

Public Notice
Mississippi Commission on Environmental Quality
P. O. Box 2261
Jackson, MS 39225
Telephone No. (601) 961-5171

Public Notice Start Date: June 27, 2017
Deadline for Comment: July 27, 2017

MDEQ Contact: Jacqueline Evans

Please take note that the Mississippi Commission on Environmental Quality (“Commission”) is considering a Revision to the State Implementation Plan for the Control of Air Pollution (SIP Revision) to add amendments to state law to the SIP pursuant to the requirements of Section 110(a)(2)(E)(ii) and Section 128(a)(1) & (2) of the Federal Clean Air Act. This SIP Revision will incorporate changes to state law. Mississippi Code Annotated, Section 49-2-5 was amended effective July 1, 2016. The amendment involved the addition of paragraph 6 in Section 49-2-5 which provides that at least a majority of the members of the Commission on Environmental Quality not receive a significant portion of their income from persons regulated under the Federal Clean Air Act; and for related purposes.

The proposed SIP Revision may be reviewed in the offices of the Mississippi Department of Environmental Quality (MDEQ), 515 E. Amite St., Jackson, Mississippi 39201 by contacting Mr. Lorenzo Boddie, Public Records Administrator at 601-961-5171. For persons with internet access, the proposed SIP Revision may be found on the MDEQ website at <http://www.deq.state.ms.us> under Programs/Air/New Information. The proposed amendments and SIP Revision will also be available for public review in the main branches of the public libraries in the cities of Gulfport and Tupelo in the State of Mississippi.

Persons wishing to comment on the proposed SIP Revision are invited to submit comments in writing to MDEQ, P.O. Box 2261, Jackson, Mississippi 39225. Such delivery should be made to the attention of Mr. Chad Lafontaine to the mailing address shown above or to the physical address as follows: MDEQ, 515 E. Amite St., Jackson, Mississippi 39201. Any written statements regarding the SIP Revision will be a part of the public record if received by 5:00 p.m., Thursday, July 27, 2017. All comments received by this date will be considered in preparation of the final submission to EPA. A public hearing may be held if the Commission finds a significant degree of public interest in the Draft Certification and Proposed SIP Revision.

Please bring the foregoing to the attention of persons whom you know will be interested.

**MISSISSIPPI
DEPARTMENT OF ENVIRONMENTAL QUALITY
OFFICE OF POLLUTION CONTROL**

**PROPOSED
STATE IMPLEMENTATION PLAN (SIP)
REVISION**

**TO ADD AMENDMENTS OF STATE LAW TO THE SIP PURSUANT TO THE
REQUIREMENTS OF SECTION 110(a)(2)(E)(ii) AND SECTION 128(a)(1) & (2) OF THE
FEDERAL CLEAN AIR ACT**

Public comment period begins June 27, 2017

Public comment period ends July 27, 2017

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1.66 Introduction: State Implementation Plan (SIP) Revision to incorporate amendments to state law into the SIP pursuant to the requirements of Section 110(a)(2)(E)(ii) and Section 128(a)(1) & (2) of the Federal Clean Air Act.

The purpose of this SIP Revision is to further address the state SIP infrastructure requirements of Section 110(a)(2)(E)(ii) and Section 128(a)(1) & (2) of the Federal Clean Air Act regarding ethics requirements of the state environmental control commission and state permit board. Certain provisions of state law as well as certain provisions of the state constitution related to ethics of the state environmental commission and the state environmental permit board were added to the Mississippi SIP on July 16, 2012. Those provisions were included in Appendix A-10 and A-11 of the previously submitted SIP Revision. This SIP Revision will incorporate recent changes to state law. Mississippi Code Section 49-2-5 was amended effective on July 1, 2016. The changes involve the addition of paragraph 6 in Section 49-2-5 which provides that at least a majority of the members of the Mississippi Commission on Environmental Quality not receive a significant portion of their income from persons regulated under the Federal Clean Air Act; and for related purposes. The amended law is included in Appendix A-12 of this SIP Revision.

1.67 Notification of Public Comment Period for this SIP Revision.

Public participation on the SIP revision will be achieved by at least a 30-day public comment period beginning on Tuesday, June 27, 2017 and ending on Thursday, July 27, 2017. The notice of public comment period (public notice) will be published consistent with procedures approved by EPA. A public hearing may be held if the Commission finds a significant degree of public interest in the Draft Certification and Proposed SIP Revision.

The public notice is to be published on June 27, 2017, in daily newspapers in the cities of Gulfport, Jackson, and Tupelo in the State of Mississippi. The public notice and the proposed SIP revision will be made available for public review in the main branches of the public libraries in the above mentioned cities and at the Mississippi Department of Environmental Quality, 515 E. Amite St., Jackson, Mississippi, 39201 and also will be available on the Department's website <http://www.deq.state.ms.us>

The public notice follows this page.

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Please bring the foregoing to the attention of persons whom you know will be interested.

3.30 Legal Authority for the SIP Revision

No legislative actions are needed concerning this SIP revision. The State of Mississippi Air & Water Pollution Control Law, Section 49-17-1 to 49-17-43, Mississippi Code of 1972, gives the Commission on Environmental Quality the necessary legal authority to adopt and implement this SIP revision. The State act, Mississippi Code Annotated, Section 49-17-13(3), designates the Commission as the State air pollution control agency for all purposes of the federal pollution control legislation and programs and take all actions necessary thereto. The enabling state air pollution control law as of July 1, 2016, is included in Appendix A-12 of this SIP Revision. Section 49-2-5 was amended effective July 1, 2016, by adding paragraph 6. The new paragraph 49-2-5(6) provides that at least a majority of the members of the Commission on Environmental Quality not receive a significant portion of their income from persons regulated under the Federal Clean Air Act; and for related purposes.

5.29 Control Strategy for the SIP Revision

No control strategy is required for this SIP Revision.

6.33 Control Regulations for the SIP Revision

No amendments to state regulations are required for this SIP revision.

14.1.28 Health Effects of the SIP Revision

No adverse health effects are expected to be caused by this SIP revision.

14.3.28 Economics Effects of the SIP Revision

No adverse economic effects due to this SIP revision are foreseen.

14.5.28 Social Effects of the SIP Revision

No adverse social effects are foreseen as a result of this SIP revision.

14.6.28 Air Quality Effects of the SIP Revision

This SIP revision will not have any adverse air quality effects.

**MISSISSIPPI DEPARTMENT OF ENVIRONMENTAL QUALITY
OFFICE OF POLLUTION CONTROL**

STATE IMPLEMENTATION PLAN REVISION

**TO ADD AMENDMENTS OF STATE LAW TO THE SIP PURSUANT TO THE
REQUIREMENTS OF SECTION 110(a)(2)(E)(ii) AND SECTION 128(a)(1) & (2) OF THE
FEDERAL CLEAN AIR ACT**

APPENDIX A-12

**STATE AIR POLLUTION CONTROL LAW AS OF JULY 1, 2016
SECTION 49-2-5 (6) ADDED EFFECTIVE JULY 1, 2016**

MISSISSIPPI CODE of 1972

*** Current through the 2011 Regular Session and 1st Extraordinary Session ***

TITLE 49. CONSERVATION AND ECOLOGY CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY IN GENERAL

Miss. Code Ann. § 49-2-1 (2011)

§ 49-2-1. Declaration of purpose

It is hereby declared to be the intent of the Legislature to conserve, manage, develop and protect our natural resources and wildlife for the benefit of this and succeeding generations by reorganizing the natural resource and wildlife conservation functions of state government into the Mississippi Department of Environmental Quality and the Mississippi Department of Wildlife, Fisheries and Parks thereby providing more effective organizations through which the methods of conserving, managing, developing and protecting our natural resources and wildlife can be analyzed, coordinated and implemented.

HISTORY: SOURCES: Laws, 1978, ch. 484, § 1; Laws, 2000, ch. 516, § 20, eff from and after passage (approved Apr. 30, 2000.)

§ 49-2-2. Definitions

For purposes of this chapter, the following words and phrases shall have the meanings ascribed herein, unless the context otherwise requires:

- (a) "Department" means the Mississippi Department of Environmental Quality.
- (b) "Commission" means the Mississippi Commission on Environmental Quality.
- (c) "Office" means an administrative subdivision of the department.
- (d) "Executive director" means the chief officer of the department.
- (e) "Environmental self-evaluation report" means any document, including any audit, report, finding, communication, or opinion or any draft of an audit, report, finding, communication or opinion, prepared solely as a part of or in connection with a voluntary self-assessment that is done in good faith, which report is kept and maintained solely within the confines of the evaluated party.
- (f) "Voluntary self-evaluation" means a self-initiated internal assessment, audit, or review, not otherwise expressly required by environmental law, of a facility or an activity at a facility, or management systems related to a facility or an activity. A voluntary self-evaluation shall be designed to identify and prevent noncompliance with environmental laws, and improve

compliance with environmental laws. In addition, a voluntary self-evaluation must be conducted by an owner or operator of a facility or an employee of the owner or operator or by a private contractor engaged by the owner or operator.

(g) "Environmental law" means any federal, state or local statute, rule or regulation, or any order, award, agreement, release, permit, license, standard or notice from or issued by a federal, state or local court, agency or governmental authority in pursuance thereof.

HISTORY: SOURCES: Laws, 1989, ch. 544, § 134; Laws, 1990, ch. 522, § 27; Laws, 1995, ch. 627, § 3, eff from and after July 1, 1995.

§ 49-2-3. Repealed

Repealed by Laws, 1989, ch. 544, § 131, eff from and after July 1, 1989.

[En Laws, 1978, ch. 484, § 2]

§ 49-2-4. Department of Environmental Quality; executive director; qualifications

(1) There is hereby created the Mississippi Department of Environmental Quality whose offices shall be located in Jackson, Mississippi.

(2) The department shall be headed by an executive director who shall be appointed by and serve at the pleasure of the Governor. The appointment of the executive director shall be made with the advice and consent of the Senate. The executive director may assign to the appropriate bureaus such powers and duties as deemed appropriate to carry out the department's lawful functions. The executive director shall have the following minimum qualifications:

(a) A master's degree in a field related to natural resources, and at least six (6) years' full-time experience in natural resources, including at least three (3) years of management experience; or

(b) A bachelor's degree in a field related to natural resources or administration and at least eight (8) years of full-time work in the field of natural resources, including four (4) years of management experience.

The executive director shall be the chief administrative officer of the department.

HISTORY: SOURCES: Laws, 1989, ch. 544, § 128, eff from and after July 1, 1989.

§ 49-2-5. Commission on Environmental Quality

(1) There is hereby created the Mississippi Commission on Environmental Quality, to be composed of seven (7) persons appointed by the Governor, with the advice and consent of the Senate, for a term of seven (7) years. One (1) person shall be appointed from each congressional district as constituted January 1, 1978, and two (2) members shall be appointed from the state at large. The initial terms of the members from congressional districts shall be for one (1), two (2),

three (3), four (4) and five (5) years respectively, and the initial terms of the members from the state at large shall be one (1) for six (6) years and one (1) for seven (7) years. Thereafter, all terms shall be for seven (7) years. The members serving on the predecessor Commission on Natural Resources on June 30, 1989, shall continue to serve as members of the successor Commission on Environmental Quality until the expiration of the term of their appointment to the predecessor commission.

