

UNIVERSITY OF MISSISSIPPI

# LAWS RELATING TO ENVIRONMENTAL CONTROL

## PART 2

University of Mississippi Law Center

MISSISSIPPI  
SEA GRANT CONSORTIUM

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LAWS RELATING TO ENVIRONMENTAL CONTROL

PART 2 OF 2 PARTS

Preliminary Draft

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## FOREWORD

This volume is one of ten representing a compilation of Mississippi laws which most significantly affect the use and development of the state's marine and coastal zone. This project was conceived and substantially completed by Professor Frank L. Maraist of the University of Mississippi Law Center under the auspices of Mississippi-Alabama Sea Grant Consortium and the University of Mississippi.

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D. Safety Requirements For:

1. Private Business and Industry.

(a) Radiation Control Agency (designation given Board of Health in radiation matters).

A licensee or registrant must not expose an individual in a controlled area to a radiation dose (from all sources during a period of three months) in excess of the limits specified in the tables shown in Regulation § X. 101(a), (b).<sup>1</sup> If a person is to be exposed to a dosage greater than the Regulation limits, the licensee or registrant must obtain a certificate on Agency Form RH-4 and the exposed individual must record his exposure time.<sup>2</sup> No licensee may possess, use, receive or transfer radioactive material in such a manner as to cause an individual in a controlled area to be exposed to airborne radioactive material in an average concentration in excess of the limits specified in Appendix A, Table 1, of these Regulations. No allowance may be made for protective clothing.<sup>3</sup> No licensee or registrant shall possess, use or transfer sources of radiation in such a manner as to cause any individual under 18 years of age within a controlled area to receive in any three month period a dose in excess of 10% of those shown in Reg. § X. 101(a).<sup>4</sup>

No licensee shall expose any person in an uncontrolled area to radiation levels which would, if the person were continuously present in the area, result in a dose in excess of two millirems per hour, or in excess of 100 millirems in any seven consecutive days.<sup>5</sup>

No person may release, in an uncontrolled area, radioactive material in concentrations above those limits specified in Appendix A, Table II, of the regulations. However, an applicant for a license may include proposed limits

higher than those specified if he has made reasonable efforts to minimize the release or if the amount released would not be harmful to individuals. Also, the make-up of the emitted radiation must be specified.<sup>6</sup>

In order to determine the extent of individual exposure to radiation the Agency may incorporate into the license provisions a requirement that the business make appropriate bio-assay services available to the individual and forward a copy of these assay reports to the Agency.<sup>7</sup>

Each licensee must make a survey (i. e., an evaluation of radiation hazards incident to production, use, release and disposal of radioactive material) adequate to assure compliance with these regulations.<sup>8</sup> Each licensee must supply personal monitoring equipment (e. g., film badge, pocket dosimeter) for use by: individuals entering a controlled area who may receive over 25% of the allowable dose specified in § X. 101(a); individuals under 18 who may receive in a calendar quarter a dose exceeding 5% of the limits in § X. 101(a); and all persons who enter a high radiation area.<sup>9</sup> Licensees must post a conventional 3-bladed purple and yellow radiation warning symbol near all radiation sources and a sign reading "CAUTION, RADIATION AREA".<sup>10</sup> However, a room with a radiation source emitting 5 or less millirems per hour, 12 inches from the surface of the source, does not require a warning symbol or sign. No warning sign is needed in hospitals, provided the licensee protects his employees, and no sign is needed where the source is in a room under licensee's control less than eight hours.<sup>11</sup> The licensee must inform persons who frequent or work near radiation of the various safety problems associated with exposure, and must post these regulations and Agency Form RH-5 in the radiation area.<sup>12</sup> Finally, sources

of radiation must be secured against unauthorized removal from their place of storage.<sup>13</sup>

(b) State Board of Health.

The various safety requirements set forth in the Board's REGULATIONS: SANITATION AND SAFETY OF INDUSTRIAL ESTABLISHMENTS must be followed to assure the safety of the employee's working environment.<sup>14</sup> No person or firm may use any material, process or condition known to have an adverse effect on health. Threshold limit values of Air-Borne Contaminants should be followed.<sup>15</sup> Poisonous and toxic materials must be plainly marked and stored in a separate cabinet, and must be used in such a manner as to prevent contamination of the product (in soft drink plants) and not constitute a hazard to employees.<sup>16</sup> Institutions for the aged and infirm must have a written fire control and evacuation plan, conduct semi-annual fire drills, have adequate first aid kits on hand, and provide safeguards to keep out unauthorized persons.<sup>17</sup> Barber shops and barber schools may be inspected during business hours by Board representatives, and such shops must be kept clean at all times. There must be no direct connection between a barber shop and a sleeping room.<sup>18</sup> Coin-operated dry cleaning machines must be registered with the State Board of Health and comply with regulations of that agency.<sup>19</sup> Finally, no firm may maintain a condition which, in the opinion of the health officer, is conducive to breeding flies, mosquitoes, rats or other vermin in numbers sufficient to create a public health hazard.<sup>20</sup>

(c) Building Codes and Fire Hazards.

Whenever municipal authorities discover building which are unsafe due to dilapidation, fire hazards, lack of ventilation, light or sanitary facilities, or

due to any hazardous conditions rendering the building unsafe or unsanitary, they may exercise their police power to remedy or eliminate the situation,<sup>21</sup> including condemnation if the building is determined to be unfit for human habitation, use or occupancy.<sup>22</sup> Authorities may remove or prevent construction of fireplaces, stoves, chimneys, ovens or any apparatus used in a factory or business that may present a fire hazard.<sup>23</sup> Municipalities may regulate, for health and safety purposes, the location, height, size, use and underlying land of buildings or structures built for trade and industry.<sup>24</sup>

The construction codes published by nationally recognized groups which set minimum standards have been adopted as minimum standard guides for building, plumbing, electrical, gas, sanitary and other related codes in Mississippi. County boards of supervisors may adopt building codes, plumbing codes, electrical codes, sanitary codes and other codes dealing with general public health, safety or welfare. However, these codes may not exceed the provisions of the construction codes published by nationally recognized groups.<sup>25</sup> The City of Gulfport, for instance, has adopted the Fire Prevention Code of the American Insurance Association.<sup>26</sup> The State Oil and Gas Board issues regulations protecting underground gas reservoirs from pollution or the escape of natural gas therefrom.<sup>27</sup> Municipal authorities may require removal of anhydrous ammonia stored within corporate limits if after a hearing it is established that the storage plant is unsafe. Municipal authorities may also regulate and restrict the operation of vehicles transporting anhydrous ammonia over city streets. Aggrieved persons may appeal to circuit court.<sup>28</sup> The Biloxi Port Commission and the

City of Pascagoula prohibit smoking or other fires on the docks or on the decks of boats tied alongside.<sup>29</sup>

The Biloxi rule applies specifically to fuel docks and bans smoking or fires even inside boats tied alongside. The Pascagoula rule makes an exception for necessary uses of fire for repairing docks and for cooking fires inside enclosed buildings on the dock. Pascagoula also forbids transportation of gasoline to or from a dock or boat except in closed containers or pipelines.<sup>30</sup> Watercraft may use city water free while docked, but will be charged the usual rate if water is wasted.<sup>31</sup>

Finally, the board of supervisors may purchase fire fighting equipment, contract with municipalities for its storage and operation,<sup>32</sup> and provide financial assistance to any fire department offering services and protection.<sup>33</sup>

(d) Other Hazards.

Governing authorities of municipalities may regulate or prohibit any mill, laundry or manufacturing plant from allowing soot, cinders, smoke or unnecessary noise to cause damage to or interfere with the use or occupancy of public or private property.<sup>34</sup> No person may place or maintain in view of a public highway any unauthorized sign which resembles a traffic-control device, or railroad sign or signal. Nor may any unauthorized sign attempt to direct movement of traffic or hide a traffic control device or railroad signal. Public authorities cannot allow commercial advertising to be placed on traffic-control devices or permit the erection of billboards closer than 50 feet from the center line of a state highway.<sup>35</sup>

No person may do business as an applicator of chemicals or pesticides by air without a license from the Board of Agricultural Aviation.<sup>36</sup> The Board adopts rules and regulations necessary to regulate the aerial application of chemicals and pesticides which may create unusual hazards to the health, welfare, and safety of the public. The Board may inspect places where such chemicals or pesticides are being prepared or applied and may take samples for analysis.<sup>37</sup>

## 2. State (Employees).

The State Forestry Commission advises and assists on fire control matters in rural and urban areas, combats fires, performs rescue and lifesaving work, and does radiological monitoring.<sup>38</sup>

The Gulf Regional District, in making regional plans, gives primary attention to projects involving rehabilitation of devastated areas so as to safeguard the lives and safety of the people in the region.<sup>29</sup> The Pat Harrison Waterway Commission provides coordinated utilization of manpower, communication, and material resources during emergencies in order to protect life and property.<sup>40</sup> Finally, agency heads in general are required to maintain written plans for protecting personnel and equipment against nuclear attack or other disasters, to designate a staff member for civil defense planning and coordination, to cooperate with other agencies in emergencies, and to keep in touch with the State Director of Civil Defense.<sup>41</sup>

## FOOTNOTES

[Unless otherwise specified all footnotes refer to MISS. CODE ANN. (1972)].

1. Radiation Control Agency, Std. for Protection Against Radiation, Reg. § X.101.
2. Id. Reg. § X.102.
3. Id. Reg. § X.103.
4. Id. Reg. § X.104.
5. Id. Reg. § X.105.
6. Id. Reg. § X.106.
7. Id. Reg. § X.107.
8. Id. Reg. § X.201.
9. Id. Reg. § X.202.
10. Id. Reg. § X.203.
11. Id. Reg. § X.204.
12. Id. Reg. § X-205.
13. Id. Reg. § X.206.
14. State Bd. of Health, Reg.: SANITATION AND SAFETY OF INDUSTRIAL ESTABLISHMENTS.
15. Id. SAFETY OF THE WORKING ENVIRONMENT.
16. Id. REGULATION GOVERNING SOFT DRINK BOTTLING PLANTS.
17. Id. STANDARDS FOR INSTITUTIONS FOR AGED AND INFIRM.
18. Id. BARBERING AND BARBER SCHOOLS.
19. Id. INSTALLATION, OPERATION, AND REGISTRATION OF COIN-OPERATED DRY CLEANING MACHINES.

20. Id. CONTROL OF FLIES, MOSQUITOES, RATS, AND OTHER VERMIN.
21. § 43-35-103.
22. § 43-35-107.
23. § 21-19-21.
24. § 17-1-3.
25. § 19-5-9.
26. Gulfport, Miss., CODE OF ORDINANCES § 11-14.
27. § 53-3-157.
28. § 75-57-31.
29. Biloxi Port Commission, Rule 9, Pascagoula Code § 6-5.
30. Pascagoula Code, § 6-47.
31. Pascagoula Code, § 6-33.
32. § 19-5-97.
33. § 19-5-95.
34. § 21-19-15.
35. §§ 49-23-31, 63-3-317.
36. § 69-21-113.
37. § 69-21-109.
38. Executive Order No. 73, § IIIA(14) (Sept. 28, 1970).
39. § 17-11-25.
40. Executive Order No. 73, § IIIA(26) (Sept. 28, 1970).
41. Id., § II.

E. Compilation of Health Data.

The State Department of Public Health acts through its committees to collect vital statistics, develop medical literature, investigate hospitals, investigate influence of localities and employment on public health, and supervise the health interests of the state.<sup>1</sup> The Department's Bureau of Vital Statistics appoints county boards of health (consisting of one physician from each supervisor's district plus the county health officer) to collect vital, mortuary and sanitary statistics, and to keep a register for births, deaths and infectious diseases in the county. The Bureau reports these statistical data annually to the department.<sup>2</sup> The State Board of Health, through its secretary, may correct errors on birth certificates upon affidavit of two respectable persons having personal knowledge of the pertinent facts, but major changes require a proceeding in chancery court (for example, change in date of birth of two or more days, name or sex of child, name of either parent, or birthplace of child).<sup>3</sup>

The Public Health Department's executive committee is the Bureau on State Medicine. Its functions include encouraging investigation of epidemic diseases in the state, publishing medical literature of importance to the state and distributing health circulars.<sup>4</sup> The Public Health Department is required to prepare an annual report of its activities for the Governor. Copies of the report are made available to the State Board of Health for general distribution.<sup>5</sup>

The State Board of Health collects and preserves information on diseases and death, keeps a central registry of pathological information concerning cancer patients and results of their treatment, and preserves all books, documents and

records of transactions of Board business.<sup>6</sup> The county health officer must report his findings as to the sanitary condition of market places, schools and other public buildings to the county board of supervisors and to the State Board of Health.<sup>7</sup> Any municipality may enforce the collection and registration of birth, health and mortuary statistics, subject to the rules of the State Board of Health.<sup>8</sup>

In accordance with its statutory power to see that vital statistics are kept throughout the state,<sup>9</sup> the State Board of Health requires every local registrar to maintain a Birth Record Book and a Death Record Book which include items of information collected by the Division of Public Health Statistics. Fetal deaths are recorded in the Birth Record Book. Entries in both books are numbered consecutively, beginning anew each year. The local registrar presents completed birth, death and fetal death certificates to the county health department each Monday along with reports from local institutions and funeral directors on the second Monday of each month. All live births are recorded in the county where they occur. Births occurring in moving conveyances are registered in the county where the child is first removed from the conveyance. Heads of institutions are responsible for preparing birth certificates for births in the institutions, and the attending physician or midwife is responsible for preparing certificates of birth occurring elsewhere. If there is no attending physician or midwife, a parent or other person on the premises prepares the certificate. In any case, the certificate must be filed with the local registrar within five days after birth. Separate certificates are required for twins, triplets, etc. The

child's full name is required for registration. If registration occurs over five days but less than one year after birth, it is a "belated registration" and is filed with current births. No information on the father of an illegitimate child appears on the certificate and the child's surname is that of the mother. Upon proof of marriage and affidavit of paternity, the certificate will be amended either by the State Registrar or by court order. Births over one year past are recorded by Delayed Certificate of Birth, with different forms for persons over thirteen years old. New certificates are issued for adopted children upon proof of adoption. Changes in birth certificates requested over one year after birth may be made only by court order. All deaths and fetal deaths must also be properly recorded, with the rules as to birth certificates applicable to fetal deaths. Death certificates may be signed by a physician in charge, or, if none, by a county health officer or coroner after investigation. A previously unregistered death may be registered with no supporting evidence if requested within one year from death, or by filing affidavits if from one to three years have passed. Deaths occurring over three years prior to the request for filing will not be registered.<sup>10</sup>

Current health certificates issued and filed by local health departments are required for employees of institutions for the aged or infirm.<sup>11</sup>

## FOOTNOTES

[Unless otherwise specified all footnotes refer to MISS. CODE ANN. (1972)].

1. § 41-1-7.
2. § 41-1-11.
3. § 41-57-19 to -23.
4. § 41-1-13.
5. § 41-1-17.
6. § 41-2-15.
7. § 41-3-41.
8. § 41-3-57.
9. § 41-57-7.
10. State Bd. of Health, Regulation: VITAL STATISTICS.
11. Id. STANDARDS FOR INSTITUTIONS FOR AGED OR INFIRM.

#### IV. LAND-USE REGULATION

##### A. Eminent Domain.

Eminent domain is the power utilized by various public and private agencies to secure private lands for public or semi-public purposes. This power is conferred on various agencies by state law. This section is an attempt to briefly examine some of the more important uses of eminent domain power.

A major use of the power of eminent domain is in the development of highways and streets. At the state level, the State Highway Commission has complete control and supervision of all state roadways. This includes the power and authority to establish, relocate, widen, or alter roadways in the state highway system. The commission, therefore, has the power to secure the necessary rights of way for such highways.<sup>1</sup> The power of eminent domain is also expressly conferred upon all county boards of supervisors to obtain necessary land for building roads and parkways, for relocating existing routes or for widening existing highways.<sup>2</sup> Similar powers are granted to municipal authorities, who may exercise eminent domain within or without the municipal corporation limits as required for development of the municipality.<sup>3</sup>

The various highway authorities of the state, counties and municipalities may acquire public or private property for construction of controlled-access facilities and related service roads. Such property may be acquired by purchase, gift or condemnation.<sup>4</sup> However, no existing public street or highway may be converted into a controlled-access facility without the consent of the owners of lands abutting the proposed freeway or with the purchase or condemnation of the access rights of these abutting landowners.<sup>5</sup> No statute will be construed as

requiring the consent of the owners of the abutting lands where a street or highway is constructed, established or located for the first time for the use of vehicular or pedestrian traffic.<sup>6</sup>

The State Highway Commission may enter any lands, waters and premises to make surveys, soundings and examinations. The commission may exercise the right of eminent domain and institute condemnation proceedings to acquire property for highway projects.<sup>7</sup> The commission is authorized to obtain and pay for the right-of-way necessary for such highway or for any alteration. Rights-of-way of not less than sixty feet in width will be acquired except within the boundaries of towns and cities where unusual conditions exist. In those cases the commission may obtain and pay for rights-of-way of such width as it considers necessary.<sup>8</sup> The State Highway Commission may condemn or acquire lands containing road building materials. The commission may also condemn or acquire lands necessary for the safety and convenience of traffic.<sup>9</sup> The estate which the commission is authorized to acquire includes all rights, title, and interest in and to the lands or property being acquired except all oil and gas rights. Also excluded are other rights, title or interest which may be expressly excepted and reserved by the property owner in the deed or condemnation petition by which the property is acquired.<sup>10</sup>

The State Highway Commission is authorized to acquire by gift, purchase, or condemnation, and to improve and maintain strips of land necessary for the restoration, preservation and enhancement of scenic beauty adjacent to state highway rights of way. This includes acquisition and development of publicly

owned and controlled rest and recreation areas and other facilities within or adjacent to the highway rights of way which are reasonably necessary to accommodate the traveling public.<sup>11</sup> The State Highway Commission is also authorized to acquire all advertising devices and property rights pertaining thereto when such devices are to be removed under state law.<sup>12</sup> Just compensation will be paid for the removal of any lawfully erected outdoor advertising. Damages resulting from taking by eminent domain will be ascertained in the manner prescribed by law.<sup>13</sup>

The board of supervisors of a county in which the federal government plans to construct a roadway or parkway is authorized to donate the required right-of-way and scenic easements for such projects. The board may also condemn land adjoining such roadways or parkways for use as public parks.<sup>14</sup>

Junkyards adjoining state highways are subject to condemnation proceedings by the State Highway Commission. If such junkyards cannot be adequately screened from view, or the screening is not economically feasible, the commission has the power to acquire or condemn the property and remove the junkyard. Just compensation for relocation, removal or disposal will be paid.<sup>15</sup>

The highway authorities of the state, county or municipality are authorized to enter into agreements with each other or with the federal government to finance, plan, establish, improve or maintain controlled-access facilities or other public highways within their respective jurisdictions.<sup>16</sup> They may also enter into similar agreements concerning state highways in relation to the construction of flood control, navigation, drainage, or NASA projects approved

or adopted by the federal government.<sup>17</sup> These authorities, jointly, or severally, may acquire by purchase, gift, or eminent domain all necessary land or property interests for acquiring, constructing, owning, operating and maintaining toll bridges and approaches.<sup>18</sup> The board of commissioners of a bridge district has the right, power and authority to purchase, hold and possess such real estate as may be necessary for the purposes for which the district was organized. In addition, the district has the right of eminent domain. If condemnation proceedings become necessary, such proceedings will be instituted and conducted in the manner provided by law.<sup>19</sup>

The governing bodies of municipalities have the authority to exercise the power of eminent domain for laying out and widening streets, avenues, and alleys. They also have authority to secure land for parks, cemeteries, school houses, fire departments, market houses, and other public buildings. They may construct and repair sidewalks or sewers, lay out and erect levees, construct drainage systems, change the course of streams, and construct bridges when such work is for the protection of the municipality.<sup>20</sup> A municipal or county agency may also acquire by eminent domain any island in the Gulf of Mexico or Mississippi Sound within three miles of the corporate limits of the municipality or within the boundary of the county involved for use as a public park or recreational harbor development or other similar purposes.<sup>21</sup> The legislative body of municipalities may exercise the power of eminent domain in the construction and acquisition of land for playgrounds and public parks.<sup>22</sup> No lands acquired by eminent domain for such public purposes may be sold.<sup>23</sup>

