

Administrative Procedures Act Rules

Title 11: Mississippi Department of Environmental Quality

Part 1: Administrative Regulations

Part 1, Chapter 1: Mississippi Commission on Environmental Quality Regulations Regarding the Delegation of Authority to the Executive Director of the Mississippi Department of Environmental Quality

TABLE OF CONTENTS

Rule 1.1 Delegations

Introduction: Statutes regarding environmental and natural resources issues in Mississippi grant the Mississippi Commission on Environmental Quality ("Commission") broad discretion to delegate many of its statutory authorities to the Executive Director of the Mississippi Department of Environmental Quality ("MDEQ"). Since the creation of the Commission and its predecessor bodies, the Mississippi Air and Water Pollution Control Commission and the Mississippi Commission on Natural Resources, the Commission has delegated certain authorities to the Executive Director by agency action reflected in the minutes of the Commission. The Commission now consolidates these delegations, adds additional delegations, and promulgates these delegations as a regulation pursuant to the Mississippi Administrative Procedures Law.

The chart below describes specific delegations of authority and lists the most pertinent statutory authorization for the delegation. The Commission, however, also is given a broad general authority to delegate its authority by Miss. Code Ann. § 49-17-17(o). That section authorizes the Commission "to delegate in such manner as it sees fit the duties and powers relating to air and water quality and pollution control to the agency members presently engaged in the several fields of water or air control or pollution." Miss. Code Ann. § 49-17-17(n) authorizes the Commission to "exercise all incidental powers necessary to carry out the purposes of Sections 49-17-1 through 49-17-43 and Sections 17-17-1 through 17-17-47." The Commission interprets these statutes to allow the delegation of authority to the Executive Director to perform all actions within the jurisdiction of the Commission required to protect the quality and quantity of the state's water resources and the quality of the state's ambient air and to regulate solid nonhazardous and hazardous waste within the State. This delegation authority by definition allows delegation of authorities related to the three offices of MDEQ created by statute: The Office of Geology and Energy Resources, the Office of Land and Water Resources, and the Office of Pollution Control. *See* Miss. Code Ann. § 49-2-7.

The Commission also interprets these statutes as allowing the delegation to the Executive Director of authorities necessary to perform the day-to-day functions of MDEQ through the Office of Administrative Services, as created by Miss. Code Ann. § 49-2-17. Additionally, Miss. Code Ann. § 53-7-19(p) allows the Commission to authorize the director "to discharge or exercise any power or duty granted to the commission by the provisions" of the Surface Mining and Reclamation Law. This regulatory action is not intended to revoke any authorization previously granted to the

Executive Director and not listed in this regulation. Also, Miss. Code Ann. § 53-9-69(1) allows the executive director to issue orders under prescribed circumstances under the Mississippi Surface Coal Mining and Reclamation Law. § 53-9-69(1)(b) allows the executive director or the executive director's authorized representative on the basis of any inspection to order the cessation of surface coal mining and reclamation operations or that portion of those operations when it is determined that any condition or practices exist or that any permittee is in violation of the chapter or any regulation or written order of the commission promulgated or issued under this chapter or any condition of a permit and the condition, practice or violation also creates an imminent danger to the health and safety of the public, or is causing or can reasonably be expected to cause significant imminent environmental harm to land, air or water resources. When on the basis of an inspection, the executive director or the executive director's authorized representative determines that the condition, practice or violation does not create an imminent danger, an order to the permittee shall be issued setting a reasonable time of not more than 90 days for the abatement of the violations or, if deemed necessary, an immediate cessation of activities violating or resulting in the violation of this chapter, the regulations or any condition or limitation of a permit. § 53-9-69 (1)(c).

The delegation of authority to the Executive Director does not require the Executive Director to exercise the authority delegated. The Executive Director may determine, on a case-by-case basis, that a decision within his or her authority to make should be referred to the Commission for consultation and/or decision.

