

By: Representative Reeves

To: Oil, Gas and Other Minerals

HOUSE BILL NO. 47

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

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

16 **SECTION 1.** Section 49-2-7, Mississippi Code of 1972, is  
 17 amended as follows:

18 49-2-7. (1) The Department of Environmental Quality shall  
 19 be the Mississippi Department of Natural Resources with the  
 20 exception of the Office of Parks and Recreation, and shall retain  
 21 all powers and duties granted by law to the Mississippi Department  
 22 of Natural Resources with the exception of the Office of Parks and  
 23 Recreation, and wherever the term "Mississippi Department of  
 24 Natural Resources" appears in any law the same shall mean the  
 25 Department of Environmental Quality. The Executive Director of  
 26 the Department of Environmental Quality may assign to the  
 27 appropriate offices any powers and duties deemed appropriate to  
 28 carry out the lawful duties of the department.

29 The department shall be composed of the following offices:

30 \* \* \*

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

32 (b) Office of Pollution Control.



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

35           (3) Each office shall be composed of the administrative  
36 units set forth in the consolidation plan adopted by the  
37 commission, subject to changes by the executive director, with  
38 approval of the commission, as hereinafter set forth.

39           (4) The department is designated as the single state  
40 department to receive and expend any federal funds being received  
41 or expended by any agency transferred to the department by Chapter  
42 484, Laws of 1978, and to receive and expend any federal funds  
43 made available for matters within the jurisdiction of the  
44 department.

45           (5) The department shall be responsible for conserving,  
46 managing, developing and protecting the natural resources of the  
47 State of Mississippi within the jurisdiction of the department,  
48 with the exception of functions of the Office of Recreation and  
49 Parks. The department shall coordinate all functions of state  
50 government related to natural resources within the jurisdiction of  
51 the department. The department shall not exercise any of its  
52 authority or powers granted under the provisions of this section  
53 in a manner which would be inconsistent with the provisions of  
54 Section 29-1-1.

55           **SECTION 2.** Section 29-7-3, Mississippi Code of 1972, is  
56 amended as follows:

57           29-7-3. There shall be no development or extraction of oil,  
58 gas, or other minerals from state-owned lands by any private party  
59 without first obtaining a mineral lease therefor from the  
60 commission. The commission is hereby authorized and empowered,  
61 for and on behalf of the state, to lease any and all of the state  
62 land now owned (including that submerged or wherever the tide may  
63 ebb and flow) or hereafter acquired, to some reputable person,  
64 association, or company for oil and/or gas and/or other minerals  
65 in and under and which may be produced therefrom, excepting,



66 however, sixteenth section school land, lieu lands, and such  
67 forfeited tax land and property the title to which is subject to  
68 any lawful redemption, for such consideration and upon such terms  
69 and conditions as the commission deems just and proper. No  
70 mineral lease of offshore lands shall allow offshore drilling  
71 operations north of the coastal barrier islands, except in Blocks  
72 40, 41, 42, 43, 63, 64 and 66 through 98, inclusive. Further,  
73 surface offshore drilling operations will not be allowed within  
74 one (1) mile of Cat Island. The commission may only offer for  
75 lease the state-owned lands in Blocks 40, 41, 42, 43, 63, 64 and  
76 66 through 98, inclusive, as shown on the Mississippi Department  
77 of Environmental Quality Bureau of Geology Plat of Lease Blocks  
78 (Open File Report 151) on terms and conditions and for a length of  
79 time as determined by the commission. The commission may not  
80 lease any lands or submerged lands off the Mississippi Gulf Coast  
81 that have been leased by the Department on Marine Resources before  
82 January 1, 2004, for any public or private oyster reef lease or  
83 any lands or submerged lands within one (1) mile of that lease for  
84 the purposes of drilling offshore for oil, gas and other minerals.

85 Consistent with the conservation policies of this state under  
86 Section 53-1-1 et seq., the commission may offer for public bid  
87 any tracts or blocks of state-owned lands not currently under  
88 lease, which have been identified to the commission as having  
89 development potential for oil or natural gas, not less than once a  
90 year. Upon consultation with the Office of Geology in the  
91 Mississippi Development Authority, the Secretary of State and any  
92 other state agency as the commission deems appropriate, the  
93 commission shall promulgate rules and regulations consistent with  
94 this chapter governing all aspects of the process of leasing state  
95 lands within its jurisdiction for mineral development, including  
96 the setting of all terms of the lease form to be used for leasing  
97 state-owned lands, any necessary fees, public bidding process,  
98 delay rental payments, shut-in royalty payments, and such other



99 provisions as may be required. The Attorney General shall review  
100 the lease form adopted by the commission for legal sufficiency.

