

By: Senator(s) Dawkins

To: Environment Prot, Cons
and Water Res

SENATE BILL NO. 2816

1 AN ACT TO AMEND SECTION 49-17-29, MISSISSIPPI CODE OF 1972,
2 TO REINSTATE THE MORATORIUM ON PERMITS FOR NEW SWINE CONCENTRATED
3 ANIMAL FEEDING OPERATIONS AND FOR EXPANSION OF EXISTING SWINE
4 CONCENTRATED ANIMAL FEEDING OPERATIONS; TO REQUIRE THE DEPARTMENT
5 OF ENVIRONMENTAL QUALITY TO COMPLY WITH THE RECOMMENDATIONS OF TO
6 THE STATE DEPARTMENT OF HEALTH REGARDING SWINE FARMS; TO PROVIDE
7 THAT THE MORATORIUM SHALL END UPON COMPLIANCE WITH THE
8 RECOMMENDATIONS; AND FOR RELATED PURPOSES.

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

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

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

25 (b) It is unlawful for any person to build, erect,
26 alter, replace, use or operate any equipment which will cause the
27 issuance of air contaminants unless that person holds a permit
28 from the Permit Board (except repairs or maintenance of equipment
29 for which a permit has been previously issued), or unless that
30 person is exempted from holding a permit by a regulation



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

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

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

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



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

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



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

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

120 (c) All persons required to obtain an air pollution
121 control or water pollution control permit, a permit under the
122 Solid Wastes Disposal Law of 1974 (Title 17, Chapter 17) or any
123 other permit within the jurisdiction of the Permit Board shall
124 make application for that permit with the Permit Board. The
125 Permit Board, under any regulations as the commission may
126 prescribe, may require the submission of those plans,
127 specifications and other information as it deems necessary to
128 carry out Sections 49-17-1 through 49-17-43 and Title 17, Chapter
129 17, or to carry out the commission's regulations adopted under



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

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

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

161 (f) To insure the protection of the public health,
162 safety, and welfare of the people of Mississippi; to enable the



163 state to evaluate information from recent investigations
164 suggesting potential health risks from swine concentrated animal
165 feeding operations; and to enable the department to implement the
166 air and water monitoring systems and standards recommended by the
167 State Department of Health, there is hereby imposed a moratorium
168 on the issuance of permits for new or expanded swine concentrated
169 animal feeding operations. The Permit Board shall not issue any
170 permit for a new swine concentrated animal feeding operation or
171 the expansion of an existing swine concentrated animal feeding
172 operation until * * * the department complies with the State
173 Department of Health recommendations addressing health concerns in
174 the Department of Health review: "Summary of Available
175 Information and Recommendations Regarding Health Concerns Related
176 to Concentrated Swine Farms." * * *

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

