

By: Bowles, Ishee, Montgomery (15th)

To: Agriculture;
Conservation and
Water Resources

HOUSE BILL NO. 698

1 AN ACT TO AMEND SECTION 49-17-29, MISSISSIPPI CODE OF 1972,
2 TO EXTEND THE REPEALER ON THE PROVISION OF LAW THAT PROHIBITS THE
3 PERMIT BOARD FROM ISSUING PERMITS FOR CONSTRUCTING A NEW OR
4 EXPANDING AN EXISTING SWINE CONCENTRATED ANIMAL FEEDING OPERATION;
5 AND FOR RELATED PURPOSES.

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

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

9 49-17-29. (1) (a) Except as in compliance with paragraph
10 (b) of this subsection, it is unlawful for any person to cause
11 pollution of the air in the state or to place or cause to be
12 placed any wastes or other products or substances in a location
13 where they are likely to cause pollution of the air. It is also
14 unlawful to discharge any wastes, products or substances into the
15 air of the state which exceed standards of performance, hazardous
16 air pollutant standards, other emission standards set by the
17 commission, or which reduce the quality of the air below the air
18 quality standards or increments established by the commission or
19 prevent attainment or maintenance of those air quality standards.
20 Any such action is hereby declared to be a public nuisance.

21 (b) It is unlawful for any person to build, erect,
22 alter, replace, use or operate any equipment which will cause the

23 issuance of air contaminants unless that person holds a permit
24 from the Permit Board (except repairs or maintenance of equipment
25 for which a permit has been previously issued), or unless that
26 person is exempted from holding a permit by a regulation
27 promulgated by the commission. Concentrated animal feeding
28 operations may be a source or a category of sources exempted under
29 this paragraph. However, no new or existing applications relating
30 to swine concentrated animal feeding operations within a county
31 shall be exempted from regulations and ordinances which have been
32 duly passed by the county's board of supervisors and which are in
33 force on June 1, 1998.

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

45 (b) It is unlawful for any person to carry on any of
46 the following activities, unless that person holds a current
47 permit for that activity from the Permit Board as may be required
48 for the disposal of all wastes which are or may be discharged into
49 the waters of the state, or unless that person is exempted from
50 holding a permit by a regulation promulgated by the commission:
51 (i) the construction, installation, modification or operation of
52 any disposal system or part thereof or any extension or addition
53 thereto, including, but not limited to, systems serving

54 agricultural operations; (ii) the increase in volume or strength
55 of any wastes in excess of the permissive discharges specified
56 under any existing permit; (iii) the construction, installation or
57 operation of any industrial, commercial or other establishment,
58 including irrigation projects or any extension or modification
59 thereof or addition thereto, the operation of which would cause an
60 increase in the discharge of wastes into the waters of the state
61 or would otherwise alter the physical, chemical or biological
62 properties of any waters of the state in any manner not already
63 lawfully authorized; (iv) the construction or use of any new
64 outlet for the discharge of any wastes into the waters of the
65 state. However, no new or existing applications relating to swine
66 concentrated animal feeding operations within a county shall be
67 exempted from regulations and ordinances which have been duly
68 passed by the county's board of supervisors and which are in force
69 on June 1, 1998.

70 (3) (a) Except as otherwise provided in this section, the
71 Permit Board created by Section 49-17-28 shall be the exclusive
72 administrative body to make decisions on permit issuance,
73 reissuance, denial, modification or revocation of air pollution
74 control and water pollution control permits and permits required
75 under the Solid Wastes Disposal Law of 1974 (Title 17, Chapter
76 17), and all other permits within the jurisdiction of the Permit
77 Board. After consideration of alternative waste treatment
78 technologies available to control air and water pollution and
79 odor, including appropriate siting criteria, the commission may
80 promulgate regulations establishing conditions, limitations and
81 exemptions under which the Permit Board shall make these

