

By: Representatives Broomfield, Bailey, Barnett (116th), Coleman (65th), Creel, Denny, Ellis, Evans, Fredericks, Hamilton, Harrison, Holloway, Huddleston, Livingston, Middleton, Rushing, Simpson, Smith (27th), Straughter, Watson, West, Young

To: Public Health and Welfare

HOUSE BILL NO. 1195

1 AN ACT TO AMEND SECTIONS 21-27-203, 21-27-205, 21-27-207,
2 21-27-211, 21-27-213, 21-27-215, 21-27-217, 21-27-219 AND
3 21-27-221, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT THE
4 DEPARTMENT OF ENVIRONMENTAL QUALITY RATHER THAN THE STATE BOARD OF
5 HEALTH SHALL REGULATE THE MUNICIPAL AND DOMESTIC WATER AND
6 WASTEWATER SYSTEM ACT; TO AMEND SECTIONS 41-26-2, 41-26-3,
7 41-26-5, 41-26-6, 41-26-7, 41-26-8, 41-26-9, 41-26-11, 41-26-13,
8 41-26-14, 41-26-15, 41-26-17, 41-26-19, 41-26-21, 41-26-23,
9 41-26-25, 41-26-31 AND 41-26-101, MISSISSIPPI CODE OF 1972, TO
10 PROVIDE THAT THE COMMISSION ON ENVIRONMENTAL QUALITY AND THE
11 DEPARTMENT OF ENVIRONMENTAL QUALITY RATHER THAN THE STATE BOARD OF
12 HEALTH AND THE STATE DEPARTMENT OF HEALTH SHALL REGULATE THE
13 MISSISSIPPI SAFE DRINKING WATER ACT; TO AMEND SECTIONS 41-67-2,
14 41-67-3, 41-67-4, 41-67-6, 41-67-7, 41-67-8, 41-67-9, 41-67-11,
15 41-67-12, 41-67-21, 41-67-25, 41-67-28 AND 41-67-29, MISSISSIPPI
16 CODE OF 1972, TO PROVIDE THAT THE DEPARTMENT OF ENVIRONMENTAL
17 QUALITY RATHER THAN THE STATE DEPARTMENT OF HEALTH SHALL REGULATE
18 THE MISSISSIPPI INDIVIDUAL ON-SITE WASTEWATER DISPOSAL SYSTEM LAW;
19 AND FOR RELATED PURPOSES.

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

21 SECTION 1. Section 21-27-203, Mississippi Code of 1972, is
22 amended as follows:

23 21-27-203. For purposes of Sections 21-27-201 through
24 21-27-221, the following terms shall have the meanings ascribed
25 herein, unless the context shall otherwise require:

26 (a) "Association" means the Mississippi Water and
27 Pollution Control Operator's Association, Inc.

28 * * *

29 (b) "Commission" means the Mississippi Commission on
30 Environmental Quality.

31 (c) "Community water system" means a public water
32 system serving piped water for human consumption to fifteen (15)
33 or more individual service connections used by year-round
34 consumers or regularly serving twenty-five (25) or more individual

35 consumers year-round, including, but not limited to, any
36 collection, pretreatment, treatment, storage and/or distribution
37 facilities or equipment used primarily as part of, or in
38 connection with, that system, regardless of whether or not the
39 components are under the ownership or control of the operator of
40 the system.

41 (d) "Department" means the Department of Environmental
42 Quality.

43 (e) "Nontransient, noncommunity water system" means a
44 public water system that is not a community water system and that
45 regularly serves at least twenty-five (25) of the same persons
46 over six (6) months per year.

47 (f) "Operator" means the person who directly supervises
48 and is personally responsible for the daily operation and
49 maintenance of a wastewater facility, community water system,
50 nontransient, noncommunity water system or commercial nonhazardous
51 solid waste management landfill.

52 (g) "Person" means the state or any agency or
53 institution of the state, any municipality, political subdivision,
54 public or private corporation, individual, partnership,
55 association or other entity, including any officer or governing or
56 managing body of any municipality, political subdivision, or
57 public or private corporation, or the United States or any officer
58 or employee of the United States.

59 (h) "Pollution" means contamination or other alteration
60 of the physical, chemical or biological properties of any waters
61 of the state, including change in temperature, taste, color,
62 turbidity or odor of the waters, or the discharge of any liquid,
63 gaseous, solid, radioactive or other substance or heat into any
64 waters of the state.

65 (i) "Wastewater facilities" means pipelines or
66 conduits, pumping stations, force mains, treatment plants, lagoons
67 or any other structure, device, appurtenance or facility, whether

68 operated individually or in any combination, used for collecting,
69 treating and/or disposing of municipal or domestic wastewater, by
70 either surface or underground methods, which is required to have a
71 permit under Section 49-17-29.

72 (j) "Waters of the state" means all waters within the
73 jurisdiction of this state, including all streams, lakes, ponds,
74 impounding reservoirs, marshes, watercourses, waterways, wells,
75 springs, irrigation systems, drainage systems and all other bodies
76 or accumulations of water, surface and underground, natural or
77 artificial, situated wholly or partly within or bordering upon the
78 state, and such coastal waters as are within the jurisdiction of
79 the state, except lakes, ponds or other surface waters which are
80 wholly landlocked and privately owned.

81 SECTION 2. Section 21-27-205, Mississippi Code of 1972, is
82 amended as follows:

83 21-27-205. (1) The commission shall classify all municipal
84 and domestic water collection, storage, treatment and/or
85 distribution systems actually used or intended for use as
86 community water systems or nontransient, noncommunity water
87 systems according to size, type, character of water to be treated,
88 number of service connections, and other physical conditions
89 affecting the operation and maintenance of those systems, and also
90 according to the degree of skill, knowledge, training and
91 experience required of the operators of those systems to ensure
92 competent, efficient operation and maintenance of such systems and
93 protection of public health.

94 (2) The commission shall classify all municipal and domestic
95 wastewater facilities according to size, type, character of
96 wastewater to be treated, and other physical conditions affecting
97 the operation and maintenance of the facilities, and also
98 according to the degree of skill, knowledge, training and
99 experience required of the operators of the facilities to ensure

100 competent, efficient operation and maintenance of the facilities
101 and prevention of pollution of waters of the state.

102 (3) The commission shall establish reciprocal certification
103 arrangements with other states and private companies that
104 establish training and certification programs for operators of
105 commercial nonhazardous solid waste management landfills that meet
106 or exceed the requirements of the commercial nonhazardous solid
107 waste management landfill operator training and certification
108 program established by the commission.

109 SECTION 3. Section 21-27-207, Mississippi Code of 1972, is
110 amended as follows:

111 21-27-207. * * * The * * * commission may adopt, modify,
112 repeal and promulgate, after due notice and hearing, and may make
113 exceptions to and grant exemptions and variances from and may
114 enforce those rules, regulations and procedures as are necessary
115 or appropriate to effectuate the duties and responsibilities of
116 the department arising under Sections 21-27-201 through 21-27-221.
117 The rules, regulations and procedures shall include, but not be
118 limited to, the following: criteria for classifying municipal and
119 domestic community water systems, nontransient, noncommunity water
120 systems and wastewater facilities; qualifications for operators of
121 community water systems, nontransient, noncommunity water systems
122 and wastewater facilities; procedures for examining or testing
123 applicants for operator certificates; procedures and fees for
124 issuing, reissuing, modifying, revoking or terminating operator
125 certificates; and reciprocal certification of operators certified
126 in other states having certification requirements not less
127 stringent than those established by the * * * commission. * * *
128 The * * * commission shall consult with the advisory committee
129 established under this chapter in promulgating the rules,
130 regulations and procedures.

131 SECTION 4. Section 21-27-211, Mississippi Code of 1972, is
132 amended as follows:

133 21-27-211. (1) It is unlawful to operate or cause to be
134 operated any wastewater facility or community water system covered
135 under Sections 21-27-201 through 21-27-221 unless the operator of
136 that facility or system holds a current certificate of competency
137 issued by the * * * commission, as provided by Sections 21-27-201
138 through 21-27-221, in a classification corresponding to the
139 classification of the facility or system. After July 1, 1998, it
140 shall be unlawful to operate or cause to be operated any
141 nontransient, noncommunity water system covered under Sections
142 21-27-201 through 21-27-221, unless the operator of that system
143 holds a current certificate of competency issued by the
144 commission. If an operator is lost due to illness, death,
145 resignation, discharge or other legitimate cause, the owner or
146 president of the governing board of the facility or system shall
147 immediately notify either the * * * commission * * *. The
148 facility or system may continue to operate without a certified
149 operator on an interim basis for a period not to exceed one
150 hundred eighty (180) days, except for good cause shown upon
151 petition to the responsible agency. The * * * commission * * *
152 may grant, upon petition of the facility or system, an extension
153 of the interim operating period not to exceed an additional one
154 hundred eighty (180) days for good cause shown.

155 (2) It is unlawful to operate or cause to be operated any
156 commercial nonhazardous solid waste management landfill permitted
157 under Section 49-17-29 unless the operator of that facility holds
158 a current certificate of competency issued by the commission, as
159 provided by Sections 21-27-201 through 21-27-221. However, in the
160 event of temporary loss of an operator due to illness, death,
161 resignation, discharge or other legitimate cause, notice shall be
162 immediately given to the commission and the continued operation of
163 the facility without a certified operator may proceed on an
164 interim basis for a period not to exceed one hundred eighty (180)
165 days, except for good cause shown upon petition to the commission.

166 SECTION 5. Section 21-27-213, Mississippi Code of 1972, is
167 amended as follows:

168 21-27-213. (1) Notwithstanding any provision of Sections
169 21-27-201 through 21-27-221 to the contrary, any person who is an
170 operator of a municipal or domestic wastewater facility or
171 community water system on July 1, 1986, may, on or before June 30,
172 1987, apply to the * * * commission for, and shall be issued, an
173 operator's certificate without examination or proof of other
174 qualifications, if the application is accompanied by an affidavit
175 of the owner of the facility or system verifying the status of the
176 applicant. Any certificate so issued shall be valid only for the
177 particular facility being operated by the applicant, and then only
178 so long as the facility remains in the same or a lower
179 classification as at the time the application is filed.

180 (2) Notwithstanding any provision of Sections 21-27-201
181 through 21-27-221 to the contrary, any person who is an operator
182 of a nontransient, noncommunity water system on July 1, 1997, may,
183 before June 30, 1998, apply to the commission for an operator's
184 certificate without examination. The application shall be
185 accompanied by an affidavit of the owner of the system verifying
186 the status of the applicant. The commission shall consider the
187 performance history of any system operated by the applicant in
188 determining whether to issue a certificate under this subsection.
189 Upon review of the performance history and the application, the
190 commission may grant or deny the issuance of a certificate under
191 this subsection. Any certificate issued under this subsection
192 shall be valid only for the particular facility being operated by
193 the applicant.

