

Administrative Procedures Act Rules

Title 11: Mississippi Department of Environmental Quality

Part 1: Administrative Regulations

Part 1, Chapter 4: Mississippi Environmental Quality Permit Board Delegation of Permitting Authority Pursuant to Miss. Code Ann. §§ 49-17-28(3), 49-17-29(3)(A), 51-3-15(1) And 53-7-41(6) (Adopted October 22, 1996; Revised March 27, 2001; Revised December 14, 2004)

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Rule 4.1 Definitions. As used in these regulations, the following terms shall have the following definitions:

- A. "Department" shall mean the Mississippi Department of Environmental Quality.
- B. "Executive Director" shall mean the Executive Director of the Mississippi Department of Environmental Quality.
- C. "Delegated Permit" shall mean an air pollution control permit, a water pollution control permit, a permit required under the Solid Waste Disposal Law of 1974 (Title 17, Chapter 17 of the Mississippi Code Annotated, as amended), a permit to withdraw surface water or ground water pursuant to Miss. Code Ann. § 51-3-1 through 51-3-55, any related general permit, a water quality certification issued pursuant to § 401 of the federal Clean Water Act and Miss. Code Ann. § 49-17-28(3) or the modification or renewal of any of the permit or certifications listed above. However, "Delegated Permit" shall not include any permit for a commercial hazardous waste management facility or for a municipal solid waste landfill or incinerator, or the modification or renewal of such a permit, or any permit which by law must be issued by the Mississippi Commission on Environmental Quality.
- D. "Delegated Surface Mining Permit" shall mean a permit for a surface mining operation pursuant to the Mississippi Surface Mining and Reclamation Act (Title 53, Chapter 7 of the Mississippi Code Annotated, as amended) including any general permit.

- E. "Modify," "Modified," or "Modification," shall include, but not be limited to, the transfer of any rights in a permit from one party to another.
- F. "Permit Board" shall mean the Mississippi Environmental Quality Permit Board, created by Miss. Code Ann. § 49-17-28.

Source: Miss Code Ann. §§ 49-17-28(3), 49-17-29(3)(A), 51-3-15(1) 53-7-41(6), 49-2-1, et seq., 49-17-1, et seq., 51-3-1, et seq., 53-7-1, et seq., and 17-17-1, et seq.

Rule 4.2 Delegation and Reporting.

- A. By the adoption of these regulations, the Permit Board, pursuant to Miss. Code Ann. § 49-17-29 and § 51-3-15(1), delegates to the Executive Director the authority to make decisions on the issuance, reissuance, denial, modification, or revocation of Delegated Permits. Pursuant to Miss. Code Ann. § 53-7-41(6), the Permit Board further delegates to the Executive Director the authority to make decisions on the issuance, reissuance, modification, rescission or cancellation of Delegated Surface Mining Permits. Delegated Surface Mining Permits may be cancelled at the request of the operator, if the operator does not commence operations under the permit by stripping, grubbing or mining any part of the permit area. Delegated Surface Mining Permits may be rescinded if, because of a change in post-mining use of the land by the landowner, the completion of the approved reclamation plan by the operator is no longer feasible.
- B. As a further condition prescribed by the Permit Board of this delegation of authority to the Executive Director, the Permit Board directs the Executive Director to delegate the authority to issue, reissue, deny, modify, or revoke Delegated Permits and to delegate the authority to issue, reissue, modify, rescind or cancel Delegated Surface Mining Permits to senior staff personnel within the Department, in order that the delegation made in section II.A. of these regulations will not detract in a significant way from the Executive Director's performance of his or her other duties. Delegated Permits may be issued, reissued, denied, revoked, or modified and Delegated Surface Mining Permits may be issued, reissued, modified, rescinded or cancelled by the Executive Director, by the Head of the Office of the Department in which the permit action is taken, or by the Division Chief for the Division of the Department in which the permit action is taken. The Executive Director may, at his discretion, determine which of these Office Heads and Division Chiefs will be granted the authority to issue, deny, revoke or modify Delegated Permits and to issue, reissue, modify, rescind or cancel Delegated Surface Mining Permits. The Executive Director may, at his discretion, determine that any application for the issuance, reissuance, modification, denial or revocation of a Delegated Permit and any application for the issuance, reissuance, modification, rescission or cancellation of a Delegated Surface Mining Permit will be presented to and determined by the Permit Board rather than by the Executive Director or Department personnel.
- C. The Executive Director, in person or through his delegate, shall report to the Permit Board at its next regularly-scheduled meeting each action taken by him or by Department

personnel listed above to issue, reissue, deny, modify, or revoke a Delegated Permit and to issue, reissue, modify, rescind or cancel a Delegated Surface Mining Permit. The Permit Board then shall vote to note and to record on its minutes the report of the Executive Director or his delegate. In determining whether to note and to record on its minutes the report, the Permit Board shall consider only whether the report accurately lists and describes the actions taken by the Executive Director or his delegate(s). The Permit Board shall not review any action regarding a permit taken by the Executive Director or his delegate(s) unless and until a formal hearing on the permit action is convened pursuant to Miss. Code Ann. § 49-17-29(4)(b).

- D. If the Department or Permit Board is required by any statute or regulation to notify the public of the receipt of an application for a permit or of the Department's intent to issue, reissue, deny, modify, or revoke a Delegated Permit or to issue, reissue, modify, rescind or cancel a Delegated Surface Mining Permit or to conduct a public hearing prior to taking any permit action, no Delegated Permit or Delegated Surface Mining Permit shall be issued by the Executive Director or his delegate until the statutory or regulatory public notice, hearing, and comment periods and procedures are completed as required for that permit action.

Source: Miss. Code Ann. §§ 49-17-28(3), 49-17-29(3)(A), 51-3-15(1), 53-7-41(6), 49-2-1, et seq., 49-17-1, et seq., 51-3-1, et seq., 53-7-1, et seq., and 17-17-1, et seq.

Rule 4.3 Appeal: The appeal of any issuance, reissuance, denial, modification, or revocation of a Delegated Permit and the appeal of any issuance, reissuance, denial, rescission or cancellation of a Delegated Surface Mining Permit by the Executive Director shall be appealable pursuant to Miss. Code Ann. § 49-17-29 in the same manner as a non-delegated permit or decision of the Permit Board. The time period in which an aggrieved party may file a request for a formal hearing before the Permit Board concerning a Delegated Permit action or a Delegated Surface Mining Permit action taken by the Executive Director or his delegate shall be calculated from the date of the Permit Board meeting at which the decision of the Executive Director or his delegate is accepted by the Permit Board. This time period shall be calculated in the manner prescribed by Mississippi Rule of Civil Procedure 6(a).

Source: Miss. Code Ann. §§ 49-17-28(3), 49-17-29(3)(A), 51-3-15(1), 53-7-41(6), 49-2-1, et seq., 49-17-1, et seq., 51-3-1, et seq., 53-7-1, et seq., and 17-17-1, et seq.