the provisions of subsection (1)(j) of
335 this section. Said rules and regulations shall be equivalent to
336 counterpart rules and regulations of the Environmental Protection
337 Agency whether now in effect or hereinafter promulgated. Any
338 person who has made an application for a permit for an existing
339 facility under this section shall be treated as having been issued
340 such permit until such time as final administrative disposition of
341 such application has been made unless the cause of such delay is
342 the result of the failure of the applicant to furnish information
343 reasonably required or requested in order to process the
344 application.

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

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

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

384 (8) Notwithstanding any other provision of this chapter, the
385 executive director, upon receipt of information that the
386 generation, storage, transportation, treatment or disposal of any
387 solid waste may present an imminent and substantial hazard to the

388 public health or to the environment, may take any legal, equitable
389 or other action, including injunctive relief, necessary to protect
390 the health of such persons or the environment.

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

393 17-17-151. (1) Each application for the issuance of a
394 permit to operate a commercial hazardous waste management facility
395 shall be accompanied by a demonstration of need for that facility
396 in the anticipated service area, which shall be of the form and
397 content as the Permit Board may prescribe. Applications for the
398 reissuance, transfer or modification of previously issued permits,
399 except modifications seeking an increase in the volume of
400 hazardous waste to be managed on an annual basis, shall not be
401 subject to the requirements of this section.

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

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

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

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

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

418 (a) The extent to which the proposed commercial
419 hazardous waste management facility is in conformance with the

420 Mississippi Capacity Assurance Plan and any interstate or regional
421 agreements associated therewith;

422 (b) An approximate service area for the proposed
423 facility which takes into account the economics of hazardous waste
424 collection, transportation, treatment, storage and disposal;

425 (c) The quantity of hazardous waste generated within
426 the anticipated service area suitable for treatment, storage or
427 disposal at the proposed facility;

428 (d) The design capacity of existing commercial
429 hazardous waste management facilities located within the
430 anticipated service area of the proposed facility; and

431 (e) The extent to which the proposed facility is needed
432 to replace other facilities, if the need for a proposed commercial
433 hazardous waste management facility cannot be established under
434 paragraphs (a) through (d).

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

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

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

446 (7) The commission shall develop and adopt criteria and
447 standards to be considered in location and permitting of
448 commercial hazardous waste management facilities. The standards
449 and criteria shall be developed through public participation,
450 shall be enforced by the Permit Board and shall include, in
451 addition to all applicable state and federal rules and
452 regulations, consideration of:

453 (a) Hydrological and geological factors such as flood
454 plains, depth to water table, soil composition and permeability,
455 cavernous bedrock, seismic activity, and slope;

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

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

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

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

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

470 49-17-25. (1) Except as provided in subsection (4) of this
471 section prior to the adoption, amendment or repeal of rules and
472 regulations necessary to implement this chapter, Sections 17-17-1
473 through 17-17-47, Sections 21-27-201 through 21-27-221, Sections
474 37-138-1 through 37-138-31, and all other laws administered by the
475 department, the commission shall conduct a public hearing or
476 hearings thereon after public notice. Such notice shall be given
477 by publication once a week for three (3) successive weeks in a
478 newspaper having a general circulation throughout the state. The
479 notice shall contain a description of the proposed regulation and
480 the time, date and place of the hearing.

481 (2) Additionally, the adoption, amendment or repeal of any
482 rule or regulation under this chapter, Sections 17-17-1 through
483 17-17-47, Sections 21-27-201 through 21-27-221, Sections 37-138-1
484 through 37-138-31 and all other laws administered by the
485 department shall be governed by the "Mississippi Administrative

486 Procedures Law." Any rule or regulation heretofore or hereafter
487 adopted, amended or repealed in substantial compliance with the
488 procedural requirements under Section 25-43-7 shall be valid. A
489 proceeding to contest any rule or regulation on the ground of
490 noncompliance with the procedural requirements of this section
491 must be commenced within one (1) year from the effective date of
492 the rule or regulation.

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

496 (4) Any rules or regulations adopted pursuant to Section 4
497 of Senate Bill No. 2709, 2004 Regular Session, shall be governed
498 by the provisions of that section and subsection (2) of this
499 section.