Municipalities may acquire land for waterworks systems and necessary rights-of-way to and from such facilities by condemnation. Such rights-of-way may be extended as needed. The land and rights-of-way may be within or without the corporate limits.<sup>24</sup> The governing authorities of a municipality are empowered to grant to any person, corporation or association the use of streets, alleys, and public grounds for laying, constructing, repairing and maintaining gas, water, sewer, or steam pipes. Similar grants may be made for conduits for electric light, telegraph and telephone lines, and pipe lines transporting oil, petroleum, kerosene or gasoline.<sup>25</sup> Similarly, governing authorities may use eminent domain to provide and regulate construction and passage of railways and street railroads through the streets, avenues, alleys and public grounds of the municipality.<sup>26</sup> Municipal authorities may also use eminent domain proceedings to acquire title to privately owned cemeteries which, due to age, abandonment or improper maintenance, have become detrimental to public health and welfare.<sup>27</sup>

Counties and municipalities in which are located a military camp or artillery range are authorized to acquire, lease, construct, improve or extend, within or without their territorial limits, waterworks systems, sewer systems, sewage disposal systems, and garbage and refuse disposal systems to such sites.<sup>28</sup> These political subdivisions may also acquire property by exercise of the power of eminent domain to provide these systems.<sup>29</sup> However, all such powers granted to municipalities must be exercised in the manner provided by law.<sup>30</sup>

Certain coastal municipalities are empowered to procure by eminent

domain land and property interests necessary for expanding and improving port operations. Such acquisitions may be within or without the corporate limits of the municipality.<sup>31</sup> Coastal municipalities meeting other specifications are authorized to acquire necessary land for constructing and operating harbors and seaports.<sup>32</sup>

Coastal municipalities may authorize port commissions to oversee port and harbor operations. These commissions are also granted eminent domain powers.<sup>33</sup> Port commissions have the authority to sell or lease land originally acquired for port purposes. Such sale or lease may be for industrial use or may be made in exchange for other land required for use in navigation or flood control.<sup>34</sup>

In the exercise of eminent domain powers, a county must determine the amount and character of land to be acquired. The determination of the public necessity for such exercise is conclusive and not subject to attack.<sup>35</sup>

The board of supervisors, acting with and through a county port authority, and with approval of the Mississippi A. & I. Board, may dredge, fill in, and reclaim submerged tidal lands belonging to the State of Mississippi and may develop and utilize such lands to aid commerce through ports as long as navigation is not impeded.<sup>36</sup> County port authorities and county development commissions have joint powers and concurrent jurisdiction. They control all lands within or adjacent to any river, bay, or natural lake below the mean high tide mark and lying within or adjacent to any port or harbor within the jurisdiction of these authorities.<sup>37</sup>

Acquiring property by eminent domain requires the condemning authority

to proceed in the manner prescribed by statute.<sup>38</sup> After commencement of an eminent domain proceeding, the condemning authority may take immediate possession of the property involved. The proceeding may be abandoned at any time prior to a final order, but the condemning authority remains liable to the owner for any damages sustained.<sup>39</sup> All land acquired by eminent domain must be used for public or governmental purposes.<sup>40</sup>

Drainage districts have condemnation powers to acquire necessary land for construction of levees and drainage ditches. These powers may be exercised within or without the district, as required.<sup>41</sup> Any rights gained through purchase or condemnation for drainage improvements may be sold or leased.<sup>42</sup> Similarly, flood control districts are authorized to acquire lands, rights of way and easements by purchase, grant or condemnation as required for locating, operating or maintaining flood control works.<sup>43</sup> The eminent domain power of drainage districts and flood control districts is superior to similar powers exercised by railroads, telephone companies, power associations and other semi-public corporations.<sup>44</sup>

Other public agencies and political subdivisions of the state possess the power of eminent domain. These include the Mississippi A. & I. Board,<sup>45</sup> the Mineral Lease Commission,<sup>46</sup> the Mississippi Marine Conservation Commission,<sup>47</sup> the Pearl River Valley Water Supply District,<sup>48</sup> the Gulf Regional District<sup>49</sup> and the County Mosquito Control Commission.<sup>50</sup> These governmental units generally possess the power of eminent domain necessary to further the public welfare and interest in their respective areas.

[Eminent domain powers relating to airports is discussed infra in  
IV. C. Land Use Regulations - Airports.]

## FOOTNOTES

[Unless otherwise specified all footnotes refer to MISS. CODE ANN. (1972)].

1. § 65-1-47.
2. § 55-5-5.
3. § 21-37-47.
4. § 65-5-9.
5. § 65-5-5.
6. Id.
7. § 65-23-103.
8. § 65-1-47.
9. Id.
10. Id.
11. § 65-1-51.
12. § 49-23-15. See § 49-23-9 [as amended by H. B. 288, Ch. 303, Sec. 2, Laws of 1972] for specifications as to proper advertising sign location and construction.
13. § 49-23-17.
14. § 55-5-5.
15. § 49-25-13.
16. § 65-5-15.
17. § 65-1-29.
18. § 65-23-13.
19. § 65-23-229.

20. §§ 21-37-47; 17-1-3.
21. § 55-7-13.
22. § 17-1-3.
23. §§ 55-7-21, 65-33-11.
24. §§ 21-27-7, -11, -23.
25. § 21-27-5.
26. § 21-19-31.
27. § 21-27-21.
28. § 17-5-3.
29. § 17-5-5.
30. § 21-17-3.
31. § 59-7-405.
32. §§ 59-3-1, -7-5, -305.
33. § 59-1-17.
34. § 59-7-211.
35. § 59-9-19(b).
36. § 59-9-67.
37. § 59-9-29.
38. §§ 11-35-21, et seq.
39. §§ 61-3-17, -5-7.
40. § 61-3-83.
41. § 51-35-11.
42. § 51-29-123.
43. § 51-39-159.

44. § 51-35-315.
45. § 59-3-13.
46. § 29-7-7.
47. § 49-15-15.
48. § 51-9-121.
49. § 17-11-33.
50. §§ 41-27-9, -121.

B. State and Local Zoning Regulations.

Property may be "zoned" in either of two ways: (1) by direct zoning, i. e., a regulation of the use of private property, or (2) by restrictions contained in the sale or lease of lands, particularly public lands. Both methods are discussed herein.

All lands belonging to the state are managed and disposed of through the State Land Office. The State Land Commissioner, with approval of the governor, may contract to sell any state owned land. He may also rent or lease such land.<sup>1</sup> The commissioner may also rent or lease state submerged land lying in or adjacent to the Mississippi Sound or the Gulf of Mexico. The rental or leasing period may not exceed five years.<sup>2</sup>

The State Land Commissioner is authorized to grant or donate easements in and to public lands of the state to any drainage district, flood control district, or to any county in the state, or to the United States or any agency thereof, for construction and maintenance of flood control canals and ditches, drainage canals or ditches, or other flood control or drainage structures.<sup>3</sup>

Sixteenth section lands or lands granted in lieu thereof may not be sold except for industrial development by the board of supervisors of the county controlling such land. The purchase price must not be less than the fair market value. The proceeds of the sale must be used to purchase equivalent acreage and interest in other land in the county which will be held and used as sixteenth section land. Sixteenth section land may be leased for a term not exceeding 99 years for industrial development. Sixteenth section land leased for purposes other than industrial development cannot exceed a term of 10 years.<sup>4</sup>

Any sale or lease of sixteenth section land must be approved by both the board of trustees of the school district wherein such land is situated and also by

the Mississippi Agricultural and Industrial Board. The Agricultural and Industrial Board may condition such sale or lease on approval of two-thirds of the qualified electors of the county. Not more than 100 acres of any one sixteenth section may be sold for the purpose of being made an industrial park or a part thereof. All minerals in, on and under the public lands conveyed are reserved to the state.<sup>5</sup>

Any sixteenth section lands within reasonable proximity to any port, harbor, or waterway, and suitable for port, harbor, or industrial use, may, at the discretion of the board of supervisors, be classified as industrial lands.<sup>6</sup> All sixteenth section land classified as forest land which is not now under lease will not be leased. Any such land under lease with a fixed date of expiration will not be leased again when the present lease expires. The mineral rights in such lands may be leased for oil, gas or mineral purposes. Leases granted for the surface of such lands limited to hunting and fishing rights and related activities. These leases may not extend longer than 15 years.<sup>7</sup>

In leases of sixteenth section land, title to all timber, minerals, oil and gas is reserved, together with the right of ingress and egress to remove same whether such provision be included in the terms of any such lease or not. No timber will be cut and used by the lessee except for fuel and necessary repairs and improvements on the leased premises. Committing waste on any leased sixteenth section land will terminate the lease.<sup>8</sup>

The State Mineral Lease Commission is authorized to lease any state owned land to reputable persons or corporations for development of oil, gas and other minerals. (Sixteenth section school lands and land subject to tax redemption may not be so leased). The lease will not include more than seven-

eighths of the mineral rights; at least one-eighth of the mineral right must be reserved to the state.<sup>9</sup> The commission is empowered to drill on any state owned land lying within a proven oil or gas field for the purpose of servicing state-owned facilities.<sup>10</sup>

Governing authorities of counties and municipalities have the general power to lease lands owned by the counties or municipalities for use in production or development of oil, gas, sulphur, and other minerals. They will retain one-eighth of the mineral rights.<sup>11</sup>

The State Oil and Gas Board must allocate and apportion the production of oil and gas from any pool or field to prevent waste. It also allocates production between tracts of land under separate ownership on a fair and equitable basis. However, the producers of a discovery well in a new field or pool may certify an itemized list of expenses that were incurred in the actual drilling of the well to the State Oil and Gas Board. Until these costs have been recovered, the discovery well is not subject to apportionment.<sup>12</sup> All natural gas reduced to possession and subsequently injected into an underground reservoir is deemed the property of the injector. Such gas is not subject to the rights of the owner of the surface of the lands or of any mineral interest therein, provided the Oil and Gas Board has entered an order approving the underground storage reservoir.<sup>13</sup> Mississippi has no statute granting authority to establish underground storage of natural gas in offshore waters of the state.<sup>14</sup>

A municipality may create a fire district within or adjoining the municipality when petitioned to do so by a majority of owners of the property, real or

personal, located within the proposed fire district.<sup>15</sup> Governing authorities of two or more municipalities may contract to create a consolidated fire district to consist of the whole or a part of the territory of the municipalities joining therein.<sup>16</sup>

The Pearl River Industrial Commission is authorized to make studies to investigate the possibilities of industrial, irrigational, and recreational development. These studies will also include plans to attract new industries, and to conserve available water.<sup>17</sup>

Recreational districts in the state may authorize any project that will provide and maintain recreational facilities such as picnic areas, campsites, trailer sites, cabins, lodges, roads and trails for hiking, bicycling, or horse back riding, nature trails, botanical gardens, zoos, museums, athletic fields, golf courses, tennis and badminton courts, bowling alleys, and skeet, trap, rifle and archery ranges.<sup>18</sup>

As a contribution to the national forests of the United States, the State of Mississippi will consent to acquisition by the United States of land within or adjacent to existing national forests in Mississippi. Prior approval, however, is required from the board of supervisors of the county in which the land is located and the Mississippi Forestry Commission. Not more than 25,000 acres may be so acquired in the state. Also, not more than 500 acres may be purchased or donated in any one county outside the existing boundaries of an existing national forest.<sup>19</sup>

The county board of supervisors has the authority to subdivide all public

lands on an island or islands not being utilized for the purposes for which they were originally acquired into lots, blocks or sites. These divisions may then be sold either directly or by auction.<sup>20</sup> However, plans for such subdividing must be approved by the Air and Water Pollution Control Commission.<sup>21</sup>

The governing authority of the municipality may regulate buildings and their surroundings within the municipal corporate limits. It may exercise eminent domain to provide land for playgrounds and parks. The governing authorities of a municipality may cooperate with the county board of supervisors in establishing zoning ordinances.<sup>22</sup> In order to do such zoning, the legislative body may utilize the city engineering department or employ an advisory committee of citizens to recommend boundaries for various districts and to set appropriate regulations to be enforced therein.<sup>23</sup> A municipal body may divide the municipality into districts of such number, shape and area deemed best suited to carry out municipal purposes. Within such districts, erection, construction, reconstruction, alteration, repair or use of buildings, structures, or land may be regulated or restricted.<sup>24</sup>

Municipalities may acquire land for use in the construction of airports and air navigation facilities within or without their territorial limits. The power of eminent domain may be used in acquiring such lands.<sup>25</sup> No statute will be construed as a limit of any right, power, or authority of a municipality to regulate airport hazards by zoning.<sup>26</sup> The governing authority of the municipality is authorized to make and enforce regulations for the proper control of such airports, including the right to charge reasonable fees to use the airports

and to issue necessary bonds. Any political subdivision which has an airport within its territorial limits also has the power to adopt and enforce zoning regulations within the airport hazard area. All buildings in that area may be regulated.<sup>27</sup>

Prior to any airport zoning regulation, the political subdivision will appoint an Airport Zoning Commission, which can be the city planning commission or a comprehensive zoning commission, to make recommendations. This commission will hold public hearings and submit a final report to the municipality for its approval.<sup>28</sup> If a political subdivision has a comprehensive zoning ordinance, airport zoning regulations may be incorporated therein. Any conflict between the two regulations will be settled by adhering to the more stringent.<sup>29</sup>

A joint airport zoning board will be set up when an existing airport facility is subject to control by several governing municipalities or state agencies. Two members will be appointed by each interested party and a chairman elected by these board members.<sup>30</sup>

All airport regulations must be reasonable. In determining what regulations to adopt, the subdivision or joint airport zoning board must consider the character of flying operations expected, the nature of terrain and the neighborhood. No destruction of legally existing non-conforming uses at the time of adoption is authorized. If there are conflicts between the airport regulations and existing regulations, the more stringent prevails.<sup>31</sup> Whenever other statutes, local ordinances or regulations require a greater width or size of yards, courts, or open spaces, or a lower height of buildings, or a greater percentages of lots to be left unoccupied, or impose other standards higher than those of zoning laws

these other statutes, local ordinances, or regulations will govern.<sup>32</sup>

Airport zoning regulations may require a permit before a new structure is built or an old one substantially altered or repaired. A permit may also be required before a non-conforming use is altered. No permit will be granted for the creation of a hazard to the airport. Any person may apply for a variance to the Board of Adjustment. A variance would be allowed if the literal application of the regulation would create an undue hardship, would not create a hazard, and would not be contrary to the public interest. The granting of a variance or permit may be conditioned to require the owner, at his own expense, to install markers or lights necessary to indicate hazards. Where it is desirable to lower or eliminate a non-conforming structure that interferes with the approach to the airport, and protection cannot be constitutionally provided for by the zoning regulations, acquisition of the non-conforming structure is authorized.<sup>33</sup>

The political subdivision where land is located may acquire by grant, purchase, or condemnation such air right, easement, or other interest in the property or non-conforming structures as may be necessary to the operation of the airport.<sup>34</sup>

Municipalities may regulate the location, size, density of population, and use of land, buildings or other structures for industry and residences. No law of the state or municipality prevents cooperation between the governing authority and the board of supervisors in determining zoning regulations.<sup>35</sup>

The Port Commission has jurisdiction over and control of all lands lying within or adjacent to any river, bay or natural lake below the mean high tide

mark, and which lie within or adjacent to any port or harbor within the jurisdiction of the commission.<sup>36</sup> The Port Commission may sell or lease unused lands for industrial use. If the title to such land is in the name of the city, the city and the port commission must pass a joint resolution and both must join in the execution of the transaction.<sup>37</sup>

All bathhouses, piers, wharf, docks, and pavilions or other structures owned by the riparian owner are his private property, and he may avail himself of any legal remedy to abate nuisances committed in the area. The governing authorities of the municipalities and the county board of supervisors may adopt regulations concerning the use of beaches, landings, and riparian areas abutting streets or roads to protect riparian owners' enjoyment of their rights.<sup>38</sup> No contract may be let to dredge or remove shells from Telegraph Reef or Merrill's Coquille.<sup>39</sup>

All lands belonging to the state, whether held in fee or in trust by the state, are designated as forest reserves and wildlife refuges so long as the state owns them. No wildlife may be taken thereon except under regulations of the State Game and Fish Commission.<sup>40</sup> The commission may designate wildlife refuges as it deems necessary.<sup>41</sup>

## FOOTNOTES

[Unless otherwise specified all footnotes refer to MISS. CODE ANN. (1972)].

1. § 29-1-39. See also Title 7, Chapter 3, Laws of 1942.
2. § 29-1-107.
3. § 29-1-99.
4. § 29-3-27, -61.
5. § 29-3-29.
6. § 29-3-33.
7. § 29-3-41.
8. § 29-3-85. Case: Board of Supervisors of Stone County v. Bond, 203 So. 2d 800 (Miss. 1967).
9. § 29-7-3.
10. § 29-7-5.
11. § 17-9-1, -3.
12. § 53-1-17(b), (c).
13. § 53-3-157.
14. § 53-3-165.
15. § 21-25-21.
16. § 21-25-25.
17. § 51-9-5.
18. § 55-9-29.
19. § 3-5-13.
20. § 65-33-11.
21. Subdivision Regulations of Hancock County, Miss., § 11 A (1) (1970).

22. § 17-1-3, -5.
23. § 17-1-13.
24. § 17-1-7.
25. § 61-5-5.
26. § 61-3-81.
27. §§ 61-5-11, -17, -7-7.
28. § 61-7-13.
29. § 61-7-9.
30. § 61-7-7.
31. § 61-7-15.
32. § 17-1-21.
33. § 61-7-17.
34. § 61-7-29.
35. § 17-1-3, -5.
36. § 59-1-17.
37. § 59-1-19.
38. § 49-15-9.
39. § 49-15-57.
40. § 49-5-1.
41. § 49-1-29(b).

