

By: Senator(s) Dawkins

To: Environment Prot, Cons
and Water Res

SENATE BILL NO. 2499

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 AND 49-17-29,
6 MISSISSIPPI CODE OF 1972, IN CONFORMITY TO THE PROVISIONS OF THIS
7 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 socioeconomic 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 socioeconomic 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 facilities that
25 manufacture, process, store or release to the environment any
26 potentially hazardous substance.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

66 (d) "Potentially harmful substance" means:

67 (i) Any hazardous substance;

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

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

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

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

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

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

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

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

93 (g) "Task force" means the Environmental Equity Task
94 Force established under this act.

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

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

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

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

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

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

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

- 127 (d) Implement the environmental equity research
128 program;
- 129 (e) Develop and implement a strategy for preventing
130 pollution and encouraging sustainable development that is
131 consistent with the provisions of this act;
- 132 (f) Develop and implement a comprehensive information
133 management plan;
- 134 (g) Develop and implement a public participation,
135 communication and education strategy to ensure public
136 participation and public access to data and reports;
- 137 (h) Develop and implement a plan for assisting other
138 federal, state and local government agencies in examining
139 environmental equity concerns;
- 140 (i) Provide environmental equity awareness training;
- 141 (j) Provide technical assistance and training to aid
142 other public and private entities in the promotion of
143 environmental equity;
- 144 (k) Prepare a report by January 15, 2008, and each year
145 thereafter, on the status of environmental equity activities; and
- 146 (l) Ensure that the department provides for the
147 function of an ombudsman with the department.

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

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

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

185 **SECTION 6.** Where it is determined by the task force that a
186 minority or low-income community is disproportionately exposed to
187 any potentially harmful substance, the task force shall issue a
188 moratorium on the siting or permitting of any facility that
189 proposes to manufacture, process, store and/or release to the
190 environment any potentially harmful substance in close
191 geographical proximity to the disproportionately exposed minority
192 or low-income community. The moratorium shall continue in effect

193 until the task force determines, upon petition of any interested
194 party, that there is no longer a disproportionate exposure of the
195 minority or low-income community to any potentially hazardous
196 substance as a result of pollution reduction.

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

199 17-17-15. (1) Hazardous wastes shall not be handled or
200 disposed of along with or in the same site or adjoining site as
201 ordinary wastes unless specifically approved as exempted waste by
202 the department. These shall be disposed of by special
203 incinerators, separate landfills, or other means dictated by the
204 particularities of the hazardous waste involved, as determined by
205 the department or other responsible agency. The department may,
206 in its discretion, maintain a field office at any treatment or
207 disposal facility that receives hazardous wastes directly or
208 indirectly from more than one (1) generator. However, the
209 department shall maintain a field office at any commercial
210 off-site multiuser hazardous waste incinerator designed to
211 incinerate multiple nonhomogeneous types of wastes, and the cost
212 of operating such field office shall be borne by the owner of such
213 commercial hazardous waste incinerator. The field office, when
214 required, shall be located in adequate accommodations provided by
215 the facility owner and shall be staffed with department regulatory
216 personnel as deemed necessary by the department. In exercising
217 its discretion to determine the need for a field office,
218 regulatory staff and support equipment, the department shall
219 consider, at a minimum, the type and amount of hazardous waste
220 received and also the type of facility. All fees shall be
221 established by the department and shall be in addition to any
222 other fees provided by law. The fee prescribed by the department
223 shall be in an amount not less than the actual operating expenses
224 of the permanent field office and shall be in addition to any
225 other fees required by law.

226 (2) In addition to considering all applicable state and
227 federal laws and regulations, the Mississippi Pollution Control
228 Permit Board shall not issue a permit for the establishment or
229 operation of a commercial hazardous waste landfill for the
230 disposal of hazardous waste (as defined by Section 17-17-3,
231 Mississippi Code of 1972), in the State of Mississippi until the
232 Environmental Protection Agency makes a final determination,
233 pursuant to the Federal Hazardous and Solid Waste Amendments of
234 1984, Public Law No. 98-616, that each waste to be placed in such
235 landfill is suitable for land disposal.

