

**Senate Bill 2895**

***(As Sent to Governor)***

AN ACT TO AMEND SECTION 49-17-28, MISSISSIPPI CODE OF 1972, TO CLARIFY THE JURISDICTION OF THE PERMIT BOARD AND TO MAKE TECHNICAL AND CONFORMING AMENDMENTS; TO AMEND SECTION 49-17-29, MISSISSIPPI CODE OF 1972, TO AUTHORIZE THE COMMISSION ON ENVIRONMENTAL QUALITY TO PROMULGATE REGULATIONS ESTABLISHING CONDITIONS, LIMITATIONS AND EXEMPTIONS WHICH THE PERMIT BOARD SHALL APPLY; TO PROVIDE FOR THE APPLICABILITY OF REGULATIONS ESTABLISHING EXEMPTIONS; TO PROVIDE THAT EXEMPTIONS MAY ALSO APPLY TO CERTAIN AGRICULTURAL OPERATIONS; TO CLARIFY THE PERMIT BOARD'S AUTHORITY REGARDING SEQUENCING OF THE ISSUANCE OF PERMITS; TO CLARIFY THAT THE PERMIT BOARD OPERATES IN ACCORDANCE WITH THE COMMISSION'S REGULATIONS; TO PROVIDE THAT THE PERMIT BOARD ISSUE FINDINGS OF FACT AND CONCLUSIONS OF LAW WITH ITS DECISION FOLLOWING A FORMAL HEARING, BUT NOT IN ITS INITIAL PERMIT DECISION; TO CLARIFY THAT THE PERMIT BOARD MAY ADOPT RULES OF PRACTICE AND PROCEDURE CONSISTENT WITH THE COMMISSION'S REGULATIONS AND THAT THE PERMIT BOARD MAY MAKE DECISIONS REGARDING REISSUANCE OF PERMITS; TO PROVIDE THAT THE PERMIT BOARD MAY CONSOLIDATE MULTIPLE PERMITS FOR THE SAME FACILITY INTO A SINGLE PERMIT; TO CLARIFY THE EFFECTIVE DATE OF ACTIONS REGARDING REVOCATION OF A PERMIT AND TO MAKE TECHNICAL AND CONFORMING AMENDMENTS; TO PLACE A MORATORIUM, WITH CERTAIN EXCEPTIONS, ON PERMITS FOR NEW SWINE CONCENTRATED ANIMAL FEEDING OPERATIONS OR THE EXPANSION OF EXISTING SWINE CONCENTRATED ANIMAL FEEDING OPERATIONS; AND FOR RELATED PURPOSES.

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

SECTION 1. Section 49-17-28, Mississippi Code of 1972, is amended as follows:

49-17-28. (1) There is \*\*\* created a Permit Board for the purpose of issuing, reissuing, modifying, revoking or denying, under the conditions, limitations and exemptions prescribed in Section 49-17-29: (a) permits to control or prevent the discharge of contaminants and wastes into the air and waters of the state; (b) \*\*\* permits required under the Solid Wastes Disposal Law of 1974 (Title 17, Chapter 17); \*\*\* (c) permits required under \*\*\* Sections 51-3-1 through 51-3-55; and (d) all other permits within the jurisdiction of the Permit Board. The membership of the Permit Board shall be composed of the Chief of the Bureau of Environmental Health of the State Board of Health, or his designee; the Executive Director of the Department of Wildlife, Fisheries and Parks, or his designee; the Head of the Office of Land and Water Resources of the Department of Environmental Quality, or his designee; the Supervisor of the State Oil and Gas Board, or his designee; the Executive Director of the Department of Marine Resources, or his designee; the Head of the Office of Geology and Energy Resources of the Department of Environmental Quality, or his designee; the Commissioner of Agriculture and Commerce, or his designee; a retired professional engineer knowledgeable in the engineering of water wells and water supply systems, to be appointed by the Governor for a term concurrent with that of the Governor and until his successor is appointed and qualified; and a retired water well contractor, to be appointed by the Governor for a term concurrent with that of the Governor and until his successor is appointed and qualified. The retired professional engineer and the retired water well contractor shall only vote on matters pertaining to the Office of Land and Water Resources.

