

By: Representative Reeves

To: Oil, Gas and Other
Minerals

HOUSE BILL NO. 46

1 AN ACT TO BRING FORWARD FOR THE PURPOSES OF AMENDMENT
2 SECTIONS 29-7-1, 29-7-3, 29-7-17, 29-7-19, 29-7-21 AND 27-29-35,
3 MISSISSIPPI CODE OF 1972, WHICH RELATE TO THE MINERAL LEASE
4 COMMISSION; TO AMEND SECTION 49-2-7, MISSISSIPPI CODE OF 1972, TO
5 PROVIDE THAT THE OFFICE OF GEOLOGY WITHIN THE DEPARTMENT OF
6 ENVIRONMENTAL QUALITY SHALL BE TRANSFERRED TO THE MISSISSIPPI
7 DEVELOPMENT AUTHORITY; TO AMEND SECTIONS 29-7-3, 49-2-9, 49-17-28,
8 53-7-5 AND 53-9-105, MISSISSIPPI CODE OF 1972, IN CONFORMITY; TO
9 BRING FORWARD FOR THE PURPOSES OF AMENDMENT SECTION 49-2-16,
10 MISSISSIPPI CODE OF 1972, WHICH PROVIDES FOR THE QUALIFICATIONS OF
11 THE HEAD OF THE OFFICE OF GEOLOGY AND ENERGY RESOURCES; TO BRING
12 FORWARD FOR THE PURPOSES OF AMENDMENT SECTION 53-7-41, MISSISSIPPI
13 CODE OF 1972, WHICH PROVIDES FOR THE AUTHORITY OF THE PERMIT BOARD
14 FOR THE SURFACE MINING AND RECLAMATION OF LAND; TO BRING FORWARD
15 FOR THE PURPOSES OF AMENDMENT SECTION 53-9-7, MISSISSIPPI CODE OF
16 1972, WHICH IS THE DEFINITION SECTION OF THE MISSISSIPPI SURFACE
17 COAL MINING AND RECLAMATION LAW; AND FOR RELATED PURPOSES.

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

19 **SECTION 1.** Section 29-7-1, Mississippi Code of 1972, is
20 brought forward as follows:

21 29-7-1. (1) The Mississippi Major Economic Impact Authority
22 shall be the mineral lease commission, and shall exercise the
23 duties and responsibilities of the mineral lease commission under
24 the provisions of Section 29-7-1 et seq.

25 (2) The words "mineral lease commission," whenever they may
26 appear in the laws of the State of Mississippi, shall be construed
27 to mean the Mississippi Major Economic Impact Authority.

28 (3) The term "commission" means the Mississippi Major
29 Economic Impact Authority.

30 **SECTION 2.** Section 29-7-3, Mississippi Code of 1972, is
31 brought forward as follows:

32 29-7-3. There shall be no development or extraction of oil,
33 gas, or other minerals from state-owned lands by any private party
34 without first obtaining a mineral lease therefor from the



35 commission. The commission is hereby authorized and empowered,
36 for and on behalf of the state, to lease any and all of the state
37 land now owned (including that submerged or wherever the tide may
38 ebb and flow) or hereafter acquired, to some reputable person,
39 association, or company for oil and/or gas and/or other minerals
40 in and under and which may be produced therefrom, excepting,
41 however, sixteenth section school land, lieu lands, and such
42 forfeited tax land and property the title to which is subject to
43 any lawful redemption, for such consideration and upon such terms
44 and conditions as the commission deems just and proper. No
45 mineral lease of offshore lands shall allow offshore drilling
46 operations north of the coastal barrier islands, except in Blocks
47 40, 41, 42, 43, 63, 64 and 66 through 98, inclusive. Further,
48 surface offshore drilling operations will not be allowed within
49 one (1) mile of Cat Island. The commission may only offer for
50 lease the state-owned lands in Blocks 40, 41, 42, 43, 63, 64 and
51 66 through 98, inclusive, as shown on the Mississippi Department
52 of Environmental Quality Bureau of Geology Plat of Lease Blocks
53 (Open File Report 151) on terms and conditions and for a length of
54 time as determined by the commission. The commission may not
55 lease any lands or submerged lands off the Mississippi Gulf Coast
56 that have been leased by the Department on Marine Resources before
57 January 1, 2004, for any public or private oyster reef lease or
58 any lands or submerged lands within one (1) mile of that lease for
59 the purposes of drilling offshore for oil, gas and other minerals.

60 Consistent with the conservation policies of this state under
61 Section 53-1-1 et seq., the commission may offer for public bid
62 any tracts or blocks of state-owned lands not currently under
63 lease, which have been identified to the commission as having
64 development potential for oil or natural gas, not less than once a
65 year. Upon consultation with the Office of Geology in the
66 Mississippi Department of Environmental Quality, the Secretary of
67 State and any other state agency as the commission deems



68 appropriate, the commission shall promulgate rules and regulations
69 consistent with this chapter governing all aspects of the process
70 of leasing state lands within its jurisdiction for mineral
71 development, including the setting of all terms of the lease form
72 to be used for leasing state-owned lands, any necessary fees,
73 public bidding process, delay rental payments, shut-in royalty
74 payments, and such other provisions as may be required. The
75 Attorney General shall review the lease form adopted by the
76 commission for legal sufficiency.

77 There shall not be conducted any seismographic or other
78 mineral exploration or testing activities on any state-owned lands
79 within the mineral leasing jurisdiction of the commission without
80 first obtaining a permit therefor from the commission. Upon
81 consultation with the Office of Geology in the Mississippi
82 Department of Environmental Quality, the Secretary of State and
83 any other state agency as the commission deems appropriate, the
84 commission shall promulgate rules and regulations governing all
85 aspects of seismographic or other mineral exploration activity on
86 state lands within its jurisdiction, including the establishing of
87 fees and issuance of permits for the conduct of such mineral
88 exploration activities. The Attorney General shall review the
89 permit form adopted by the commission for legal sufficiency.
90 Provided, however, that persons obtaining permits from the
91 commission for seismographic or other mineral exploration or
92 testing activities on state-owned wildlife management areas, lakes
93 and fish hatcheries, shall be subject to rules and regulations
94 promulgated therefor by the Mississippi Commission on Wildlife,
95 Fisheries and Parks which shall also receive all permit fees for
96 such testing on said lands. In addition, persons obtaining
97 permits from the commission for seismographic or other mineral
98 exploration or testing activities on state-owned marine waters
99 shall be subject to rules and regulations promulgated therefor by



100 the Mississippi Department on Marine Resources which shall also
101 receive all permit fees for such testing on those waters.

102 Further, provided that each permit within the Mississippi
103 Sound or tidelands shall be reviewed by the Mississippi Commission
104 on Marine Resources and such special conditions as it may specify
105 will be included in the permit. Information or data obtained in
106 any mineral exploration activity on any and all state lands shall
107 be disclosed to the state through the commission, upon demand.
108 Such information or data shall be treated as confidential for a
109 period of ten (10) years from the date of receipt thereof and
110 shall not be disclosed to the public or to any firm, individual or
111 agency other than officials or authorized employees of this state.
112 Any person who makes unauthorized disclosure of such confidential
113 information or data shall be guilty of a misdemeanor, and upon
114 conviction thereof, be fined not more than Five Thousand Dollars
115 (\$5,000.00) or imprisoned in the county jail not more than one (1)
116 year, or both.