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

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

241 17-17-27. (1) The department shall exercise such
242 supervision over restrictions, equipment, methodology and
243 personnel in the management of solid wastes as may be necessary to
244 enforce sanitary requirements; and the commission shall adopt such
245 rules and regulations as may be needed to specify methodology and
246 procedures to meet the requirements of this chapter, which shall
247 include at a minimum:

248 (a) Criteria for the determination of whether any waste
249 or combination of wastes is hazardous for the purposes of this
250 chapter;

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

253 (c) Rules and regulations for the transportation,
254 containerization and labeling of hazardous wastes, which rules
255 shall be consistent with those issued by the United States
256 Department of Transportation;

257 (d) Rules and regulations specifying the terms and
258 conditions under which the Permit Board shall issue, modify,

259 suspend, revoke or deny such permits as may be required by this
260 chapter. Such rules and regulations shall include, and not by way
261 of limitation, specific authority for the Permit Board to consider
262 the financial capability and performance history of an applicant;

263 (e) Rules and regulations establishing standards and
264 procedures for the safe storage or transportation of hazardous
265 waste and for the safe operation and maintenance of hazardous
266 waste treatment or disposal facilities or sites or equipment;

267 (f) A listing of those wastes or combinations of wastes
268 which are not compatible, and which may not be stored or disposed
269 of together;

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

272 (h) Standards for financial responsibility to cover the
273 liability, closure and post-closure of any site and perpetual care
274 of a commercial hazardous waste landfill. Rules and regulations
275 promulgated hereunder may include, and not by way of limitation,
276 requirements for maintaining liability insurance coverage if such
277 coverage is not required under rules and regulations promulgated
278 by the United States Environmental Protection Agency;

279 (i) Rules and regulations establishing minimum
280 distances within which any hazardous waste disposal facility may
281 be located from any municipality, school, residence, church or
282 health care facility;

283 (j) Other rules and regulations as the commission deems
284 necessary to manage hazardous wastes in the state, provided that
285 such rules and regulations shall be equivalent to the United
286 States Environmental Protection Agency's rules and regulations;

287 (k) No permit shall be issued that is in conflict with
288 the provisions of the Mississippi Environmental Equity Act.

289 (2) In complying with this section the commission shall
290 consider the variations within this state in climate, geology,
291 population density and such other factors as may be relevant to

292 the management of hazardous wastes. It is the intent of the
293 Legislature that commercial hazardous waste landfills be located
294 on those sites which, by virtue of their geologic conditions,
295 provide a high degree of environmental protection. In carrying
296 out the intent of this provision, the commission is authorized to
297 adopt siting criteria for commercial hazardous waste landfills
298 which are more stringent or extensive in scope, coverage and
299 effect than the rules and regulations promulgated by the United
300 States Environmental Protection Agency.

301 (3) Except as hereinafter provided, hazardous wastes shall
302 not be disposed of in this state by the use of underground
303 injection methods, as herein defined according to 40 CFR
304 260.10(74) to mean "subsurface emplacement of fluids through a
305 bored, drilled, or driven well, or through a dug well, where the
306 depth of the dug well is greater than the largest surface
307 dimension." This prohibition shall not apply to the disposal on
308 the generation site of hazardous wastes generated in the
309 production of oil or gas or in a commercial or manufacturing
310 operation. Commercial hazardous waste underground injection wells
311 designed or intended to dispose of multiple nonhomogeneous types
312 of wastes from multiple sources other than the owner of the well
313 are hereby prohibited in the State of Mississippi.

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

319 (4) After promulgation of the regulations required under
320 this section, no person shall construct, substantially alter or
321 operate any solid waste treatment or disposal facility or site,
322 nor shall any person store, treat or dispose of any hazardous
323 waste without first obtaining a permit from the Permit Board for
324 such facility, site or activity. However, no person shall

325 construct any new hazardous waste treatment or disposal facility
326 or site or substantially alter any such existing facility or site,
327 nor shall the Permit Board issue a permit for any such
328 construction or alteration, until the commission has promulgated
329 rules and regulations under the provisions of subsection (1)(j) of
330 this section. Said rules and regulations shall be equivalent to
331 counterpart rules and regulations of the Environmental Protection
332 Agency whether now in effect or hereinafter promulgated. Any
333 person who has made an application for a permit for an existing
334 facility under this section shall be treated as having been issued
335 such permit until such time as final administrative disposition of
336 such application has been made unless the cause of such delay is
337 the result of the failure of the applicant to furnish information
338 reasonably required or requested in order to process the
339 application.