101 There shall not be conducted any seismographic or other  
102 mineral exploration or testing activities on any state-owned lands  
103 within the mineral leasing jurisdiction of the commission without  
104 first obtaining a permit therefor from the commission. Upon  
105 consultation with the Office of Geology in the Mississippi  
106 Development Authority, the Secretary of State and any other state  
107 agency as the commission deems appropriate, the commission shall  
108 promulgate rules and regulations governing all aspects of  
109 seismographic or other mineral exploration activity on state lands  
110 within its jurisdiction, including the establishing of fees and  
111 issuance of permits for the conduct of such mineral exploration  
112 activities. The Attorney General shall review the permit form  
113 adopted by the commission for legal sufficiency. Provided,  
114 however, that persons obtaining permits from the commission for  
115 seismographic or other mineral exploration or testing activities  
116 on state-owned wildlife management areas, lakes and fish  
117 hatcheries, shall be subject to rules and regulations promulgated  
118 therefor by the Mississippi Commission on Wildlife, Fisheries and  
119 Parks which shall also receive all permit fees for such testing on  
120 said lands. In addition, persons obtaining permits from the  
121 commission for seismographic or other mineral exploration or  
122 testing activities on state-owned marine waters shall be subject  
123 to rules and regulations promulgated therefor by the Mississippi  
124 Department on Marine Resources which shall also receive all permit  
125 fees for such testing on those waters.

126 Further, provided that each permit within the Mississippi  
127 Sound or tidelands shall be reviewed by the Mississippi Commission  
128 on Marine Resources and such special conditions as it may specify  
129 will be included in the permit. Information or data obtained in  
130 any mineral exploration activity on any and all state lands shall  
131 be disclosed to the state through the commission, upon demand.



132 Such information or data shall be treated as confidential for a  
133 period of ten (10) years from the date of receipt thereof and  
134 shall not be disclosed to the public or to any firm, individual or  
135 agency other than officials or authorized employees of this state.  
136 Any person who makes unauthorized disclosure of such confidential  
137 information or data shall be guilty of a misdemeanor, and upon  
138 conviction thereof, be fined not more than Five Thousand Dollars  
139 (\$5,000.00) or imprisoned in the county jail not more than one (1)  
140 year, or both.

141 Whenever any such land or property is leased for oil and gas  
142 and/or other minerals, such lease contract shall provide for a  
143 lease royalty to the state of at least three-sixteenths (3/16) of  
144 such oil and gas or other minerals, same to be paid in the manner  
145 prescribed by the commission. Of the monies received in  
146 connection with the execution of such leases, five-tenths of one  
147 percent (5/10 of 1%) shall be retained in a special fund to be  
148 appropriated by the Legislature, One Hundred Thousand Dollars  
149 (\$100,000.00) of which amount to be used by the commission for the  
150 administration of the leasing and permitting under this section,  
151 and the remainder of such amount shall be deposited into the  
152 Education Trust Fund, created in Section 206A, Mississippi  
153 Constitution of 1890; and two percent (2%) shall be paid into a  
154 special fund to be designated as the "Gulf and Wildlife Protection  
155 Fund," to be appropriated by the Legislature, one-half (1/2)  
156 thereof to be apportioned as follows: an amount which shall not  
157 exceed One Million Dollars (\$1,000,000.00) shall be used by the  
158 Mississippi Department of Wildlife, Fisheries and Parks and the  
159 Mississippi Department on Marine Resources solely for the purpose  
160 of cleanup, remedial or abatement actions involving pollution as a  
161 result of the exploration or production of oil or gas, and any  
162 amount in excess of such One Million Dollars (\$1,000,000.00) shall  
163 be deposited into the Education Trust Fund, created in Section  
164 206A, Mississippi Constitution of 1890. The remaining one-half



