

By: Senator(s) Dawkins

To: Environment Prot, Cons
and Water Res

SENATE BILL NO. 2726

1 AN ACT TO CREATE AN ENVIRONMENTAL EQUITY PROGRAM TO BE
2 ADMINISTERED BY THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO ENSURE
3 THAT HAZARDOUS WASTE FACILITIES ARE NOT DISPROPORTIONATELY
4 CONCENTRATED IN MINORITY OR LOW INCOME COMMUNITIES; TO AMEND
5 SECTIONS 17-17-15, 17-17-27, 17-17-151, 49-17-25, 49-17-29,
6 25-43-5 AND 25-43-7, MISSISSIPPI CODE OF 1972, IN CONFORMITY TO
7 THE PROVISIONS OF THIS ACT; AND FOR RELATED PURPOSES.

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

9 **SECTION 1.** This act shall be known and may be cited as the
10 "Mississippi Environmental Equity Act."

11 **SECTION 2.** It is in the interest of the citizens of
12 Mississippi to ensure equal environmental protection for all
13 people regardless of race, ethnicity, or socio-economic status.
14 There is an urgent need to collect, analyze and report regularly
15 data on environmental quality and related public health measures
16 by race, ethnicity and socio-economic status, and to develop
17 policies and programs that prevent and reduce the
18 disproportionately greater exposures to potentially hazardous
19 substances experienced by racial minority, ethnic minority and
20 low-income populations. It is the intent of the Legislature to
21 ensure equitable processes and outcomes in the prevention and
22 reduction of human exposure to potentially harmful substances, to
23 enhance the authority of the Department of Environmental Quality
24 to investigate and make siting recommendations of hazardous waste
25 facilities.

26 **SECTION 3.** As used in this act, the following words and
27 phrases shall have the meanings respectively ascribed herein
28 unless the context clearly indicates otherwise.



29 (a) "Environmental equity" means ensuring equitable
30 processes and outcomes in the:

31 (i) Prevention and reduction of releases of
32 potentially harmful substances to the environment;

33 (ii) Prevention and reduction of human exposure to
34 potentially harmful substances in the environment;

35 (iii) Distribution of environmental services among
36 population groups, including racial minority, ethnic minority and
37 low-income groups; and

38 (iv) Sharing by all economic levels and ethnic
39 groups of the negative and positive impact of actions proposed by
40 individuals, corporations and public agencies which are found to
41 affect the quality of the environment.

42 (b) "Low-income community" means any area in which one
43 (1) of the following conditions exist:

44 (i) Twenty percent (20%) or more of the citizens
45 are persons or families who require financial assistance from any
46 federal or state assistance program due to insufficient personal
47 or family income; or

48 (ii) Twenty percent (20%) or more of the citizens
49 are persons or families with income below the poverty level as
50 reported in the most recent federal decennial census; or

51 (c) "Minority community" means an area where fifty
52 percent (50%) or more of the residents are Asian, Black, Hispanic
53 or Native American, according to the following definitions:

54 (i) "Asian" means a person having origins in any
55 of the original people of the Far East, Southeast Asia, the Indian
56 subcontinent or the Pacific Islands.

57 (ii) "Black" means a person having origins in any
58 Black racial group of Africa.

59 (iii) "Hispanic" means a person of Spanish or
60 Portuguese culture with origins in Mexico, South or Central
61 America or the Caribbean Islands, regardless of race.



62 (iv) "Native American" means a person having
63 origins in any of the original people of North America, including
64 American Indians, Eskimos and Aleuts.

65 (d) "Potentially harmful substance" means:

66 (i) Any hazardous substance;

67 (ii) Any air pollutant as defined under the Clean
68 Air Act;

69 (iii) Any extremely hazardous substance as defined
70 under the Superfund Amendments and Reauthorization Act;

71 (iv) Any hazardous chemical for which a material
72 safety data sheet is required to be prepared under the
73 Occupational Safety and Health Act of 1970 or regulations
74 promulgated under that act;

75 (v) Any toxic chemical under the Superfund Act;

76 (vi) Any pesticide as defined under the Federal
77 Insecticide, Fungicide and Rodenticide Act; and

78 (vii) Chemicals subject to restrictive orders
79 under the Toxic Substances Control Act.

80 (e) "Release" or "releases" means any spilling,
81 leaking, pumping, pouring, emitting, emptying, discharging,
82 injecting, escaping, leaching, dumping or disposing into the
83 environment (including abandonment or discarding of barrels,
84 containers and other collapsed receptacles containing any
85 potentially harmful substance), but excludes any release that
86 results in exposure to persons solely within a workplace, the
87 normal application of fertilizer and releases during routine use
88 of a product that do not result in exposure to individuals who are
89 not present in the residence or facility where the product is to
90 be used.

91 (f) "State" refers to the State of Mississippi.

92 (g) "Task force" means the Environmental Equity Task
93 Force established under Section 5 of this act.



94 **SECTION 4.** (1) The Department of Environmental Quality
95 shall promulgate regulations providing for a comprehensive
96 assessment, on a continuing basis, of the extent to which
97 identifiable populations are disproportionately exposed to
98 potentially harmful substances in the environment on the basis of
99 race, ethnicity or socio-economic status, and the development and
100 implementation, on a continuing basis, of state regulations,
101 policies, programs and enforcement priorities that prevent and
102 reduce any such disproportionate exposure.