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

SECTION 2. Section 49-17-29, Mississippi Code of 1972, is amended as follows:

49-17-29. (1) (a) Except as in compliance with paragraph (b) of this subsection, it is unlawful for any person \*\*\* to cause pollution of the air in the state or to place or cause to be placed any wastes or other products or substances in

a location where they are likely to cause pollution of the air. It is also unlawful to discharge any wastes, products or substances into the air of the state which exceed standards of performance, hazardous air pollutant standards, other emission standards set by the commission, or which reduce the quality of the air below the air quality standards or increments established by the commission or prevent attainment or maintenance of those air quality standards. Any such action is hereby declared to be a public nuisance.

(b) It is unlawful for any person to build, erect, alter, replace, use or operate any equipment which will cause the issuance of air contaminants unless that person holds a permit from the Permit Board (except repairs or maintenance of equipment for which a permit has been previously issued), or unless that person is exempted from holding a permit by a regulation promulgated by the commission. Concentrated animal feeding operations may be a source or a category of sources exempted under this paragraph. However, no new or existing applications relating to swine concentrated animal feeding operations within a county shall be exempted from regulations and ordinances which have been duly passed by the county's board of supervisors and which are in force on the effective date of this act.

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

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

irrigation projects or any extension or modification thereof or addition thereto, the operation of which would cause an increase in the discharge of wastes into the waters of the state or would otherwise alter the physical, chemical or biological properties of any waters of the state in any manner not already lawfully authorized; (iv) the construction or use of any new outlet for the discharge of any wastes into the waters of the state. However, no new or existing applications relating to swine concentrated animal feeding operations within a county shall be exempted from regulations and ordinances which have been duly passed by the county's board of supervisors and which are in force on the effective date of this act.

(3) (a) Except as otherwise provided in this section, the Permit Board created by Section 49-17-28 shall be the exclusive administrative body to make decisions on permit issuance, reissuance, denial, modification or revocation of air pollution control and water pollution control permits and permits required under the Solid Wastes Disposal Law of 1974 (Title 17, Chapter 17), and all other permits within the jurisdiction of the Permit Board. After consideration of alternative waste treatment technologies available to control air and water pollution and odor, including appropriate siting criteria, the commission may promulgate regulations establishing conditions, limitations and exemptions under which the Permit Board shall make these decisions. Regulations promulgated by the commission which establish exemptions as authorized under Senate Bill No. 2895, 1998 Regular Session, shall apply to any applicable facility in operation on the effective date of that regulation and to any applicable facility constructed or operated after the effective date of that regulation. The Permit Board may issue multiple permits for the same facility or operation simultaneously or in the sequence that it deems appropriate consistent with the commission's regulations. Except as otherwise provided in this paragraph, the Permit Board, under any conditions that the board may prescribe, may authorize the Executive Director of the Department of Environmental Quality to make decisions on permit issuance, reissuance, denial, modification or revocation. The executive director shall not be authorized to make decisions on permit issuance, reissuance, denial, modification or revocation for a commercial hazardous waste management facility or a municipal solid waste landfill or incinerator. A decision by the executive director shall be a decision of the Permit Board and shall be subject to formal hearing and appeal as provided in this section. The executive director shall report all permit decisions to the Permit Board at its next regularly scheduled meeting and those decisions shall be recorded in the minutes of the Permit Board. The decisions of the Permit Board shall be recorded in minutes of the Permit Board and shall be kept separate and apart from the minutes of the commission. The decision of the Permit Board or the executive director to issue, reissue, deny, modify or revoke permits shall not be construed to be an order or other action of the commission.

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

(c) All persons required to obtain an air pollution control or water pollution control permit, a permit under the Solid Wastes Disposal Law of 1974 (Title 17, Chapter 17) or any other permit within the jurisdiction of the Permit Board shall make application for that permit with the Permit Board. The Permit Board, under any \* \* \* regulations as the commission may prescribe, may require the submission of those plans, specifications and other information as it deems necessary to carry out Sections 49-17-1 through 49-17-43 and Title 17, Chapter 17, or to carry out the commission's \* \* \* regulations adopted under those sections. The Permit Board, based upon any information as it deems relevant, shall issue, reissue, deny, modify or revoke air pollution control or water pollution control permit or permits required under the Solid Wastes Disposal Law of 1974 (Title 17, Chapter 17) or any other permit within the jurisdiction of the Permit Board under any conditions as it deems necessary that are consistent with the commission's regulations. The Permit Board's action of issuance, reissuance, denial, modification or revocation of a permit as recorded in its minutes shall constitute a complete decision of the board. All permits issued by the Permit Board shall remain in full force and effect until the board makes a final determination regarding any reissuance, modification, or revocation thereof. The Permit Board shall take action upon an application within one hundred eighty (180) days following its receipt in the board's principal office. No action which affects revocation of an existing permit shall take effect until the thirty (30) days mentioned in paragraph (4)(b) of this section has expired or until a formal hearing as prescribed in that paragraph is held, whichever is later.