117 Whenever any such land or property is leased for oil and gas
118 and/or other minerals, such lease contract shall provide for a
119 lease royalty to the state of at least three-sixteenths (3/16) of
120 such oil and gas or other minerals, same to be paid in the manner
121 prescribed by the commission. Of the monies received in
122 connection with the execution of such leases, five-tenths of one
123 percent (5/10 of 1%) shall be retained in a special fund to be
124 appropriated by the Legislature, One Hundred Thousand Dollars
125 (\$100,000.00) of which amount to be used by the commission for the
126 administration of the leasing and permitting under this section,
127 and the remainder of such amount shall be deposited into the
128 Education Trust Fund, created in Section 206A, Mississippi
129 Constitution of 1890; and two percent (2%) shall be paid into a
130 special fund to be designated as the "Gulf and Wildlife Protection
131 Fund," to be appropriated by the Legislature, one-half (1/2)
132 thereof to be apportioned as follows: an amount which shall not



133 exceed One Million Dollars (\$1,000,000.00) shall be used by the
134 Mississippi Department of Wildlife, Fisheries and Parks and the
135 Mississippi Department on Marine Resources solely for the purpose
136 of cleanup, remedial or abatement actions involving pollution as a
137 result of the exploration or production of oil or gas, and any
138 amount in excess of such One Million Dollars (\$1,000,000.00) shall
139 be deposited into the Education Trust Fund, created in Section
140 206A, Mississippi Constitution of 1890. The remaining one-half
141 (1/2) of such Gulf and Wildlife Protection Fund to be apportioned
142 as follows: an amount which shall not exceed One Million Dollars
143 (\$1,000,000.00) shall be used by the Mississippi Commission on
144 Wildlife, Fisheries and Parks and the Mississippi Department on
145 Marine Resources for use first in the prudent management,
146 preservation, protection and conservation of existing waters,
147 lands and wildlife of this state and then, provided such purposes
148 are accomplished, for the acquisition of additional waters and
149 lands and any amount in excess of such One Million Dollars
150 (\$1,000,000.00) shall be deposited into the Education Trust Fund,
151 created in Section 206A, Mississippi Constitution of 1890.
152 However, in the event that the Legislature is not in session to
153 appropriate funds from the Gulf and Wildlife Protection Fund for
154 the purpose of cleanup, remedial or abatement actions involving
155 pollution as a result of the exploration or production of oil or
156 gas, then the Mississippi Department of Wildlife, Fisheries and
157 Parks and the Mississippi Department on Marine Resources may make
158 expenditures from this special fund account solely for said
159 purpose. The commission may lease the submerged beds for sand and
160 gravel on such a basis as it may deem proper, but where the waters
161 lie between this state and an adjoining state, there must be a
162 cash realization to this state, including taxes paid for such sand
163 and gravel, equal to that being had by such adjoining state, in
164 all cases the requisite consents therefor being lawfully obtained
165 from the United States.



166 The Department of Environmental Quality is authorized to
167 employ competent engineering personnel to survey the territorial
168 waters of this state in the Mississippi Sound and the Gulf of
169 Mexico and to prepare a map or plat of such territorial waters,
170 divided into blocks of not more than six thousand (6,000) acres
171 each with coordinates and reference points based upon longitude
172 and latitude surveys. The commission is authorized to adopt such
173 survey, plat or map for leasing of such submerged lands for
174 mineral development; and such leases may, after the adoption of
175 such plat or map, be made by reference to the map or plat, which
176 shall be on permanent file with the commission and a copy thereof
177 on file in the Office of the State Oil and Gas Board.

178 **SECTION 3.** Section 29-7-17, Mississippi Code of 1972, is
179 brought forward as follows:

180 29-7-17. (1) Any person found by the commission to be
181 violating any of the provisions of Section 29-7-3, or any rule or
182 regulation or written order of the commission in pursuance
183 thereof, or any condition or limitation of a permit shall be
184 subject to a civil penalty of not more than Ten Thousand Dollars
185 (\$10,000.00) for each violation, such penalty to be assessed and
186 levied by the commission after a hearing as hereinafter provided.
187 Each day upon which a violation occurs shall be deemed a separate
188 and additional violation. Appeals from the imposition of a civil
189 penalty may be taken to the appropriate chancery court in the same
190 manner as appeals from the orders of the commission. If the
191 appellant desires to stay the execution of a civil penalty
192 assessed by the commission, he shall give bond with sufficient
193 resident sureties of one or more guaranty or surety companies
194 authorized to do business in this state, payable to the State of
195 Mississippi, in an amount equal to double the amount of any civil
196 penalty assessed by the commission, as to which the stay of
197 execution is desired, on the condition that if the judgment shall



198 be affirmed the appellant shall pay all costs of the assessment
199 entered against him.

200 (2) In lieu of, or in addition to, the penalty provided in
201 subsection (1) of this section, the commission shall have power to
202 institute and maintain in the name of the state any and all
203 proceedings necessary or appropriate to enforce the provisions of
204 Section 29-7-3, rules and regulations promulgated, and orders and
205 permits made and issued thereunder, in the appropriate circuit,
206 chancery, county or justice court of the county in which venue may
207 lie. The commission may obtain mandatory or prohibitory
208 injunctive relief, either temporary or permanent, and it shall not
209 be necessary in such cases that the state plead or prove: (i)
210 that irreparable damage would result if the injunction did not
211 issue; (ii) that there is no adequate remedy at law; or (iii) that
212 a written complaint or commission order has first been issued for
213 the alleged violation.

214 (3) Any person who violates any of the provisions of, or
215 fails to perform any duty imposed by, Section 29-7-3 or any rule
216 or regulation issued hereunder, or who violates any order or
217 determination of the commission promulgated pursuant to such
218 section, and causes the death of fish, shellfish, or other
219 wildlife shall be liable, in addition to the penalties provided in
220 subsections (1), (2), (4) and (5) of this section, to pay to the
221 state an additional amount equal to the sum of money reasonably
222 necessary to restock such waters or replenish such wildlife as
223 determined by the commission after consultation with the
224 Mississippi Commission on Wildlife, Fisheries and Parks and the
225 Mississippi Department on Marine Resources. Such amount may be
226 recovered by the commission on behalf of the state in a civil
227 action brought in the appropriate county or circuit court of the
228 county in which venue may lie.

229 (4) Any person who, through misadventure, happenstance or
230 otherwise causes damage to or destruction of state-owned lands or



231 structures or other property thereon necessitating remedial or
232 cleanup action shall be liable for the cost of such remedial or
233 cleanup action and the commission may recover the cost of same by
234 a civil action brought in the circuit court of the county in which
235 venue may lie. This penalty may be recovered in lieu of or in
236 addition to the penalties provided in subsections (1), (2), (3)
237 and (5) of this section.

238 (5) It shall be unlawful for any person to conduct
239 unauthorized mineral exploration, development, or extraction
240 activity or to violate the provisions of Section 29-7-3 or the
241 rules and regulations of the commission which relate to mineral
242 exploration, development, or extraction activity and, upon
243 conviction thereof, such person shall be guilty of a misdemeanor,
244 and fined not less than Five Hundred Dollars (\$500.00) nor more
245 than Five Thousand Dollars (\$5,000.00) for each offense. Each day
246 on which such violation occurs or continues shall constitute a
247 separate offense.

248 (6) In lieu of or in addition to the penalties prescribed
249 hereinabove, any person convicted by a court of law or found
250 guilty by the commission of unlawful mineral extraction activity
251 on state-owned lands shall repay to the state the fair market
252 value of the minerals unlawfully extracted.

253 (7) Proceedings before the commission on civil violations
254 prescribed hereinabove shall be conducted in the manner set forth
255 in this chapter.