194 SECTION 6. Section 21-27-215, Mississippi Code of 1972, is
195 amended as follows:

196 21-27-215. Notwithstanding any provision of Sections
197 21-27-201 through 21-27-221 to the contrary, holders of valid
198 certificates of competency obtained through examination under the

199 voluntary certification program sponsored by the association may,
200 on or before June 30, 1987, apply to the * * * commission for, and
201 shall be issued, an operator's certificate issued under the
202 provisions of Sections 21-27-201 through 21-27-221 without further
203 examination or proof of other qualifications, provided such
204 state-issued certificate shall be valid only for the class of
205 facility covered by the association certificate.

206 SECTION 7. Section 21-27-217, Mississippi Code of 1972, is
207 amended as follows:

208 21-27-217. (1) Any person found by the * * *
209 commission * * * or any duly designated hearing officer appointed
210 thereby, violating any of the provisions of Sections 21-27-201
211 through 21-27-221, or any rule or regulation promulgated by
212 the * * * commission hereunder, or any order issued by the * * *
213 commission in the exercise of its authority and duties hereunder,
214 shall be subject to a civil penalty of not less than One Hundred
215 Dollars (\$100.00) nor more than One Thousand Dollars (\$1,000.00),
216 for each violation, such penalty to be levied and assessed by the
217 board or commission or designated hearing officer. Appeals from
218 such actions may be taken as provided hereinafter. Each day upon
219 which a violation occurs shall be deemed a separate and additional
220 violation.

221 In determining the amount of any monetary penalty assessed
222 hereunder, the * * * commission or duly appointed hearing officer
223 shall consider all factors bearing upon the violation, including
224 but not limited to, any resulting actual or probable pollution of
225 the lands and/or waters of the state and/or endangerment to public
226 health, and the nature and extent thereof, any violation of the
227 terms or conditions of permits issued by the * * * commission for
228 the affected facility, and any actual or probable damage to the
229 affected facility caused by improper operation thereof.

230 (2) In lieu of, or in addition to, the penalty provided in
231 subsection (1) of this section, the * * * commission shall have

232 power to institute and maintain in the name of the state any and
233 all proceedings necessary or appropriate to enforce the provisions
234 of Sections 21-27-201 through 21-27-221, rules and regulations in
235 force pursuant hereto, and orders and operator certifications made
236 and issued hereunder, in the appropriate circuit, chancery, county
237 or justice court of the county in which venue may lie. The * * *
238 commission may obtain mandatory or prohibitory injunctive relief,
239 either temporary or permanent.

240 (3) Any person found guilty of violating any provision of
241 Sections 21-27-201 through 21-27-221, upon conviction, shall be
242 punished by a fine of not less than One Hundred Dollars (\$100.00)
243 nor more than One Thousand Dollars (\$1,000.00) per day of
244 violation.

245 SECTION 8. Section 21-27-219, Mississippi Code of 1972, is
246 amended as follows:

247 21-27-219. (1) Whenever the * * * commission or an employee
248 thereof has reason to believe that a violation of any provision of
249 a regulation or of any order of the * * * commission has occurred,
250 the * * * commission may cause a written complaint to be served
251 upon the alleged violator or violators. The complaint shall
252 specify the provisions of Sections 21-27-201 through 21-27-221 or
253 regulation or order alleged to have been violated and the facts
254 alleged to constitute a violation thereof, and shall require that
255 the alleged violator appear before the * * * commission, or any
256 duly designated hearing officer appointed thereby, at a time and
257 place specified in the notice and answer the charges complained
258 of. The time of appearance before the * * * commission or
259 designated hearing officer shall be not less than thirty (30) days
260 from the date of the service of the complaint.

261 (2) The * * * commission or designated hearing officer shall
262 afford an opportunity for a fair hearing to the alleged violator
263 or violators at the time and place specified in the complaint. On
264 the basis of the evidence produced at the hearing, the * * *

265 commission or designated hearing officer shall make findings of
266 fact and conclusions of law and enter such order as in its opinion
267 will best further the purposes of Sections 21-27-201 through
268 21-27-221 and shall give written notice of such order to the
269 alleged violator, and the * * * commission or designated hearing
270 officer may assess such penalties as hereinbefore provided.

271 (3) Except as otherwise expressly provided, any notice or
272 other instrument issued by or under authority of the * * *
273 commission or designated hearing officer may be served on any
274 person affected thereby personally or by publication, and proof of
275 such service may be made in like manner as in case of service of a
276 summons in a civil action, such proof to be filed in the office of
277 the * * * commission; or such service may be made by mailing a
278 copy of the notice, order or other instrument by certified mail,
279 directed to the person affected at his last known post office
280 address as shown by the files or records of the * * * commission,
281 and proof thereof may be made by the affidavit of the person who
282 did the mailing, filed in the office of the * * * commission.

283 (4) In conducting the hearings provided in this section, any
284 member of the * * * commission, or the chief administrative
285 officer thereof, or the duly designated hearing officer, shall
286 have the authority to issue subpoenas to appear and give
287 testimony, to produce records, or both, and in case of contumacy
288 or refusal to obey a notice of hearing or subpoena issued
289 hereunder, the circuit court shall have jurisdiction upon
290 application of the * * * commission or its representative to issue
291 an order requiring obedience to the hearing notice or subpoena of
292 the * * * commission or designated hearing officer. Any failure
293 to obey such court order may be punished by such court as contempt
294 thereof. Any member of the * * * commission, or the chief
295 administrative officer thereof, or the designated hearing officer,
296 may administer oaths. A verbatim record of the hearing shall be

297 made. Witnesses who are subpoenaed shall receive the same fees
298 and mileage as in civil actions.

299 (5) Any person aggrieved by the decision of the * * *
300 commission to issue, deny, modify or revoke any operator
301 certification hereunder shall be entitled to a full hearing before
302 the * * * commission or duly designated hearing officer appointed
303 thereby in the same manner as provided hereinabove, and appeals
304 from such actions shall be in the same manner as provided
305 hereinafter.

306 SECTION 9. Section 21-27-221, Mississippi Code of 1972, is
307 amended as follows:

308 21-27-221. (1) Any person aggrieved by the final decision
309 of any duly designated hearing officer appointed by the * * *
310 commission as a result of any hearing held under the provisions of
311 Sections 21-27-201 through 21-27-221 may, within thirty (30) days
312 of receipt of written notice of the action of the hearing officer,
313 appeal such final decision to the full * * * commission * * * by
314 filing therewith a written notice of appeal. No cost bond or
315 other security shall be required to perfect such appeal. The
316 hearing officer shall forthwith prepare and submit to the * * *
317 commission the record made at the hearing, which shall thereupon
318 become the record of the cause. Appeals to the * * * commission
319 shall be considered only upon the record made before the hearing
320 officer. The * * * commission shall review all findings of fact
321 and conclusions of law of the hearing officer, together with any
322 penalties levied, and may affirm, modify or reverse and remand the
323 decision of the hearing officer, as may be determined to be
324 necessary or appropriate. Appeals from the final decision of
325 the * * * commission shall be perfected as hereinafter provided.

326 (2) Any person aggrieved by the final decision of the * * *
327 commission as a result of any hearing held under the provisions of
328 Sections 21-27-201 through 21-27-221, including hearings requested
329 incidental to the issuance, denial, modification or revocation of

330 any operator certification issued hereunder, may, within thirty
331 (30) days of receipt of written notice of the action of the * * *
332 commission, appeal such final decision to the chancery court of
333 the county of the situs in whole or in part of the subject matter
334 by giving a cost bond with sufficient sureties, payable to the
335 state in the sum of not less than One Hundred Dollars (\$100.00)
336 nor more than Five Hundred Dollars (\$500.00), to be fixed by
337 the * * * commission and to be filed with and approved by the
338 chief administrative officer of the appropriate agency, who shall
339 forthwith certify the same together with a certified copy of the
340 record made before the * * * commission or designated hearing
341 officer in the matter to the chancery court to which the appeal is
342 taken, which shall thereupon become the record of the cause. An
343 appeal to the chancery court as provided herein shall not stay the
344 decision of the * * * commission. The aggrieved party may, within
345 such thirty (30) days, petition the * * * chancery court for an
346 appeal with supersedeas and the chancellor shall grant a hearing
347 on the petition and upon good cause shown may grant such appeal
348 with supersedeas; the appellant shall be required to post a
349 supersedeas bond with sufficient sureties according to law in an
350 amount to be determined by the chancellor. Appeals shall be
351 considered only upon the record as made before the * * *
352 commission. The chancery court shall always be deemed open for
353 hearing of such appeals and the chancellor may hear the same in
354 termtime or in vacation at any place in his district, and the same
355 shall have precedence over all civil cases, except election
356 contests. The chancery court shall review all questions of law
357 and of fact. If no prejudicial error be found, the matter shall
358 be affirmed. If prejudicial error be found, the same shall be
359 reversed, and the chancery court shall remand the matter to
360 the * * * commission for appropriate action as may be indicated or
361 necessary under the circumstances. Appeals may be taken from the
362 chancery court to the Supreme Court in the manner as now required

363 by law, except that if a supersedeas is desired by the party
364 appealing to the chancery court, he may apply therefor to the
365 chancellor thereof, who shall award a writ of supersedeas, without
366 additional bond, if in his judgment material damage is not likely
367 to result thereby; but otherwise, he shall require such
368 supersedeas bond as he deems proper, which shall be payable to the
369 state for damage.

370 SECTION 10. Section 41-26-2, Mississippi Code of 1972, is
371 amended as follows:

372 41-26-2. (1) The Legislature finds that:

373 (a) An adequate supply of safe, pure drinking water is
374 essential to the public health and welfare and the maintenance of
375 that supply through viable water systems is an important natural
376 resource in the economic development of the state;

377 (b) The federal Safe Drinking Water Act, as amended,
378 provides a comprehensive framework for regulating the collection,
379 treatment, storage and distribution of potable water; and

380 (c) It is in the public interest of the state to assume
381 primary enforcement responsibility under the federal Safe Drinking
382 Water Act, as amended.

383 (2) The purposes of this chapter shall be:

384 (a) To establish a state program to assure provision of
385 safe drinking water to the public by establishing drinking water
386 standards consistent with the federal act and developing a state
387 program to implement and enforce the standards. The standards
388 shall protect the public health and welfare to the extent feasible
389 using technology, treatment techniques and other means which are
390 generally available;

391 (b) To develop a process for implementing plans for the
392 provision of safe drinking water in emergencies;

393 (c) To provide public notice of potentially hazardous
394 conditions that may exist in a water supply; and

395 (d) To authorize the director to prevent the creation
396 of new potentially nonviable community water systems, to provide
397 technical assistance to existing potentially nonviable systems to
398 help those systems become viable and to encourage the elimination
399 of nonviable systems whose problems cannot be corrected.