103 The department shall publish a notice of proposed rulemaking,
104 not later than one hundred eighty (180) days after the effective
105 date of this act, and provide a public comment period of sixty
106 (60) days after the publication of the notice of proposed
107 rulemaking; and publish its adopted regulations not later than
108 forty-five (45) days after the public comment period.

109 The rules promulgated under this section shall be promulgated
110 in accordance with the Administrative Procedures Law to the extent
111 that the Administrative Procedures Act does not conflict with this
112 section.

113 (2) The Department of Environmental Quality also shall:

114 (a) Review statutory authority, regulations and
115 policies for the purpose of determining whether there are any
116 deficiencies or inconsistencies therein that are a barrier to full
117 compliance with the provisions of this act;

118 (b) Review, on a continuing basis, programs
119 administered, mandated, delegated or funded by the state to ensure
120 that they are in compliance with the provisions of this act;

121 (c) Develop decision criteria for use in the
122 rulemaking, permitting and enforcement programs to ensure that the
123 state's activities are in compliance with the provisions of this
124 act;

125 (d) Implement the environmental equity research
126 program;



127 (e) Develop and implement a strategy for preventing
128 pollution and encouraging sustainable development that is
129 consistent with the provisions of this act;

130 (f) Develop and implement a comprehensive information
131 management plan;

132 (g) Develop and implement a public participation,
133 communication and educations strategy to ensure public
134 participation and public access to data and reports;

135 (h) Develop and implement a plan for assisting other
136 federal, state and local government agencies in examining
137 environmental equity concerns;

138 (i) Provide environmental equity awareness training;

139 (j) Provide technical assistance and training to aid
140 other public and private entities in the promotion of
141 environmental equity;

142 (k) Prepare a report by January 15, 1998, and each year
143 thereafter, on the status of environmental equity activities;

144 (l) Ensure that the department provides for the
145 function of an ombudsman with the department.

146 **SECTION 5.** (1) There shall be an Environmental Equity Task
147 Force that will consist of fifteen (15) voting members to be
148 appointed by the leadership of the Legislative Black Caucus, State
149 House of Representatives, State Senate, Department of
150 Environmental Quality, Governor's Office and Southern Echo
151 Environmental Group, as provided in this section. Seven (7) of
152 the voting members shall be minority members of the State
153 Legislature appointed as follows: two (2) members shall be
154 appointed by the President Pro Tempore of the Senate, two (2)
155 members shall be appointed by the Speaker Pro Tempore of the
156 House, and the final three (3) members shall be appointed by the
157 leadership of the Legislative Black Caucus. The remaining eight
158 (8) voting members of the task force shall be appointed as
159 follows: four (4) members shall be appointed by the Governor's



160 Office, three (3) members shall be appointed by the Department of
161 Environmental Quality and one (1) member shall be appointed by
162 Southern Echo Environmental Group. Nonvoting members of the task
163 force shall include members of the House Conservation and Water
164 Resources Committee and Senate Environmental Protection,
165 Conservation and Water Resources Committee, environmental advocacy
166 organizations, such as the Sierra Club, and other grassroots
167 organizations, all of whom shall be selected by the chairman of
168 the task force. The terms of the voting members of the task force
169 shall be as follows: five (5) of the initial members shall be
170 appointed for terms of four (4) years, five (5) of the initial
171 members shall be appointed for terms of three (3) years and five
172 (5) of the initial members shall be appointed for terms of two (2)
173 years, respectively, from the date of their appointment. After
174 the expiration of the initial terms provided for under this
175 subsection, all subsequent appointments shall be for terms of four
176 (4) years from the expiration date of the previous term.

177 The chairman shall be elected from the fifteen (15) voting
178 members of the task force. Members of the task force shall
179 receive no compensation for their services, but the voting members
180 of the task force shall be reimbursed for their actual and
181 necessary expenses incurred in the performance of their official
182 duties as provided in Section 25-3-41.

183 (2) The task force shall have the following powers and
184 duties:

185 (a) To litigate;

186 (b) To make and execute contracts and all other
187 instruments necessary or convenient for the exercise of its powers
188 and function under this act;

189 (c) To assist the Department of Environmental Quality
190 with holding public hearings and to contract for professional and
191 technical assistance and advice;



192 (d) To contract for and to accept assistance, including
193 but not limited to gifts, grants or loans of funds or of property
194 from the federal or state government, or from any other public or
195 private source and to comply with the terms of conditions thereof,
196 subject to the applicable general policies;

197 (e) To encourage individuals, corporations,
198 associations, organizations and public agencies to consider the
199 environmental interests of the minority or low-income communities
200 in its decision-making process;

201 (f) To provide local governments and the private sector
202 with improved liaison, interpretation and focus relative to a
203 variety of state and federal programs which bear on environmental
204 equity;

205 (g) To conduct systematic and thorough research to be
206 made available to the public on environmental issues that relate
207 to minority or low-income communities, including, but not limited
208 to, lead, occupational hazards, siting of polluting facilities and
209 access to parks and other open spaces;

210 (h) To conduct community outreach and produce materials
211 to educate the public about issues related to environmental
212 equity; and

213 (i) To exercise and perform such other powers and
214 duties as shall have been or may be from time to time conveyed or
215 imposed by law.

216 **SECTION 6.** In order to determine if there are significant
217 adverse impacts of environmental pollution on human health in
218 environmental high-impact areas, minority or low-income
219 communities, there shall be a moratorium on the siting or
220 permitting of any new toxic chemical facility in any environmental
221 high-impact area shown to emit toxic chemicals in quantities found
222 to cause significant adverse impacts on human health. A new toxic
223 chemical facility may be cited or permitted in such an
224 environmental high-impact area during this period only if:



- 225 (a) The need for the activity is shown; and
226 (b) The facility demonstrates that it will minimize
227 uncontrolled releases into the environment.