#### IV. LAND-USE REGULATIONS

##### C. Airports.

Any municipality may, by resolution, create a corporate public body, to be known as the municipal airport authority. The governing body of the municipality will appoint five persons as commissioners. These commissioners will serve staggered terms of 1, 2, 3, 4 and 5 years respectively and will be replaced at the end of the term by commissioners who will serve for five years.<sup>1</sup> Two or more municipalities may, by resolution of each, create a public body known as a Regional Airport Authority. This authority exercises its functions upon the issuance of a certificate of incorporation by the Secretary of State.<sup>2</sup> The authority has the power to sue and be sued; to execute contracts; to plan and protect airports within the state or in any adjoining states; to prevent airport hazards by acquiring property through purchase, eminent domain or other methods; to acquire other airports by purchase, eminent domain, or otherwise (this must be done with consent of other authority or municipality); and to establish and maintain airports in and over the public waters of this state.<sup>3</sup>

All powers, privileges, and authority granted to any municipality may be exercised jointly with any state or federal agency to the extent provided by law. Two or more public agencies may enter into agreements with each other. Eminent domain proceedings can be authorized only by authority of the governing bodies of the constituent public agencies of the joint board. Such proceedings, when authorized, will be in their joint names and property so acquired will be

held by the agencies as tenants in common until conveyed to them by the joint board. When disposing of any airport, the joint agency must obtain the consent of its governing bodies.<sup>4</sup>

Two or more public agencies may enter into an agreement to operate an airport facility. Property acquired will be held in the name of the constituent agencies as tenants in common. The joint board cannot dispose of any airport without the consent of its constituent governing bodies. However, joint boards may enter into contracts and leases without consent.<sup>5</sup>

To aid and to cooperate in the planning, construction, or operation of airports, a municipality, which has created an airport authority, may, with or without consideration, lend or donate money to the authority; provide that taxes or available funds of the municipality for airports be paid directly to the airport authority; furnish water, sewer, or drainage facilities adjacent to or in connection with the airport; dedicate, sell, convey or lease any of its interest to the authority; furnish, dedicate, close, pave and install roads to the airport; provide necessary aid in the operation and construction of airports; and enter into agreements with the authority to further airport operations.<sup>6</sup>

Applications for approval of airport sites must be filed with the Aeronautics Commission using forms furnished by the commission and supplemented by other supporting data or information as required by the commission.<sup>7</sup> This commission consists of three members, one from each Supreme Court District appointed by the governor. The term of office is six years.<sup>8</sup> The Aeronautics Commission is empowered to encourage, foster, and assist the development of

aeronautics in the state, and to encourage establishment of airports and other navigational facilities. The commission may render financial assistance in the acquisition, development, operation and maintenance of airports from funds made available by the legislature. Hearings and investigations will be conducted by the commission to determine the location, type of construction, and the cost to the state of maintaining emergency and other classes of airports owned, operated, or directly financed in whole or in part by the state. The commission will render assistance within its powers to any subdivision of the state to procure federal aid for establishing and maintaining airports.<sup>9</sup> The commission is authorized to cooperate with the federal government in the acquisition, construction, improvement, maintenance and operation of airports and other navigational facilities within the state. The commission will comply with the provisions of the federal laws for the expenditure of federal monies.<sup>10</sup>

No city, town, or county in this state, acting alone or jointly, may submit any project to the Administrator of Civil Aeronautics of the United States under the provisions of the "Federal Airport Act" without approval by the Mississippi Aeronautics Commission.<sup>11</sup> It is the duty of the commission to enforce all rules and regulations governing airport operations. Authorized persons may inspect and examine any premises, buildings, or other structures of airports, air navigational facilities, air schools, or other aeronautical activities. General police powers are granted to the commission, its members, the director, and other designated officers and employees.<sup>12</sup>

The Aeronautics Commission is authorized to provide for the approval of airport sites and the issuance of certificates of such approvals. No charge is made for commission approval, and certificates of approval are issued without

charge. The commission will grant approval of sites that are adequate for the proposed airport; that conform to minimum standards of safety; and that have safe air traffic patterns. The provisions of this act do not apply to airports owned or operated by federal agencies. The commission may exempt any class of airports from its rules or regulations if it finds that the application of such would be an undue burden and is not required in the interest of public safety.<sup>13</sup>

No person or political subdivision of this state may construct any public use airport or conduct any type of flight operation from any such airport unless the site of the airport has been approved by the Mississippi Aeronautics Commission.<sup>14</sup> Complaints must be made to the commission in writing. Matters so presented will be handled by correspondence or conference. Matters not disposed of informally become the subject of formal proceedings.<sup>15</sup> All airport site approvals are subject to suspension or revocation by the commission for proper cause shown.<sup>16</sup>

It is the public policy of this state to encourage construction of transportation facilities, including airports, for use by state universities and state supported four year colleges. The Board of Trustees of the State Institutions of Higher Learning, the State Building Commission, and other state agencies may seek funds from municipalities near the college or from the county in which the airport is located. Such municipalities and counties are authorized to borrow money and issue bonds to aid in the building of the airports.<sup>17</sup>

The board of supervisors of each county is authorized to acquire land by condemnation, donation, lease or purchase for use as an airport or landing

facility for airplanes. They may also erect necessary buildings on such land. The boards of supervisors of counties where there is located a university or other four year college are authorized to contribute county funds to state agencies for the acquisition of airport sites. These sites must be available for use by the university or college, or the general public.<sup>18</sup>

The governing authorities of municipalities are authorized to issue negotiable bonds to raise money to assist the Board of Trustees of State Institutions of Higher Learning, the State Building Commission, or other state agencies in constructing suitable buildings and runways and equipping an airport for the university or state supported four year college, if the site is within ten miles of the municipality.<sup>19</sup> The municipality may also aid and assist by donating lands, furnishing materials and labor, using municipal operating funds, acquiring a site, erecting suitable buildings, and equipping and maintaining the airport for the university or college.<sup>20</sup> The municipality which offers assistance for the acquisition, construction, and maintenance of such airports for the university or college does not have to be in the same county as the university or college if the airport is not more than ten miles away.<sup>21</sup>

Funds are available to the state or any of its subdivisions from the federal government for the construction, development, or improvement of airports. The State Board of Development is authorized to make and adopt rules and regulations necessary to obtain such funds. The board will also disburse the funds in accordance with the federal regulations. The State Board of Development will allocate the funds on the terms and conditions required by the federal

government or the state subdivision operating or maintaining the airport. The board is also authorized to adopt and enforce necessary regulations to prevent or remove hazards affecting the proper use of airports within the state.<sup>22</sup>

Every municipality is authorized to designate the State Aeronautics Commission as its agent to accept, receive, and disburse federal or state monies made available by grant or loan. The municipality may also designate the commission as its agent in contracting for and supervising the planning acquisition, development, construction, or operation of any airport or air navigation facility.<sup>23</sup>

Any two or more public agencies [public agency is defined, for purposes of this section, to be any agency of the state government, including a municipality, and any agency of the United States. Miss. Code Ann. § 61-5-33 (1972)] may agree to jointly own, control, or operate an airport within the state. Such agreements should specify the proportionate interests, responsibilities for expenses and maintenance, and costs of land and structure acquisitions to be borne by each agency.<sup>24</sup>

Municipalities may acquire lands for construction of airports and air navigational facilities by the exercise of eminent domain or by other legally accepted means of acquisition. These facilities must be coordinated in design with those of both the state and federal government. A municipality may acquire existing airports owned by another municipality with consent of that municipality.<sup>25</sup> These facilities may be beyond the limits of the acquiring municipality. The municipality may lease, sub-lease, or contract maintenance and operation to the United States or to any person, firm, association, or corporation for

training aviators.<sup>26</sup>

The governing authorities of designated coastal municipalities may provide, control and maintain airplane landing fields and strips when such will aid in commerce through the port.<sup>27</sup> Similarly, boards of supervisors, acting through county port authorities and municipal port commissions, may enter into contracts for the development, construction, repair, maintenance or operation of air terminals when needed to aid in development of commerce through the port.<sup>28</sup>

No tort action may be brought against the state or municipality for any act done in or about the construction, maintenance, enlargement, operation or management of any airport facility.<sup>29</sup>

Counties or municipalities in which all or part of a military air base is located are authorized to acquire, lease, construct, improve or extend, within or without their territorial limits, waterworks systems, sewer systems, sewage disposal systems, garbage disposal systems and rubbish disposal systems for such a facility.<sup>30</sup> In addition, these counties and municipalities are authorized to own, operate and maintain such systems within or without their territorial limits.<sup>31</sup>

When acquiring property by eminent domain, a municipal authority must proceed in the manner prescribed by state law.<sup>32</sup> After commencement of eminent domain proceedings, the authority may take possession. The authority may abandon such proceedings at any time prior to final order; however, the authority remains liable for any damage to the owner.<sup>33</sup> The board of super-

visors of the several counties are also authorized to acquire, by condemnation, land to be utilized in the construction and operation of an airport or landing strip.<sup>34</sup> The acquisition of land for airports or for elimination of airport hazards is a public and governmental function. All land acquired is to be used for public and governmental purposes as a matter of public necessity.<sup>35</sup>

A municipality may, by resolution, create a public corporate body known as an airport authority which will be responsible for operating and maintaining airports and associated facilities.<sup>36</sup> This authority generally has all powers necessary to acquire land, issue bonds, construct facilities, regulate and control operations, and fix and collect fees charged for services in connection with the airport.<sup>37</sup>

In order to prevent airport hazards, any political subdivision with an airport within its limits may adopt airport zoning regulations to divide the area into zones and regulate land use and building heights. If the airport is owned or controlled by a subdivision or a state institution and the area is outside of its territorial limits, a joint airport zoning board can be created with the same powers. Each joint board will have two members appointed by each subdivision and a chairman elected by a majority of board members.<sup>38</sup> In the event it is desired to lower or eliminate a nonconforming structure, or the airport approach protection cannot be constitutionally provided by zoning regulations, or it appears advisable that the necessary protection be acquired by acquisition of property rights rather than by zoning, the political subdivision where the land is located may acquire by grant, purchase, or condemnation, such rights,

easements, or interests in the property or non-conforming structure as may be necessary.<sup>39</sup>

No airport zoning regulation may be adopted, amended or changed except by action of the subdivision's legislative body. A hearing must be held and fifteen days notice of such hearing published in a generally circulated newspaper of a county where the airport is located. Prior to any zoning regulation, the political subdivision or joint airport zoning board must appoint an airport zoning commission to recommend the regulations. This commission will hold public hearings and submit its final report to the legislative body for approval.<sup>40</sup>

The political subdivision or agency adopting airport zoning regulations may initiate court proceedings to prevent, restrain, correct or abate any violation of such regulations. Each day a violation continues to exist constitutes a separate offense.<sup>41</sup> However, all airport regulations must be reasonable. In determining what regulations to adopt, the subdivision or joint airport zoning board will consider the character of flying operations expected, the nature of the terrain, and the neighborhood. Destruction of non-conforming uses legally existing at the time of adoption is not authorized. If there is a conflict between the airport zones and existing zones, the more stringent requirements prevail.<sup>42</sup>

Any aggrieved person or affected taxpayer may complain of a zoning decision. The petition must state that the decision is illegal and give the grounds for illegality. The circuit court may then issue a writ of certiorari to the board. This writ will not stay proceedings, but, on application and on due

cause being shown, a restraining order will be granted. When any airport zoning regulation is held by the court to interfere with the use or enjoyment of a particular structure or parcel of land to the extent that it would be a taking or deprivation of property in violation of the Mississippi or United States Constitution, such holding will not affect application of the zoning regulations to other structures or parcels of land.<sup>43</sup>

Airport hazards that endanger lives and property or obstruct take-offs or landings are public nuisances. Such hazards may be prevented through the legal exercise of the police power. No compensation is required for these hazards.<sup>44</sup>

The owner, lessee, or operator of each airport must promptly notify the Aeronautics Commission, in writing, of any physical change affecting the safety of the airport. Notice must also be given to the commission of proposed material change in the physical characteristics of the airport.<sup>45</sup>

Any person may apply for a variance of a zoning regulation to the board of adjustment. The variance will be allowed where the application of the regulation would create an undue hardship, provided no hazard results and it is not contrary to the public interest. The granting of a variance or permit may require the owner, at his own expense, to install markers or lights as necessary to indicate the hazard.<sup>46</sup>

All zoning regulations must provide for a board of adjustment with not less than three members. The board will have power to hear and decide appeals,

special exceptions, and variances. If a zoning board of appeals exists, it may be designated as the board of adjustment. A concurring or majority vote of the board is sufficient to reverse any order. All meetings will be public and the board must keep minutes of all votes. These minutes will be filed with the board's record and made public.<sup>47</sup> The airport zoning regulations will provide for administration by a new agency or an existing agency of a political subdivision. No member of the board of adjustment may be on this agency. The agency will issue permits and hold hearings, but may not exercise any of the powers of the board of adjustment.<sup>48</sup>

If a municipality, county, or other governmental subdivision has surplus airport land, such property may be set aside for industrial purposes or it may be sold or leased as the governmental unit prescribes. To provide for the improvement of such property for industrial purposes, the municipal authority is authorized to provide all necessary utilities. It may lay out, construct or improve roadways, sewers, lights and water. The cost of such improvements will be paid from funds made available from lease or sale of such lands.<sup>49</sup>

Any municipality over 10,000 population is authorized to lease any of its airport grounds and improvements to private concerns for up to twenty-five years. The municipality may require the lessee to erect improvements and maintain them at their own or the municipality's expense. The lease will only be for expansion or development of the airport. The municipality is also authorized to construct and maintain landing areas at its expense, and to lease buildings to federal agencies and private or commercial air lines for up to twenty-five years. This permits the municipality to expand its airport at the least possible public expense.<sup>50</sup>

## FOOTNOTES

[Unless otherwise specified all footnotes refer to MISS. CODE ANN. (1972)].

1. § 61-3-5.
2. § 61-3-7.
3. § 61-3-15.
4. §§ 61-5-33, -35, -39(4).
5. §§ 61-3-69, -71, -73.
6. § 61-3-79.
7. Miss. Aero. Comm., Rules and Regs., § 2, para. 4, page 3 (June 1970).
8. § 61-1-5.
9. § 61-1-13.
10. § 61-1-17.
11. § 61-1-33.
12. § 61-1-43.
13. § 61-1-31.
14. Miss. Aero. Comm., Rules and Regs., § 2, para. 1, page 1 (June 1970).
15. Id., § 5, para. B(1) (June 1970).
16. Id., § 2, para. 5, page 3, (June 1970).
17. § 61-5-71.
18. § 61-5-73.
19. § 21-33-301.
20. § 21-19-59.
21. § 65-5-75.

22. MISS. CODE ANN. § 7545 (1956). Caveat: This section has been repealed by implication in the 1972 Code edition.
23. § 61-5-15.
24. § 61-5-35.
25. § 61-5-5.
26. § 61-5-75.
27. § 59-7-405.
28. § 59-9-25.
29. § 61-5-47.
30. § 17-5-3.
31. § 17-5-5.
32. § 11-35-21.
33. § 61-3-17.
34. § 61-5-73.
35. § 61-3-83.
36. § 61-3-5.
37. § 61-3-15 et seq.
38. § 61-7-7.
39. § 61-7-29.
40. § 61-7-11.
41. § 61-7-27.
42. § 61-7-15.
43. § 61-7-25.

44. § 61-7-5.
45. Miss. Aero. Comm. , Rules and Regs. , § 3, para. 2, page 4 (June 1970).
46. § 61-7-17.
47. § 61-7-19.
48. Id.
49. § 57-7-1.
50. § 61-5-91.

## V. POLLUTION CONTROL

In a general statement of policy it is recognized that, since the pollution of the air and waters of the state constitute 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 since 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 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 so as to protect the health, general welfare and physical property of the people; 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.<sup>1</sup> In response to these needs and with the purpose of achieving these goals, the Mississippi Air and Water Pollution Control Commission has been created.<sup>2</sup> The Commission is designated as the state air and water pollution control agency for all purposes of federal pollution control legislation, and is authorized to

take all action necessary or appropriate to secure for this state the benefit of such legislation.<sup>3</sup>

The Commission is composed of the following eleven members: the Director of the Division of Sanitary Engineering of the State Board of Health; the Director of the State Game and Fish Commission; the Water Engineer of the State Board of Water Commissioners; the Supervisor of the State Oil and Gas Board; the Executive Secretary of the Mississippi Marine Conservation Commission; one (1) member to be appointed by Commissioner of Agriculture and Commerce who is actively engaged in and whose principal income is from farming; and five (5) members to be appointed by the Governor, one (1) of whom will represent municipalities and will be an elected official of a municipality of the state; two (2) of whom will represent industry; one (1) of whom is actively engaged in and whose principal income is from farming; and one (1) of whom will be appointed from a list of ten (10) names submitted by the Mississippi Wildlife Federation.<sup>4</sup> The term of office of the members appointed by the Governor is six (6) years.<sup>5</sup> In addition, there are three (3) associate members of the Commission who have the right to meet with the Commission at any time and who also have the right of full discussion in matters pending before the Commission, but who have no vote thereon: the Director of the Agricultural and Industrial Board; the State Geologist; and the Director of State Parks.<sup>6</sup>

The Commission appoints an executive director who must be a person fully trained and experienced in pollution control.<sup>7</sup> The executive director exercises administrative supervision of air and water pollution and air and

water quality control programs adopted by the Commission and, in the interim between meetings of the Commission, he has authority to perform in the name of the Commission all functions and duties delegated to him by the Commission, including the issuance of emergency orders.<sup>8</sup>

The Commission may exercise the following powers:

- (a) General supervision of the administration and enforcement of all rules, regulations and orders it promulgates.<sup>9</sup>
- (b) To develop comprehensive programs for the prevention, control and abatement of new or existing pollution of the air and waters of the state.<sup>10</sup>
- (c) To cooperate with other state and federal agencies, or political subdivisions, for the purpose of achieving the objectives with respect to air and waters.<sup>11</sup>
- (d) To administer funds allocated to carry out its functions.<sup>12</sup>
- (e) To conduct and encourage studies relating to air and water quality and pollution.<sup>13</sup>
- (f) To collect and disseminate information relating to air and water quality and pollution.<sup>14</sup>
- (g) To adopt, modify or repeal and promulgate standards of quality of the air and water for the abatement of pollution.<sup>15</sup>
- (h) To enforce rules and regulations implementing or effectuating the powers and duties of the Commission as it may deem necessary to prevent, control and abate existing or potential pollution.<sup>16</sup>
- (i) To issue, modify or revoke orders prohibiting, controlling or

abating discharges of contaminants and wastes into the air and waters of the state; and to require the construction of new or improved disposal systems, air-cleaning devices or other remedial measures to prevent, control, or abate air and water pollution; and to set standards of air and water quality.<sup>17</sup>

- (j) To hold hearings, to issue notices and subpoenas requiring the attendance of witnesses and production of evidence, to administer oaths, and to take such testimony as they may deem necessary.<sup>18</sup>
- (k) To require the prior submission of plans, specifications and other relative data and to inspect the construction of disposal systems or air-cleaning devices, in connection with the issuance of permits or approval required by law.<sup>19</sup>
- (l) To issue, revoke, modify or deny, under such conditions as it may prescribe, permits for the discharge of contaminants and waste into the air and waters of the state, or for the installation, modification or operation of disposal systems, or air-cleaning devices.<sup>20</sup>
- (m) To require the proper maintenance and operation of disposal systems, or air-cleaning devices; to require the installation and operation of monitoring devices or methods as deemed necessary and to insure that records pertaining to such devices be kept and submitted to the Commission.<sup>21</sup>
- (n) To exercise all incidental powers necessary to carry out the law.<sup>22</sup>

(o) The Commission has no jurisdiction or authority to make any rule on 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 regulations between employers and employees with respect to, or arising out of any air condition.<sup>23</sup>

It is unlawful for any person to cause pollution of the air or waters of 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 or waters. It is likewise unlawful to discharge any waste, products or substances into the air or waters which thereby reduces the quality of such air or waters below the air and water quality standards established by the Commission.<sup>24</sup> Any such action is declared to be a public nuisance.<sup>25</sup>

Whenever the Commission or one of its employees has reason to believe that there is a violation of the pollution standards, the Commission can serve upon the alleged violator a written complaint, and the Commission will afford a hearing to the alleged violator.<sup>26</sup> The Commission has the power to enter any private or public property to investigate and inspect conditions relating to pollution of the air or water; it may also require the maintenance of records relating to the operation of disposal systems or air-cleaning devices, and may examine such records.<sup>27</sup> The Commission may also issue emergency orders, when such emergency circumstances exist, and such order will last, unless otherwise terminated, for 45 days.<sup>28</sup> Any interested person can request, in writing,

that the Commission call a hearing for the purpose of taking action in respect to any matter within its jurisdiction.<sup>29</sup> All hearings before the Commission must be recorded.<sup>30</sup> Any person who is found by the Commission to have violated any of its provisions will be subject to a penalty of not less than fifty dollars (\$50.00) and not more than Three Thousand Dollars (\$3,000.00) for each violation, and each day upon which a violation occurs is a separate and additional violation. If the appellant desires to stay the execution of the penalty assessed, he will give bond with sufficient surety, payable to the State of Mississippi.<sup>31</sup> Any interested party aggrieved by an order of the Commission may file a sworn petition with the Commission setting forth the grounds and reasons for his complaint and asking for a hearing on the matter, provided no other hearing has been had on the same matter. Following such hearing, the final order or determination of the Commission will be conclusive unless petitioner, or other interested party at the hearing, within fifteen (15) days after adjournment of the meeting, appeals to the chancery court in the county where the hearing was held, or in the county where the object of the hearing is located, by giving a cost bond of not less than one hundred dollars (\$100.00) nor more than five thousand dollars (\$5,000.00). Such appeal to the chancery court will not stay the execution of the order. If further action is sought, the petitioner may appeal from the chancery court to the Supreme Court of Mississippi as provided by law.<sup>32</sup> In all legal matters concerning its activities, the Commission is advised and represented by the Attorney General of the State or one of his assistants who also prosecutes and defends for the state in all courts, all causes arising under the provisions and regulations promulgated by the Commission.<sup>33</sup>

The present examination of pollution control is divided into three main areas: (1) Water Pollution, (2) Air Pollution, and (3) Land Pollution.

## FOOTNOTES

[Unless otherwise specified all footnotes refer to MISS. CODE ANN. (1972)].

1. § 49-17-3.
2. § 49-17-7 [as amended by House Bill No. 680, ch. 505, Sec. 2, Laws of 1972].
3. § 49-17-13 [as amended by House Bill No. 680, ch. 505, Sec. 4, Laws of 1972].
4. § 49-17-7(a) [as amended by House Bill No. 680, ch. 505, Sec. 2, Laws of 1972].
5. Id.
6. § 49-17-7(b) [as amended by House Bill No. 680, ch. 505, Sec. 2, Laws of 1972].
7. § 49-17-13(1) [as amended by House Bill No. 680, ch. 505, Sec. 4(a), Laws of 1972].
8. Id.
9. § 49-17-17(a) [as amended by House Bill No. 680, ch. 505, sec. 5, Laws of 1972].
10. § 49-17-17(b).
11. § 49-17-17(c).
12. § 49-17-17(d).
13. § 49-17-17(e).
14. § 49-17-17(g).
15. § 49-17-17(h).
16. § 49-17-17(i).