500 **SECTION 11.** Section 49-17-29, Mississippi Code of 1972, is
501 amended as follows:

502 49-17-29. (1) (a) Except as in compliance with paragraph
503 (b) of this subsection, it is unlawful for any person to cause
504 pollution of the air in the state or to place or cause to be
505 placed any wastes or other products or substances in a location
506 where they are likely to cause pollution of the air. It is also
507 unlawful to discharge any wastes, products or substances into the
508 air of the state which exceed standards of performance, hazardous
509 air pollutant standards, other emission standards set by the
510 commission, or which reduce the quality of the air below the air
511 quality standards or increments established by the commission or
512 prevent attainment or maintenance of those air quality standards.
513 Any such action is hereby declared to be a public nuisance.

514 (b) It is unlawful for any person to build, erect,
515 alter, replace, use or operate any equipment which will cause the
516 issuance of air contaminants unless that person holds a permit
517 from the Permit Board (except repairs or maintenance of equipment
518 for which a permit has been previously issued), or unless that

519 person is exempted from holding a permit by a regulation
520 promulgated by the commission. Concentrated animal feeding
521 operations may be a source or a category of sources exempted under
522 this paragraph. However, no new or existing applications relating
523 to swine concentrated animal feeding operations within a county
524 shall be exempted from regulations and ordinances which have been
525 duly passed by the county's board of supervisors and which are in
526 force on June 1, 1998.

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

538 (b) It is unlawful for any person to carry on any of
539 the following activities, unless that person holds a current
540 permit for that activity from the Permit Board as may be required
541 for the disposal of all wastes which are or may be discharged into
542 the waters of the state, or unless that person is exempted from
543 holding a permit by a regulation promulgated by the commission:
544 (i) the construction, installation, modification or operation of
545 any disposal system or part thereof or any extension or addition
546 thereto, including, but not limited to, systems serving
547 agricultural operations; (ii) the increase in volume or strength
548 of any wastes in excess of the permissive discharges specified
549 under any existing permit; (iii) the construction, installation or
550 operation of any industrial, commercial or other establishment,
551 including irrigation projects or any extension or modification

552 thereof or addition thereto, the operation of which would cause an
553 increase in the discharge of wastes into the waters of the state
554 or would otherwise alter the physical, chemical or biological
555 properties of any waters of the state in any manner not already
556 lawfully authorized; (iv) the construction or use of any new
557 outlet for the discharge of any wastes into the waters of the
558 state. However, no new or existing applications relating to swine
559 concentrated animal feeding operations within a county shall be
560 exempted from regulations and ordinances which have been duly
561 passed by the county's board of supervisors and which are in force
562 on June 1, 1998.

563 (3) (a) Except as otherwise provided in this section, the
564 Permit Board created by Section 49-17-28 shall be the exclusive
565 administrative body to make decisions on permit issuance,
566 reissuance, denial, modification or revocation of air pollution
567 control and water pollution control permits and permits required
568 under the Solid Wastes Disposal Law of 1974 (Title 17, Chapter
569 17), and all other permits within the jurisdiction of the Permit
570 Board. After consideration of alternative waste treatment
571 technologies available to control air and water pollution and
572 odor, including appropriate siting criteria, the commission may
573 promulgate regulations establishing conditions, limitations and
574 exemptions under which the Permit Board shall make these
575 decisions. Regulations promulgated by the commission which
576 establish exemptions as authorized under this section shall apply
577 to any applicable facility in operation on the effective date of
578 that regulation and to any applicable facility constructed or
579 operated after the effective date of that regulation. The Permit
580 Board may issue multiple permits for the same facility or
581 operation simultaneously or in the sequence that it deems
582 appropriate consistent with the commission's regulations. Except
583 as otherwise provided in this paragraph, the Permit Board, under
584 any conditions that the board may prescribe, may authorize the

585 Executive Director of the Department of Environmental Quality to
586 make decisions on permit issuance, reissuance, denial,
587 modification or revocation. The executive director shall not be
588 authorized to make decisions on permit issuance, reissuance,
589 denial, modification or revocation for a commercial hazardous
590 waste management facility or a municipal solid waste landfill or
591 incinerator. A decision by the executive director shall be a
592 decision of the Permit Board and shall be subject to formal
593 hearing and appeal as provided in this section. The executive
594 director shall report all permit decisions to the Permit Board at
595 its next regularly scheduled meeting and those decisions shall be
596 recorded in the minutes of the Permit Board. The decisions of the
597 Permit Board shall be recorded in minutes of the Permit Board and
598 shall be kept separate and apart from the minutes of the
599 commission. The decision of the Permit Board or the executive
600 director to issue, reissue, deny, modify or revoke permits shall
601 not be construed to be an order or other action of the commission.

