

By: Representatives Mangold, Boyd

To: Conservation and Water Resources; Appropriations

HOUSE BILL NO. 1028

1 AN ACT TO AMEND SECTIONS 49-17-14, 49-17-16, 49-17-30 AND
2 49-17-32, MISSISSIPPI CODE OF 1972, TO REVISE THE AIR OPERATING
3 PERMIT PROGRAM FEE TRUST FUND; TO REVISE THE PURPOSES OF THE
4 ADVISORY COUNCIL; TO REVISE THE TITLE V FEE SYSTEM BY PROVIDING
5 THAT FUNDS ARE COLLECTED THROUGH AN EQUITABLE FEE SYSTEM FOR THE
6 TITLE V PROGRAM; TO PROVIDE THE COMMISSION ON ENVIRONMENTAL
7 QUALITY WITH CERTAIN AUTHORITY AND REQUIREMENTS REGARDING THE
8 SETTING OF FEES; AND FOR RELATED PURPOSES.

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

10 **SECTION 1.** Section 49-17-14, Mississippi Code of 1972, is
11 amended as follows:

12 49-17-14. (1) "Title V program" means, as used in Sections
13 49-17-1 through 49-17-45, the air operating permit program
14 mandated in Title V of the 1990 amendments to the federal Clean
15 Air Act, codified in 42 USCS Section 7661, et seq.

16 (2) There is created in the State Treasury a fund to be
17 designated as the "Air Operating Permit Program Fee Trust Fund,"
18 referred to hereinafter as the "fund."

19 (3) The fund shall be treated as a special trust fund.
20 Interest earned on the principal therein shall be credited by the
21 Treasurer to the fund.



22 (4) The fund may receive monies from any available public or
23 private source including, but not limited to, collection of fees,
24 interest, grants, taxes, public and private donations and judicial
25 actions.

26 (5) To facilitate the proper administration of the fund, the
27 commission is authorized to promulgate rules and regulations for
28 the administration of the fund.

29 (6) The commission shall expend or utilize monies in the
30 fund by an annual appropriation approved by the Legislature to pay
31 all reasonable direct and indirect costs associated with the
32 development and administration of the Title V program including,
33 but not limited to, the reasonable costs of the following
34 activities as they relate to the Title V program:

35 (a) Preparing generally applicable regulations or
36 guidance regarding the permit program or its implementation or
37 enforcement;

38 (b) Reviewing and acting on any application for a
39 permit, permit modification or permit renewal, including the
40 development of an applicable requirement as part of the processing
41 of a permit, or permit modification or renewal;

42 (c) Administering the permit program, including the
43 supporting and tracking of permit applications, compliance
44 certification, and related data entry;

45 (d) Implementing and enforcing the terms of any Title V
46 permit (not including any court costs or other costs associated



47 with an enforcement action), including adequate resources to
48 determine which sources are subject to the program;

49 (e) Emissions and ambient monitoring;

50 (f) Modeling, analyses, or demonstrations;

51 (g) Preparing inventories and tracking emissions;

52 (h) Providing direct and indirect support to sources
53 under the Small Business Stationary Source Technical and
54 Environmental Compliance Assistance Program under Section 507 of
55 the federal Clean Air Act in determining and meeting their
56 obligations under this section; and

57 (i) Providing funding to the Advisory Council created
58 in Section 49-17-16 in an amount reasonably sufficient to meet the
59 Advisory Council's obligations under Sections 49-17-1 through
60 49-17-45.

61 (7) Monies in the fund at the end of the fiscal year shall
62 be retained in the fund for use in the next succeeding fiscal
63 year. * * * If the fund balance at the end of the fiscal year
64 exceeds thirty-three percent (33%) of the projected annual costs
65 of administering the program, the assessment rates may be adjusted
66 to reduce the future projected fund balance. If necessary, the
67 assessment rates shall be adjusted during the setting of the next
68 fee schedule.