340 (5) Any permit issued under this section may be revoked by
341 the issuing agency at any time when the permittee fails to comply
342 with the terms and conditions of the permit. Where the obtaining
343 of or compliance with any permit required under this section
344 would, in the judgment of the department, cause undue or
345 unreasonable hardship to any person, the department may issue a
346 variance from these requirements. In no case shall the duration
347 of any such variance exceed one (1) year. Renewals or extensions
348 may be given only after an opportunity has been given for public
349 comment on each such renewal or extension.

350 (6) Information obtained by the commission concerning
351 environmental protection including, but not limited to,
352 information contained in applications for solid or hazardous waste
353 disposal permits shall be public information and shall be made
354 available upon proper request. Other information obtained by the
355 commission, department, or Permit Board in the administration of
356 Sections 17-17-1 through 17-17-47 concerning trade secrets,
357 including, but not limited to, marketing or financial information,

358 treatment, transportation, storage or disposal processes or
359 devices, methods of manufacture, or production capabilities or
360 amounts shall be kept confidential if and only if: (a) a written
361 confidentiality claim is made when the information is supplied;
362 (b) such confidentiality claim allows disclosure to authorized
363 department employees and/or the United States Environmental
364 Protection Agency (EPA); and (c) such confidentiality claim is
365 determined by the commission to be valid. If the confidentiality
366 claim is denied, the information sought to be covered thereby
367 shall not be released or disclosed, except to the Environmental
368 Protection Agency, until the claimant has been notified in writing
369 and afforded an opportunity for a hearing and appeal therefrom, as
370 with other orders of the commission. Disclosure of confidential
371 information by the EPA shall be governed by federal law and EPA
372 regulations. Misappropriation of a trade secret shall be governed
373 by the Mississippi Uniform Trade Secrets Act, Sections 75-26-1
374 through 75-26-19.

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

379 (8) Notwithstanding any other provision of this chapter, the
380 executive director, upon receipt of information that the
381 generation, storage, transportation, treatment or disposal of any
382 solid waste may present an imminent and substantial hazard to the
383 public health or to the environment, may take any legal, equitable
384 or other action, including injunctive relief, necessary to protect
385 the health of such persons or the environment.

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

388 17-17-151. (1) Each application for the issuance of a
389 permit to operate a commercial hazardous waste management facility
390 shall be accompanied by a demonstration of need for that facility

391 in the anticipated service area, which shall be of the form and
392 content as the Permit Board may prescribe. Applications for the
393 reissuance, transfer or modification of previously issued permits,
394 except modifications seeking an increase in the volume of
395 hazardous waste to be managed on an annual basis, shall not be
396 subject to the requirements of this section.

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

400 (a) Documentation of the available capacity at existing
401 commercial hazardous waste management facilities in the area to be
402 served by the facility;

403 (b) Documentation of the current volume of hazardous
404 waste generated in the area to be served by the facility and the
405 volume of hazardous waste reasonably expected to be generated in
406 the area to be served over the next twenty (20) years; and

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

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

413 (a) The extent to which the proposed commercial
414 hazardous waste management facility is in conformance with the
415 Mississippi Capacity Assurance Plan and any interstate or regional
416 agreements associated therewith;

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

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

423 (d) The design capacity of existing commercial
424 hazardous waste management facilities located within the
425 anticipated service area of the proposed facility; and

426 (e) The extent to which the proposed facility is needed
427 to replace other facilities, if the need for a proposed commercial
428 hazardous waste management facility cannot be established under
429 paragraphs (a) through (d).

430 (4) No permit shall be issued that is in conflict with the
431 provisions of the Mississippi Environmental Equity Act.

432 (5) Based on the needs of the State of Mississippi, it is
433 the intent of the Legislature that there shall not be a
434 proliferation of unnecessary facilities in any one (1) county of
435 the state.

436 (6) If the Permit Board determines that a proposed
437 commercial hazardous waste management facility is inconsistent
438 with or contradictory to the factors set forth in subsection (3),
439 the Permit Board is hereby empowered to deny any permit for such
440 facility.