17. § 49-17-17(j).
18. § 49-17-17(k).
19. § 49-17-17(l).
20. § 49-17-17(m).
21. § 49-17-17(n).
22. § 49-17-17(o).
23. § 49-17-17(p).
24. § 49-17-29 [as amended by House Bill No. 680, ch. 505, sec. 6, Laws of 1972].
25. Id.
26. § 49-17-31 [as amended by House Bill No. 680, ch. 505, sec. 8, Laws of 1972].
27. § 49-17-21 [as amended by House Bill No. 680, ch. 505, sec. 20, Laws of 1972].
28. § 49-17-27 [as amended by House Bill No. 680, ch. 505, sec. 11, Laws of 1972].
29. § 49-17-35.
30. § 49-17-39.
31. § 49-17-43.
32. § 49-17-41.
33. § 49-17-13(2) [as amended by House Bill No. 680, ch. 505, sec. 4(a), Laws of 1972].

### A. Water Pollution

The word "water" as used in this section 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."<sup>1</sup>

It is the express intention of the Air and Water Pollution Control Commission to prevent, eliminate or reduce to acceptable levels the pollution of the State. The aims of the Commission are to protect the public health and welfare, to enhance the quality of State Waters, to ensure the water's value as public water supplies, to facilitate the propagation of fish and wildlife, to provide recreational water, and to insure non-polluted water for agricultural, industrial and other legitimate uses.<sup>2</sup> Water quality is measured by samplings taken from points so distributed over the area and depth of the waters being studied as to permit a realistic appraisal of the actual or potential damage to water use or aquatic life that may exist.<sup>3</sup> The Commission may authorize exceptions to set standards of water quality upon presentation of sufficient evidence of intent to comply with the standards to the extent practical or technically feasible.<sup>4</sup> In no case is it permissible to deposit materials in waters of the state which will cause impairment of the reasonable or legitimate use of the waters.<sup>5</sup> All Commission

standards apply at all stages of streamflow which exceed the 7-day, 10-year minimum flow in unregulated, natural streams.<sup>6</sup>

There are certain minimum conditions the Commission has determined are applicable to all waters. First, waters must be free from all substances attributable to municipal, industrial, agricultural, or other discharges which will form putrescent or otherwise objectionable sludge deposits.<sup>7</sup> Secondly, waters must be free from floating debris, oil, scum and other floating materials attributable to municipal, industrial, agricultural or other discharges in amounts sufficient to be unsightly or deleterious.<sup>8</sup> Third, waters must be free from materials attributable to municipal, industrial, agricultural or other discharges producing color, odor, or other conditions in such degree as to create a nuisance.<sup>9</sup> Fourth, waters must be free from substances attributable to municipal, industrial, agricultural or other discharges in concentrations or combinations which are toxic or harmful to humans, animal or aquatic life.<sup>10</sup> Fifth, municipal, industrial, or other wastes must receive effective treatment or control in accordance with the latest practical technological advances having been approved by the Commission.<sup>11</sup>

1. Specific Water Quality Criteria.

a. Public Water Supply.

Water classified as part of the Public Water Supply is for use as a source of raw water for drinking and food purposes.<sup>12</sup> Any water treatment process must first be approved by the Mississippi State Board of Health.<sup>13</sup> Furthermore, the raw water supply must be such that after its treatment it will meet the "Public Health Service Drinking Water Standards" (latest edition).<sup>14</sup> Local

water supply districts -- such as Pearl River Valley Water Supply District -- are also charged with the duty of preserving the sanitary condition of water supplies.<sup>15</sup>

Scientific measurements are taken of various properties of water to ensure that the standards for public water supply are maintained. These properties include: dissolved oxygen, pH, temperature, bacteria, chlorides, specific conductance, dissolved solids, threshold odor, phenolic compounds, radioactive substances, and certain chemical constituents.<sup>16</sup>

b. Shellfish Harvesting Areas.

Waters classified as harvesting are to be used for the propagation and harvesting of shellfish for sale or for use as a food product.<sup>17</sup> These waters must meet the requirements set forth in the latest edition of the National Shellfish Sanitation Program, Manual of Operations, Part I, "Sanitation of Shellfish Growing Areas", as published by the U. S. Public Health Service.<sup>18</sup> Scientific standards to be measured in these waters include: dissolved oxygen, pH, temperature, bacteria, toxic substances, color, taste and odor producing substances.<sup>19</sup>

c. Recreation.

Waters in this classification are to be used for recreational purposes,<sup>20</sup> including swimming and water skiing. In considering the waters intended for water contact sports, the Commission would take into consideration the relative proximity of discharge of wastes and the potential hazards involved in locating swimming areas close to waste discharges.<sup>21</sup> The Commission is: not, however, to assign this classification to waters in which the water bacterial quality is

dependent upon adequate disinfection of waste and where the interruption of such disinfection treatment would render the water unsafe for water contact sports. <sup>22</sup>

Scientific measurements to be taken in these waters include: dissolved oxygen, pH, temperature, bacteria, specific conductance, dissolved solids, toxic substances, color, taste and odor producing substances. <sup>23</sup>

d. Fish and Wildlife.

Waters included in this classification are intended for fishing; propagation of fish, aquatic life and wildlife; and any other uses requiring water of lesser quality. <sup>24</sup> The scientific standards that must be met in these waters include: dissolved oxygen, pH, temperature, specific conductance, dissolved solids, toxic substances, taste and odor, and phenolic compounds. <sup>25</sup> Other state agencies involved in the protection of fish and game include the State Game and Fish Commission <sup>26</sup> and the State Board of Health. <sup>27</sup>

e. Agricultural and Industrial Water Supplies.

Waters of this classification are suitable for agricultural irrigation, livestock watering, industrial cooling and process water supplies, fish survival and other uses; excepted are waters used for fish and wildlife propagation, water contact sports and a source of a potable water supply. <sup>28</sup> The areas of scientific measurement are the following: dissolved oxygen, pH, temperature, specific conductance, and dissolved solids. <sup>29</sup> In this area the Air and Water Pollution Control Commission may also require persons owning or operating facilities which, through misadventure, happenstance or otherwise, cause pollution necessitating immediate remedial or cleanup action, to pay the cost of such remedial or cleanup action.

The Commission can recover this cost by a civil action brought in a circuit court of proper venue.<sup>30</sup>

f. Navigation and Utility Use.

Waters classified in this category are suitable for navigation, survival of fish, and any other uses; excepted are those waters used as a source of potable water supply, for fish and wildlife propagation, for recreational activities, including water contact sports, or for agricultural irrigation and livestock watering.<sup>31</sup> The scientific standards in these waters include: dissolved oxygen, pH, temperature, specific conductance and dissolved solids.<sup>32</sup>

2. Water Disposal.

The Air and Water Pollution Control Commission has many regulations and procedures specifically dealing with the problem of waste materials being introduced into the state's lakes and streams thereby decreasing the quality for which any body of water has been officially classified. As a threshold requirement no person can erect, construct, install, modify or operate any disposal system or extension or addition thereto without first securing a permit from the Commission.<sup>33</sup> This permit will specify the conditions under which it is issued.<sup>34</sup> Construction of any system must be commenced within 12 months after the issuance of the permit, however, or the permit will be void.<sup>35</sup>

Prior to the issuance of a permit, the following steps must be taken:

- (a) At least 30 days before submitting an application for a permit, a preliminary engineering report must be submitted to the Commission. This report, which must be prepared and submitted by

a professional engineer registered in this State, must include the quantity and characteristics of the waste before and after treatment, a detailed description of the treatment units and processes to be used, the expected time and level of operation to be required, and the anticipated effect on the receiving waters of the State.<sup>36</sup>

(b) Not sooner than 30 days after submission of the preliminary engineering report, but at least 60 days prior to the date action is desired, final plans and specifications must be submitted along with an application for a permit. The final plans and specifications must include: (1) a general layout; (2) detailed plans; (3) specifications; and (4) a summary of the design data.<sup>37</sup>

(c) After certification by the design engineer that the construction is complete and is in conformity with the approved application, the Commission will then issue a permit for the operation of the disposal facility.<sup>38</sup>

If the Commission finds that conditions in any existing disposal system or the operation thereof are such that modifications, additions or extensions are needed, it may issue a tolerance permit for a reasonable period of time to allow such changes to be incorporated.<sup>39</sup>

There are certain activities which are unlawful unless the person concerned has a current permit of approval. These include: (1) the construction, installation, modification or operation of any disposal system or any part thereof or any extension or addition to it; (2) the increase in volume or strength of any

wastes in excess of the permissible discharges specified under any existing permit; (3) the construction, installation or operation of any industrial, commercial or other establishment, including irrigation projects, or any extension or modification or addition, 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; and (4) the construction or use of any new outlet for the discharge of any wastes into the waters of the state.<sup>40</sup> Any person who is denied a permit by the Commission or who has such permit revoked or modified must be afforded an opportunity for a hearing in connection with the matter upon written application made within 30 days after service of notice of such denial, revocation or modification.<sup>41</sup>

a. Industrial.

Any firm or corporation discharging effluent industrial waste, oil waste or other waste into any waters of this state is required to pay an annual fee for inspection. The inspection is to determine whether such disposal constitutes pollution.<sup>42</sup> This fee is determined on the basis of the number of employees as follows:

- (1) Less than 50 -- \$50
- (2) 50 or more, but less than 150 -- \$100
- (3) 150 or more -- \$200

It is unlawful for any corporation to deposit or discharge into the waterways, either directly or through private or public sewers, any sewage, butcher's offal, garbage, dead animals, gaseous liquids or solid matter, oil, gasoline, residuum of gas, calcium carbide, trade waste, tar or refuse, or any other matter which

is capable of producing floating matter or scum on the surface of the water, sediment in the bottom of the waterways, or the odors and gases of putrefaction.<sup>44</sup> It is likewise unlawful for any person [person includes any agency, public or private corporation, partnership, etc. Miss. Code Ann. § 49-17-5(3)(b) (1972)] to discharge wastes into waters of the state in a location likely to cause pollution or in such a manner as to reduce the quality of such waters below the standards established by the Air and Water Control Commission.<sup>45</sup>

Other agencies are involved with controlling industrial waste in conjunction with the Air and Water Pollution Control Commission, thus providing a decentralized method of dealing with local and regional problems. The Pearl River Industrial Commission is empowered to draw plans for protection against pollution, to devise methods of disposing of industrial wastes and to adopt long range plans for sewerage disposal for the area.<sup>46</sup> This effort is complemented by the activities of Pearl River Basin Development District<sup>47</sup> and the Pearl River Valley Water Supply District.<sup>48</sup> The Game and Fish Commission also has jurisdiction to help in the control of waste disposal. One of its specific functions is to require that every person, firm or corporation which discharges industrial waste into streams in the state pay a sum, not to exceed \$200 annually, for the purpose of financing the inspection and supervision of such waste disposal. These funds are then used solely for the purpose of enforcing the Air and Water Pollution Act.<sup>49</sup>

The Board of Health has many regulations detailing sanitary procedures that must be complied with by various businesses. In addition, the State Oil and Gas Board can pass regulations which require disposal of any waste products brought to the surface by any well. It can also pass regulations designed to prevent seepage, overflow, and damage to the topsoil.<sup>50</sup> The Board of Supervisors in any county, acting through county port authority or county development commission, may es-

establish industrial parks, and in such parks provide for water, sewage, and drainage facilities.<sup>51</sup>

b. Municipalities.

Municipalities which discharge effluent, industrial waste, oil waste or other waste disposal into any waters of the state must pay an annual fee for inspection to determine whether such disposal constitutes pollution.<sup>52</sup> The amount of the fee is based on population as follows:<sup>53</sup>

- (1) Less than 5,000 - \$50
- (2) 5,000 to 15,000 - \$100
- (3) 15,000 but less than 30,000 - \$200
- (4) 30,000 but less than 50,000 - \$500
- (5) Over 50,000 - \$1,000

These fee rates, however, do not apply to municipalities discharging waste into municipally owned and operated sewage disposal systems.<sup>54</sup>

It has been determined that waste disposal by septic tanks with absorption fields is not an acceptable practice for densely populated areas.<sup>55</sup> Such disposal is considered satisfactory for isolated locations, however, and no permit is required under the regulations of the Air and Water Pollution Control Commission for their construction or operation.<sup>56</sup> The Commission strongly recommends that counties and municipalities adopt regulations governing the construction of disposal systems that will be adequate for the population of such areas.<sup>57</sup> Where evidence of pollution becomes obvious, however, the Commission will require construction of adequate waste treatment facilities.<sup>58</sup>

Any municipality may pass sanitary laws, but they are subject to, and must not be inconsistent with, the regulations of the State Board of Health regarding

the county where the municipality is situated.<sup>59</sup> In fact, the health officer of each county is under a duty to make reports to the State Board of Health concerning sanitary conditions of his district or county.<sup>60</sup> Under authority of State Board of Health, cities, towns and villages may construct sewers to empty into any navigable stream or any creek 25 miles or more in length.<sup>61</sup> The Board, however, when public health requires, may prevent the emptying of sewerage into such stream or creek, or may require that the particular city, town or village take necessary steps to correct the problem.<sup>62</sup> In addition, the Game and Fish Commission may require that the municipality pay a fee, not to exceed \$200 annually, to fund inspection and supervision costs related to such waste disposal.<sup>63</sup>

c. Individual.

Under regulations of the State Board of Health,<sup>64</sup> every habitable building must be equipped with adequate toilet facilities. These facilities must be maintained in good repair. As a general rule, all human excreta and other liquid wastes must be disposed of in accordance with the Board's Rules and Regulations. The Board also can establish regulations for house trailers, house trailer camps, or tourist camps. These regulations will include provisions for water supply and disposal, plumbing, drainage, and disposal of waste and refuse.<sup>65</sup> The Board can, if necessary, enact special regulations for protecting from contamination the watershed from which any specific public water supply is derived.<sup>66</sup> These regulations will deal with the methods of sewage and waste disposal as they may affect the sanitary quality of the water tributary to the supply.<sup>67</sup>

Any person who pollutes any navigable waters by putting in them any

refuse or foul matter calculated to render the water thereof less fit for drinking or for the sustenance of fish, shall be guilty of a misdemeanor. A conviction is punishable by a fine of not more than \$50 or by imprisonment in the county jail for not more than 30 days, or both.<sup>68</sup> Furthermore, no waste material of any kind or character can be thrown from any boat into the yacht basin, harbor, or on the decks, peirs or bulkhead.<sup>69</sup>

### 3. Emergency Control.

In the event that an emergency is found to exist by the Air and Water Pollution Control Commission, it may issue an emergency order as circumstances may require.<sup>70</sup> This emergency order will become operative at the time and date designated therein, and will remain in force until modified or cancelled by the Commission, superseded by a regular order of the Commission, or until 45 days from its effective date, whichever occurs first. It may be enforced by an injunction if necessary.<sup>71</sup>

Under statutory authority, flood control districts may be created to cooperate with the federal government in construction of flood control improvements, to protect property, control floods, prevent overflows, and to reclaim overflow lands. They may also cooperate to operate and maintain dams and reservoirs which may be constructed by the federal government.<sup>72</sup> To accomplish these objectives, a flood control district, by its commissioners, is authorized and empowered to acquire lands, flowage rights, rights of way, or easements within or without of the district by purchase, grant, donation or condemnation.<sup>73</sup> The commissioners may purchase land from the State of Mississippi for the district's use or for the federal government's use in building or maintaining flood control

works and improvements.<sup>74</sup> The purchase of state land will be upon the same terms and conditions as lands purchased from other persons, except that the limitation of the number of acres which may be sold to any one person will not apply to a purchase by the flood control district.<sup>75</sup> The commissioners of a flood control district, or any agency with which it may cooperate in the execution of its plan to control surplus or flood waters, will have the power to construct and maintain by-passes for conveyance of these waters.<sup>76</sup> They may convey these waters from one point in a natural watercourse to another point therein or from one watercourse to another watercourse.<sup>77</sup> Finally, the commissioners of a flood control district have the power to police the works of the district, and in times of floods or great emergency they may compel assistance of the district's citizens in protecting the works.<sup>78</sup> They may also prohibit persons or things from passing over the district's works if they determine that damage would result from such activity.<sup>79</sup>

## FOOTNOTES

[Unless otherwise specified all footnotes refer to MISS. CODE ANN. (1972)].

1. § 49-17-5(1)(f) [as amended by H. B. No. 680, ch. 505, sec. (1)(f), Laws of 1972].
2. Water Quality Criteria for Intrastate Waters, Regulation WPC-3-70, sec. I(1) (1970).
3. Id., sec. I(2).
4. Id., sec. I(3).
5. Id.
6. Id., sec. I(5).
7. Id., sec. II(1).
8. Id., sec. II(2).
9. Id., sec. II(3).
10. Id., sec. II(4).
11. Id., sec. II(5).
12. Id., sec. III(1).
13. Id.; see also, State Board of Health Regulations on Sanitary Control of Public Water Systems.
14. Id.
15. § 51-9-127.
16. Water Quality Criteria for Intrastate Waters, Regulation WPC-3-70, sec. III(1) a-k, 1970.
17. Id., sec. III(2).

18. Id.
19. Id. , a-e.
20. Id. , sec. III(3).
21. Id.
22. Id.
23. Id. , a-g.
24. Id. , sec. III(4).
25. Id. , a-h.
26. § 49-1-29. For further provisions and sanctions under this Commission,  
see also, § 49-7-81.
27. § 97-15-45.
28. Water Quality Criteria for Intrastate Waters, Regulation WPC-3-70,  
Sec. III(5), 1970.
29. Id. , a-e.
30. § 49-17-43 [as amended by H. B. No. 680, ch. 505, sec. 14, Laws of  
1972].
31. Water Quality Criteria for Intrastate Waters, Regulation WPC-3-70, sec.  
III(6), 1970.
32. Id. , a-e.
33. Regulation for permits for Operating Disposal Systems, Reg. 2-68, § 4  
(1968).
34. Id.
35. Id.
36. Id. , (a).
37. Id. , (b).

38. Id., (c).
39. Id., § 5.
40. § 49-17-29 [as amended by H. B. No. 680, ch. 505, sec. 6, Laws of 1972].
41. Id. (b)1.
42. § 49-17-21 [as amended by H. B. No. 680, ch. 505, sec. 10, Laws of 1972].
43. Id.
44. 16 Miss. State Port Authority Tariff 2-B, § 11, item 230 (Supp. 1, 1970).
45. § 49-17-29(b) [as amended by H. B. No. 680, ch. 505, sec. 6(b), Laws of 1972].
46. § 51-9-5.
47. § 51-11-1.
48. § 51-9-103, -121.
49. § 49-1-29(n).
50. § 53-1-17(b), (c).
51. § 59-9-23.
52. § 49-17-21(e) [as amended by H. B. No. 680, ch. 505, sec. 10, Laws of 1972].
53. Id.
54. Id.
55. Reg. for Permits for Operating Disposal Systems, Reg. 2-68 (1968) § 2.
56. Id.
57. Id.
58. Id.
59. § 41-3-57.
60. § 41-3-49.

61. § 97-15-45.
62. Id.
63. § 49-1-29(n).
64. Regulation - Sanitation of Habitable Buildings.
65. § 41-25-13.
66. State Board of Health Regulation - Sanitary Control of Public Water Systems.
67. Id.
68. § 97-15-45.
69. Biloxi Port Commission, Rule 5.
70. § 49-17-27 [as amended by H. B. No. 680, ch. 505, sec. 11, Laws of 1972].
71. Id.
72. § 51-35-105.
73. § 51-35-159.
74. Id.
75. Id.
76. § 51-35-173.
77. Id.
78. § 51-35-197.
79. Id.

B. Air Pollution (Air Quality Standards)<sup>1</sup>

1. General Nuisances.

Provision for the control and abatement of general nuisances is made by regulations promulgated by the governing authorities of municipalities and by the Mississippi Air and Water Pollution Control Commission (hereinafter referred to as the commission).