256 **SECTION 4.** Section 29-7-19, Mississippi Code of 1972, is
257 brought forward as follows:

258 29-7-19. (1) The hearings, as provided under Section
259 29-7-21(1), may be conducted by the commission itself at a regular
260 or special meeting of the commission, or the commission may
261 designate a hearing officer, who may conduct such hearings in the
262 name of the commission at any time and place as conditions and
263 circumstances may warrant. The hearing officer shall have the



264 record prepared of any hearing that he has conducted for the
265 commission. The record shall be submitted to the commission along
266 with that hearing officer's findings of fact and recommended
267 decision. Upon receipt and review of the record of the hearing
268 and the hearing officer's findings of fact and recommended
269 decision, the commission shall render its decision in the matter.
270 The decision shall become final after it is entered on the minutes
271 and shall be considered the final administrative agency decision
272 on the matter. The decision may be appealed under Section
273 29-7-21(2).

274 (2) All hearings before the commission shall be recorded
275 either by a court reporter, tape or mechanical recorders and
276 subject to transcription upon order of the commission or any
277 interested party, but if the request for transcription originates
278 with an interested party, that party shall pay the cost thereof.

279 **SECTION 5.** Section 29-7-21, Mississippi Code of 1972, is
280 brought forward as follows:

281 29-7-21. (1) Any person or interested party aggrieved by
282 any final rule, regulation, permit or order of the commission may
283 file a petition with the commission within thirty (30) days after
284 the final rule, regulation, permit or order is entered on the
285 minutes. The petition shall set forth the grounds and reasons for
286 the complaint and request a hearing of the matter involved.
287 However, there shall be no hearing on the same subject matter that
288 has previously been held before the commission or its designated
289 hearing officer. The commission shall fix the time and place of
290 the hearing and notify the petitioners thereof. In pending
291 matters, the commission shall have the same powers as to
292 subpoenaing witnesses, administering oaths, examining witnesses
293 under oath and conducting the hearing, as is now vested by law in
294 the Mississippi Public Service Commission, as to hearings before
295 it, with the additional power that the executive director may
296 issue all subpoenas, both at the instance of the petitioner and of



297 the commission. At the hearings the petitioner, and any other
298 interested party, may offer exhibits, present witnesses, and
299 otherwise submit evidence, as the commission deems appropriate.
300 After the hearing, the commission's decision shall be deemed the
301 final administrative agency decision on the matter.

302 (2) Any interested person aggrieved by any final rule,
303 regulation, permit or order of the commission issued under this
304 section, regardless of the amount involved, may appeal to the
305 Chancery Court of the First Judicial District of Hinds County,
306 Mississippi, which shall be taken and perfected as hereinafter
307 provided, within thirty (30) days from the date that the final
308 rule, regulation or order is filed for record in the office of the
309 commission. The chancery court may affirm the rule, regulation,
310 permit, or order, or reverse the same for further proceedings as
311 the court may require. All appeals shall be on the record, taken
312 and perfected, heard and determined either in termtime or in
313 vacation, including a transcript of pleadings and testimony, both
314 oral and documentary, filed and heard before the commission, and
315 the appeal shall be heard and disposed of promptly by the court as
316 a preference cause. In perfecting any appeal provided by this
317 section, the provisions of law respecting notice to the reporter
318 and the allowance of bills of exception, now or hereafter in force
319 respecting appeals from the chancery court to the Supreme Court,
320 shall be applicable. However, the reporter shall transcribe his
321 notes and file the transcript of the record with the board within
322 thirty (30) days after approval of the appeal bond.

323 (3) Upon the filing with the commission of a petition for
324 appeal to the Hinds County Chancery Court, it shall be the duty of
325 the commission, as promptly as possible and within sixty (60) days
326 after approval of the appeal bond, if required, to file with the
327 clerk of the chancery court to which the appeal is taken, a copy
328 of the petition for appeal and of the rule, regulation, permit or
329 order appealed from, and the original and one (1) copy of the



330 transcript of the record of proceedings in evidence before the
331 commission. After the filing of the petition, the appeal shall be
332 perfected by the filing with the clerk of the chancery court to
333 which the appeal is taken of bond in the sum of Five Hundred
334 Dollars (\$500.00) with two (2) sureties or with a surety company
335 qualified to do business in Mississippi as the surety, conditioned
336 to pay the cost of the appeal; the bond to be approved by any
337 member of the commission, or by the clerk of the court to which
338 the appeal is taken. The perfection of an appeal shall not stay
339 or suspend the operation of any rule, regulation, permit or order
340 of the board, but the judge of the chancery court to which the
341 appeal is taken may award a writ of supersedeas to any rule,
342 regulation, permit or order of the commission after five (5) days'
343 notice to the commission and after hearing. Any order or judgment
344 staying the operation of any rule, regulation, permit or order of
345 the commission shall contain a specific finding, based upon
346 evidence submitted to the chancery judge and identified by
347 reference thereto, that great or irreparable damage would result
348 to the appellant if he is denied relief, and the stay shall not
349 become effective until a supersedeas bond shall have been executed
350 and filed with and approved by the clerk of the court or the
351 chancery judge, payable to the state. The supersedeas bond shall
352 be in an amount fixed by the chancery judge to protect the lessee
353 or permittee from loss or damage from the stay and conditioned as
354 the chancery judge may direct in the order granting the
355 supersedeas. If the appeal is of a commission order concerning
356 the lease of state lands for minerals, that appeal shall be given
357 priority over other matters pending in the chancery court. If the
358 appeal is of a commission permit, that appeal shall be given
359 priority over other matters pending in chancery court.

360 **SECTION 6.** Section 27-29-35, Mississippi Code of 1972, is
361 brought forward as follows:

362 27-29-35. From and after July 1, 2004, the board of
363 supervisors of a county shall reduce the ad valorem taxes levied
364 by the county in an amount equal to one-half (1/2) of the county's
365 share of the revenue derived from the oil and gas severance tax
366 under Sections 27-25-505 and 27-25-705 as a result of offshore
367 drilling on the Mississippi Gulf Coast. From and after July 1,
368 2004, the governing authorities of a municipality shall reduce the
369 ad valorem taxes levied by the municipality in an amount equal to
370 one-half (1/2) of the municipality's share of the revenue derived
371 from the oil and gas severance tax under Sections 27-25-505 and
372 27-25-705 as a result of offshore drilling on the Mississippi Gulf
373 Coast.

374 **SECTION 7.** Section 49-2-7, Mississippi Code of 1972, is
375 amended as follows:

376 49-2-7. (1) The Department of Environmental Quality shall
377 be the Mississippi Department of Natural Resources with the
378 exception of the Office of Parks and Recreation, and shall retain
379 all powers and duties granted by law to the Mississippi Department
380 of Natural Resources with the exception of the Office of Parks and
381 Recreation, and wherever the term "Mississippi Department of
382 Natural Resources" appears in any law the same shall mean the
383 Department of Environmental Quality. The Executive Director of
384 the Department of Environmental Quality may assign to the
385 appropriate offices any powers and duties deemed appropriate to
386 carry out the lawful duties of the department.

387 The department shall be composed of the following offices:

388 * * *

389 (a) Office of Land and Water Resources; and

390 (b) Office of Pollution Control.

391 (2) The Office of Geology and Energy Resources shall be
392 transferred to the Mississippi Development Authority.

393 (3) Each office shall be composed of the administrative
394 units set forth in the consolidation plan adopted by the



395 commission, subject to changes by the executive director, with
396 approval of the commission, as hereinafter set forth.