Rule 1.1. Delegations: The Commission delegates the following powers to the Executive Director of MDEQ:

- A. To employ qualified professional personnel and technical and clerical staff as may be required for the operation of the Department.
- B. To organize the administrative units of the Department and alter such organizational structure and reassign responsibilities as he or she may deem necessary to carry out the policies of the Commission within the limits of Miss. Code Ann. § 49-2-7.¹
- C. To delegate the authority to sign Commission Orders to the Chief of Staff, Head of the Office of Pollution Control, the Head of the Office of Geology and Energy Resources, the Head of the Office of Land and Water Resources and the General Counsel of MDEQ to the extent that the Executive Director is allowed to issue Orders pursuant to Miss. Code Ann. § 49-2-13(j).
- D. To issue Orders in accordance with Miss. Code Ann. § 17-17-227 approving or denying in whole or in part Solid Waste Management Plans and/or amendments thereof.
- E. To issue Administrative Orders:

¹ Authorities listed in this rule are not inclusive and are in addition to authorities listed in the Introduction; Title 11, Part 1, Chapter 1.

- (1) To prohibit, control or abate discharges of contaminants and wastes into the air and waters of the State.
 - (2) To require appropriate remedial measures to prevent, control or abate air and water pollution or to cause the proper management of solid wastes.
 - (3) To impose penalties which the Respondent agrees to pay.
 - (4) To require compliance with permits, laws and regulations.
 - (5) To issue Emergency Orders pursuant to Miss. Code Ann. § 49-17-27.
- F. To execute all orders required by the Brownfields Statute that are not specifically required by Statute and/or Regulation to be issued by the full Commission.
- G. To issue Cease Pumping Orders and Orders Conditioning Permitted Water Withdrawal; to issue Cease and Desist Orders to Surface Mining Operators who are mining without the required Permit or Notice of Intent to Mine or who are otherwise operating in violation of Mississippi law, regulations or condition(s) of any Permit or other Order; and to issue the authorized Orders to Surface Coal Mining Operators who are operating in violation of Mississippi law, regulations, or condition(s) of any Permit or other Order.
- H. To make preliminary determinations necessary to file suit, file suit, conduct litigation, and settle all litigation matters on behalf of the Commission.
- I. To enter into all contracts, grants and cooperative agreements allowed by Miss. Code Ann. § 49-2-9(e).
- J. To delegate signature authority for Agency contracts, purchase orders, travel reimbursement authorizations, requisitions, personnel forms, and similar documents to the Chief of Staff, Head of the Office of Administrative Services and/or to the Division Chiefs within that Office.
- K. To grant continuances for scheduled Formal Hearings; to issue Non-dispositive rulings regarding contested matters (such as, Scheduling Orders and decisions on Interlocutory Motions), and to Stay pending Evidentiary Hearing on the effectiveness of a Commission Order upon a showing of good cause by any party.
- L. To issue, re-issue, deny, or revoke Asbestos Certifications and approve Asbestos Abatement Training Programs.
- M. To issue, re-issue, deny, or revoke Underground Storage Tank (UST) Certifications to individuals authorized to install, alter and /or close USTs.
- N. To issue, re-issue, deny, or revoke Landfill (Solid Waste) Operator and Class I Rubbish Site Operator Certifications.