(2) The commission shall elect from its membership a chairman who shall preside over meetings and a vice chairman who shall preside in the absence of the chairman or when the chairman shall be excused.

(3) The commission shall adopt rules and regulations governing times and places for meetings, and governing the manner of conducting its business. Each member of the commission shall take the oath prescribed by Section 268 of the Constitution and shall enter into bond in the amount of Thirty Thousand Dollars (\$ 30,000.00) to be approved by the Secretary of State, conditioned according to law and payable to the State of Mississippi before assuming the duties of office. Any member who shall not attend three (3) consecutive regular meetings of the commission shall be subject to removal by a majority vote of the commission members.

(4) The members of the commission shall receive no annual salary, but shall receive per diem compensation as authorized by law for each day devoted to the discharge of official duties, and shall be entitled to reimbursement for all actual and necessary expenses incurred in the discharge of their duties, including mileage as authorized by law.

The commission shall be composed of persons with extensive knowledge of or practical experience in at least one (1) of the matters of jurisdiction of the commission.

(5) The commission is authorized and empowered to use and expend any funds received by it from any source for the purposes of this chapter. Such funds shall be expended in accordance with the statutes governing the expenditure of state funds.

(6) At least a majority of the members of the commission shall represent the public interest and shall not derive any significant portion of their income from persons subject to permits under the federal Clean Air Act or enforcement order under the federal Clean Air Act. In the event of any potential conflict of interest by a member of the commission, such member shall disclose the potential conflict to the other members of the commission and shall recuse himself or herself from participating in or voting on any matter related to such conflict of interest.

HISTORY: SOURCES: Laws, 1978, ch. 484, § 3; Laws, 1980, ch 560, § 22; Laws, 1989, ch. 544, § 130, eff from and after July 1, 1989; Laws, 2016, ch. 341, § 1, eff from and after July 1, 2016.

§ 49-2-6. Mississippi Commission on Environmental Quality assuming powers and duties of Mississippi Commission on Natural Resources

The Mississippi Commission on Environmental Quality shall be the Mississippi Commission

on Natural Resources with the exception of the Bureau of Parks and Recreation, and shall retain all powers and duties granted by law to the Mississippi Commission on Natural Resources with the exception of the Division of Parks and Recreation, and wherever the term "Mississippi Commission on Natural Resources" appears in any law the same shall mean the Mississippi Commission on Environmental Quality.

HISTORY: SOURCES: Laws, 1989, ch. 544, § 129, eff from and after July 1, 1989.

§ 49-2-7. Department of Environmental Quality assuming powers and duties of Department of Natural Resources; organization of department; duties

The Department of Environmental Quality shall be the Mississippi Department of Natural Resources with the exception of the Office of Parks and Recreation, and shall retain all powers and duties granted by law to the Mississippi Department of Natural Resources with the exception of the Office of Parks and Recreation, and wherever the term "Mississippi Department of Natural Resources" appears in any law the same shall mean the Department of Environmental Quality. The Executive Director of the Department of Environmental Quality may assign to the appropriate offices any powers and duties deemed appropriate to carry out the lawful duties of the department.

The department shall be composed of the following offices:

- (a) Office of Geology and Energy Resources;
- (b) Office of Land and Water Resources; and
- (c) Office of Pollution Control.

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

The department is designated as the single state department to receive and expend any federal funds being received or expended by any agency transferred to the department by Chapter 484, Laws of 1978, and to receive and expend any federal funds made available for matters within the jurisdiction of the department.

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

HISTORY: SOURCES: Laws, 1978, ch. 484, § 5; Laws, 1989, ch. 544, § 132; Laws, 1990, ch.

522, § 28; Laws, 1993, ch. 615, § 4, eff from and after July 1, 1993.

§ 49-2-9. Commission on Environmental Quality; powers and duties

(1) Effective July 1, 1979, the commission shall have the following powers and duties:

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

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

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

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

(e) To enter into, and to authorize the executive director to execute with the approval of the commission, contracts, grants and cooperative agreements with any federal or state agency or subdivision thereof, or any public or private institution located inside or outside the State of Mississippi, or any person, corporation or association in connection with carrying out the provisions of this chapter; but this authority under this chapter and under any and all statutes within the commission's jurisdiction, except those statutes relating to the Bureau of Recreation and Parks, shall not include contracts, grants or cooperative agreements which do not develop data or information usable by the commission, or which provide goods, services or facilities to the commission or any of its bureaus, and shall exclude any monies for special interest groups for purposes of lobbying or otherwise promoting their special interests; and

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

(2) The Mississippi Department of Environmental Quality, Office of Geology and Energy Resources shall be responsible for program management, procurement, development and maintenance of the Mississippi Digital Earth Model, which should include the following seven (7) core data layers of a digital land base computer model of the State of Mississippi:

(a) Geodetic control;

(b) Elevation and bathymetry;

(c) Orthoimagery;

(d) Hydrography;

(e) Transportation;

(f) Government boundaries; and

(g) Cadastral. With respect to the cadastral layer, the authority and responsibility of the Mississippi Department of Environmental Quality, Office of Geology and Energy Resources shall be limited to compiling information submitted by counties.

For all seven (7) framework layers, the Mississippi Department of Environmental Quality, Office of Geology and Energy Resources shall be the integrator of data from all sources and the guarantor of data completeness and consistency and shall administer the council's policies and standards for the procurement of remote sensing and geographic information system data by state and local governmental entities.

HISTORY: SOURCES: Laws, 1978, ch. 484, § 6; Laws, 1982, ch. 411, § 5; Laws, 2003, ch. 527, § 3, eff from and after July 1, 2003.

§ 49-2-11. Economic and fiscal impact statements; prerequisite to enactment of rule or regulation and notice of action; effect of statements

(1) Prior to the adoption of an environmental rule or regulation by the Commission on Environmental Quality for a new program, the commission shall consider the economic impact and environmental benefits such rule or regulation will have on the citizens and the environment of our state, as well as the fiscal impacts of such rule or regulation on the state and local governmental agencies. This section shall not apply to the adoption of any environmental rule or regulation for a new program which is promulgated pursuant to a state/federal program delegation agreement or contract or which is expressly required by state law.

(2) Prior to giving notice of proposed agency action as required by Section 25-43-7, Mississippi Code of 1972, the commission shall develop a written report providing an economic and fiscal impact statement for the adoption of an environmental rule or regulation for a new program, except as provided in subsection (1) of this section. In developing the economic and fiscal impact statement, the commission shall consult with personnel at the Universities Research Center.

(3) The economic and fiscal impact statement shall include the following:

(a) A description of the need for and the environmental benefits which will likely accrue as the result of the proposed action;

(b) An estimate of the capital cost and the annual cost to the regulated community of implementing the proposed action;

(c) An estimate of any initial cost and annual costs to the department and other state and local

governmental entities of implementing and enforcing the proposed action, including the estimated amount of paperwork;

(d) A description of reasonable alternative methods, where applicable, for achieving the purpose of the proposed action which were considered by the commission and a statement of reasons for rejecting those alternatives in favor of the proposed adoption or substantive modification; and

(e) A detailed statement of the data and methodology used in making estimates required by this subsection.

(4) No rule or regulation shall be declared invalid based on a challenge to the economic and fiscal impact statement for the rule or regulation unless the issue is raised in administrative proceedings before the commission. No person shall have standing to challenge a rule or regulation, based upon the economic and fiscal impact statement or lack thereof, unless that person provided the commission with information sufficient to make the commission aware of specific concerns regarding the statement in a public meeting or hearing held by the commission or in written comments regarding the rule or regulation. The grounds for invalidation for an action of the commission, based upon the economic and fiscal impact statement, are limited to the commission's failure to adhere to the procedure for preparation of the economic and fiscal impact statement as provided in this section, or the commission's failure to consider information submitted to the commission regarding specific concerns about the statement, if such failure substantially impairs the fairness of the rulemaking proceeding.

HISTORY: SOURCES: Laws, 1994, ch. 598, § 2, eff from and after July 1, 1994.

§ 49-2-13. Powers and duties of executive director

The executive director shall have the following powers and duties:

(a) To administer the policies of the commission within the authority granted by the commission;

(b) To supervise and direct all administrative and technical activities of the department;

(c) To organize the administrative units of the department in accordance with the plan adopted by the commission and, with commission approval, alter such organizational plan and reassign responsibilities as he may deem necessary to carry out the policies of the commission;

(d) To coordinate the activities of the various offices of the department;

(e) To employ, subject to the approval of the commission, qualified professional personnel in the subject matter or fields of each office, and such other technical and clerical staff as may be required for the operation of the department;

(f) To recommend to the commission such studies and investigations as he may deem

appropriate, and to carry out the approved recommendations in conjunction with the various offices;

(g) To merge and coordinate functions and duties where possible to eliminate the possibility of two (2) separate organizational entities performing the same or similar functions, including, but not limited to, functions of audit, inspection, collection, personnel, motor vehicles, accounting, data processing, payroll and any other such administrative, procedural or enforcement function;

(h) To coordinate all studies in the State of Mississippi concerned with the supply, development, use and conservation of natural resources within the jurisdiction of the department;

(i) To prepare and deliver to the Legislature and the Governor on or before January 1 of each year, and at such other times as may be required by the Legislature or Governor, a full report of the work of the department and the offices thereof, including a detailed statement of expenditures of the department and any recommendations the commission may have;

(j) To issue, modify or revoke any and all orders under authority granted by the commission which include, but are not limited to those which (i) prohibit, control or abate discharges of contaminants and wastes into the air and waters of the state; (ii) require the construction of new disposal systems or air-cleaning devices or any parts thereof, or the modification, extension or alteration of existing disposal systems or air-cleaning devices or any parts thereof, or the adoption of other remedial measures to prevent, control or abate air and water pollution or to cause the proper management of solid wastes; (iii) impose penalties pursuant to Section 17-17-29 and Section 49-17-43 which have been agreed upon with alleged violators; and (iv) require compliance with the conditions of any permit issued by the Permit Board created in Section 49-17-28 and all regulations of the commission; and

(k) With the approval of the commission, to enter into contracts, grants and cooperative agreements with any federal or state agency or subdivision thereof, or any public or private institution located inside or outside the State of Mississippi, or any person, corporation or association in connection with carrying out the provisions of this chapter, provided the agreements do not have a financial cost in excess of the amounts appropriated for such purposes by the Legislature.

HISTORY: SOURCES: Laws, 1978, ch. 484, § 8; Laws, 1982, ch. 411, § 6; Laws, 1987, ch. 332, § 3; Laws, 1988, ch. 312, § 1; Laws, 1989, ch. 544, § 133; Laws, 1990, ch. 522, § 29, eff from and after July 1, 1990.

§ 49-2-15. Repealed

Repealed by Laws, 1989, ch. 544, § 131, eff from and after July 1, 1989.