441 (7) The commission shall develop and adopt criteria and
442 standards to be considered in location and permitting of
443 commercial hazardous waste management facilities. The standards
444 and criteria shall be developed through public participation,
445 shall be enforced by the Permit Board and shall include, in
446 addition to all applicable state and federal rules and
447 regulations, consideration of:

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

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

454 (c) Land use factors such as local land use, whether
455 residential, industrial, commercial, recreational or agricultural,

456 proximity to public water supplies, and proximity to incompatible
457 structures such as schools, churches and airports;

458 (d) Transportation factors, such as proximity to waste
459 generators and to population, route safety and method of
460 transportation; and

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

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

465 49-17-25. (1) Except as provided in subsection (4) of this
466 section, prior to the adoption, amendment or repeal of rules and
467 regulations necessary to implement this chapter, Sections 17-17-1
468 through 17-17-47, Sections 21-27-201 through 21-27-221, Sections
469 37-138-1 through 37-138-31, and all other laws administered by the
470 department, the commission shall conduct a public hearing or
471 hearings thereon after public notice. Such notice shall be given
472 by publication once a week for three (3) successive weeks in a
473 newspaper having a general circulation throughout the state. The
474 notice shall contain a description of the proposed regulation and
475 the time, date and place of the hearing.

476 (2) Additionally, the adoption, amendment or repeal of any
477 rule or regulation under this chapter, Sections 17-17-1 through
478 17-17-47, Sections 21-27-201 through 21-27-221, Sections 37-138-1
479 through 37-138-31 and all other laws administered by the
480 department shall be governed by the "Mississippi Administrative
481 Procedures Law." Any rule or regulation heretofore or hereafter
482 adopted, amended or repealed in substantial compliance with the
483 procedural requirements under Section 25-43-7 shall be valid. A
484 proceeding to contest any rule or regulation on the ground of
485 noncompliance with the procedural requirements of this section
486 must be commenced within one (1) year from the effective date of
487 the rule or regulation.

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

491 (4) Any rules or regulations adopted pursuant to Section 4
492 of Senate Bill No. 2499, 2007 Regular Session, shall be governed
493 by the provisions of that section and subsection (2) of this
494 section.

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

497 49-17-29. (1) (a) Except as in compliance with paragraph
498 (b) of this subsection, it is unlawful for any person to cause
499 pollution of the air in the state or to place or cause to be
500 placed any wastes or other products or substances in a location
501 where they are likely to cause pollution of the air. It is also
502 unlawful to discharge any wastes, products or substances into the
503 air of the state which exceed standards of performance, hazardous
504 air pollutant standards, other emission standards set by the
505 commission, or which reduce the quality of the air below the air
506 quality standards or increments established by the commission or
507 prevent attainment or maintenance of those air quality standards.
508 Any such action is hereby declared to be a public nuisance.

509 (b) It is unlawful for any person to build, erect,
510 alter, replace, use or operate any equipment which will cause the
511 issuance of air contaminants unless that person holds a permit
512 from the Permit Board (except repairs or maintenance of equipment
513 for which a permit has been previously issued), or unless that
514 person is exempted from holding a permit by a regulation
515 promulgated by the commission. Concentrated animal feeding
516 operations may be a source or a category of sources exempted under
517 this paragraph. However, no new or existing applications relating
518 to swine concentrated animal feeding operations within a county
519 shall be exempted from regulations and ordinances which have been

520 duly passed by the county's board of supervisors and which are in
521 force on June 1, 1998.

522 (2) (a) Except as in compliance with paragraph (b) of this
523 subsection, it is unlawful for any person to cause pollution of
524 any waters of the state or to place or cause to be placed any
525 wastes in a location where they are likely to cause pollution of
526 any waters of the state. It is also unlawful to discharge any
527 wastes into any waters of the state which reduce the quality of
528 those waters below the water quality standards established by the
529 commission; or to violate any applicable pretreatment standards or
530 limitations, technology-based effluent limitations, toxic
531 standards or any other limitations established by the commission.
532 Any such action is declared to be a public nuisance.