69 (8) At no time shall a fee be assessed that results in a
70 projected ending fund balance of more than the current annual cost
71 of administering the Title V program.



72 (* * *9) No such fees shall be utilized by the Department
73 of Environmental Quality or any other person for any purpose or
74 purposes other than those purposes required by Sections 49-17-1
75 through 49-17-45, as they relate to the Title V program.

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

78 49-17-16. (1) (a) An Advisory Council, hereinafter
79 referred to as "Advisory Council," is created to conduct an
80 independent study of the costs for the development and
81 administration of the Title V program within the Department of
82 Environmental Quality and to conduct an annual review of the costs
83 of administering such programs.

84 (b) The costs to be included within the study for the
85 Title V program shall be those costs set forth in Section
86 49-17-14. * * * After completing a study of the program needs and
87 costs, the Advisory Council shall recommend an equitable fee
88 system for the Title V program. The annual review of the Title V
89 program shall determine if the fee system is collecting sufficient
90 funds to meet the program needs. The Advisory Council shall
91 recommend an appropriate fee schedule for the upcoming fee year
92 and, if necessary, recommend changes to the existing fee system so
93 that sufficient funds are collected through an equitable fee
94 system. Each annual review report shall be due January 1 of each
95 year to the commission and the Executive Director of the
96 Department of Environmental Quality.



97 (2) * * * The Department of Environmental Quality shall
98 assist the Advisory Council by providing any information the
99 Advisory Council may require to perform its duties under Sections
100 49-17-1 through 49-17-45.

101 (3) The Advisory Council shall be composed of the following
102 seven (7) persons appointed as follows: three (3) representatives
103 of * * * industries that qualify for inclusion under the Title V
104 program, that are required to pay the * * * program fee * * *,
105 with one (1) such representative to be appointed by the Governor,
106 one (1) by the Lieutenant Governor and one (1) by the Speaker of
107 the House of Representatives; the Executive Director of the * * *
108 Mississippi Development Authority; the President of the
109 Mississippi Manufacturers Association; the President of the
110 Mississippi Farm Bureau Federation; and the Chairman of the
111 Mississippi Small Business Compliance Advisory Panel.
112 Nonappointed members of the Advisory Council may designate an
113 alternate member to act in their stead in performing any function
114 of the Advisory Council. The length of term for each member of
115 the Advisory Council shall be four (4) years. Members of the
116 Advisory Council may serve successive and multiple terms.

117 * * *

118 (4) * * * Vacancies on the Advisory Council shall be filled
119 by appointment in the same manner as the original
120 appointments. * * *



121 (5) The Advisory Council shall select from their membership
122 a chairperson to preside over meetings and a vice chairperson to
123 preside in the absence of the chairperson or when the chairperson
124 shall be excused. The Advisory Council shall adopt procedures
125 governing the manner of conducting its business. A majority of
126 the members shall constitute a quorum to do business.

127 (6) Members of the Advisory Council shall serve without
128 salary. The members of the Advisory Council shall be entitled to
129 receive reimbursement of their actual travel and hotel expenses as
130 provided in Section 25-3-41, incurred while in the performance of
131 their duties as members of the Advisory Council to be paid on an
132 itemized statement approved by the State Fiscal Officer. Expenses
133 shall be paid from fees collected in accordance with Section
134 49-17-30.

135 (7) The Executive Director of the Department of
136 Environmental Quality shall provide technical, clerical and other
137 support services, including services by contract, as the Advisory
138 Council determines that it requires in the performance of its
139 functions.

140 **SECTION 3.** Section 49-17-30, Mississippi Code of 1972, is
141 amended as follows:

142 49-17-30. (1) As a condition of * * * Title V of the
143 federal Clean Air Act, the owner or operator of any stationary
144 source required to obtain an air operating permit under the Title



145 V program, hereinafter referred to as a "Title V permit," shall
146 pay to the Department of Environmental Quality an annual fee.