397 (4) The department is designated as the single state
398 department to receive and expend any federal funds being received
399 or expended by any agency transferred to the department by Chapter
400 484, Laws of 1978, and to receive and expend any federal funds
401 made available for matters within the jurisdiction of the
402 department.

403 (5) The department shall be responsible for conserving,
404 managing, developing and protecting the natural resources of the
405 State of Mississippi within the jurisdiction of the department,
406 with the exception of functions of the Office of Recreation and
407 Parks. The department shall coordinate all functions of state
408 government related to natural resources within the jurisdiction of
409 the department. The department shall not exercise any of its
410 authority or powers granted under the provisions of this section
411 in a manner which would be inconsistent with the provisions of
412 Section 29-1-1.

413 **SECTION 8.** Section 29-7-3, Mississippi Code of 1972, is
414 amended as follows:

415 29-7-3. There shall be no development or extraction of oil,
416 gas, or other minerals from state-owned lands by any private party
417 without first obtaining a mineral lease therefor from the
418 commission. The commission is hereby authorized and empowered,
419 for and on behalf of the state, to lease any and all of the state
420 land now owned (including that submerged or wherever the tide may
421 ebb and flow) or hereafter acquired, to some reputable person,
422 association, or company for oil and/or gas and/or other minerals
423 in and under and which may be produced therefrom, excepting,
424 however, sixteenth section school land, lieu lands, and such
425 forfeited tax land and property the title to which is subject to
426 any lawful redemption, for such consideration and upon such terms
427 and conditions as the commission deems just and proper. No



428 mineral lease of offshore lands shall allow offshore drilling
429 operations north of the coastal barrier islands, except in Blocks
430 40, 41, 42, 43, 63, 64 and 66 through 98, inclusive. Further,
431 surface offshore drilling operations will not be allowed within
432 one (1) mile of Cat Island. The commission may only offer for
433 lease the state-owned lands in Blocks 40, 41, 42, 43, 63, 64 and
434 66 through 98, inclusive, as shown on the Mississippi Department
435 of Environmental Quality Bureau of Geology Plat of Lease Blocks
436 (Open File Report 151) on terms and conditions and for a length of
437 time as determined by the commission. The commission may not
438 lease any lands or submerged lands off the Mississippi Gulf Coast
439 that have been leased by the Department on Marine Resources before
440 January 1, 2004, for any public or private oyster reef lease or
441 any lands or submerged lands within one (1) mile of that lease for
442 the purposes of drilling offshore for oil, gas and other minerals.

443 Consistent with the conservation policies of this state under
444 Section 53-1-1 et seq., the commission may offer for public bid
445 any tracts or blocks of state-owned lands not currently under
446 lease, which have been identified to the commission as having
447 development potential for oil or natural gas, not less than once a
448 year. Upon consultation with the Office of Geology in the
449 Mississippi Development Authority, the Secretary of State and any
450 other state agency as the commission deems appropriate, the
451 commission shall promulgate rules and regulations consistent with
452 this chapter governing all aspects of the process of leasing state
453 lands within its jurisdiction for mineral development, including
454 the setting of all terms of the lease form to be used for leasing
455 state-owned lands, any necessary fees, public bidding process,
456 delay rental payments, shut-in royalty payments, and such other
457 provisions as may be required. The Attorney General shall review
458 the lease form adopted by the commission for legal sufficiency.

459 There shall not be conducted any seismographic or other
460 mineral exploration or testing activities on any state-owned lands



461 within the mineral leasing jurisdiction of the commission without
462 first obtaining a permit therefor from the commission. Upon
463 consultation with the Office of Geology in the Mississippi
464 Development Authority, the Secretary of State and any other state
465 agency as the commission deems appropriate, the commission shall
466 promulgate rules and regulations governing all aspects of
467 seismographic or other mineral exploration activity on state lands
468 within its jurisdiction, including the establishing of fees and
469 issuance of permits for the conduct of such mineral exploration
470 activities. The Attorney General shall review the permit form
471 adopted by the commission for legal sufficiency. Provided,
472 however, that persons obtaining permits from the commission for
473 seismographic or other mineral exploration or testing activities
474 on state-owned wildlife management areas, lakes and fish
475 hatcheries, shall be subject to rules and regulations promulgated
476 therefor by the Mississippi Commission on Wildlife, Fisheries and
477 Parks which shall also receive all permit fees for such testing on
478 said lands. In addition, persons obtaining permits from the
479 commission for seismographic or other mineral exploration or
480 testing activities on state-owned marine waters shall be subject
481 to rules and regulations promulgated therefor by the Mississippi
482 Department on Marine Resources which shall also receive all permit
483 fees for such testing on those waters.

484 Further, provided that each permit within the Mississippi
485 Sound or tidelands shall be reviewed by the Mississippi Commission
486 on Marine Resources and such special conditions as it may specify
487 will be included in the permit. Information or data obtained in
488 any mineral exploration activity on any and all state lands shall
489 be disclosed to the state through the commission, upon demand.
490 Such information or data shall be treated as confidential for a
491 period of ten (10) years from the date of receipt thereof and
492 shall not be disclosed to the public or to any firm, individual or
493 agency other than officials or authorized employees of this state.



494 Any person who makes unauthorized disclosure of such confidential
495 information or data shall be guilty of a misdemeanor, and upon
496 conviction thereof, be fined not more than Five Thousand Dollars
497 (\$5,000.00) or imprisoned in the county jail not more than one (1)
498 year, or both.

499 Whenever any such land or property is leased for oil and gas
500 and/or other minerals, such lease contract shall provide for a
501 lease royalty to the state of at least three-sixteenths (3/16) of
502 such oil and gas or other minerals, same to be paid in the manner
503 prescribed by the commission. Of the monies received in
504 connection with the execution of such leases, five-tenths of one
505 percent (5/10 of 1%) shall be retained in a special fund to be
506 appropriated by the Legislature, One Hundred Thousand Dollars
507 (\$100,000.00) of which amount to be used by the commission for the
508 administration of the leasing and permitting under this section,
509 and the remainder of such amount shall be deposited into the
510 Education Trust Fund, created in Section 206A, Mississippi
511 Constitution of 1890; and two percent (2%) shall be paid into a
512 special fund to be designated as the "Gulf and Wildlife Protection
513 Fund," to be appropriated by the Legislature, one-half (1/2)
514 thereof to be apportioned as follows: an amount which shall not
515 exceed One Million Dollars (\$1,000,000.00) shall be used by the
516 Mississippi Department of Wildlife, Fisheries and Parks and the
517 Mississippi Department on Marine Resources solely for the purpose
518 of cleanup, remedial or abatement actions involving pollution as a
519 result of the exploration or production of oil or gas, and any
520 amount in excess of such One Million Dollars (\$1,000,000.00) shall
521 be deposited into the Education Trust Fund, created in Section
522 206A, Mississippi Constitution of 1890. The remaining one-half
523 (1/2) of such Gulf and Wildlife Protection Fund to be apportioned
524 as follows: an amount which shall not exceed One Million Dollars
525 (\$1,000,000.00) shall be used by the Mississippi Commission on
526 Wildlife, Fisheries and Parks and the Mississippi Department on



527 Marine Resources for use first in the prudent management,
528 preservation, protection and conservation of existing waters,
529 lands and wildlife of this state and then, provided such purposes
530 are accomplished, for the acquisition of additional waters and
531 lands and any amount in excess of such One Million Dollars
532 (\$1,000,000.00) shall be deposited into the Education Trust Fund,
533 created in Section 206A, Mississippi Constitution of 1890.
534 However, in the event that the Legislature is not in session to
535 appropriate funds from the Gulf and Wildlife Protection Fund for
536 the purpose of cleanup, remedial or abatement actions involving
537 pollution as a result of the exploration or production of oil or
538 gas, then the Mississippi Department of Wildlife, Fisheries and
539 Parks and the Mississippi Department on Marine Resources may make
540 expenditures from this special fund account solely for said
541 purpose. The commission may lease the submerged beds for sand and
542 gravel on such a basis as it may deem proper, but where the waters
543 lie between this state and an adjoining state, there must be a
544 cash realization to this state, including taxes paid for such sand
545 and gravel, equal to that being had by such adjoining state, in
546 all cases the requisite consents therefor being lawfully obtained
547 from the United States.