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

608 (c) All persons required to obtain an air pollution
609 control or water pollution control permit, a permit under the
610 Solid Wastes Disposal Law of 1974 (Title 17, Chapter 17) or any
611 other permit within the jurisdiction of the Permit Board shall
612 make application for that permit with the Permit Board. The
613 Permit Board, under any regulations as the commission may
614 prescribe, may require the submission of those plans,
615 specifications and other information as it deems necessary to
616 carry out Sections 49-17-1 through 49-17-43 and Title 17, Chapter
617 17, or to carry out the commission's regulations adopted under

618 those sections. The Permit Board, based upon any information as
619 it deems relevant, shall issue, reissue, deny, modify or revoke
620 air pollution control or water pollution control permit or permits
621 required under the Solid Wastes Disposal Law of 1974 (Title 17,
622 Chapter 17) or any other permit within the jurisdiction of the
623 Permit Board under any conditions as it deems necessary that are
624 consistent with the commission's regulations. The Permit Board's
625 action of issuance, reissuance, denial, modification or revocation
626 of a permit as recorded in its minutes shall constitute a complete
627 decision of the board. All permits issued by the Permit Board
628 shall remain in full force and effect until the board makes a
629 final determination regarding any reissuance, modification, or
630 revocation thereof. The Permit Board shall take action upon an
631 application within one hundred eighty (180) days following its
632 receipt in the board's principal office. No action which affects
633 revocation of an existing permit shall take effect until the
634 thirty (30) days mentioned in paragraph (4)(b) of this section has
635 expired or until a formal hearing as prescribed in that paragraph
636 is held, whichever is later.

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

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

649 (f) The Permit Board shall not issue any permit for a
650 new swine concentrated animal feeding operation or the expansion

651 of an existing swine concentrated animal feeding operation before
652 January 1, 2000, unless the department received the application
653 for that operation's new or modified permit before February 28,
654 1998, or except as provided in this paragraph (f). In issuing or
655 modifying any permit for which the department received an
656 application before February 28, 1998, the Permit Board shall apply
657 those siting criteria adopted or used by the commission before
658 February 28, 1998, unless federal law or regulations require more
659 stringent criteria. The moratorium established in this paragraph
660 shall not apply to the issuance of any permit for a new swine
661 concentrated animal feeding operation or the expansion of an
662 existing swine concentrated animal feeding operation that uses an
663 animal waste management system which the applicant demonstrates to
664 the Permit Board is innovative in significantly reducing the
665 effects of the operation on the public health, welfare or the
666 environment and which is approved by the Permit Board. The Permit
667 Board shall not issue or modify more than five (5) permits under
668 this innovative animal waste management system technology
669 exemption to the moratorium.

670 (g) Each applicant for a permit for a new outlet for
671 the discharge of wastes into the waters of the state who is
672 required to obtain a certificate of public convenience and
673 necessity from the Public Service Commission for such wastewater
674 system shall submit financial and managerial information as
675 required by the Public Utilities Staff. Following review of that
676 information, the Executive Director of the Public Utilities Staff
677 shall certify in writing to the executive director of the
678 department, the financial and managerial viability of the system
679 if the Executive Director of the Public Utilities Staff determines
680 the system is viable. The Permit Board shall not issue the permit
681 until the certification is received.

682 (h) The Permit Board shall not issue any permit that is
683 in conflict with the Mississippi Environmental Equity Act.

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

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

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

711 In conducting the formal hearing, the Permit Board shall have
712 the same full powers as to subpoenaing witnesses, administering
713 oaths, examining witnesses under oath and conducting the hearing,
714 as is now vested by law in the Mississippi Public Service
715 Commission, as to the hearings before it, with the additional
716 power that the Executive Director of the Permit Board may issue

717 all subpoenas at the instance of the Permit Board or at the
718 instance of any interested party. Any subpoenas shall be served
719 by any lawful officer in any county to whom the subpoena is
720 directed and return made thereon as provided by law, with the cost
721 of service being paid by the party on whose behalf the subpoena
722 was issued. Witnesses summoned to appear at the hearing shall be
723 entitled to the same per diem and mileage as witnesses attending
724 the circuit court and shall be paid by the person on whose behalf
725 the witness was called. Sufficient sureties for the cost of
726 service of the subpoena and witness fees shall be filed with the
727 Executive Director of the Permit Board at the time that issuance
728 of the subpoena is requested. At a hearing, any interested party
729 may present witnesses and submit evidence and cross-examine
730 witnesses.

