MISSISSIPPI LEGISLATURE                        REGULAR SESSION 2001
To:  Public Health and Welfare
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

HOUSE BILL NO. 1195


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

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

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

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

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

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

H. B. No. 1195 *HR03/R1027* G3/5 01/HR03/R1027 PAGE 1 (MS/LH)
consumers year-round, including, but not limited to, any collection, pretreatment, treatment, storage and/or distribution facilities or equipment used primarily as part of, or in connection with, that system, regardless of whether or not the components are under the ownership or control of the operator of the system.

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

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

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

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

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

(i) "Wastewater facilities" means pipelines or conduits, pumping stations, force mains, treatment plants, lagoons or any other structure, device, appurtenance or facility, whether
operated individually or in any combination, used for collecting, treating and/or disposing of municipal or domestic wastewater, by either surface or underground methods, which is required to have a permit under Section 49-17-29.

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

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

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

(2) The commission shall classify all municipal and domestic wastewater facilities according to size, type, character of wastewater to be treated, and other physical conditions affecting the operation and maintenance of the facilities, and also according to the degree of skill, knowledge, training and experience required of the operators of the facilities to ensure
competent, efficient operation and maintenance of the facilities and prevention of pollution of waters of the state.

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

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

21-27-207. * * * The * * * commission may adopt, modify, repeal and promulgate, after due notice and hearing, and may make exceptions to and grant exemptions and variances from and may enforce those rules, regulations and procedures as are necessary or appropriate to effectuate the duties and responsibilities of the department arising under Sections 21-27-201 through 21-27-221. The rules, regulations and procedures shall include, but not be limited to, the following: criteria for classifying municipal and domestic community water systems, nontransient, noncommunity water systems and wastewater facilities; qualifications for operators of community water systems, nontransient, noncommunity water systems and wastewater facilities; procedures for examining or testing applicants for operator certificates; procedures and fees for issuing, reissuing, modifying, revoking or terminating operator certificates; and reciprocal certification of operators certified in other states having certification requirements not less stringent than those established by the * * * commission. * * *

The * * * commission shall consult with the advisory committee established under this chapter in promulgating the rules, regulations and procedures.

SECTION 4. Section 21-27-211, Mississippi Code of 1972, is amended as follows:
21-27-211. (1) It is unlawful to operate or cause to be operated any wastewater facility or community water system covered under Sections 21-27-201 through 21-27-221 unless the operator of such facility or system holds a current certificate of competency issued by the commission, as provided by Sections 21-27-201 through 21-27-221, in a classification corresponding to the classification of the facility or system. After July 1, 1998, it shall be unlawful to operate or cause to be operated any nontransient, noncommunity water system covered under Sections 21-27-201 through 21-27-221, unless the operator of that system holds a current certificate of competency issued by the commission. If an operator is lost due to illness, death, resignation, discharge or other legitimate cause, the owner or president of the governing board of the facility or system shall immediately notify the commission. The facility or system may continue to operate without a certified operator on an interim basis for a period not to exceed one hundred eighty (180) days, except for good cause shown upon petition to the responsible agency. The commission may grant, upon petition of the facility or system, an extension of the interim operating period not to exceed an additional one hundred eighty (180) days for good cause shown.

(2) It is unlawful to operate or cause to be operated any commercial nonhazardous solid waste management landfill permitted under Section 49-17-29 unless the operator of that facility holds a current certificate of competency issued by the commission, as provided by Sections 21-27-201 through 21-27-221. However, in the event of temporary loss of an operator due to illness, death, resignation, discharge or other legitimate cause, notice shall be immediately given to the commission and the continued operation of the facility without a certified operator may proceed on an interim basis for a period not to exceed one hundred eighty (180) days, except for good cause shown upon petition to the commission.
SECTION 5. Section 21-27-213, Mississippi Code of 1972, is amended as follows:

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

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

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

21-27-215. Notwithstanding any provision of Sections 21-27-201 through 21-27-221 to the contrary, holders of valid certificates of competency obtained through examination under the
 voluntary certification program sponsored by the association may, on or before June 30, 1987, apply to the commission for, and shall be issued, an operator's certificate issued under the provisions of Sections 21-27-201 through 21-27-221 without further examination or proof of other qualifications, provided such state-issued certificate shall be valid only for the class of facility covered by the association certificate.