The governing authorities of municipalities have the power to make regulations to secure the health of the municipalities and to prevent, remove and abate nuisances.<sup>2</sup> The following illegal acts are declared by statute to be public nuisances: to cause pollution of the air; to place, or cause to be placed, any wastes or other products in a location where they are likely to cause air pollution; to discharge any waste products or substances into the air which reduces the quality of the air below the air quality standards established by the commission.<sup>3</sup>

The regulations promulgated by the commission<sup>4</sup> forbid any person to cause or allow the emission of particles or any contaminants in sufficient amounts, or of such duration, as to be injurious to humans, animals, plants or property or to create a condition of air pollution.<sup>5</sup> Also, no person may cause or permit the handling, transportation or storage of any material in a manner which allows, or may allow, unnecessary amounts of particulate matter<sup>6</sup> to become airborne.<sup>7</sup> When dust, fumes, gases, mist, odorous matter, vapors, or any combination thereof escape from a building or equipment in such a manner and amount as to cause a nuisance to property other than that from which it originated, the commission may order this corrected so that all air and gases, or air and gas-borne

material, leaving the building or equipment are controlled or removed prior to discharge to the open air.<sup>8</sup> In order to control particulate fallout, the commission's regulations further provide that no person shall cause or allow the emission of particulate fallout to exceed background levels by 5.25 grams/meter squared/month if such fallout occurs on property other than that from which the fallout originated.<sup>9</sup>

## 2. Fuel Burning:

In fossil fuel burning, the maximum permissible emission of ash and/or particulate matter from fossil fuel burning installations must conform to the line shown in Figure 1 of the chart on page 13, Air Quality Regulations, Reg. APC-S-1 (1972).<sup>10</sup> When a person is using combination boilers, the fuel burning operations utilizing a mixture such as, but not limited to, fossil fuels plus bark, or spent wood, or water treatment by-products sludge, may be allowed emission rates up to 0.30 grains per standard dry cubic foot.<sup>11</sup> When using Kraft Process Recovery Boilers, the emissions of particulate matter from a recovery furnace stack shall not exceed 4 pounds per ton of equivalent air dried Kraft pulp produced at any given time.<sup>12</sup> And during an Air Pollution Alert or Warning,<sup>13</sup> persons operating fuel-burning equipment which requires boiler lancing or soot blowing, may perform such operations only between the hours of 12:00 noon and 4:00 p. m.<sup>14</sup>

## 3. Open Burning.

Open burning is any burning of combustible materials or any fire from which the products of combustion are emitted directly into the open air without passing through a stack or chimney.<sup>15</sup> The production or emission of dense smoke or the open burning of garbage, rubbish, domestic waste, commercial or

industrial, is prohibited, except as follows:<sup>16</sup> fires set for recognized agricultural and/or forestry practices;<sup>17</sup> fires set for the training of fire control personnel;<sup>18</sup> fires set for prevention of a fire hazard that would otherwise endanger human or animal life where no safe alternative is possible;<sup>19</sup> fires set for recreational purposes unless prohibited by local ordinances and restrictions;<sup>20</sup> fires set for the backyard reduction of leaves on the premises on which they fell unless prohibited by local ordinances and restrictions;<sup>21</sup> fires used to dispose of waste resulting from storm damage;<sup>22</sup> fires set for clearing land as provided by law;<sup>23</sup> fires used for cooking of food for human beings;<sup>24</sup> and approved safety flares to consume oilfield or related waste products.<sup>25</sup> The commission may grant approval for flares used during the production testing of oil and gas wells provided the commission is notified in advance and the plan is submitted and approved showing that air quality standards will not be exceeded.<sup>26</sup>

The commission may grant approval for the direct incineration of oil field waste products. The commission must be notified at least twenty-four (24) hours before prescribed request, and burning must meet at least the following conditions:<sup>27</sup> location of the burning must not be within or adjacent to a city or town or in such proximity thereto that the ambient air<sup>28</sup> of the city or town may be affected by smoke from the burning;<sup>29</sup> the burning may be conducted only between the hours 8:00 a. m. and 5:00 p. m. , and the duration of the burning should not last over forty-five (45) minutes;<sup>30</sup> the burning must be controlled as not to create a hazard;<sup>31</sup> and finally there shall be no open burning by any person of

tree waste, vegetation, refuse, or debris in any form during an Air Pollution Alert or Air Pollution Warning.<sup>32</sup>

In addition to the above limitations, the governing authorities of municipalities have the power to make regulations for fire prevention,<sup>33</sup> as does the Mississippi Game and Fish Commission.<sup>34</sup>

#### 4. Incineration.

An incinerator is a combustion device specifically designed for the destruction by high temperature burning of solid, semi-solid, liquid or gaseous combustible wastes and from which the solid residues contain little or no combustibles.<sup>35</sup> Any municipality may take all steps necessary to operate, or build, an incinerator service,<sup>36</sup> and it can also regulate the construction and building of chimneys, smoke stacks, and smoke and hot-air flues.<sup>37</sup> The maximum discharge of particulate matter from any incinerator must not exceed 0.29 grain per standard dry cubic foot of flue gases calculated to twelve percent (12%) carbon dioxide by volume for products of combustion.<sup>38</sup> This limitation applies when the incinerator is operating at design capacity.<sup>39</sup> The carbon dioxide produced by the combustion of any auxiliary fuels are excluded from the calculation of twelve percent (12%) carbon dioxide. Any equipment acquired after May 8, 1970, must be of the multiple chamber type or its equivalent for emission control.<sup>40</sup> In critical areas where an installation is in close proximity to a residential area, the incinerator is limited to emission of 0.1 grains per standard dry cubic foot of flue gases calculated to twelve percent (12%) carbon dioxide by volume for products of combustion.<sup>41</sup> Also, no person shall incinerate radioactive material for the purpose of disposal or preparation for disposal except as specially approved by the Radiation Control Agency.<sup>42</sup>

As in the case of fuel burning during an Air Pollution Alert, the use of incinerators for the disposal of any form of solid waste shall be limited to the hours between 12:00 noon and 4:00 p. m.<sup>43</sup> But during an Air Pollution Warning, the use of incinerators for the disposal of any form of solid waste or liquid waste is prohibited.<sup>44</sup>

Where these requirements require a degree of emission abatement which is not attainable with existing equipment now commercially available or with existing technology or where control equipment is so costly that the process would have to be terminated rather than comply, the commission may grant a variance provided that the excessive emissions which result are not being actively challenged as a nuisance by the proximate neighbors to the operation and human, plant, or animal life is not endangered.<sup>45</sup> Where such challenges are made, or such endangerment exists, the commission will have no choice but to enforce the regulations.<sup>76</sup> As technological advancements are made in the field of those operating under variances of this section, the person holding such variance will be required to comply with the standards set forth above.<sup>47</sup>

## 5. Contaminant Emissions.

An air contaminant is any particulate matter, dust, fumes, gas, mist, smoke or vapor produced by any unnatural process.<sup>48</sup> Air contamination is the presence in the outdoor ambient air of one or more air contaminants which contribute to a condition of air pollution.<sup>49</sup>

It is unlawful for any person to build, alter, replace or operate any equipment which will cause the issuance of air contaminants unless he holds a permit from the Mississippi Air and Water Pollution Control Commission. Repairs or maintenance for which a permit has been previously issued are exempted from this permit requirement.<sup>50</sup> The commission has the power to issue, modify or revoke orders prohibiting, controlling or abating discharges of contaminants into the air of this state and can require the construction of new disposal or air-cleaning devices or the extension or alteration of existing systems.<sup>51</sup>

No person may cause or permit the emission of smoke from a point source<sup>52</sup> into the open air of which the shade is darker than number two on the Ringelmann<sup>53</sup> Smoke Chart.<sup>54</sup> Exceptions to this general rule are made for start-up and soot-blowing operations and for emergencies conditions. Start-up operations may produce darker emissions for up to fifteen minutes per start-up in any one hour, but there can be no more than three start-ups per stack in any twenty-four hour day.<sup>55</sup> Emissions resulting from soot blowing operations are permitted provided such emissions do not exceed a shade of appearance of a Ringelmann No. 3 on the Ringelmann Smoke Chart providing the aggregate duration of such emissions during any twenty-four hour period does not exceed ten minutes per billion BTU gross heating value of fuel in

any one hour.<sup>56</sup> Tolerance may also be granted for a breakdown or an emergency condition allowing darker emissions, provided that prompt remedial action is initiated and the commission is notified.<sup>57</sup>

No person may cause, permit, or allow the emission from any manufacturing process, in any one hour from any point source, of particulate matter in total quantities in excess of the amount shown in the table on page 12, Air Quality Regulations, Reg. APC-S-1 (1972).<sup>58</sup> Conveyor discharge of coarse solid matter may be allowed if no nuisance is created beyond the property boundary where the discharge occurs.<sup>59</sup> Dealing specifically with various types of manufacturing, all Kraft Pulping Mills that existed prior to May 8, 1970 and those that were not modified, have to comply with the following emission limits:<sup>60</sup> the emission of particulate matter from recovery furnace stacks shall not exceed four pounds per ton of equivalent air-dried Kraft pulp;<sup>61</sup> the emission of particulate matter from lime kilns shall not exceed one pound per ton of equivalent air-dried Kraft pulp;<sup>62</sup> and finally, the emission of particulate matter from smelt tanks shall not exceed one-half pound per ton of equivalent air-dried Kraft pulp.<sup>63</sup>

The owner or operator of air pollution control equipment vented to the atmosphere, which came into existence after May 8, 1970, must have the necessary sampling ports and ease of accessibility.<sup>64</sup> The owner or operator of air pollution control equipment that was in existence prior to May 8, 1970 must provide the necessary sampling ports and ease of accessibility when deemed necessary by the commission, but a reasonable time to comply with the regulations is allowed.<sup>65</sup>

The maximum discharge of sulfur oxides from any fuel burning installation in which the fuel is burned primarily to produce heat or power by indirect heat transfer may not exceed 4.8 pounds (measured as sulfur dioxide) per million BTU heat input.<sup>66</sup> The maximum discharge of sulfur dioxide from any modified fuel burning unit, whose generation capacity is less than 250 million BTU per hour and in which the fuel is burned primarily to produce heat or power by indirect heat transfer, may not exceed 2.4 pounds per million BTU input.<sup>67</sup> Except as is otherwise required, no person may cause or permit the emission of gas containing sulfur oxides (measured as sulfur dioxide) in excess of 2,000 ppm (volume) from any existing process equipment, or in excess of 500 ppm (volume) for new equipment unless otherwise provided by the commission.<sup>68</sup> No person may allow the emission of fluorides into the ambient air to exceed four-tenths (0.4) pounds per ton of  $P_2O_5$  or equivalent.<sup>69</sup>

Any person responsible for the operation of a source of air contaminants which emits 0.25 tons per day or more of air contaminants for which air standards have been adopted must prepare emission control action programs consistent with good industrial practice and safe operation procedures for reducing the emission of air contaminants into the outdoor atmosphere during periods of an Air Pollution Alert, Air Pollution Warning, or Air Pollution Emergency. Emission control action programs are designed to reduce or eliminate emissions of air contaminants into the outdoor atmosphere in accordance with the objectives set forth in Tables 1-5 of Regulations for the Prevention of Air Pollution Emergency Episodes, Reg. APC-S-3, p. 9-24 (1972).<sup>70</sup> These emission control action programs must be in writing and show the source of air contamination, the approxi-

mate time required to effect the program, a brief description of the manner in which the reduction will be achieved during each stage of an air pollution episode and such other information as the commission deems pertinent.<sup>71</sup> These emission control action programs are subject to commission review and approval.<sup>72</sup>

Every existing or proposed industry or facility which does, or may, emit contaminants, regardless of quantity, must secure the proper permit(s) from the Mississippi Air and Water Pollution Control Commission.<sup>73</sup>

Every facility emitting in excess of 0.25 tons of total air contaminants per day must supply the commission with an emission reduction schedule setting forth preplanned abatement strategies in the event of an emergency episode.<sup>74</sup> Facilities existing as of May 11, 1972, had until September 18, 1972 to submit their schedules.<sup>75</sup> New facilities<sup>76</sup> are required to submit their schedules within 120 days of their start-up dates.<sup>77</sup> Emissions reduction schedules for new facilities must contain three stages of reduction procedures:<sup>78</sup> alert level reduction,<sup>79</sup> warning level reduction,<sup>80</sup> and emergency level reduction.<sup>81</sup>

Each level of reduction procedures must show the type and source of air contaminants, the amount of reduction of contaminants, the time involved in reduction and the manner in which reduction will be achieved.<sup>82</sup> The emissions reduction schedule is subject to approval and review by the commission.<sup>83</sup>

If the emissions reduction schedule is not accepted by the commission, they return it, and state their reasons for non-approval.<sup>84</sup> If the emissions reduction schedule is not approved, the applicant has thirty (30) days to conform to the standards set forth by the commission,<sup>85</sup> and if any person is aggrieved by the requirements to amend the schedule, he is entitled to a hearing.<sup>86</sup> Should an applicant fail to submit an emissions reduction schedule within the allowable

time period or fail to submit an amended preplanned strategy, the commission establishes or revises said plans to cause it to meet the standards set by the commission.<sup>87</sup> Upon the issuance of the appropriate order by the commission, the applicant must carry the revised or established strategies into effect.<sup>88</sup>

Any new facility must be designed and constructed in conformity with the commission's rules and regulations.<sup>89</sup> The new facility must be designed and equipped in accordance with the latest control technology in order to reduce emission to a minimum where practical or otherwise required.<sup>90</sup> The new facility also must be constructed in such a manner as to minimize point source and fugitive dust emissions.<sup>91</sup> A new facility, if required by the commission, must be provided with sampling ports as stipulated by the commission,<sup>92</sup> safe access to each port,<sup>93</sup> and instrumentation to monitor and record emissions data.<sup>94</sup>

The commission may require the installation, maintenance and use of monitoring equipment as deemed necessary to evaluate the air contaminant emissions.<sup>95</sup> They may also require the maintenance of records relating to the operation or air contamination sources, and any authorized representative of the commission may examine and copy the records pertaining to the operation of such air contaminant sources.<sup>96</sup> Internal reports, memoranda, field reports, laboratory analysis and like material, other than emission data, shall be kept confidential by the commission.<sup>97</sup> The emission data is available for public inspection between the hours of 9:00 a. m. and 5:00 p. m. , Monday through Friday, in the office of the Mississippi Air and Water Pollution Control Commission,

Sixth Floor, Robert E. Lee Building, Jackson, Mississippi.<sup>98</sup>

The commission reserves the right to prescribe or establish restrictive emission limits as is deemed necessary in problem areas. The expansion, alteration, or establishment of a new industry may also result in more restrictive emission limits than presently prescribed.<sup>99</sup>

## 6. Emergency Control.<sup>100</sup>

Conditions justifying the proclamation of an air pollution alert, air pollution warning, or air pollution emergency are deemed to exist whenever the director of the Commission determines that the accumulation of air pollution in any place is attaining or has attained levels which could, if such levels are sustained or exceeded, lead to substantial threat to the health of the people.<sup>101</sup>

To make an Air Pollution Forecast, which is an internal watch by the Department of Air Pollution Control actuated by: (1) a national weather service advisory that an atmospheric stagnation advisory is in effect or (2) an equivalent local forecast of stagnant atmospheric conditions,<sup>102</sup> the director is guided by the criteria outlined below.

The Alert is that concentration of pollutants at which first stage control actions are to begin. An alert is declared when any one of the following levels is reached at any monitoring site:<sup>103</sup>

- (1) the  $\text{SO}_2$  level is equal to or greater than 0.3 ppm ( $800 \mu\text{g}/\text{m}^3$ ) for a 24-hour average;<sup>104</sup>
- (2) the particulate level is equal to or greater than  $3\text{COH}_5$  or  $375 \mu\text{g}/\text{m}^3$  for a 24-hour average;<sup>105</sup>
- (3)  $\text{SO}_2$  and particulate combined ---- product of  $\text{SO}_2$ , ppm, 24-hour average, and  $\text{COH}_5$  24-hour average equal to 0.2; or product of  $\text{SO}_2$  --  $\mu\text{g}/\text{m}^3$  m 24-hour average, and particulate  $\mu\text{g}/\text{m}^3$ , 24-hour average is equal to 65000;<sup>106</sup>
- (4) the CO level is equal to or greater than 15 ppm ( $17 \text{mg}/\text{m}^3$ ) for an 8-hour average;<sup>107</sup>
- (5) the  $\text{NO}_2$  level is equal to or greater than 0.6 ppm ( $1130 \mu\text{g}/\text{m}^3$ ) for a 1-hour average or 0.15 ppm ( $282 \mu\text{g}/\text{m}^3$ ) for a 24-hour average, and meteorological conditions are such that the pollutant concentration is expected to remain at the above

levels for twelve (12) or more hours or increase unless control actions are taken; <sup>108</sup> or (6) the oxidant ( $O_3$ ) level is equal to or greater than 0.1 ppm ( $200 \mu\text{g}/\text{m}^3$ ) for a 1-hour average. <sup>109</sup>

The Warning level indicates that air quality is continuing to degrade and that additional control actions are necessary. <sup>110</sup> A warning is declared when any of the following levels is reached at any monitoring site: (1) the  $SO_2$  level is equal to or greater than 0.6 ppm ( $1600 \mu\text{g}/\text{m}^3$ ) for a 24-hour average; <sup>111</sup> (2) the particulate level is equal to or greater than  $5.0 COH_5$  or  $625 \mu\text{g}/\text{m}^3$  for a 24-hour average; <sup>112</sup> (3)  $SO_2$  and particulates combined -- product of  $SO_2$ , ppm, 24-hour average and  $COH_5$ , 24-hour average equal to 0.8; or product of  $SO_2$ ,  $\mu\text{g}/\text{m}^3$ , 24-hour average and particulate  $\mu\text{g}/\text{m}^3$ , 24-hour average equal to 261000; <sup>113</sup> (4) the CO level is equal to or greater than 30 ppm ( $34 \text{ mg}/\text{m}^3$ ) for an 8-hour average; <sup>114</sup> (5) the oxidant ( $O_3$ ) level is equal to or greater than 0.4 ppm ( $88 \mu\text{g}/\text{m}^3$ ) for a 1-hour average; <sup>115</sup> (6) the  $NO_2$  level is equal to or greater than 1.2 ppm ( $2260 \mu\text{g}/\text{m}^3$ ) for a 1-hour average or 0.3 ppm ( $565 \mu\text{g}/\text{m}^3$ ) for a 24-hour average and meteorological conditions are such that pollutant concentrations are expected to remain at the above levels for twelve (12) or more hours or increase unless control actions are taken. <sup>116</sup>

The Emergency level indicates that air quality is continuing to degrade to a level that should never be reached and that the most stringent control actions are necessary. <sup>117</sup> An emergency is declared when any one of the following levels is reached at any monitoring site: (1) the  $SO_2$  level is equal to or greater than

0.8 ppm ( $2100 \mu\text{g}/\text{m}^3$ ) for a 24-hour average;<sup>118</sup> (2) the particulate level is equal to or greater than  $7.0 \text{ COH}_5$  or ( $875 \mu\text{g}/\text{m}^3$ ) for a 24-hour average;<sup>119</sup> (3) the  $\text{SO}_2$  and particulate combined --- product of  $\text{SO}_2$  ppm, 24-hour average and particulate  $\mu\text{g}/\text{m}^3$ , 24-hour average equal to 393000;<sup>120</sup> (4) the CO level is equal to or greater than 40 ppm ( $46 \text{ mg}/\text{m}^3$ ) for an 8-hour average;<sup>121</sup> (5) the oxidant ( $\text{O}_3$ ) level is equal to or greater than 0.6 ( $1200 \mu\text{g}/\text{m}^3$ ) for a 1-hour average;<sup>122</sup> or (6) the  $\text{NO}_2$  level is equal to or greater than 1.6 ppm ( $3000 \mu\text{g}/\text{m}^3$ ) for a 1-hour average or 0.4 ppm ( $750 \mu\text{g}/\text{m}^3$ ) for a 24-hour average and the meteorological conditions are such that this condition is expected to continue for twelve (12) or more hours.<sup>123</sup>

Once one of these levels is declared, any status reached by application of these criteria will remain in effect until the criteria for that level is no longer met. At such time, the next lower status is assumed until a safe air contaminant level is reached.<sup>124</sup>

The following are emergency orders which may be appropriate for use by the director of the commission upon his declaration that an Air Pollution Emergency Episode exists for any air contaminants for which air standards have been adopted.