165 (1/2) of such Gulf and Wildlife Protection Fund to be apportioned  
166 as follows: an amount which shall not exceed One Million Dollars  
167 (\$1,000,000.00) shall be used by the Mississippi Commission on  
168 Wildlife, Fisheries and Parks and the Mississippi Department on  
169 Marine Resources for use first in the prudent management,  
170 preservation, protection and conservation of existing waters,  
171 lands and wildlife of this state and then, provided such purposes  
172 are accomplished, for the acquisition of additional waters and  
173 lands and any amount in excess of such One Million Dollars  
174 (\$1,000,000.00) shall be deposited into the Education Trust Fund,  
175 created in Section 206A, Mississippi Constitution of 1890.  
176 However, in the event that the Legislature is not in session to  
177 appropriate funds from the Gulf and Wildlife Protection Fund for  
178 the purpose of cleanup, remedial or abatement actions involving  
179 pollution as a result of the exploration or production of oil or  
180 gas, then the Mississippi Department of Wildlife, Fisheries and  
181 Parks and the Mississippi Department on Marine Resources may make  
182 expenditures from this special fund account solely for said  
183 purpose. The commission may lease the submerged beds for sand and  
184 gravel on such a basis as it may deem proper, but where the waters  
185 lie between this state and an adjoining state, there must be a  
186 cash realization to this state, including taxes paid for such sand  
187 and gravel, equal to that being had by such adjoining state, in  
188 all cases the requisite consents therefor being lawfully obtained  
189 from the United States.

190 The Department of Environmental Quality is authorized to  
191 employ competent engineering personnel to survey the territorial  
192 waters of this state in the Mississippi Sound and the Gulf of  
193 Mexico and to prepare a map or plat of such territorial waters,  
194 divided into blocks of not more than six thousand (6,000) acres  
195 each with coordinates and reference points based upon longitude  
196 and latitude surveys. The commission is authorized to adopt such  
197 survey, plat or map for leasing of such submerged lands for



198 mineral development; and such leases may, after the adoption of  
199 such plat or map, be made by reference to the map or plat, which  
200 shall be on permanent file with the commission and a copy thereof  
201 on file in the Office of the State Oil and Gas Board.

202         **SECTION 3.** Section 49-2-9, Mississippi Code of 1972, is  
203 amended as follows:

204         49-2-9. (1) Effective July 1, 1979, the commission shall  
205 have the following powers and duties:

206                 (a) To formulate the policy of the department regarding  
207 natural resources within the jurisdiction of the department;

208                 (b) To adopt, modify, repeal, and promulgate, after due  
209 notice and hearing, and where not otherwise prohibited by federal  
210 or state law, to make exceptions to and grant exemptions and  
211 variances from, and to enforce rules and regulations implementing  
212 or effectuating the powers and duties of the commission under any  
213 and all statutes within the commission's jurisdiction, and as the  
214 commission may deem necessary to prevent, control and abate  
215 existing or potential pollution;

216                 (c) To apply for, receive and expend any federal or  
217 state funds or contributions, gifts, devises, bequests or funds  
218 from any other source;

219                 (d) To commission or conduct studies designed to  
220 determine alternative methods of managing or using the natural  
221 resources of this state, in a manner to insure efficiency and  
222 maximum productivity;

223                 (e) To enter into, and to authorize the executive  
224 director to execute with the approval of the commission,  
225 contracts, grants and cooperative agreements with any federal or  
226 state agency or subdivision thereof, or any public or private  
227 institution located inside or outside the State of Mississippi, or  
228 any person, corporation or association in connection with carrying  
229 out the provisions of this chapter; but this authority under this  
230 chapter and under any and all statutes within the commission's



231 jurisdiction, except those statutes relating to the Bureau of  
232 Recreation and Parks, shall not include contracts, grants or  
233 cooperative agreements which do not develop data or information  
234 usable by the commission, or which provide goods, services or  
235 facilities to the commission or any of its bureaus, and shall  
236 exclude any monies for special interest groups for purposes of  
237 lobbying or otherwise promoting their special interests; and

238 (f) To discharge such other duties, responsibilities  
239 and powers as are necessary to implement the provisions of this  
240 chapter.

241 (2) The Mississippi Development Authority, Office of Geology  
242 and Energy Resources shall be responsible for program management,  
243 procurement, development and maintenance of the Mississippi  
244 Digital Earth Model, which should include the following seven (7)  
245 core data layers of a digital land base computer model of the  
246 State of Mississippi:

247 (a) Geodetic control;

248 (b) Elevation and bathymetry;

249 (c) Orthoimagery;

250 (d) Hydrography;

251 (e) Transportation;

252 (f) Government boundaries; and

253 (g) Cadastral. With respect to the cadastral layer,  
254 the authority and responsibility of the Mississippi Department of  
255 Environmental Quality, Office of Geology and Energy Resources  
256 shall be limited to compiling information submitted by counties.