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

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

746 (c) Within twenty (20) days after the date the Permit
747 Board takes action upon permit issuance, reissuance, denial,
748 modification or revocation after a formal hearing under this
749 subsection as recorded in the minutes of the Permit Board, any

750 person aggrieved of that action may appeal the action as provided
751 in subsection (5) of this section.

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

755 (b) Any person who is aggrieved by any decision of the
756 Permit Board issuing, reissuing, denying, revoking or modifying a
757 permit after a formal hearing may appeal that decision within the
758 period specified in subsection (4)(c) of this section to the
759 chancery court of the county of the situs in whole or in part of
760 the subject matter. The appellant shall give a cost bond with
761 sufficient sureties, payable to the state in the sum of not less
762 than One Hundred Dollars (\$100.00) nor more than Five Hundred
763 Dollars (\$500.00), to be fixed by the Permit Board and to be filed
764 with and approved by the Executive Director of the Permit Board,
765 who shall forthwith certify the filing of the bond together with a
766 certified copy of the record of the Permit Board in the matter to
767 the chancery court to which the appeal is taken, which shall
768 thereupon become the record of the cause. An appeal to the
769 chancery court as provided in this section shall not stay the
770 decision of the Permit Board. The aggrieved party may, within
771 twenty (20) days following the date the board's decision after a
772 formal hearing is entered on the board's minutes, petition the
773 chancery court for an appeal with supersedeas and the chancellor
774 shall grant a hearing on that petition. Upon good cause shown,
775 the chancellor may grant that appeal with supersedeas. If
776 granted, the appellant shall be required to post a bond with
777 sufficient sureties according to law in an amount to be determined
778 by the chancellor. Appeals shall be considered only upon the
779 record as made before the Permit Board. The chancery court shall
780 always be deemed open for hearing of an appeal and the chancellor
781 may hear the same in termtime or in vacation at any place in the
782 chancellor's district, and the appeal shall have precedence over

783 all civil cases, except election contests. The chancery court
784 shall review all questions of law and of fact. If no prejudicial
785 error is found, the matter shall be affirmed. If prejudicial
786 error is found the decision of the board shall be reversed and the
787 chancery court shall remand the matter to the Permit Board for
788 appropriate action as may be indicated or necessary under the
789 circumstances. Appeals may be taken from the chancery court to
790 the Supreme Court in the manner as now required by law, except
791 that if a supersedeas is desired by the party appealing to the
792 chancery court, that party may apply for a supersedeas to the
793 chancellor of that court, who shall award a writ of supersedeas,
794 without additional bond, if in the chancellor's judgment material
795 damage is not likely to result thereby; but otherwise, the
796 chancellor shall require a supersedeas bond as the chancellor
797 deems proper, which shall be liable to the state for any damage.

798 **SECTION 12.** Section 25-43-5, Mississippi Code of 1972, is
799 amended as follows:

800 25-43-5. (1) In addition to other rule-making authority and
801 requirements imposed by law, each agency shall:

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

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

813 (c) Allow public inspection of all rules and other
814 written statements of policy or interpretations formulated,
815 adopted or used by the agency in the discharge of its functions.

816 (d) Allow public inspection of all final orders,
817 decisions and opinions.

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

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

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

829 25-43-7. (1) Prior to the adoption, amendment or repeal of
830 any rule, the agency shall give at least thirty (30) days' notice
831 of its intended action. The notice shall include a statement of
832 either the terms or substance of the intended action or a
833 description of the subjects and issues involved, and the manner in
834 which interested persons may present their views thereon. The
835 notice shall be filed with the office of the Secretary Of State
836 and mailed by the agency to all persons who have made timely
837 request of the agency for advance notice of its rule-making
838 proceedings. The Secretary Of State shall furnish copies at the
839 request of any person and shall be reimbursed by the requesting
840 person for the expense of providing such service.

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

849 the adoption of an identical rule under subsection (1) of this
850 section is not precluded.

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

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

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