

By: Representative Reeves

To: Oil, Gas and Other
Minerals; Conservation and
Water Resources

HOUSE BILL NO. 1136

1 AN ACT TO AMEND SECTION 49-2-7, MISSISSIPPI CODE OF 1972, TO
2 PROVIDE THAT THE OFFICE OF GEOLOGY WITHIN THE DEPARTMENT OF
3 ENVIRONMENTAL QUALITY SHALL BE TRANSFERRED TO THE MISSISSIPPI
4 DEVELOPMENT AUTHORITY; TO AMEND SECTIONS 29-7-3, 49-2-9, 49-17-28,
5 53-7-5 AND 53-9-105, MISSISSIPPI CODE OF 1972, IN CONFORMITY; TO
6 BRING FORWARD SECTION 49-2-16, MISSISSIPPI CODE OF 1972, WHICH
7 PROVIDES FOR THE QUALIFICATIONS OF THE HEAD OF THE OFFICE OF
8 GEOLOGY AND ENERGY RESOURCES, FOR PURPOSES OF AMENDMENT; TO BRING
9 FORWARD SECTION 53-7-41, MISSISSIPPI CODE OF 1972, WHICH PROVIDES
10 FOR THE AUTHORITY OF THE PERMIT BOARD FOR THE SURFACE MINING AND
11 RECLAMATION OF LAND; TO BRING FORWARD SECTION 53-9-7, MISSISSIPPI
12 CODE OF 1972, WHICH IS THE DEFINITION SECTION OF THE MISSISSIPPI
13 SURFACE COAL MINING AND RECLAMATION LAW; AND FOR RELATED PURPOSES.

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

15 **SECTION 1.** Section 49-2-7, Mississippi Code of 1972, is
16 amended as follows:

17 49-2-7. (1) The Department of Environmental Quality shall
18 be the Mississippi Department of Natural Resources with the
19 exception of the Office of Parks and Recreation, and shall retain
20 all powers and duties granted by law to the Mississippi Department
21 of Natural Resources with the exception of the Office of Parks and
22 Recreation, and wherever the term "Mississippi Department of
23 Natural Resources" appears in any law the same shall mean the
24 Department of Environmental Quality. The Executive Director of
25 the Department of Environmental Quality may assign to the
26 appropriate offices any powers and duties deemed appropriate to
27 carry out the lawful duties of the department.

28 The department shall be composed of the following offices:

29 * * *

30 (a) Office of Land and Water Resources; and

31 (b) Office of Pollution Control.

32 (2) The Office of Geology and Energy Resources shall be
33 transferred to the Mississippi Development Authority.

34 (3) Each office shall be composed of the administrative
35 units set forth in the consolidation plan adopted by the
36 commission, subject to changes by the executive director, with
37 approval of the commission, as hereinafter set forth.

38 (4) The department is designated as the single state
39 department to receive and expend any federal funds being received
40 or expended by any agency transferred to the department by Chapter
41 484, Laws of 1978, and to receive and expend any federal funds
42 made available for matters within the jurisdiction of the
43 department.

44 (5) The department shall be responsible for conserving,
45 managing, developing and protecting the natural resources of the
46 State of Mississippi within the jurisdiction of the department,
47 with the exception of functions of the Office of Recreation and
48 Parks. The department shall coordinate all functions of state
49 government related to natural resources within the jurisdiction of
50 the department. The department shall not exercise any of its
51 authority or powers granted under the provisions of this section
52 in a manner which would be inconsistent with the provisions of
53 Section 29-1-1.

54 **SECTION 2.** Section 29-7-3, Mississippi Code of 1972, is
55 amended as follows:

56 29-7-3. There shall be no development or extraction of oil,
57 gas, or other minerals from state-owned lands by any private party
58 without first obtaining a mineral lease therefor from the
59 commission. The commission is hereby authorized and empowered,
60 for and on behalf of the state, to lease any and all of the state
61 land now owned (including that submerged or whereover the tide may
62 ebb and flow) or hereafter acquired, to some reputable person,
63 association, or company for oil and/or gas and/or other minerals
64 in and under and which may be produced therefrom, excepting,

65 however, sixteenth section school land, lieu lands, and such
66 forfeited tax land and property the title to which is subject to
67 any lawful redemption, for such consideration and upon such terms
68 and conditions as the commission deems just and proper. No
69 mineral lease of offshore lands shall allow offshore drilling
70 operations north of the coastal barrier islands, except in Blocks
71 40, 41, 42, 43, 63, 64 and 66 through 98, inclusive. Further,
72 surface offshore drilling operations will not be allowed within
73 one (1) mile of Cat Island. The commission may only offer for
74 lease the state-owned lands in Blocks 40, 41, 42, 43, 63, 64 and
75 66 through 98, inclusive, as shown on the Mississippi Department
76 of Environmental Quality Bureau of Geology Plat of Lease Blocks
77 (Open File Report 151) on terms and conditions and for a length of
78 time as determined by the commission. The commission may not
79 lease any lands or submerged lands off the Mississippi Gulf Coast
80 that have been leased by the Department on Marine Resources before
81 January 1, 2004, for any public or private oyster reef lease or
82 any lands or submerged lands within one (1) mile of that lease for
83 the purposes of drilling offshore for oil, gas and other minerals.