257 For all seven (7) framework layers, the Mississippi  
258 Department of Environmental Quality, Office of Geology and Energy  
259 Resources shall be the integrator of data from all sources and the  
260 guarantor of data completeness and consistency and shall  
261 administer the council's policies and standards for the  
262 procurement of remote sensing and geographic information system  
263 data by state and local governmental entities.





264           **SECTION 4.** Section 49-17-28, Mississippi Code of 1972, is  
265 amended as follows:

266           49-17-28. (1) There is created a Permit Board for the  
267 purpose of issuing, reissuing, modifying, revoking or denying,  
268 under the conditions, limitations and exemptions prescribed in  
269 Section 49-17-29: (a) permits to control or prevent the discharge  
270 of contaminants and wastes into the air and waters of the state;  
271 (b) permits required under the Solid Wastes Disposal Law of 1974  
272 (Title 17, Chapter 17); (c) permits required under Sections 51-3-1  
273 through 51-3-55; (d) water quality certifications required by  
274 Section 401 of the federal Clean Water Act; and (e) all other  
275 permits within the jurisdiction of the Permit Board. The  
276 membership of the Permit Board shall be composed of the Chief of  
277 the Bureau of Environmental Health of the State Board of Health,  
278 or his designee; the Executive Director of the Department of  
279 Wildlife, Fisheries and Parks, or his designee; the Head of the  
280 Office of Land and Water Resources of the Department of  
281 Environmental Quality, or his designee; the Supervisor of the  
282 State Oil and Gas Board, or his designee; the Executive Director  
283 of the Department of Marine Resources, or his designee; the Head  
284 of the Office of Geology and Energy Resources of the Mississippi  
285 Development Authority, or his designee; the Commissioner of  
286 Agriculture and Commerce, or his designee; a retired professional  
287 engineer knowledgeable in the engineering of water wells and water  
288 supply systems, to be appointed by the Governor for a term  
289 concurrent with that of the Governor and until his successor is  
290 appointed and qualified; and a retired water well contractor, to  
291 be appointed by the Governor for a term concurrent with that of  
292 the Governor and until his successor is appointed and qualified.  
293 The retired professional engineer and the retired water well  
294 contractor shall only vote on matters pertaining to the Office of  
295 Land and Water Resources.



296 (2) Members of the Permit Board who are officers and  
297 employees of the state shall receive no compensation for their  
298 services on the board, but other board members shall receive per  
299 diem compensation as provided in Section 25-3-69. All board  
300 members shall be reimbursed for actual and necessary expenses,  
301 including mileage, incurred in the performance of their official  
302 duties as provided in Section 25-3-41.

303 (3) In implementing the authority granted under this section  
304 for the Permit Board to act on water quality certifications  
305 required by Section 401 of the federal Clean Water Act, the Permit  
306 Board shall authorize the Executive Director of the Department of  
307 Environmental Quality to make decisions on issuance, reissuance,  
308 denial, modification and revocation of water quality  
309 certifications on projects which the department has received no  
310 written adverse comments. The Permit Board may authorize the  
311 executive director to make decisions on water quality  
312 certifications for other projects. A decision of the executive  
313 director made under this authority shall be a decision of the  
314 Permit Board and shall be subject to a formal hearing and an  
315 appeal as provided in Section 49-17-29.

316 **SECTION 5.** Section 53-7-5, Mississippi Code of 1972, is  
317 amended as follows:

318 53-7-5. For the purposes of this chapter, the following  
319 terms shall have the meanings ascribed in this section, except  
320 where the context otherwise requires:

321 (a) "Affected area" means any area from which any  
322 materials are removed or are to be removed in a surface mining  
323 operation and upon which any materials are to be deposited. The  
324 affected area includes all areas affected by the construction of  
325 new roads, or the improvement or use of existing roads other than  
326 public roads to gain access and to haul materials.



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

330 (c) "As recorded in the minutes of the Permit Board"  
331 means the date of the Permit Board meeting at which the action  
332 concerned is taken by the Permit Board.

333 (d) "Commission" means the Mississippi Commission on  
334 Environmental Quality.

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

338 (f) "Executive director" means the Executive Director  
339 of the Mississippi Department of Environmental Quality.

340 (g) "Exploration activity" means the disturbance of the  
341 surface or subsurface for the purpose of determining the location,  
342 quantity or quality of a deposit of any material, except the  
343 drilling of test holes or core holes of twelve (12) inches or less  
344 in diameter.

