

By: Representative Whittington

To: Conservation and Water
Resources

HOUSE BILL NO. 436

1 AN ACT TO AUTHORIZE THE MISSISSIPPI COMMISSION ON
 2 ENVIRONMENTAL QUALITY TO ESTABLISH FEES NECESSARY TO DEFRAY THE
 3 COSTS OF OPERATION OF THE COMMISSION, THE MISSISSIPPI
 4 ENVIRONMENTAL QUALITY PERMIT BOARD AND THE MISSISSIPPI DEPARTMENT
 5 OF ENVIRONMENTAL QUALITY; TO CREATE THE DEPARTMENT OF
 6 ENVIRONMENTAL QUALITY PROGRAM FUND; TO AMEND SECTIONS 51-3-31,
 7 51-5-1, 53-7-21, 53-7-25 AND 53-7-69, MISSISSIPPI CODE OF 1972, TO
 8 ALLOW THE COMMISSION TO SET PROGRAM FEES AND TO DIRECT FEES TO THE
 9 DEPARTMENT OF ENVIRONMENTAL QUALITY PROGRAM FUND; TO BRING FORWARD
 10 SECTION 53-7-43, MISSISSIPPI CODE OF 1972, WHICH PROVIDES FOR
 11 APPLICATIONS FOR THE MODIFICATION, TRANSFER OR REISSUANCE OF ANY
 12 SURFACE MINING PERMIT, FOR PURPOSES OF AMENDMENT; TO REPEAL
 13 SECTION 49-31-25, MISSISSIPPI CODE OF 1972, WHICH ESTABLISHES
 14 MULTIMEDIA POLLUTION PREVENTION FEES; AND FOR RELATED PURPOSES.

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

16 **SECTION 1.** (1) The Commission on Environmental Quality may
 17 establish and collect fees sufficient to cover all reasonable
 18 direct and indirect costs associated with the development and
 19 administration of all programs and activities within the
 20 jurisdiction of the commission, the Mississippi Department of
 21 Environmental Quality or the Mississippi Environmental Quality
 22 Permit Board. These fees shall be set by the commission at an
 23 amount not to exceed the expenses borne by the state, exclusive of
 24 federal funding, in carrying out the duties of the commission,
 25 department and permit board. The commission may assess fees
 26 either as an annual amount to be paid by a facility or person or
 27 as amounts reflecting the costs of programs. The commission shall
 28 review and, if necessary, revise its fees at least once each year.
 29 The commission may establish fees by order or by regulation.

30 (2) In adopting a fee schedule, the commission shall use
 31 graduated fees to reflect at a minimum, the following factors:

32 (a) The amount of fees remaining in the Department of
 33 Environmental Quality Program Fund at the end of each fiscal year

34 that are available to be credited against the costs of a program;
35 and

36 (b) The types and volume of wastes or emissions, type
37 of facility, population served and any other factors determined
38 necessary to fairly apportion fees to ensure that smaller
39 generators and businesses do not bear an inordinate share of the
40 costs of a program.

41 (3) Any person required to pay fees established by the
42 commission may petition the commission for a hearing as provided
43 under Section 49-17-35.

44 (4) The commission shall file a report by July 31 of each
45 year with the Governor, the Lieutenant Governor and the Speaker of
46 the House describing the type and amount of fees collected and the
47 ratio of general fund appropriations to environmental fees for
48 the preceding fiscal year.

49 (5) It is the intent of the Legislature that fees collected
50 pursuant to this section shall not supplant or reduce in any way
51 the general fund appropriation to the Department of Environmental
52 Quality.

53 (6) The commission shall deposit all fees collected under
54 this section into the "Department of Environmental Quality Program
55 Fund."

56 **SECTION 2.** (1) There is created in the State Treasury a
57 special trust fund to be designated as the "Department of
58 Environmental Quality Program Fund," hereinafter referred to in
59 this section as the "fund." Interest earned on the principal
60 therein shall be credited by the Treasurer to the fund. Monies in
61 the fund at the end of the fiscal year shall be retained in the
62 fund for use in the next succeeding fiscal year. The fund may
63 receive monies from any available public or private source,
64 including, but not limited to, collection of fees, interest,
65 grants, public and private donations, and judicial actions.

66 (2) The commission and the department shall administer the
67 fund as provided in Section 7-7-3.