400 (3) It is the intent of the Legislature that the commission
401 in implementing Section 41-26-5(3) shall work cooperatively with
402 organizations which provide training and assistance to public
403 water systems. The commission shall, consistent with state and
404 federal law and rules and regulations and subject to the
405 availability of funds, contract annually with and provide funding
406 for those organizations. Any contract and funding shall be
407 contingent upon receipt of an acceptable scope of work and cost
408 proposal, as determined by the department and upon the contractor
409 satisfactorily meeting performance objectives established in the
410 contract.

411 SECTION 11. Section 41-26-3, Mississippi Code of 1972, is
412 amended as follows:

413 41-26-3. For purposes of this chapter, the following terms
414 shall have the meaning ascribed herein unless the context clearly
415 indicates otherwise:

416 (a) "Administrator" means the Administrator of the U.S.
417 Environmental Protection Agency or the administrator's designee.

418 (b) "Commission" means the Mississippi Commission on
419 Environmental Quality.

420 (c) "Community public water system" means a public
421 water system serving at least fifteen (15) individual service
422 connections used by year-round consumers or regularly servicing at
423 least twenty-five (25) individual consumers year-round.

424 (d) "Construction" means any placement, assembly or
425 installation of facilities or equipment, including contractual
426 obligations to purchase those facilities or equipment, at the

427 location where the equipment will be used, including any
428 preparation work at any location.

429 (e) "Contaminant" means any physical, chemical,
430 biological or radiological substance or matter in water.

431 (f) "Cross connection" means any direct interconnection
432 between a public water system and a nonpublic water system or
433 other source which may result in the contamination of the drinking
434 water provided by the public water system.

435 (g) "Department" means the Department of Environmental
436 Quality.

437 (h) "Executive director" means the Executive Director
438 of the Department of Environmental Quality.

439 (i) "Federal act" means the Safe Drinking Water Act of
440 1974, as amended, principally codified as 42 USCS Section 300(f)
441 et seq.

442 (j) "Federal agency" means any department, agency or
443 instrumentality of the United States.

444 (k) "Interested party" means any person claiming an
445 interest in the water system operation that is the subject of the
446 hearing and who may be affected by the water system.

447 (l) "Maximum contaminant level" means the maximum
448 permissible level of a contaminant in water which is delivered to
449 any user of a public water system.

450 (m) "Municipality" means a city, town, village or other
451 public body created by state law, or an Indian tribal organization
452 authorized by law.

453 (n) "National primary drinking water regulations" means
454 primary drinking water regulations promulgated by the
455 administrator under the federal act.

456 (o) "Nontransient, noncommunity public water system"
457 means a public water system that is not a community water system
458 and that regularly serves at least twenty-five (25) of the same
459 persons over six (6) months per year.

460 (p) "Person" means an individual, corporation, company,
461 association, partnership, municipality or federal agency.

462 (q) "Public water system" means a system for providing
463 to the public piped water for human consumption through pipes or
464 other constructed conveyances if the system has at least fifteen
465 (15) service connections or regularly serves at least twenty-five
466 (25) individuals. The term includes but is not limited to:

467 (i) Any collection, treatment, storage and
468 distribution facilities under control of the operator of the
469 system and used primarily in connection with the system; and

470 (ii) Any collection or pre-treatment storage
471 facilities not under the control which are used primarily in
472 connection with the system.

473 (r) "Semi-public water system" means a system for the
474 provision to the public of water for human consumption through
475 pipes or other constructed conveyances if the system has more than
476 one (1) but less than fifteen (15) service connections.

477 (s) "Supplier of water" means any person who owns, or
478 controls a public water system.

479 (t) "Violator" means a public water system, an officer
480 or director of a public water system, an operator, certified or
481 otherwise, or any other person designated by a public water system
482 or the department as the official responsible for the operation of
483 a public water system.

484 SECTION 12. Section 41-26-5, Mississippi Code of 1972, is
485 amended as follows:

486 41-26-5. (1) In addition to any other duties required by
487 law, the commission shall have the following powers and duties
488 concerning safe drinking water:

489 (a) To establish policies, requirements or standards
490 governing the source, collection, distribution, purification,
491 treatment and storage of water for public water systems as it
492 deems necessary for the provision of safe drinking water;

493 (b) To adopt, modify, repeal and promulgate, after due
494 notice and hearing and in accordance with the Mississippi
495 Administrative Procedures Law and Section 41-26-6, and where not
496 otherwise prohibited by federal or state law, to make exceptions
497 to and grant exemptions and variances from, and to enforce rules
498 and regulations implementing the powers and duties of the
499 commission under this chapter;

500 (c) To enter into, and to authorize the executive
501 director to execute contracts, grants and cooperative agreements
502 with, any federal or state agency or subdivision thereof,
503 interstate agency, or any other person in connection with carrying
504 out this chapter; and

505 (d) To discharge other powers, duties and
506 responsibilities which may be necessary to implement this chapter.

507 (2) (a) Except as provided in Section 41-26-5(2)(b),
508 regulations adopted under this section shall apply to each public
509 water system in the state.

510 (b) Regulations shall not apply to a public water
511 system:

512 (i) Which consists only of distribution and
513 storage facilities, and which does not have any collection and
514 treatment facilities;

515 (ii) Which obtains all of its water from, but is
516 not owned or operated by, a public water system to which such
517 regulations apply;

518 (iii) Which does not sell water to any person; and

519 (iv) Which is not a carrier which conveys
520 passengers in interstate commerce.

521 (3) The commission shall develop and implement a technical
522 assistance program to help existing potentially nonviable
523 community public water systems to become viable and to improve the
524 technical, managerial or financial capabilities of small community
525 public water systems. In developing this program, the commission

526 shall work cooperatively with organizations which currently
527 provide training and assistance to public water systems.

528 SECTION 13. Section 41-26-6, Mississippi Code of 1972, is
529 amended as follows:

530 41-26-6. (1) The commission may adopt rules and regulations
531 governing public water systems, but those rules and regulations
532 shall, except as expressly required by law, be no more stringent
533 or extensive in scope, coverage and effect than regulations
534 promulgated by the United States Environmental Protection Agency.

535 (2) If federal regulations do not provide a standard,
536 criteria or guidance addressing public water systems, the
537 commission may promulgate rules and regulations to address these
538 matters when the commission determines that the rules and
539 regulations are necessary to protect the public health and
540 welfare.

541 (3) Nothing in this section shall prohibit the director by
542 order or in the approval of plans for construction or changes from
543 placing additional requirements on a public water system on a case
544 by case basis in order to provide for the quantity and quality of
545 drinking water or to protect the public health and welfare.

546 SECTION 14. Section 41-26-7, Mississippi Code of 1972, is
547 amended as follows:

548 41-26-7. (1) In addition to any other duties required by
549 law, the executive director shall have the following powers and
550 duties concerning safe drinking water:

551 (a) To exercise general supervision over the
552 administration and enforcement of this chapter and applicable
553 rules and regulations;

554 (b) To make inspections and investigations, collect
555 samples and carry on research and analyses as may be necessary to
556 carry out this chapter and applicable rules and regulations;

557 (c) To enter at all reasonable times onto any property
558 other than the interior of a private dwelling to make inspections,

559 conduct investigations or studies or enforce this chapter and
560 applicable rules and regulations;

561 (d) To enter into contracts, grants or cooperative
562 arrangements with any federal or state agency or subdivision
563 thereof, interstate agency or any other person;

564 (e) To receive financial and technical assistance from
565 the federal government and other public or private agencies or
566 organizations;

567 (f) To participate in related programs of the federal
568 government, other states, interstate agencies, or other public or
569 private agencies or organizations;

570 (g) To establish adequate fiscal controls and
571 accounting procedures to assure proper disbursement of and account
572 for funds appropriated or otherwise necessary to carry out this
573 chapter;

574 (h) To hold hearings, issue, modify or revoke orders,
575 levy and collect any administrative fine or penalty and to enforce
576 the laws, rules and regulations governing safe drinking water;

577 (i) To keep any records and make reports with respect
578 to the activities of the department;

579 (j) To delegate any powers, duties and responsibilities
580 as deemed appropriate to administer this chapter including
581 delegation of any powers and duties regarding administrative
582 enforcement to a designated administrative law judge or hearing
583 officer; and

584 (k) To perform all acts necessary to carry out this
585 chapter or the federal act.

586 SECTION 15. Section 41-26-8, Mississippi Code of 1972, is
587 amended as follows:

588 41-26-8. (1) The executive director shall exercise general
589 supervision over the construction and operation of public water
590 systems throughout the state. The general supervision shall
591 include all of the features of construction and operation of

592 public water systems which do or may affect the sanitary quality
593 or the quantity of the water supply.

594 (2) (a) No person shall construct or change any community
595 public water system or nontransient, noncommunity public water
596 system until the plans for that construction or change have been
597 submitted to and approved by the director. Plans for the
598 construction or change must be prepared by a professional engineer
599 registered in this state.

600 (b) In addition, each applicant for a new community
601 public water system or nontransient, noncommunity public water
602 system shall submit an operation and maintenance plan for review
603 and approval by the executive director. The plan must be approved
604 before beginning construction.

605 (c) In granting any approval under this section, the
606 executive director may specify any modifications, conditions or
607 limitations as may be required for the protection of the public
608 health and welfare.

609 (d) The executive director may also review the source
610 of the water and the quantity of water to be withdrawn.

611 (e) Records of construction, including plans and
612 descriptions of existing portions of a public water system, shall
613 be made available to the department upon request.

614 (f) Each applicant for a new community public water
615 system or nontransient, noncommunity public water system shall
616 submit financial and managerial information as required by the
617 public utilities staff. Following review of that information, the
618 executive director of the public utilities staff shall certify in
619 writing to the executive director the financial and managerial
620 viability of the system if the executive director of the public
621 utilities staff determines the system is viable. The executive
622 director shall not approve the construction until that
623 certification is received.

624 (g) The executive director shall not approve any plans
625 for changes to an existing community public water system or
626 nontransient, noncommunity public water system, if the executive
627 director determines the changes would threaten the viability of
628 the system or if the changes may overload the operational
629 capabilities of the system.

630 (3) Each semi-public water system shall notify the
631 department of its location, a responsible party and the number of
632 connections served. The department shall, to the extent
633 practicable, take appropriate actions to ensure that records on
634 semi-public water systems are up-to-date. The commission may
635 require water well drillers to provide information on wells
636 drilled for use by semi-public water systems. The department
637 shall at least annually collect a sample from each semi-public
638 water system and shall analyze that sample at no cost to the
639 semi-public water system for microbiological contaminants and any
640 other contaminants deemed appropriate by the department. If the
641 department finds levels of contaminants exceeding the Mississippi
642 Primary Drinking Water Standards, the department shall notify the
643 responsible party and shall provide technical assistance to the
644 system to correct the problem. No semi-public water system shall
645 be subject to the penalty provided under Section 41-26-31,
646 Mississippi Code of 1972.