345 (h) "Formal hearing" means a hearing on the record, as  
346 recorded and transcribed by a court reporter, before the  
347 commission or Permit Board where all parties to the hearing are  
348 allowed to present witnesses, cross-examine witnesses and present  
349 evidence for inclusion into the record, as appropriate under rules  
350 promulgated by the commission or Permit Board.

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

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

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

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



359           (m) "Material" means bentonite, metallic ore, mineral  
360 clay, dolomite, phosphate, sand, gravel, soil, clay, sand clay,  
361 clay gravel, stone, chalk, and any other materials designated by  
362 the commission.

363           (n) "Nearest approximate original contour" means that  
364 surface configuration achieved by backfilling and grading of the  
365 surface-mined area so that it substantially resembles the surface  
366 configuration of the land before mining and blends into and  
367 complements the drainage pattern of the surrounding terrain, with  
368 all highwalls, spoil piles and water-collecting depressions  
369 eliminated, to the extent practicable, unless contained in an  
370 approved reclamation plan.

371           (o) "Operator" means the person that is to engage or  
372 that is engaged in a surface mining operation, whether on a  
373 permanent, continuous basis, or for a limited period of time and  
374 for a specific or ancillary purpose, including any person whose  
375 permit or coverage under a general permit has expired or been  
376 suspended or revoked.

377           (p) "Overburden" means all materials which are removed  
378 to gain access to other materials in the process of surface  
379 mining, including the material before or after its removal by  
380 surface mining.

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

383           (r) "Permit area" means all the area designated in the  
384 permit application or application for coverage under a general  
385 permit and shall include all land affected by the surface mining  
386 operations during the term of the permit and may include any  
387 contiguous area which the operator proposes to surface mine  
388 thereafter.

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



391           (t) "Person" means any individual, trust, firm,  
392 joint-stock company, public or private corporation, joint venture,  
393 partnership, association, cooperative, state, or any agency or  
394 institution thereof, municipality, commission, political  
395 subdivision of a state or any interstate body, and includes any  
396 officer or governing or managing body of any municipality,  
397 political subdivision, or the United States or any officer or  
398 employee of the United States.

399           (u) "Public hearing" means a public forum organized by  
400 the commission, department or Permit Board for the purpose of  
401 providing information to the public regarding a surface mining and  
402 reclamation operation and at which members of the public are  
403 allowed to make comments or ask questions or both of the  
404 commission, department or the Permit Board regarding a proposed  
405 operation or permit.

406           (v) "Reclamation" means work necessary to restore an  
407 area of land affected by surface mining to a useful, productive  
408 and beneficial purpose, the entire process being designed to  
409 restore the land to a useful, productive and beneficial purpose,  
410 suitable and amenable to surrounding land and consistent with  
411 local environmental conditions in accordance with the standards  
412 set forth in this chapter.

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

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

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



423 (z) "Surface mining operation" or "operation" means the  
424 activities conducted at a mining site, including extraction,  
425 storage, processing and shipping of materials and reclamation of  
426 the affected area. This term does not include the following: the  
427 dredging and removal of oyster shells from navigable bodies of  
428 water; the dredging and removal of any materials from the bed of  
429 navigable streams, when the activity is regulated and permitted  
430 under an individual permit by the United States Corps of  
431 Engineers; the extraction of hydrocarbons in a liquid or gaseous  
432 state by means of wells, pipe, or other on-site methods; the  
433 off-site transportation of materials; exploration activities;  
434 construction activities at a construction site; or any other  
435 exception adopted by the commission in its regulations.

436 (aa) "Topsoil" means the organic or inorganic matter  
437 naturally present on the surface of the earth which has been  
438 subjected to and influenced by genetic and environmental factors  
439 of parent material, climate, macroorganisms and microorganisms,  
440 and topography, all acting over a period of time, and that is  
441 necessary for the growth and regeneration of vegetation on the  
442 surface of the earth.

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

446 **SECTION 6.** Section 53-9-105, Mississippi Code of 1972, is  
447 amended as follows:

448 53-9-105. (1) The Mississippi Development Authority,  
449 through the Office of Geology, shall establish and maintain a  
450 state reclamation program for abandoned mines which complies with  
451 Subchapter IV of the federal Surface Mining Control and  
452 Reclamation Act of 1977, 30 USCS 1231 through 1243.