228 The moratorium shall continue in effect in such an
229 environmental high-impact area until the task force determines,
230 upon petition of any interested party, that the health-based
231 levels identified have been attained in the area.

232 **SECTION 7.** Section 17-17-15, Mississippi Code of 1972, is
233 amended as follows:

234 17-17-15. (1) Hazardous wastes shall not be handled or
235 disposed of along with or in the same site or adjoining site as
236 ordinary wastes unless specifically approved as exempted waste by
237 the department. These shall be disposed of by special
238 incinerators, separate landfills, or other means dictated by the
239 particularities of the hazardous waste involved, as determined by
240 the department or other responsible agency. The department may,
241 in its discretion, maintain a field office at any treatment or
242 disposal facility that receives hazardous wastes directly or
243 indirectly from more than one (1) generator. However, the
244 department shall maintain a field office at any commercial
245 off-site multiuser hazardous waste incinerator designed to
246 incinerate multiple nonhomogeneous types of wastes, and the cost
247 of operating such field office shall be borne by the owner of such
248 commercial hazardous waste incinerator. The field office, when
249 required, shall be located in adequate accommodations provided by
250 the facility owner and shall be staffed with department regulatory
251 personnel as deemed necessary by the department. In exercising
252 its discretion to determine the need for a field office,
253 regulatory staff and support equipment, the department shall
254 consider, at a minimum, the type and amount of hazardous waste
255 received and also the type of facility. All fees shall be
256 established by the department and shall be in addition to any
257 other fees provided by law. The fee prescribed by the department



258 shall be in an amount not less than the actual operating expenses
259 of the permanent field office and shall be in addition to any
260 other fees required by law.

261 (2) In addition to considering all applicable state and
262 federal laws and regulations, the Mississippi Pollution Control
263 Permit Board shall not issue a permit for the establishment or
264 operation of a commercial hazardous waste landfill for the
265 disposal of hazardous waste (as defined by Section 17-17-3,
266 Mississippi Code of 1972), in the State of Mississippi until the
267 Environmental Protection Agency makes a final determination,
268 pursuant to the Federal Hazardous and Solid Waste Amendments of
269 1984, Public Law No. 98-616, that each waste to be placed in such
270 landfill is suitable for land disposal.

271 (3) No permit shall be issued pursuant to this section that
272 is in conflict with the provisions of the Mississippi
273 Environmental Equity Act.

274 **SECTION 8.** Section 17-17-27, Mississippi Code of 1972, is
275 amended as follows:

276 17-17-27. (1) The department shall exercise such
277 supervision over restrictions, equipment, methodology and
278 personnel in the management of solid wastes as may be necessary to
279 enforce sanitary requirements; and the commission shall adopt such
280 rules and regulations as may be needed to specify methodology and
281 procedures to meet the requirements of this chapter, which shall
282 include at a minimum:

283 (a) Criteria for the determination of whether any waste
284 or combination of wastes is hazardous for the purposes of this
285 chapter;

286 (b) Rules and regulations for the storage, treatment
287 and disposal of solid wastes;

288 (c) Rules and regulations for the transportation,
289 containerization and labeling of hazardous wastes, which rules



290 shall be consistent with those issued by the United States
291 Department of Transportation;

292 (d) Rules and regulations specifying the terms and
293 conditions under which the Permit Board shall issue, modify,
294 suspend, revoke or deny such permits as may be required by this
295 chapter. Such rules and regulations shall include, and not by way
296 of limitation, specific authority for the Permit Board to consider
297 the financial capability and performance history of an applicant.
298 No permit shall be issued that is in conflict with the provisions
299 of the Mississippi Environmental Equity Act;

300 (e) Rules and regulations establishing standards and
301 procedures for the safe storage or transportation of hazardous
302 waste and for the safe operation and maintenance of hazardous
303 waste treatment or disposal facilities or sites or equipment;

304 (f) A listing of those wastes or combinations of wastes
305 which are not compatible, and which may not be stored or disposed
306 of together;

307 (g) Procedures and requirements for the use of a
308 manifest during the transport of hazardous wastes;

309 (h) Standards for financial responsibility to cover the
310 liability, closure and post-closure of any site and perpetual care
311 of a commercial hazardous waste landfill. Rules and regulations
312 promulgated hereunder may include, and not by way of limitation,
313 requirements for maintaining liability insurance coverage if such
314 coverage is not required under rules and regulations promulgated
315 by the United States Environmental Protection Agency;

316 (i) Rules and regulations establishing minimum
317 distances within which any hazardous waste disposal facility may
318 be located from any municipality, school, residence, church or
319 health care facility;

320 (j) Other rules and regulations as the commission deems
321 necessary to manage hazardous wastes in the state, provided that



322 such rules and regulations shall be equivalent to the United
323 States Environmental Protection Agency's rules and regulations.

324 (2) In complying with this section the commission shall
325 consider the variations within this state in climate, geology,
326 population density and such other factors as may be relevant to
327 the management of hazardous wastes. It is the intent of the
328 Legislature that commercial hazardous waste landfills be located
329 on those sites which, by virtue of their geologic conditions,
330 provide a high degree of environmental protection. In carrying
331 out the intent of this provision, the commission is authorized to
332 adopt siting criteria for commercial hazardous waste landfills
333 which are more stringent or extensive in scope, coverage and
334 effect than the rules and regulations promulgated by the United
335 States Environmental Protection Agency.