84 Consistent with the conservation policies of this state under
85 Section 53-1-1 et seq., the commission may offer for public bid
86 any tracts or blocks of state-owned lands not currently under
87 lease, which have been identified to the commission as having
88 development potential for oil or natural gas, not less than once a
89 year. Upon consultation with the Office of Geology in the
90 Mississippi Development Authority, the Secretary of State and any
91 other state agency as the commission deems appropriate, the
92 commission shall promulgate rules and regulations consistent with
93 this chapter governing all aspects of the process of leasing state
94 lands within its jurisdiction for mineral development, including
95 the setting of all terms of the lease form to be used for leasing
96 state-owned lands, any necessary fees, public bidding process,
97 delay rental payments, shut-in royalty payments, and such other

98 provisions as may be required. The Attorney General shall review
99 the lease form adopted by the commission for legal sufficiency.

100 There shall not be conducted any seismographic or other
101 mineral exploration or testing activities on any state-owned lands
102 within the mineral leasing jurisdiction of the commission without
103 first obtaining a permit therefor from the commission. Upon
104 consultation with the Office of Geology in the Mississippi
105 Development Authority, the Secretary of State and any other state
106 agency as the commission deems appropriate, the commission shall
107 promulgate rules and regulations governing all aspects of
108 seismographic or other mineral exploration activity on state lands
109 within its jurisdiction, including the establishing of fees and
110 issuance of permits for the conduct of such mineral exploration
111 activities. The Attorney General shall review the permit form
112 adopted by the commission for legal sufficiency. Provided,
113 however, that persons obtaining permits from the commission for
114 seismographic or other mineral exploration or testing activities
115 on state-owned wildlife management areas, lakes and fish
116 hatcheries, shall be subject to rules and regulations promulgated
117 therefor by the Mississippi Commission on Wildlife, Fisheries and
118 Parks which shall also receive all permit fees for such testing on
119 said lands. In addition, persons obtaining permits from the
120 commission for seismographic or other mineral exploration or
121 testing activities on state-owned marine waters shall be subject
122 to rules and regulations promulgated therefor by the Mississippi
123 Department on Marine Resources which shall also receive all permit
124 fees for such testing on those waters.

125 Further, provided that each permit within the Mississippi
126 Sound or tidelands shall be reviewed by the Mississippi Commission
127 on Marine Resources and such special conditions as it may specify
128 will be included in the permit. Information or data obtained in
129 any mineral exploration activity on any and all state lands shall
130 be disclosed to the state through the commission, upon demand.

131 Such information or data shall be treated as confidential for a
132 period of ten (10) years from the date of receipt thereof and
133 shall not be disclosed to the public or to any firm, individual or
134 agency other than officials or authorized employees of this state.
135 Any person who makes unauthorized disclosure of such confidential
136 information or data shall be guilty of a misdemeanor, and upon
137 conviction thereof, be fined not more than Five Thousand Dollars
138 (\$5,000.00) or imprisoned in the county jail not more than one (1)
139 year, or both.

140 Whenever any such land or property is leased for oil and gas
141 and/or other minerals, such lease contract shall provide for a
142 lease royalty to the state of at least three-sixteenths (3/16) of
143 such oil and gas or other minerals, same to be paid in the manner
144 prescribed by the commission. Of the monies received in
145 connection with the execution of such leases, five-tenths of one
146 percent (5/10 of 1%) shall be retained in a special fund to be
147 appropriated by the Legislature, One Hundred Thousand Dollars
148 (\$100,000.00) of which amount to be used by the commission for the
149 administration of the leasing and permitting under this section,
150 and the remainder of such amount shall be deposited into the
151 Education Trust Fund, created in Section 206A, Mississippi
152 Constitution of 1890; and two percent (2%) shall be paid into a
153 special fund to be designated as the "Gulf and Wildlife Protection
154 Fund," to be appropriated by the Legislature, one-half (1/2)
155 thereof to be apportioned as follows: an amount which shall not
156 exceed One Million Dollars (\$1,000,000.00) shall be used by the
157 Mississippi Department of Wildlife, Fisheries and Parks and the
158 Mississippi Department on Marine Resources solely for the purpose
159 of cleanup, remedial or abatement actions involving pollution as a
160 result of the exploration or production of oil or gas, and any
161 amount in excess of such One Million Dollars (\$1,000,000.00) shall
162 be deposited into the Education Trust Fund, created in Section
163 206A, Mississippi Constitution of 1890. The remaining one-half