548 The Department of Environmental Quality is authorized to
549 employ competent engineering personnel to survey the territorial
550 waters of this state in the Mississippi Sound and the Gulf of
551 Mexico and to prepare a map or plat of such territorial waters,
552 divided into blocks of not more than six thousand (6,000) acres
553 each with coordinates and reference points based upon longitude
554 and latitude surveys. The commission is authorized to adopt such
555 survey, plat or map for leasing of such submerged lands for
556 mineral development; and such leases may, after the adoption of
557 such plat or map, be made by reference to the map or plat, which
558 shall be on permanent file with the commission and a copy thereof
559 on file in the Office of the State Oil and Gas Board.



560 **SECTION 9.** Section 49-2-9, Mississippi Code of 1972, is
561 amended as follows:

562 49-2-9. (1) Effective July 1, 1979, the commission shall
563 have the following powers and duties:

564 (a) To formulate the policy of the department regarding
565 natural resources within the jurisdiction of the department;

566 (b) To adopt, modify, repeal, and promulgate, after due
567 notice and hearing, and where not otherwise prohibited by federal
568 or state law, to make exceptions to and grant exemptions and
569 variances from, and to enforce rules and regulations implementing
570 or effectuating the powers and duties of the commission under any
571 and all statutes within the commission's jurisdiction, and as the
572 commission may deem necessary to prevent, control and abate
573 existing or potential pollution;

574 (c) To apply for, receive and expend any federal or
575 state funds or contributions, gifts, devises, bequests or funds
576 from any other source;

577 (d) To commission or conduct studies designed to
578 determine alternative methods of managing or using the natural
579 resources of this state, in a manner to insure efficiency and
580 maximum productivity;

581 (e) To enter into, and to authorize the executive
582 director to execute with the approval of the commission,
583 contracts, grants and cooperative agreements with any federal or
584 state agency or subdivision thereof, or any public or private
585 institution located inside or outside the State of Mississippi, or
586 any person, corporation or association in connection with carrying
587 out the provisions of this chapter; but this authority under this
588 chapter and under any and all statutes within the commission's
589 jurisdiction, except those statutes relating to the Bureau of
590 Recreation and Parks, shall not include contracts, grants or
591 cooperative agreements which do not develop data or information
592 usable by the commission, or which provide goods, services or



593 facilities to the commission or any of its bureaus, and shall
594 exclude any monies for special interest groups for purposes of
595 lobbying or otherwise promoting their special interests; and
596 (f) To discharge such other duties, responsibilities
597 and powers as are necessary to implement the provisions of this
598 chapter.

599 (2) The Mississippi Development Authority, Office of Geology
600 and Energy Resources shall be responsible for program management,
601 procurement, development and maintenance of the Mississippi
602 Digital Earth Model, which should include the following seven (7)
603 core data layers of a digital land base computer model of the
604 State of Mississippi:

- 605 (a) Geodetic control;
- 606 (b) Elevation and bathymetry;
- 607 (c) Orthoimagery;
- 608 (d) Hydrography;
- 609 (e) Transportation;
- 610 (f) Government boundaries; and
- 611 (g) Cadastral. With respect to the cadastral layer,
612 the authority and responsibility of the Mississippi Development
613 Authority, Office of Geology and Energy Resources shall be limited
614 to compiling information submitted by counties.

615 For all seven (7) framework layers, the Mississippi
616 Development Authority, Office of Geology and Energy Resources
617 shall be the integrator of data from all sources and the guarantor
618 of data completeness and consistency and shall administer the
619 council's policies and standards for the procurement of remote
620 sensing and geographic information system data by state and local
621 governmental entities.

622 **SECTION 10.** Section 49-17-28, Mississippi Code of 1972, is
623 amended as follows:

624 49-17-28. (1) There is created a Permit Board for the
625 purpose of issuing, reissuing, modifying, revoking or denying,



626 under the conditions, limitations and exemptions prescribed in
627 Section 49-17-29: (a) permits to control or prevent the discharge
628 of contaminants and wastes into the air and waters of the state;
629 (b) permits required under the Solid Wastes Disposal Law of 1974
630 (Title 17, Chapter 17); (c) permits required under Sections 51-3-1
631 through 51-3-55; (d) water quality certifications required by
632 Section 401 of the federal Clean Water Act; and (e) all other
633 permits within the jurisdiction of the Permit Board. The
634 membership of the Permit Board shall be composed of the Chief of
635 the Bureau of Environmental Health of the State Board of Health,
636 or his designee; the Executive Director of the Department of
637 Wildlife, Fisheries and Parks, or his designee; the Head of the
638 Office of Land and Water Resources of the Department of
639 Environmental Quality, or his designee; the Supervisor of the
640 State Oil and Gas Board, or his designee; the Executive Director
641 of the Department of Marine Resources, or his designee; the Head
642 of the Office of Geology and Energy Resources of the Mississippi
643 Development Authority, or his designee; the Commissioner of
644 Agriculture and Commerce, or his designee; a retired professional
645 engineer knowledgeable in the engineering of water wells and water
646 supply systems, to be appointed by the Governor for a term
647 concurrent with that of the Governor and until his successor is
648 appointed and qualified; and a retired water well contractor, to
649 be appointed by the Governor for a term concurrent with that of
650 the Governor and until his successor is appointed and qualified.
651 The retired professional engineer and the retired water well
652 contractor shall only vote on matters pertaining to the Office of
653 Land and Water Resources.

654 (2) Members of the Permit Board who are officers and
655 employees of the state shall receive no compensation for their
656 services on the board, but other board members shall receive per
657 diem compensation as provided in Section 25-3-69. All board
658 members shall be reimbursed for actual and necessary expenses,



659 including mileage, incurred in the performance of their official
660 duties as provided in Section 25-3-41.

661 (3) In implementing the authority granted under this section
662 for the Permit Board to act on water quality certifications
663 required by Section 401 of the federal Clean Water Act, the Permit
664 Board shall authorize the Executive Director of the Department of
665 Environmental Quality to make decisions on issuance, reissuance,
666 denial, modification and revocation of water quality
667 certifications on projects which the department has received no
668 written adverse comments. The Permit Board may authorize the
669 executive director to make decisions on water quality
670 certifications for other projects. A decision of the executive
671 director made under this authority shall be a decision of the
672 Permit Board and shall be subject to a formal hearing and an
673 appeal as provided in Section 49-17-29.

674 **SECTION 11.** Section 53-7-5, Mississippi Code of 1972, is
675 amended as follows:

676 53-7-5. For the purposes of this chapter, the following
677 terms shall have the meanings ascribed in this section, except
678 where the context otherwise requires:

679 (a) "Affected area" means any area from which any
680 materials are removed or are to be removed in a surface mining
681 operation and upon which any materials are to be deposited. The
682 affected area includes all areas affected by the construction of
683 new roads, or the improvement or use of existing roads other than
684 public roads to gain access and to haul materials.