336 (3) Except as hereinafter provided, hazardous wastes shall
337 not be disposed of in this state by the use of underground
338 injection methods, as herein defined according to 40 CFR
339 260.10(74) to mean "subsurface emplacement of fluids through a
340 bored, drilled, or driven well, or through a dug well, where the
341 depth of the dug well is greater than the largest surface
342 dimension." This prohibition shall not apply to the disposal on
343 the generation site of hazardous wastes generated in the
344 production of oil or gas or in a commercial or manufacturing
345 operation. Commercial hazardous waste underground injection wells
346 designed or intended to dispose of multiple nonhomogeneous types
347 of wastes from multiple sources other than the owner of the well
348 are hereby prohibited in the State of Mississippi.

349 A commercial hazardous waste landfill shall not be located on
350 the same site or within one thousand (1,000) feet of an existing
351 or abandoned ordinary waste disposal site, unless the hazardous
352 waste to be disposed of in said commercial landfill is
353 specifically approved as exempted.



354 (4) After promulgation of the regulations required under
355 this section, no person shall construct, substantially alter or
356 operate any solid waste treatment or disposal facility or site,
357 nor shall any person store, treat or dispose of any hazardous
358 waste without first obtaining a permit from the Permit Board for
359 such facility, site or activity. However, no person shall
360 construct any new hazardous waste treatment or disposal facility
361 or site or substantially alter any such existing facility or site,
362 nor shall the Permit Board issue a permit for any such
363 construction or alteration, until the commission has promulgated
364 rules and regulations under the provisions of subsection (1)(j) of
365 this section. Said rules and regulations shall be equivalent to
366 counterpart rules and regulations of the Environmental Protection
367 Agency whether now in effect or hereinafter promulgated. Any
368 person who has made an application for a permit for an existing
369 facility under this section shall be treated as having been issued
370 such permit until such time as final administrative disposition of
371 such application has been made unless the cause of such delay is
372 the result of the failure of the applicant to furnish information
373 reasonably required or requested in order to process the
374 application.

375 (5) Any permit issued under this section may be revoked by
376 the issuing agency at any time when the permittee fails to comply
377 with the terms and conditions of the permit. Where the obtaining
378 of or compliance with any permit required under this section
379 would, in the judgment of the department, cause undue or
380 unreasonable hardship to any person, the department may issue a
381 variance from these requirements. In no case shall the duration
382 of any such variance exceed one (1) year. Renewals or extensions
383 may be given only after an opportunity has been given for public
384 comment on each such renewal or extension.

385 (6) Information obtained by the commission concerning
386 environmental protection including, but not limited to,



387 information contained in applications for solid or hazardous waste
388 disposal permits shall be public information and shall be made
389 available upon proper request. Other information obtained by the
390 commission, department, or Permit Board in the administration of
391 Sections 17-17-1 through 17-17-47 concerning trade secrets,
392 including, but not limited to, marketing or financial information,
393 treatment, transportation, storage or disposal processes or
394 devices, methods of manufacture, or production capabilities or
395 amounts shall be kept confidential if and only if: (a) a written
396 confidentiality claim is made when the information is supplied;
397 (b) such confidentiality claim allows disclosure to authorized
398 department employees and/or the United States Environmental
399 Protection Agency (EPA); and (c) such confidentiality claim is
400 determined by the commission to be valid. If the confidentiality
401 claim is denied, the information sought to be covered thereby
402 shall not be released or disclosed, except to the Environmental
403 Protection Agency, until the claimant has been notified in writing
404 and afforded an opportunity for a hearing and appeal therefrom, as
405 with other orders of the commission. Disclosure of confidential
406 information by the EPA shall be governed by federal law and EPA
407 regulations. Misappropriation of a trade secret shall be governed
408 by the Mississippi Uniform Trade Secrets Act, Sections 75-26-1
409 through 75-26-19.

410 (7) Anyone making unauthorized disclosure of information
411 determined to be confidential as herein provided shall be liable
412 in a civil action for damages arising therefrom and shall also be
413 guilty of a misdemeanor punishable as provided by law.

414 (8) Notwithstanding any other provision of this chapter, the
415 executive director, upon receipt of information that the
416 generation, storage, transportation, treatment or disposal of any
417 solid waste may present an imminent and substantial hazard to the
418 public health or to the environment, may take any legal, equitable



419 or other action, including injunctive relief, necessary to protect
420 the health of such persons or the environment.

421 **SECTION 9.** Section 17-17-151, Mississippi Code of 1972, is
422 amended as follows:

423 17-17-151. (1) Each application for the issuance of a
424 permit to operate a commercial hazardous waste management facility
425 shall be accompanied by a demonstration of need for that facility
426 in the anticipated service area, which shall be of the form and
427 content as the Permit Board may prescribe. Applications for the
428 reissuance, transfer or modification of previously issued permits,
429 except modifications seeking an increase in the volume of
430 hazardous waste to be managed on an annual basis, shall not be
431 subject to the requirements of this section.

432 (2) The demonstration of need shall be specific as to the
433 types of hazardous waste to be managed and shall include, but not
434 be limited to:

435 (a) Documentation of the available capacity at existing
436 commercial hazardous waste management facilities in the area to be
437 served by the facility;

438 (b) Documentation of the current volume of hazardous
439 waste generated in the area to be served by the facility and the
440 volume of hazardous waste reasonably expected to be generated in
441 the area to be served over the next twenty (20) years; and

442 (c) A description of any additional factors, such as
443 physical limitations on the transportation of the hazardous waste
444 or the existence of additional capacity outside the area to be
445 served which may satisfy the projected need.