68 (3) The commission is authorized to utilize any monies in
69 the fund to support the exercise of the powers and duties of the
70 commission, the department and its executive director, and the
71 permit board as set forth in statute. The commission may delegate
72 to the executive director the authority to make expenditures of
73 the fund.

74 **SECTION 3.** The commission may take any administrative or
75 legal action necessary to collect any fee owed to the commission
76 and to collect attorney's fees and costs related to the collection
77 of any fee. The commission may, by regulation or order, impose a
78 late fee for any fee not paid to the commission in a timely
79 fashion and may issue an order directing the holder of a permit
80 who has not paid its fees within ninety (90) days of the fee due
81 date to cease and desist its operations under the permit. The
82 commission may adopt regulations allowing the Mississippi
83 Environmental Quality Permit Board to revoke any permit for which
84 fees due under commission regulations have not been paid within
85 ninety (90) days of the due date.

86 **SECTION 4.** Section 51-3-31, Mississippi Code of 1972, is
87 amended as follows:

88 51-3-31. Any person desiring to use water for a beneficial
89 purpose shall apply to the board for a permit for such use on a
90 form prescribed by the board for such purpose. The * * *
91 application shall provide such information as deemed appropriate
92 by the board to its decision to issue such permit.

93 * * *

94 **SECTION 5.** Section 51-5-1, Mississippi Code of 1972, is
95 amended as follows:

96 51-5-1. (1) Every person, firm and corporation desiring to
97 engage in the business of drilling wells for underground water in
98 the State of Mississippi shall file an application with the State

99 Board of Water Commissioners for a drilling license, using forms
100 prepared by the board, setting out qualifications therefor and
101 such other information, including any examination, oral or
102 written, as may be required by the board. * * *

103 (2) All licenses shall expire on June 30 of each year and
104 shall not be transferable and shall be renewable annually, without
105 qualifying examination, upon payment of the required fee. * * *

106 (3) Nothing in this chapter shall prevent a person who has
107 not obtained a license pursuant thereto from constructing a water
108 well on his own or leased property intended for use only in a
109 single family house which is his permanent residence, or intended
110 for use only for watering livestock on his farm, and where the
111 waters to be produced are not intended for use by the public or
112 any residence other than his own. However, such person shall
113 comply with all rules and regulations as to the construction of
114 wells as set out by the provisions of this chapter.

115 (4) This section shall not apply to any person who performs
116 labor or services at the direction and under the personal
117 supervision of a licensed well contractor.

118 (5) A license may be renewed and shall be renewable without
119 examination for the ensuing year by making an application not
120 later than the expiration date and paying the applicable fee.
121 Such application shall have the effect of extending the validity
122 of the current license until the new license is received or the
123 applicant is notified by the board that it has refused his
124 license. On application made after June 30 of each year, the
125 license will be renewed only upon payment of the applicable fee,
126 plus a penalty of Ten Dollars (\$10.00) for each month or fraction
127 thereof the application is delinquent. Delinquency in excess of
128 one (1) year may, in the discretion of the State Board of Water
129 Commissioners, be deemed as a waiver of the driller's right for
130 renewal; and if he should apply thereafter, the board may require

131 that he be considered as a new applicant, including the
132 requirement for examination.

133 (6) Any person whose license has been revoked may, upon
134 application for a new license, be required, in the discretion of
135 the board, to take the examination and in all other ways be
136 considered as a new applicant.

137 **SECTION 6.** Section 53-7-21, Mississippi Code of 1972, is
138 amended as follows:

139 53-7-21. (1) Unless exempted under Section 53-7-7, no
140 operator shall engage in surface mining without having first
141 obtained coverage under a general permit or having obtained from
142 the Permit Board a permit for each operation. The permit or
143 coverage under a general permit shall authorize the operator to
144 engage in surface mining upon the area of land described in the
145 application for a period of either five (5) years or longer period
146 of time as deemed appropriate by the Permit Board from the date of
147 issuance or until reclamation of the affected area is completed
148 and the reclamation bond is finally released, whichever comes
149 first.

150 (2) Each operator holding a permit shall annually, before
151 the anniversary date of the permit, file with the department a
152 certificate of compliance in which the operator, under oath, shall
153 declare that the operator is following the approved mining and
154 reclamation plan and is abiding by this chapter and the rules and
155 regulations adopted under this chapter. The commission may
156 establish a fee for filing the certificate of compliance.

