

By: Senator(s) Dawkins

To: Environment Prot, Cons  
and Water Res

SENATE BILL NO. 2863

1 AN ACT TO CONFORM TO THE UNIFIED NATIONAL STRATEGY FOR ANIMAL  
2 FEEDING OPERATIONS PROPOSED BY THE UNITED STATES DEPARTMENT OF  
3 AGRICULTURE AND THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY;  
4 TO AMEND SECTION 49-17-29, MISSISSIPPI CODE OF 1972, TO PROVIDE  
5 THAT PERSONS WHO EXERCISE SUBSTANTIAL CONTROL OVER A SWINE  
6 CONCENTRATED FEEDING OPERATION MUST BE A CO-PERMITTEE; TO DEFINE  
7 "SUBSTANTIAL CONTROL"; TO PROVIDE THAT SUCH PERSONS SHALL BE  
8 JOINTLY AND SEVERALLY LIABLE FOR VIOLATIONS AND POLLUTION FROM  
9 SUCH OPERATION; AND FOR RELATED PURPOSES.

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

11 SECTION 1. The legislature finds that in response to a need  
12 to develop a national strategy to minimize water quality and  
13 public health impacts of animal feeding operations, the United  
14 States Department of Agriculture and the United States  
15 Environmental Protection Agency, in a coordinated effort,  
16 developed a Unified National Strategy for Animal Feeding  
17 Operations. The federal strategy proposes that states should  
18 address integrator liability. The guidance manual for  
19 concentrated animal feeding operations of the EPA states that  
20 corporate entities that exercise substantial operational control  
21 over a confined animal feeding operation are considered operators  
22 and should be co-permitted along with the confined animal feeding  
23 operation operator. This act is to conform with the unified  
24 national strategy and guidance manual recommendations and to  
25 address public health concerns about swine concentrated feeding  
26 operations in Mississippi.

27 SECTION 2. Section 49-17-29, Mississippi Code of 1972, is  
28 amended as follows:

29           49-17-29. (1) (a) Except as in compliance with paragraph  
30 (b) of this subsection, it is unlawful for any person to cause  
31 pollution of the air in the state or to place or cause to be  
32 placed any wastes or other products or substances in a location  
33 where they are likely to cause pollution of the air. It is also  
34 unlawful to discharge any wastes, products or substances into the  
35 air of the state which exceed standards of performance, hazardous  
36 air pollutant standards, other emission standards set by the  
37 commission, or which reduce the quality of the air below the air  
38 quality standards or increments established by the commission or  
39 prevent attainment or maintenance of those air quality standards.  
40 Any such action is hereby declared to be a public nuisance.

41           (b) It is unlawful for any person to build, erect,  
42 alter, replace, use or operate any equipment which will cause the  
43 issuance of air contaminants unless that person holds a permit  
44 from the Permit Board (except repairs or maintenance of equipment  
45 for which a permit has been previously issued), or unless that  
46 person is exempted from holding a permit by a regulation  
47 promulgated by the commission. Concentrated animal feeding  
48 operations may be a source or a category of sources exempted under  
49 this paragraph. However, no new or existing applications relating  
50 to swine concentrated animal feeding operations within a county  
51 shall be exempted from regulations and ordinances which have been  
52 duly passed by the county's board of supervisors and which are in  
53 force on June 1, 1998.

54           (2) (a) Except as in compliance with paragraph (b) of this  
55 subsection, it is unlawful for any person to cause pollution of  
56 any waters of the state or to place or cause to be placed any  
57 wastes in a location where they are likely to cause pollution of  
58 any waters of the state. It is also unlawful to discharge any  
59 wastes into any waters of the state which reduce the quality of  
60 those waters below the water quality standards established by the  
61 commission; or to violate any applicable pretreatment standards or

62 limitations, technology-based effluent limitations, toxic  
63 standards or any other limitations established by the commission.  
64 Any such action is declared to be a public nuisance.