164 (1/2) of such Gulf and Wildlife Protection Fund to be apportioned
165 as follows: an amount which shall not exceed One Million Dollars
166 (\$1,000,000.00) shall be used by the Mississippi Commission on
167 Wildlife, Fisheries and Parks and the Mississippi Department on
168 Marine Resources for use first in the prudent management,
169 preservation, protection and conservation of existing waters,
170 lands and wildlife of this state and then, provided such purposes
171 are accomplished, for the acquisition of additional waters and
172 lands and any amount in excess of such One Million Dollars
173 (\$1,000,000.00) shall be deposited into the Education Trust Fund,
174 created in Section 206A, Mississippi Constitution of 1890.
175 However, in the event that the Legislature is not in session to
176 appropriate funds from the Gulf and Wildlife Protection Fund for
177 the purpose of cleanup, remedial or abatement actions involving
178 pollution as a result of the exploration or production of oil or
179 gas, then the Mississippi Department of Wildlife, Fisheries and
180 Parks and the Mississippi Department on Marine Resources may make
181 expenditures from this special fund account solely for said
182 purpose. The commission may lease the submerged beds for sand and
183 gravel on such a basis as it may deem proper, but where the waters
184 lie between this state and an adjoining state, there must be a
185 cash realization to this state, including taxes paid for such sand
186 and gravel, equal to that being had by such adjoining state, in
187 all cases the requisite consents therefor being lawfully obtained
188 from the United States.

189 The Department of Environmental Quality is authorized to
190 employ competent engineering personnel to survey the territorial
191 waters of this state in the Mississippi Sound and the Gulf of
192 Mexico and to prepare a map or plat of such territorial waters,
193 divided into blocks of not more than six thousand (6,000) acres
194 each with coordinates and reference points based upon longitude
195 and latitude surveys. The commission is authorized to adopt such
196 survey, plat or map for leasing of such submerged lands for

197 mineral development; and such leases may, after the adoption of
198 such plat or map, be made by reference to the map or plat, which
199 shall be on permanent file with the commission and a copy thereof
200 on file in the Office of the State Oil and Gas Board.

201 **SECTION 3.** Section 49-2-9, Mississippi Code of 1972, is
202 amended as follows:

203 49-2-9. (1) Effective July 1, 1979, the commission shall
204 have the following powers and duties:

205 (a) To formulate the policy of the department regarding
206 natural resources within the jurisdiction of the department;

207 (b) To adopt, modify, repeal, and promulgate, after due
208 notice and hearing, and where not otherwise prohibited by federal
209 or state law, to make exceptions to and grant exemptions and
210 variances from, and to enforce rules and regulations implementing
211 or effectuating the powers and duties of the commission under any
212 and all statutes within the commission's jurisdiction, and as the
213 commission may deem necessary to prevent, control and abate
214 existing or potential pollution;

215 (c) To apply for, receive and expend any federal or
216 state funds or contributions, gifts, devises, bequests or funds
217 from any other source;

218 (d) To commission or conduct studies designed to
219 determine alternative methods of managing or using the natural
220 resources of this state, in a manner to insure efficiency and
221 maximum productivity;

222 (e) To enter into, and to authorize the executive
223 director to execute with the approval of the commission,
224 contracts, grants and cooperative agreements with any federal or
225 state agency or subdivision thereof, or any public or private
226 institution located inside or outside the State of Mississippi, or
227 any person, corporation or association in connection with carrying
228 out the provisions of this chapter; but this authority under this
229 chapter and under any and all statutes within the commission's

230 jurisdiction, except those statutes relating to the Bureau of
231 Recreation and Parks, shall not include contracts, grants or
232 cooperative agreements which do not develop data or information
233 usable by the commission, or which provide goods, services or
234 facilities to the commission or any of its bureaus, and shall
235 exclude any monies for special interest groups for purposes of
236 lobbying or otherwise promoting their special interests; and

237 (f) To discharge such other duties, responsibilities
238 and powers as are necessary to implement the provisions of this
239 chapter.

240 (2) The Mississippi Development Authority, Office of Geology
241 and Energy Resources shall be responsible for program management,
242 procurement, development and maintenance of the Mississippi
243 Digital Earth Model, which should include the following seven (7)
244 core data layers of a digital land base computer model of the
245 State of Mississippi:

246 (a) Geodetic control;

247 (b) Elevation and bathymetry;

248 (c) Orthoimagery;

249 (d) Hydrography;

250 (e) Transportation;

251 (f) Government boundaries; and

252 (g) Cadastral. With respect to the cadastral layer,
253 the authority and responsibility of the Mississippi Development
254 Authority, Office of Geology and Energy Resources shall be limited
255 to compiling information submitted by counties.

256 For all seven (7) framework layers, the Mississippi
257 Development Authority, Office of Geology and Energy Resources
258 shall be the integrator of data from all sources and the guarantor
259 of data completeness and consistency and shall administer the
260 council's policies and standards for the procurement of remote
261 sensing and geographic information system data by state and local
262 governmental entities.