157 **SECTION 7.** Section 53-7-25, Mississippi Code of 1972, is
158 amended as follows:

159 53-7-25. (1) Each application for a surface mining permit
160 and for coverage under a general permit shall be accompanied by an
161 application fee established by the commission. * * * The
162 commission, in considering regulations on the fee schedule, may
163 recognize the difference in the various materials, taking into

164 consideration the commercial value of the material and the nature
165 and size of operation necessary to extract it.

166 * * *

167 (2) Upon submission of the certificate of compliance
168 required under Section 53-7-21, each operator shall pay a fee of
169 Fifty Dollars (\$50.00).

170 **SECTION 8.** Section 53-7-69, Mississippi Code of 1972, is
171 amended as follows:

172 53-7-69. (1) There is created in the State Treasury a fund
173 to be designated as the "Surface Mining and Reclamation Fund,"
174 referred to hereinafter as the "fund." There is created in the
175 fund an account designated as the "Land Reclamation Account" and
176 an account designated as the "Surface Mining Program Operations
177 Account."

178 (2) The fund shall be treated as a special trust fund.
179 Interest earned on the principal therein shall be credited by the
180 Treasurer to the fund.

181 (3) The fund may receive monies from any available public or
182 private sources, including, but not limited to, collection of
183 fees, interest, grants, taxes, public and private donations,
184 judicial actions, penalties and forfeited performance bonds. Any
185 monies received from penalties, forfeited performance bonds,
186 judicial actions and the interest thereon, less enforcement and
187 collection costs, shall be credited to the Land Reclamation
188 Account. Any monies received from the collection of * * * grants,
189 taxes, public or private donations and the interest thereon shall
190 be credited to the Surface Mining Program Operations Account. All
191 fees collected shall be deposited in the Department of
192 Environmental Quality Program Fund.

193 (4) The commission shall expend or utilize monies in the
194 fund by an annual appropriation by the Legislature as provided
195 herein. Monies in the Land Reclamation Account may be used to
196 defray any costs of reclamation of land affected by mining

197 operations. Monies in the Surface Mining Program Operations
198 Account may be used to defray the reasonable direct and indirect
199 costs associated with the administration and enforcement of this
200 chapter.

201 (5) Proceeds from the forfeiture of performance bonds or
202 deposits and penalties recovered shall be available to be expended
203 to reclaim, in accordance with this chapter, lands with respect to
204 which the performance bonds or deposits were provided and
205 penalties assessed. If the commission expends monies from the
206 fund for which the cost of reclamation exceeded the proceeds from
207 the forfeiture of performance bonds or deposits, the commission
208 may seek to recover any monies expended from the fund from any
209 responsible party.

210 **SECTION 9.** Section 53-7-43, Mississippi Code of 1972, is
211 brought forward as follows:

212 53-7-43. (1) Applications for the modification, transfer or
213 reissuance of any surface mining permit issued under this chapter
214 may be filed with the department. The Permit Board may modify any
215 surface mining permit to increase or decrease the permit area and
216 shall require an increase in the performance bond and a modified
217 reclamation plan for any expanded area.

218 (2) Any permit issued under this chapter shall carry with it
219 the right of successive reissuance upon expiration for areas
220 within the boundaries of the existing permit. The operator may
221 apply for reissuance and that permit shall be reissued, except as
222 provided in this subsection. On application for reissuance the
223 burden of proving that the permit should not be reissued shall be
224 on the opponents of reissuance or the department. If the
225 opponents to reissuance or the department establish and the Permit
226 Board finds, in writing, that the operator is not satisfactorily
227 meeting the terms and conditions of the existing permit or the
228 present surface mining and reclamation operation is not in

229 compliance with this chapter and the rules and regulations issued
230 under this chapter, the Permit Board shall not reissue the permit.

231 (3) Any permit reissuance shall be for a term not to exceed
232 the term of the original permit established by this chapter.
233 Application for permit reissuance shall be filed with the Permit
234 Board at least sixty (60) days before the expiration of the
235 permit. If an application for reissuance is timely filed, the
236 operator may continue surface mining operations under the existing
237 permit until the Permit Board takes action on the reissuance
238 application.

239 **SECTION 10.** Section 49-31-25, Mississippi Code of 1972,
240 which establishes the multimedia pollution prevention fee, is
241 repealed.

242 **SECTION 11.** This act shall take effect and be in force from
243 and after July 1, 2006.