a. Air Pollution Alert.<sup>125</sup>

Any person who is responsible for the operation of a source of air contamination as set forth in Section 4(1) of the Regulations for the Prevention of Air Pollution Episodes, APC-S-3, (1972), takes all AIR POLLUTION ALERT actions as required for such source of air contamination and places into effect the

emission control action programs for an AIR POLLUTION ALERT.<sup>126</sup> In regard to suspended particulate matter, there can be no open burning by any person of tree wastes, vegetation, refuse, or debris in any form.<sup>127</sup> Also, the use of incinerators for the disposal of any form of solid waste is limited to the hours between 12:00 noon and 4:00 p.m.<sup>128</sup> Persons operating fuel-burning equipment which requires boiler lancing or soot blowing must perform such operations only between the hours of 12:00 noon and 4:00 p. m.<sup>129</sup> When there is a possibility that nitrogen oxides will be emitted, there is no open burning by any person of tree wastes, vegetation, refuse, or debris in any form.<sup>130</sup> Additionally, the use of incinerators for the disposal of solid waste is limited to the hours of 12:00 noon to 4:00 p. m.<sup>131</sup>

b. Air Pollution Warning.<sup>132</sup>

When any person is responsible for the operation of a source of air contamination as set forth in Section 4(1) of Regulations for the Prevention of Air Pollution Emergency Episodes, Reg. APC-S-3 (1972), he takes all AIR POLLUTION WARNING actions as required for such source of air contamination and places into effect the emission control action programs for an AIR POLLUTION WARNING.<sup>133</sup> When the emissions produced by the contaminator are suspended particulate matter, no open burning is allowed of tree waste, vegetation, refuse, or debris in any form.<sup>134</sup> Furthermore, no incineration of solid or liquid waste is permitted at any time.<sup>135</sup> Persons operating fuel-burning equipment which requires boiler lancing or soot blowing are authorized to do so between 12:00 noon and 4:00 p. m.<sup>136</sup> When the emission may contain nitrogen oxides, there is no open burning of

137 vegetation nor use of an incinerator to dispose of solid or liquid waste. 138

c. Air Pollution Emergency. 139

Any person who is responsible for the operation of a source of air contamination as described in Section 4(1) of Regulations for the Prevention of Air Pollution Emergency Episodes, Reg. APC-S-3, (1972), takes all AIR POLLUTION EMERGENCY actions as listed and places the emission control action programs into effect. 140 All manufacturing establishments, except those included in Section 5(1)(c)1. a. of Regulations for the Prevention of Air Pollution Emergency Episodes, APC-S-3 (1972), institute actions which result in maximum reduction of air contaminants from their operations by ceasing, curtailing or postponing operations which emit air contaminants to the extent possible without causing injury to persons or damage to equipment. 141 All places of employment described below are required to immediately cease operations: 142 (1) mining and quarrying for non-metallic minerals; 143 (2) all contract construction work except that which must proceed to avoid physical harm; 144 (3) wholesale trade establishments, i. e., places of business primarily engaged in selling merchandise to retailers, to industrial, commercial, institutional or professional users, or to other wholesalers, or acting as agents in buying merchandise for or selling merchandise to such persons or companies; 145 (4) all offices of local, county, and state government including authorities, joint meetings, and any other public body, except to the extent that such office must continue to operate in order to enforce these emergency air pollution episodes; 146 (5) all retail trade establishments except pharmacies and stores primarily engaged in the sale of food; 147

(6) banks, credit agencies other than banks, securities and commodities brokers, dealers, exchanges and services, offices of insurance carriers, agents and brokers and real estate offices;<sup>148</sup> (7) wholesale and retail laundries, laundry services, cleaning and dyeing establishments, photographic studios, beauty shops, barber shops, and shoe repair shops;<sup>149</sup> (8) advertising offices, consumer credit reporting businesses, adjustment and collection agencies, duplicating, addressing, blueprinting, photocopying, mailing, mailing list and stenographic services, equipment rental services and commercial testing laboratories;<sup>150</sup> (9) automobile repair, automobile services and garages;<sup>151</sup> (10) establishments rendering amusement and recreational services including motion picture theatres;<sup>152</sup> and (11) elementary and secondary schools, colleges, universities, professional schools, junior colleges, vocational schools, and public and private libraries.<sup>153</sup>

Additional restrictions prohibit both open burning of vegetation, tree waste, refuse, or debris,<sup>154</sup> and incineration of liquid or solid waste.<sup>155</sup> The use of motor vehicles is prohibited except in emergencies with the approval of local or state police.<sup>156</sup>

Where the director of the commission determines that an Air Pollution Emergency Episode condition exists at one or more monitoring sites solely because of emission from a limited number of sources, he may order such source or sources to put into effect the emission control action programs which are applicable for each episode state.<sup>157</sup>

Finally, by Executive Order 73, Section II. (Sept. 28, 1970), the

governor has outlined several steps that are to be taken when there is an emergency which is caused by natural disaster or by invasion by a foreign enemy. These instructions provide guidelines and criteria that are to be followed by the various state agencies under the guidance of the State Director of Civil Defense.<sup>158</sup>

## 7. Permit Regulations:<sup>159</sup>

A permit, issued by the Mississippi Air and Water Pollution Control Commission, must be obtained by individuals or firms which use or operate equipment causing the emission of air contaminants.<sup>160</sup> Every industry or facility which discharges dust, fumes, mist, smoke, particulate matter, vapor, gas, or any combination thereof, regardless of the quantity, must obtain a permit from the commission.<sup>161</sup> Permit requirements are divided into two categories: new and existing facilities.

### a. Existing Facility.

An existing facility is any equipment, machine, device, article, contrivance or installation that emits air contaminants and was built, installed or erected prior to May 11, 1972.<sup>162</sup> The application for a permit must be submitted on the form supplied by the commission,<sup>163</sup> and each separate facility must submit a separate application for a permit to operate an existing facility.<sup>164</sup> Each application must be signed by the applicant, and that signature will constitute an agreement that the applicant assumes responsibility for any alterations, additions or changes in the operation that may be necessary to achieve and maintain required emission standards.<sup>165</sup> The application for a permit to operate an existing facility must have been submitted within sixty (60) days after May 11, 1972.<sup>166</sup> The failure to do so is considered a violation of the Mississippi Air and Water Pollution Control Act.<sup>167</sup> Under no circumstances will an extension be granted for the submission of an application.<sup>168</sup> The commission may require additional information from the applicant in the event the application does not clearly define the point or sources of emissions.<sup>169</sup> Facilities holding permits

under Regulations APC-S-2, adopted May 8, 1970, follow other guidelines.<sup>170</sup>

If the facility held a valid permit under the regulations in effect prior to May 11, 1972, the commission will re-issue another permit. Those permits which are re-issued will be effective for three (3) years.<sup>171</sup> Those facilities which held construction permits will be re-issued another valid construction permit,<sup>172</sup> and facilities which held temporary permits will be re-issued Tolerance Permits.<sup>173</sup> Applications for a permit to operate an existing facility submitted under Regulation APC-S-2, May 8, 1970, for which a permit had not been issued by May 11, 1972, will be reviewed and the necessary action taken.<sup>174</sup>

The standards used by the commission to determine whether a permit to operate an existing facility should be issued will be decided by either stack emissions data, mathematical methods, visible emission evaluation, or by a combination of these methods,<sup>175</sup> and the emissions from the facility must not exceed the emission standards contained in Regulation APC-S-1 (1972).<sup>176</sup> The facility must also adequately show that the operation of the facility will not interfere with the attainment<sup>176</sup> and maintenance of the Natural Ambient Air Quality Standards.<sup>177</sup> If these standards are met, the facility will be granted a three (3) year permit to operate.<sup>178</sup>

If an existing facility employs inadequate air pollution control equipment or if the facility interferes with the attainment and maintenance of the Natural Ambient Air Quality Standards, it will be granted a Tolerance Permit.<sup>179</sup> This Tolerance Permit shall supersede and cause the expiration of all previously issued permits,<sup>180</sup> and it shall set forth a time limit for achieving and maintaining compliance with the emission standards set by the commission.<sup>181</sup> Under no circumstances shall this time limit extend beyond July 31, 1975, for existing facilities.<sup>182</sup> Sixty (60)

days after the issuance of the Tolerance Permit, it is the responsibility of the facility to submit to the commission an acceptable implementation schedule which sets forth the type of equipment and proposed installation dates in order to achieve compliance with the rules and regulations of the commission.<sup>183</sup> If the facility fails to submit an acceptable implementation schedule within sixty (60) days, the commission will supply the facility its own schedule, and the facility will have eighteen (18) months in which to totally comply with the schedule.<sup>184</sup> If the facility is granted a Tolerance Permit, it must furnish the commission with periodic reports describing the work accomplished and the proposed work to be completed.<sup>185</sup> The maximum reporting interval shall not exceed six (6) months.<sup>186</sup> When the implementation schedule is completed and the proposed modifications finished, the applicant will be responsible for the submission of performance data.<sup>187</sup> If the performance data fails to prove that the air pollution control equipment is adequate, the applicant will be granted an extra ninety (90) days in which to comply, provided it does not extend past July 31, 1975.<sup>188</sup> At the end of the ninety (90) day extension, the applicant must show that he is able to meet the commission's standards.<sup>189</sup> Failure to be in compliance after this ninety (90) day period shall constitute a per day violation by the operation of the inadequate facility and the applicant will be subject to prosecution under the Mississippi Air and Water Pollution Control Act.<sup>190</sup> Once a facility operating under a Tolerance Permit has met the requirements of Section 1. 2. 1,<sup>191</sup> he will be issued a three-year permit to operate.<sup>192</sup>

Each existing facility emitting total air contaminants in excess of 0. 25

tons per day has the responsibility of supplying to the commission an emissions reduction schedule which shall set forth preplanned abatement strategies in the event an emergency arises.<sup>193</sup> This emission reduction schedule must have three (3) stages of reduction procedures: (1) alert level reduction; (2) warning level reduction; and (3) emergency level reduction.<sup>194</sup> Each level of reduction procedures must show the type and source of air contaminants, the amount of reduction of contaminants, the time required for reduction, and the manner in which reduction will be achieved,<sup>195</sup> and unacceptable schedules will be returned to the applicant along with the reason for denial by the commission.<sup>197</sup> The applicant will have thirty (30) days to amend the schedule so that it will conform to the commission's standards,<sup>198</sup> and a hearing will be granted to any aggrieved party.<sup>199</sup> If the applicant fails to submit a schedule, or fails to amend a preplanned strategy, the commission will revise or establish a plan so that it will meet the standards.<sup>200</sup> The established or revised preplanned strategies supplied by the commission will be put into effect by the applicant.<sup>201</sup>

A permit to operate will expire three (3) years after its issuance.<sup>202</sup> Not less than ninety (90) days prior to the expiration date of the permit, a request for a renewal of the permit must be submitted to the commission if the facility is to continue operations.<sup>203</sup> The renewal application will be substantiated with current emission data, test results or other reports necessary to determine the emissions produced by the facility.<sup>204</sup>

A permit to operate an existing facility may be suspended or revoked by the commission for the willful or continued violation of the rules.<sup>205</sup> A permit may also be revoked if the facility does not comply with the orders to reduce emissions during an air pollution emergency or for violating any provisions of

the permit.<sup>206</sup> If the facility ceases operations for more than eighteen (18) months, its permit will be revoked.<sup>207</sup> Suspension or revocation of a permit to operate shall become final ten (10) days after notification by the commission,<sup>208</sup> and the facility must surrender the permit to the commission.<sup>209</sup>

If there is any attempt to transfer a permit to another owner, the permit will automatically be revoked.<sup>210</sup> If a facility operating under a valid permit wishes to change the location of its operations, it may do so only if all other parameters (i. e. process weight) are left unchanged and the commission approves the action.<sup>211</sup> A facility wishing to relocate must inform the commission ninety (90) days prior to relocation.<sup>212</sup>

b. New Facility.

A new facility is any equipment, machine, device, article, contrivance or installation, built or erected on or after May 11, 1972, or any existing facility modified, repaired or rebuilt on or after the above date, that emits dust, fumes, mist, smoke, or other particulate matter, vapor, gas or any combination thereof from the same or related operations.<sup>213</sup> At least thirty (30) days prior to applying for a permit to construct a new facility, a preliminary engineering study must be submitted to the commission for review.<sup>214</sup> The study must be done by a professional engineer who is registered in the state,<sup>215</sup> and must include a discussion of the operation, the possible points of emission, the type of emission, the process weight values or pounds per hour capacity or some definite proposed input and output production values.<sup>216</sup> If the preliminary study is rejected, the commission shall notify the applicant, in writing, stating the

reasons for denial.<sup>217</sup> If the study is denied, however, the applicant may resubmit it noting the changes in design as required by the commission.<sup>218</sup> The commission may waive the above requirement for certain types of facilities.<sup>219</sup>

The application must be submitted on the form supplied by the commission.<sup>220</sup> Each separate new facility must submit an application<sup>221</sup> signed by the professional engineer responsible for the design or review of the facility.<sup>222</sup> The engineer must be registered in the state,<sup>223</sup> and by his signature he assumes responsibility for the design of the new facility.<sup>224</sup> In addition, each application must be signed by the applicant, his signature constituting an agreement that he assumes responsibility for any additions or alterations in the operations that may be necessary to achieve and maintain the emissions standards set by the commission.<sup>225</sup> The application for a permit to construct a new facility must be submitted and approved prior to the start of actual construction.<sup>226</sup> Failure on the part of the applicant to apply for a permit prior to construction, or the failure to receive the permit from the commission, shall be a violation of the Mississippi Air and Water Pollution Act and will subject the violator to prosecution.<sup>227</sup>

Each application for a construction permit must be accompanied by two (2) complete sets of site drawings, construction drawings, design calculations and specifications.<sup>228</sup> The commission may request any additional information that it deems necessary.<sup>229</sup> All construction drawings and plan descriptions must be approved and stamped by the registered professional engineer whose name appears on the construction permit.<sup>230</sup>

The Mississippi Air and Water Pollution Control Commission will act

within ninety (90) days on the application for a permit to construct.<sup>231</sup> If the new facility is judged inadequate by the commission, the commission will notify the applicant, in writing, and state the reasons for denial.<sup>232</sup> The applicant will then be allowed to submit the corrected plans and designs to the commission for review,<sup>233</sup> and if the new plans show the proposed facility to be adequate, the permit will then be issued.<sup>234</sup>

The new facility will be designed so as to operate without violating the commission's rules and regulations<sup>235</sup> and will be constructed so as to conform to the National Ambient Air Quality Standards.<sup>236</sup> The facility will use the latest control technology in order to reduce emissions to a minimum.<sup>237</sup> If required by the commission, the new facility will be provided with sampling ports,<sup>238</sup> safe access to each port,<sup>239</sup> and instrumentation to monitor and record emission data.<sup>240</sup> If there is more than a one (1) year delay in starting construction after the permit has been issued, or if the construction has been suspended for more than a year, the commission may revoke the permit.<sup>241</sup> The applicant may, however, ask for an extension of the expiration date by stating, in writing, the reasons for an extension.<sup>242</sup> The extension will not be granted for more than six (6) months.<sup>243</sup>

When the construction of the facility is completed, the registered professional engineer who approved the design to the facility will notify the commission that the construction was performed in accordance with the approved plans and specifications on file with the commission.<sup>244</sup> If the registered engineer who approved the design is unable to certify the construction, the reasons must be stated in a letter accompanying the certification by the new

engineer.<sup>245</sup> Should minor field adjustments in the previously approved plans and specifications be made, they must be brought to the attention of the commission prior to the issuance of the construction certification.<sup>246</sup> If the construction or installation of the new facility is not in accordance with the approved plans on file with the commission, this shall be deemed falsification of data and will constitute a violation of the commission's rules.<sup>247</sup>

Application for a Performance Evaluation Permit is required within thirty (30) days prior to the start-up of the facility.<sup>248</sup> The Performance Evaluation Permit will be issued for not more than one hundred and twenty (120) days from the start-up date.<sup>249</sup> The Performance Evaluation Permit will not be issued prior to the receipt of the certification of construction.<sup>250</sup> The Performance Permit will govern the period of time during which the facility will demonstrate either by stack emission data, acceptable mathematical methods, visible emissions evaluation, or by a combination of the above that emissions from the facility will not exceed the standards defined in Regulation APC-S-1, as amended January 19, 1972, and that the facility does not interfere with the attainment and maintenance of the National Ambient Air Quality Standards.<sup>251</sup> The method, or methods used to evaluate the performance of a new facility will be stipulated by the commission at the time the Performance Evaluation Permit is issued,<sup>252</sup> but the commission reserves the right to conduct the performance tests.<sup>253</sup> Should the evaluation be stipulated to be visible emission evaluation, the person or persons performing such tests will be currently certified in smoke evaluation.<sup>254</sup> If the facility is unable to conduct the tests within the one hundred twenty (120) day period or is unable to demonstrate through the process of evaluation that the facility is adequate, the facility may be granted

an extension of the Performance Evaluation Permit, provided the facility has been actively engaged in evaluating the performance of the facility.<sup>256</sup> However, the extension period will never exceed one hundred eighty (180) days.<sup>256</sup> A facility that cannot demonstrate compliance with the commission's rules or the need for an extension period will be subject to a per day violation for the operation of the facility.<sup>257</sup> When a person applies for an extension of the Performance Evaluation Permit, he will provide at that time an implementation schedule and the proposed corrections, adjustments, and additional equipment that he will employ to achieve and maintain compliance with the commission's rules.<sup>258</sup>

An applicant will be given one hundred twenty (120) days in which to test the performance and adequacy of his facility's emission control equipment, and he must supply the commission with substantiated data.<sup>259</sup> If the applicant uses the stack analysis method, he will use the guidelines set forth by the commission<sup>260</sup> in Regulation APC-S-1, as amended January 19, 1972. He must meet the criteria set forth therein<sup>261</sup> and bear the expense for such tests.<sup>262</sup> The commission may monitor these performance tests, as well as conduct the tests.<sup>263</sup> The stack analysis report will include, but is not limited to, a detailed description of testing procedures,<sup>264</sup> sample calculations,<sup>265</sup> and the results.<sup>266</sup>

If the applicant chooses to use mathematical methods to demonstrate the control adequacy of his equipment, his report will include, but is not limited to, an emissions inventory including:<sup>267</sup> the location and description of control

equipment at each pointsource;<sup>268</sup> determination of all possible pollutants and their characteristics, conditions, particle size, distribution, etc.;<sup>269</sup> determination of process weight at each point of emission;<sup>270</sup> a list of all stack parameters at each point of emissions;<sup>271</sup> and a detailed description of input materials.<sup>272</sup> The applicant will also include in his mathematical evaluation report a detailed engineering report including: sufficient calculations to demonstrate uncontrolled emissions,<sup>273</sup> sufficient calculations to support or show design efficiency of control equipment,<sup>274</sup> and sufficient calculations to demonstrate controlled emissions.<sup>275</sup> The applicant will also include a study of ground level concentrations of pollution containing: a detailed description of diffusion equations and the method or methods used,<sup>276</sup> a statement of background level,<sup>277</sup> a description of meteorological data used and how local correction is obtained,<sup>278</sup> sample calculations,<sup>279</sup> results,<sup>280</sup> and comparison of results with the National Ambient Air Quality Standards.<sup>281</sup>

If a new facility emits a total of more than 0.25 tons of air contaminants per day, it has the responsibility to supply the commission with an emissions reduction schedule which will set forth preplanned abatement strategies in the event an emergency arises.<sup>282</sup> This will be done within one hundred and twenty (120) days of the facility's start-up date.<sup>283</sup> This emission reduction schedule must have three (3) stages of reduction procedures: alert level reduction,<sup>284</sup> warning level reduction,<sup>285</sup> and emergency level reduction.<sup>286</sup> Each level of the reduction procedure must show the type and source of air contaminants, the amount of reduction of contaminants, the time involved in reduction, and the manner in which the reduction will be achieved.<sup>287</sup> The emission reduction schedule will

be subject to commission review,<sup>288</sup> and an unacceptable schedule will be returned to the applicant with a written statement of denial.<sup>289</sup> If the schedule is unacceptable, the applicant will have thirty (30) days in which to amend the schedule to conform to the commission's standards.<sup>290</sup> If the person is aggrieved by the commission's requirements, he will be entitled to a hearing.<sup>291</sup> Should the applicant fail to submit a reduction schedule within the given time period, or fail to submit an amended preplanned strategy, the commission will establish or revise the plan to meet the commission's standards.<sup>292</sup> The established or revised preplanned strategies will then be put into effect by the applicant.<sup>293</sup>

In order to obtain a permit to operate, the new facility must meet the following standards:<sup>294</sup> the applicant must establish by emission data, test results or reports that the facility has achieved and can maintain the emission standards set forth in Regulation APC-S-1, as amended January 19, 1972, and that the operation of the facility will not interfere with the attainment of the National Ambient Air Quality Standards;<sup>295</sup> and the applicant must show that he has complied with all the rules and regulations of the commission<sup>296</sup> and has submitted an acceptable emission reduction schedule.<sup>297</sup> A facility having met the above requirements will be issued a permit<sup>298</sup> which will be effective for three (3) years from the issuance date.<sup>299</sup> At least ninety (90) days prior to the expiration of the three (3) year permit, the applicant must make an application for renewal if he desires to continue operation.<sup>300</sup> The renewal application will set forth the current emission data.<sup>301</sup> A permit to operate can be revoked by the commission for a willful or continued violation of the standards<sup>302</sup> or

for failure to comply with an order to reduce emissions during an air pollution emergency.<sup>303</sup> A permit to operate will be suspended if a facility ceases operation for more than eighteen (18) months.<sup>304</sup> The suspension or revocation of a permit will become final ten (10) days after the order of the commission.<sup>305</sup> When the permit has been revoked it will be surrendered to the commission.<sup>306</sup> If there is any attempt to transfer a permit to another owner, the commission will automatically revoke the permit.<sup>307</sup> If a facility wishes to change locations, and has a valid permit, it may do so only if all other parameters (i. e. process weight) are left unchanged and the commission approves the action.<sup>358</sup> However, the applicant must notify the commission ninety (90) days before relocation.<sup>309</sup>

