

By: Representative Bowles

To: Agriculture;
Conservation and Water
Resources

HOUSE BILL NO. 455

1 AN ACT TO AMEND SECTION 49-17-29, MISSISSIPPI CODE OF 1972,
2 TO REINSTATE UNTIL JANUARY 1, 2003, THE PROVISION OF LAW THAT
3 PROHIBITS THE ENVIRONMENTAL QUALITY PERMIT BOARD FROM ISSUING
4 CERTAIN PERMITS FOR CONSTRUCTING A NEW OR EXPANDING AN EXISTING
5 SWINE CONCENTRATED ANIMAL FEEDING OPERATION; AND FOR RELATED
6 PURPOSES.

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

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

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

22 (b) It is unlawful for any person to build, erect,
23 alter, replace, use or operate any equipment which will cause the
24 issuance of air contaminants unless that person holds a permit
25 from the Permit Board (except repairs or maintenance of equipment
26 for which a permit has been previously issued), or unless that
27 person is exempted from holding a permit by a regulation
28 promulgated by the commission. Concentrated animal feeding
29 operations may be a source or a category of sources exempted under



30 this paragraph. However, no new or existing applications relating
31 to swine concentrated animal feeding operations within a county
32 shall be exempted from regulations and ordinances which have been
33 duly passed by the county's board of supervisors and which are in
34 force on June 1, 1998.

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

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

52 (i) the construction, installation, modification or operation of
53 any disposal system or part thereof or any extension or addition
54 thereto, including, but not limited to, systems serving
55 agricultural operations; (ii) the increase in volume or strength
56 of any wastes in excess of the permissive discharges specified
57 under any existing permit; (iii) the construction, installation or
58 operation of any industrial, commercial or other establishment,
59 including irrigation projects or any extension or modification
60 thereof or addition thereto, the operation of which would cause an
61 increase in the discharge of wastes into the waters of the state
62 or would otherwise alter the physical, chemical or biological



63 properties of any waters of the state in any manner not already
64 lawfully authorized; (iv) the construction or use of any new
65 outlet for the discharge of any wastes into the waters of the
66 state. However, no new or existing applications relating to swine
67 concentrated animal feeding operations within a county shall be
68 exempted from regulations and ordinances which have been duly
69 passed by the county's board of supervisors and which are in force
70 on June 1, 1998.

71 (3) (a) Except as otherwise provided in this section, the
72 Permit Board created by Section 49-17-28 shall be the exclusive
73 administrative body to make decisions on permit issuance,
74 reissuance, denial, modification or revocation of air pollution
75 control and water pollution control permits and permits required
76 under the Solid Wastes Disposal Law of 1974 (Title 17, Chapter
77 17), and all other permits within the jurisdiction of the Permit
78 Board. After consideration of alternative waste treatment
79 technologies available to control air and water pollution and
80 odor, including appropriate siting criteria, the commission may
81 promulgate regulations establishing conditions, limitations and
82 exemptions under which the Permit Board shall make these
83 decisions. Regulations promulgated by the commission which
84 establish exemptions as authorized under Senate Bill No. 2895,
85 1998 Regular Session, [Laws, 1998, ch. 537] shall apply to any
86 applicable facility in operation on the effective date of that
87 regulation and to any applicable facility constructed or operated
88 after the effective date of that regulation. The Permit Board may
89 issue multiple permits for the same facility or operation
90 simultaneously or in the sequence that it deems appropriate
91 consistent with the commission's regulations. Except as otherwise
92 provided in this paragraph, the Permit Board, under any conditions
93 that the board may prescribe, may authorize the Executive Director
94 of the Department of Environmental Quality to make decisions on
95 permit issuance, reissuance, denial, modification or revocation.



96 The executive director shall not be authorized to make decisions
97 on permit issuance, reissuance, denial, modification or revocation
98 for a commercial hazardous waste management facility or a
99 municipal solid waste landfill or incinerator. A decision by the
100 executive director shall be a decision of the Permit Board and
101 shall be subject to formal hearing and appeal as provided in this
102 section. The executive director shall report all permit decisions
103 to the Permit Board at its next regularly scheduled meeting and
104 those decisions shall be recorded in the minutes of the Permit
105 Board. The decisions of the Permit Board shall be recorded in
106 minutes of the Permit Board and shall be kept separate and apart
107 from the minutes of the commission. The decision of the Permit
108 Board or the executive director to issue, reissue, deny, modify or
109 revoke permits shall not be construed to be an order or other
110 action of the commission.