65 (b) It is unlawful for any person to carry on any of  
66 the following activities, unless that person holds a current  
67 permit for that activity from the Permit Board as may be required  
68 for the disposal of all wastes which are or may be discharged into  
69 the waters of the state, or unless that person is exempted from  
70 holding a permit by a regulation promulgated by the commission:

71 (i) the construction, installation, modification or operation of  
72 any disposal system or part thereof or any extension or addition  
73 thereto, including, but not limited to, systems serving  
74 agricultural operations; (ii) the increase in volume or strength  
75 of any wastes in excess of the permissive discharges specified  
76 under any existing permit; (iii) the construction, installation or  
77 operation of any industrial, commercial or other establishment,  
78 including irrigation projects or any extension or modification  
79 thereof or addition thereto, the operation of which would cause an  
80 increase in the discharge of wastes into the waters of the state  
81 or would otherwise alter the physical, chemical or biological  
82 properties of any waters of the state in any manner not already  
83 lawfully authorized; (iv) the construction or use of any new  
84 outlet for the discharge of any wastes into the waters of the  
85 state. However, no new or existing applications relating to swine  
86 concentrated animal feeding operations within a county shall be  
87 exempted from regulations and ordinances which have been duly  
88 passed by the county's board of supervisors and which are in force  
89 on June 1, 1998.

90 (3) (a) Except as otherwise provided in this section, the  
91 Permit Board created by Section 49-17-28 shall be the exclusive  
92 administrative body to make decisions on permit issuance,  
93 reissuance, denial, modification or revocation of air pollution  
94 control and water pollution control permits and permits required

95 under the Solid Wastes Disposal Law of 1974 (Title 17, Chapter  
96 17), and all other permits within the jurisdiction of the Permit  
97 Board. After consideration of alternative waste treatment  
98 technologies available to control air and water pollution and  
99 odor, including appropriate siting criteria, the commission may  
100 promulgate regulations establishing conditions, limitations and  
101 exemptions under which the Permit Board shall make these  
102 decisions. Regulations promulgated by the commission which  
103 establish exemptions as authorized under Senate Bill No. 2895,  
104 1998 Regular Session [Laws, 1998, ch. 537], shall apply to any  
105 applicable facility in operation on the effective date of that  
106 regulation and to any applicable facility constructed or operated  
107 after the effective date of that regulation. The Permit Board may  
108 issue multiple permits for the same facility or operation  
109 simultaneously or in the sequence that it deems appropriate  
110 consistent with the commission's regulations. Except as otherwise  
111 provided in this paragraph, the Permit Board, under any conditions  
112 that the board may prescribe, may authorize the Executive Director  
113 of the Department of Environmental Quality to make decisions on  
114 permit issuance, reissuance, denial, modification or revocation.  
115 The executive director shall not be authorized to make decisions  
116 on permit issuance, reissuance, denial, modification or revocation  
117 for a commercial hazardous waste management facility or a  
118 municipal solid waste landfill or incinerator. A decision by the  
119 executive director shall be a decision of the Permit Board and  
120 shall be subject to formal hearing and appeal as provided in this  
121 section. The executive director shall report all permit decisions  
122 to the Permit Board at its next regularly scheduled meeting and  
123 those decisions shall be recorded in the minutes of the Permit  
124 Board. The decisions of the Permit Board shall be recorded in  
125 minutes of the Permit Board and shall be kept separate and apart  
126 from the minutes of the commission. The decision of the Permit  
127 Board or the executive director to issue, reissue, deny, modify or

128 revoke permits shall not be construed to be an order or other  
129 action of the commission.

130 (b) The Executive Director of the Department of  
131 Environmental Quality shall also be the Executive Director of the  
132 Permit Board and shall have available to him, as Executive  
133 Director of the Permit Board, all resources and personnel  
134 otherwise available to him as executive director of the  
135 department.

136 (c) All persons required to obtain an air pollution  
137 control or water pollution control permit, a permit under the  
138 Solid Wastes Disposal Law of 1974 (Title 17, Chapter 17) or any  
139 other permit within the jurisdiction of the Permit Board shall  
140 make application for that permit with the Permit Board. The  
141 Permit Board, under any regulations as the commission may  
142 prescribe, may require the submission of those plans,  
143 specifications and other information as it deems necessary to  
144 carry out Sections 49-17-1 through 49-17-43 and Title 17, Chapter  
145 17, or to carry out the commission's regulations adopted under  
146 those sections. The Permit Board, based upon any information as  
147 it deems relevant, shall issue, reissue, deny, modify or revoke  
148 air pollution control or water pollution control permit or permits  
149 required under the Solid Wastes Disposal Law of 1974 (Title 17,  
150 Chapter 17) or any other permit within the jurisdiction of the  
151 Permit Board under any conditions as it deems necessary that are  
152 consistent with the commission's regulations. The Permit Board's  
153 action of issuance, reissuance, denial, modification or revocation  
154 of a permit as recorded in its minutes shall constitute a complete  
155 decision of the board. All permits issued by the Permit Board  
156 shall remain in full force and effect until the board makes a  
157 final determination regarding any reissuance, modification, or  
158 revocation thereof. The Permit Board shall take action upon an  
159 application within one hundred eighty (180) days following its  
160 receipt in the board's principal office. No action which affects

161 revocation of an existing permit shall take effect until the  
162 thirty (30) days mentioned in paragraph (4)(b) of this section has  
163 expired or until a formal hearing as prescribed in that paragraph  
164 is held, whichever is later.

