

By: Representative Crawford

To: Conservation and Water
Resources

HOUSE BILL NO. 788

1 AN ACT TO PROHIBIT THE INTENTIONAL INJECTION, RELEASE, OR
2 DISPERSION OF CHEMICALS WITHIN THE BORDERS OF THE STATE OF
3 MISSISSIPPI INTO THE ATMOSPHERE WITH THE EXPRESS PURPOSE OF
4 AFFECTING TEMPERATURE, WEATHER, OR THE INTENSITY OF THE SUNLIGHT;
5 TO BRING FORWARD SECTIONS 49-17-5, 49-17-19, 49-17-25 AND
6 49-17-36, MISSISSIPPI CODE OF 1972, WHICH RELATE TO POLLUTION OF
7 WATERS, STREAMS, AND AIR WITHIN THE STATE, FOR PURPOSES OF
8 POSSIBLE AMENDMENT; TO AMEND SECTION 49-17-29, MISSISSIPPI CODE OF
9 1972, TO MAKE A MINOR, NONSUBSTANTIVE CHANGE; AND FOR RELATED
10 PURPOSES.

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

12 **SECTION 1.** The intentional injection, release, or
13 dispersion, by any means, of chemicals, chemical compounds,
14 substances, or apparatus within the borders of the State of
15 Mississippi, into the atmosphere with the express purpose of
16 affecting temperature, weather, or the intensity of the sunlight
17 is prohibited.

18 **SECTION 2.** Section 49-17-5, Mississippi Code of 1972, is
19 brought forward as follows:

20 49-17-5. For the purposes of Sections 49-17-1 through
21 49-17-43, the following words and phrases shall have the meanings
22 ascribed to them in this section:

23 (1) **Water.**

24 (a) "Pollution" means such contamination, or other
25 alteration of the physical, chemical or biological properties, of
26 any waters of the state, including change in temperature, taste,
27 color, turbidity, or odor of the waters, or such discharge of any
28 liquid, gaseous, solid, radioactive, or other substance or leak
29 into any waters of the state unless in compliance with a valid
30 permit issued therefor by the Permit Board.

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

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

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

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

45 (f) "Waters of the state" means all waters within the
46 jurisdiction of this state, including all streams, lakes, ponds,
47 impounding reservoirs, marshes, watercourses, waterways, wells,

48 springs, irrigation systems, drainage systems, and all other
49 bodies or accumulations of water, surface and underground, natural
50 or artificial, situated wholly or partly within or bordering upon
51 the state, and such coastal waters as are within the jurisdiction
52 of the state, except lakes, ponds or other surface waters which
53 are wholly landlocked and privately owned, and which are not
54 regulated under the Federal Clean Water Act (33 USCS 1251 et
55 seq.) .

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

59 (2) **Air.**

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

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

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

74 (d) "Air contamination source" means any source at,
75 from, or by reason of which there is emitted into the atmosphere
76 any air contaminant, regardless of who the person may be who owns
77 or operates the building, premises or other property in, at, or on
78 which such source is located, or the facility, equipment or other
79 property by which the emission is caused or from which the
80 emission comes.

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

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

89 (g) "Federal Clean Air Act" means the Federal Clean Air
90 Act, 42 USCS 7401 et seq., as amended.

91 (3) **General.**

92 (a) "Commission" means the Mississippi Commission on
93 Environmental Quality acting through the Office of Pollution
94 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.

SECTION 3. Section 49-17-19, Mississippi Code of 1972, is brought forward as follows:

49-17-19. 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 United States 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 United States 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.

SECTION 4. Section 49-17-25, Mississippi Code of 1972, is brought forward as follows:

144 49-17-25. (1) Prior to the adoption, amendment or repeal of
145 rules and regulations necessary to implement this chapter,
146 Sections 17-17-1 through 17-17-47, Sections 21-27-201 through
147 21-27-221, Sections 37-138-1 through 37-138-31, and all other laws
148 administered by the department, the commission shall conduct a
149 public hearing or hearings thereon after public notice. Such
150 notice shall be given by publication once a week for three (3)
151 successive weeks in a newspaper having a general circulation
152 throughout the state. The notice shall contain a description of
153 the proposed regulation and the time, date and place of the
154 hearing.