82 decisions. Regulations promulgated by the commission which
83 establish exemptions as authorized under Senate Bill No. 2895,
84 1998 Regular Session, [Laws, 1998, ch. 537] shall apply to any
85 applicable facility in operation on the effective date of that
86 regulation and to any applicable facility constructed or operated
87 after the effective date of that regulation. The Permit Board may
88 issue multiple permits for the same facility or operation
89 simultaneously or in the sequence that it deems appropriate
90 consistent with the commission's regulations. Except as otherwise
91 provided in this paragraph, the Permit Board, under any conditions
92 that the board may prescribe, may authorize the Executive Director
93 of the Department of Environmental Quality to make decisions on
94 permit issuance, reissuance, denial, modification or revocation.
95 The executive director shall not be authorized to make decisions
96 on permit issuance, reissuance, denial, modification or revocation
97 for a commercial hazardous waste management facility or a
98 municipal solid waste landfill or incinerator. A decision by the
99 executive director shall be a decision of the Permit Board and
100 shall be subject to formal hearing and appeal as provided in this
101 section. The executive director shall report all permit decisions
102 to the Permit Board at its next regularly scheduled meeting and
103 those decisions shall be recorded in the minutes of the Permit
104 Board. The decisions of the Permit Board shall be recorded in
105 minutes of the Permit Board and shall be kept separate and apart
106 from the minutes of the commission. The decision of the Permit
107 Board or the executive director to issue, reissue, deny, modify or
108 revoke permits shall not be construed to be an order or other
109 action of the commission.

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

116 (c) All persons required to obtain an air pollution
117 control or water pollution control permit, a permit under the
118 Solid Wastes Disposal Law of 1974 (Title 17, Chapter 17) or any
119 other permit within the jurisdiction of the Permit Board shall
120 make application for that permit with the Permit Board. The
121 Permit Board, under any regulations as the commission may
122 prescribe, may require the submission of those plans,
123 specifications and other information as it deems necessary to
124 carry out Sections 49-17-1 through 49-17-43 and Title 17, Chapter
125 17, or to carry out the commission's regulations adopted under
126 those sections. The Permit Board, based upon any information as
127 it deems relevant, shall issue, reissue, deny, modify or revoke
128 air pollution control or water pollution control permit or permits
129 required under the Solid Wastes Disposal Law of 1974 (Title 17,
130 Chapter 17) or any other permit within the jurisdiction of the
131 Permit Board under any conditions as it deems necessary that are
132 consistent with the commission's regulations. The Permit Board's
133 action of issuance, reissuance, denial, modification or revocation
134 of a permit as recorded in its minutes shall constitute a complete
135 decision of the board. All permits issued by the Permit Board
136 shall remain in full force and effect until the board makes a
137 final determination regarding any reissuance, modification, or

138 revocation thereof. The Permit Board shall take action upon an
139 application within one hundred eighty (180) days following its
140 receipt in the board's principal office. No action which affects
141 revocation of an existing permit shall take effect until the
142 thirty (30) days mentioned in paragraph (4)(b) of this section has
143 expired or until a formal hearing as prescribed in that paragraph
144 is held, whichever is later.

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

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

157 (f) The Permit Board shall not issue any permit for a
158 new swine concentrated animal feeding operation or the expansion
159 of an existing swine concentrated animal feeding operation before
160 January 1, 2002, unless the department received the application
161 for that operation's new or modified permit before February 28,
162 1998, or except as provided in this paragraph (f). In issuing or
163 modifying any permit for which the department received an
164 application before February 28, 1998, the Permit Board shall apply
165 those siting criteria adopted or used by the commission before

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

178 (4) (a) Except as required by this section, before the
179 issuance, reissuance, denial, modification or revocation of any
180 air pollution control or water pollution control permit, permit
181 required under the Solid Wastes Disposal Law of 1974 (Title 17,
182 Chapter 17) or any other permit within its jurisdiction, the
183 Permit Board, in its discretion, may hold a public hearing or
184 meeting to obtain comments from the public on its proposed action.
185 Before the issuance, reissuance, denial, modification pertaining
186 to the expansion of a facility, transfer or revocation of a permit
187 for a commercial hazardous waste management facility or a
188 commercial municipal solid waste landfill or incinerator, the
189 Permit Board shall conduct a public hearing or meeting to obtain
190 comments from the public on the proposed action. That hearing or
191 meeting shall be informal in nature and conducted under those
192 procedures as the Permit Board may deem appropriate consistent
193 with the commission's regulations.

194 (b) Within thirty (30) days after the date the Permit
195 Board takes action upon permit issuance, reissuance, denial,
196 modification or revocation, as recorded in the minutes of the
197 Permit Board, any interested party aggrieved by that action may
198 file a written request for a formal hearing before the Permit
199 Board. An interested party is any person claiming an interest
200 relating to the property or project which is the subject of the
201 permit action, and who is so situated that the person may be
202 affected by the disposition of that action.

203 The Permit Board shall fix the time and place of the formal
204 hearing and shall notify the permittee of that time and place.