If a facility wishes to renew its permit, it must meet all the requirements necessary to obtain a permit.<sup>310</sup> A facility that cannot adequately demonstrate the requirements for a renewal of a permit will be issued a Tolerance Permit, and will be given a reasonable amount of time to comply with the standards.<sup>311</sup>

A Tolerance Permit will be issued to a facility which either employs inadequate air pollution control equipment or, through the operation of the facility, interferes with the attainment and maintenance of the National Ambient Air Quality Standards.<sup>312</sup> This Tolerance Permit will supersede and cause the expiration of all other permits.<sup>313</sup> The permit will set a definite time limit for achieving and maintaining the commission's standards.<sup>314</sup> This time limit will be stipulated by the commission<sup>315</sup> and will take into account the time needed to order, ship and install the necessary equipment, or to make adjustments or corrections on existing equipment to achieve compliance with the commission's standards.<sup>316</sup>

After the installation of the new equipment, the applicant will be responsible for submitting performance data as stated above.<sup>317</sup> If the performance data fails to comply with the standards, the applicant will be subject to a per day violation for the continued use of the facility.<sup>318</sup> If the facility does demonstrate that it can meet the standards it will be granted a three (3) year permit to operate.<sup>319</sup>

All facilities holding a permit to operate will be subject to a periodic inspection every eighteen (18) months or as otherwise provided by the commission.<sup>320</sup> The facility will be evaluated with regard to visible emission, fugative dust and overall facility maintenance of air cleaning devices.<sup>321</sup> Facilities holding authorizations other than a permit to operate will be subject to more frequent inspection in order to evaluate the progress that the facility is making toward achieving and maintaining compliance with the rules of the commission.<sup>322</sup> The commission may also require the installation, maintenance and use of monitoring equipment as may be deemed necessary.<sup>323</sup> The commission may also require that records relating to the operation of contamination sources be kept, and that any authorized representative of the commission may examine and copy any such records.<sup>324</sup> Internal reports, memoranda, field reports, and laboratory reports shall be treated confidentially by the commission.<sup>325</sup>

The commission may specify certain classes or sizes of articles, machines, equipment, or other contrivances, as being exempt from the permit requirements. The commission will maintain an official list of the above

exemptions for public inspection.<sup>326</sup> Institutions of higher learning, federal facilities or affiliated state agencies engaged in research and development may be granted exemptions to certain sections of the permit regulations.<sup>327</sup>

## FOOTNOTES

[Unless otherwise specified all footnotes refer to MISS. CODE ANN. (1972)].

1. For a general statement concerning air pollution standards write to Air and Water Pollution Control Commission, P. O. Box 827, Jackson, Mississippi 39205. Ask for "Air Quality Regulations" Regulation APC-S-1 (1972).
2. §§ 21-19-1, -15, -19.
3. § 49-17-29 [as amended by H. B. No. 680, ch. 505, § 6, Laws of 1972].
4. As passed pursuant to the authority granted to the Air and Water Pollution Control Commission by § 49-17-17.
5. Air Quality Regulations, Reg. APC-S-1, § 3(3).
6. Particulate matter is any material, except uncombined water, that exists in a finally divided form as a liquid or solid. Air Quality Regulations, Reg. APC-S-1, § 2(16)(1972).
7. Air Quality Regulations, Reg. APC-S-1, § 2(3a)(1972).
8. Id. § (3b).
9. Id. § (3c).
10. Air Quality Regulations, Reg. APC-S-1, § 3(4a) (1972).
11. Id. § (4b).
12. Id. § (4c).
13. As to what constitutes an Air Pollution Alert or Warning see Regulations for the Prevention of Air Pollution Emergency Episodes, Reg. APC-S-3, § 3(a) and (c) (1972).
14. Regulations for the Prevention of Air Pollution Emergency Episodes,

Reg. APC-S-3, § 5(2c) (1972).

15. Air Quality Regulations, Reg. APC-S-1, § 2 (15) (1972).
16. Air Quality Regulations, Reg. APC-S-1, § 3 (7) (1972).
17. Id. § (7a).
18. Id. § (7b).
19. Id. § (7c). But see Miss. Code Ann. § 49-7-75 (1972).
20. Air Quality Regulations, Reg. APC-S-1, § 3 (7d) (1972).
21. Id. § (7e).
22. Id. § (7f).
23. Id. § (7g). See also Regulations for Prevention of Air Pollution Emergency Episodes, Reg. APC-S-3, § 5 (3a) (1972).
24. Air Quality Regulations, Reg. APC-S-1, § 3 (7h) (1972).
25. Id. § (7i).
26. Id. § (7j).
27. Id. § (7k).
28. Ambient Air is the encompassing atmosphere existing in the matter of space and to which life of this earth is adapted. For the purposes of these regulations, that portion of the atmosphere outside of buildings, stacks, and ducts. Air Quality Regulations, Reg. APC-S-1, § 2 (1) (1972).
29. Air Quality Regulations, Reg. APC-S-1, § 3 (7k(1)) (1972).
30. Id. § (7k(2)).
31. Id. § (7k(3)).
32. Regulations for Prevention of Air Pollution Emergency Episodes, Reg. APC-S-3, § 5 (3a) (1972).

33. § 21-19-21, -25-3.
34. § 49-1-27(g).
35. Air Quality Regulations, Reg. APC-S-1, § 2 (12) (1972).
36. § 21-27-23.
37. § 21-19-21.
38. Air Quality Regulations, Reg. APC-S-1, § 5(8) 1972.
39. Id.
40. Id.
41. Id.
42. Standards for Protection Against Radiation, Reg. § X.305 (1970 ).
43. Regulations for Prevention of Air Pollution Emergency Episodes,  
Reg. APC-S-3, § 5(a)(3b) (1972).
44. Regulations for Prevention of Air Pollution Emergency Episodes,  
Reg. APC-S-3, § 5 (b)(2b) (1972).
45. Air Quality Regulations, Reg. APC-S-1, § 1 (2) (1972).
46. Id.
47. Id.
48. Air Quality Regulations, Reg. APC-S-1, § 2 (3) (1972).
49. Id. § 2 (4).
50. 49-17-29. Cf. note 78, infra.
51. § 49-17-17.
52. A point source of contamination is any single point of emission of any  
contaminant such as from an individual machine or combustion devise.  
Air Quality Regulations, Reg. APC-S-1, § 2 (6) (1972).

53. The Ringelmann Chart is published by the U. S. Bureau of Mines, on which are illustrated graduated shades of gray to black for use in estimating the obscuring capacity of smoke. Air Quality Regulations, Reg. APC-S-1, § 2 (20) (1972).
54. Air Quality Regulations, Reg. APC-S-1, § 3 (1a) (1972).
55. Id. § 3 (1b).
56. Id. § 3 (1d).
57. Id. § 3 (1c).
58. Air Quality Regulations, Reg. APC-S-1, § 3 (6a) (1972).
59. Id.
60. Air Quality Regulations, Reg. APC-S-1, § 3 (6b) (1972).
61. Id. § 3 (6b(1)).
62. Id. § 3 (6b(2)).
63. Id. § 3 (6b(3)).
64. Air Quality Regulations, Reg. APC-S-1, § 3 (9a) (1972).
65. Id. § 3 (9b).
66. Air Quality Regulations, Reg. APC-S-1, § 4 (1a) (1972).
67. Id. § 4 (1c).
68. Id. § 4 (2a).
69. Air Quality Regulations, Reg. APC-S-1, § 5 (1) (1972).
70. Regulations for the Prevention of Air Pollution Emergency Episodes, Reg. APC-S-3, § 4 (1a) (1972).
71. Id. § 4 (1b).
72. Id. § 4 (1d).
73. Permit Regulations, Reg. APC-S-2, § 1.4 (1972).

74. Id. §§ 1.5.1, 2.8.1.
75. Id. § 1.5.1.
76. "New facilities" denotes those facilities which did not exist as of  
May 11, 1972. Id. § 2.1.1.
77. Permit Regulations, Reg. APC-S-2, § 2.8.2 (1972).
78. Id. § 2.8.3.1.
79. Id. (1).
80. Id. (2).
81. Id. (3).
82. Id. § 1.8.2.2.
83. Id. § 2.8.4.
84. Id. §§ 1.5.4, 2.8.5.
85. Id. § 1.5.5, 2.8.6.
86. Id. § 2.8.7.
87. Id. §§ 1.5.7, 2.8.8.
88. Id. § 1.5.8.
89. Id. § 2.4.6.1.
90. Id. § 2.4.6.3.
91. Id. § 1.4.6.4.
92. Id. § 2.4.6.5(a).
93. Id. (b).
94. Id. (c).
95. Id. § 5.2.
96. Id. § 5.2.2.

97. Id. § 5. 2. 3.
98. Id. § 5. 2. 4.
99. Air Quality Regulations, Reg. APC-S-1, § 3 (10) (1972).
100. For a copy of Regulations for the Prevention of Air Pollution Emergency Episodes, Reg. APC-S-3 (adopted January 25, 1972), write the Mississippi Air and Water Pollution Control Commission, P. O. Box 827, Jackson, Mississippi 39205.
101. Regulations for the Prevention of Air Pollution Emergency Episodes, Reg. APC-S-3, § 3 (1972).
102. Id. § 3 (a).
103. Regulations for the Prevention of Air Pollution Emergency Episodes, Reg. APC-S-3, § 3 (b) (1972).
104. Id.
105. Id.
106. Id.
107. Id.
108. Id.
109. Id.
110. Regulations for the Prevention of Air Pollution Emergency Episodes, Reg. APC-S-3, § 3 (c) (1972).
111. Id.
112. Id.
113. Id.
114. Id.

115. Id.
116. Id.
117. Regulations for the Prevention of Air Pollution Emergency Episodes,  
Reg. APC-S-3, § 3 (d) (1972).
118. Id.
119. Id.
120. Id.
121. Id.
122. Id.
123. Id.
124. Regulations for the Prevention of Air Pollution Emergency Episodes,  
Reg. APC-S-3, § 3(e) (1972).
125. Regulations for the Prevention of Air Pollution Emergency Episodes,  
Reg. APC-#-3, § 5 (1)(a) (1972).
126. Id. 1. A, See part 5, 'Contaminant Emissions,' supra.
127. Regulations for the Prevention of Air Pollution Emergency Episodes,  
Reg. APC-S-3, § 5 (1)(a) 2. a (1972), See no. 32 supra.
128. Regulations for the Prevention of Air Pollution Emergency Episodes,  
Reg. APC-S-3, § 5 (1)(a) 2. b. (1972). See n. 43 , supra.
129. Regulations for the Prevention of Air Pollution Emergency Episodes,  
Reg. APC-S-3, § 5 (1)(a) 2. c. (1972). See n. 14 , supra.
130. Regulations for the Prevention of Air Pollution Emergency Episodes,  
Reg. APC-S-3, § 5 (1)(a) 3. a. (1972).
131. Regulations for the Prevention of Air Pollution Emergency Episodes,  
Reg. APC-S-3, § 5 (1)(a) 3. b. (1972).

132. Regulations for the Prevention of Air Pollution Emergency Episodes,  
Reg. APC-S-3, § 5 (1)(b) (1972).
133. Regulations for the Prevention of Air Pollution Emergency Episodes,  
Reg. APC-S-3, § 5 (1)(b) 1. a (1972).
134. Regulations for the Prevention of Air Pollution Emergency Episodes,  
Reg. APC-S-3, § 5 (1)(b) 2. a (1972).
135. Regulations for the Prevention of Air Pollution Emergency Episodes,  
Reg. APC-S-3, § 5 (1)(b) 2. c. (1972).
136. Regulations for the Prevention of Air Pollution Emergency Episodes,  
Reg. APC-S-3, § 5 (1)(b) 2. c. (1972).
137. Regulations for the Prevention of Air Pollution Emergency Episodes,  
Reg. APC-S-3, § 5 (1)(b) 3. 1. (1972).
138. Regulations for the Prevention of Air Pollution Emergency Episodes,  
Reg. APC-S-3, § 5 (1)(b) 3. b. (1972).
139. Regulations for the Prevention of Air Pollution Emergency Episodes,  
Reg. APC-S-3, § 5 (1)(c) (1972).
140. Regulations for the Prevention of Air Pollution Emergency Episodes,  
Reg. APC-S-3, § 5 (1)(c) 1. a. (1972).
141. Id. § 5 (1)(c) 1. b.
142. Regulations for the Prevention of Air Pollution Emergency Episodes,  
Reg. APC-S-3, § 5 (1)(c) 1. c. (1972).
143. Id. 1.
144. Id. 2.
145. Id. 3.

146. Id. 4.
147. Id. 5.
148. Id. 6.
149. Id. 7.
150. Id. 8.
151. Id. 9.
152. Id. 10.
153. Id. 11.
154. Regulations for the Prevention of Air Pollution Emergency Episodes,  
Reg. APC-S-3, § 5 (1)(c) d. (1972).
155. Regulations for the Prevention of Air Pollution Emergency Episodes,  
Reg. APC-S-3, § 5 (1)(c) e. (1972).
156. Regulations for the Prevention of Air Pollution Emergency Episodes,  
Reg. APC-S-3, § 5 (1)(c) f. (1972).
157. Regulations for the Prevention of Air Pollution Emergency Episodes,  
Reg. APC-S-3, § 5 (2) (1972).
158. Executive Order 73, § 11 (Sept. 28, 1970).
159. For a copy of Permit Regulations, Reg. APC-S-2 (1972), write to the  
Mississippi Air and Water Pollution Control Commission, P. O. Box 827,  
Jackson, Mississippi, 39205.
160. Permit Regulations, Reg. APC-S-2, 1. 1 (1972).
161. Id.
162. Id. at 1. 2. 1.
163. Id. at 1. 2. 2. 2.
164. Id. at 1. 2. 2. 3.

165. Id. at 1. 2. 2. 4.
166. Id. at 1. 2. 2. 5.
167. Id. at 1. 2. 2. 6.
168. Id. at 1. 2. 2. 7.
169. Id. at 1. 2. 2. 8.
170. Id. at 1. 2. 2. 1.
171. Id. at 3. 1. 1.
172. Id. at 2. 1. 2.
173. Id. at 3. 1. 2, see note 179, infra.
174. Id. at 3. 1. 4.
175. Id. at 1. 2. 1, see notes 259-81, infra.
176. Id.
177. Id.
178. Id.
179. Id. at 1. 4. 1.
180. Id. at 1. 4. 2.
181. Id. at 1. 4. 3.
182. Id. at 1. 4. 4.
183. Id. at 1. 4. 5.
184. Id. at 1. 4. 6.
185. Id. at 1. 4. 7.
186. Id. at 1. 4. 8.
187. Id. at 1. 4. 9, see notes 259-81, infra.
188. Id. at 1. 4. 10.
189. Id. at 1. 4. 11.

190. Id. at 1. 4. 11.
191. Id. at 1. 4. 12, see notes 175-78, supra.
192. Id. at 1. 4. 13.
193. Id. at 1. 5. 1.
194. Id. at 1. 5. 2. 1.
195. Id. at 1. 5. 2. 2.
196. Id. at 1. 5. 3.
197. Id. at 1. 5. 4.
198. Id. at 1. 5. 5.
199. Id. at 1. 5. 6.
200. Id. at 1. 5. 7.
201. Id. at 1. 5. 8.
202. Id. at 1. 6. 1.
203. Id. at 1. 6. 2.
204. Id. at 1. 6. 3.
205. Id. at 1. 7. 1.
206. Id. at 1. 7. 2.
207. Id. at 1. 7. 3.
208. Id. at 1. 7. 4.
209. Id. at 1. 7. 5.
210. Id. at 1. 8. 1.
211. Id. at 1. 8. 2.
212. Id. at 1. 8. 3.
213. Id. at 2. 1.

214. Id. at 2. 2. 1.
215. Id. at 2. 2. 2.
216. Id. at 2. 2. 3.
217. Id. at 2. 2. 4.
218. Id. at 2. 2. 5.
219. Id. at 2. 2. 6.
220. Id. at 2. 3. 1.
221. Id. at 2/3/2/
222. Id. at 2. 3. 3.
223. Id. at 2. 3. 4.
224. Id. at 2. 3. 5.
225. Id. at 2. 3. 6.
226. Id. at 2. 3. 7.
227. Id. at 2. 3. 8.
228. Id. at 2. 3. 9. 1.
229. Id. at 2. 3. 9. 2.
230. Id. at 2. 3. 9. 3.
231. Id. at 2. 4. 2.
232. Id. at 2. 4. 2.
233. Id. at 2. 4. 3.
234. Id. at 2. 4. 4.
235. Id. at 2. 4. 6. 1.
236. Id. at 2. 4. 6. 2.
237. Id. at 2. 4. 6. 3.
238. Id. at 2. 4. 6. 5(a).

239. Id. at 2. 4. 6. 5(b).
240. Id. at 2. 4. 6. 5(c).
241. Id. at 2. 4. 7. 1.
242. Id. at 2. 4. 7. 2.
243. Id. at 2. 4. 7. 3.
244. Id. at 2. 4. 8. 1.
245. Id. at 2. 4. 8. 2.
246. Id. at 2. 4. 8. 3.
247. Id. at 2. 4. 8. 4.
248. Id. at 2. 5. 1.
249. Id. at 2. 5. 3.
250. Id. at 2. 5. 4.
251. Id. at 2. 5. 5.
252. Id. at 2. 5. 7.
253. Id. at 2. 5. 6.
254. Id. at 2. 5. 8.
255. Id. at 2. 5. 11.
256. Id. at 2. 5. 12.
257. Id. at 2. 5. 13.
258. Id. at 2. 5. 14.
259. Id. at 2. 6. 1.
260. Id. at 2. 6. 2. 1.
261. Id. at 2. 6. 2. 2.
262. Id. at 2. 6. 2. 3.

263. Id. at 2. 6. 2. 4.
264. Id. at 2. 6. 2. 6(a).
265. Id. at 2. 6. 2. 6(b).
266. Id. at 2. 6. 2. 6(c).
267. Id. at 2. 7. 1.
268. Id. at 2. 7. 1 A. 1.
269. Id. at 2. 7. 1 A. 2.
270. Id. at 2. 7. 1 A. 3.
271. Id. at 2. 7. 1 A. 4.
272. Id. at 2. 7. 1 A. 5.
273. Id. at 2. 7. 1 B. 1.
274. Id. at 2. 7. 1 B. 2.
275. Id. at 2. 7. 1 B. 3.
276. Id. at 2. 7. 1 C. 1.
277. Id. at 2. 7. 1 C. 2.
278. Id. at 2. 7. 1 C. 3.
279. Id. at 2. 7. 1 C. 4.
280. Id. at 2. 7. 1 C. 5.
281. Id. at 2. 7. 1 C. 6.
282. Id. at 2. 8. 1.
283. Id. at 2. 8. 2.
284. Id. at 2. 8. 3. 1(a).
285. Id. at 2. 8. 3. 1(b).

286. Id. at 2. 8. 3. 1(c).
287. Id. at 2. 8. 3. 2.
288. Id. at 2. 8. 4.
289. Id. at 2. 8. 5.
290. Id. at 2. 8. 6.
291. Id. at 2. 8. 7.
292. Id. at 2. 8. 8.
293. Id. at 2. 8. 9.
294. Id. at 2. 9. 1. 1.
295. Id. at 2. 9. 1. 1(a).
296. Id. at 2. 9. 1. 1(b).
297. Id. at 2. 9. 1. 1(c).
298. Id. at 2. 9. 2. 2.
299. Id. at 2. 9. 2. 2.
300. Id. at 2. 9. 2. 3.
301. Id. at 2. 9. 2. 4.
302. Id. at 2. 9. 3. 1.
303. Id. at 2. 9. 3. 2.
304. Id. at 2. 9. 3. 3.
305. Id. at 2. 9. 3. 4.
306. Id. at 2. 9. 3. 5.
307. Id. at 2. 9. 4. 1.
308. Id. at 2. 9. 4. 2.