453 (2) For any year in which the department intends to conduct  
454 abandoned mine lands reclamation with amounts held in the  
455 Abandoned Mine Lands Reclamation Account, the executive director



456 shall submit to the secretary an application for the support of  
457 the state program and implementation of specific reclamation  
458 projects. Such requests shall include information required by the  
459 secretary. This may include, but is not limited to:

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

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

462 (c) A statement of the estimated benefits in such terms  
463 as: number of acres restored, miles of stream improved, acres of  
464 surface lands protected from subsidence, population protected from  
465 subsidence, air pollution, hazards of mine and coal refuse  
466 disposal area fires;

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

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

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

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

479 (3) The reported costs for each proposed project shall  
480 include: actual construction costs, actual operation and  
481 maintenance costs of permanent facilities, planning and  
482 engineering costs, construction inspection costs, and other  
483 necessary administrative expenses.

484 (4) The executive director shall make reports on operations  
485 of the reclamation program as required by the secretary or by  
486 Congress.

487 (5) The executive director shall at all times accept and  
488 consider comments regarding annual grant applications and the



489 eligibility, priority ranking and selection of lands for  
490 reclamation. At least thirty (30) days prior to the submission of  
491 each annual grant application to the secretary, the executive  
492 director shall provide for a public hearing and shall publish a  
493 notice regarding the proposed grant application and the public  
494 hearing in a newspaper of general circulation in the state. The  
495 public notice shall state that a hearing will be held, generally  
496 outline the grant application, and solicit comments regarding the  
497 application. A listing and identification of all projects  
498 included in the grant application shall be mailed to all persons  
499 who have requested written notification of the annual grant  
500 application and shall be available to any person upon request. At  
501 the public hearing for review of an annual grant application, any  
502 person may appear before the executive director or his or her  
503 designee and be heard on the record. The executive director may  
504 receive documentary or other evidence for inclusion in the record.  
505 The executive director shall fix a time for the closing of the  
506 record and may, in his discretion, receive other comments or  
507 evidence that he deems appropriate after the public hearing and  
508 before the closing of the record. A copy of the record shall be  
509 included with the grant application to the secretary.

510 (6) The state shall not be liable under any provision of  
511 federal law for any costs or damages as a result of action taken  
512 or omitted in the course of carrying out the state reclamation  
513 program approved by the secretary. This subsection shall not  
514 preclude liability for costs or damages as a result of gross  
515 negligence or intentional misconduct by the state. Reckless,  
516 willful or wanton misconduct shall constitute gross negligence.  
517 However, nothing in this subsection shall be deemed to waive any  
518 immunity provided by Mississippi law to the state or its  
519 employees, or to waive the protection afforded the state by the  
520 Eleventh Amendment to the United States Constitution.





521           **SECTION 7.** Section 49-2-16, Mississippi Code of 1972, is  
522 brought forward as follows:

523           49-2-16. (1) The head of the Office of Geology and Energy  
524 Resources shall be a geologist, petroleum engineer or energy  
525 engineer of established reputation with a minimum of a bachelor's  
526 degree in geology, petroleum engineering or energy engineering or  
527 a field related thereto.

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

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

534           (4) The head of the Division of Regional Water Resources of  
535 the Office of Land and Water Resources shall have a minimum of six  
536 (6) years' experience in a field related to the division's  
537 function.

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

541           **SECTION 8.** Section 53-7-41, Mississippi Code of 1972, is  
542 brought forward as follows:

543           53-7-41. (1) The Permit Board, based upon the provisions of  
544 this chapter, may issue, reissue, deny, modify, revoke, cancel,  
545 rescind, suspend or transfer a permit for a surface mining  
546 operation. The head of the Office of Geology and Energy Resources  
547 shall abstain in any action taken by the Permit Board under this  
548 chapter.

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

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



553           (a) The Permit Board finds that the reclamation as  
554 required by this chapter cannot be accomplished by means of the  
555 proposed reclamation plan;

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

559           (c) The Permit Board finds that the proposed mining  
560 operation will cause pollution of any water of the state or of the  
561 ambient air of the state in violation of applicable state and  
562 federal laws and regulations;

563           (d) The applicant has had any other permit issued under  
564 this chapter revoked, or any bond or deposit posted to comply with  
565 this chapter forfeited, and the conditions causing the permit to  
566 be revoked or the bond or deposit to be forfeited have not been  
567 corrected to the satisfaction of the Permit Board;

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

571           (f) The operation will likely adversely affect any  
572 public highway or road unless the operation is intended to  
573 stabilize or repair the public road or highway; or

574           (g) The applicant is unable to meet the public  
575 liability insurance or performance bonding requirements of this  
576 chapter.