- O. To issue, re-issue, deny, or revoke Wastewater Operator Certifications and approve Wastewater Training Programs.
- P. To issue, re-issue, deny, or revoke Water Well Driller Licenses.
- Q. To issue, re-issue, deny, or revoke Lead Certifications and approve Lead-Based Paint Activities Training Programs.
- R. To issue, re-issue, deny, or revoke Waste Tire Transporter Certificates.
- S. To requisition and use funds in the Pollution Emergency Fund, Nonhazardous Solid Waste Corrective Action Trust Fund, Waste Tire Abatement Funds and all other Funds created by Title 17 and Title 49 and within the jurisdiction of the Commission for the statutory purposes allowed by the Code.
- T. To discharge or exercise any power or duty granted to the Commission by the provisions of the Surface Mining and Reclamation Law and the Surface Coal Mining and Reclamation Law and their respective rules and regulations.
- U. To execute reciprocity agreements with other States whose Lead Based Paint Program requirements meet or exceed the Commission's requirements.
- V. To waive the late penalty for failure to pay UST fee upon sufficient demonstration that failure to pay timely was unavoidable due to financial hardship or otherwise beyond the control of the owner.
- W. To compile and publish compilations of the regulations of the Commission and Permit Board.
- X. To approve and award Local Governments Solid Waste Assistance Grants, Competitive Grants and Non-Competitive Grants), Local Governments Waste Tire Collection and Clean Up Grants, Local Governments Tire Derived Product Grants, Incentive Waste Tire Recycling and Research Grants, Local Governments Planning Grants, Right Way To Throw Away Grants (Local Hazardous Waste Amnesty/Collection Event Grants), Regional Recycling Cooperative Grants, Nonhazardous Solid Waste Corrective Action Trust Fund Cooperative Agreements, and Pollution Prevention/Recycling Grants otherwise allowed by Law.
- Y. To execute, approve and amend environmental covenants.
- Z. To issue administrative orders to require compliance to water well drillers who are operating in violation of Mississippi law, regulations, or other Orders.
- AA. To enter into reciprocity agreements with other states related to certifications when so authorized by law or rules and regulations.

Source: Miss. Code Ann. §§ 21-27-207, 21-27-211, 49-2-5 (3), 49-2-9(e) and (f), 49-2-13 (c), (e), (j) and (k), 49-2-17, 49-17-17 (c),(n), and (o), 49-17-23, 49-17-44.1, 49-17-43(d), 49-17-68, 49-17-421, 49-17-429, 49-17-507, 49-17-531, 49-35-11(4), 17-17-63, 17-17-65, 17-17-227, 17-17-407(b), 17-17-425, 51-3-7, 53-7-19(l), (m) and (p), 37-138-9, 51-5-1(1) and (5), 49-31-1, et seq., 49-35-1, et seq., 49-2-1, et seq., 49-17-1, et seq., 17-17-1, et seq., 17-17-201, et seq., 17-17-401, et seq., 17-17-501, et seq., 51-3-1, et seq., 51-5-1, et seq., 53-7-1, et seq., 53-9-1, et seq. and 89-23-1, et seq.

Administrative Procedures Act Rules

Title 11: Mississippi Department of Environmental Quality

Part 1: Administrative Regulations

Part 1, Chapter 1: Mississippi Commission on Environmental Quality Regulations Regarding the Delegation of Authority to the Executive Director of the Mississippi Department of Environmental Quality

TABLE OF CONTENTS

Rule 1.1 Delegations

Introduction: Statutes regarding environmental and natural resources issues in Mississippi grant the Mississippi Commission on Environmental Quality ("Commission") broad discretion to delegate many of its statutory authorities to the Executive Director of the Mississippi Department of Environmental Quality ("MDEQ"). Since the creation of the Commission and its predecessor bodies, the Mississippi Air and Water Pollution Control Commission and the Mississippi Commission on Natural Resources, the Commission has delegated certain authorities to the Executive Director by agency action reflected in the minutes of the Commission. The Commission now consolidates these delegations, adds additional delegations, and promulgates these delegations as a regulation pursuant to the Mississippi Administrative Procedures Law.

The chart below describes specific delegations of authority and lists the most pertinent statutory authorization for the delegation. The Commission, however, also is given a broad general authority to delegate its authority by Miss. Code Ann. § 49-17-17(o). That section authorizes the Commission "to delegate in such manner as it sees fit the duties and powers relating to air and water quality and pollution control to the agency members presently engaged in the several fields of water or air control or pollution." Miss. Code Ann. § 49-17-17(n) authorizes the Commission to "exercise all incidental powers necessary to carry out the purposes of Sections 49-17-1 through 49-17-43 and Sections 17-17-1 through 17-17-47." The Commission interprets these statutes to allow the delegation of authority to the Executive Director to perform all actions within the jurisdiction of the Commission required to protect the quality and quantity of the state's water resources and the quality of the state's ambient air and to regulate solid nonhazardous and hazardous waste within the State. This delegation authority by definition allows delegation of authorities related to the three offices of MDEQ created by statute: The Office of Geology and Energy Resources, the Office of Land and Water Resources, and the Office of Pollution Control. *See* Miss. Code Ann. § 49-2-7.