[En Laws, 1978, ch. 484, § 9]

§ 49-2-16. Qualifications for certain office heads

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

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

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

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

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

HISTORY: SOURCES: Laws, 1989, ch. 544, § 135; Laws, 1990, ch. 522, § 30, eff from and after July 1, 1990.

§ 49-2-17. Assistant for administration

Effective July 1, 1979, the executive director shall employ an assistant for administration and shall centralize under his office the following administrative functions for the entire department:

- (a) accounting;
- (b) payroll;
- (c) purchasing;
- (d) data processing;
- (e) personnel;
- (f) motor pool and vehicles;
- (g) maintenance;
- (h) printing and records; and
- (i) public relations.

HISTORY: SOURCES: Laws, 1978, ch. 484, § 10, eff from and after passage (approved April 17, 1978).

§ 49-2-19. Traveling expenses of departmental employees

All employees of the department, when authorized by the executive director, shall be entitled to transportation, traveling and subsistence expenses while away from the office on official business of the department, in accordance with Section 25-3-41, Mississippi Code of 1972.

HISTORY: SOURCES: Laws, 1978, ch. 484, § 19; Laws, 2000, ch. 516, § 21, eff from and after passage (approved Apr. 30, 2000.)

§ 49-2-21. Attorney General as counsel to Commission and Department of Environmental Quality; executive director authorized to employ legal counsel

The Attorney General shall be counsel and attorney for the commission and the Department of Environmental Quality and shall provide such legal services as may be requested from time to time, without cost. The executive director is hereby authorized to employ such legal counsel as may be necessary or appropriate for the operation of the department.

HISTORY: SOURCES: Laws, 1978, ch. 484, § 20; Laws, 1990, ch. 480, § 1, eff from and after passage (approved March 26, 1990).

§ 49-2-23. Authority to enter agreements with National Space Technology Laboratories

The Mississippi Department of Natural Resources, as created in Section 49-2-7, is designated as the primary agency of the State of Mississippi that shall enter into such agreements with the National Space Technology Laboratories (NSTL) located in Hancock County, Mississippi, as may be necessary to enable the State of Mississippi to have full access to all information and technical assistance that is made available through the NSTL.

HISTORY: SOURCES: Laws, 1979, ch. 416, § 1, eff from and after July 1, 1979.

§ 49-2-24. Conference suite within Mississippi Technology Transfer Center named in honor of Herman Cowan Glazier, Jr

The conference suite within the Mississippi Technology Transfer Center at the National Space Technology Laboratories, National Aeronautics and Space Administration, in Hancock County, Mississippi, is hereby named in honor of Herman Cowan Glazier, Jr.; and the Governor's Office of General Services shall have a distinctive plaque placed therein noting the designation provided for by this section.

HISTORY: SOURCES: Laws, 1988, ch. 326, eff from and after passage (approved April 13, 1988).

§ 49-2-25. Creation of office of technical resources; supervision

(1) To assure the access and a proper utilization of assistance provided for in Section 49-2-23, the executive director of the department of natural resources, as provided by Section 49-2-11, is

hereby authorized to establish the office of technical resources within the NSTL facility in Hancock County and to direct and supervise the activities of this office and its personnel in a manner that will:

(a) Provide the State of Mississippi, its political subdivisions and its people with an informed access to any and all of the services, skills, information and other capabilities which are available through the various functions of the federal government under its commitment to utilize its technical resources for public benefit.

(b) Promote the transfer and utilization of such technical resources through a positive program of identifying, interpreting and informing potential users of these resources within the State of Mississippi.

(c) Cooperate with all agencies and offices of the federal government and with any other state which share in the same objectives of the office of technical resources.

(d) Manage, supervise and coordinate an orderly flow of these resources to all eligible users who request this service within the jurisdiction of the State of Mississippi.

(2) The executive director of the department of natural resources shall approve any change, acquisition of properties or the hiring of any additional personnel within the office of technical resources.

HISTORY: SOURCES: Laws, 1979, ch. 416, § 2, eff from and after July 1, 1979.

§ 49-2-27. Repealed

Repealed by Laws, 1992, ch. 582, § 1, eff from and after passage (approved May 15, 1992).

[En Laws, 1992, ch. 582, § 1]

§ 49-2-29. Strategic plan for operations of Department of Environmental Quality

(1) The Department of Environmental Quality shall develop a strategic plan for its operations. The strategic plan shall cover a five-year period. The plan shall include, at a minimum, the following:

(a) A clearly defined comprehensive statement of the mission, goals and objectives of the agency;

(b) Performance effectiveness objectives (measurable indicators of output and outcome) for each program in the department;

(c) A description of the department's internal management system used to evaluate its performance in relation to projected levels;

(d) Detailed plans and strategies for meeting current and future needs and achieving goals and objectives established for the department;

(e) A description of significant external factors which may affect any projected levels of performance, including an identification of priority and other service populations, or other service measures, under current law and how those populations are expected to change within the period of the plan;

(f) A detailed analysis of the use of current agency resources in meeting current needs and expected future needs, and additional resources that may be necessary to meet future needs;

(g) An analysis and estimate of the economic impact on the regulated community of regulations adopted by the Commission on Environmental Quality; and

(h) An analysis of any likely or expected changes in the services provided by the department due to changes in state or federal law.

(2) The department shall revise the plan biennially.

(3) Upon completion of the initial plan and each revision, the department shall provide copies to the Governor, the Lieutenant Governor, the Speaker of the House of Representatives, the Chairman of the Senate Environmental Protection, Conservation and Water Resources Committee, the Chairman of the House Conservation and Water Resources Committee, the Legislative Budget Office, the Performance Evaluation and Expenditure Review Committee, the Executive Director of the Department of Finance and Administration and the Legislative Reference Bureau.

(4) Except as otherwise provided in this subsection, the department shall develop the strategic plan before July 1, 1995. However, if the comparative risk assessment required under Section 49-2-31 is initiated before September 1, 1994, the department shall develop the strategic plan before July 1, 1996.

HISTORY: SOURCES: Laws, 1994, ch. 598, § 3; Laws, 2009, ch. 546, § 16, eff from and after passage (approved Apr. 15, 2009.)

§ 49-2-31. Comparative risk assessment

(1) Before July 1, 1995, the Department of Environmental Quality shall complete a comparative risk assessment that will include consideration of environmental risks to the health and welfare of the citizens of Mississippi and to the environment. The assessment also shall include an examination of environmental factors, public health factors and socioeconomic factors. The department shall provide for public participation in the assessment process.

(2) The requirements of this section shall be contingent upon the receipt of federal funds.

HISTORY: SOURCES: Laws, 1994, ch. 598, § 4, eff from and after July 1, 1994.

§§ 49-2-41 through 49-2-63. Repealed

Repealed by Laws, 1980, ch. 548, § 19, eff from and after May 26, 1980.

[En Laws, 1979, ch. 471, §§ 1-14]

§ 49-2-71. Discovery and admissibility in evidence of environmental self-evaluation reports; divulgence or dissemination of information in reports; exemption from Public Records Act

(1) An environmental self-evaluation report, as defined in Section 49-2-2, is privileged and is not admissible in any legal or investigative action in any civil or administrative proceeding and is not subject to any discovery pursuant to the rules of civil procedure or administrative procedure, unless:

(a) The person for whom the environmental self-evaluation report was prepared, irrespective of whether the self-evaluation report was conducted and/or prepared by a private contractor hired by the person, expressly waives the provisions of this section;

(b) The court of record, or hearing officer, who shall be neutral and independent, after in camera review, determines that:

(i) The environmental self-evaluation report shows evidence that the person for which the environmental self-evaluation report was prepared is not or was not in compliance with an environmental law;

(ii) The person did not initiate appropriate efforts to achieve compliance with the environmental law or complete any necessary permit application promptly after the noncompliance with the environmental law was discovered and, as a result, the person did not or will not achieve compliance with the environmental law or complete the necessary permit application within a reasonable amount of time;

(iii) For the purposes of paragraphs (b)(i) and (b)(ii) only, if the evidence shows noncompliance by a person with more than one (1) environmental law, the person may demonstrate that appropriate efforts to achieve compliance were or are being taken by instituting a comprehensive program that establishes a phased schedule of actions to be taken to bring the person into compliance with all of such environmental laws;

(c) The court of record or hearing officer, who shall be neutral and independent, after an in camera review, determines that the privilege is being asserted for a fraudulent purpose or that the environmental self-evaluation report was prepared to avoid disclosure of information in an investigative, administrative, or judicial proceeding that was underway, or for which the person had been provided written notification that an investigation into a specific violation had been initiated; or

(d) (i) For environmental self-evaluation reports made before January 20, 2003, the court of

record or hearing officer, who shall be neutral and independent, determines that even if subject to the privilege, it is found that a condition exists that demonstrates an imminent and substantial hazard or endangerment to the public health and safety or the environment;

(ii) For an environmental self-evaluation report that was made on or after January 20, 2003, the court of record or hearing officer, who shall be neutral and independent, determines that even if subject to the privilege, it is found that a condition exists or existed at the time of the report that demonstrates or demonstrated an imminent and substantial hazard or endangerment to the public health and safety or the environment.

(2) The self-evaluation privilege created by this section does not apply to:

(a) Documents or information required to be developed, maintained or reported pursuant to any environmental law or any other law or regulation; or

(b) Documents or other information required to be made available or furnished to a regulatory agency pursuant to any environmental law or any other law or regulation; or

(c) Information in the possession of a regulatory agency obtained through observation, sampling, monitoring or otherwise and which is subject to public disclosure pursuant to the Mississippi Public Records Act of 1983; or

(d) Information obtained through any source independent of the environmental self-evaluation report; or

(e) Documents existing prior to the commencement of and independent of the voluntary self-evaluation with the exception of evidence establishing a request for compliance assistance to the appropriate government agency or authority.

(3) (a) Upon a showing by any party, based upon independent knowledge, that probable cause exists to believe that an exception to the self-evaluation privilege under subsection (1) of this section is applicable to an environmental self-evaluation report or that the privilege does not apply to the environmental self-evaluation report pursuant to the provisions of subsection (2) of this section, then a court of record or hearing officer, who shall be neutral and independent, may allow such party limited access to the environmental self-evaluation report for the purposes of an in camera review only. The court of record or the hearing officer may grant limited access to all or part of the environmental self-evaluation report under the provisions of this subsection (3) upon such conditions as may be necessary to protect the confidentiality of the environmental self-evaluation report. A moving party who obtains access to an environmental self-evaluation report pursuant to the provisions of this subsection (3) may not divulge any information from the report except as specifically allowed by the court or hearing officer.

(b) If any party divulges all or any part of the information contained in an environmental self-evaluation report in violation of the provisions of paragraph (a) of this subsection (3) or if any other person knowingly divulges or disseminates all or any part of the information contained in an environmental self-evaluation report that was provided to such person in violation of the

provisions of paragraph (a) of this subsection (3), such party or other person is liable for any damages caused by the divulgence or dissemination of the information that are incurred by the person for which the environmental self-evaluation report was prepared. The court or hearing officer also may issue such contempt orders and sanctions against the offending party or such party's legal counsel as may be necessary to ensure compliance.