263 **SECTION 4.** Section 49-17-28, Mississippi Code of 1972, is
264 amended as follows:

265 49-17-28. (1) There is created a Permit Board for the
266 purpose of issuing, reissuing, modifying, revoking or denying,
267 under the conditions, limitations and exemptions prescribed in
268 Section 49-17-29: (a) permits to control or prevent the discharge
269 of contaminants and wastes into the air and waters of the state;
270 (b) permits required under the Solid Wastes Disposal Law of 1974
271 (Title 17, Chapter 17); (c) permits required under Sections 51-3-1
272 through 51-3-55; (d) water quality certifications required by
273 Section 401 of the federal Clean Water Act; and (e) all other
274 permits within the jurisdiction of the Permit Board. The
275 membership of the Permit Board shall be composed of the Chief of
276 the Bureau of Environmental Health of the State Board of Health,
277 or his designee; the Executive Director of the Department of
278 Wildlife, Fisheries and Parks, or his designee; the Head of the
279 Office of Land and Water Resources of the Department of
280 Environmental Quality, or his designee; the Supervisor of the
281 State Oil and Gas Board, or his designee; the Executive Director
282 of the Department of Marine Resources, or his designee; the Head
283 of the Office of Geology and Energy Resources of the Mississippi
284 Development Authority, or his designee; the Commissioner of
285 Agriculture and Commerce, or his designee; a retired professional
286 engineer knowledgeable in the engineering of water wells and water
287 supply systems, to be appointed by the Governor for a term
288 concurrent with that of the Governor and until his successor is
289 appointed and qualified; and a retired water well contractor, to
290 be appointed by the Governor for a term concurrent with that of
291 the Governor and until his successor is appointed and qualified.
292 The retired professional engineer and the retired water well
293 contractor shall only vote on matters pertaining to the Office of
294 Land and Water Resources.

295 (2) Members of the Permit Board who are officers and
296 employees of the state shall receive no compensation for their
297 services on the board, but other board members shall receive per
298 diem compensation as provided in Section 25-3-69. All board
299 members shall be reimbursed for actual and necessary expenses,
300 including mileage, incurred in the performance of their official
301 duties as provided in Section 25-3-41.

302 (3) In implementing the authority granted under this section
303 for the Permit Board to act on water quality certifications
304 required by Section 401 of the federal Clean Water Act, the Permit
305 Board shall authorize the Executive Director of the Department of
306 Environmental Quality to make decisions on issuance, reissuance,
307 denial, modification and revocation of water quality
308 certifications on projects which the department has received no
309 written adverse comments. The Permit Board may authorize the
310 executive director to make decisions on water quality
311 certifications for other projects. A decision of the executive
312 director made under this authority shall be a decision of the
313 Permit Board and shall be subject to a formal hearing and an
314 appeal as provided in Section 49-17-29.

315 **SECTION 5.** Section 53-7-5, Mississippi Code of 1972, is
316 amended as follows:

317 53-7-5. For the purposes of this chapter, the following
318 terms shall have the meanings ascribed in this section, except
319 where the context otherwise requires:

320 (a) "Affected area" means any area from which any
321 materials are removed or are to be removed in a surface mining
322 operation and upon which any materials are to be deposited. The
323 affected area includes all areas affected by the construction of
324 new roads, or the improvement or use of existing roads other than
325 public roads to gain access and to haul materials.

326 (b) "Appeal" means an appeal to an appropriate court of
327 the state taken from a final decision of the Permit Board or
328 commission made after a formal hearing before that body.

329 (c) "As recorded in the minutes of the Permit Board"
330 means the date of the Permit Board meeting at which the action
331 concerned is taken by the Permit Board.

332 (d) "Commission" means the Mississippi Commission on
333 Environmental Quality.

334 (e) "Department" means the Mississippi Development
335 Authority, acting through the Office of Geology and Energy
336 Resources or a successor office.

337 (f) "Executive director" means the Executive Director
338 of the Mississippi Department of Environmental Quality.

339 (g) "Exploration activity" means the disturbance of the
340 surface or subsurface for the purpose of determining the location,
341 quantity or quality of a deposit of any material, except the
342 drilling of test holes or core holes of twelve (12) inches or less
343 in diameter.

344 (h) "Formal hearing" means a hearing on the record, as
345 recorded and transcribed by a court reporter, before the
346 commission or Permit Board where all parties to the hearing are
347 allowed to present witnesses, cross-examine witnesses and present
348 evidence for inclusion into the record, as appropriate under rules
349 promulgated by the commission or Permit Board.

350 (i) "Fund" means the Surface Mining and Reclamation
351 Fund created by Section 53-7-69.

352 (j) "General permit" means general permit as defined in
353 Section 49-17-5.

354 (k) "Highwall" means a wall created by mining having a
355 slope steeper than two (2) to one (1).

356 (l) "Interested party" means interested party as
357 provided under Section 49-17-29.

358 (m) "Material" means bentonite, metallic ore, mineral
359 clay, dolomite, phosphate, sand, gravel, soil, clay, sand clay,
360 clay gravel, stone, chalk, and any other materials designated by
361 the commission.

362 (n) "Nearest approximate original contour" means that
363 surface configuration achieved by backfilling and grading of the
364 surface-mined area so that it substantially resembles the surface
365 configuration of the land before mining and blends into and
366 complements the drainage pattern of the surrounding terrain, with
367 all highwalls, spoil piles and water-collecting depressions
368 eliminated, to the extent practicable, unless contained in an
369 approved reclamation plan.