The Commission also interprets these statutes as allowing the delegation to the Executive Director of authorities necessary to perform the day-to-day functions of MDEQ through the Office of Administrative Services, as created by Miss. Code Ann. § 49-2-17. Additionally, Miss. Code Ann. § 53-7-19(p) allows the Commission to authorize the director "to discharge or exercise

any power or duty granted to the commission by the provisions" of the Surface Mining and Reclamation Law. This regulatory action is not intended to revoke any authorization previously granted to the Executive Director and not listed in this regulation. Also, Miss. Code Ann. § 53-9-69(1) allows the executive director to issue orders under prescribed circumstances under the Mississippi Surface Coal Mining and Reclamation Law. § 53-9-69(1)(b) allows the executive director or the executive director's authorized representative on the basis of any inspection to order the cessation of surface coal mining and reclamation operations or that portion of those operations when it is determined that any condition or practices exist or that any permittee is in violation of the chapter or any regulation or written order of the commission promulgated or issued under this chapter or any condition of a permit and the condition, practice or violation also creates an imminent danger to the health and safety of the public, or is causing or can reasonably be expected to cause significant imminent environmental harm to land, air or water resources. When on the basis of an inspection, the executive director or the executive director's authorized representative determines that the condition, practice or violation does not create an imminent danger, an order to the permittee shall be issued setting a reasonable time of not more than 90 days for the abatement of the violations or, if deemed necessary, an immediate cessation of activities violating or resulting in the violation of this chapter, the regulations or any condition or limitation of a permit. § 53-9-69 (1)(c).

The delegation of authority to the Executive Director does not require the Executive Director to exercise the authority delegated. The Executive Director may determine, on a case-by-case basis, that a decision within his or her authority to make should be referred to the Commission for consultation and/or decision.

Rule 1.1 Delegations: The Commission delegates the following powers to the Executive Director of MDEQ:

- A. To employ qualified professional personnel and technical and clerical staff as may be required for the operation of the Department.
- B. To organize the administrative units of the Department and alter such organizational structure and reassign responsibilities as he or she may deem necessary to carry out the policies of the Commission within the limits of Miss. Code Ann. § 49-2-7.²
- C. To delegate the authority to sign Commission Orders to the Chief of Staff, Head of the Office of Pollution Control, and the Head of the Office of Geology and Energy Resources, the Head of the Office of Land and Water and Water Resources and the General Counsel of MDEQ to the extent that the Executive Director is allowed to issue Orders pursuant to Miss. Code Ann. § 49-2-13(j).
- D. To issue Orders in accordance with Miss. Code Ann. § 17-17-227 approving or denying in whole or in part Solid Waste Management Plans and/or amendments thereof.
- E. To Issue Administrative Orders:

² Authorities listed in this rule are not inclusive and are in addition to authorities listed in the Introduction; Title 11, Part 1, Chapter 1.

- (1) To prohibit, control or abate discharges of contaminants and wastes into the air and waters of the State.
 - (2) To require appropriate remedial measures to prevent, control or abate air and water pollution or to cause the proper management of solid wastes.
 - (3) To impose penalties which the Respondent agrees to pay.
 - (4) To require compliance with permits, laws and regulations.
 - (5) To issue Emergency Orders pursuant to Miss. Code Ann. § 49-17-27.
- F. To execute all Orders required by the Brownfields Statute that are not specifically required by Statute and/or Regulation to be issued by the full Commission.
- G. To issue Cease Pumping Orders and Orders Conditioning Permitted Water Withdrawal; to issue Cease and Desist Orders to Surface Mining Operators who are mining without the required Permit or Notice of Intent to Mine or who are otherwise operating in violation of Mississippi law, regulations or condition(s) of any Permit or other Order; and to issue the authorized Orders to Surface Coal Mining Operators who are operating in violation of Mississippi law, regulations, or condition(s) of any Permit or other Order.
- H. To make preliminary determinations necessary to file suit, file suit, conduct litigation, and settle all litigation matters on behalf of the Commission.
- I. To enter into all contracts, grants and cooperative agreements allowed by Miss. Code Ann. § 49-2-9(e).
- J. To delegate signature authority for Agency contracts, purchase orders, travel reimbursement authorizations, requisitions, personnel forms, and similar documents to the Chief of Staff, Head of the Office of Administrative Services and/or to the Division Chiefs within that Office.
- K. To grant continuances for scheduled Formal Hearings; to issue Non-dispositive rulings regarding contested matters (such as, Scheduling Orders and decisions on Interlocutory Motions), and to Stay pending Evidentiary Hearing on the effectiveness of a Commission Order upon a showing of good cause by any party.
- L. To issue, re-issue, deny, or revoke Asbestos Certifications and approve Asbestos Abatement Training Programs.
- M. To issue, re-issue, deny, or revoke Underground Storage Tank (UST) Certifications to individuals authorized to install, alter and /or close USTs.
- N. To issue, re-issue, deny, or revoke Landfill (Solid Waste) and Class I Rubbish Site Operator Certifications.