647 SECTION 16. Section 41-26-9, Mississippi Code of 1972, is
648 amended as follows:

649 41-26-9. The executive director, upon receipt of information
650 that a contaminant which is present in or is likely to enter a
651 public water system may present an imminent and substantial
652 endangerment to the public health, may take any actions deemed
653 necessary to protect the public health. The actions may include,
654 but shall not be limited to:

655 (a) Issuing any orders either on the initiative of the
656 executive director or through a designated administrative law

657 judge or hearing officer as may be necessary to protect the public
658 health of users of the system, including travelers; and

659 (b) Commencing a civil action for appropriate relief,
660 including a restraining order or permanent or temporary
661 injunction.

662 SECTION 17. Section 41-26-11, Mississippi Code of 1972, is
663 amended as follows:

664 41-26-11. The executive director shall develop an adequate
665 plan for the provision of safe drinking water under emergency
666 circumstances. If, in the judgment of the director, emergency
667 circumstances exist in the state for safe drinking water, the
668 executive director may take any actions deemed necessary to
669 provide safe drinking water where it otherwise would not be
670 available.

671 SECTION 18. Section 41-26-13, Mississippi Code of 1972, is
672 amended as follows:

673 41-26-13. (1) A public water system shall, as soon as
674 practicable, notify the * * * department * * * and the
675 administrator if one (1) of the following conditions exist: (a)
676 the system is not in compliance with the Mississippi Primary
677 Drinking Water Regulations; (b) the system fails to perform
678 monitoring required by regulations adopted by the commission; (c)
679 the system is subject to a variance granted for an inability to
680 meet a maximum contaminant level requirement; (d) the system is
681 subject to an exemption; or (e) the system fails to comply with
682 the requirements prescribed by a variance or exemption.

683 (2) In addition, the system shall provide public notice.
684 The notice shall be published at least once every three (3) months
685 in a newspaper of general circulation in the area which is served
686 by the water system, as determined by the executive director. The
687 notice shall not be placed in the legal section of the newspaper.
688 The notice shall be furnished to the other communications media
689 serving the area as soon as practicable after the discovery of any

690 condition for which the notice is required. If the water bills of
691 a public water system are issued more often than once every three
692 (3) months, the notice shall be included in at least one (1) water
693 bill of the system every three (3) months, and if a public water
694 system issues its water bills less often than once every three (3)
695 months, the notice shall be included in each water bill issued by
696 the system.

697 SECTION 19. Section 41-26-14, Mississippi Code of 1972, is
698 amended as follows:

699 41-26-14. (1) The department shall develop and implement a
700 cross connection control program in accordance with this section.
701 Before development of the cross connection control program, the
702 department shall consult with the United States Environmental
703 Protection Agency regarding the development of a federal cross
704 connection control program. It is the intent of the Legislature
705 that any cross connection control program developed and
706 implemented by the department be equivalent to a federal program,
707 unless otherwise provided in this section. The cross connection
708 control program developed and implemented under this section shall
709 be considered the minimum program for cross connection control.

710 (2) (a) The commission shall adopt regulations defining a
711 high hazard cross connection and a low hazard cross connection.
712 The commission shall determine which low hazard cross connections
713 pose a very low risk and therefore are below regulatory concern.
714 Those low hazard cross connections posing a very low risk shall be
715 exempt from the requirements of this section. In addition, the
716 regulations shall specify those backflow preventers which are
717 recommended to address both high hazard and low hazard cross
718 connections.

719 (b) Any regulations previously adopted to implement a
720 cross connection control program shall be void to the extent those
721 regulations are in conflict or inconsistent with this section.

722 (3) Before December 31, 2000, each public water system shall
723 develop and implement a cross connection control program and shall
724 conduct a survey and on-site visits, as necessary, to locate cross
725 connections within its system. Single family dwellings and
726 multifamily dwellings designed to house not more than eight (8)
727 families shall be excluded from the survey, unless the public
728 water system has reason to believe a cross connection exists.

729 (4) Before June 30, 2001, each property owner identified by
730 the public water system as having a high hazard cross connection
731 shall install an approved backflow preventer. If the property
732 owner already has a backflow preventer installed, the public water
733 system shall require the property owner to have the backflow
734 preventer tested. If the backflow preventer functions properly,
735 the public water system shall consider the backflow preventer
736 approved and may allow the installed backflow preventer to remain
737 in place until the backflow preventer fails to function properly.

738 (5) Before June 30, 2004, each property owner identified by
739 the public water system as having a low hazard cross connection
740 shall install an approved backflow preventer. If the property
741 owner already has a backflow preventer installed, the public water
742 system shall require the property owner to have the backflow
743 preventer tested. If the backflow preventer functions properly,
744 the public water system shall consider the backflow preventer
745 approved and may allow the installed backflow preventer to remain
746 in place until the backflow preventer fails to function properly.

747 (6) Each high hazard backflow preventer shall be inspected
748 and tested at least annually. Each low hazard backflow preventer
749 shall be inspected and tested at least biennially. If a high
750 hazard backflow preventer fails to function properly, the property
751 owner shall have the backflow preventer repaired and retested or
752 shall install a new approved backflow preventer within thirty (30)
753 days of the initial test. If a low hazard backflow preventer
754 fails to function properly, the property owner shall have the

755 backflow preventer repaired and retested or shall install a new
756 approved backflow preventer within ninety (90) days of the initial
757 test.

758 (7) All inspection and testing of backflow preventers under
759 this section shall be conducted by a certified tester, unless
760 otherwise provided in the regulations of the commission.

761 Certified backflow preventer testers shall be licensed by the
762 department under those conditions as the department deems
763 appropriate. As a condition of certification, each certified
764 backflow preventer tester shall not charge a fee in excess of
765 Fifty Dollars (\$50.00) for the inspection and testing of any low
766 hazard backflow preventer.

767 (8) If a property owner fails to install an approved
768 backflow preventer or fails to have a backflow preventer tested as
769 required by this section, the public water system may discontinue
770 service to that property owner until the failure is corrected.

771 (9) After the dates specified in subsections (4) and (5) of
772 this section, it is unlawful to install or allow the installation
773 or maintenance of any cross connection, auxiliary intake or
774 bypass, unless the source and quality of water from the auxiliary
775 supply, the method of connection and the use and operation of that
776 cross connection, auxiliary intake or bypass has been approved by
777 the executive director.

778 SECTION 20. Section 41-26-15, Mississippi Code of 1972, is
779 amended as follows:

780 41-26-15. The following acts and the causing of these acts
781 are prohibited:

782 (a) Failure by a supplier of water to comply with the
783 requirements of Section 41-26-13, or dissemination by that
784 supplier of any false or misleading information with respect to
785 notices required under Section 41-26-13, or with respect to
786 remedial actions being undertaken to achieve compliance with
787 Mississippi Primary Drinking Water Regulations;

788 (b) Failure by a supplier of water to comply with this
789 chapter or applicable rules or regulations promulgated under this
790 chapter, or with conditions of any variances or exemptions granted
791 under this chapter;

792 (c) Failure by any person to comply with any order
793 issued by the executive director, administrative law judge or
794 hearing officer under this chapter;

795 (d) Refusal by a supplier of water to allow an
796 authorized representative of the department to inspect any public
797 water system;

798 (e) Contamination of a public water system;

799 (f) Intentionally damaging any pipe or other part of a
800 public water system;

801 (g) Discharge of sewage or other waste at any location
802 that may come into contact with a public water system intake,
803 unless that discharge is permitted or authorized by a state or
804 federal agency; and

805 (h) Abandonment or other termination of water services
806 to more than fifty percent (50%) of the customers of a system by a
807 supplier of water, without providing at least sixty (60) days'
808 notice to all customers served by the public water system and the
809 department.

810 SECTION 21. Section 41-26-17, Mississippi Code of 1972, is
811 amended as follows:

812 41-26-17. (1) When the executive director or an employee of
813 the department has reason to believe that a violation of this
814 chapter, a rule or regulation promulgated under this chapter, any
815 order of the executive director, or any limitation or condition of
816 an approval has occurred, the executive director shall cause a
817 written complaint to be served upon the alleged violator. The
818 complaint shall specify the provisions of this chapter, rule or
819 regulation, order or approval alleged to be violated and the facts
820 alleged to constitute that violation. The complaint shall also

821 require the alleged violator to appear before the executive
822 director at a time and place specified in the notice to answer the
823 charges. The time of appearance shall be at least five (5) days
824 from the date of the service of the complaint.

825 (2) Except as provided in subsection (1) of this section,
826 upon the filing of a complaint by any person alleging a violation
827 of this chapter, a rule or regulation promulgated under this
828 chapter, any order of the executive director or any limitation or
829 condition of an approval, the executive director shall conduct an
830 investigation of the complaint. Any complaint filed under this
831 subsection shall be in writing, signed by the person making the
832 allegation and filed with the executive director. If the
833 executive director finds a basis for the complaint, the executive
834 director shall cause written notice of the complaint, specifying
835 the charges or allegations made, to be served upon the alleged
836 violator. The notice shall also require the alleged violator to
837 appear before the executive director at a time and place specified
838 in the notice to answer the charges. The time of appearance shall
839 be at least five (5) days from the date of the service of the
840 complaint. If the executive director finds no basis for the
841 complaint, the executive director shall dismiss the complaint.

842 (3) The executive director shall afford an opportunity for a
843 hearing to the alleged violator at the time and place specified in
844 the notice. On the basis of the facts determined at the hearing,
845 the presiding official shall make findings of fact and conclusions
846 of law and enter an order. The executive director shall give
847 written notice of that order to the alleged violator and to any
848 other persons appearing at the hearing or making written request
849 for notice of the order. In addition to ordering corrections in
850 the operation or maintenance of a public water system, and other
851 measures which, in the opinion of the executive director, are
852 necessary to ensure compliance with this chapter or the federal

853 act or to safeguard the public health, the executive director may
854 assess penalties as provided in Section 41-26-31.

855 (4) Except as otherwise expressly provided, any notice or
856 other instrument issued by or under authority of this chapter may
857 be served on any person affected and proof of that service may be
858 made in like manner as in case of service of a summons in a civil
859 action. Proof of service shall be filed in the office of the
860 executive director. In addition, service may be made by mailing a
861 copy of the notice, order or other instrument by certified mail,
862 directed to the person affected at the person's last known post
863 office address as shown by the files or records of the department,
864 and proof thereof may be made by the affidavit of the person who
865 did the mailing, filed in the office of the executive director.

866 SECTION 22. Section 41-26-19, Mississippi Code of 1972, is
867 amended as follows:

868 41-26-19. (1) (a) Any hearing under this chapter may be
869 conducted by the executive director or an administrative law judge
870 or an administrative hearing officer designated by the executive
871 director. The presiding official may conduct the hearings in the
872 name of the executive director at any time and place as conditions
873 and circumstances may warrant. The presiding official shall have
874 the record of any hearing prepared which the official has
875 conducted for the executive director.