155 (2) Additionally, the adoption, amendment or repeal of any
156 rule or regulation under this chapter, Sections 17-17-1 through
157 17-17-47, Sections 21-27-201 through 21-27-221, Sections 37-138-1
158 through 37-138-31 and all other laws administered by the
159 department shall be governed by the "Mississippi Administrative
160 Procedures Law." Any rule or regulation heretofore or hereafter
161 adopted, amended or repealed in substantial compliance with the
162 procedural requirements under Section 25-43-7 shall be valid. A
163 proceeding to contest any rule or regulation on the ground of
164 noncompliance with the procedural requirements of this section
165 must be commenced within one (1) year from the effective date of
166 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.

SECTION 5. Section 49-17-36, Mississippi Code of 1972, is brought forward as follows:

49-17-36. (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;

190 (e) The seriousness of the violation, including any
191 harm to the environment and any hazard to the health, safety and
192 welfare of the public; and

193 (f) Past performance history.

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

197 **SECTION 6.** Section 49-17-29, Mississippi Code of 1972, is
198 amended as follows:

199 49-17-29. (1) (a) Except as in compliance with paragraph
200 (b) of this subsection, it is unlawful for any person to cause
201 pollution of the air in the state or to place or cause to be
202 placed any wastes or other products or substances in a location
203 where they are likely to cause pollution of the air. It is also
204 unlawful to discharge any wastes, products or substances into the
205 air of the state which exceed standards of performance, hazardous
206 air pollutant standards, other emission standards set by the
207 commission, or which reduce the quality of the air below the air
208 quality standards or increments established by the commission or
209 prevent attainment or maintenance of those air quality standards.
210 Any such action is hereby declared to be a public nuisance.

211 (b) It is unlawful for any person to build, erect,
212 alter, replace, use or operate any equipment which will cause the
213 issuance of air contaminants unless that person holds a permit
214 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

265 under the Solid Wastes Disposal Law of 1974 (Title 17, Chapter
266 17), and all other permits within the jurisdiction of the Permit
267 Board. After consideration of alternative waste treatment
268 technologies available to control air and water pollution and
269 odor, including appropriate siting criteria, the commission may
270 promulgate regulations establishing conditions, limitations and
271 exemptions under which the Permit Board shall make these
272 decisions. Regulations promulgated by the commission which
273 establish exemptions as authorized under this section shall apply
274 to any applicable facility in operation on the effective date of
275 that regulation and to any applicable facility constructed or
276 operated after the effective date of that regulation. The Permit
277 Board may issue multiple permits for the same facility or
278 operation simultaneously or in the sequence that it deems
279 appropriate consistent with the commission's regulations. Except
280 as otherwise provided in this paragraph, the Permit Board, under
281 any conditions that the board may prescribe, may authorize the
282 Executive Director of the Department of Environmental Quality to
283 make decisions on permit issuance, reissuance, denial,
284 modification or revocation. The executive director shall not be
285 authorized to make decisions on permit issuance, reissuance,
286 denial, modification or revocation for a commercial hazardous
287 waste management facility or a solid waste management permit for a
288 municipal solid waste landfill or incinerator. A decision by the
289 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 * * * subsection (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

339 decisions of the Permit Board shall be as provided in this
340 section.