- O. To issue, re-issue, deny, or revoke Wastewater Operator Certifications and approve Wastewater Training Programs.
- P. To issue, re-issue, deny, or revoke Water Well Driller Licenses.
- Q. To issue, re-issue, deny, or revoke Lead Certifications and approve Lead-Based Paint Activities Training Programs.
- R. To issue, re-issue, deny, or revoke Waste Tire Transporter Certificates.
- S. To requisition and use funds in the Pollution Emergency Fund, Nonhazardous Solid Waste Corrective Action Trust Fund, Waste Tire Abatement Funds and all other Funds created by Title 17 and Title 49 and within the jurisdiction of the Commission for the statutory purposes allowed by the Code.
- T. To discharge or exercise any power or duty granted to the Commission by the Provisions of the Surface Mining and Reclamation Law and the Surface Coal Mining and Reclamation Law and their respective rules and regulations.
- U. To execute reciprocity agreements with other States whose Lead Based Paint Program requirements meet or exceed the Commission's requirements.
- V. To waive the late penalty for failure to pay UST fee upon sufficient demonstration that failure to pay timely was unavoidable due to financial hardship or otherwise beyond the control of the owner.
- W. To compile and publish compilations of the regulations of the Commission and Permit Board.
- X. To approve and award Local Governments Solid Waste Assistance Grants (Competitive Grants and Non-Competitive Grants), Local Governments Waste Tire Collection and Clean Up Grants, Local Government Tire Derived Products Grants, Incentive Waste Tire Recycling and Research Grants, Local Government Planning Grants, Right Way To Throw Away Grants (Local Hazardous Waste Amnesty/Collection Event Grants), Regional Recycling Cooperative Grants, Nonhazardous Solid Waste Corrective Action Trust Fund Cooperative Agreements, and Pollution Prevention/Recycling Grants otherwise allowed by Law.
- Y. To execute, approve and amend environmental covenants.
- Z. To issue administrative orders to require compliance to water well drillers who are operating in violation of Mississippi law, regulations, or other Orders.
- AA. To enter into reciprocity agreements with other states related to certifications when so authorized by law or rules and regulations.

Source: Miss. Code Ann. §§ 21-27-207, 21-27-211, 49-2-5 (3), 49-2-9(e) and (f), 49-2-13 (c),

(e), (j) and (k), 49-2-17, 49-17-17 (c),(n), and (o), 49-17-23, 49-17-44.1, 49-17-43(d), 49-17-68, 49-17-421, 49-17-429, 49-17-507, 49-17-531, 49-35-11(4), 17-17-63, 17-17-65, 17-17-227, 17-17-407(b), 17-17-425, 51-3-7, 53-7-19(l), (m) and (p), 37-138-9, 51-5-1(1) and (5), 49-31-1, et seq., 49-2-1, et seq., 49-17-1, et seq., 17-17-1, et seq., 17-17-201, et seq., 17-17-401, et seq. and 17-17-501, et seq., 51-3-1, et seq., 51-5-1, et seq., 53-7-1, et seq., 53-9-1, et seq. and 89-23-1, et seq.