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

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

177 (f) The Permit Board shall not issue any permit for a  
178 new swine concentrated animal feeding operation or the expansion  
179 of an existing swine concentrated animal feeding operation before  
180 January 1, 2000, unless the department received the application  
181 for that operation's new or modified permit before February 28,  
182 1998, or except as provided in this paragraph (f). In issuing or  
183 modifying any permit for which the department received an  
184 application before February 28, 1998, the Permit Board shall apply  
185 those siting criteria adopted or used by the commission before  
186 February 28, 1998, unless federal law or regulations require more  
187 stringent criteria. The moratorium established in this paragraph  
188 shall not apply to the issuance of any permit for a new swine  
189 concentrated animal feeding operation or the expansion of an  
190 existing swine concentrated animal feeding operation that uses an  
191 animal waste management system which the applicant demonstrates to  
192 the Permit Board is innovative in significantly reducing the  
193 effects of the operation on the public health, welfare or the

194 environment and which is approved by the Permit Board. The Permit  
195 Board shall not issue or modify more than five (5) permits under  
196 this innovative animal waste management system technology  
197 exemption to the moratorium.

198 (g) In addition to the owner, any person who exercises  
199 substantial control over a swine concentrated animal feeding  
200 operation required to be permitted under this section shall be  
201 considered an operator and shall be a co-permittee with the swine  
202 concentrated animal feeding operation owner. A person exercises  
203 substantial control if the person:

204 (i) Establishes management or production standards  
205 for the care, maintenance, feeding, medication of the swine; or

206 (ii) Directs the activity of persons working at  
207 the concentrated animal feeding operation either through a  
208 contract or direct supervision of activities at the facility; or

209 (iii) Owns or has an ownership interest in the  
210 swine. An ownership interests includes a right or option to  
211 purchase the swine.

212 This requirement shall apply to permits for new swine  
213 concentrated animal feeding operations and to the reissuance,  
214 modification, or transfer of permits for existing swine  
215 concentrated animal feeding operations.

216 (4) (a) Except as required by this section, before the  
217 issuance, reissuance, denial, modification or revocation of any  
218 air pollution control or water pollution control permit, permit  
219 required under the Solid Wastes Disposal Law of 1974 (Title 17,  
220 Chapter 17) or any other permit within its jurisdiction, the  
221 Permit Board, in its discretion, may hold a public hearing or  
222 meeting to obtain comments from the public on its proposed action.  
223 Before the issuance, reissuance, denial, modification pertaining  
224 to the expansion of a facility, transfer or revocation of a permit  
225 for a commercial hazardous waste management facility or a  
226 commercial municipal solid waste landfill or incinerator, the

227 Permit Board shall conduct a public hearing or meeting to obtain  
228 comments from the public on the proposed action. That hearing or  
229 meeting shall be informal in nature and conducted under those  
230 procedures as the Permit Board may deem appropriate consistent  
231 with the commission's regulations.

232 (b) Within thirty (30) days after the date the Permit  
233 Board takes action upon permit issuance, reissuance, denial,  
234 modification or revocation, as recorded in the minutes of the  
235 Permit Board, any interested party aggrieved by that action may  
236 file a written request for a formal hearing before the Permit  
237 Board. An interested party is any person claiming an interest  
238 relating to the property or project which is the subject of the  
239 permit action, and who is so situated that the person may be  
240 affected by the disposition of that action.

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

243 In conducting the formal hearing, the Permit Board shall have  
244 the same full powers as to subpoenaing witnesses, administering  
245 oaths, examining witnesses under oath and conducting the hearing,  
246 as is now vested by law in the Mississippi Public Service  
247 Commission, as to the hearings before it, with the additional  
248 power that the Executive Director of the Permit Board may issue  
249 all subpoenas at the instance of the Permit Board or at the  
250 instance of any interested party. Any subpoenas shall be served  
251 by any lawful officer in any county to whom the subpoena is  
252 directed and return made thereon as provided by law, with the cost  
253 of service being paid by the party on whose behalf the subpoena  
254 was issued. Witnesses summoned to appear at the hearing shall be  
255 entitled to the same per diem and mileage as witnesses attending  
256 the circuit court and shall be paid by the person on whose behalf  
257 the witness was called. Sufficient sureties for the cost of  
258 service of the subpoena and witness fees shall be filed with the  
259 Executive Director of the Permit Board at the time that issuance



260 of the subpoena is requested. At a hearing, any interested party  
261 may present witnesses and submit evidence and cross-examine  
262 witnesses.

