

By: Representative Franks

To: Conservation and Water Resources; Judiciary A

HOUSE BILL NO. 1534

1 AN ACT TO AMEND SECTION 49-17-29, MISSISSIPPI CODE OF 1972,
2 TO REVISE APPELLATE REVIEW OF CERTAIN ADMINISTRATIVE ACTIONS OF
3 THE PERMIT BOARD OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY; TO
4 AMEND SECTION 49-17-41, MISSISSIPPI CODE OF 1972, TO REVISE
5 APPELLATE REVIEW OF CERTAIN ADMINISTRATIVE ACTIONS OF THE
6 COMMISSION ON ENVIRONMENTAL QUALITY; AND FOR RELATED PURPOSES.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

157 (f) The Permit Board shall not issue any permit for a
158 new swine concentrated animal feeding operation or the expansion
159 of an existing swine concentrated animal feeding operation before
160 January 1, 2000, unless the department received the application
161 for that operation's new or modified permit before February 28,

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

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

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

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

206 (b) Within sixty (60) days after the date the Permit
207 Board takes action upon permit issuance, reissuance, denial,
208 modification or revocation, as recorded in the minutes of the
209 Permit Board, any interested party aggrieved by that action may
210 file a petition for a * * * hearing de novo before the chancery
211 court of the county of the situs in whole or in part of the
212 subject matter. The chancery court shall always be deemed open
213 for hearing under this subsection and the chancellor may hear the
214 same in term time or in vacation at any place in the chancellor's
215 district, and the appeal shall have precedence over all civil
216 cases, except election contests. The appellant shall give a cost
217 bond with sufficient sureties, payable to the state in the sum of
218 not less than One Hundred Dollars (\$100.00) nor more than Five
219 Hundred Dollars (\$500.00), to be fixed by the chancellor. An
220 appeal to the chancery court as provided in this section shall not
221 stay the decision of the Permit Board. An interested party is any
222 person claiming an interest relating to the property or project
223 which is the subject of the permit action, and who is so situated
224 that the person may be affected by the disposition of that action.

225 The hearing de novo shall be conducted in accordance with the
226 Mississippi Rules on Civil Procedure.

227 * * *

228 Upon conclusion of the * * * hearing, the court shall
229 enter * * * its * * * decision affirming, modifying or reversing
230 the decision of the Permit Board to issue, reissue, deny, modify
231 or revoke a permit, specifying the findings of fact and
232 conclusions of law supporting its decision. That decision * * *
233 shall be final unless an appeal, as provided in this section, is
234 taken to the Supreme Court within sixty (60) days following the
235 date the decision is entered.

236 (c) Within sixty (60) days after the entry of the
237 decision of the chancery court under this subsection * * *, any
238 person aggrieved of that action may appeal the action as provided
239 in subsection (5) of this section.

240 (5) (a) Appeals from any decision of the chancery court
241 shall be * * * to the Supreme Court as provided in this
242 subsection.

243 (b) Any person who is aggrieved by any decision of the
244 chancery court issuing, reissuing, denying, revoking or modifying
245 a permit after a * * * hearing de novo may appeal that decision
246 within the period specified in subsection (4)(c) of this section
247 to the Supreme Court. The appellant shall give a cost bond with
248 sufficient sureties, payable to the state in the sum of not less
249 than One Hundred Dollars (\$100.00) nor more than Five Hundred
250 Dollars (\$500.00), to be fixed by the chancellor and to be filed
251 with and approved by the chancery clerk, who shall forthwith
252 certify the filing of the bond together with a certified copy of
253 the record * * * in the matter to the Supreme Court, which shall
254 thereupon become the record of the cause. * * * Appeal to the
255 Supreme Court as provided in this section shall not stay the
256 chancellor's decision * * *. The aggrieved party may, within
257 sixty (60) days following the entry of the chancellor's
258 decision * * * petition the Supreme Court for an appeal with
259 supersedeas and the court shall grant a hearing on that petition.
260 Upon good cause shown, the court may grant that appeal with