446 (3) The Permit Board shall consider the following factors in
447 evaluating the need for the proposed facility:

448 (a) The extent to which the proposed commercial
449 hazardous waste management facility is in conformance with the
450 Mississippi Capacity Assurance Plan and any interstate or regional
451 agreements associated therewith;



452 (b) An approximate service area for the proposed
453 facility which takes into account the economics of hazardous waste
454 collection, transportation, treatment, storage and disposal;

455 (c) The quantity of hazardous waste generated within
456 the anticipated service area suitable for treatment, storage or
457 disposal at the proposed facility;

458 (d) The design capacity of existing commercial
459 hazardous waste management facilities located within the
460 anticipated service area of the proposed facility; * * *

461 (e) The extent to which the proposed facility is needed
462 to replace other facilities, if the need for a proposed commercial
463 hazardous waste management facility cannot be established under
464 paragraphs (a) through (d); and

465 (f) No permit shall be issued that is in conflict with
466 the provisions of the Mississippi Environmental Equity Act.

467 (4) Based on the needs of the State of Mississippi, it is
468 the intent of the Legislature that there shall not be a
469 proliferation of unnecessary facilities in any one (1) county of
470 the state.

471 (5) If the Permit Board determines that a proposed
472 commercial hazardous waste management facility is inconsistent
473 with or contradictory to the factors set forth in subsection (3),
474 the Permit Board is hereby empowered to deny any permit for such
475 facility.

476 (6) The commission shall develop and adopt criteria and
477 standards to be considered in location and permitting of
478 commercial hazardous waste management facilities. The standards
479 and criteria shall be developed through public participation,
480 shall be enforced by the Permit Board and shall include, in
481 addition to all applicable state and federal rules and
482 regulations, consideration of:



483 (a) Hydrological and geological factors such as flood
484 plains, depth to water table, soil composition and permeability,
485 cavernous bedrock, seismic activity, and slope;

486 (b) Natural resource factors such as wetlands,
487 endangered species habitats, proximity to parks, forests,
488 wilderness areas and historical sites, and air quality;

489 (c) Land use factors such as local land use, whether
490 residential, industrial, commercial, recreational or agricultural,
491 proximity to public water supplies, and proximity to incompatible
492 structures such as schools, churches and airports;

493 (d) Transportation factors, such as proximity to waste
494 generators and to population, route safety and method of
495 transportation; and

496 (e) Aesthetic factors such as the visibility,
497 appearance and noise level of the facility.

498 **SECTION 10.** Section 49-17-25, Mississippi Code of 1972, is
499 amended as follows:

500 49-17-25. (1) Except as provided in subsection (4) of this
501 section prior to the adoption, amendment or repeal of rules and
502 regulations necessary to implement this chapter, Sections 17-17-1
503 through 17-17-47, Sections 21-27-201 through 21-27-221, Sections
504 37-138-1 through 37-138-31, and all other laws administered by the
505 department, the commission shall conduct a public hearing or
506 hearings thereon after public notice. Such notice shall be given
507 by publication once a week for three (3) successive weeks in a
508 newspaper having a general circulation throughout the state. The
509 notice shall contain a description of the proposed regulation and
510 the time, date and place of the hearing.

511 (2) Additionally, the adoption, amendment or repeal of any
512 rule or regulation under this chapter, Sections 17-17-1 through
513 17-17-47, Sections 21-27-201 through 21-27-221, Sections 37-138-1
514 through 37-138-31 and all other laws administered by the
515 department shall be governed by the "Mississippi Administrative



516 Procedures Law." Any rule or regulation heretofore or hereafter
517 adopted, amended or repealed in substantial compliance with the
518 procedural requirements under Section 25-43-7 shall be valid. A
519 proceeding to contest any rule or regulation on the ground of
520 noncompliance with the procedural requirements of this section
521 must be commenced within one (1) year from the effective date of
522 the rule or regulation.

523 (3) Notice of rules and regulations adopted by the
524 commission shall be published once in a newspaper having general
525 circulation throughout the state.

526 (4) Any rules or regulations adopted pursuant to Section 4
527 of Senate Bill No. 2726, 2002 Regular Session, shall be governed
528 by the provisions of that section and subsection (2) of this
529 section.

530 **SECTION 11.** Section 49-17-29, Mississippi Code of 1972, is
531 amended as follows:

532 49-17-29. (1) (a) Except as in compliance with paragraph
533 (b) of this subsection, it is unlawful for any person to cause
534 pollution of the air in the state or to place or cause to be
535 placed any wastes or other products or substances in a location
536 where they are likely to cause pollution of the air. It is also
537 unlawful to discharge any wastes, products or substances into the
538 air of the state which exceed standards of performance, hazardous
539 air pollutant standards, other emission standards set by the
540 commission, or which reduce the quality of the air below the air
541 quality standards or increments established by the commission or
542 prevent attainment or maintenance of those air quality standards.
543 Any such action is hereby declared to be a public nuisance.