533 (b) It is unlawful for any person to carry on any of
534 the following activities, unless that person holds a current
535 permit for that activity from the Permit Board as may be required
536 for the disposal of all wastes which are or may be discharged into
537 the waters of the state, or unless that person is exempted from
538 holding a permit by a regulation promulgated by the commission:
539 (i) the construction, installation, modification or operation of
540 any disposal system or part thereof or any extension or addition
541 thereto, including, but not limited to, systems serving
542 agricultural operations; (ii) the increase in volume or strength
543 of any wastes in excess of the permissive discharges specified
544 under any existing permit; (iii) the construction, installation or
545 operation of any industrial, commercial or other establishment,
546 including irrigation projects or any extension or modification
547 thereof or addition thereto, the operation of which would cause an
548 increase in the discharge of wastes into the waters of the state
549 or would otherwise alter the physical, chemical or biological
550 properties of any waters of the state in any manner not already
551 lawfully authorized; (iv) the construction or use of any new
552 outlet for the discharge of any wastes into the waters of the

553 state. However, no new or existing applications relating to swine
554 concentrated animal feeding operations within a county shall be
555 exempted from regulations and ordinances which have been duly
556 passed by the county's board of supervisors and which are in force
557 on June 1, 1998.

558 (3) (a) Except as otherwise provided in this section, the
559 Permit Board created by Section 49-17-28 shall be the exclusive
560 administrative body to make decisions on permit issuance,
561 reissuance, denial, modification or revocation of air pollution
562 control and water pollution control permits and permits required
563 under the Solid Wastes Disposal Law of 1974 (Title 17, Chapter
564 17), and all other permits within the jurisdiction of the Permit
565 Board. After consideration of alternative waste treatment
566 technologies available to control air and water pollution and
567 odor, including appropriate siting criteria, the commission may
568 promulgate regulations establishing conditions, limitations and
569 exemptions under which the Permit Board shall make these
570 decisions. Regulations promulgated by the commission which
571 establish exemptions as authorized under this section shall apply
572 to any applicable facility in operation on the effective date of
573 that regulation and to any applicable facility constructed or
574 operated after the effective date of that regulation. The Permit
575 Board may issue multiple permits for the same facility or
576 operation simultaneously or in the sequence that it deems
577 appropriate consistent with the commission's regulations. Except
578 as otherwise provided in this paragraph, the Permit Board, under
579 any conditions that the board may prescribe, may authorize the
580 Executive Director of the Department of Environmental Quality to
581 make decisions on permit issuance, reissuance, denial,
582 modification or revocation. The executive director shall not be
583 authorized to make decisions on permit issuance, reissuance,
584 denial, modification or revocation for a commercial hazardous
585 waste management facility or a municipal solid waste landfill or

586 incinerator. A decision by the executive director shall be a
587 decision of the Permit Board and shall be subject to formal
588 hearing and appeal as provided in this section. The executive
589 director shall report all permit decisions to the Permit Board at
590 its next regularly scheduled meeting and those decisions shall be
591 recorded in the minutes of the Permit Board. The decisions of the
592 Permit Board shall be recorded in minutes of the Permit Board and
593 shall be kept separate and apart from the minutes of the
594 commission. The decision of the Permit Board or the executive
595 director to issue, reissue, deny, modify or revoke permits shall
596 not be construed to be an order or other action of the commission.

597 (b) The Executive Director of the Department of
598 Environmental Quality shall also be the Executive Director of the
599 Permit Board and shall have available to him, as Executive
600 Director of the Permit Board, all resources and personnel
601 otherwise available to him as executive director of the
602 department.

603 (c) All persons required to obtain an air pollution
604 control or water pollution control permit, a permit under the
605 Solid Wastes Disposal Law of 1974 (Title 17, Chapter 17) or any
606 other permit within the jurisdiction of the Permit Board shall
607 make application for that permit with the Permit Board. The
608 Permit Board, under any regulations as the commission may
609 prescribe, may require the submission of those plans,
610 specifications and other information as it deems necessary to
611 carry out Sections 49-17-1 through 49-17-43 and Title 17, Chapter
612 17, or to carry out the commission's regulations adopted under
613 those sections. The Permit Board, based upon any information as
614 it deems relevant, shall issue, reissue, deny, modify or revoke
615 air pollution control or water pollution control permit or permits
616 required under the Solid Wastes Disposal Law of 1974 (Title 17,
617 Chapter 17) or any other permit within the jurisdiction of the
618 Permit Board under any conditions as it deems necessary that are