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

347 (f) The Permit Board shall not issue any permit for a
348 new swine concentrated animal feeding operation or the expansion
349 of an existing swine concentrated animal feeding operation before
350 January 1, 2000, unless the department received the application
351 for that operation's new or modified permit before February 28,
352 1998, or except as provided in this paragraph (f). In issuing or
353 modifying any permit for which the department received an
354 application before February 28, 1998, the Permit Board shall apply
355 those siting criteria adopted or used by the commission before
356 February 28, 1998, unless federal law or regulations require more
357 stringent criteria. The moratorium established in this paragraph
358 shall not apply to the issuance of any permit for a new swine
359 concentrated animal feeding operation or the expansion of an
360 existing swine concentrated animal feeding operation that uses an
361 animal waste management system which the applicant demonstrates to
362 the Permit Board is innovative in significantly reducing the
363 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

389 for a commercial hazardous waste management facility or a solid
390 waste management permit for a commercial municipal solid waste
391 landfill or incinerator, the Permit Board shall conduct a public
392 hearing or meeting to obtain comments from the public on the
393 proposed action. That hearing or meeting shall be informal in
394 nature and conducted under those procedures as the Permit Board
395 may deem appropriate consistent with the commission's regulations.

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

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

407 In conducting the formal hearing, the Permit Board shall have
408 the same full powers as to subpoenaing witnesses, administering
409 oaths, examining witnesses under oath and conducting the hearing,
410 as is now vested by law in the Mississippi Public Service
411 Commission, as to the hearings before it, with the additional
412 power that the Executive Director of the Permit Board may issue
413 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

439 appeal, as provided in this section, is taken to chancery court
440 within twenty (20) days following the date the decision is entered
441 in the board's minutes.

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

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

451 (b) Any person who is aggrieved by any decision of the
452 Permit Board issuing, reissuing, denying, revoking or modifying a
453 permit after a formal hearing may appeal that decision within the
454 period specified in subsection (4)(c) of this section to the
455 chancery court of the county of the situs in whole or in part of
456 the subject matter. The appellant shall give a cost bond with
457 sufficient sureties, payable to the state in the sum of not less
458 than One Hundred Dollars (\$100.00) nor more than Five Hundred
459 Dollars (\$500.00), to be fixed by the Permit Board and to be filed
460 with and approved by the Executive Director of the Permit Board,
461 who shall forthwith certify the filing of the bond together with a
462 certified copy of the record of the Permit Board in the matter to
463 the chancery court to which the appeal is taken, which shall

464 thereupon become the record of the cause. An appeal to the
465 chancery court as provided in this section shall not stay the
466 decision of the Permit Board. The aggrieved party may, within
467 twenty (20) days following the date the board's decision after a
468 formal hearing is entered on the board's minutes, petition the
469 chancery court for an appeal with supersedeas and the chancellor
470 shall grant a hearing on that petition. Upon good cause shown,
471 the chancellor may grant that appeal with supersedeas. If
472 granted, the appellant shall be required to post a bond with
473 sufficient sureties according to law in an amount to be determined
474 by the chancellor. Appeals shall be considered only upon the
475 record as made before the Permit Board. The chancery court shall
476 always be deemed open for hearing of an appeal and the chancellor
477 may hear the same in termtime or in vacation at any place in the
478 chancellor's district, and the appeal shall have precedence over
479 all civil cases, except election contests. The chancery court
480 shall review all questions of law and of fact. If no prejudicial
481 error is found, the matter shall be affirmed. If prejudicial
482 error is found the decision of the board shall be reversed and the
483 chancery court shall remand the matter to the Permit Board for
484 appropriate action as may be indicated or necessary under the
485 circumstances. Appeals may be taken from the chancery court to
486 the Supreme Court in the manner as now required by law, except
487 that if a supersedeas is desired by the party appealing to the
488 chancery court, that party may apply for a supersedeas to the

489 chancellor of that court, who shall award a writ of supersedeas,
490 without additional bond, if in the chancellor's judgment material
491 damage is not likely to result thereby; but otherwise, the
492 chancellor shall require a supersedeas bond as the chancellor
493 deems proper, which shall be liable to the state for any damage.

494 **SECTION 7.** This act shall take effect and be in force from
495 and after July 1, 2025.