876 (b) In any pending matters under this chapter, the
877 executive director shall have the same powers to subpoena
878 witnesses, administer oaths, examine witnesses under oath and
879 conduct the hearing, as is now vested by law in the Mississippi
880 Public Service Commission, for hearings before it. In addition,
881 the executive director may issue all subpoenas, both at the
882 instance of the petitioner and of the executive director. At any
883 hearing the executive director, the staff of the department, any
884 other petitioner or any other interested person, may offer proof,
885 present witnesses and submit evidence. At the discretion of the

886 presiding official, comments may be taken from members of the
887 public who are subscribers of the public water system. Witnesses
888 who are subpoenaed shall receive the same fees and mileage as in
889 civil actions. In case of contumacy or refusal to obey a notice
890 of hearing or subpoena issued under this section, the circuit
891 court shall have jurisdiction, upon application of the executive
892 director or the executive director's representative, to issue an
893 order requiring that person to appear and testify or produce
894 evidence as the case may require and any failure to obey that
895 order of the court may be punished by the court as contempt.
896 Failure to appear at any hearing, without prior authorization to
897 do so from the executive director or the executive director's
898 representative, may result in the executive director finding the
899 alleged violator guilty of the charges complained of by default.
900 An order may be entered, including the assessment of a penalty,
901 which, in the opinion of the director, will best further the
902 purposes of this chapter.

903 (2) All hearings shall be recorded either by a court
904 reporter or by tape or mechanical recorders and subject to
905 transcription upon order of the executive director or any
906 interested person. If the request for transcription originates
907 with an interested person, that person shall pay the cost prior to
908 the production of the transcription.

909 SECTION 23. Section 41-26-21, Mississippi Code of 1972, is
910 amended as follows:

911 41-26-21. Following the hearing, the presiding official
912 shall enter an order which shall become a final order of the
913 executive director, unless the petitioner or other interested
914 person appearing at the hearing, shall, within ten (10) days after
915 the date of the final order was made, appeal to the Chancery Court
916 of the First Judicial District of Hinds County or the chancery
917 court of the county of the situs, in whole or in part. The
918 petitioner or other interested person shall give a cost bond with

919 sufficient sureties, payable to the state in the sum of not less
920 than One Hundred Dollars (\$100.00) nor more than Five Hundred
921 Dollars (\$500.00), to be fixed in the order appealed from. The
922 cost bond shall be filed with and approved by the executive
923 director, who shall certify the bond, together with a certified
924 copy of the record of the hearing in the matter, to the chancery
925 court, which shall be the record of the cause. Except as provided
926 in this section, an appeal to the chancery court as provided in
927 this section shall not stay the execution of a final order of the
928 executive director.

929 Any person who is aggrieved by any final order or other
930 decision issued under this section may, within ten (10) days after
931 the date of that order or decision, petition the Chancery Court of
932 the First Judicial District of Hinds County or the chancery court
933 of the county of the situs, in whole or in part, for an appeal
934 with supersedeas. The chancellor shall grant a hearing on that
935 petition. Upon good cause shown, the chancellor may grant the
936 appeal with supersedeas. The appellant shall be required to post
937 a bond with sufficient sureties according to law in an amount to
938 be determined by the chancellor. Appeals shall be considered only
939 upon the record as made at the hearing before the presiding
940 official. The chancery court shall always be deemed open for
941 hearing of appeals and the chancellor may hear the appeal in
942 termtime or in vacation at any place in the chancellor's district.
943 The appeal shall have precedence over all civil cases, except
944 election contests. The chancery court shall review all questions
945 of law and of fact. If no prejudicial error is found, the matter
946 shall be affirmed and remanded to the executive director for
947 enforcement. If a prejudicial error is found, the matter shall be
948 reversed and the chancery court shall remand the matter to the
949 executive director for appropriate action as may be indicated or
950 necessary under the circumstances. Appeals may be taken from the
951 chancery court to the Supreme Court in the manner as now required

952 by law, but if a supersedeas is desired by the party appealing to
953 the chancery court, that party may apply for the supersedeas to
954 the chancellor, who shall award a writ of supersedeas, without
955 additional bond, if in the chancellor's judgment material damage
956 is not likely to result. If material damage is likely to result,
957 the chancellor shall require a supersedeas bond as deemed proper,
958 which shall be liable to the state for any damage.

959 SECTION 24. Section 41-26-23, Mississippi Code of 1972, is
960 amended as follows:

961 41-26-23. (1) There is created in the State Treasury a fund
962 to be designated as the "Drinking Water Quality Analysis Fund."
963 The fund shall be treated as a special trust fund. Interest
964 earned on the principal in the fund shall be credited by the
965 Treasurer to the fund. The fund may receive monies from any
966 available public or private source, including fees, proceeds and
967 grants. The department shall expend or utilize monies in the fund
968 to pay all reasonable direct and indirect costs of water quality
969 analysis and related activities as required by the federal Safe
970 Drinking Water Act, as amended. Monies in the fund at the end of
971 the fiscal year shall be retained in the fund for use in the
972 succeeding fiscal year. Except as provided in subsection (5) of
973 this section, if the annual fees collected exceed the cost of
974 administering the water quality analysis program in that fiscal
975 year, the excess shall be applied to the cost of administering the
976 program in the succeeding fiscal year. In the succeeding fiscal
977 year, the total to be collected from fees shall be reduced by the
978 excess retained in the fund and the assessment rates shall be
979 adjusted proportionately.

980 (2) The department annually shall assess and collect fees
981 for water quality analysis and related activities as required by
982 the federal Safe Drinking Water Act, as amended, which shall not
983 exceed One Dollar and Ninety Cents (\$1.90) per connection or Forty
984 Thousand Dollars (\$40,000.00) per system, whichever is less. The

985 department annually shall adopt by rule, in accordance with the
986 Administrative Procedures Law and following a public hearing, a
987 fee schedule to cover all reasonable direct and indirect costs of
988 water quality analysis and related activities as required by the
989 federal Safe Drinking Water Act, as amended. In adopting a fee
990 schedule, the department shall consider the recommendations of the
991 advisory committee created in this section, if those
992 recommendations are made in a timely manner as provided.

993 (3) An advisory committee is created to study the program
994 needs and costs for the implementation of the water quality
995 analysis program and to conduct an annual review of the needs and
996 costs of administering that program. The annual review shall
997 include an independent recommendation on an equitable fee schedule
998 for the succeeding fiscal year. Each annual review report shall
999 be due to the department by May 1. The advisory committee shall
1000 consist of one (1) member appointed by the Mississippi Rural Water
1001 Association, one (1) member appointed by the Mississippi Municipal
1002 Association, one (1) member appointed by the Mississippi
1003 Association of Supervisors and one (1) member appointed by the
1004 Mississippi Water and Pollution Control Operators Association,
1005 Inc.

1006 (4) All suppliers of water for which water quality analysis
1007 and related activities as required by the federal Safe Drinking
1008 Water Act, as amended, are performed by the * * * department * * *
1009 shall pay the water quality analysis fee within forty-five (45)
1010 days following receipt of an invoice from the department. In the
1011 discretion of the department, any supplier of water required to
1012 pay the fee shall be liable for a penalty equal to a maximum of
1013 two (2) times the amount of fees due and payable plus an amount
1014 necessary to reimburse the costs of delinquent fee collection for
1015 failure to pay the fee within ninety (90) days following the
1016 receipt of the invoice. Any person making sales to customers of
1017 water for residential, noncommercial or nonagricultural use and

1018 who recovers the fee required by this section or any portion
1019 thereof from any customer shall indicate on each statement
1020 rendered to customers that these fees are for water quality
1021 analyses required by the federal government under the Safe
1022 Drinking Water Act, as amended.

1023 (5) There is created within the Drinking Water Quality
1024 Analysis Fund an equipment capital expenditure account,
1025 hereinafter referred to as the "account." The department may
1026 transfer any excess fees, not exceeding ten percent (10%) of the
1027 total fees assessed under this section, to the account. The
1028 balance in the account shall not exceed Five Hundred Thousand
1029 Dollars (\$500,000.00). Funds in the account shall be used by the
1030 department, as appropriated by the Legislature, to defray the
1031 costs of purchasing new equipment or repairing existing equipment
1032 for the analysis of drinking water.

1033 SECTION 25. Section 41-26-25, Mississippi Code of 1972, is
1034 amended as follows:

1035 41-26-25. (1) (a) There is created in the State Treasury a
1036 fund to be designated as the "Public Water System Assistance
1037 Fund." The fund shall contain two (2) accounts, designated as the
1038 "Public Water System Technical Assistance Account" and the "Public
1039 Water Systems Bond Operations Account."

1040 (b) Monies in the Public Water System Technical
1041 Assistance Account shall be used to pay the reasonable direct and
1042 indirect costs of providing technical assistance to public water
1043 systems under the program established in Section 41-26-5. Monies
1044 in the Public Water Systems Bond Operations Account shall be used
1045 as ordered by the court under Section 41-26-31.

1046 (2) Expenditures may be made from the fund upon requisition
1047 by the executive director.

1048 (3) The fund shall be treated as a special trust fund.
1049 Interest earned on the principal shall be credited by the
1050 Treasurer to the fund.

1051 (4) The fund may receive monies from any available public or
1052 private source, including, but not limited to, collection of
1053 fines, penalties or fees, proceeds from bond or other financial
1054 security forfeitures, interest, grants, taxes, public and private
1055 donations, petroleum violation escrow funds or refunds, and
1056 appropriated funds.

1057 SECTION 26. Section 41-26-31, Mississippi Code of 1972, is
1058 amended as follows:

1059 41-26-31. (1) If the executive director finds any person
1060 guilty of a violation of this chapter, any rule or regulation or
1061 written order of the executive director or any condition or
1062 limitation of an approval, the executive director may assess and
1063 levy a civil penalty of not more than Twenty-five Thousand Dollars
1064 (\$25,000.00) for each violation, except as provided in Section
1065 41-26-8(3). Each day of a continuing violation is a separate
1066 violation. Any penalty shall be assessed and levied by the
1067 executive director after a hearing as provided in this chapter.
1068 Appeals from the imposition of the civil penalty may be taken to
1069 the Chancery Court of the First Judicial District of Hinds County
1070 or the chancery court of the county of the situs, in whole or in
1071 part, as provided in Section 41-26-15. If the appellant desires
1072 to stay the execution of a civil penalty assessed under this
1073 section, the appellant shall give bond with sufficient sureties of
1074 one or more guaranty or surety companies authorized to do business
1075 in this state, payable to the State of Mississippi, in an amount
1076 equal to double the amount of any civil penalty assessed by the
1077 executive director, as to which the stay of execution is desired.
1078 If the judgment is affirmed, the appellant shall pay all costs of
1079 the assessment entered against the appellant.

