

By: Senator(s) Dawkins

To: Environment Prot, Cons
and Water Res

SENATE BILL NO. 2491

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 THE
6 STATE DEPARTMENT OF HEALTH REGARDING SWINE FARMS; TO PROVIDE THAT
7 THE MORATORIUM SHALL END UPON COMPLIANCE WITH THE RECOMMENDATIONS;
8 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 this section shall apply
88 to any applicable facility in operation on the effective date of
89 that regulation and to any applicable facility constructed or
90 operated after the effective date of that regulation. The Permit
91 Board may issue multiple permits for the same facility or
92 operation simultaneously or in the sequence that it deems
93 appropriate consistent with the commission's regulations. Except
94 as otherwise provided in this paragraph, the Permit Board, under
95 any conditions that the board may prescribe, may authorize the
96 Executive Director of the Department of Environmental Quality to



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

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

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



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

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

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

160 (f) To insure the protection of the public health,
161 safety and welfare of the people of Mississippi; to enable the
162 state to evaluate information from recent investigations



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

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

188 (4) (a) Except as required by this section, before the
189 issuance, reissuance, denial, modification or revocation of any
190 air pollution control or water pollution control permit, permit
191 required under the Solid Wastes Disposal Law of 1974 (Title 17,
192 Chapter 17) or any other permit within its jurisdiction, the
193 Permit Board, in its discretion, may hold a public hearing or
194 meeting to obtain comments from the public on its proposed action.
195 Before the issuance, reissuance, denial, modification pertaining



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

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

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

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



229 the witness was called. Sufficient sureties for the cost of
230 service of the subpoena and witness fees shall be filed with the
231 Executive Director of the Permit Board at the time that issuance
232 of the subpoena is requested. At a hearing, any interested party
233 may present witnesses and submit evidence and cross-examine
234 witnesses.

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

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

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

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

259 (b) Any person who is aggrieved by any decision of the
260 Permit Board issuing, reissuing, denying, revoking or modifying a
261 permit after a formal hearing may appeal that decision within the



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



295 that if a supersedeas is desired by the party appealing to the
296 chancery court, that party may apply for a supersedeas to the
297 chancellor of that court, who shall award a writ of supersedeas,
298 without additional bond, if in the chancellor's judgment material
299 damage is not likely to result thereby; but otherwise, the
300 chancellor shall require a supersedeas bond as the chancellor
301 deems proper, which shall be liable to the state for any damage.

302 **SECTION 2.** This act shall take effect and be in force from
303 and after its passage.