619 consistent with the commission's regulations. The Permit Board's
620 action of issuance, reissuance, denial, modification or revocation
621 of a permit as recorded in its minutes shall constitute a complete
622 decision of the board. All permits issued by the Permit Board
623 shall remain in full force and effect until the board makes a
624 final determination regarding any reissuance, modification, or
625 revocation thereof. The Permit Board shall take action upon an
626 application within one hundred eighty (180) days following its
627 receipt in the board's principal office. No action which affects
628 revocation of an existing permit shall take effect until the
629 thirty (30) days mentioned in paragraph (4)(b) of this section has
630 expired or until a formal hearing as prescribed in that paragraph
631 is held, whichever is later.

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

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

644 (f) The Permit Board shall not issue any permit for a
645 new swine concentrated animal feeding operation or the expansion
646 of an existing swine concentrated animal feeding operation before
647 January 1, 2000, unless the department received the application
648 for that operation's new or modified permit before February 28,
649 1998, or except as provided in this paragraph (f). In issuing or
650 modifying any permit for which the department received an
651 application before February 28, 1998, the Permit Board shall apply

652 those siting criteria adopted or used by the commission before
653 February 28, 1998, unless federal law or regulations require more
654 stringent criteria. The moratorium established in this paragraph
655 shall not apply to the issuance of any permit for a new swine
656 concentrated animal feeding operation or the expansion of an
657 existing swine concentrated animal feeding operation that uses an
658 animal waste management system which the applicant demonstrates to
659 the Permit Board is innovative in significantly reducing the
660 effects of the operation on the public health, welfare or the
661 environment and which is approved by the Permit Board. The Permit
662 Board shall not issue or modify more than five (5) permits under
663 this innovative animal waste management system technology
664 exemption to the moratorium.

665 (g) Each applicant for a permit for a new outlet for
666 the discharge of wastes into the waters of the state who is
667 required to obtain a certificate of public convenience and
668 necessity from the Public Service Commission for such wastewater
669 system shall submit financial and managerial information as
670 required by the Public Utilities Staff. Following review of that
671 information, the Executive Director of the Public Utilities Staff
672 shall certify in writing to the executive director of the
673 department, the financial and managerial viability of the system
674 if the Executive Director of the Public Utilities Staff determines
675 the system is viable. The Permit Board shall not issue the permit
676 until the certification is received.

677 (h) The Permit Board shall not issue any permit that is
678 in conflict with the Mississippi Environmental Equity Act.

679 (4) (a) Except as required by this section, before the
680 issuance, reissuance, denial, modification or revocation of any
681 air pollution control or water pollution control permit, permit
682 required under the Solid Wastes Disposal Law of 1974 (Title 17,
683 Chapter 17) or any other permit within its jurisdiction, the
684 Permit Board, in its discretion, may hold a public hearing or

685 meeting to obtain comments from the public on its proposed action.
686 Before the issuance, reissuance, denial, modification pertaining
687 to the expansion of a facility, transfer or revocation of a permit
688 for a commercial hazardous waste management facility or a
689 commercial municipal solid waste landfill or incinerator, the
690 Permit Board shall conduct a public hearing or meeting to obtain
691 comments from the public on the proposed action. That hearing or
692 meeting shall be informal in nature and conducted under those
693 procedures as the Permit Board may deem appropriate consistent
694 with the commission's regulations.

695 (b) Within thirty (30) days after the date the Permit
696 Board takes action upon permit issuance, reissuance, denial,
697 modification or revocation, as recorded in the minutes of the
698 Permit Board, any interested party aggrieved by that action may
699 file a written request for a formal hearing before the Permit
700 Board. An interested party is any person claiming an interest
701 relating to the property or project which is the subject of the
702 permit action, and who is so situated that the person may be
703 affected by the disposition of that action.