1080 (2) In addition to or in lieu of the penalty provided in
1081 subsection (1) of this section, the executive director may
1082 institute and maintain in the name of the state any proceedings
1083 necessary or appropriate to enforce this chapter, any rule or

1084 regulation or written order of the executive director or any
1085 condition or limitation of an approval. The proceedings may be
1086 filed and heard in the appropriate circuit, chancery, county or
1087 justice court of the county in which venue may lie, or in the
1088 Circuit, Chancery or County Court of the First Judicial District
1089 of Hinds County, as the case may be. The executive director may
1090 obtain mandatory or prohibitory injunctive relief, either
1091 temporary or permanent. In cases of imminent and substantial
1092 hazard or endangerment, it shall not be necessary that the state
1093 plead or prove: (a) that irreparable damage would result if the
1094 injunction did not issue; (b) that there is no adequate remedy at
1095 law; or (c) that a written order has first been issued for the
1096 alleged violation.

1097 (3) In determining the amount of any penalty under this
1098 section, the director shall consider at a minimum:

- 1099 (a) The willfulness of the violation;
- 1100 (b) Costs of restoration and abatement;
- 1101 (c) Economic benefit as a result of noncompliance;
- 1102 (d) The seriousness of the violation, including any
1103 harm or hazard to the public health and welfare; and
- 1104 (e) Past performance history.

1105 (4) (a) The owner of any public water system found in
1106 violation of this chapter may submit to the director a plan for:

- 1107 (i) The physical consolidation of the system with
1108 one or more other viable public water systems;
- 1109 (ii) The consolidation of significant management
1110 and administrative functions of the system with one or more other
1111 viable public water systems or contract or satellite management of
1112 the system; or
- 1113 (iii) The transfer of ownership of the system.

1114 (b) If the executive director approves the plan and the
1115 plan is fully implemented as determined by the executive director,
1116 the executive director shall waive any penalty assessed under this

1117 section for a violation identified in the approved plan before the
1118 date on which the action specified in the approved plan was
1119 completed.

1120 (5) (a) In addition to or in lieu of any other penalty
1121 imposed under this section, the executive director may require the
1122 owner of any public water system found in violation to provide a
1123 performance bond or other acceptable financial security instrument
1124 including, but not limited to, cash, negotiable bonds of the
1125 United States government or the state, or negotiable certificates
1126 of deposit or a letter of credit of any bank organized or
1127 transacting business in the state and insured by the Federal
1128 Deposit Insurance Corporation or the Federal Savings and Loan
1129 Insurance Corporation or a similar federal banking or savings and
1130 loan insurance organization to the department. The bond or
1131 financial security must be approved by the executive director.
1132 The purpose of the bond or other financial security shall be the
1133 protection of the health and welfare of the customers of the
1134 system. The board shall establish by regulation the acceptable
1135 forms of financial security and the amount of financial security
1136 required for the various types and sizes of facilities. The
1137 executive director shall notify the owner, in writing, of the form
1138 and amount of security required.

1139 (b) The executive director may petition the Chancery
1140 Court of the First Judicial District of Hinds County for
1141 forfeiture of the bond or other financial security, if the
1142 director determines that:

1143 (i) The continued operation or lack of operation
1144 of the system covered by this section represents a threat to the
1145 public health and welfare;

1146 (ii) All reasonable and practical efforts under
1147 the circumstances have been made to obtain corrective actions from
1148 the violators; and

1149 (iii) It does not appear that corrective actions
1150 can or will be taken within an appropriate time as determined by
1151 the executive director, or it appears the facility has been
1152 abandoned.

1153 (c) The proceeds of any forfeiture shall be deposited
1154 in the Public Water Systems Bond Operations Account of the Public
1155 Water Systems Assistance Fund and shall be used as ordered by the
1156 court to address or correct the noncompliance at the system. The
1157 proceeds shall be in addition to any other funds otherwise
1158 appropriated to the department and may be expended under the
1159 authority of this section without additional action of the
1160 Legislature or the Department of Finance and Administration.

1161 (d) If the court finds that a system has been abandoned
1162 or that services of a system have been terminated, the court may
1163 enter any orders regarding continued operations of that system as
1164 it deems necessary to protect the public health and welfare.

1165 (6) (a) Any penalty assessed by the executive director
1166 under this section shall be due and payable within thirty (30)
1167 days after notification of the violator of the order, and shall be
1168 due and payable jointly or severally, as the order may require or
1169 allow.

1170 (b) If the assessed penalty is not paid within the
1171 thirty (30) days, or within any additional time as the executive
1172 director may allow, the executive director may file suit in the
1173 Circuit Court of the First Judicial District of Hinds County or
1174 any other court with appropriate jurisdiction to enforce the
1175 order, collect the penalty and recover reasonable attorney's fees
1176 and all court costs.

1177 (c) A copy of the administrative order shall be
1178 sufficient proof as to the decision of the executive director.

1179 (7) All fines and penalties recovered or collected by the
1180 executive director under subsection (1) of this section shall be

1181 deposited in the Public Water Systems Technical Assistance Account
1182 of the Public Water Systems Assistance Fund.

1183 SECTION 27. Section 41-26-101, Mississippi Code of 1972, is
1184 amended as follows:

1185 41-26-101. (1) Each member elected or reelected after June
1186 30, 1998, to serve on a governing board of any community public
1187 water system, except systems operated by municipalities with a
1188 population greater than two thousand five hundred (2,500), shall
1189 attend a minimum of eight (8) hours of management training within
1190 two (2) years following the election of that board member. Any
1191 member failing to complete the management training within two (2)
1192 years after his election shall be subject to removal from the
1193 board by the remaining members. If a board member has undergone
1194 training and is reelected to the board, that board member shall
1195 not be required to attend training as provided by this subsection.

1196 (2) The management training shall be organized by the * * *
1197 Department of Environmental Quality, in cooperation with the
1198 Mississippi Rural Water Association and other organizations. The
1199 management training shall include information on water system
1200 management and financing, rate setting and structures, operations
1201 and maintenance, applicable laws and regulations, ethics, the
1202 duties and responsibilities of a board member and other
1203 information deemed necessary by the department after consultation
1204 with the association and other organizations. The department
1205 shall develop and provide all training materials. The department
1206 may charge a fee not to exceed Seventy-five Dollars (\$75.00) per
1207 member to defray the actual costs of providing the materials and
1208 training. These costs shall be reimbursed to the board member as
1209 an expense of the community public water system.

1210 (3) To avoid board members having to interfere with their
1211 jobs or employment, management training sessions may be divided
1212 into segments and, to the greatest extent possible, shall be
1213 scheduled for evening sessions. The department shall conduct

1214 management training on a regional basis and shall use community
1215 college or other public facilities for the convenience of board
1216 members.

1217 (4) The department may make exceptions to and grant
1218 exemptions and variances to the requirements of this section for
1219 good cause shown.

1220 SECTION 28. Section 41-67-2, Mississippi Code of 1972, is
1221 amended as follows:

1222 41-67-2. For purposes of this chapter, the following words
1223 shall have the meanings ascribed herein unless the context clearly
1224 indicates otherwise:

1225 * * *

1226 (a) "Commission" means the Commission on Environmental
1227 Quality.

1228 (b) "Department" means the * * * Department of
1229 Environmental Quality.

1230 (c) "Generator" means any person whose act or process
1231 produces sewage or other material suitable for disposal in an
1232 individual on-site wastewater disposal system.

1233 (d) "Individual on-site wastewater disposal system"
1234 means an approved method of sewage disposal designed and installed
1235 in accordance with this law, and regulations of the * * *
1236 commission.

1237 (e) "Person" means any individual, trust, firm,
1238 joint-stock company, public or private corporation (including a
1239 government corporation), partnership, association, state, or any
1240 agency or institution thereof, municipality, commission, political
1241 subdivision of a state or any interstate body, and includes any
1242 officer or governing or managing body of any municipality,
1243 political subdivision, or the United States or any officer or
1244 employee thereof.

1245 (f) "Professional engineer" means any person who has
1246 met the qualifications required under Section 73-13-23(1) and who

1247 has been issued a certificate of registration as a professional
1248 engineer.

1249 (g) "Property of the generator" means land owned by or
1250 under permanent legal easement or lease to the generator.

1251 (h) "Subdivision" means any land that is divided into
1252 ten (10) or more lots, tracts, sites or parcels for the purpose of
1253 residential development.

1254 SECTION 29. Section 41-67-3, Mississippi Code of 1972, is
1255 amended as follows:

1256 41-67-3. (1) The Commission of Environmental Quality shall
1257 have the following duties and responsibilities:

1258 (a) To exercise general supervision over the design,
1259 construction, operation and maintenance of individual on-site
1260 wastewater disposal systems with flows substantially equivalent to
1261 a single family residential generator, except when the property
1262 owner or lessee chooses to employ a professional engineer to
1263 comply with this chapter; * * *

1264 (b) To adopt, modify, repeal and promulgate rules and
1265 regulations, after due notice and hearing, and where not otherwise
1266 prohibited by federal or state law, to make exceptions to, to
1267 grant exemptions from and to enforce rules and regulations
1268 implementing or effectuating the duties of the department under
1269 this chapter to protect the public health. The commission may
1270 grant variances from rules and regulations adopted under this
1271 chapter, including requirements for buffer zones, or from setbacks
1272 required under Section 41-67-7 where the granting of a variance
1273 shall not subject the public to unreasonable health risks or
1274 jeopardize environmental resources;

1275 (c) To provide or deny certification for persons
1276 engaging in the business of the design, construction or
1277 installation of individual on-site wastewater disposal systems and
1278 persons engaging in the removal and disposal of the sludge and
1279 liquid waste from those systems;

1280 (d) To suspend or revoke certifications issued to
1281 persons engaging in the business of the design, construction or
1282 installation of individual on-site wastewater disposal systems or
1283 persons engaging in the removal and disposal of the sludge and
1284 liquid waste from those systems, when it is determined the person
1285 has violated this chapter or applicable rules and regulations; and

1286 (e) To require the submission of information deemed
1287 necessary by the department to determine the suitability of
1288 individual lots for individual on-site wastewater disposal
1289 systems.

1290 (2) Nothing in this chapter shall preclude a professional
1291 engineer from providing services relating to the design,
1292 construction or installation of an individual on-site wastewater
1293 disposal system to comply with this chapter. Except as otherwise
1294 required by subsection (4) of this section or Section 41-67-8, a
1295 professional engineer shall notify the department in writing of
1296 those services being provided. If a professional engineer
1297 designs, constructs or installs or directly supervises the
1298 construction or installation of a design-based individual on-site
1299 wastewater disposal system consistent with this chapter and stamps
1300 the appropriate documentation with that professional engineer's
1301 seal, the department shall approve the design, construction or
1302 installation of the system, if requested. Professional engineers
1303 engaging in the design, construction or installation of individual
1304 on-site wastewater disposal systems shall not require
1305 certification under this chapter.