147 (2) To facilitate the proper administration of the Title V
148 program, the commission is authorized to assess and collect fees
149 from * * * any stationary source subject to the Title V program.
150 The commission shall establish the amount of each fee to cover the
151 costs of the Title V program as provided in Section 49-17-14. The
152 commission is further authorized to promulgate such rules and
153 regulations as are necessary for the development and
154 administration of the Title V program and the assessment and
155 collection of the Title V program fees.

156 * * *

157 (3) (a) * * * The fee schedule for Title V program fees
158 shall be set annually by order of the commission in an amount
159 sufficient to cover the reasonable costs of development and
160 administration of the Title V program. The commission's order
161 shall follow:

162 (i) Receipt of the report and recommendations of
163 the Advisory Council, if timely received; and

164 (ii) A public hearing to be held not earlier than
165 thirty (30) days following receipt by the commission of the report
166 and recommendations of the Advisory Council. * * *

167 (b) * * * The commission may proceed with entry of the
168 order on fees if the Advisory Council fails to submit its report
169 in a timely manner.



170 (c) The order of the commission may be appealed in the
171 manner set forth in Section 49-17-41.

172 (d) The determination of the fee set by order of the
173 commission shall not be considered the promulgation of a
174 regulation by the commission.

175 (e) The record of the public hearing shall be included
176 in the record upon which the order is based and shall become a
177 part of the appellate records for all appeals taken from the order
178 of the commission establishing or modifying Title V program fees.
179 Any undisputed amount due from an appellant must be paid according
180 to the appellant's payment schedule during the pendency of the
181 appeal.

182 (4) Any person required to pay the Title V * * * program fee
183 set forth under this chapter who disagrees with the calculation or
184 applicability of the person's fee may petition the commission in
185 writing for a hearing in accordance with Section 49-17-35. Such
186 hearing shall be in accordance with Section 49-17-33. Any
187 disputed portion of the fee for which a hearing has been requested
188 will not incur any penalty or interest from and after the receipt
189 by the commission of the hearing petition. The decision of the
190 commission may be appealed in the manner set forth in Section
191 49-17-41.

192 (5) All fees collected pursuant to this section shall be
193 deposited into the "Air Operating Permit Program Fee Trust Fund"
194 established in Section 49-17-14.



195 **SECTION 4.** Section 49-17-32, Mississippi Code of 1972, is
196 amended as follows:

197 49-17-32. (1) The commission may delegate to the Department
198 of Environmental Quality the responsibility for the collection of
199 the Title V program fees.

200 (2) * * * The Title V program fee shall be due September 1
201 of each year. Each owner or operator may elect a quarterly
202 payment method of four (4) equal payments with the payments due
203 September 1, December 1, March 1 and June 1. The owner or
204 operator shall notify the Department of Environmental Quality that
205 the quarterly payment method will be used by September 1.

206 (3) If any part of the * * * Title V program fee imposed is
207 not paid within thirty (30) days after the due date, a penalty of
208 ten percent (10%) of the amount due shall at once accrue and be
209 added thereto, unless the permittee demonstrates to the commission
210 that the failure to make timely payment was unavoidable due to
211 financial hardship or otherwise beyond the permittee's control.
212 If the fee is not paid in full, including any penalty within sixty
213 (60) days of the due date, the Environmental Quality Permit Board
214 may revoke the permit upon proper notice and hearing as required
215 by law. Any penalty collected under this section shall be
216 deposited into the "Air Operating Permit Program Fee Trust Fund."

217 (4) Any owner or operator that fails to properly identify
218 themselves subject to the Title V program may be subject to fees
219 and penalties as determined by the commission.



220 (* * *5) It is the intent of the Legislature that fees
221 collected pursuant to Sections 49-17-1 through 49-17-45 shall not
222 supplant or reduce in any way the General Fund appropriation to
223 the Department of Environmental Quality.

224 **SECTION 5.** This act shall take effect and be in force from
225 and after July 1, 2020.