370 (o) "Operator" means the person that is to engage or
371 that is engaged in a surface mining operation, whether on a
372 permanent, continuous basis, or for a limited period of time and
373 for a specific or ancillary purpose, including any person whose
374 permit or coverage under a general permit has expired or been
375 suspended or revoked.

376 (p) "Overburden" means all materials which are removed
377 to gain access to other materials in the process of surface
378 mining, including the material before or after its removal by
379 surface mining.

380 (q) "Permit" means a permit to conduct surface mining
381 and reclamation operations under this chapter.

382 (r) "Permit area" means all the area designated in the
383 permit application or application for coverage under a general
384 permit and shall include all land affected by the surface mining
385 operations during the term of the permit and may include any
386 contiguous area which the operator proposes to surface mine
387 thereafter.

388 (s) "Permit Board" means the Permit Board created by
389 Section 49-17-28.

390 (t) "Person" means any individual, trust, firm,
391 joint-stock company, public or private corporation, joint venture,
392 partnership, association, cooperative, state, or any agency or
393 institution thereof, municipality, commission, political
394 subdivision of a state or any interstate body, and includes any
395 officer or governing or managing body of any municipality,
396 political subdivision, or the United States or any officer or
397 employee of the United States.

398 (u) "Public hearing" means a public forum organized by
399 the commission, department or Permit Board for the purpose of
400 providing information to the public regarding a surface mining and
401 reclamation operation and at which members of the public are
402 allowed to make comments or ask questions or both of the
403 commission, department or the Permit Board regarding a proposed
404 operation or permit.

405 (v) "Reclamation" means work necessary to restore an
406 area of land affected by surface mining to a useful, productive
407 and beneficial purpose, the entire process being designed to
408 restore the land to a useful, productive and beneficial purpose,
409 suitable and amenable to surrounding land and consistent with
410 local environmental conditions in accordance with the standards
411 set forth in this chapter.

412 (w) "State" means the State of Mississippi.

413 (x) "Spoil pile" means the overburden and other mined
414 waste material as it is piled or deposited in the process of
415 surface mining.

416 (y) "Surface mining" or "mining" means the extraction
417 of materials from the ground or water or from waste or stock piles
418 or from pits or banks or natural occurrences by methods including,
419 but not limited to, strip drift, open pit, contour or auger
420 mining, dredging, placering, quarrying and leaching, and
421 activities related thereto, which will alter the surface.

422 (z) "Surface mining operation" or "operation" means the
423 activities conducted at a mining site, including extraction,
424 storage, processing and shipping of materials and reclamation of
425 the affected area. This term does not include the following: the
426 dredging and removal of oyster shells from navigable bodies of
427 water; the dredging and removal of any materials from the bed of
428 navigable streams, when the activity is regulated and permitted
429 under an individual permit by the United States Corps of
430 Engineers; the extraction of hydrocarbons in a liquid or gaseous
431 state by means of wells, pipe, or other on-site methods; the
432 off-site transportation of materials; exploration activities;
433 construction activities at a construction site; or any other
434 exception adopted by the commission in its regulations.

435 (aa) "Topsoil" means the organic or inorganic matter
436 naturally present on the surface of the earth which has been
437 subjected to and influenced by genetic and environmental factors
438 of parent material, climate, macroorganisms and microorganisms,
439 and topography, all acting over a period of time, and that is
440 necessary for the growth and regeneration of vegetation on the
441 surface of the earth.

442 (bb) "Toxic material" means any substance present in
443 sufficient concentration or amount to cause significant injury or
444 illness to plant, animal, aquatic or human life.

445 **SECTION 6.** Section 53-9-105, Mississippi Code of 1972, is
446 amended as follows:

447 53-9-105. (1) The Mississippi Development Authority,
448 through the Office of Geology, shall establish and maintain a
449 state reclamation program for abandoned mines which complies with
450 Subchapter IV of the federal Surface Mining Control and
451 Reclamation Act of 1977, 30 USCS 1231 through 1243.

452 (2) For any year in which the department intends to conduct
453 abandoned mine lands reclamation with amounts held in the
454 Abandoned Mine Lands Reclamation Account, the executive director

455 shall submit to the secretary an application for the support of
456 the state program and implementation of specific reclamation
457 projects. Such requests shall include information required by the
458 secretary. This may include, but is not limited to:

459 (a) A general description of each proposed project;

460 (b) A priority evaluation of each proposed project;

461 (c) A statement of the estimated benefits in such terms
462 as: number of acres restored, miles of stream improved, acres of
463 surface lands protected from subsidence, population protected from
464 subsidence, air pollution, hazards of mine and coal refuse
465 disposal area fires;

466 (d) An estimate of the cost for each proposed project;

467 (e) In the case of proposed research and demonstration
468 projects, a description of the specific techniques to be evaluated
469 or objective to be attained;

470 (f) An identification of lands or interest therein to
471 be acquired and the estimated cost; and

472 (g) In each year after the first in which a plan is
473 filed, an inventory of each project funded under the previous
474 year's grant. This inventory shall include details of financial
475 expenditures on each project together with a brief description of
476 each project, including project locations, the landowner's name,
477 acreage, and the type of reclamation or abatement performed.

