

By: Representative Ellington

To: Conservation and Water Resources

HOUSE BILL NO. 1077

1 AN ACT TO AMEND SECTION 49-17-29, MISSISSIPPI CODE OF 1972,
2 TO PROVIDE THAT THE MISSISSIPPI PUBLIC UTILITIES STAFF SHALL MAKE
3 AN ECONOMIC VIABILITY DETERMINATION ON NEW WASTEWATER SYSTEMS AND
4 CERTIFY SAME TO THE DEPARTMENT OF ENVIRONMENTAL QUALITY; AND FOR
5 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 this section shall apply
84 to any applicable facility in operation on the effective date of
85 that regulation and to any applicable facility constructed or
86 operated after the effective date of that regulation. The Permit
87 Board may issue multiple permits for the same facility or
88 operation simultaneously or in the sequence that it deems
89 appropriate consistent with the commission's regulations. Except
90 as otherwise provided in this paragraph, the Permit Board, under
91 any conditions that the board may prescribe, may authorize the
92 Executive Director of the Department of Environmental Quality to
93 make decisions on permit issuance, reissuance, denial,
94 modification or revocation. The executive director shall not be



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

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

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



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

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

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

156 (f) The Permit Board shall not issue any permit for a
157 new swine concentrated animal feeding operation or the expansion
158 of an existing swine concentrated animal feeding operation before
159 January 1, 2000, unless the department received the application
160 for that operation's new or modified permit before February 28,



161 1998, or except as provided in this paragraph (f). In issuing or
162 modifying any permit for which the department received an
163 application before February 28, 1998, the Permit Board shall apply
164 those siting criteria adopted or used by the commission before
165 February 28, 1998, unless federal law or regulations require more
166 stringent criteria. The moratorium established in this paragraph
167 shall not apply to the issuance of any permit for a new swine
168 concentrated animal feeding operation or the expansion of an
169 existing swine concentrated animal feeding operation that uses an
170 animal waste management system which the applicant demonstrates to
171 the Permit Board is innovative in significantly reducing the
172 effects of the operation on the public health, welfare or the
173 environment and which is approved by the Permit Board. The Permit
174 Board shall not issue or modify more than five (5) permits under
175 this innovative animal waste management system technology
176 exemption to the moratorium.

177 (g) Each applicant for a permit for a new outlet for
178 the discharge of wastes into the waters of the state who is
179 required to obtain a certificate of public convenience and
180 necessity from the Public Service Commission for such wastewater
181 system shall submit financial and managerial information as
182 required by the Public Utilities Staff. Following review of that
183 information, the Executive Director of the Public Utilities Staff
184 shall certify in writing to the executive director of the
185 department, the financial and managerial viability of the system
186 if the Executive Director of the Public Utilities Staff determines
187 the system is viable. The Permit Board shall not issue the permit
188 until the certification is received.

189 (4) (a) Except as required by this section, before the
190 issuance, reissuance, denial, modification or revocation of any
191 air pollution control or water pollution control permit, permit
192 required under the Solid Wastes Disposal Law of 1974 (Title 17,
193 Chapter 17) or any other permit within its jurisdiction, the



194 Permit Board, in its discretion, may hold a public hearing or
195 meeting to obtain comments from the public on its proposed action.
196 Before the issuance, reissuance, denial, modification pertaining
197 to the expansion of a facility, transfer or revocation of a permit
198 for a commercial hazardous waste management facility or a
199 commercial municipal solid waste landfill or incinerator, the
200 Permit Board shall conduct a public hearing or meeting to obtain
201 comments from the public on the proposed action. That hearing or
202 meeting shall be informal in nature and conducted under those
203 procedures as the Permit Board may deem appropriate consistent
204 with the commission's regulations.

205 (b) Within thirty (30) days after the date the Permit
206 Board takes action upon permit issuance, reissuance, denial,
207 modification or revocation, as recorded in the minutes of the
208 Permit Board, any interested party aggrieved by that action may
209 file a written request for a formal hearing before the Permit
210 Board. An interested party is any person claiming an interest
211 relating to the property or project which is the subject of the
212 permit action, and who is so situated that the person may be
213 affected by the disposition of that action.