544 (b) It is unlawful for any person to build, erect,
545 alter, replace, use or operate any equipment which will cause the
546 issuance of air contaminants unless that person holds a permit
547 from the Permit Board (except repairs or maintenance of equipment
548 for which a permit has been previously issued), or unless that



549 person is exempted from holding a permit by a regulation
550 promulgated by the commission. Concentrated animal feeding
551 operations may be a source or a category of sources exempted under
552 this paragraph. However, no new or existing applications relating
553 to swine concentrated animal feeding operations within a county
554 shall be exempted from regulations and ordinances which have been
555 duly passed by the county's board of supervisors and which are in
556 force on June 1, 1998.

557 (2) (a) Except as in compliance with paragraph (b) of this
558 subsection, it is unlawful for any person to cause pollution of
559 any waters of the state or to place or cause to be placed any
560 wastes in a location where they are likely to cause pollution of
561 any waters of the state. It is also unlawful to discharge any
562 wastes into any waters of the state which reduce the quality of
563 those waters below the water quality standards established by the
564 commission; or to violate any applicable pretreatment standards or
565 limitations, technology-based effluent limitations, toxic
566 standards or any other limitations established by the commission.
567 Any such action is declared to be a public nuisance.

568 (b) It is unlawful for any person to carry on any of
569 the following activities, unless that person holds a current
570 permit for that activity from the Permit Board as may be required
571 for the disposal of all wastes which are or may be discharged into
572 the waters of the state, or unless that person is exempted from
573 holding a permit by a regulation promulgated by the commission:
574 (i) the construction, installation, modification or operation of
575 any disposal system or part thereof or any extension or addition
576 thereto, including, but not limited to, systems serving
577 agricultural operations; (ii) the increase in volume or strength
578 of any wastes in excess of the permissive discharges specified
579 under any existing permit; (iii) the construction, installation or
580 operation of any industrial, commercial or other establishment,
581 including irrigation projects or any extension or modification



582 thereof or addition thereto, the operation of which would cause an
583 increase in the discharge of wastes into the waters of the state
584 or would otherwise alter the physical, chemical or biological
585 properties of any waters of the state in any manner not already
586 lawfully authorized; (iv) the construction or use of any new
587 outlet for the discharge of any wastes into the waters of the
588 state. However, no new or existing applications relating to swine
589 concentrated animal feeding operations within a county shall be
590 exempted from regulations and ordinances which have been duly
591 passed by the county's board of supervisors and which are in force
592 on June 1, 1998.

593 (3) (a) Except as otherwise provided in this section, the
594 Permit Board created by Section 49-17-28 shall be the exclusive
595 administrative body to make decisions on permit issuance,
596 reissuance, denial, modification or revocation of air pollution
597 control and water pollution control permits and permits required
598 under the Solid Wastes Disposal Law of 1974 (Title 17, Chapter
599 17), and all other permits within the jurisdiction of the Permit
600 Board. After consideration of alternative waste treatment
601 technologies available to control air and water pollution and
602 odor, including appropriate siting criteria, the commission may
603 promulgate regulations establishing conditions, limitations and
604 exemptions under which the Permit Board shall make these
605 decisions. Regulations promulgated by the commission which
606 establish exemptions as authorized under Senate Bill No. 2895,
607 1998 Regular Session [Laws, 1998, Ch. 537], shall apply to any
608 applicable facility in operation on the effective date of that
609 regulation and to any applicable facility constructed or operated
610 after the effective date of that regulation. The Permit Board may
611 issue multiple permits for the same facility or operation
612 simultaneously or in the sequence that it deems appropriate
613 consistent with the commission's regulations. Except as otherwise
614 provided in this paragraph, the Permit Board, under any conditions



615 that the board may prescribe, may authorize the Executive Director
616 of the Department of Environmental Quality to make decisions on
617 permit issuance, reissuance, denial, modification or revocation.
618 The executive director shall not be authorized to make decisions
619 on permit issuance, reissuance, denial, modification or revocation
620 for a commercial hazardous waste management facility or a
621 municipal solid waste landfill or incinerator. A decision by the
622 executive director shall be a decision of the Permit Board and
623 shall be subject to formal hearing and appeal as provided in this
624 section. The executive director shall report all permit decisions
625 to the Permit Board at its next regularly scheduled meeting and
626 those decisions shall be recorded in the minutes of the Permit
627 Board. The decisions of the Permit Board shall be recorded in
628 minutes of the Permit Board and shall be kept separate and apart
629 from the minutes of the commission. The decision of the Permit
630 Board or the executive director to issue, reissue, deny, modify or
631 revoke permits shall not be construed to be an order or other
632 action of the commission.

633 (b) The Executive Director of the Department of
634 Environmental Quality shall also be the Executive Director of the
635 Permit Board and shall have available to him, as Executive
636 Director of the Permit Board, all resources and personnel
637 otherwise available to him as executive director of the
638 department.

639 (c) All persons required to obtain an air pollution
640 control or water pollution control permit, a permit under the
641 Solid Wastes Disposal Law of 1974 (Title 17, Chapter 17) or any
642 other permit within the jurisdiction of the Permit Board shall
643 make application for that permit with the Permit Board. The
644 Permit Board, under any regulations as the commission may
645 prescribe, may require the submission of those plans,
646 specifications and other information as it deems necessary to
647 carry out Sections 49-17-1 through 49-17-43 and Title 17, Chapter



648 17, or to carry out the commission's regulations adopted under
649 those sections. The Permit Board, based upon any information as
650 it deems relevant, shall issue, reissue, deny, modify or revoke
651 air pollution control or water pollution control permit or permits
652 required under the Solid Wastes Disposal Law of 1974 (Title 17,
653 Chapter 17) or any other permit within the jurisdiction of the
654 Permit Board under any conditions as it deems necessary that are
655 consistent with the commission's regulations. The Permit Board's
656 action of issuance, reissuance, denial, modification or revocation
657 of a permit as recorded in its minutes shall constitute a complete
658 decision of the board. All permits issued by the Permit Board
659 shall remain in full force and effect until the board makes a
660 final determination regarding any reissuance, modification, or
661 revocation thereof. The Permit Board shall take action upon an
662 application within one hundred eighty (180) days following its
663 receipt in the board's principal office. No action which affects
664 revocation of an existing permit shall take effect until the
665 thirty (30) days mentioned in paragraph (4)(b) of this section has
666 expired or until a formal hearing as prescribed in that paragraph
667 is held, whichever is later.

