

By: Senator(s) Nunnelee

To: Environment Prot, Cons
and Water Res

SENATE BILL NO. 2538

1 AN ACT TO AMEND SECTION 49-17-29, MISSISSIPPI CODE OF 1972,
2 TO SPECIFY TYPE OF PERMITS REQUIRING A PUBLIC HEARING; AND FOR
3 RELATED PURPOSES.

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

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

7 49-17-29. (1) (a) Except as in compliance with paragraph
8 (b) of this subsection, it is unlawful for any person to cause
9 pollution of the air in the state or to place or cause to be
10 placed any wastes or other products or substances in a location
11 where they are likely to cause pollution of the air. It is also
12 unlawful to discharge any wastes, products or substances into the
13 air of the state which exceed standards of performance, hazardous
14 air pollutant standards, other emission standards set by the
15 commission, or which reduce the quality of the air below the air
16 quality standards or increments established by the commission or
17 prevent attainment or maintenance of those air quality standards.
18 Any such action is hereby declared to be a public nuisance.

19 (b) It is unlawful for any person to build, erect,
20 alter, replace, use or operate any equipment which will cause the
21 issuance of air contaminants unless that person holds a permit
22 from the Permit Board (except repairs or maintenance of equipment
23 for which a permit has been previously issued), or unless that
24 person is exempted from holding a permit by a regulation
25 promulgated by the commission. Concentrated animal feeding
26 operations may be a source or a category of sources exempted under
27 this paragraph. However, no new or existing applications relating



28 to swine concentrated animal feeding operations within a county
29 shall be exempted from regulations and ordinances which have been
30 duly passed by the county's board of supervisors and which are in
31 force on June 1, 1998.

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

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

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



61 lawfully authorized; (iv) the construction or use of any new
62 outlet for the discharge of any wastes into the waters of the
63 state. However, no new or existing applications relating to swine
64 concentrated animal feeding operations within a county shall be
65 exempted from regulations and ordinances which have been duly
66 passed by the county's board of supervisors and which are in force
67 on June 1, 1998.

68 (3) (a) Except as otherwise provided in this section, the
69 Permit Board created by Section 49-17-28 shall be the exclusive
70 administrative body to make decisions on permit issuance,
71 reissuance, denial, modification or revocation of air pollution
72 control and water pollution control permits and permits required
73 under the Solid Wastes Disposal Law of 1974 (Title 17, Chapter
74 17), and all other permits within the jurisdiction of the Permit
75 Board. After consideration of alternative waste treatment
76 technologies available to control air and water pollution and
77 odor, including appropriate siting criteria, the commission may
78 promulgate regulations establishing conditions, limitations and
79 exemptions under which the Permit Board shall make these
80 decisions. Regulations promulgated by the commission which
81 establish exemptions as authorized under Senate Bill No. 2895,
82 1998 Regular Session [Laws, 1998, Ch. 537], shall apply to any
83 applicable facility in operation on the effective date of that
84 regulation and to any applicable facility constructed or operated
85 after the effective date of that regulation. The Permit Board may
86 issue multiple permits for the same facility or operation
87 simultaneously or in the sequence that it deems appropriate
88 consistent with the commission's regulations. Except as otherwise
89 provided in this paragraph, the Permit Board, under any conditions
90 that the board may prescribe, may authorize the Executive Director
91 of the Department of Environmental Quality to make decisions on
92 permit issuance, reissuance, denial, modification or revocation.
93 The executive director shall not be authorized to make decisions



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

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

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



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

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

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

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



160 1998, or except as provided in this paragraph (f). In issuing or
161 modifying any permit for which the department received an
162 application before February 28, 1998, the Permit Board shall apply
163 those siting criteria adopted or used by the commission before
164 February 28, 1998, unless federal law or regulations require more
165 stringent criteria. The moratorium established in this paragraph
166 shall not apply to the issuance of any permit for a new swine
167 concentrated animal feeding operation or the expansion of an
168 existing swine concentrated animal feeding operation that uses an
169 animal waste management system which the applicant demonstrates to
170 the Permit Board is innovative in significantly reducing the
171 effects of the operation on the public health, welfare or the
172 environment and which is approved by the Permit Board. The Permit
173 Board shall not issue or modify more than five (5) permits under
174 this innovative animal waste management system technology
175 exemption to the moratorium.

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



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

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

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

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



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

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

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

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

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



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



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