205 In conducting the formal hearing, the Permit Board shall have
206 the same full powers as to subpoenaing witnesses, administering
207 oaths, examining witnesses under oath and conducting the hearing,
208 as is now vested by law in the Mississippi Public Service
209 Commission, as to the hearings before it, with the additional
210 power that the Executive Director of the Permit Board may issue
211 all subpoenas at the instance of the Permit Board or at the
212 instance of any interested party. Any subpoenas shall be served
213 by any lawful officer in any county to whom the subpoena is
214 directed and return made thereon as provided by law, with the cost
215 of service being paid by the party on whose behalf the subpoena
216 was issued. Witnesses summoned to appear at the hearing shall be
217 entitled to the same per diem and mileage as witnesses attending
218 the circuit court and shall be paid by the person on whose behalf
219 the witness was called. Sufficient sureties for the cost of
220 service of the subpoena and witness fees shall be filed with the
221 Executive Director of the Permit Board at the time that issuance

222 of the subpoena is requested. At a hearing, any interested party
223 may present witnesses and submit evidence and cross-examine
224 witnesses.

225 The Permit Board may designate a hearing officer to conduct
226 the formal hearing on all or any part of the issues on behalf of
227 the Permit Board. The hearing officer shall prepare the record of
228 the formal hearing conducted by that officer for the Permit Board
229 and shall submit the record to the Permit Board.

230 Upon conclusion of the formal hearing, the Permit Board shall
231 enter in its minutes the board's decision affirming, modifying or
232 reversing its prior decision to issue, reissue, deny, modify or
233 revoke a permit. The Permit Board shall prepare and record in its
234 minutes findings of fact and conclusions of law supporting its
235 decision. That decision, as recorded in its minutes with its
236 findings of fact and conclusions of law, shall be final unless an
237 appeal, as provided in this section, is taken to chancery court
238 within twenty (20) days following the date the decision is entered
239 in the board's minutes.

240 (c) Within twenty (20) days after the date the Permit
241 Board takes action upon permit issuance, reissuance, denial,
242 modification or revocation after a formal hearing under this
243 subsection as recorded in the minutes of the Permit Board, any
244 person aggrieved of that action may appeal the action as provided
245 in subsection (5) of this section.

246 (5) (a) Appeals from any decision or action of the Permit
247 Board shall be only to chancery court as provided in this
248 subsection.

249 (b) Any person who is aggrieved by any decision of the

250 Permit Board issuing, reissuing, denying, revoking or modifying a
251 permit after a formal hearing may appeal that decision within the
252 period specified in subsection (4)(c) of this section to the
253 chancery court of the county of the situs in whole or in part of
254 the subject matter. The appellant shall give a cost bond with
255 sufficient sureties, payable to the state in the sum of not less
256 than One Hundred Dollars (\$100.00) nor more than Five Hundred
257 Dollars (\$500.00), to be fixed by the Permit Board and to be filed
258 with and approved by the Executive Director of the Permit Board,
259 who shall forthwith certify the filing of the bond together with a
260 certified copy of the record of the Permit Board in the matter to
261 the chancery court to which the appeal is taken, which shall
262 thereupon become the record of the cause. An appeal to the
263 chancery court as provided in this section shall not stay the
264 decision of the Permit Board. The aggrieved party may, within
265 twenty (20) days following the date the board's decision after a
266 formal hearing is entered on the board's minutes, petition the
267 chancery court for an appeal with supersedeas and the chancellor
268 shall grant a hearing on that petition. Upon good cause shown,
269 the chancellor may grant that appeal with supersedeas. If
270 granted, the appellant shall be required to post a bond with
271 sufficient sureties according to law in an amount to be determined
272 by the chancellor. Appeals shall be considered only upon the
273 record as made before the Permit Board. The chancery court shall
274 always be deemed open for hearing of an appeal and the chancellor
275 may hear the same in termtime or in vacation at any place in the
276 chancellor's district, and the appeal shall have precedence over
277 all civil cases, except election contests. The chancery court

278 shall review all questions of law and of fact. If no prejudicial
279 error is found, the matter shall be affirmed. If prejudicial
280 error is found the decision of the board shall be reversed and the
281 chancery court shall remand the matter to the Permit Board for
282 appropriate action as may be indicated or necessary under the
283 circumstances. Appeals may be taken from the chancery court to
284 the Supreme Court in the manner as now required by law, except
285 that if a supersedeas is desired by the party appealing to the
286 chancery court, that party may apply for a supersedeas to the
287 chancellor of that court, who shall award a writ of supersedeas,
288 without additional bond, if in the chancellor's judgment material
289 damage is not likely to result thereby; but otherwise, the
290 chancellor shall require a supersedeas bond as the chancellor
291 deems proper, which shall be liable to the state for any damage.

292 SECTION 2. This act shall take effect and be in force from
293 and after July 1, 2000.