478 (3) The reported costs for each proposed project shall
479 include: actual construction costs, actual operation and
480 maintenance costs of permanent facilities, planning and
481 engineering costs, construction inspection costs, and other
482 necessary administrative expenses.

483 (4) The executive director shall make reports on operations
484 of the reclamation program as required by the secretary or by
485 Congress.

486 (5) The executive director shall at all times accept and
487 consider comments regarding annual grant applications and the

488 eligibility, priority ranking and selection of lands for
489 reclamation. At least thirty (30) days prior to the submission of
490 each annual grant application to the secretary, the executive
491 director shall provide for a public hearing and shall publish a
492 notice regarding the proposed grant application and the public
493 hearing in a newspaper of general circulation in the state. The
494 public notice shall state that a hearing will be held, generally
495 outline the grant application, and solicit comments regarding the
496 application. A listing and identification of all projects
497 included in the grant application shall be mailed to all persons
498 who have requested written notification of the annual grant
499 application and shall be available to any person upon request. At
500 the public hearing for review of an annual grant application, any
501 person may appear before the executive director or his or her
502 designee and be heard on the record. The executive director may
503 receive documentary or other evidence for inclusion in the record.
504 The executive director shall fix a time for the closing of the
505 record and may, in his discretion, receive other comments or
506 evidence that he deems appropriate after the public hearing and
507 before the closing of the record. A copy of the record shall be
508 included with the grant application to the secretary.

509 (6) The state shall not be liable under any provision of
510 federal law for any costs or damages as a result of action taken
511 or omitted in the course of carrying out the state reclamation
512 program approved by the secretary. This subsection shall not
513 preclude liability for costs or damages as a result of gross
514 negligence or intentional misconduct by the state. Reckless,
515 willful or wanton misconduct shall constitute gross negligence.
516 However, nothing in this subsection shall be deemed to waive any
517 immunity provided by Mississippi law to the state or its
518 employees, or to waive the protection afforded the state by the
519 Eleventh Amendment to the United States Constitution.

520 **SECTION 7.** Section 49-2-16, Mississippi Code of 1972, is
521 brought forward as follows:

522 49-2-16. (1) The head of the Office of Geology and Energy
523 Resources shall be a geologist, petroleum engineer or energy
524 engineer of established reputation with a minimum of a bachelor's
525 degree in geology, petroleum engineering or energy engineering or
526 a field related thereto.

527 (2) The head of the Office of Land and Water Resources shall
528 possess a minimum of six (6) years' experience in a field related
529 to the bureau's function.

530 (3) The head of the Division of State Land and Water
531 Resources of the Office of Land and Water Resources shall have six
532 (6) years' experience in hydraulics and hydrology.

533 (4) The head of the Division of Regional Water Resources of
534 the Office of Land and Water Resources shall have a minimum of six
535 (6) years' experience in a field related to the division's
536 function.

537 (5) The head of the Office of Pollution Control shall have a
538 minimum of six (6) years' experience in a field related to
539 pollution control.

540 **SECTION 8.** Section 53-7-41, Mississippi Code of 1972, is
541 brought forward as follows:

542 53-7-41. (1) The Permit Board, based upon the provisions of
543 this chapter, may issue, reissue, deny, modify, revoke, cancel,
544 rescind, suspend or transfer a permit for a surface mining
545 operation. The head of the Office of Geology and Energy Resources
546 shall abstain in any action taken by the Permit Board under this
547 chapter.

548 (2) The Permit Board shall issue a permit if the Permit
549 Board determines that the applicant and completed application
550 comply with the requirements of this chapter.

551 (3) The Permit Board may deny a permit if:

552 (a) The Permit Board finds that the reclamation as
553 required by this chapter cannot be accomplished by means of the
554 proposed reclamation plan;

555 (b) Any part of the proposed operation lies within an
556 area designated as unsuitable for surface mining as designated by
557 Section 53-7-49 or 53-7-51;

558 (c) The Permit Board finds that the proposed mining
559 operation will cause pollution of any water of the state or of the
560 ambient air of the state in violation of applicable state and
561 federal laws and regulations;

562 (d) The applicant has had any other permit issued under
563 this chapter revoked, or any bond or deposit posted to comply with
564 this chapter forfeited, and the conditions causing the permit to
565 be revoked or the bond or deposit to be forfeited have not been
566 corrected to the satisfaction of the Permit Board;

567 (e) The Permit Board determines that the proposed
568 operation will endanger the health and safety of the public or
569 will create imminent environmental harm;

570 (f) The operation will likely adversely affect any
571 public highway or road unless the operation is intended to
572 stabilize or repair the public road or highway; or

573 (g) The applicant is unable to meet the public
574 liability insurance or performance bonding requirements of this
575 chapter.