(4) Nothing in this section limits, waives or abrogates the scope or nature of any statutory or common-law privilege.

(5) A person asserting a voluntary self-evaluation privilege has the burden of proving a prima facie case as to the privilege. A party seeking disclosure of an environmental self-evaluation report has the burden of proving that such privilege does not exist under this section.

(6) All environmental self-evaluation reports that are protected by the self-evaluation privilege created by this section shall be privileged and exempt from the provisions of the Mississippi Public Records Act in accordance with Section 25-61-11, Mississippi Code of 1972.

HISTORY: SOURCES: Laws, 1995, ch. 627, § 2; Laws, 2003, ch. 301, § 1, eff from and after passage (approved Jan. 20, 2003.)

MISSISSIPPI CODE of 1972

***** Current through the 2011 Regular Session and 1st Extraordinary Session *****

TITLE 49. CONSERVATION AND ECOLOGY

CHAPTER 17. POLLUTION OF WATERS, STREAMS, AND AIR

IN GENERAL

Miss. Code Ann. § 49-17-1 (2011)

§ 49-17-1. Short title

Sections 49-17-1 through 49-17-43 may be cited as the "Mississippi Air and Water Pollution Control Law."

HISTORY: SOURCES: Codes, 1942, § 7106-135; Laws, 1966, ch. 258, § 25, eff from and after July 1, 1966.

§ 49-17-3. Statement of policy

Whereas, the pollution of the air and waters of the state constitutes a menace to public health and welfare, creates a public nuisance, is harmful to wildlife, fish and aquatic life, and impairs domestic, agricultural, industrial, recreational and other legitimate beneficial uses of air and water, and whereas, the problem of air and water pollution in this state is closely related to the problem of air and water pollution in adjoining states, it is hereby declared to be the public policy of this state to conserve the air and waters of the state and to protect, maintain and improve the quality thereof for public use, for the propagation of wildlife, fish and aquatic life, and for domestic, agricultural, industrial, recreational and other legitimate beneficial uses; to maintain such a reasonable degree of quality of the air resources of the state to protect the health, general welfare and physical property of the people, and to provide that no waste be discharged into any waters of the state without first receiving the necessary treatment or other corrective action to protect the legitimate beneficial uses of such waters; to provide for the prevention, abatement and control of new or existing air or water pollution; and to cooperate with other agencies of the state, agencies of other states, and the federal government in carrying out these objectives.

HISTORY: SOURCES: Codes, 1942, § 7106-111; Laws, 1966, ch. 258, § 1, eff from and after July 1, 1966.

§ 49-17-5. Definitions

For the purposes of Sections 49-17-1 through 49-17-43, the following words and phrases shall have the meanings ascribed to them in this section:

(1) Water.

(a) "Pollution" means such contamination, or other alteration of the physical, chemical or biological properties, of any waters of the state, including change in temperature, taste, color, turbidity, or odor of the waters, or such discharge of any liquid, gaseous, solid, radioactive, or

other substance or leak into any waters of the state unless in compliance with a valid permit issued therefor by the Permit Board.

(b) "Wastes" means sewage, industrial wastes, oil field wastes, and all other liquid, gaseous, solid, radioactive, or other substances which may pollute or tend to pollute any waters of the state.

(c) "Sewerage system" means pipelines or conduits, pumping stations, and force mains, and other structures, devices, appurtenances and facilities used for collecting or conducting wastes to an ultimate point for treatment or disposal.

(d) "Treatment works" means any plant or other works, used for the purpose of treating, stabilizing or holding wastes.

(e) "Disposal system" means a system for disposing of wastes, either by surface or underground methods, and includes sewerage systems, treatment works, disposal wells and other systems.

(f) "Waters of the state" means all waters within the jurisdiction of this state, including all streams, lakes, ponds, impounding reservoirs, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, situated wholly or partly within or bordering upon the state, and such coastal waters as are within the jurisdiction of the state, except lakes, ponds or other surface waters which are wholly landlocked and privately owned, and which are not regulated under the Federal Clean Water Act (33 U.S.C. 1251 et seq).

(g) "Underground water" means an underground source of drinking water as defined within the regulations of the Federal Safe Drinking Water Act.

(2) Air.

(a) "Air contaminant" means particulate matter, dust, fumes, gas, mist, smoke or vapor, or any combination thereof, produced by processes other than natural.

(b) "Air pollution" means the presence in the outdoor atmosphere of one or more air contaminants in quantities, of characteristic, and of a duration which are materially injurious or can be reasonably expected to become materially injurious to human, plant or animal life or to property, or which unreasonably interfere with enjoyment of life or use of property throughout the state or throughout such area of the state as shall be affected thereby.

(c) "Air contamination" means the presence in the outdoor atmosphere of one or more air contaminants which contribute to a condition of air pollution.

(d) "Air contamination source" means any source at, from, or by reason of which there is emitted into the atmosphere any air contaminant, regardless of who the person may be who owns or operates the building, premises or other property in, at, or on which such source is located, or

the facility, equipment or other property by which the emission is caused or from which the emission comes.

(e) "Air-cleaning device" means any method, process or equipment, the primary function of which is to remove, reduce or render less noxious air contaminants discharged into the atmosphere.

(f) "Area of the state" means any city or county or portion thereof, or other substantial geographical area of the state as may be designated by the Mississippi Commission on Environmental Quality.

(g) "Federal Clean Air Act" means the Federal Clean Air Act, 42 U.S.C. 7401 et seq., as amended.

(3) General.

(a) "Commission" means the Mississippi Commission on Environmental Quality acting through the Office of Pollution Control of the Department of Environmental Quality.

(b) "Person" means the state or other agency or institution thereof, any municipality, political subdivision, public or private corporation, individual, partnership, association or other entity, and includes any officer or governing or managing body of any municipality, political subdivision, or public or private corporation, or the United States or any officer or employee thereof.

(c) "Pollution Emergency Fund" means the fund established under Section 49-17-68.

(d) "General permit" means a permit for categories of sources that involve similar wastes and have similar monitoring requirements and restrictions.

HISTORY: SOURCES: Codes, 1942, § 7106-112; Laws, 1966, ch. 258, § 2; Laws, 1972, ch. 505, § 1; Laws, 1978, ch. 484, § 54; Laws, 1981, ch. 528, § 12; Laws, 1987, ch. 523, § 1; Laws, 1988, ch. 311, § 3; Laws, 1991, ch. 561, § 2, eff from and after July 1, 1991.

§ 49-17-7. Transfer of duties and responsibilities of Mississippi Air and Water Pollution Control Commission

(1) The Mississippi Commission on Environmental Quality shall be the Mississippi Air and Water Pollution Control Commission, and shall exercise the duties and responsibilities of the Mississippi Air and Water Pollution Control Commission through the Mississippi Department of Environmental Quality.

(2) The words "Mississippi Air and Water Pollution Control Commission" wherever they may appear in the laws of the State of Mississippi shall be construed to mean the Mississippi Commission on Environmental Quality.

HISTORY: SOURCES: Codes, 1942, § 7106-113; Laws, 1966, ch. 258, § 3; Laws, 1972, ch.

369, § 14; ch. 505, § 2; Laws, 1973, ch. 406, § 1; Laws, 1977, ch. 327, § 1; Laws, 1978, ch. 484, § 53; Laws, 1999, ch. 573, § 3, eff from and after July 1, 1999.

§ 49-17-9 and 49-17-11. Repealed

Repealed by Laws, 1978, ch. 484, § 57, eff from and after July 1, 1979.

§ 49-17-9. [Codes, 1942, § 7106-132; Laws, 1966, ch. 258, § 22]

§ 49-17-11. [Codes, 1942, § 7106-114; Laws, 1966, ch. 258, § 4; Am Laws, 1972, ch. 505, § 3]

§ 49-17-13. Commission designated as pollution control agency for state; assistance from other state agencies

(1) The commission is hereby designated as the pollution control agency for this state to administer federal pollution control legislation and programs and interstate or regional agreements pertaining to solid or hazardous waste management.

(2) The commission shall have the right to call upon and receive the assistance of any officer, board, department, school, university or any other state agency, and officers and employees thereof, for any reasonable assistance necessary or beneficial in carrying out the provisions of Sections 49-17-1 through 49-17-43.

HISTORY: SOURCES: Codes, 1942, § 7106-115; Laws, 1966, ch. 258, § 5; Laws, 1971, ch. 456, § 1; Laws, 1972, ch. 505, § 4; 1978, ch. 484, § 55; Laws, 1982, ch. 411, § 7; Laws, 1984, ch. 488, § 235; Laws, 1989, ch. 552, § 1; Laws, 1999, ch. 573, § 2, eff from and after July 1, 1999.

§ 49-17-14. Title V air operating permit program; program fee trust fund; expenditures for authorized purposes

(1) "Title V program" means, as used in Sections 49-17-1 through 49-17-45, the air operating permit program mandated in Title V of the 1990 amendments to the federal Clean Air Act, codified in 42 U.S.C.S. Section 7661, et seq.

(2) There is created in the State Treasury a fund to be designated as the "Air Operating Permit Program Fee Trust Fund," referred to hereinafter as the "fund."

(3) The fund shall be treated as a special trust fund. Interest earned on the principal therein shall be credited by the Treasurer to the fund.

(4) The fund may receive monies from any available public or private source including, but not limited to, collection of fees, interest, grants, taxes, public and private donations and judicial actions.

(5) To facilitate the proper administration of the fund, the commission is authorized to

promulgate rules and regulations for the administration of the fund.

(6) The commission shall expend or utilize monies in the fund by an annual appropriation approved by the Legislature to pay all reasonable direct and indirect costs associated with the development and administration of the Title V program including, but not limited to, the reasonable costs of the following activities as they relate to the Title V program:

(a) Preparing generally applicable regulations or guidance regarding the permit program or its implementation or enforcement;

(b) Reviewing and acting on any application for a permit, permit modification or permit renewal, including the development of an applicable requirement as part of the processing of a permit, or permit modification or renewal;

(c) Administering the permit program, including the supporting and tracking of permit applications, compliance certification, and related data entry;

(d) Implementing and enforcing the terms of any Title V permit (not including any court costs or other costs associated with an enforcement action), including adequate resources to determine which sources are subject to the program;

(e) Emissions and ambient monitoring;

(f) Modeling, analyses, or demonstrations;

(g) Preparing inventories and tracking emissions;

(h) Providing direct and indirect support to sources under the Small Business Stationary Source Technical and Environmental Compliance Assistance Program under Section 507 of the federal Clean Air Act in determining and meeting their obligations under this section; and

(i) Providing funding to the Advisory Council created in Section 49-17-16 in an amount reasonably sufficient to meet the Advisory Council's obligations under Sections 49-17-1 through 49-17-45.

(7) Monies in the fund at the end of the fiscal year shall be retained in the fund for use in the next succeeding fiscal year. If the annual fees collected exceed the cost of administering the Title V program for that fiscal year, then the excess shall be applied to the cost of administering the program for the succeeding fiscal year. In the succeeding fiscal year, the total to be collected from fees shall be reduced by the excess retained in the fund and the assessment rates shall be adjusted proportionately.