685 (b) "Appeal" means an appeal to an appropriate court of
686 the state taken from a final decision of the Permit Board or
687 commission made after a formal hearing before that body.

688 (c) "As recorded in the minutes of the Permit Board"
689 means the date of the Permit Board meeting at which the action
690 concerned is taken by the Permit Board.



691 (d) "Commission" means the Mississippi Commission on
692 Environmental Quality.

693 (e) "Department" means the Mississippi Development
694 Authority, acting through the Office of Geology and Energy
695 Resources or a successor office.

696 (f) "Executive director" means the Executive Director
697 of the Mississippi Department of Environmental Quality.

698 (g) "Exploration activity" means the disturbance of the
699 surface or subsurface for the purpose of determining the location,
700 quantity or quality of a deposit of any material, except the
701 drilling of test holes or core holes of twelve (12) inches or less
702 in diameter.

703 (h) "Formal hearing" means a hearing on the record, as
704 recorded and transcribed by a court reporter, before the
705 commission or Permit Board where all parties to the hearing are
706 allowed to present witnesses, cross-examine witnesses and present
707 evidence for inclusion into the record, as appropriate under rules
708 promulgated by the commission or Permit Board.

709 (i) "Fund" means the Surface Mining and Reclamation
710 Fund created by Section 53-7-69.

711 (j) "General permit" means general permit as defined in
712 Section 49-17-5.

713 (k) "Highwall" means a wall created by mining having a
714 slope steeper than two (2) to one (1).

715 (l) "Interested party" means interested party as
716 provided under Section 49-17-29.

717 (m) "Material" means bentonite, metallic ore, mineral
718 clay, dolomite, phosphate, sand, gravel, soil, clay, sand clay,
719 clay gravel, stone, chalk, and any other materials designated by
720 the commission.

721 (n) "Nearest approximate original contour" means that
722 surface configuration achieved by backfilling and grading of the
723 surface-mined area so that it substantially resembles the surface



724 configuration of the land before mining and blends into and
725 complements the drainage pattern of the surrounding terrain, with
726 all highwalls, spoil piles and water-collecting depressions
727 eliminated, to the extent practicable, unless contained in an
728 approved reclamation plan.

729 (o) "Operator" means the person that is to engage or
730 that is engaged in a surface mining operation, whether on a
731 permanent, continuous basis, or for a limited period of time and
732 for a specific or ancillary purpose, including any person whose
733 permit or coverage under a general permit has expired or been
734 suspended or revoked.

735 (p) "Overburden" means all materials which are removed
736 to gain access to other materials in the process of surface
737 mining, including the material before or after its removal by
738 surface mining.

739 (q) "Permit" means a permit to conduct surface mining
740 and reclamation operations under this chapter.

741 (r) "Permit area" means all the area designated in the
742 permit application or application for coverage under a general
743 permit and shall include all land affected by the surface mining
744 operations during the term of the permit and may include any
745 contiguous area which the operator proposes to surface mine
746 thereafter.

747 (s) "Permit Board" means the Permit Board created by
748 Section 49-17-28.

749 (t) "Person" means any individual, trust, firm,
750 joint-stock company, public or private corporation, joint venture,
751 partnership, association, cooperative, state, or any agency or
752 institution thereof, municipality, commission, political
753 subdivision of a state or any interstate body, and includes any
754 officer or governing or managing body of any municipality,
755 political subdivision, or the United States or any officer or
756 employee of the United States.



757 (u) "Public hearing" means a public forum organized by
758 the commission, department or Permit Board for the purpose of
759 providing information to the public regarding a surface mining and
760 reclamation operation and at which members of the public are
761 allowed to make comments or ask questions or both of the
762 commission, department or the Permit Board regarding a proposed
763 operation or permit.

764 (v) "Reclamation" means work necessary to restore an
765 area of land affected by surface mining to a useful, productive
766 and beneficial purpose, the entire process being designed to
767 restore the land to a useful, productive and beneficial purpose,
768 suitable and amenable to surrounding land and consistent with
769 local environmental conditions in accordance with the standards
770 set forth in this chapter.

771 (w) "State" means the State of Mississippi.

772 (x) "Spoil pile" means the overburden and other mined
773 waste material as it is piled or deposited in the process of
774 surface mining.

775 (y) "Surface mining" or "mining" means the extraction
776 of materials from the ground or water or from waste or stock piles
777 or from pits or banks or natural occurrences by methods including,
778 but not limited to, strip drift, open pit, contour or auger
779 mining, dredging, placering, quarrying and leaching, and
780 activities related thereto, which will alter the surface.

781 (z) "Surface mining operation" or "operation" means the
782 activities conducted at a mining site, including extraction,
783 storage, processing and shipping of materials and reclamation of
784 the affected area. This term does not include the following: the
785 dredging and removal of oyster shells from navigable bodies of
786 water; the dredging and removal of any materials from the bed of
787 navigable streams, when the activity is regulated and permitted
788 under an individual permit by the United States Corps of
789 Engineers; the extraction of hydrocarbons in a liquid or gaseous



790 state by means of wells, pipe, or other on-site methods; the
791 off-site transportation of materials; exploration activities;
792 construction activities at a construction site; or any other
793 exception adopted by the commission in its regulations.

794 (aa) "Topsoil" means the organic or inorganic matter
795 naturally present on the surface of the earth which has been
796 subjected to and influenced by genetic and environmental factors
797 of parent material, climate, macroorganisms and microorganisms,
798 and topography, all acting over a period of time, and that is
799 necessary for the growth and regeneration of vegetation on the
800 surface of the earth.

801 (bb) "Toxic material" means any substance present in
802 sufficient concentration or amount to cause significant injury or
803 illness to plant, animal, aquatic or human life.

804 **SECTION 12.** Section 53-9-105, Mississippi Code of 1972, is
805 amended as follows:

806 53-9-105. (1) The Mississippi Development Authority,
807 through the Office of Geology, shall establish and maintain a
808 state reclamation program for abandoned mines which complies with
809 Subchapter IV of the federal Surface Mining Control and
810 Reclamation Act of 1977, 30 USCS 1231 through 1243.

811 (2) For any year in which the department intends to conduct
812 abandoned mine lands reclamation with amounts held in the
813 Abandoned Mine Lands Reclamation Account, the executive director
814 shall submit to the secretary an application for the support of
815 the state program and implementation of specific reclamation
816 projects. Such requests shall include information required by the
817 secretary. This may include, but is not limited to:

818 (a) A general description of each proposed project;

819 (b) A priority evaluation of each proposed project;

820 (c) A statement of the estimated benefits in such terms
821 as: number of acres restored, miles of stream improved, acres of
822 surface lands protected from subsidence, population protected from



823 subsidence, air pollution, hazards of mine and coal refuse
824 disposal area fires;

825 (d) An estimate of the cost for each proposed project;

826 (e) In the case of proposed research and demonstration
827 projects, a description of the specific techniques to be evaluated
828 or objective to be attained;

829 (f) An identification of lands or interest therein to
830 be acquired and the estimated cost; and

831 (g) In each year after the first in which a plan is
832 filed, an inventory of each project funded under the previous
833 year's grant. This inventory shall include details of financial
834 expenditures on each project together with a brief description of
835 each project, including project locations, the landowner's name,
836 acreage, and the type of reclamation or abatement performed.