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

117 (c) All persons required to obtain an air pollution
118 control or water pollution control permit, a permit under the
119 Solid Wastes Disposal Law of 1974 (Title 17, Chapter 17) or any
120 other permit within the jurisdiction of the Permit Board shall
121 make application for that permit with the Permit Board. The
122 Permit Board, under any regulations as the commission may
123 prescribe, may require the submission of those plans,
124 specifications and other information as it deems necessary to
125 carry out Sections 49-17-1 through 49-17-43 and Title 17, Chapter
126 17, or to carry out the commission's regulations adopted under
127 those sections. The Permit Board, based upon any information as
128 it deems relevant, shall issue, reissue, deny, modify or revoke



129 air pollution control or water pollution control permit or permits
130 required under the Solid Wastes Disposal Law of 1974 (Title 17,
131 Chapter 17) or any other permit within the jurisdiction of the
132 Permit Board under any conditions as it deems necessary that are
133 consistent with the commission's regulations. The Permit Board's
134 action of issuance, reissuance, denial, modification or revocation
135 of a permit as recorded in its minutes shall constitute a complete
136 decision of the board. All permits issued by the Permit Board
137 shall remain in full force and effect until the board makes a
138 final determination regarding any reissuance, modification, or
139 revocation thereof. The Permit Board shall take action upon an
140 application within one hundred eighty (180) days following its
141 receipt in the board's principal office. No action which affects
142 revocation of an existing permit shall take effect until the
143 thirty (30) days mentioned in paragraph (4)(b) of this section has
144 expired or until a formal hearing as prescribed in that paragraph
145 is held, whichever is later.

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

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

158 (f) The Permit Board shall not issue any permit for a
159 new swine concentrated animal feeding operation or the expansion
160 of an existing swine concentrated animal feeding operation before
161 January 1, 2003, unless the department received the application



162 for that operation's new or modified permit before February 28,
163 1998, or except as provided in this paragraph (f). In issuing or
164 modifying any permit for which the department received an
165 application before February 28, 1998, the Permit Board shall apply
166 those siting criteria adopted or used by the commission before
167 February 28, 1998, unless federal law or regulations require more
168 stringent criteria. The moratorium established in this paragraph
169 shall not apply to the issuance of any permit for a new swine
170 concentrated animal feeding operation or the expansion of an
171 existing swine concentrated animal feeding operation that uses an
172 animal waste management system which the applicant demonstrates to
173 the Permit Board is innovative in significantly reducing the
174 effects of the operation on the public health, welfare or the
175 environment and which is approved by the Permit Board. The Permit
176 Board shall not issue or modify more than five (5) permits under
177 this innovative animal waste management system technology
178 exemption to the moratorium.

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



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

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

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

226 The Permit Board may designate a hearing officer to conduct
227 the formal hearing on all or any part of the issues on behalf of



228 the Permit Board. The hearing officer shall prepare the record of
229 the formal hearing conducted by that officer for the Permit Board
230 and shall submit the record to the Permit Board.

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

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

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

250 (b) Any person who is aggrieved by any decision of the
251 Permit Board issuing, reissuing, denying, revoking or modifying a
252 permit after a formal hearing may appeal that decision within the
253 period specified in subsection (4)(c) of this section to the
254 chancery court of the county of the situs in whole or in part of
255 the subject matter. The appellant shall give a cost bond with
256 sufficient sureties, payable to the state in the sum of not less
257 than One Hundred Dollars (\$100.00) nor more than Five Hundred
258 Dollars (\$500.00), to be fixed by the Permit Board and to be filed
259 with and approved by the Executive Director of the Permit Board,
260 who shall forthwith certify the filing of the bond together with a



261 certified copy of the record of the Permit Board in the matter to
262 the chancery court to which the appeal is taken, which shall
263 thereupon become the record of the cause. An appeal to the
264 chancery court as provided in this section shall not stay the
265 decision of the Permit Board. The aggrieved party may, within
266 twenty (20) days following the date the board's decision after a
267 formal hearing is entered on the board's minutes, petition the
268 chancery court for an appeal with supersedeas and the chancellor
269 shall grant a hearing on that petition. Upon good cause shown,
270 the chancellor may grant that appeal with supersedeas. If
271 granted, the appellant shall be required to post a bond with
272 sufficient sureties according to law in an amount to be determined
273 by the chancellor. Appeals shall be considered only upon the
274 record as made before the Permit Board. The chancery court shall
275 always be deemed open for hearing of an appeal and the chancellor
276 may hear the same in termtime or in vacation at any place in the
277 chancellor's district, and the appeal shall have precedence over
278 all civil cases, except election contests. The chancery court
279 shall review all questions of law and of fact. If no prejudicial
280 error is found, the matter shall be affirmed. If prejudicial
281 error is found the decision of the board shall be reversed and the
282 chancery court shall remand the matter to the Permit Board for
283 appropriate action as may be indicated or necessary under the
284 circumstances. Appeals may be taken from the chancery court to
285 the Supreme Court in the manner as now required by law, except
286 that if a supersedeas is desired by the party appealing to the
287 chancery court, that party may apply for a supersedeas to the
288 chancellor of that court, who shall award a writ of supersedeas,
289 without additional bond, if in the chancellor's judgment material
290 damage is not likely to result thereby; but otherwise, the
291 chancellor shall require a supersedeas bond as the chancellor
292 deems proper, which shall be liable to the state for any damage.



293 **SECTION 2.** This act shall take effect and be in force from
294 and after July 1, 2002.