(8) No such fees shall be utilized by the Department of Environmental Quality or any other person for any purpose or purposes other than those purposes required by Sections 49-17-1 through 49-17-45.

HISTORY: SOURCES: Laws, 1993, ch. 611, § 1, eff from and after passage (approved April 16, 1993).

§ 49-17-15. Repealed

Repealed by Laws, 1978, ch. 484, § 57, eff from and after July 1, 1979.

[Am Laws, 1972, ch. 505, § 17; Codes, 1942, § 7106-131; Laws, 1966, ch. 258, § 21]

§ 49-17-16. Advisory Council

(1) (a) An Advisory Council, hereinafter referred to as "Advisory Council," is created to conduct an independent study of the costs for the development and administration of the Title V program within the Department of Environmental Quality and to conduct an annual review of the costs of administering such programs.

(b) The costs to be included within the study for the Title V program shall be those costs set forth in Section 49-17-14. The Advisory Council shall include within the study the type and quantity of actual and allowable emissions within the state that are covered by the Title V program. After completing a study of the program needs and costs the Advisory Council shall recommend an equitable fee system for the Title V program that is based on the type and quantity of emissions. The annual review for the air operating permit program shall determine if the fee system is collecting sufficient funds to meet Title V program needs. Each annual review report shall be due January 1 of each succeeding year to the commission and the Executive Director of the Department of Environmental Quality.

(2) The Advisory Council shall submit recommendations to the Department of Environmental Quality concerning the costs of the development, implementation and administration of the State Air Operating Permit Implementation Plan in advance of the state's submittal to the Environmental Protection Agency which is due by November 1993. The Department of Environmental Quality shall assist the Advisory Council by providing any information the Advisory Council may require to perform its duties under Sections 49-17-1 through 49-17-45.

(3) The Advisory Council shall be composed of the following seven (7) persons appointed as follows: three (3) representatives of permitted industries that qualify for inclusion under the Title V program, that are required to pay the permit fee and that are also permittees under the National Pollution Discharge Elimination System (NPDES) permit program of the Clean Water Act, with one (1) such representative to be appointed by the Governor, one (1) by the Lieutenant Governor and one (1) by the Speaker of the House of Representatives; the Executive Director of the Department of Economic and Community Development; the President of the Mississippi Manufacturers Association; the President of the Mississippi Farm Bureau Federation; and the Chairman of the Mississippi Small Business Compliance Advisory Panel. Nonappointed members of the Advisory Council may designate an alternate member to act in their stead in performing any function of the Advisory Council.

The initial terms of appointment of the members of the Advisory Council shall be as follows: the

representatives of the permitted industries appointed by the Lieutenant Governor and the Speaker of the House of Representatives shall serve a term of one (1) year; the representative of the permitted industry appointed by the Governor and the Chairman of the Mississippi Small Business Compliance Advisory Panel shall serve a term of two (2) years; the Executive Director of the Department of Economic and Community Development and the President of the Mississippi Farm Bureau Federation, or their designees, shall serve a term of three (3) years; and the President of the Mississippi Manufacturers Association, or his designee, shall serve a term of four (4) years. Thereafter, the length of the term for each member of the Advisory Council shall be four (4) years.

(4) Original appointments to the Advisory Council shall be made no later than June 1, 1993. Vacancies on the Advisory Council shall be filled by appointment in the same manner as the original appointments. The Advisory Council shall convene within sixty (60) days following the date of the appointment of the members.

(5) The Advisory Council shall select from their membership a chairperson to preside over meetings and a vice-chairperson to preside in the absence of the chairperson or when the chairperson shall be excused. The Advisory Council shall adopt procedures governing the manner of conducting its business. A majority of the members shall constitute a quorum to do business.

(6) Members of the Advisory Council shall serve without salary. The members of the Advisory Council shall be entitled to receive reimbursement of their actual travel and hotel expenses as provided in Section 25-3-41, incurred while in the performance of their duties as members of the Advisory Council to be paid on an itemized statement approved by the State Fiscal Officer. Expenses shall be paid from fees collected in accordance with Section 49-17-30.

(7) The Executive Director of the Department of Environmental Quality shall provide technical, clerical and other support services, including services by contract, as the Advisory Council determines that it requires in the performance of its functions.

HISTORY: SOURCES: Laws, 1993, ch. 611, § 2, eff from and after passage (approved April 16, 1993).

§ 49-17-17. Powers and duties

The commission shall have and may exercise the following powers and duties:

(a) General supervision of the administration and enforcement of Sections 49-17-1 through 49-17-43 and Sections 17-17-1 through 17-17-47, and all rules and regulations and orders promulgated thereunder;

(b) To develop comprehensive programs for the prevention, control and abatement of new or existing pollution of the air and waters of the state;

(c) To advise, consult, cooperate, or enter into contracts, grants and cooperative agreements

with any federal or state agency or subdivision thereof, other states and interstate agencies, or any public or private institution located inside or outside the State of Mississippi, and with affected groups, political subdivisions, and industries in furtherance of carrying out the provisions of Sections 49-17-1 through 49-17-43 and shall have the authority to enter into compacts with any other state or states for the purpose of achieving the objectives of such sections with respect to air and waters, or to authorize the executive director with the approval of the commission to exercise any of the aforementioned powers;

(d) To administer funds allocated to the state's water and air pollution abatement grant program, to accept and administer loans and grants from the federal government and from other sources, public or private, for carrying out any of its functions, which loans and grants shall not be expended for other than the purposes for which provided;

(e) To encourage, participate in, or conduct studies, investigations, research and demonstrations relating to air and water quality and pollution and causes, prevention, control and abatement as it may deem advisable and necessary for the discharge of its duties under Sections 49-17-1 through 49-17-43; to make funds available from the water pollution abatement grant fund by means of advances to political subdivisions in this state in an amount not to exceed one percent (1%) of the estimated project cost as approved by and under such rules and regulations as adopted by the commission for the preparation of project planning reports and feasibility analyses; and to exercise such supervision as it may deem advisable and necessary for the discharge of its duties under Sections 49-17-1 through 49-17-43;

(f) To require the repayment of funds made available to a political subdivision under subsection (e) above to the water pollution abatement grant fund prior to the receipt of any other funds by any political subdivision providing services to the area and receiving funds provided under Sections 49-17-1 through 49-17-43; any funds made available to any political subdivisions providing services to the area and receiving funds under the provisions of said sections shall be repaid in the same manner as are other funds made available to the political subdivisions under the provisions of said sections;

(g) To collect and disseminate information relating to air and water quality and pollution and the prevention, control, supervision and abatement thereof;

(h) To adopt, modify or repeal and promulgate ambient air and water quality standards and emissions standards for the state under such conditions as the commission may prescribe for the prevention, control and abatement of pollution;

(i) To adopt, modify, repeal, and promulgate, after due notice and hearing, and, where not otherwise prohibited by federal or state law, to make exceptions to and grant exemptions and variances from, and to enforce rules and regulations implementing or effectuating the powers and duties of the commission under Sections 49-17-1 through 49-17-43 and Sections 17-17-1 through 17-17-47, and as the commission may deem necessary to prevent, control and abate existing or potential pollution;

(j) To issue, modify, or revoke orders (1) prohibiting, controlling or abating discharges of

contaminants and wastes into the air and waters of the state; (2) requiring the construction of new disposal systems, or air-cleaning devices, or any parts thereof or the modification, extension or alteration of existing disposal systems, or air-cleaning devices, or any parts thereof, or the adoption of other remedial measures to prevent, control or abate air and water pollution; and (3) setting standards of air or water quality or evidencing any other determination by the commission under Sections 49-17-1 through 49-17-43;

(k) To hold such hearings, to issue notices of hearing and subpoenas requiring the attendance of such witnesses and the production of such evidence, to administer oaths, and to take such testimony as the commission deems necessary;

(l) To require the prior submission of plans, specifications and other data relative to, and to inspect the construction of, disposal systems, or air-cleaning devices, or any part thereof, in connection with the issuance of such permits or approval as are required by Sections 49-17-1 through 49-17-43;

(m) To require proper maintenance and operation of disposal systems, or air-cleaning devices; and to require the installation and operation of monitoring devices or methods as may be deemed necessary and the maintenance and submission of monitoring and operating records as may be prescribed;

(n) To exercise all incidental powers necessary to carry out the purposes of Sections 49-17-1 through 49-17-43 and Sections 17-17-1 through 17-17-47; and

(o) To delegate in such manner as it sees fit the duties and powers relating to air and water quality and pollution control to the agency members presently engaged in the several fields of water or air control or pollution. In cases of difference of opinion between such agencies as to their respective field of operation, the commission shall delegate said responsibility to the proper agency, and the commission's action therein shall be final.

Nothing contained in this law shall be deemed to grant to the commission any jurisdiction or authority to make any rule or regulation, recommendation or determination or to enter any order with respect to air conditions existing solely within the property boundaries of commercial and industrial plants, works, or shops or to affect the relations between employers and employees with respect to or arising out of any air condition.

HISTORY: SOURCES: Codes, 1942, § 7106-116; Laws, 1966, ch. 258, § 6; Laws, 1971, ch. 456, § 2; Laws, 1972, ch. 505, § 5; Laws, 1977, ch. 327, § 2; Laws, 1981, ch. 528, § 13; Laws, 1982, ch. 411, § 8, eff from and after passage (approved March 25, 1982).

§ 49-17-19. Standards of air and water quality

In order to carry out the purposes of Sections 49-17-1 through 49-17-43, the commission may set ambient standards of air and water quality for the state or portions thereof. Such ambient standards of quality shall be such as to protect the public health and welfare and the present and prospective future use of such air and of such waters for public water supplies, propagation of

fish and aquatic life and wildlife, recreational purposes, and agricultural, industrial and other legitimate uses. Such ambient standards may be amended from time to time as determined to be necessary by the commission. In order to carry out the purposes of Sections 49-17-1 through 49-17-43, the commission may also set emission standards for the purpose of controlling air contamination, air pollution and the sources thereof. In establishing ambient air quality standards for odor, the commission shall adopt recognized objective standards if they exist. In the absence of a recognized objective ambient air quality standard for odor, the commission may adopt such subjective standards as may be appropriate.

In establishing such standards relating to pesticides and commercial fertilizers for underground water, the commission shall adopt federal standards if they exist. If no federal standard exists, the commission shall petition the U.S. Environmental Protection Agency to establish a federal standard for the substance of interest. If the commission determines that a federal standard cannot be obtained within thirty (30) days, it shall consult with the U.S. Environmental Protection Agency's Office of Drinking Water and Office of Pesticide Programs regarding the agency's conclusion relative to available toxicological information on the substance of interest and on the methodology used for establishing a federal standard. The commission shall utilize this information and methodology to establish a standard. The commission may also consult with and request similar information from other sources.