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

706 In conducting the formal hearing, the Permit Board shall have
707 the same full powers as to subpoenaing witnesses, administering
708 oaths, examining witnesses under oath and conducting the hearing,
709 as is now vested by law in the Mississippi Public Service
710 Commission, as to the hearings before it, with the additional
711 power that the Executive Director of the Permit Board may issue
712 all subpoenas at the instance of the Permit Board or at the
713 instance of any interested party. Any subpoenas shall be served
714 by any lawful officer in any county to whom the subpoena is
715 directed and return made thereon as provided by law, with the cost
716 of service being paid by the party on whose behalf the subpoena
717 was issued. Witnesses summoned to appear at the hearing shall be

718 entitled to the same per diem and mileage as witnesses attending
719 the circuit court and shall be paid by the person on whose behalf
720 the witness was called. Sufficient sureties for the cost of
721 service of the subpoena and witness fees shall be filed with the
722 Executive Director of the Permit Board at the time that issuance
723 of the subpoena is requested. At a hearing, any interested party
724 may present witnesses and submit evidence and cross-examine
725 witnesses.

726 The Permit Board may designate a hearing officer to conduct
727 the formal hearing on all or any part of the issues on behalf of
728 the Permit Board. The hearing officer shall prepare the record of
729 the formal hearing conducted by that officer for the Permit Board
730 and shall submit the record to the Permit Board.

731 Upon conclusion of the formal hearing, the Permit Board shall
732 enter in its minutes the board's decision affirming, modifying or
733 reversing its prior decision to issue, reissue, deny, modify or
734 revoke a permit. The Permit Board shall prepare and record in its
735 minutes findings of fact and conclusions of law supporting its
736 decision. That decision, as recorded in its minutes with its
737 findings of fact and conclusions of law, shall be final unless an
738 appeal, as provided in this section, is taken to chancery court
739 within twenty (20) days following the date the decision is entered
740 in the board's minutes.

741 (c) Within twenty (20) days after the date the Permit
742 Board takes action upon permit issuance, reissuance, denial,
743 modification or revocation after a formal hearing under this
744 subsection as recorded in the minutes of the Permit Board, any
745 person aggrieved of that action may appeal the action as provided
746 in subsection (5) of this section.

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

750 (b) Any person who is aggrieved by any decision of the
751 Permit Board issuing, reissuing, denying, revoking or modifying a
752 permit after a formal hearing may appeal that decision within the
753 period specified in subsection (4)(c) of this section to the
754 chancery court of the county of the situs in whole or in part of
755 the subject matter. The appellant shall give a cost bond with
756 sufficient sureties, payable to the state in the sum of not less
757 than One Hundred Dollars (\$100.00) nor more than Five Hundred
758 Dollars (\$500.00), to be fixed by the Permit Board and to be filed
759 with and approved by the Executive Director of the Permit Board,
760 who shall forthwith certify the filing of the bond together with a
761 certified copy of the record of the Permit Board in the matter to
762 the chancery court to which the appeal is taken, which shall
763 thereupon become the record of the cause. An appeal to the
764 chancery court as provided in this section shall not stay the
765 decision of the Permit Board. The aggrieved party may, within
766 twenty (20) days following the date the board's decision after a
767 formal hearing is entered on the board's minutes, petition the
768 chancery court for an appeal with supersedeas and the chancellor
769 shall grant a hearing on that petition. Upon good cause shown,
770 the chancellor may grant that appeal with supersedeas. If
771 granted, the appellant shall be required to post a bond with
772 sufficient sureties according to law in an amount to be determined
773 by the chancellor. Appeals shall be considered only upon the
774 record as made before the Permit Board. The chancery court shall
775 always be deemed open for hearing of an appeal and the chancellor
776 may hear the same in termtime or in vacation at any place in the
777 chancellor's district, and the appeal shall have precedence over
778 all civil cases, except election contests. The chancery court
779 shall review all questions of law and of fact. If no prejudicial
780 error is found, the matter shall be affirmed. If prejudicial
781 error is found the decision of the board shall be reversed and the
782 chancery court shall remand the matter to the Permit Board for

783 appropriate action as may be indicated or necessary under the
784 circumstances. Appeals may be taken from the chancery court to
785 the Supreme Court in the manner as now required by law, except
786 that if a supersedeas is desired by the party appealing to the
787 chancery court, that party may apply for a supersedeas to the
788 chancellor of that court, who shall award a writ of supersedeas,
789 without additional bond, if in the chancellor's judgment material
790 damage is not likely to result thereby; but otherwise, the
791 chancellor shall require a supersedeas bond as the chancellor
792 deems proper, which shall be liable to the state for any damage.

793 **SECTION 12.** This act shall take effect and be in force from
794 and after its passage.