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

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



680 (f) The Permit Board shall not issue any permit for a
681 new swine concentrated animal feeding operation or the expansion
682 of an existing swine concentrated animal feeding operation before
683 January 1, 2000, unless the department received the application
684 for that operation's new or modified permit before February 28,
685 1998, or except as provided in this paragraph (f). In issuing or
686 modifying any permit for which the department received an
687 application before February 28, 1998, the Permit Board shall apply
688 those siting criteria adopted or used by the commission before
689 February 28, 1998, unless federal law or regulations require more
690 stringent criteria. The moratorium established in this paragraph
691 shall not apply to the issuance of any permit for a new swine
692 concentrated animal feeding operation or the expansion of an
693 existing swine concentrated animal feeding operation that uses an
694 animal waste management system which the applicant demonstrates to
695 the Permit Board is innovative in significantly reducing the
696 effects of the operation on the public health, welfare or the
697 environment and which is approved by the Permit Board. The Permit
698 Board shall not issue or modify more than five (5) permits under
699 this innovative animal waste management system technology
700 exemption to the moratorium.

701 (g) The Permit Board shall not issue any permit that is
702 in conflict with the Mississippi Environmental Equity Act.

703 (4) (a) Except as required by this section, before the
704 issuance, reissuance, denial, modification or revocation of any
705 air pollution control or water pollution control permit, permit
706 required under the Solid Wastes Disposal Law of 1974 (Title 17,
707 Chapter 17) or any other permit within its jurisdiction, the
708 Permit Board, in its discretion, may hold a public hearing or
709 meeting to obtain comments from the public on its proposed action.
710 Before the issuance, reissuance, denial, modification pertaining
711 to the expansion of a facility, transfer or revocation of a permit
712 for a commercial hazardous waste management facility or a



713 commercial municipal solid waste landfill or incinerator, the
714 Permit Board shall conduct a public hearing or meeting to obtain
715 comments from the public on the proposed action. That hearing or
716 meeting shall be informal in nature and conducted under those
717 procedures as the Permit Board may deem appropriate consistent
718 with the commission's regulations.

719 (b) Within thirty (30) days after the date the Permit
720 Board takes action upon permit issuance, reissuance, denial,
721 modification or revocation, as recorded in the minutes of the
722 Permit Board, any interested party aggrieved by that action may
723 file a written request for a formal hearing before the Permit
724 Board. An interested party is any person claiming an interest
725 relating to the property or project which is the subject of the
726 permit action, and who is so situated that the person may be
727 affected by the disposition of that action.

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

730 In conducting the formal hearing, the Permit Board shall have
731 the same full powers as to subpoenaing witnesses, administering
732 oaths, examining witnesses under oath and conducting the hearing,
733 as is now vested by law in the Mississippi Public Service
734 Commission, as to the hearings before it, with the additional
735 power that the Executive Director of the Permit Board may issue
736 all subpoenas at the instance of the Permit Board or at the
737 instance of any interested party. Any subpoenas shall be served
738 by any lawful officer in any county to whom the subpoena is
739 directed and return made thereon as provided by law, with the cost
740 of service being paid by the party on whose behalf the subpoena
741 was issued. Witnesses summoned to appear at the hearing shall be
742 entitled to the same per diem and mileage as witnesses attending
743 the circuit court and shall be paid by the person on whose behalf
744 the witness was called. Sufficient sureties for the cost of
745 service of the subpoena and witness fees shall be filed with the



746 Executive Director of the Permit Board at the time that issuance
747 of the subpoena is requested. At a hearing, any interested party
748 may present witnesses and submit evidence and cross-examine
749 witnesses.

750 The Permit Board may designate a hearing officer to conduct
751 the formal hearing on all or any part of the issues on behalf of
752 the Permit Board. The hearing officer shall prepare the record of
753 the formal hearing conducted by that officer for the Permit Board
754 and shall submit the record to the Permit Board.

755 Upon conclusion of the formal hearing, the Permit Board shall
756 enter in its minutes the board's decision affirming, modifying or
757 reversing its prior decision to issue, reissue, deny, modify or
758 revoke a permit. The Permit Board shall prepare and record in its
759 minutes findings of fact and conclusions of law supporting its
760 decision. That decision, as recorded in its minutes with its
761 findings of fact and conclusions of law, shall be final unless an
762 appeal, as provided in this section, is taken to chancery court
763 within twenty (20) days following the date the decision is entered
764 in the board's minutes.

765 (c) Within twenty (20) days after the date the Permit
766 Board takes action upon permit issuance, reissuance, denial,
767 modification or revocation after a formal hearing under this
768 subsection as recorded in the minutes of the Permit Board, any
769 person aggrieved of that action may appeal the action as provided
770 in subsection (5) of this section.