1306 (3) To assure the effective and efficient administration of
1307 this chapter, the commission shall adopt rules governing the
1308 design, construction or installation, operation and maintenance of
1309 individual on-site wastewater disposal systems, including rules
1310 concerning the:

1311 (a) Review and approval of individual on-site
1312 wastewater disposal systems in accordance with Section 41-67-6;

1313 (b) Certification of installers of individual on-site
1314 wastewater disposal systems and persons engaging in the removal
1315 and disposal of the sludge and liquid waste from those systems;
1316 and

1317 (c) Registration and requirements for testing and
1318 listing of manufacturers of aerobic treatment systems.

1319 (4) In addition, the commission shall adopt rules
1320 establishing performance standards for individual on-site
1321 wastewater disposal systems for single family residential
1322 generators and rules concerning the operation and maintenance of
1323 individual on-site wastewater disposal systems designed to meet
1324 those standards. The performance standards shall be consistent
1325 with the federal Clean Water Act, maintaining the wastes on the
1326 property of the generator except as authorized under Section
1327 41-67-8, and protection of the public health. Rules for the
1328 operation and maintenance of individual on-site wastewater
1329 disposal systems designed to meet performance standards shall
1330 include rules concerning the following:

1331 (a) A standard application form and requirements for
1332 supporting documentation;

1333 (b) Application review;

1334 (c) Approval or denial of authorization for proposed
1335 systems;

1336 (d) Requirements, as deemed appropriate by the
1337 commission, for annual renewal of authorization;

1338 (e) Enforcement of the requirements and conditions of
1339 authorization; and

1340 (f) Inspection, monitoring, sampling and reporting on
1341 the performance of the system.

1342 Any system proposed for authorization in accordance with
1343 performance standards must be designed and certified by a
1344 professional engineer and must be authorized by the commission
1345 before installation. Appeals from a final decision of the

1346 commission regarding the authorization of an individual on-site
1347 wastewater disposal system based upon performance standards shall
1348 be taken using a procedure substantially equivalent to the
1349 procedure specified for hospital licenses in Chapter 9 of Title
1350 41.

1351 (5) To the extent practicable, all rules and regulations
1352 adopted under this chapter shall give maximum flexibility to
1353 persons installing individual on-site wastewater disposal systems
1354 and a maximum number of options consistent with the federal Clean
1355 Water Act, consistent with maintaining the wastes on the property
1356 of the generator except as authorized under Section 41-67-8, and
1357 consistent with protection of the public health. In addition, all
1358 rules and regulations, to the extent practicable, shall encourage
1359 the use of economically feasible systems, including alternative
1360 techniques and technologies for individual on-site wastewater
1361 disposal.

1362 (6) All regulations shall be applied uniformly in all areas
1363 of the state and shall take into consideration and make provision
1364 for different types of soil in the state when performing soil and
1365 site evaluations.

1366 SECTION 30. Section 41-67-4, Mississippi Code of 1972, is
1367 amended as follows:

1368 41-67-4. (1) The Commission on Environmental Quality shall
1369 determine the feasibility of establishing community sewerage
1370 systems upon the submission by the developer of a preliminary
1371 design and feasibility study prepared by a professional engineer.
1372 The developer may request and obtain a hearing before the
1373 commission if the developer is dissatisfied with the commission's
1374 determination of feasibility. The determination that a sewerage
1375 system must be established shall be made without regard to whether
1376 the establishment of a sewerage system is authorized by law or is
1377 subject to approval by one or more state or local government or
1378 public bodies.

1379 (2) Where residential subdivisions are proposed which are
1380 composed of fewer than thirty-five (35) building sites, and no
1381 system of sanitary sewers is available to which collection sewers
1382 may be feasibly connected, the commission may waive the
1383 requirement for a feasibility study. If the feasibility study is
1384 waived, all sites within the subdivision shall be approved, if a
1385 certified installer attests that each site can be adequately
1386 served by an individual on-site wastewater disposal system.

1387 (3) No feasibility study or community sewerage system shall
1388 be required for subdivisions designed, laid out, platted or
1389 partially constructed before July 1, 1988, or for any subdivision
1390 that was platted and recorded during the period from July 1, 1995
1391 through June 30, 1996.

1392 SECTION 31. Section 41-67-6, Mississippi Code of 1972, is
1393 amended as follows:

1394 41-67-6. (1) Within five (5) working days following receipt
1395 of the notice of intent and plot plan by an owner, lessee or
1396 developer of any lot or tract of land, the department shall
1397 conduct a soil and site evaluation, except in cases where a
1398 professional engineer provides services relating to the design,
1399 construction or installation of an individual on-site wastewater
1400 disposal system to comply with this chapter. Within ten (10)
1401 additional working days, the department shall make recommendations
1402 to the owner, lessee or developer of the type or types of
1403 individual on-site wastewater disposal systems suitable for
1404 installation on the lot or tract, unless there are conditions
1405 requiring further investigation that are revealed in the initial
1406 evaluation. In making recommendations on the type or types of
1407 individual on-site wastewater disposal systems suitable for
1408 installation on a lot or tract, personnel of the department shall
1409 use best professional judgment based on rules and regulations
1410 adopted by the commission, considering the type or types of
1411 systems which are installed and functioning on lots or tracts near

1412 the subject lot or tract. If existing systems in the surrounding
1413 area function properly, systems of that same type shall be
1414 approved. To the extent practicable, the recommendations shall
1415 give the owner, lessee or developer maximum flexibility and a
1416 maximum number of options consistent with the federal Clean Water
1417 Act, consistent with maintaining the wastes on the property of the
1418 generator except as authorized under Section 41-67-8, and
1419 consistent with protection of the public health. The system or
1420 systems recommended shall be environmentally sound and
1421 cost-effective. The department or a professional engineer shall
1422 provide complete information, including all applicable
1423 requirements and regulations on all systems recommended. The
1424 owner, lessee or developer shall have the right to choose among
1425 systems. The department shall provide the owner, lessee or
1426 developer with a form that specifies all types of individual
1427 on-site wastewater disposal systems that are suitable for
1428 installation on the lot or tract and lists all installers of those
1429 systems that are certified by the department. Approval of the
1430 design, construction or installation of an individual on-site
1431 wastewater disposal system by the department is not required. If
1432 any property owner, lessee or the owner's or lessee's lending
1433 institution requests the department to approve the design,
1434 construction or installation of any system on the owner's or
1435 lessee's property, the department shall approve the design,
1436 construction or installation of that system, as requested, if the
1437 system is designed, constructed and installed, as the case may be,
1438 in accordance with the rules and regulations of the commission.
1439 The department shall not approve any individual on-site wastewater
1440 disposal system that has a direct or point source discharge,
1441 unless the Permit Board has issued a permit for that system under
1442 Section 41-67-8.

1443 (2) Evaluations and recommendations for a subdivision shall
1444 not be subject to the time constraints in this section.

1445 (3) If the department has been requested to approve the
1446 design, construction or installation of an individual on-site
1447 wastewater disposal system, an installer may not begin the design,
1448 construction or installation of the individual on-site wastewater
1449 disposal system, unless the installer notifies the department of
1450 the date on which the installer plans to begin work on the system.

1451 (4) A person may not design, construct or install, or cause
1452 to be designed, constructed or installed an individual on-site
1453 wastewater disposal system that does not comply with this chapter
1454 and rules and regulations of the commission.

1455 (5) Any person who installs an individual on-site wastewater
1456 disposal system shall sign and file with the department an
1457 affidavit that the system was installed in compliance with all
1458 requirements and regulations applicable to that type of system.
1459 If any person or contractor fails to comply with all requirements
1460 and regulations in the installation of the system, the commission,
1461 after due notice and hearing, may levy an administrative fine not
1462 to exceed One Thousand Dollars (\$1,000.00).

1463 (6) Any provisions of this chapter regarding the
1464 department's approval of the design, construction and installation
1465 of an individual on-site wastewater disposal system shall not
1466 apply to a residence, building or facility that is located on a
1467 land tract that is two (2) acres or larger.

1468 SECTION 32. Section 41-67-7, Mississippi Code of 1972, is
1469 amended as follows:

1470 41-67-7. Individual on-site wastewater disposal systems
1471 shall be considered acceptable on lots in areas or subdivisions
1472 where prior to the sale of the lots, the following requirements
1473 are met:

1474 (1) Individual on-site wastewater disposal systems with
1475 underground absorption fields shall be considered acceptable,
1476 provided the following requirements are met:

1477 (a) Sewers are not available or feasible;

1478 (b) The existing disposal systems in the area are
1479 functioning satisfactorily;

1480 (c) Soil types, soil texture, seasonal water tables and
1481 other limiting factors are satisfactory for underground
1482 absorption; and

1483 (d) Any private water supply is located at a higher
1484 elevation and at least fifty (50) feet from the individual on-site
1485 wastewater disposal system and at least one hundred (100) feet
1486 from the disposal field of the system.

1487 (2) Except for systems utilizing underground absorption,
1488 alternative individual on-site wastewater disposal systems shall
1489 be considered acceptable, provided the following requirements are
1490 met:

1491 (a) Sewers are not available or feasible;

1492 (b) The systems meet applicable water quality
1493 requirements of the federal Clean Water Act and also requirements
1494 of the * * * department; and

1495 (c) Any discharge is confined within the boundaries of
1496 the property of the generator except as authorized under Section
1497 41-67-8.

1498 SECTION 33. Section 41-67-8, Mississippi Code of 1972, is
1499 amended as follows:

1500 41-67-8. (1) This section shall be applicable only after
1501 the department has determined that there is no type of individual
1502 on-site wastewater disposal system authorized under subsection (3)
1503 or (4) of Section 41-67-3 or rules or regulations of the
1504 commission that can maintain the wastes on the property of the
1505 generator.

1506 (2) The owner of any individual on-site wastewater disposal
1507 system from which effluent is discharged off the property of the
1508 generator shall obtain a permit for that discharge, if required
1509 under Section 49-17-29, from the Permit Board created under
1510 Section 49-17-28.

1511 (3) The Permit Board may issue general permits for
1512 individual on-site wastewater disposal systems as provided in
1513 Section 49-17-29.

1514 (4) Any violation of this section shall be punished as
1515 provided in Section 49-17-43.

1516 SECTION 34. Section 41-67-9, Mississippi Code of 1972, is
1517 amended as follows:

1518 41-67-9. (1) Existing individual on-site wastewater
1519 disposal systems shall be considered acceptable, provided the
1520 following requirements are met:

1521 (a) The lot is located in an area or subdivision where
1522 individual on-site wastewater disposal systems are considered
1523 acceptable under this chapter;

1524 (b) The residence, building or facility has previously
1525 been occupied for a period of time deemed by the department
1526 necessary to determine the functioning capability of the
1527 individual on-site wastewater disposal system;

1528 (c) The system is functioning properly with no evidence
1529 that any insufficiently treated effluent is or has been seeping to
1530 the surface of the ground and any discharge of treated effluent is
1531 confined within the boundaries of the property of the generator
1532 except as authorized under Section 41-67-8; and

1533 (d) If a private water supply well is present, the well
1534 is located at a higher elevation than the disposal system and is
1535 protected from surface contamination by a concrete slab of a
1536 thickness of at least four (4) inches extending at least two (2)
1537 feet in all directions from the well casing.