576 (4) The Permit Board shall deny a permit if the Permit Board
577 finds by clear and convincing evidence on the basis of the
578 information contained in the permit application or obtained by
579 on-site inspection that the proposed operation cannot comply with
580 this chapter or rules and regulations adopted under this chapter
581 or that the proposed method of operation, road system
582 construction, shaping or revegetation of the affected area cannot
583 be carried out in a manner consistent with this chapter and
584 applicable state and federal laws, rules and regulations.

585 (5) The Permit Board may hold a public hearing to obtain
586 comments from the public on its proposed action. If the Permit
587 Board holds a public hearing, the Permit Board shall publish
588 notice and conduct the hearing as provided in Section 49-17-29.

589 (6) The Permit Board may authorize the executive director,
590 under any conditions the Permit Board may prescribe, to make
591 decisions on permit issuance, reissuance, modification, rescission
592 or cancellation under this chapter. A decision by the executive
593 director is a decision of the Permit Board and shall be subject to
594 formal hearing and appeal as provided in Section 49-17-29. The
595 executive director shall report all permit decisions to the Permit
596 Board at its next regularly scheduled meeting and those decisions
597 shall be deemed as recorded in the minutes of the Permit Board at
598 that time.

599 (7) The Permit Board may cancel a permit at the request of
600 the operator, if the operator does not commence operations under
601 the permit by stripping, grubbing or mining any part of the permit
602 area. The Permit Board may rescind a permit, if, because of a
603 change in post-mining use of the land by the landowner, the
604 completion of the approved reclamation plan by the operator is no
605 longer feasible. If a permit is canceled or rescinded, the
606 remaining portion of the bond or deposit required under Section
607 53-7-37 shall be returned to the operator as soon as possible.

608 **SECTION 9.** Section 53-9-7, Mississippi Code of 1972, is
609 brought forward as follows:

610 53-9-7. For the purposes of this chapter, the following
611 terms shall have the meaning ascribed in this section unless the
612 context requires otherwise:

613 (a) "Abandoned mine lands" means lands and waters
614 affected by the mining or processing of coal before August 3,
615 1977, or affected by the mining or processing of noncoal minerals,
616 including, but not limited to, sand, gravel, clay and soil, before
617 August 3, 1977, and abandoned or left in either an unreclaimed or

618 inadequately reclaimed condition, and for which there is no
619 continuing reclamation responsibility required under state or
620 federal law, and which continue in the present condition
621 substantially to degrade the quality of the environment, to
622 prevent or damage the beneficial use of land or water resources,
623 or to endanger the health or safety of the public. Abandoned mine
624 lands also means those lands and waters described by 30 USCS
625 1232(g)(4), 30 USCS 1233(D)(1) and 30 USCS 1239.

626 (b) "Appeal" means an appeal to an appropriate court of
627 the state taken from a final decision of the Permit Board or
628 commission made after a formal hearing before that body.

629 (c) "Approximate original contour" means that surface
630 configuration achieved by backfilling and grading of the mined
631 area so that the reclaimed area, including any terracing or access
632 roads, closely resembles the general surface configuration of the
633 land before mining and blends into and complements the drainage
634 pattern of the surrounding terrain, with all highwalls and spoil
635 piles eliminated. Water impoundments may be allowed if the Permit
636 Board determines that the impoundments are in compliance with
637 Section 53-9-45(2)(g).

638 (d) "As recorded in the minutes of the Permit Board"
639 means the date of the Permit Board meeting at which the action
640 concerned is taken by the Permit Board.

641 (e) "Coal" means combustible carbonaceous rock,
642 classified as anthracite, bituminous, subbituminous, or lignite by
643 the American Society of Testing and Materials.

644 (f) "Commission" means the Mississippi Commission on
645 Environmental Quality.

646 (g) "Department" means the Mississippi Department of
647 Environmental Quality.

648 (h) "Executive director" means the executive director
649 of the department.

650 (i) "Exploration operations" means the disturbance of
651 the surface or subsurface before surface coal mining and
652 reclamation operations begin for the purpose of determining the
653 location, quantity or quality of a coal deposit, and the gathering
654 of environmental data to establish the conditions of the area
655 before the beginning of surface coal mining and reclamation
656 operations.

657 (j) "Federal act" means the Surface Mining Control and
658 Reclamation Act of 1977, as amended, which is codified as Section
659 1201 et seq. of Title 30 of the United States Code.

660 (k) "Formal hearing" means a hearing on the record, as
661 recorded and transcribed by a court reporter, before the
662 commission or Permit Board where all parties to the hearing are
663 allowed to present witnesses, cross-examine witnesses and present
664 evidence for inclusion into the record, as appropriate under rules
665 promulgated by the commission or Permit Board.

666 (l) "Imminent danger to health and safety of the
667 public" means the existence of any condition or practice, or any
668 violation of a permit or other requirement of this chapter, in a
669 surface coal mining and reclamation operation, which could
670 reasonably be expected to cause substantial physical harm to
671 persons outside the permit area before that condition, practice or
672 violation can be abated. A reasonable expectation of death or
673 serious injury before abatement exists if a rational person
674 subjected to the same conditions or practices giving rise to the
675 peril would not expose himself or herself to the danger during the
676 time necessary for abatement.