HISTORY: SOURCES: Codes, 1942, § 7106-119; Laws, 1966, ch. 258, § 9; Laws, 1972, ch. 505, § 7; Laws, 1982, ch. 411, § 9; Laws, 1987, ch. 523, § 2; Laws, 1991, ch. 333 § 1, eff from and after passage (approved March 15, 1991).

§ 49-17-21. Inspections and investigations; access to and maintenance of records; testing and sampling; monitoring equipment

(a) The commission or its duly authorized representative shall have the power to enter at reasonable times upon any private or public property, and the owner, managing agent or occupant of any such property shall permit such entry for the purpose of inspecting and investigating conditions relating to pollution or the possible pollution of any air or waters of the state and to have access to such records as the commission may require under subsection (b) of this section.

(b) The commission may require the maintenance of records relating to the operation of air contamination sources or water disposal systems, and any authorized representative of the commission may examine and copy any such records or memoranda pertaining to the operation of such air contamination source or water disposal system. The records shall contain such information as the commission may require. Copies of such records shall be submitted to the commission upon request.

(c) The commission may conduct, authorize or require tests and take samples of air contaminants or waste waters, fuel, process material or other material which affects or may affect (1) emission of air contaminants from any source, or (2) waste water disposal systems. Upon request of the commission, the person responsible for the source to be tested shall provide necessary sampling ports in stacks or ducts and such other safe and proper sampling and testing facilities as may be

necessary for proper determination of the emission of air contaminants. If an authorized employee of the commission during the course of any inspection obtains a sample of air contaminant, fuel, process material or other material, he shall give the owner or operator of the equipment or fuel facility a receipt for the sample obtained.

(d) The commission may require the installation, maintenance and use of such monitoring equipment and methods at such locations and intervals as the commission deems necessary.

HISTORY: SOURCES: Codes, 1942, § 7106-122; Laws, 1966, ch. 258, § 12; Laws, 1968, ch. 440, § 1; Laws, 1972, ch. 505, § 10; Laws, 1973, ch. 412, § 1; Laws, 1977, ch. 327, § 3, eff from and after passage (approved March 4, 1977).

§ 49-17-22. Enforcement powers of Commission on Marine Resources; cooperation with commission or environmental quality

The Commission on Marine Resources is hereby authorized to cooperate with the Commission on Environmental Quality for the enforcement of the provisions of Sections 49-17-1 through 49-17-43 in and on the salt waters of the State of Mississippi.

HISTORY: SOURCES: Codes, 1942, § 7106-116 (last Para.); Laws, 1972, ch. 505, § 5; Laws, 1994, ch. 578, § 59, eff from and after July 1, 1994.

§ 49-17-23. Record of minutes, rules, regulations and orders; annual publication, available to public; copies; index

The commission shall keep the minutes of the commission, including all orders, rules and regulations promulgated, in a record book, or books, especially prepared for that purpose.

All minutes of commission meetings and hearings, and all rules, regulations, and orders made by the commission shall be in writing and shall be filed in full by the commission in a book for such purposes, to be kept by the commission which shall be a public record and open to inspection by the public at all times during all reasonable hours. The commission shall compile and publish annually the rules and regulations promulgated by the commission in current consolidated version. The commission shall provide the consolidated compilation of the rules and regulations to the public for a cost sufficient to cover printing and postage and administrative expenses, including the cost of any contractual services necessary to compile and publish such rules and regulations on an annual basis. A copy of any rule, minutes, regulation or order certified by the commission shall be received in evidence in all courts of this state with the same effect as the original. The commission shall compile and index on a current date basis all orders of the commission in a book for such purposes that shall be available for inspection and copying by the public. All responsibilities of the commission pursuant to this section may be delegated by the commission to the Executive Director.

HISTORY: SOURCES: Codes, 1942, §§ 7106-124, 7106-129; Laws, 1966, ch. 258, §§ 14, 19; Laws, 1972, ch. 505, §§ 12, 16; Laws, 1977, ch. 327, § 4; Laws, 1993, ch. 611, § 5, eff from and after passage (approved April 16, 1993).

§ 49-17-25. Procedures for publication, adoption, amendment or repeal of rules and regulations necessary to implement laws administered by Department of Environmental Quality; notice

(1) Prior to the adoption, amendment or repeal of rules and regulations necessary to implement this chapter, Sections 17-17-1 through 17-17-47, Sections 21-27-201 through 21-27-221, Sections 37-138-1 through 37-138-31, and all other laws administered by the department, the commission shall conduct a public hearing or hearings thereon after public notice. Such notice shall be given by publication once a week for three (3) successive weeks in a newspaper having a general circulation throughout the state. The notice shall contain a description of the proposed regulation and the time, date and place of the hearing.

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

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

HISTORY: SOURCES: Codes, 1942, § 7106-130; Laws, 1966, ch. 258, § 20; Laws, 1977, ch. 327, § 5; Laws, 1991, ch. 333 § 2, eff from and after passage (approved March 15, 1991).

§ 49-17-26. Notification procedures as to chemicals in underground water exceeding state standards

If the commission determines, after adequate scientific investigation and evaluation, that a chemical as defined in Sections 69-23-3 and 75-47-5(a) in the underground water exceeds or is likely to exceed duly adopted state standards and that the source of the chemical is not within the regulatory jurisdiction of the commission, the commission shall notify the Department of Agriculture and Commerce, which shall proceed in accordance with Section 69-23-7 and other existing laws.

HISTORY: SOURCES: Laws, 1987, ch. 523, § 3, eff from and after July 1, 1987.

§ 49-17-27. Emergency orders; public notice of emergency situations

In the event an emergency is found to exist by the commission, it may issue an emergency order as circumstances may require. Said emergency order shall become operative at the time and date designated therein and shall remain in force until modified or cancelled by the

commission or superseded by a regular order of the commission or for a period of forty-five (45) days from its effective date, whichever shall occur first, and may be enforced by an injunction if necessary.

The chancery court shall always be deemed open for hearing requests for injunctions to enforce such emergency orders and the same shall have precedence over other matters.

When, in the opinion of the commission or its executive director, an emergency situation exists which creates an imminent and substantial endangerment threatening the public health and safety or the lives and property of the people of this state, notice shall be given immediately to local governing authorities, both county and municipal, the state emergency management organization, and the governor for appropriate action in accordance with applicable laws for protections against disaster situations.

HISTORY: SOURCES: Codes, 1942, § 7106-123; Laws, 1966, ch. 258, § 13; Laws, 1972, ch. 505, § 11; Laws, 1980, ch. 491, § 25, eff from and after passage (approved May 9, 1980).

§ 49-17-28. Permit board; membership; compensation

(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; (d) water quality certifications required by Section 401 of the federal Clean Water Act; and (e) 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.

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

HISTORY: SOURCES: Laws, 1973, ch. 373, § 1; Laws, 1977, ch. 327, § 6; Laws, 1978, ch. 484, § 56; Laws, 1981, ch. 528, § 14; Laws, 1985, ch. 459, § 30; Laws, 1988, ch. 312, § 2; Laws, 1991, ch. 376, § 1; Laws, 1994, ch. 578, § 60; Laws, 1996, ch. 367, § 1; Laws, 1998, ch. 537, § 1; Laws, 1999, ch. 573, § 1, eff from and after July 1, 1999.

§ 49-17-29. Permit Board; prohibitions; air and water permits; solid waste and hazardous permits; permit hearings; permit appeals

(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 June 1, 1998.

(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 June 1, 1998.

(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 this section 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.

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

(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.

HISTORY: SOURCES: Codes, 1942, § 7106-118; Laws, 1966, ch. 258, § 8; Laws, 1972, ch. 505, § 6; Laws, 1973, ch. 373, § 1; Laws, 1977, ch. 327, § 7; Laws, 1981, ch. 528, § 15; Laws, 1991, ch. 561, § 1; Laws, 1992, ch. 583 § 15; Laws, 1996, ch. 335, § 1; Laws, 1998, ch. 537, § 2; Laws, 2002, ch. 401, § 1, eff from and after July 1, 2002.

§ 49-17-30. Title V permit fees

(1) As a condition of any air operating permit required under Title V of the federal Clean Air Act, the owner or operator of any stationary source shall pay to the Department of Environmental Quality an annual permit fee. The commission shall establish the amount of each fee to cover the costs of the Title V program as provided in Section 49-17-14.

(2) To facilitate the proper administration of the Title V program, the commission is authorized to assess and collect fees from Title V program permittees. The commission is further authorized to promulgate such rules and regulations as are necessary for the development and administration of the Title V program and the assessment and collection of Title V program fees.

(a) For purposes of fee assessment and collection, the maximum emission rate of each pollutant used in the calculation of fees shall be four thousand (4,000) tons per year per facility.

(b) For purposes of fee assessment and collection, the permit holder shall elect for actual or allowable emissions to be used in determining the annual quantity of emissions unless the commission determines by order that the method chosen by the applicant for calculating actual emissions fails to reasonably represent actual emissions. Such order of the commission shall be subject to appeal in the manner provided in Section 49-17-41. Actual emissions shall be calculated using emission monitoring data or direct emissions measurements for the pollutant(s); mass balance calculations such as the amounts of the pollutant(s) entering and leaving process equipment and where mass balance calculations can be supported by direct measurement of process parameters, such direct measurement data shall be supplied; published emission factors such as those relating release quantities to throughput or equipment type (e.g., air emission factors); or other approaches such as engineering calculations (e.g. estimating volatilization using published mathematical formulas) or best engineering judgments where such judgments are derived from process and/or emission data which supports the estimates of maximum actual emissions.

If the commission determines that there is not sufficient information available on a facility's emissions, the determination of the fee shall be based upon the permitted allowable emissions until such time as an adequate determination of actual emissions is made.

(c) A minimum annual fee of Two Hundred Fifty Dollars (\$ 250.00) shall be assessed to and

collected from the owner or operator of each facility that is required to hold a Title V permit. The maximum annual fee shall be Two Hundred Fifty Thousand Dollars (\$ 250,000.00) per facility.

(3) (a) Prior to the date of full implementation of the Title V program in Mississippi, the fee assessed shall be Four Dollars (\$ 4.00) per ton of emissions of each air pollutant for which fees can be assessed under the Title V program, not to exceed Fifty Thousand Dollars (\$ 50,000.00) per facility.

(b) Following the date of full implementation of the Title V program in Mississippi, the fee schedule for Title V permit fees for any subsequent calendar year shall be set by order of the commission in an amount sufficient to cover the reasonable costs of development and administration of the Title V program. The commission's order shall follow:

(i) Receipt of the report and recommendations of the Advisory Council; and

(ii) A public hearing to be held not earlier than thirty (30) days following receipt by the commission of the report and recommendations of the Advisory Council. The commission may proceed with entry of the order on fees if the Advisory Council fails to submit its report in a timely manner. The order of the commission may be appealed in the manner set forth in Section 49-17-41. The determination of the fee shall be by order of the commission and shall not be considered the promulgation of a regulation by the commission. The record of the public hearing shall be included in the record upon which the order is based and shall become a part of the appellate records for all appeals taken from the order of the commission establishing or modifying Title V permit fees. Any undisputed amount due from an appellant must be paid according to the appellant's payment schedule during the pendency of the appeal.