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

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

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

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

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

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

place.

In conducting the formal hearing, the Permit Board shall have the same full powers as to subpoenaing witnesses, administering oaths, examining witnesses under oath and conducting the hearing, as is now vested by law in the Mississippi Public Service Commission, as to the hearings before it, with the additional power that the Executive Director of the Permit Board may issue all subpoenas at the instance of the Permit Board or at the instance of any interested party. Any subpoenas shall be served by any lawful officer in any county to whom the subpoena is directed and return made thereon as provided by law, with the cost of service being paid by the party on whose behalf the subpoena was issued. Witnesses summoned to appear at the hearing shall be entitled to the same per diem and mileage as witnesses attending the circuit court and shall be paid by the person on whose behalf the witness was called. Sufficient sureties for the cost of service of the subpoena and witness fees shall be filed with the Executive Director of the Permit Board at the time that issuance of the subpoena is requested. At a hearing, any interested party may present witnesses and submit evidence and cross-examine witnesses.

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

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

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

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

subsection.

(b) Any person who is aggrieved by any \* \* \* decision of the Permit Board issuing, reissuing, denying, revoking or modifying a permit after a formal hearing may appeal that \* \* \* decision within the period specified in subsection (4)(c) of this section to the chancery court of the county of the situs in whole or in part of the subject matter. The appellant shall give a cost bond with sufficient sureties, payable to the state in the sum of not less than One Hundred Dollars (\$100.00) nor more than Five Hundred Dollars (\$500.00), to be fixed by the Permit Board and to be filed with and approved by the Executive Director of the Permit Board, who shall forthwith certify the filing of the bond together with a certified copy of the record of the Permit Board in the matter to the chancery court to which the appeal is taken, which shall thereupon become the record of the cause. An appeal to the chancery court as provided in this section shall not stay the decision of the Permit Board. The aggrieved party may, within twenty (20) days following the date the board's decision after a formal hearing is entered on the board's minutes, petition the chancery court for an appeal with supersedeas and the chancellor shall grant a hearing on that petition. Upon good cause shown, the chancellor may grant that appeal with supersedeas. If granted, the appellant shall be required to post a bond with sufficient sureties according to law in an amount to be determined by the chancellor. Appeals shall be considered only upon the record as made before the Permit Board. The chancery court shall always be deemed open for hearing of an appeal and the chancellor may hear the same in termtime or in vacation at any place in the chancellor's district, and the appeal shall have precedence over all civil cases, except election contests. The chancery court shall review all questions of law and of fact. If no prejudicial error is found, the matter shall be affirmed. If prejudicial error is found the decision of the board shall be reversed and the chancery court shall remand the matter to the Permit Board for appropriate action as may be indicated or necessary under the circumstances. Appeals may be taken from the chancery court to the Supreme Court in the manner as now required by law, except that if a supersedeas is desired by the party appealing to the chancery court, that party may apply for a supersedeas to the chancellor of that court, who shall award a writ of supersedeas, without additional bond, if in the chancellor's judgment material damage is not likely to result thereby; but otherwise, the chancellor shall require a supersedeas bond as the chancellor deems proper, which shall be liable to the state for any damage.

SECTION 3. The Mississippi Department of Environmental Quality shall monitor the ambient air conditions and surface water conditions near confined swine feeding operations and report to the Legislature by January 1, 1999, with its findings and recommendations.



SECTION 4. The provisions of Senate Bill No. 2895, 1998 Regular Session, are not intended to enlarge, abridge or diminish any authority or power, existing on the effective date of this act, of any county to adopt any regulations, resolutions or ordinances which are not inconsistent with the Mississippi Constitution or the Mississippi Code of 1972, as amended, and no provision of the act shall be construed as doing so.

SECTION 5. This act shall take effect and be in force from and after June 1, 1998.