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

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

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

(2) In lieu of, or in addition to, the penalty provided in subsection (1) of this section, the commission shall have
power to institute and maintain in the name of the state any and all proceedings necessary or appropriate to enforce the provisions of Sections 21-27-201 through 21-27-221, rules and regulations in force pursuant hereto, and orders and operator certifications made and issued hereunder, in the appropriate circuit, chancery, county or justice court of the county in which venue may lie. The * * * commission may obtain mandatory or prohibitory injunctive relief, either temporary or permanent.

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

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

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

(2) The * * * commission or designated hearing officer shall afford an opportunity for a fair hearing to the alleged violator or violators at the time and place specified in the complaint. On the basis of the evidence produced at the hearing, the * * *
commission or designated hearing officer shall make findings of
fact and conclusions of law and enter such order as in its opinion
will best further the purposes of Sections 21-27-201 through
21-27-221 and shall give written notice of such order to the
alleged violator, and the * * * commission or designated hearing
officer may assess such penalties as hereinbefore provided.

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

(4) In conducting the hearings provided in this section, any
member of the * * * commission, or the chief administrative
officer thereof, or the duly designated hearing officer, shall
have the authority to issue subpoenas to appear and give
testimony, to produce records, or both, and in case of contumacy
or refusal to obey a notice of hearing or subpoena issued
hereunder, the circuit court shall have jurisdiction upon
application of the * * * commission or its representative to issue
an order requiring obedience to the hearing notice or subpoena of
the * * * commission or designated hearing officer. Any failure
to obey such court order may be punished by such court as contempt
thereof. Any member of the * * * commission, or the chief
administrative officer thereof, or the designated hearing officer,
may administer oaths. A verbatim record of the hearing shall be
made. Witnesses who are subpoenaed shall receive the same fees and mileage as in civil actions.

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

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

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

(2) Any person aggrieved by the final decision of the commission as a result of any hearing held under the provisions of Sections 21-27-201 through 21-27-221, including hearings requested incidental to the issuance, denial, modification or revocation of
any operator certification issued hereunder, may, within thirty (30) days of receipt of written notice of the action of the commission, appeal such final decision to the chancery court of the county of the situs in whole or in part of the subject matter by giving a cost bond with sufficient sureties, payable to the state in the sum of not less than One Hundred Dollars ($100.00) nor more than Five Hundred Dollars ($500.00), to be fixed by the commission and to be filed with and approved by the chief administrative officer of the appropriate agency, who shall forthwith certify the same together with a certified copy of the record made before the commission or designated hearing officer in the matter to the chancery court to which the appeal is taken, which shall thereupon become the record of the cause. An appeal to the chancery court as provided herein shall not stay the decision of the commission. The aggrieved party may, within such thirty (30) days, petition the chancery court for an appeal with supersedeas and the chancellor shall grant a hearing on the petition and upon good cause shown may grant such appeal with supersedeas; the appellant shall be required to post a supersedeas bond with sufficient sureties according to law in an amount to be determined by the chancellor. Appeals shall be considered only upon the record as made before the commission. The chancery court shall always be deemed open for hearing of such appeals and the chancellor may hear the same in termtime or in vacation at any place in his district, and the same shall have precedence over all civil cases, except election contests. The chancery court shall review all questions of law and of fact. If no prejudicial error be found, the matter shall be affirmed. If prejudicial error be found, the same shall be reversed, and the chancery court shall remand the matter to the commission for appropriate action as may be indicated or necessary under the circumstances. Appeals may be taken from the chancery court to the Supreme Court in the manner as now required.
by law, except that if a supersedeas is desired by the party
appealing to the chancery court, he may apply therefor to the
chancellor thereof, who shall award a writ of supersedeas, without
additional bond, if in his judgment material damage is not likely
to result thereby; but otherwise, he shall require such
supersedeas bond as he deems proper, which shall be payable to the
state for damage.

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

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

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

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

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

(2)  The purposes of this chapter shall be:

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

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

(c)  To provide public notice of potentially hazardous
conditions that may exist in a water supply; and
(d) To authorize the director to prevent the creation of new potentially nonviable community water systems, to provide technical assistance to existing potentially nonviable systems to help those systems become viable and to encourage the elimination of nonviable systems whose problems cannot be corrected.