263 The Permit Board may designate a hearing officer to conduct  
264 the formal hearing on all or any part of the issues on behalf of  
265 the Permit Board. The hearing officer shall prepare the record of  
266 the formal hearing conducted by that officer for the Permit Board  
267 and shall submit the record to the Permit Board.

268 Upon conclusion of the formal hearing, the Permit Board shall  
269 enter in its minutes the board's decision affirming, modifying or  
270 reversing its prior decision to issue, reissue, deny, modify or  
271 revoke a permit. The Permit Board shall prepare and record in its  
272 minutes findings of fact and conclusions of law supporting its  
273 decision. That decision, as recorded in its minutes with its  
274 findings of fact and conclusions of law, shall be final unless an  
275 appeal, as provided in this section, is taken to chancery court  
276 within twenty (20) days following the date the decision is entered  
277 in the board's minutes.

278 (c) Within twenty (20) days after the date the Permit  
279 Board takes action upon permit issuance, reissuance, denial,  
280 modification or revocation after a formal hearing under this  
281 subsection as recorded in the minutes of the Permit Board, any  
282 person aggrieved of that action may appeal the action as provided  
283 in subsection (5) of this section.

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

287 (b) Any person who is aggrieved by any decision of the  
288 Permit Board issuing, reissuing, denying, revoking or modifying a  
289 permit after a formal hearing may appeal that decision within the  
290 period specified in subsection (4)(c) of this section to the  
291 chancery court of the county of the situs in whole or in part of  
292 the subject matter. The appellant shall give a cost bond with

293 sufficient sureties, payable to the state in the sum of not less  
294 than One Hundred Dollars (\$100.00) nor more than Five Hundred  
295 Dollars (\$500.00), to be fixed by the Permit Board and to be filed  
296 with and approved by the Executive Director of the Permit Board,  
297 who shall forthwith certify the filing of the bond together with a  
298 certified copy of the record of the Permit Board in the matter to  
299 the chancery court to which the appeal is taken, which shall  
300 thereupon become the record of the cause. An appeal to the  
301 chancery court as provided in this section shall not stay the  
302 decision of the Permit Board. The aggrieved party may, within  
303 twenty (20) days following the date the board's decision after a  
304 formal hearing is entered on the board's minutes, petition the  
305 chancery court for an appeal with supersedeas and the chancellor  
306 shall grant a hearing on that petition. Upon good cause shown,  
307 the chancellor may grant that appeal with supersedeas. If  
308 granted, the appellant shall be required to post a bond with  
309 sufficient sureties according to law in an amount to be determined  
310 by the chancellor. Appeals shall be considered only upon the  
311 record as made before the Permit Board. The chancery court shall  
312 always be deemed open for hearing of an appeal and the chancellor  
313 may hear the same in termtime or in vacation at any place in the  
314 chancellor's district, and the appeal shall have precedence over  
315 all civil cases, except election contests. The chancery court  
316 shall review all questions of law and of fact. If no prejudicial  
317 error is found, the matter shall be affirmed. If prejudicial  
318 error is found the decision of the board shall be reversed and the  
319 chancery court shall remand the matter to the Permit Board for  
320 appropriate action as may be indicated or necessary under the  
321 circumstances. Appeals may be taken from the chancery court to  
322 the Supreme Court in the manner as now required by law, except  
323 that if a supersedeas is desired by the party appealing to the  
324 chancery court, that party may apply for a supersedeas to the  
325 chancellor of that court, who shall award a writ of supersedeas,

326 without additional bond, if in the chancellor's judgment material  
327 damage is not likely to result thereby; but otherwise, the  
328 chancellor shall require a supersedeas bond as the chancellor  
329 deems proper, which shall be liable to the state for any damage.

330       SECTION 3. Any person, who exercises substantial control  
331 over a swine concentrated animal feeding operation and who is a  
332 co-permittee under Section 49-27-29, shall be jointly and  
333 severally liable for compliance with and violations of  
334 environmental laws, rules and regulations of the commission,  
335 conditions of permits, and for damages, remediation and abatement  
336 of pollution from the swine concentrated animal feeding operation.

337       SECTION 4. Section 3 of this act shall be codified in  
338 Chapter 17 of Title 49, Mississippi Code of 1972.

339       SECTION 5. This act shall take effect and be in force from  
340 and after its passage.