261 supersedeas. If granted, the appellant shall be required to post
262 a bond with sufficient sureties according to law in an amount to
263 be determined by the court. Appeals shall be considered only upon
264 the record as made in the court below. * * * The Supreme Court
265 shall review all questions of law and of fact. If no prejudicial
266 error is found, the matter shall be affirmed. If prejudicial
267 error is found the decision of the chancellor shall be reversed
268 and the Supreme Court shall remand the matter to the Permit Board
269 for appropriate action as may be indicated or necessary under the
270 circumstances. Appeals may be taken from the chancery court to
271 the Supreme Court in the manner as now required by law, except
272 that if a supersedeas is desired by the party appealing * * *,
273 that party may apply for a supersedeas * * * without additional
274 bond, if in the court's judgment material damage is not likely to
275 result thereby; but otherwise, the court shall require a
276 supersedeas bond as the court deems proper, which shall be liable
277 to the state for any damage.

278 **SECTION 2.** Section 49-17-41, Mississippi Code of 1972, is
279 amended as follows:

280 49-17-41. In addition to any other remedies that might now
281 be available, any person or interested party aggrieved by any
282 order of the commission or the executive director shall have a
283 right to file a sworn petition with the chancery court of the
284 county of the situs in whole or in part of the subject matter
285 within sixty (60) days after the order was issued setting forth
286 the grounds and reasons for his complaint and asking for a hearing
287 of the matter involved. The chancery court shall always be deemed
288 open for hearing under this subsection and the chancellor may hear
289 the same in termtime or in vacation at any place in the
290 chancellor's district, and the appeal shall have precedence over
291 all civil cases, except election contests. The appellant shall
292 give a cost bond with sufficient sureties, payable to the state in
293 the sum of not less than One Hundred Dollars (\$100.00) nor more

294 than Five Hundred Dollars (\$500.00), to be fixed by the
295 chancellor.

296 The hearing de novo shall be conducted in accordance with the
297 Mississippi Rules on Civil Procedure.

298 Following such hearing, the final order of determination of
299 the chancellor upon such matters shall be conclusive, unless the
300 petitioner, or such other interested party appearing at the
301 hearing, shall, within fifteen (15) days after the entry of the
302 final order was made, appeal to the Supreme Court by giving a cost
303 bond with sufficient sureties, payable to the state in the sum of
304 not less than One Hundred Dollars (\$100.00) nor more than Five
305 Hundred Dollars (\$500.00), to be fixed in the order appealed from,
306 to be filed with the chancery clerk, who shall forthwith certify
307 the same together with a certified copy of the record * * * in the
308 matter to the Supreme Court, which shall thereupon become the
309 record of the cause. An appeal to the Supreme Court as provided
310 herein shall not stay the execution of an order * * *. Any party
311 aggrieved by the decision of the chancery court may * * * petition
312 the Supreme Court for an appeal with supersedeas, and the court
313 shall grant a hearing on said petition and upon good cause shown
314 may grant said appeal with supersedeas; the appellant shall be
315 required to post a bond with sufficient sureties according to law
316 in an amount to be determined by the court. Appeals shall be
317 considered only upon the record as made before the court below.

318 * * * The Supreme Court shall review all questions of law and of
319 fact. If no prejudicial error be found, the matter shall be
320 affirmed and remanded to the commission for enforcement. If
321 prejudicial error be found, the same shall be reversed and
322 the * * * court shall remand the matter to the commission for
323 appropriate action as may be indicated or necessary under the
324 circumstances. Appeals may be taken from the chancery court to
325 the Supreme Court in the manner as now required by law, except
326 that if a supersedeas is desired by the party appealing, that

327 party may apply for a supersedeas, without additional bond, if in
328 the court's judgment material damage is not likely to result
329 thereby, but otherwise he shall require such supersedeas bond as
330 the court deems proper, which shall be liable to the state for
331 such damage.

332 **SECTION 3.** This act shall take effect and be in force from
333 and after July 1, 2005.