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

774 (b) Any person who is aggrieved by any decision of the
775 Permit Board issuing, reissuing, denying, revoking or modifying a
776 permit after a formal hearing may appeal that decision within the
777 period specified in subsection (4)(c) of this section to the
778 chancery court of the county of the situs in whole or in part of



779 the subject matter. The appellant shall give a cost bond with
780 sufficient sureties, payable to the state in the sum of not less
781 than One Hundred Dollars (\$100.00) nor more than Five Hundred
782 Dollars (\$500.00), to be fixed by the Permit Board and to be filed
783 with and approved by the Executive Director of the Permit Board,
784 who shall forthwith certify the filing of the bond together with a
785 certified copy of the record of the Permit Board in the matter to
786 the chancery court to which the appeal is taken, which shall
787 thereupon become the record of the cause. An appeal to the
788 chancery court as provided in this section shall not stay the
789 decision of the Permit Board. The aggrieved party may, within
790 twenty (20) days following the date the board's decision after a
791 formal hearing is entered on the board's minutes, petition the
792 chancery court for an appeal with supersedeas and the chancellor
793 shall grant a hearing on that petition. Upon good cause shown,
794 the chancellor may grant that appeal with supersedeas. If
795 granted, the appellant shall be required to post a bond with
796 sufficient sureties according to law in an amount to be determined
797 by the chancellor. Appeals shall be considered only upon the
798 record as made before the Permit Board. The chancery court shall
799 always be deemed open for hearing of an appeal and the chancellor
800 may hear the same in termtime or in vacation at any place in the
801 chancellor's district, and the appeal shall have precedence over
802 all civil cases, except election contests. The chancery court
803 shall review all questions of law and of fact. If no prejudicial
804 error is found, the matter shall be affirmed. If prejudicial
805 error is found the decision of the board shall be reversed and the
806 chancery court shall remand the matter to the Permit Board for
807 appropriate action as may be indicated or necessary under the
808 circumstances. Appeals may be taken from the chancery court to
809 the Supreme Court in the manner as now required by law, except
810 that if a supersedeas is desired by the party appealing to the
811 chancery court, that party may apply for a supersedeas to the



812 chancellor of that court, who shall award a writ of supersedeas,
813 without additional bond, if in the chancellor's judgment material
814 damage is not likely to result thereby; but otherwise, the
815 chancellor shall require a supersedeas bond as the chancellor
816 deems proper, which shall be liable to the state for any damage.

817 **SECTION 12.** Section 25-43-5, Mississippi Code of 1972, is
818 amended as follows:

819 25-43-5. (1) In addition to other rule-making authority and
820 requirements imposed by law, each agency shall:

821 (a) Adopt as a rule a description of its organization,
822 stating the general course and method of its operations and the
823 methods whereby the public may obtain information or make
824 submissions or requests.

825 (b) Adopt rules of practice setting forth the nature
826 and requirements of all formal and informal procedures available,
827 including all requirements respecting the filing of applications
828 for any license and the licensing procedure employed by the agency
829 and the method whereby persons desiring notice of pending
830 applications may obtain such notice and request an opportunity to
831 be heard.

832 (c) Allow public inspection of all rules and other
833 written statements of policy or interpretations formulated,
834 adopted or used by the agency in the discharge of its functions.

835 (d) Allow public inspection of all final orders,
836 decisions and opinions.

837 (2) No agency rule, order or decision is valid or effective
838 against any person or party, nor may it be invoked by the agency
839 for any purpose, until it has been made available for public
840 inspection as herein required. This provision is not applicable
841 in favor of any person or party who has actual knowledge thereof.

842 (3) To the extent that any provision of this section
843 conflicts with any provision of the Mississippi Environmental



844 Equity Act, the provision(s) of the Mississippi Environmental
845 Equity Act shall control.

846 **SECTION 13.** Section 25-43-7, Mississippi Code of 1972, is
847 amended as follows:

848 25-43-7. (1) Prior to the adoption, amendment or repeal of
849 any rule, the agency shall give at least thirty (30) days' notice
850 of its intended action. The notice shall include a statement of
851 either the terms or substance of the intended action or a
852 description of the subjects and issues involved, and the manner in
853 which interested persons may present their views thereon. The
854 notice shall be filed with the office of the secretary of state
855 and mailed by the agency to all persons who have made timely
856 request of the agency for advance notice of its rule-making
857 proceedings. The secretary of state shall furnish copies at the
858 request of any person and shall be reimbursed by the requesting
859 person for the expense of providing such service.

860 (2) If an agency finds that an imminent peril to the public
861 health, safety or welfare requires adoption of a rule upon fewer
862 than thirty (30) days' notice and states in writing its reasons
863 for that finding, it may proceed without prior notice of hearing
864 or upon any abbreviated notice and hearing that it finds
865 practicable to adopt an emergency rule. The rule may be effective
866 for a period of not longer than one hundred twenty (120) days,
867 renewable once for a period not exceeding ninety (90) days, but
868 the adoption of an identical rule under subsection (1) of this
869 section is not precluded.

870 (3) No rule hereafter adopted is valid unless adopted in
871 substantial compliance with this section. A proceeding to contest
872 any rule on the ground of noncompliance with the procedural
873 requirements of this section must be commenced within one (1) year
874 from the effective date of the rule.

875 (4) To the extent that any provision of this section
876 conflicts with any provision of the Mississippi Environmental



877 Equity Act, the provision(s) of the Mississippi Environmental
878 Equity Act shall control.

879 **SECTION 14.** This act shall take effect and be in force from
880 and after its passage.