1538 (2) If an existing residential individual on-site wastewater
1539 disposal system is malfunctioning, the system should be replaced,
1540 where possible, with a system meeting all requirements of this
1541 chapter and rules and regulations of the commission. If
1542 replacement of the existing system is not possible, the existing
1543 system shall be repaired to reduce the volume of effluent, to

1544 adequately treat the effluent and to the greatest extent possible,
1545 to confine the discharge to the property of the generator except
1546 as authorized under Section 41-67-8. If repairs are made to
1547 significantly upgrade the existing individual on-site wastewater
1548 disposal system, the department shall approve the system, if
1549 requested.

1550 SECTION 35. Section 41-67-11, Mississippi Code of 1972, is
1551 amended as follows:

1552 41-67-11. (1) Temporary individual on-site wastewater
1553 disposal systems may be approved in otherwise unapprovable areas
1554 only after a contract has been awarded for the construction of
1555 municipal or community sewers that upon completion will adequately
1556 serve the property. Temporary individual on-site wastewater
1557 disposal systems shall only be approved under the following
1558 conditions:

1559 (a) When the municipal or community sewers shall not be
1560 completed and available for use within six (6) months, a complete
1561 individual on-site wastewater disposal system complying with all
1562 requirements of the commission may be installed. Upon completion
1563 of the sewer construction all systems shall be abandoned and all
1564 residences, buildings or facilities connected to the sewer.

1565 (b) When the public sewers shall be available and ready
1566 for use within a period not to exceed six (6) months, or where a
1567 minor extension is to be made to a municipal system by the
1568 municipality and no contract is to be awarded, an individual
1569 on-site wastewater disposal system with a minimum capacity of
1570 three hundred (300) gallons and at least sixty percent (60%) of
1571 the required disposal field may be installed. The commission
1572 shall not approve a temporary system under this subsection unless
1573 the professional engineer designing the sewer system has certified
1574 to the commission in writing that the public sewer or extension
1575 shall be completed within six (6) months, and the owner of the

1576 temporary system has certified in writing that connection to the
1577 public sewer shall be made as soon as it becomes available.

1578 (2) The commission may approve the installation of sewage
1579 holding tanks in districts created under Sections 19-5-151 through
1580 19-5-207 for the purpose of providing sewage services. The
1581 district shall be required to maintain or provide for the
1582 maintenance of those holding tanks. The commission shall require
1583 that residences be connected to a municipal or community sewage
1584 system when that system is available and ready to use.

1585 SECTION 36. Section 41-67-12, Mississippi Code of 1972, is
1586 amended as follows:

1587 41-67-12. (1) The department shall assess fees in the
1588 following amounts for the following purposes:

1589 (a) A fee of Fifty Dollars (\$50.00) shall be levied for
1590 soil and site evaluation and recommendation of individual on-site
1591 wastewater disposal systems.

1592 (b) A fee of Fifty Dollars (\$50.00) shall be levied
1593 annually for the certification of installers and persons engaging
1594 in the removal and disposal of the sludge and liquid wastes from
1595 individual on-site wastewater disposal systems.

1596 (c) A fee of One Hundred Dollars (\$100.00) shall be
1597 levied annually for the registration of manufacturers.

1598 (2) In the discretion of the commission, a person shall be
1599 liable for a penalty equal to one and one-half (1-1/2) times the
1600 amount of the fee due and payable for failure to pay the fee on or
1601 before the date due, plus any amount necessary to reimburse the
1602 cost of collection.

1603 (3) The fee authorized under this section shall not be
1604 assessed for any system operated by state agencies or
1605 institutions, including without limitation, foster homes licensed
1606 by the State Department of Human Services. The fee authorized
1607 under this section shall not be charged again after payment of the
1608 initial fee for any system that has been installed in accordance

1609 with this chapter, within a period of twenty-four (24) months
1610 following the date that the system was originally installed.

1611 SECTION 37. Section 41-67-21, Mississippi Code of 1972, is
1612 amended as follows:

1613 41-67-21. (1) The * * * department may require a property
1614 owner or lessee to repair a malfunctioning individual on-site
1615 wastewater disposal system on the owner's or lessee's property
1616 before the thirtieth day after the date on which the owner or
1617 lessee is notified by the department of the malfunctioning system.

1618 (2) The property owner or lessee shall take adequate
1619 measures as soon as practicable to abate an immediate health
1620 hazard.

1621 (3) The property owner or lessee may be assessed a civil
1622 penalty not to exceed Five Dollars (\$5.00) for each day the
1623 individual on-site wastewater disposal system remains unrepaired
1624 after the thirty-day period specified in subsection (1) of this
1625 section.

1626 (4) The department may assess the property owner or lessee
1627 of an individual on-site wastewater disposal system authorized
1628 pursuant to Section 41-67-3(4) a civil penalty not to exceed Fifty
1629 Dollars (\$50.00) for each day the system fails to meet the
1630 performance standards of that system after the thirty-day period
1631 specified in subsection (1) of this section.

1632 (5) All penalties collected by the department under this
1633 section shall be deposited in the State General Fund.

1634 (6) Appeals from the imposition of civil penalty under this
1635 section may be taken as provided in Section 41-67-29.

1636 SECTION 38. Section 41-67-25, Mississippi Code of 1972, is
1637 amended as follows:

1638 41-67-25. (1) A person may not operate as an installer in
1639 this state unless that person is certified by the department
1640 except any individual who installs an individual on-site

1641 wastewater disposal system on his own property or a professional
1642 engineer.

1643 (2) An installer of aerobic treatment plants or subsurface
1644 drip disposal systems must be a factory-trained and authorized
1645 representative. The manufacturer must furnish documentation to
1646 the department certifying the satisfactory completion of factory
1647 training and the establishment of the installer as an authorized
1648 manufacturer's representative.

1649 (3) The department shall issue a certification to an
1650 installer if the installer:

1651 (a) Completes an application form that complies with
1652 this chapter and rules adopted under this chapter;

1653 (b) Satisfactorily completes the training program
1654 provided by the department; and

1655 (c) Pays the annual certification fee.

1656 (4) Each installer shall furnish proof of certification to a
1657 property owner, lessee, the owner's representative or occupant of
1658 the property on which an individual on-site wastewater disposal
1659 system is to be designed, constructed, repaired or installed by
1660 that installer and to the department or its authorized
1661 representative, if requested.

1662 (5) The department shall provide for annual renewal of
1663 certifications.

1664 (6) (a) An installer's certification may be suspended or
1665 revoked by the department after notice and hearing if the
1666 installer violates this chapter or any rule or regulation adopted
1667 under this chapter.

1668 (b) The installer may appeal a suspension or revocation
1669 under this section as provided by law.

1670 (7) The department semiannually shall disseminate to the
1671 public an official list of certified installers and provide to
1672 county health departments a monthly update of the list.

1673 SECTION 39. Section 41-67-28, Mississippi Code of 1972, is
1674 amended as follows:

1675 41-67-28. (1) Except as otherwise provided in this chapter,
1676 any person who shall knowingly violate this chapter or any rule or
1677 regulation or written order of the commission in pursuance thereof
1678 is, upon conviction, guilty of a misdemeanor and shall be punished
1679 as provided in Section 41-3-59.

1680 (2) Each day of a continuing violation is a separate
1681 violation.

1682 (3) (a) In addition to all other statutory and common law
1683 rights, remedies and defenses, any person who purchases an
1684 individual on-site wastewater disposal system and suffers any
1685 ascertainable loss of money or property, real or personal, may
1686 bring an action at law in the court having jurisdiction in the
1687 county in which the installer or manufacturer has the principal
1688 place of business, where the act allegedly occurred, to recover
1689 any loss of money or damages for the loss of any property
1690 resulting from any of the following:

1691 (i) Improper installation of an individual on-site
1692 wastewater disposal system due to faulty workmanship;

1693 (ii) Failure of an individual on-site wastewater
1694 disposal system to operate properly due to failure to install the
1695 system in accordance with any requirements of the manufacturer or
1696 in compliance with any rules and regulations of the commission; or

1697 (iii) Failure of an individual on-site wastewater
1698 disposal system to operate properly due to defective design or
1699 construction.

1700 (b) Nothing in this chapter shall be construed to
1701 permit any class action or suit, but every private action must be
1702 maintained in the name of and for the sole use and benefit of the
1703 individual person.

1704 (4) A person who violates this chapter thereby causing a
1705 discharge off the property of the generator shall be liable to the

1706 party aggrieved or damaged by that violation for the actual
1707 damages and additional punitive damages equal to a maximum of
1708 twenty-five percent (25%) of the actual damages proven by the
1709 aggrieved party, to be taxed by the court where the suit is heard
1710 on an original action, by appeal or otherwise and recovered by a
1711 suit at law in any court of competent jurisdiction. In addition,
1712 the court may award the prevailing party reasonable attorneys fees
1713 and court costs. Before filing suit, the party aggrieved or
1714 damaged must give thirty (30) days' written notice of its intent
1715 to file suit to the alleged violator.

1716 SECTION 40. Section 41-67-29, Mississippi Code of 1972, is
1717 amended as follows:

1718 41-67-29. Any person who is aggrieved by any final decision
1719 of the commission may appeal that final decision to the chancery
1720 court of the county of the situs in whole or in part of the
1721 subject matter. The appellant shall give a cost bond with
1722 sufficient sureties, payable to the state in a sum to be fixed by
1723 the commission or the court and to be filed with and approved by
1724 the clerk of the court. The aggrieved party may, within thirty
1725 (30) days following a final decision of the commission, petition
1726 the chancery court for an appeal with supersedeas and the
1727 chancellor shall grant a hearing on the petition. Upon good cause
1728 shown the chancellor may grant the appeal with supersedeas. The
1729 appellant shall be required to post a bond with sufficient
1730 sureties according to law in an amount to be determined by the
1731 chancellor. The chancery court shall always be deemed open for
1732 hearing of appeals and the chancellor may hear the appeal in
1733 termtime or in vacation at any place in his district. The appeal
1734 shall have precedence over all civil cases, except election
1735 contests. The chancery court shall review all questions of law
1736 and of fact and may enter a final order or remand the matter to
1737 the commission for appropriate action as may be indicated or
1738 necessary under the circumstances. Appeals may be taken from the

1739 chancery court to the Supreme Court in the manner as now required
1740 by law, but if a supersedeas is desired by the party appealing to
1741 the chancery court, that party may apply therefor to the
1742 chancellor, who shall award a writ of supersedeas, without
1743 additional bond, if in the chancellor's judgment material damage
1744 is not likely to result. If material damage is likely to result,
1745 the chancellor shall require a supersedeas bond as deemed proper,
1746 which shall be liable to the state for any damage.

1747 SECTION 41. This act shall take effect and be in force from
1748 and after July 1, 2001.