837 (3) The reported costs for each proposed project shall
838 include: actual construction costs, actual operation and
839 maintenance costs of permanent facilities, planning and
840 engineering costs, construction inspection costs, and other
841 necessary administrative expenses.

842 (4) The executive director shall make reports on operations
843 of the reclamation program as required by the secretary or by
844 Congress.

845 (5) The executive director shall at all times accept and
846 consider comments regarding annual grant applications and the
847 eligibility, priority ranking and selection of lands for
848 reclamation. At least thirty (30) days prior to the submission of
849 each annual grant application to the secretary, the executive
850 director shall provide for a public hearing and shall publish a
851 notice regarding the proposed grant application and the public
852 hearing in a newspaper of general circulation in the state. The
853 public notice shall state that a hearing will be held, generally
854 outline the grant application, and solicit comments regarding the
855 application. A listing and identification of all projects



856 included in the grant application shall be mailed to all persons
857 who have requested written notification of the annual grant
858 application and shall be available to any person upon request. At
859 the public hearing for review of an annual grant application, any
860 person may appear before the executive director or his or her
861 designee and be heard on the record. The executive director may
862 receive documentary or other evidence for inclusion in the record.
863 The executive director shall fix a time for the closing of the
864 record and may, in his discretion, receive other comments or
865 evidence that he deems appropriate after the public hearing and
866 before the closing of the record. A copy of the record shall be
867 included with the grant application to the secretary.

868 (6) The state shall not be liable under any provision of
869 federal law for any costs or damages as a result of action taken
870 or omitted in the course of carrying out the state reclamation
871 program approved by the secretary. This subsection shall not
872 preclude liability for costs or damages as a result of gross
873 negligence or intentional misconduct by the state. Reckless,
874 willful or wanton misconduct shall constitute gross negligence.
875 However, nothing in this subsection shall be deemed to waive any
876 immunity provided by Mississippi law to the state or its
877 employees, or to waive the protection afforded the state by the
878 Eleventh Amendment to the United States Constitution.

879 **SECTION 13.** Section 49-2-16, Mississippi Code of 1972, is
880 brought forward as follows:

881 49-2-16. (1) The head of the Office of Geology and Energy
882 Resources shall be a geologist, petroleum engineer or energy
883 engineer of established reputation with a minimum of a bachelor's
884 degree in geology, petroleum engineering or energy engineering or
885 a field related thereto.

886 (2) The head of the Office of Land and Water Resources shall
887 possess a minimum of six (6) years' experience in a field related
888 to the bureau's function.



889 (3) The head of the Division of State Land and Water
890 Resources of the Office of Land and Water Resources shall have six
891 (6) years' experience in hydraulics and hydrology.

892 (4) The head of the Division of Regional Water Resources of
893 the Office of Land and Water Resources shall have a minimum of six
894 (6) years' experience in a field related to the division's
895 function.

896 (5) The head of the Office of Pollution Control shall have a
897 minimum of six (6) years' experience in a field related to
898 pollution control.

899 **SECTION 14.** Section 53-7-41, Mississippi Code of 1972, is
900 brought forward as follows:

901 53-7-41. (1) The Permit Board, based upon the provisions of
902 this chapter, may issue, reissue, deny, modify, revoke, cancel,
903 rescind, suspend or transfer a permit for a surface mining
904 operation. The head of the Office of Geology and Energy Resources
905 shall abstain in any action taken by the Permit Board under this
906 chapter.

907 (2) The Permit Board shall issue a permit if the Permit
908 Board determines that the applicant and completed application
909 comply with the requirements of this chapter.

910 (3) The Permit Board may deny a permit if:

911 (a) The Permit Board finds that the reclamation as
912 required by this chapter cannot be accomplished by means of the
913 proposed reclamation plan;

914 (b) Any part of the proposed operation lies within an
915 area designated as unsuitable for surface mining as designated by
916 Section 53-7-49 or 53-7-51;

917 (c) The Permit Board finds that the proposed mining
918 operation will cause pollution of any water of the state or of the
919 ambient air of the state in violation of applicable state and
920 federal laws and regulations;



921 (d) The applicant has had any other permit issued under
922 this chapter revoked, or any bond or deposit posted to comply with
923 this chapter forfeited, and the conditions causing the permit to
924 be revoked or the bond or deposit to be forfeited have not been
925 corrected to the satisfaction of the Permit Board;

926 (e) The Permit Board determines that the proposed
927 operation will endanger the health and safety of the public or
928 will create imminent environmental harm;

929 (f) The operation will likely adversely affect any
930 public highway or road unless the operation is intended to
931 stabilize or repair the public road or highway; or

932 (g) The applicant is unable to meet the public
933 liability insurance or performance bonding requirements of this
934 chapter.

935 (4) The Permit Board shall deny a permit if the Permit Board
936 finds by clear and convincing evidence on the basis of the
937 information contained in the permit application or obtained by
938 on-site inspection that the proposed operation cannot comply with
939 this chapter or rules and regulations adopted under this chapter
940 or that the proposed method of operation, road system
941 construction, shaping or revegetation of the affected area cannot
942 be carried out in a manner consistent with this chapter and
943 applicable state and federal laws, rules and regulations.

944 (5) The Permit Board may hold a public hearing to obtain
945 comments from the public on its proposed action. If the Permit
946 Board holds a public hearing, the Permit Board shall publish
947 notice and conduct the hearing as provided in Section 49-17-29.

948 (6) The Permit Board may authorize the executive director,
949 under any conditions the Permit Board may prescribe, to make
950 decisions on permit issuance, reissuance, modification, rescission
951 or cancellation under this chapter. A decision by the executive
952 director is a decision of the Permit Board and shall be subject to
953 formal hearing and appeal as provided in Section 49-17-29. The



954 executive director shall report all permit decisions to the Permit
955 Board at its next regularly scheduled meeting and those decisions
956 shall be deemed as recorded in the minutes of the Permit Board at
957 that time.

958 (7) The Permit Board may cancel a permit at the request of
959 the operator, if the operator does not commence operations under
960 the permit by stripping, grubbing or mining any part of the permit
961 area. The Permit Board may rescind a permit, if, because of a
962 change in post-mining use of the land by the landowner, the
963 completion of the approved reclamation plan by the operator is no
964 longer feasible. If a permit is canceled or rescinded, the
965 remaining portion of the bond or deposit required under Section
966 53-7-37 shall be returned to the operator as soon as possible.

967 **SECTION 15.** Section 53-9-7, Mississippi Code of 1972, is
968 brought forward as follows:

969 53-9-7. For the purposes of this chapter, the following
970 terms shall have the meaning ascribed in this section unless the
971 context requires otherwise:

972 (a) "Abandoned mine lands" means lands and waters
973 affected by the mining or processing of coal before August 3,
974 1977, or affected by the mining or processing of noncoal minerals,
975 including, but not limited to, sand, gravel, clay and soil, before
976 August 3, 1977, and abandoned or left in either an unreclaimed or
977 inadequately reclaimed condition, and for which there is no
978 continuing reclamation responsibility required under state or
979 federal law, and which continue in the present condition
980 substantially to degrade the quality of the environment, to
981 prevent or damage the beneficial use of land or water resources,
982 or to endanger the health or safety of the public. Abandoned mine
983 lands also means those lands and waters described by 30 USCS
984 1232(g)(4), 30 USCS 1233(D)(1) and 30 USCS 1239.



985 (b) "Appeal" means an appeal to an appropriate court of
986 the state taken from a final decision of the Permit Board or
987 commission made after a formal hearing before that body.