677 (m) "Interested party" means any person claiming an
678 interest relating to the surface coal mining operation and who is
679 so situated that the person may be affected by that operation, or
680 in the matter of regulations promulgated by the commission, any
681 person who is so situated that the person may be affected by the
682 action.

683 (n) "Lignite" means consolidated lignite coal having
684 less than eight thousand three hundred (8,300) British thermal
685 units per pound, moist and mineral matter free.

686 (o) "Operator" means any person engaged in coal mining
687 who removes or intends to remove more than two hundred fifty (250)
688 tons of coal from the earth by coal mining within twelve (12)
689 consecutive calendar months in any one (1) location.

690 (p) "Permit" means a permit to conduct surface coal
691 mining and reclamation operations issued under this chapter.

692 (q) "Permit area" means the area of land indicated on
693 the approved map submitted by the operator with the permit
694 application which area of land shall be covered by the operator's
695 performance bond.

696 (r) "Permit Board" means the Permit Board created under
697 Section 49-17-28.

698 (s) "Person" means an individual, partnership,
699 association, society, joint venture, joint-stock company, firm,
700 company, corporation, cooperative or other business organization
701 and any agency, unit or instrumentality of federal, state or local
702 government, including any publicly owned utility or publicly owned
703 corporation.

704 (t) "Prime farmland" means that farmland as defined by
705 the United States Secretary of Agriculture on the basis of factors
706 such as moisture availability, temperature regime, chemical
707 balance, permeability, surface layer composition, susceptibility
708 to flooding and erosion characteristics, and which historically
709 have been used for intensive agricultural purposes, and as
710 published in the federal register.

711 (u) "Public hearing," "informal hearing" or "public
712 meeting" means a public forum organized by the commission,
713 department or Permit Board for the purpose of providing
714 information to the public regarding a surface coal mining and
715 reclamation operation or regulations proposed by the commission

716 and at which members of the public are allowed to make comments or
717 ask questions or both of the commission, department or the Permit
718 Board.

719 (v) "Reclamation plan" means a plan submitted by an
720 applicant for a permit which sets forth a plan for reclamation of
721 the proposed surface coal mining operations under this chapter.

722 (w) "Revision" means any change to the permit or
723 reclamation plan that does not significantly change the effect of
724 the mining operation on either those persons impacted by the
725 permitted operations or on the environment, including, but not
726 limited to, incidental boundary changes to the permit area or a
727 departure from or change within the permit area, incidental
728 changes in the mining method or incidental changes in the
729 reclamation plan.

730 (x) "Secretary" means the Secretary of the United
731 States Department of Interior.

732 (y) "State" means the State of Mississippi.

733 (z) "State geologist" means the head of the Office of
734 Geology and Energy Resources of the department or a successor
735 office.

736 (aa) "State reclamation program" means the Mississippi
737 program for abandoned mine reclamation provided for in this
738 chapter.

739 (bb) "Surface coal mining and reclamation operations"
740 means surface coal mining operations and all activities necessary
741 and incident to the reclamation of those operations.

742 (cc) "Surface coal mining operations" means:

743 (i) Activities conducted on the surface and
744 immediate subsurface of lands in connection with a surface coal
745 mine, surface operations and surface impacts incident to an
746 underground coal mine, the products of which enter commerce or the
747 operations of which directly or indirectly affect commerce. These
748 activities include, but are not limited to:

749 (A) Excavation for the purpose of obtaining
750 coal including common methods such as contour, strip, auger,
751 mountaintop removal, boxcut, open pit and area mining;

752 (B) The use of explosives and blasting, in
753 situ distillation or retorting, leaching or other chemical or
754 physical processing; and

755 (C) The cleaning, concentrating or other
756 processing or preparation, and the loading of coal for commerce at
757 or near the mine site.

758 These activities do not include exploration operations
759 subject to Section 53-9-41.

760 (ii) Areas upon which the activities occur or
761 where the activities disturb the natural land surface. These
762 areas shall also include, but are not limited to:

763 (A) Any adjacent land the use of which is
764 incidental to any activities;

765 (B) All lands affected by the construction of
766 new roads or the improvement or use of existing roads to gain
767 access to the site of any activities and for haulage;

768 (C) All lands affected by excavations,
769 workings, impoundments, dams, ventilation shafts, entryways,
770 refuse banks, dumps, stockpiles, overburden piles, spoil banks,
771 culm banks, tailings, holes or depressions, repair areas, storage
772 areas, processing areas, shipping areas and other areas upon which
773 are sited structures, facilities or other property or materials on
774 the surface resulting from or incident to the activities.

775 (dd) "Unwarranted failure to comply" means the failure
776 of a permittee to prevent or abate the occurrence of any violation
777 of a permit, this chapter or any regulation promulgated under this
778 chapter due to indifference, lack of diligence or lack of
779 reasonable care.

780 **SECTION 10.** This act shall take effect and be in force from
781 and after July 1, 2005.