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

216 In conducting the formal hearing, the Permit Board shall have
217 the same full powers as to subpoenaing witnesses, administering
218 oaths, examining witnesses under oath and conducting the hearing,
219 as is now vested by law in the Mississippi Public Service
220 Commission, as to the hearings before it, with the additional
221 power that the Executive Director of the Permit Board may issue
222 all subpoenas at the instance of the Permit Board or at the
223 instance of any interested party. Any subpoenas shall be served
224 by any lawful officer in any county to whom the subpoena is
225 directed and return made thereon as provided by law, with the cost
226 of service being paid by the party on whose behalf the subpoena



227 was issued. Witnesses summoned to appear at the hearing shall be
228 entitled to the same per diem and mileage as witnesses attending
229 the circuit court and shall be paid by the person on whose behalf
230 the witness was called. Sufficient sureties for the cost of
231 service of the subpoena and witness fees shall be filed with the
232 Executive Director of the Permit Board at the time that issuance
233 of the subpoena is requested. At a hearing, any interested party
234 may present witnesses and submit evidence and cross-examine
235 witnesses.

236 The Permit Board may designate a hearing officer to conduct
237 the formal hearing on all or any part of the issues on behalf of
238 the Permit Board. The hearing officer shall prepare the record of
239 the formal hearing conducted by that officer for the Permit Board
240 and shall submit the record to the Permit Board.

241 Upon conclusion of the formal hearing, the Permit Board shall
242 enter in its minutes the board's decision affirming, modifying or
243 reversing its prior decision to issue, reissue, deny, modify or
244 revoke a permit. The Permit Board shall prepare and record in its
245 minutes findings of fact and conclusions of law supporting its
246 decision. That decision, as recorded in its minutes with its
247 findings of fact and conclusions of law, shall be final unless an
248 appeal, as provided in this section, is taken to chancery court
249 within twenty (20) days following the date the decision is entered
250 in the board's minutes.

251 (c) Within twenty (20) days after the date the Permit
252 Board takes action upon permit issuance, reissuance, denial,
253 modification or revocation after a formal hearing under this
254 subsection as recorded in the minutes of the Permit Board, any
255 person aggrieved of that action may appeal the action as provided
256 in subsection (5) of this section.

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



260 (b) Any person who is aggrieved by any decision of the
261 Permit Board issuing, reissuing, denying, revoking or modifying a
262 permit after a formal hearing may appeal that decision within the
263 period specified in subsection (4)(c) of this section to the
264 chancery court of the county of the situs in whole or in part of
265 the subject matter. The appellant shall give a cost bond with
266 sufficient sureties, payable to the state in the sum of not less
267 than One Hundred Dollars (\$100.00) nor more than Five Hundred
268 Dollars (\$500.00), to be fixed by the Permit Board and to be filed
269 with and approved by the Executive Director of the Permit Board,
270 who shall forthwith certify the filing of the bond together with a
271 certified copy of the record of the Permit Board in the matter to
272 the chancery court to which the appeal is taken, which shall
273 thereupon become the record of the cause. An appeal to the
274 chancery court as provided in this section shall not stay the
275 decision of the Permit Board. The aggrieved party may, within
276 twenty (20) days following the date the board's decision after a
277 formal hearing is entered on the board's minutes, petition the
278 chancery court for an appeal with supersedeas and the chancellor
279 shall grant a hearing on that petition. Upon good cause shown,
280 the chancellor may grant that appeal with supersedeas. If
281 granted, the appellant shall be required to post a bond with
282 sufficient sureties according to law in an amount to be determined
283 by the chancellor. Appeals shall be considered only upon the
284 record as made before the Permit Board. The chancery court shall
285 always be deemed open for hearing of an appeal and the chancellor
286 may hear the same in termtime or in vacation at any place in the
287 chancellor's district, and the appeal shall have precedence over
288 all civil cases, except election contests. The chancery court
289 shall review all questions of law and of fact. If no prejudicial
290 error is found, the matter shall be affirmed. If prejudicial
291 error is found the decision of the board shall be reversed and the
292 chancery court shall remand the matter to the Permit Board for



293 appropriate action as may be indicated or necessary under the
294 circumstances. Appeals may be taken from the chancery court to
295 the Supreme Court in the manner as now required by law, except
296 that if a supersedeas is desired by the party appealing to the
297 chancery court, that party may apply for a supersedeas to the
298 chancellor of that court, who shall award a writ of supersedeas,
299 without additional bond, if in the chancellor's judgment material
300 damage is not likely to result thereby; but otherwise, the
301 chancellor shall require a supersedeas bond as the chancellor
302 deems proper, which shall be liable to the state for any damage.

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