577           (4) The Permit Board shall deny a permit if the Permit Board  
578 finds by clear and convincing evidence on the basis of the  
579 information contained in the permit application or obtained by  
580 on-site inspection that the proposed operation cannot comply with  
581 this chapter or rules and regulations adopted under this chapter  
582 or that the proposed method of operation, road system  
583 construction, shaping or revegetation of the affected area cannot  
584 be carried out in a manner consistent with this chapter and  
585 applicable state and federal laws, rules and regulations.



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

590 (6) The Permit Board may authorize the executive director,  
591 under any conditions the Permit Board may prescribe, to make  
592 decisions on permit issuance, reissuance, modification, rescission  
593 or cancellation under this chapter. A decision by the executive  
594 director is a decision of the Permit Board and shall be subject to  
595 formal hearing and appeal as provided in Section 49-17-29. The  
596 executive director shall report all permit decisions to the Permit  
597 Board at its next regularly scheduled meeting and those decisions  
598 shall be deemed as recorded in the minutes of the Permit Board at  
599 that time.

600 (7) The Permit Board may cancel a permit at the request of  
601 the operator, if the operator does not commence operations under  
602 the permit by stripping, grubbing or mining any part of the permit  
603 area. The Permit Board may rescind a permit, if, because of a  
604 change in post-mining use of the land by the landowner, the  
605 completion of the approved reclamation plan by the operator is no  
606 longer feasible. If a permit is canceled or rescinded, the  
607 remaining portion of the bond or deposit required under Section  
608 53-7-37 shall be returned to the operator as soon as possible.

609 **SECTION 9.** Section 53-9-7, Mississippi Code of 1972, is  
610 brought forward as follows:

611 53-9-7. For the purposes of this chapter, the following  
612 terms shall have the meaning ascribed in this section unless the  
613 context requires otherwise:

614 (a) "Abandoned mine lands" means lands and waters  
615 affected by the mining or processing of coal before August 3,  
616 1977, or affected by the mining or processing of noncoal minerals,  
617 including, but not limited to, sand, gravel, clay and soil, before  
618 August 3, 1977, and abandoned or left in either an unreclaimed or



619 inadequately reclaimed condition, and for which there is no  
620 continuing reclamation responsibility required under state or  
621 federal law, and which continue in the present condition  
622 substantially to degrade the quality of the environment, to  
623 prevent or damage the beneficial use of land or water resources,  
624 or to endanger the health or safety of the public. Abandoned mine  
625 lands also means those lands and waters described by 30 USCS  
626 1232(g)(4), 30 USCS 1233(D)(1) and 30 USCS 1239.

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

630 (c) "Approximate original contour" means that surface  
631 configuration achieved by backfilling and grading of the mined  
632 area so that the reclaimed area, including any terracing or access  
633 roads, closely resembles the general surface configuration of the  
634 land before mining and blends into and complements the drainage  
635 pattern of the surrounding terrain, with all highwalls and spoil  
636 piles eliminated. Water impoundments may be allowed if the Permit  
637 Board determines that the impoundments are in compliance with  
638 Section 53-9-45(2)(g).

639 (d) "As recorded in the minutes of the Permit Board"  
640 means the date of the Permit Board meeting at which the action  
641 concerned is taken by the Permit Board.

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

645 (f) "Commission" means the Mississippi Commission on  
646 Environmental Quality.

647 (g) "Department" means the Mississippi Department of  
648 Environmental Quality.

649 (h) "Executive director" means the executive director  
650 of the department.



651           (i) "Exploration operations" means the disturbance of  
652 the surface or subsurface before surface coal mining and  
653 reclamation operations begin for the purpose of determining the  
654 location, quantity or quality of a coal deposit, and the gathering  
655 of environmental data to establish the conditions of the area  
656 before the beginning of surface coal mining and reclamation  
657 operations.

658           (j) "Federal act" means the Surface Mining Control and  
659 Reclamation Act of 1977, as amended, which is codified as Section  
660 1201 et seq. of Title 30 of the United States Code.

661           (k) "Formal hearing" means a hearing on the record, as  
662 recorded and transcribed by a court reporter, before the  
663 commission or Permit Board where all parties to the hearing are  
664 allowed to present witnesses, cross-examine witnesses and present  
665 evidence for inclusion into the record, as appropriate under rules  
666 promulgated by the commission or Permit Board.