(4) Any person required to pay the Title V permit fee set forth under this chapter who disagrees with the calculation or applicability of the person's fee may petition the commission in writing for a hearing in accordance with Section 49-17-35. Such hearing shall be in accordance with Section 49-17-33. Any disputed portion of the fee for which a hearing has been requested will not incur any penalty or interest from and after the receipt by the commission of the hearing petition. The decision of the commission may be appealed in the manner set forth in Section 49-17-41.

(5) All fees collected pursuant to this section shall be deposited into the "Air Operating Permit Program Fee Trust Fund" established in Section 49-17-14.

HISTORY: SOURCES: Laws, 1993, ch. 611, § 3, eff from and after passage (approved April 16, 1993).

§ 49-17-31. Proceedings before commission

(a) Whenever the commission or an employee thereof has reason to believe that a violation of any provision of Sections 49-17-1 through 49-17-43 or Sections 17-17-1 through 17-17-47 or a regulation or of any order of the commission or of any limitation or condition of a valid permit has occurred, the commission may cause a written complaint to be served upon the alleged

violator or violators. The complaint shall specify the provisions of said sections or regulation or order or permit alleged to be violated and the facts alleged to constitute a violation thereof, and shall require that the alleged violator appear before the commission at a time and place specified in the notice and answer the charges complained of. Said time of appearance before the commission shall be not less than ten (10) days from the date of the service of the complaint.

(b) The commission shall afford an opportunity for a fair hearing to the alleged violator or violators at the time and place specified in the complaint. On the basis of the evidence produced at the hearing, the commission shall make findings of fact and conclusions of law and enter such order as in its opinion will best further the purposes of Sections 49-17-1 through 49-17-43 and Sections 17-17-1 through 17-17-47, and shall give written notice of such order to the alleged violator and to such other persons as shall have appeared at the hearing or made written request for notice of the order, and the commission may assess such penalties as hereinafter provided.

(c) Except as otherwise expressly provided, any notice, or other instrument issued by or under authority of the commission may be served on any person affected thereby personally or by publication, and proof of such service may be made in like manner as in case of service of a summons in a civil action, such proof to be filed in the office of the commission; or such service may be made by mailing a copy of the notice, order, or other instrument by certified mail, directed to the person affected at his last known post-office address as shown by the files or records of the commission, and proof thereof may be made by the affidavit of the person who did the mailing, filed in the office of the commission.

HISTORY: SOURCES: Codes, 1942, § 7106-120; Laws, 1966, ch. 258, § 10; Laws, 1972, ch. 505, § 8; Laws, 1977, ch. 327, § 8; Laws, 1981, ch. 528, § 16; Laws, 1987, ch. 332, § 4, eff from and after July 1, 1987.

§ 49-17-32. Collection of fees

(1) The commission may delegate to the Department of Environmental Quality the responsibility for the collection of the Title V program fees.

(2) The air operating permit fee shall be due September 1 of each year. Any facility which proposes to use actual emissions as the basis for the fee calculation shall submit by July 1 of each year an inventory of emissions for the previous calendar year. For facilities using actual emissions as the basis of the fee, the fee shall be calculated based upon emissions during the previous calendar year. For facilities using allowable emissions as the basis for the fee, the fee shall be calculated based upon the allowable emissions contained in the permit on the date of the invoice. A permit holder may elect a quarterly payment method of four (4) equal payments with the payments due September 1, December 1, March 1, and June 1. The permit holder shall notify the Department of Environmental Quality that the quarterly payment method will be used by September 1.

(3) If any part of the air operating permit fee imposed is not paid within thirty (30) days after the due date, a penalty of ten percent (10%) of the amount due shall at once accrue and be added thereto, unless the permittee demonstrates to the commission that the failure to make timely

payment was unavoidable due to financial hardship or otherwise beyond the permittee's control. If the fee is not paid in full, including any penalty within sixty (60) days of the due date, the Environmental Quality Permit Board may revoke the permit upon proper notice and hearing as required by law. Any penalty collected under this section shall be deposited into the "Air Operating Permit Program Fee Trust Fund."

(4) It is the intent of the Legislature that fees collected pursuant to Sections 49-17-1 through 49-17-45 shall not supplant or reduce in any way the General Fund appropriation to the Department of Environmental Quality.

HISTORY: SOURCES: Laws, 1993, ch. 611, § 4; Laws, 1995, ch. 510, § 1, eff from and after passage (approved March 29, 1995).

§ 49-17-33. Hearings

The hearings herein provided may be conducted by the commission itself at a regular or special meeting of the commission, or the commission may designate a hearing officer, who may be the executive director, who shall have the power and authority to conduct such hearings in the name of the commission at any time and place as conditions and circumstances may warrant. The hearing officer shall have the record prepared of any hearing which he has conducted for the commission. Such record shall be submitted to the commission along with that hearing officer's findings of fact and recommended decision. Upon receipt and review of the record of the hearing and the hearing officer's findings of fact and recommended decision, the commission shall thereupon render its final decision in the matter. Any person ordered to appear for an alleged violation shall have the right to request a hearing before a majority of the commission if he prefers and such a hearing may then be set for the next regular meeting of the full commission, or specially. A verbatim record of the proceedings of such hearings shall be taken and filed with the commission, together with findings of fact and conclusions of law made by the commission. Witnesses who are subpoenaed shall receive the same fees and mileage as in civil actions. In case of contumacy or refusal to obey a notice of hearing or subpoena issued under this section, the circuit court shall have jurisdiction, upon application of the commission or its representative, to issue an order requiring such person to appear and testify or produce evidence as the case may require and any failure to obey such order of the court may be punished by such court as contempt thereof. Failure to appear at any such hearing, without prior authorization to do so from the commission or its designee, may result in the commission finding the alleged violator guilty of the charges complained of by default, and at such time an order may be entered, including the assessment of a penalty, which, in the opinion of the commission, will best further the purposes of Section 17-17-1 et seq., and Section 49-17-1 et seq.

HISTORY: SOURCES: Codes, 1942, § 7106-121; Laws, 1966, ch. 258, § 11; Laws, 1972, ch. 505, § 9; Laws, 1987, ch. 332, § 5, eff from and after July 1, 1987.

§ 49-17-34. Air and water permits; applications; rules, regulations and standards; administrative procedures

(1) Within fifteen (15) days after receipt by the Department of Environmental Quality an

application for any initial or modified air or water permit required under the Mississippi Air and Water Pollution Control Law that is submitted after April 16, 1993 the Department of Environmental Quality shall acknowledge in writing receipt of such application. Except for good cause shown, within forty-five (45) days after receipt of a permit application, the Department of Environmental Quality shall notify the applicant that the application is complete or of the major components required to complete the application.

(2) All rules, regulations and standards relating to air quality, water quality or air emissions or water discharge standards promulgated by the commission after April 16, 1993 shall be consistent with and shall not exceed the requirements of federal statutes and federal regulations, standards, criteria and guidance relating to air quality, water quality or air emission or water discharge standards that have been duly promulgated pursuant to the federal Administrative Procedures Act, including but not limited to the identity and scope of air pollutants included as air toxics or air quality or emission standards, the identity and scope of water pollutants included as water quality or discharge standards and the numerical and narrative limitations of such standards.

(3) If there are no federal statutes or federal regulations, standards, criteria or guidance that have been duly promulgated pursuant to the federal Administrative Procedures Act addressing matters relating to air quality or water quality, or air emission or water discharge standards, the commission may promulgate regulations to address these matters in accordance with the Mississippi Administrative Procedures Act, when the commission determines that such regulations are necessary to protect human health, welfare or the environment.

(4) For any initial or modified air or water permit issued from and after January 1, 1994, except with the written consent of the permit applicant, no provision or condition imposing any duty, responsibility or liability on the permittee shall be included in such permit, the direct basis for which has not been first promulgated as a regulation by the commission in accordance with the requirements of the Mississippi Administrative Procedures Act. "Direct basis" shall mean that such permit provisions or conditions shall not exceed the scope, coverage and effect of the regulation upon which it is based including, but not limited to, frequency or time limit of action, technology, identity and scope of pollutants regulated, numerical or narrative standards or limitations.

HISTORY: SOURCES: Laws, 1993, ch. 611, § 6, eff from and after passage (approved April 16, 1993).

§ 49-17-35. Request for hearing

Any interested person shall have the right to request the commission to call a hearing for the purpose of taking action in respect to any matter within the jurisdiction of the commission by making a request therefor in writing. Upon receipt of any such request, the commission shall conduct such investigations as it deems necessary and may call a special hearing or may schedule such matter for its next regular meeting or hearing day, and after such hearings and with all convenient speed and in any event within thirty (30) days after the conclusion of such hearing shall take such action on the subject matter thereof as it may deem appropriate.

HISTORY: SOURCES: Codes, 1942, § 7106-125; Laws, 1966, ch. 258, § 15; Laws, 1972, ch. 505, § 13, eff from and after passage (approved May 18, 1972).

§ 49-17-36. Violations; penalties

(1) It is unlawful for any person to knowingly: (a) fail to pay any fee assessed by the commission for administration of the federal air operating permit program; (b) fail to satisfy any air operating permit filing requirement; (c) make any false statement, representation of certification in any notice or report required by an air operating permit; or (d) render inaccurate any air monitoring device or method required by an air operating permit; and, upon conviction thereof, such person shall be punished by a fine of not less than Two Thousand Five Hundred Dollars (\$ 2,500.00) nor more than Twenty-five Thousand Dollars (\$ 25,000.00) per day of violation.

(2) In determining the amount of penalty under this section, the following shall be considered at a minimum:

- (a) The willfulness of the violation;
- (b) Any damage to air, water, land or other natural resources of the state or their uses;
- (c) Costs of restoration or abatement;
- (d) Economic benefit as a result of noncompliance;
- (e) The seriousness of the violation, including any harm to the environment and any hazard to the health, safety and welfare of the public; and
- (f) Past performance history.

(3) All fines collected by the commission under this section shall be deposited into the Pollution Emergency Fund established under Section 49-17-68, Mississippi Code of 1972.

HISTORY: SOURCES: Laws, 1993, ch. 611, § 7, eff from and after passage (approved April 16, 1993).

§ 49-17-37. Transcript of hearings

All hearings before the commission shall be recorded either by a court reporter or by tape or mechanical recorders and subject to transcription upon order of the commission or any interested party, but in the event that the request for transcription originates with an interested party, such party shall pay the cost thereof.

HISTORY: SOURCES: Codes, 1942, § 7106-126; Laws, 1966, ch. 258, § 16, eff from and after July 1, 1966.