309. Id. at 2.9.4.3.
310. Id. at 4.2.1.
311. Id. at 4.2.2.
312. Id. at 4.3.1.
313. Id. at 4.3.2.
314. Id. at 4.3.3.
315. Id. at 4.3.4.
316. Id. at 4.3.5.
317. Id. at 4.3.6, see notes 259-81, supra.
318. Id. at 4.3.7.
319. Id. at 4.3.8.
320. Id. at 5.1.
321. Id. at 5.1.2.
322. Id. at 5.1.3.
323. Id. at 5.2.1.
324. Id. at 5.2.2.
325. Id. at 5.2.3.
326. Id. at 6.1.
327. Id. at 6.2.

C. Land Pollution.

In addition to controlling pollutants of air and water, the State of Mississippi has also enacted rules and regulations to deal with the problem of land pollution. For instance, the State Oil and Gas Board is specifically empowered to make any regulations necessary to protect underground storage reservoirs of natural gas from pollution or from the escape of natural gas.<sup>1</sup> The use of such underground reservoirs is authorized only by approval of the Oil and Gas Board based upon the premise that the use of the underground stratum for the storage of natural gas will not contaminate other formations containing fresh water, oil, gas or other commercial mineral deposits.<sup>2</sup> The board is directed to require that all drilling, casing, and plugging of wells be done to prevent minerals from escaping from one stratum to another causing pollution or waste.<sup>3</sup> Furthermore, the board may pass regulations, subject to the approval of the Air and Water Pollution Control Commission, requiring the disposal of any waste products brought to the surface by any well and the prevention of seepage, overflow, and damage to the topsoil.<sup>4</sup> The board, in connection with its duty to prevent waste, is authorized to make inspections of wells and tanks and to regulate the spacing of wells and the establishment of drilling units.<sup>5</sup>

The State of Mississippi, through the exercise of its police power, has chosen to regulate outdoor advertising signs in areas adjacent to interstate highway systems in order to protect the safety and recreational value of public travel and to preserve natural beauty.<sup>6</sup> No outdoor advertising may be erected

or maintained within 660 feet of the nearest edge of the right of way and be visible from the main-traveled way of the interstate or primary highways in the state.<sup>7</sup> An exception is provided in the case of: (1) directional and other official signs authorized or required by law; (2) signs or devices advertising the sale or lease of the property upon which they are located; (3) signs or devices advertising the principal activities conducted on that property; (4) signs or devices located in commercially-zoned areas; (5) signs or devices located in certain unzoned commercial or industrial areas; and (6) signs or devices which locate, indentify, mark, or warn of the presence of pipelines, utility lines, or rail lines.<sup>8</sup>

The legislature has recently enacted standards to govern the erection and maintenance of signs in business areas.<sup>9</sup> The maximum size of any outdoor sign or advertising device is 1200 square feet. All illuminated outdoor signs or advertising devices must be so illuminated as to adhere to the customary practices of the industry at the time of passage of the statutes regarding these standards. However, no lighting device may be used in any manner to imitate a traffic control device, railroad sign or signal, or highway directional signs. All outdoor signs and other advertising devices located within 1/2 mile of an intersection of two or more primary highways or an interstate interchange must be erected and/or maintained<sup>10</sup> with a minimum space of 250 feet. An exception is made if such a sign is separated by a commercial building or structure other than outdoor advertising, in which case outdoor advertising is permitted on one or more sides of the building. Outdoor advertising signs, other than those within incorporated

cities, towns and villages and commercial or industrial zones, must be spaced at least 350 feet apart. The above spacing limitation is not applicable to signs in existence on October 22, 1965.<sup>11</sup>

No signs, other than those advertising the sale or lease of land, the activities conducted on the land or those identifying pipe, utility, or rail lines, may be erected without first obtaining a permit from the Highway Department at a cost of ten dollars (\$10) per sign. Such permits are generally issued within ten days after the receipt of an application containing information required by the Highway Department. The above requirement in no way restricts the authority of any municipality from requiring an additional permit and reasonable permit fee.<sup>12</sup> Furthermore, all persons, partnerships, corporations, or other business entities engaged in the outdoor advertising business must provide the Highway Commission with a bond not to exceed \$1000.<sup>13</sup> However, no bond is required of persons erecting signs for personal or business activities.<sup>14</sup>

Any sign, display, or other device lawfully erected but not conforming to the above provisions is required by statute to be removed before the end of the fifth year after it becomes nonconforming.<sup>15</sup> Any advertising device or outdoor advertising which does not conform to the above requirements is a public nuisance.<sup>16</sup> The Highway Commission must give 30 days notice by certified mail to the owner of such advertising device to remove it if it is a prohibited device or to make it conform if it is an authorized device.<sup>17</sup> If the owner fails or refuses to remove the device within 30 days as required by the notice, the commission may petition the chancery court of the county in which the device is

located for injunctive or other appropriate relief.<sup>18</sup>

Junkyards are regulated by numerous statutory provisions which set forth standards for establishment, operation, and maintenance. Such regulation is in the public interest of the state. Junkyards which fail to conform to the following statutory requirements are public nuisances.<sup>19</sup> Generally, it is unlawful for any person to establish, operate, or maintain a junkyard within 1000 feet of the nearest edge of the right of way of any interstate or primary highway.<sup>20</sup> An exception is made for junkyards which are: (1) screened by natural objects, plantings, fences, or other appropriate means so as not to be visible from the main-traveled way of the highway system; (2) located in industrially-zoned areas; (3) located within unzoned industrial areas; and (4) not visible from the main-traveled way of the highway.<sup>21</sup> Any junkyard located within 1000 feet of the highway must be screened, if possible, so as not to be visible from the main-traveled way of such highway.<sup>22</sup> Any junkyard which does not conform to the above requirements, or that cannot be made to conform by screening, must be removed.<sup>23</sup> Junkyards located along any highway that is made a part of the interstate or primary system after the above requirements were enacted must conform to such requirements by the end of the fourth year after it is determined that it is nonconforming or as soon thereafter as funds are available for that purpose.<sup>24</sup>

Municipalities are authorized to prescribe and enforce regulations for cleaning and maintaining places where offensive matter is accumulated or kept.<sup>25</sup> Such authorization includes the right to compel and regulate removal of garbage

and filth beyond the corporate limits.<sup>26</sup> Furthermore, municipalities are authorized, after determining that land is a menace to health and safety, to have such land cleaned, by cutting weeds, filling cisterns, removing rubbish and other debris, and draining cesspools and standing water.<sup>27</sup>

Several statutory provisions establish fines and penalties for unlawful disposal of debris and miscellaneous refuse. It is unlawful for anyone to dispose of cans, bottles, or glassware upon established beaches.<sup>28</sup> Such action is a misdemeanor punishable by a maximum fine of twenty dollars for each offense.<sup>29</sup> Also, any person who disposes of any trash or debris upon the public roads and highways of the state or upon any private property of another is guilty of a misdemeanor and upon conviction may be fined up to fifty dollars for each offense.<sup>30</sup> The disposal of refuse, garbage, or dead animals upon a levee or levee right of way is likewise a misdemeanor carrying a fine of from twenty to fifty dollars for each offense.<sup>31</sup> Anyone who disposes of cigarettes or other items likely to ignite grass or underbrush adjacent to a highway is likewise guilty of a misdemeanor.<sup>32</sup> The Department of Safety is authorized to place signs and trash cans along the roads and highways of the state in order to effectuate the above provisions and is also authorized to enforce such provisions.<sup>33</sup>

The Biloxi Port Commission has specifically directed that all garbage, oil, sludge, refuse, sewage, and waste material be deposited in refuse containers provided for that purpose.<sup>34</sup> Furthermore, it is stated that no waste of any kind may be thrown from any boat into the yacht basin, harbor, or on the decks, piers, bulkhead or roadways.<sup>35</sup> The Game and Fish Commission has the power to

regulate the burning of rubbish, slashings, and marshes to reduce the danger  
of fire.<sup>36</sup> Moreover, the commission has declared it unlawful for anyone to  
set fires, during the nesting season, to woods or fields, other than his own  
premises, for the purpose of driving wild animals or birds from the area.<sup>37</sup>

## FOOTNOTES

[Unless otherwise specified all footnotes refer to MISS. CODE ANN. (1972)].

1. § 53-1-157.
2. § 53-3-155.
3. § 53-1-17.
4. Id.
5. Id.
6. § 49-23-1. See also Biloxi Port Commission Rule 6 where it is stated that no signs or markings shall be placed on docks, piers, or other structures without the approval of the commission.
7. § 49-23-5.
8. Id. The Highway Commission is authorized to promulgate regulations governing the issuance of permits for the erection and maintenance of outdoor advertising coming within the exceptions contained in (1), (4), and (5) in the text. § 49-23-7.
9. See § 49-23-9 (Advance Sheet # 1, 1972).
10. After January 1, 1968.
11. § 49-23-9.
12. § 49-23-11.
13. § 49-23-13.
14. Id.
15. § 49-23-15.
16. § 49-23-19.
17. Id. Failure to receive such notice does not prohibit the Highway Commission

from removing the unlawful device.

18. § 49-23-21.
19. § 49-25-3.
20. § 49-25-7.
21. Id.
22. § 49-25-9.
23. § 49-25-15.
24. Id.
25. § 21-19-1.
26. Id.
27. § 21-19-11.
28. § 97-27-9.
29. Id.
30. § 97-15-29.
31. § 97-15-21.
32. § 97-15-29.
33. Id.
34. Biloxi Port Comm'n Rule 5.
35. Id.
36. § 49-1-29(g).
37. § 49-7-75.

## VI. MISCELLANEOUS

### A. Highways.

Control and maintenance of the highways of the state are effectuated through cooperation of many state agencies, offices, boards and federal agencies. All highway construction, reconstruction and relocation must be let on competitive contract bids as provided by statute; no construction, reconstruction or relocation may be accomplished with highway department labor, equipment or materials.<sup>1</sup> All three highway commissioners must vote in the affirmative for the expenditure of funds for the construction, reconstruction, and relocation of highways where the funds are provided by the Extraordinary Legislative Session of 1969 and/or from the proceeds of sale of bonds authorized by such session.<sup>2</sup> Also, in order to provide for the maximum commercial benefit to the state,<sup>3</sup> all interstate funds apportioned to the State Highway Commission under the Federal Aid Highway Act of 1956 must be allocated on the basis of an established need to complete the interstate system of highways. Any link or part of the legislatively designated state highway system that is removed from the system reverts, for all purposes, to the county and political subdivision in which it lies and may, in the discretion of the board of supervisors of such county, become a part of the state aids road system.<sup>4</sup>

If the governor approves, the State Highway Commission may convey any and all rights-of-way or roads which it owns to the United States government for the purpose of aiding in the location, building, construction and maintenance of national highways or parkways in the state.<sup>5</sup>

In Crary v. State Highway Commission,<sup>6</sup> it was held that the waters and soil in the Mississippi Sound are public highways, and are owned by the state in public trust. Furthermore, the state cannot sell or irrevocably transfer the rights constituting that title.

In constructing highways or parkways, authorities must use diligence to protect growing crops and pastures and to prevent damage to any property not taken.<sup>7</sup>

The board of supervisors and the state, acting through the governor, are authorized and vested with power to execute any lawful conveyance, or deed, deemed necessary for the execution of any contract under the state's highway legislation.<sup>8</sup> The governor is authorized to convey to the United States government, or any agency thereof, any land owned by the state which has been acquired by tax sale, donation or gift.<sup>9</sup> Likewise, the state and the board of supervisors of a county where a parkway is located are authorized to grant any rights-of-way, parkway rights or scenic easements in, over and through any sixteenth section lands.<sup>10</sup> The state is given concurrent jurisdiction with the United States in and over lands thus conveyed, i. e. , the state may issue both civil and criminal process against any person charged with the commission of a crime within or without these lands.<sup>11</sup>

It is the intent of the Mississippi Legislature to assent to any act of the United States Congress authorizing the development of a national parkway located wholly or partly within the state to the extent as necessary to secure any benefits under such act.<sup>12</sup> However, it should be noted that hunting (of migratory water fowl and other game) and fishing are not to be prohibited or otherwise restricted.<sup>13</sup> National parkways may not exceed an area greater than 100 acres to the mile, and scenic easements may not exceed 50 acres to the mile.<sup>14</sup>

The Highway Commission is authorized to make investigations, surveys and studies in connection with any proposed national parkway where necessary to determine whether the proposed development will be advantageous to the state.<sup>15</sup> The Commission is directed to make its findings and determinations upon completion of these investigations.<sup>16</sup> If the Commission finds that the proposed parkway development will be advantageous to the state, it is empowered to perform, on behalf of the state, any act required of the state regarding the proposed development.<sup>17</sup>

At least 50 percent of the funds allotted to Mississippi for the improvement of secondary and feeder roads under the Federal Aid Highway Act of 1944 must be expended for the improvement of highways on the county federal-aid highway system.<sup>18</sup> Under this federal act, funds allotted to the counties are required to be apportioned by the Highway Commission on the basis of area, population and rural delivery mileage.<sup>19</sup> The boards of supervisors of the various counties are authorized to select and recommend to the Commission, in the order of desired priority, a series of road improvement projects for their respective counties.<sup>20</sup> In making selections and setting priorities, the board of supervisors of each county makes its determination without regard to beat lines and selects those projects which will benefit the county as a whole.<sup>21</sup> The Highway Commission must then submit detailed plans of proposed projects to the Commissioner of Public Roads,<sup>22</sup> and must also prepare all necessary surveys, plans and estimates.<sup>23</sup> If the board of supervisors of a county refuses to accept any of the above benefits, the funds available to the county may be expended, in the discretion of the Commission, on any other highway that is on the approved system of secondary and

feeder roads within or without the county.<sup>24</sup>

The Highway Commission is authorized to construct, improve and maintain causeways, bridges, tunnels and toll-bridges (including necessary approaches and fixtures under and across the tide-water bay, bayou or river tributary of the Gulf of Mexico or Mississippi Sound which opens into the Gulf of Mexico or Mississippi Sound and lies wholly within the territorial limits of the state).<sup>25</sup>

Bridge districts may be established upon a petition to the chancery court by at least 50 real-property owners.<sup>26</sup> The chancery court must make an order establishing the district without further inquiry if the petition is signed by property owners who own a majority of the real property within the district as determined by value.<sup>27</sup> When the chancery court has established the bridge district, it must appoint five resident real property owners to act as commissioners.<sup>28</sup> Each commissioner must take the oath of office and swear that he will not, directly or indirectly, be interested in any contract made by the board of commissioners.<sup>29</sup>

The board of commissioners of a bridge district is empowered to employ engineers, attorneys, auditors, managers, and any other employees as may be necessary for the orderly function of such district.<sup>30</sup> As soon as the board has formulated plans for the bridge and approaches thereto, it must file the plans with the chancery clerk of each county having territory in the district.<sup>31</sup> The plans must be accompanied by a map showing the location of the bridge and approaches together with specifications describing the construction and character of the improvements to be made.<sup>32</sup> The board is empowered to assess property within the district and to levy a tax upon the property to pay both principal and interest on revenue bonds used to finance the bridge.<sup>33</sup> The board is further

empowered to operate and maintain the bridge as a toll bridge and may fix the tolls to be charged.<sup>34</sup> However, when the bonded indebtedness and all claims and liabilities have been discharged, the board must convey its interest in the bridge to the State Highway Commission and must operate the bridge without charge to the user.<sup>35</sup> The board is also empowered to negotiate and enter into contracts with adjoining states and the federal government or its agencies.<sup>36</sup>

B. Water Control.

It is the intent of the legislature that water be considered a basic resource of the state and that, through the exercise of its police powers, the state shall effectuate full utilization and protection of the water resources of Mississippi.<sup>37</sup> The appropriation of surface waters is governed by the Board of Water Commissioners. [For a detailed discussion of appropriation rights see the volume on MINERAL AND OTHER NON-ANIMAL RESOURCES. In that volume, water as a basic resource is discussed in depth along with the procedure regarding appropriation and permits for well drilling. More specifically, consult Mississippi Code, Sections 51-3-1, et seq.

Master Water Management Districts were created for the purpose of drainage, prevention of floodwater damage, and the development and disposal of water, including the impoundment, diversion, flowage and distribution of waters for recreation, beautification, and welfare.<sup>38</sup> These districts are governmental subdivisions of the state,<sup>39</sup> and are governed by a board of commissioners which is authorized to plan for works of improvements with the United States Secretary of Agriculture or other involved federal agencies.<sup>40</sup>

### C. Aeronautics.

The Aeronautics Commission, which has statewide jurisdiction,<sup>41</sup> is empowered to hold investigations, inquiries and hearings concerning aeronautical accidents occurring within the state.<sup>42</sup> The reports of these investigations may not be admitted as evidence in any suit or proceeding except those civil or criminal proceedings instituted by or on behalf of the Commission or in the name of the state.<sup>43</sup> The Commission is also authorized to confer with any agency of the United States in connection with the sound development of aeronautics.<sup>44</sup> The Commission is authorized to enter orders requiring compliance with its regulations; these orders must detail the requirements to be met before the Commission will grant or restore a license or certificate.<sup>45</sup> These orders are appealable to the circuit court of Hinds County.<sup>46</sup> The regulations of the Commission govern the scheduling and regulating of commercial intrastate air transportation.<sup>47</sup> Any person violating any of the rules, regulations, or orders issued by the Commission may be punished by imprisonment of up to six months and/or a maximum fine of \$500.<sup>48</sup> In addition, the court may, in its discretion, prohibit the violator from operating an aircraft within the state for a period not to exceed one year.<sup>49</sup>

### D. Gulfport City Ordinances.

The City of Gulfport has enacted various ordinances regarding the control of the local environment. Ordinances govern the disposal of discarded ice-boxes which have airtight doors that cannot be opened from the inside.<sup>50</sup> Other ordinances regulate: the distribution of handbills;<sup>51</sup> defacing of public build-

ings and sidewalks;<sup>52</sup> and placement of posters.<sup>53</sup> The city has also chosen to regulate unusual noises, including the blowing of horns, whistles, and sirens, except in emergency situations.<sup>54</sup> Fireworks are specifically forbidden to be sold or exploded within the city limits; however, public displays of fireworks may be had under written authorization of the mayor.<sup>55</sup> Still other ordinances regulate picketing upon public property,<sup>56</sup> excavation and removal of dirt from a platted lot within the city,<sup>57</sup> and provide for the protection of trees.<sup>58</sup>

## FOOTNOTES

[Unless otherwise specified all footnotes refer to MISS. CODE ANN. (1972)].

1. H. B. No. 566, ch. 484, § 1, Laws of 1972.
2. Id.
3. Id.
4. Id. § 4.
5. § 55-5-7.
6. 219 Mis. 284, 68 So. 2d 468 (1953).
7. § 55-5-13.
8. § 55-5-11.
9. § 55-5-9.
10. Id.
11. § 55-5-17.
12. § 55-5-19.
13. Id.
14. § 55-5-15.
15. § 55-5-23.
16. § 55-5-25.
17. § 55-5-27.
18. § 65-11-9.
19. § 65-11-11.
20. § 65-11-13. The county engineer is directed to prepare all reports and cost estimates regarding the projects. § 65-17-203.

21. § 65-11-15. The boards are directed to cooperate with each other in regard to the fund apportionment, § 65-11-17.
22. § 65-11-19.
23. § 65-11-21.
24. § 65-11-27.
25. § 65-23-101. The commission may issue revenue bonds to finance such construction.
26. § 65-23-201.
27. § 65-23-203.
28. § 65-23-205.
29. Id.
30. § 65-23-209.
31. § 65-23-211.
32. Id.
33. See § 65-23-213.
34. § 65-23-225.
35. Id.
36. § 65-23-227.
37. § 51-3-1.
38. § 51-7-1.
39. § 51-7-3.
40. § 51-7-15.
41. § 61-1-13, (8).

42. § 61-1-35.
43. § 61-1-37.
44. § 61-1-39.
45. § 61-1-45.
46. Id.
47. See Miss. Aer. Comm'n Rules & Regs. § 4, 4 (June, 1970).
48. § 61-1-47.
49. Id.
50. Gulfport Code of Ordinances § 17-2.
51. Id. § 17-4.
52. Id. § 17-7.
53. Id. § 17-3.
54. Id. § 17-19; See also § 17-16.
55. Id. § 17-9.
56. Id. § 17-20.
57. Id. § 17-8.
58. See §§ 18-3, 18-4, and 18-5.