667           (l) "Imminent danger to health and safety of the  
668 public" means the existence of any condition or practice, or any  
669 violation of a permit or other requirement of this chapter, in a  
670 surface coal mining and reclamation operation, which could  
671 reasonably be expected to cause substantial physical harm to  
672 persons outside the permit area before that condition, practice or  
673 violation can be abated. A reasonable expectation of death or  
674 serious injury before abatement exists if a rational person  
675 subjected to the same conditions or practices giving rise to the  
676 peril would not expose himself or herself to the danger during the  
677 time necessary for abatement.

678           (m) "Interested party" means any person claiming an  
679 interest relating to the surface coal mining operation and who is  
680 so situated that the person may be affected by that operation, or  
681 in the matter of regulations promulgated by the commission, any  
682 person who is so situated that the person may be affected by the  
683 action.



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

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

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

693           (q) "Permit area" means the area of land indicated on  
694 the approved map submitted by the operator with the permit  
695 application which area of land shall be covered by the operator's  
696 performance bond.

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

699           (s) "Person" means an individual, partnership,  
700 association, society, joint venture, joint-stock company, firm,  
701 company, corporation, cooperative or other business organization  
702 and any agency, unit or instrumentality of federal, state or local  
703 government, including any publicly owned utility or publicly owned  
704 corporation.

705           (t) "Prime farmland" means that farmland as defined by  
706 the United States Secretary of Agriculture on the basis of factors  
707 such as moisture availability, temperature regime, chemical  
708 balance, permeability, surface layer composition, susceptibility  
709 to flooding and erosion characteristics, and which historically  
710 have been used for intensive agricultural purposes, and as  
711 published in the federal register.

712           (u) "Public hearing," "informal hearing" or "public  
713 meeting" means a public forum organized by the commission,  
714 department or Permit Board for the purpose of providing  
715 information to the public regarding a surface coal mining and  
716 reclamation operation or regulations proposed by the commission



717 and at which members of the public are allowed to make comments or  
718 ask questions or both of the commission, department or the Permit  
719 Board.

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

723 (w) "Revision" means any change to the permit or  
724 reclamation plan that does not significantly change the effect of  
725 the mining operation on either those persons impacted by the  
726 permitted operations or on the environment, including, but not  
727 limited to, incidental boundary changes to the permit area or a  
728 departure from or change within the permit area, incidental  
729 changes in the mining method or incidental changes in the  
730 reclamation plan.

731 (x) "Secretary" means the Secretary of the United  
732 States Department of Interior.

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

734 (z) "State geologist" means the head of the Office of  
735 Geology and Energy Resources of the department or a successor  
736 office.

737 (aa) "State reclamation program" means the Mississippi  
738 program for abandoned mine reclamation provided for in this  
739 chapter.

740 (bb) "Surface coal mining and reclamation operations"  
741 means surface coal mining operations and all activities necessary  
742 and incident to the reclamation of those operations.

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

744 (i) Activities conducted on the surface and  
745 immediate subsurface of lands in connection with a surface coal  
746 mine, surface operations and surface impacts incident to an  
747 underground coal mine, the products of which enter commerce or the  
748 operations of which directly or indirectly affect commerce. These  
749 activities include, but are not limited to:



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

753 (B) The use of explosives and blasting, in  
754 situ distillation or retorting, leaching or other chemical or  
755 physical processing; and

756 (C) The cleaning, concentrating or other  
757 processing or preparation, and the loading of coal for commerce at  
758 or near the mine site.

759 These activities do not include exploration operations  
760 subject to Section 53-9-41.

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

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

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

769 (C) All lands affected by excavations,  
770 workings, impoundments, dams, ventilation shafts, entryways,  
771 refuse banks, dumps, stockpiles, overburden piles, spoil banks,  
772 culm banks, tailings, holes or depressions, repair areas, storage  
773 areas, processing areas, shipping areas and other areas upon which  
774 are sited structures, facilities or other property or materials on  
775 the surface resulting from or incident to the activities.

776 (dd) "Unwarranted failure to comply" means the failure  
777 of a permittee to prevent or abate the occurrence of any violation  
778 of a permit, this chapter or any regulation promulgated under this  
779 chapter due to indifference, lack of diligence or lack of  
780 reasonable care.

781 **SECTION 10.** This act shall take effect and be in force from  
782 and after July 1, 2007.