988 (c) "Approximate original contour" means that surface
989 configuration achieved by backfilling and grading of the mined
990 area so that the reclaimed area, including any terracing or access
991 roads, closely resembles the general surface configuration of the
992 land before mining and blends into and complements the drainage
993 pattern of the surrounding terrain, with all highwalls and spoil
994 piles eliminated. Water impoundments may be allowed if the Permit
995 Board determines that the impoundments are in compliance with
996 Section 53-9-45(2)(g).

997 (d) "As recorded in the minutes of the Permit Board"
998 means the date of the Permit Board meeting at which the action
999 concerned is taken by the Permit Board.

1000 (e) "Coal" means combustible carbonaceous rock,
1001 classified as anthracite, bituminous, subbituminous, or lignite by
1002 the American Society of Testing and Materials.

1003 (f) "Commission" means the Mississippi Commission on
1004 Environmental Quality.

1005 (g) "Department" means the Mississippi Department of
1006 Environmental Quality.

1007 (h) "Executive director" means the executive director
1008 of the department.

1009 (i) "Exploration operations" means the disturbance of
1010 the surface or subsurface before surface coal mining and
1011 reclamation operations begin for the purpose of determining the
1012 location, quantity or quality of a coal deposit, and the gathering
1013 of environmental data to establish the conditions of the area
1014 before the beginning of surface coal mining and reclamation
1015 operations.



1016 (j) "Federal act" means the Surface Mining Control and
1017 Reclamation Act of 1977, as amended, which is codified as Section
1018 1201 et seq. of Title 30 of the United States Code.

1019 (k) "Formal hearing" means a hearing on the record, as
1020 recorded and transcribed by a court reporter, before the
1021 commission or Permit Board where all parties to the hearing are
1022 allowed to present witnesses, cross-examine witnesses and present
1023 evidence for inclusion into the record, as appropriate under rules
1024 promulgated by the commission or Permit Board.

1025 (l) "Imminent danger to health and safety of the
1026 public" means the existence of any condition or practice, or any
1027 violation of a permit or other requirement of this chapter, in a
1028 surface coal mining and reclamation operation, which could
1029 reasonably be expected to cause substantial physical harm to
1030 persons outside the permit area before that condition, practice or
1031 violation can be abated. A reasonable expectation of death or
1032 serious injury before abatement exists if a rational person
1033 subjected to the same conditions or practices giving rise to the
1034 peril would not expose himself or herself to the danger during the
1035 time necessary for abatement.

1036 (m) "Interested party" means any person claiming an
1037 interest relating to the surface coal mining operation and who is
1038 so situated that the person may be affected by that operation, or
1039 in the matter of regulations promulgated by the commission, any
1040 person who is so situated that the person may be affected by the
1041 action.

1042 (n) "Lignite" means consolidated lignite coal having
1043 less than eight thousand three hundred (8,300) British thermal
1044 units per pound, moist and mineral matter free.

1045 (o) "Operator" means any person engaged in coal mining
1046 who removes or intends to remove more than two hundred fifty (250)
1047 tons of coal from the earth by coal mining within twelve (12)
1048 consecutive calendar months in any one (1) location.



1049 (p) "Permit" means a permit to conduct surface coal
1050 mining and reclamation operations issued under this chapter.

1051 (q) "Permit area" means the area of land indicated on
1052 the approved map submitted by the operator with the permit
1053 application which area of land shall be covered by the operator's
1054 performance bond.

1055 (r) "Permit Board" means the Permit Board created under
1056 Section 49-17-28.

1057 (s) "Person" means an individual, partnership,
1058 association, society, joint venture, joint-stock company, firm,
1059 company, corporation, cooperative or other business organization
1060 and any agency, unit or instrumentality of federal, state or local
1061 government, including any publicly owned utility or publicly owned
1062 corporation.

1063 (t) "Prime farmland" means that farmland as defined by
1064 the United States Secretary of Agriculture on the basis of factors
1065 such as moisture availability, temperature regime, chemical
1066 balance, permeability, surface layer composition, susceptibility
1067 to flooding and erosion characteristics, and which historically
1068 have been used for intensive agricultural purposes, and as
1069 published in the federal register.

1070 (u) "Public hearing," "informal hearing" or "public
1071 meeting" means a public forum organized by the commission,
1072 department or Permit Board for the purpose of providing
1073 information to the public regarding a surface coal mining and
1074 reclamation operation or regulations proposed by the commission
1075 and at which members of the public are allowed to make comments or
1076 ask questions or both of the commission, department or the Permit
1077 Board.

1078 (v) "Reclamation plan" means a plan submitted by an
1079 applicant for a permit which sets forth a plan for reclamation of
1080 the proposed surface coal mining operations under this chapter.



1081 (w) "Revision" means any change to the permit or
1082 reclamation plan that does not significantly change the effect of
1083 the mining operation on either those persons impacted by the
1084 permitted operations or on the environment, including, but not
1085 limited to, incidental boundary changes to the permit area or a
1086 departure from or change within the permit area, incidental
1087 changes in the mining method or incidental changes in the
1088 reclamation plan.

1089 (x) "Secretary" means the Secretary of the United
1090 States Department of Interior.

1091 (y) "State" means the State of Mississippi.

1092 (z) "State geologist" means the head of the Office of
1093 Geology and Energy Resources of the department or a successor
1094 office.

1095 (aa) "State reclamation program" means the Mississippi
1096 program for abandoned mine reclamation provided for in this
1097 chapter.

1098 (bb) "Surface coal mining and reclamation operations"
1099 means surface coal mining operations and all activities necessary
1100 and incident to the reclamation of those operations.

1101 (cc) "Surface coal mining operations" means:

1102 (i) Activities conducted on the surface and
1103 immediate subsurface of lands in connection with a surface coal
1104 mine, surface operations and surface impacts incident to an
1105 underground coal mine, the products of which enter commerce or the
1106 operations of which directly or indirectly affect commerce. These
1107 activities include, but are not limited to:

1108 (A) Excavation for the purpose of obtaining
1109 coal including common methods such as contour, strip, auger,
1110 mountaintop removal, boxcut, open pit and area mining;

1111 (B) The use of explosives and blasting, in
1112 situ distillation or retorting, leaching or other chemical or
1113 physical processing; and



1114 (C) The cleaning, concentrating or other
1115 processing or preparation, and the loading of coal for commerce at
1116 or near the mine site.

1117 These activities do not include exploration operations
1118 subject to Section 53-9-41.

1119 (ii) Areas upon which the activities occur or
1120 where the activities disturb the natural land surface. These
1121 areas shall also include, but are not limited to:

1122 (A) Any adjacent land the use of which is
1123 incidental to any activities;

1124 (B) All lands affected by the construction of
1125 new roads or the improvement or use of existing roads to gain
1126 access to the site of any activities and for haulage;

1127 (C) All lands affected by excavations,
1128 workings, impoundments, dams, ventilation shafts, entryways,
1129 refuse banks, dumps, stockpiles, overburden piles, spoil banks,
1130 culm banks, tailings, holes or depressions, repair areas, storage
1131 areas, processing areas, shipping areas and other areas upon which
1132 are sited structures, facilities or other property or materials on
1133 the surface resulting from or incident to the activities.

1134 (dd) "Unwarranted failure to comply" means the failure
1135 of a permittee to prevent or abate the occurrence of any violation
1136 of a permit, this chapter or any regulation promulgated under this
1137 chapter due to indifference, lack of diligence or lack of
1138 reasonable care.

1139 **SECTION 16.** This act shall take effect and be in force from
1140 and after July 1, 2007.