§ 49-17-39. Protection of confidential information

Information obtained by the commission concerning environmental protection including but not limited to information contained in applications for air emission equipment construction permits and water discharge permits shall be public information and shall be made available upon proper request. Other information obtained by the commission, department or permit board in the administration of Sections 49-17-1 through 49-17-43 concerning trade secrets, including, but not limited to, marketing or financial information, processes, devices, methods of manufacture, or production capabilities or amounts shall be kept confidential, if and only if: (a) a written confidentiality claim is made when the information is supplied; (b) such confidentiality claim allows disclosure of the confidential information to authorized department employees and/or the United States Environmental Protection Agency (EPA); and (c) such confidentiality claim is determined by the commission to be valid. If the confidentiality claim is denied, the information sought to be covered thereby shall not be released or disclosed, except to the Environmental Protection Agency, until the claimant has been notified in writing and afforded an opportunity for a hearing and appeal therefrom, as with other orders of the commission. Disclosure of confidential information by the EPA should be governed by federal law and EPA regulations. Anyone making unauthorized disclosure of information determined to be confidential as herein provided shall be liable in a civil action for damages arising therefrom and shall also be guilty of a misdemeanor punishable as provided by law.

HISTORY: SOURCES: Codes, 1942, § 7106-117; Laws, 1966, ch. 258, § 7; Laws, 1977, ch. 327, § 9; Laws, 1981, ch. 528, § 17; Laws, 1987, ch. 332, § 2, eff from and after July 1, 1987.

§ 49-17-41. Administrative appeals; appeals to chancery court; appeals to Supreme Court

In addition to any other remedies that might now be available, any person or interested party aggrieved by any order of the commission or the executive director shall have a right to file a sworn petition with the commission within thirty (30) days after the order was issued setting forth the grounds and reasons for his complaint and asking for a hearing of the matter involved, provided that no hearing on the same subject matter shall have been previously held before the commission or its designated hearing officer. The commission shall thereupon fix the time and place of such hearing and shall notify the petitioners thereof. In such pending matters, the commission 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 hearings before it, with the additional power that the executive director may issue all subpoenas, both at the instance of the petitioner and of the commission. At such hearings the petitioner, and any other interested party, may offer, present witnesses and submit evidence.

Following such hearing, the final order of determination of the commission upon such matters shall be conclusive, unless the petitioner, or such other interested party appearing at the hearing, shall, within fifteen (15) days after the adjournment of the meeting at which said final order was made, appeal to the chancery court of the county where the hearing was held, or of the situs in whole or in part of the subject matter of the hearing by giving 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 in the order appealed from, to be filed with and approved by the executive director of the commission, who shall forthwith certify the same together with a certified copy of the record of the commission 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 herein shall not stay the execution of an order of the commission. Any party aggrieved by an order of the commission may, within said fifteen (15) days after the adjournment of the commission meeting at which said final order was entered, petition the chancery court of the situs in whole or in part of the subject matter for an appeal with supersedeas, and the chancellor shall grant a hearing on said petition and upon good cause shown may grant said appeal with supersedeas; 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 commission. The chancery court shall always be deemed open for hearing of such appeals and the chancellor may hear the same in termtime or in vacation at any place in his district, and the same 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 be found, the matter shall be affirmed and remanded to the commission for enforcement. If prejudicial error be found, the same shall be reversed and the chancery court shall remand the matter to the commission 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 he may apply therefor to the chancellor thereof, who shall award a writ of supersedeas, without additional bond, if in his judgment material damage is not likely to result thereby, but otherwise he shall require such supersedeas bond as he deems proper, which shall be liable to the state for such damage.

HISTORY: SOURCES: Codes, 1942, § 7106-128; Laws, 1966, ch. 258, § 18; Laws, 1972, ch. 505, § 15; Laws, 1987, ch. 332, § 6; Laws, 1988, ch. 312, § 3, eff from and after July 1, 1988.

§ 49-17-42. Consideration as "owner"; exemption from liability

(1) Any lender or holder who maintains indicia of ownership primarily to protect an interest in a property, facility, or other person, and who does not participate in the management of the property, facility, or other person, shall not be considered an owner or operator of that property, facility, or other person, nor liable under any pollution control or other environmental protection law, or any rule or regulation or written order of the commission in pursuance thereof, for the prevention, clean-up, removal, remediation or abatement of any pollution, hazardous waste or solid waste placed, released or dumped on, in, about or near the property, facility or other person or caused by any operator on or of the property, facility or other person.

(2) This section shall apply to actions commenced by the commission or by third parties.

(3) In implementing this section, the commission shall adopt regulations equivalent to those proposed by the United States Environmental Protection Agency for this purpose.

(4) This section shall apply to all interests existing at the time of passage of this chapter and

thereafter created, whether secured or unsecured.

HISTORY: SOURCES: Laws, 1995, ch. 627, § 4, eff from and after July 1, 1995.

§ 49-17-43. Penalties

(1) Any person found by the commission violating any of the provisions of Sections 49-17-1 through 49-17-43, or any rule or regulation or written order of the commission in pursuance thereof or any condition or limitation of a permit, except a permit required under the Solid Wastes Disposal Law of 1974 (Sections 17-17-1 through 17-17-47), shall be subject to a civil penalty of not more than Twenty-five Thousand Dollars (\$ 25,000.00), for each violation, such penalty to be assessed and levied by the commission after a hearing as provided hereinabove. Appeals from the imposition of the civil penalty may be taken to the chancery court in the same manner as appeals from orders of the commission. If the appellant desires to stay the execution of a civil penalty assessed by the commission, he shall give bond with sufficient resident sureties of one or more guaranty or surety companies authorized to do business in this state, payable to the State of Mississippi, in an amount equal to double the amount of any civil penalty assessed by the commission, as to which the stay of execution is desired, conditioned, if the judgment shall be affirmed, to pay all costs of the assessment entered against the appellant. Each day upon which a violation occurs shall be deemed a separate and additional violation.

Any person violating any provision of the Solid Wastes Disposal Law of 1974 (Sections 17-17-1 through 17-17-47), any rule or regulation made pursuant to that law, or any order issued by the commission under the authority of that law shall be subject to the penalties provided in Section 17-17-29.

(2) In lieu of, or in addition to, the penalty provided in subsection (1) of this section, the commission shall have power to institute and maintain in the name of the state any and all proceedings necessary or appropriate to enforce the provisions of Sections 49-17-1 through 49-17-43, rules and regulations in force pursuant thereto, and orders and permits made and issued under those sections, in the appropriate circuit, chancery, county or justice court of the county in which venue may lie. The commission may obtain mandatory or prohibitory injunctive relief, either temporary or permanent, and in cases of imminent and substantial hazard or endangerment as set forth in Section 49-17-27, it shall not be necessary in such cases that the state plead or prove: (a) that irreparable damage would result if the injunction did not issue; (b) that there is no adequate remedy at law; or (c) that a written complaint or commission order has first been issued for the alleged violation.

(3) Any person who violates any of the provisions of, or fails to perform any duty imposed by, Sections 49-17-1 through 49-17-43 or any rule or regulation issued hereunder, or who violates any order or determination of the commission promulgated pursuant to such sections, and causes the death of fish or other wildlife shall be liable, in addition to the penalties provided in subsections (1) and (2) of this section, to pay to the state an additional amount equal to the sum of money reasonably necessary to restock such waters or replenish such wildlife as determined by the commission after consultation with the Mississippi Commission on Wildlife, Fisheries and Parks. Such amount may be recovered by the commission on behalf of the state in a civil

action brought in the appropriate county or circuit court of the county in which venue may lie.

(4) Any person who owns or operates facilities which, through misadventure, happenstance or otherwise, cause pollution necessitating immediate remedial or clean-up action shall be liable for the cost of such remedial or clean-up action and the commission may recover the cost of same by a civil action brought in the circuit court of the county in which venue may lie. This penalty may be recovered in lieu of or in addition to the penalties provided in subsections (1), (2) and (3) of this section.

In the event of the necessity for immediate remedial or clean-up action, the commission may contract for same and advance funds from the Pollution Emergency Fund to pay the costs thereof, such advancements to be repaid to the Pollution Emergency Fund upon recovery by the commission as provided above.

(5) It is unlawful for any person to: (a) discharge pollutants in violation of Section 49-17-29 or in violation of any condition or limitation included in a permit issued under Section 49-17-29 or (b) introduce pollutants into publicly owned treatment works in violation of pretreatment standards or in violation of toxic effluent standards; and, upon conviction thereof, such person shall be punished by a fine of not less than Two Thousand Five Hundred Dollars (\$ 2,500.00) nor more than Twenty-five Thousand Dollars (\$ 25,000.00) per day of violation.

(6) All fines, penalties and other sums recovered or collected by the commission for and in behalf of the state under this section shall be deposited in the Pollution Emergency Fund established under this chapter, and the commission is authorized to receive and accept, from any funds and all available sources whatsoever, additional funds to be deposited in such fund and expended for the purpose of remedial, clean-up or abatement actions involving pollution of the land, air or waters of the state in violation of Sections 49-17-1 through 49-17-43, any rule or regulation or written order of the commission in pursuance thereof, or any condition or limitation of a permit.

(7) In determining the amount of any penalty under this chapter, the commission shall consider at a minimum:

- (a) The willfulness of the violation;
- (b) Any damage to air, water, land or other natural resources of the state or their uses;
- (c) Costs of restoration and abatement;
- (d) Economic benefit as a result of noncompliance;
- (e) The seriousness of the violation, including any harm to the environment and any hazard to the health, safety and welfare of the public;
- (f) Past performance history; and

(g) Whether the noncompliance was discovered and reported as the result of a voluntary self-evaluation. If a person discovers as a result of a voluntary self-evaluation, information related to noncompliance with an environmental law and voluntarily discloses that information to the department, commission or any employee thereof, the commission shall, to the greatest extent possible, reduce a penalty, if any, determined by the commission, except for economic benefit as a result of noncompliance, to a de minimis amount if all of the following are true:

(i) The disclosure is made promptly after knowledge of the information disclosed is obtained by the person;

(ii) The person making the disclosure initiates the appropriate corrective actions and pursues those corrective actions with due diligence;

(iii) The person making the disclosure cooperates with the commission and the department regarding investigation of the issues identified in the disclosure;

(iv) The person is not otherwise required by an environmental law to make the disclosure to the commission or the department;

(v) The information was not obtained through any source independent of the voluntary self-evaluation or by the department through observation, sampling or monitoring;

(vi) The noncompliance did not result in a substantial endangerment threatening the public health, safety or welfare or the environment; and

(vii) The noncompliance is not a repeat violation occurring at the same facility within a period of three (3) years. "Repeat violation" in this subparagraph means a second or subsequent violation, after the first violation has ceased, of the same statutory provision, regulation, permit condition, or condition in an order of the commission.

(8) Any provisions of this section and chapter regarding liability for the costs of cleanup, removal, remediation or abatement of any pollution, hazardous waste or solid waste shall be limited as provided in Section 49-17-42 and rules adopted thereto.

HISTORY: SOURCES: Codes, 1942, § 7106-127; Laws, 1966, ch. 258, § 17; Laws, 1972, ch. 505, § 14; Laws, 1973, ch. 402, § 1; Laws, 1977, ch. 327, § 10; Laws, 1981, ch. 528, § 18; Laws, 1988, ch. 311, § 4; Laws, 1991, ch. 334, § 2; Laws, 1995, ch. 627, § 6; Laws, 2003, ch. 301, § 2, eff from and after passage (approved Jan. 20, 2003.)