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

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

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

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

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

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

(d) "Construction" means any placement, assembly or installation of facilities or equipment, including contractual obligations to purchase those facilities or equipment, at the
location where the equipment will be used, including any preparation work at any location.

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

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

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

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

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

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

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

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

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

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

(o) "Nontransient, noncommunity public water system" means a public water system that is not a community water system and that regularly serves at least twenty-five (25) of the same persons over six (6) months per year.
"Person" means an individual, corporation, company, association, partnership, municipality or federal agency.

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

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

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

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

"Supplier of water" means any person who owns, or controls a public water system.

"Violator" means a public water system, an officer or director of a public water system, an operator, certified or otherwise, or any other person designated by a public water system or the department as the official responsible for the operation of a public water system.

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

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

(a) To establish policies, requirements or standards governing the source, collection, distribution, purification, treatment and storage of water for public water systems as it deems necessary for the provision of safe drinking water;
(b) To adopt, modify, repeal and promulgate, after due
notice and hearing and in accordance with the Mississippi
Administrative Procedures Law and Section 41-26-6, and where not
otherwise prohibited by federal or state law, to make exceptions
to and grant exemptions and variances from, and to enforce rules
and regulations implementing the powers and duties of the
commission under this chapter;

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

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

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

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

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

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

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

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

(3) The commission shall develop and implement a technical
assistance program to help existing potentially nonviable
community public water systems to become viable and to improve the
technical, managerial or financial capabilities of small community
public water systems. In developing this program, the commission
shall work cooperatively with organizations which currently provide training and assistance to public water systems.

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

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

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

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

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

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

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

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

(c) To enter at all reasonable times onto any property other than the interior of a private dwelling to make inspections,
conduct investigations or studies or enforce this chapter and applicable rules and regulations;

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

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

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

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

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

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

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

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

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

41-26-8. (1) The executive director shall exercise general supervision over the construction and operation of public water systems throughout the state. The general supervision shall include all of the features of construction and operation of
public water systems which do or may affect the sanitary quality
or the quantity of the water supply.

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

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

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

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

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

(f) Each applicant for a new community public water
system or nontransient, noncommunity public water system shall
submit financial and managerial information as required by the
public utilities staff. Following review of that information, the
executive director of the public utilities staff shall certify in
writing to the executive director the financial and managerial
viability of the system if the executive director of the public
utilities staff determines the system is viable. The executive
director shall not approve the construction until that
certification is received.
(g) The executive director shall not approve any plans for changes to an existing community public water system or nontransient, noncommunity public water system, if the executive director determines the changes would threaten the viability of the system or if the changes may overload the operational capabilities of the system.

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

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

(a) Issuing any orders either on the initiative of the executive director or through a designated administrative law
judge or hearing officer as may be necessary to protect the public
health of users of the system, including travelers; and

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

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

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

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

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

(2) In addition, the system shall provide public notice.
The notice shall be published at least once every three (3) months
in a newspaper of general circulation in the area which is served
by the water system, as determined by the executive director. The
notice shall not be placed in the legal section of the newspaper.
The notice shall be furnished to the other communications media
serving the area as soon as practicable after the discovery of any
condition for which the notice is required. If the water bills of a public water system are issued more often than once every three (3) months, the notice shall be included in at least one (1) water bill of the system every three (3) months, and if a public water system issues its water bills less often than once every three (3) months, the notice shall be included in each water bill issued by the system.

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

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

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

(b) Any regulations previously adopted to implement a cross connection control program shall be void to the extent those regulations are in conflict or inconsistent with this section.
(3) Before December 31, 2000, each public water system shall develop and implement a cross connection control program and shall conduct a survey and on-site visits, as necessary, to locate cross connections within its system. Single family dwellings and multifamily dwellings designed to house not more than eight (8) families shall be excluded from the survey, unless the public water system has reason to believe a cross connection exists.

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

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

(6) Each high hazard backflow preventer shall be inspected and tested at least annually. Each low hazard backflow preventer shall be inspected and tested at least biennially. If a high hazard backflow preventer fails to function properly, the property owner shall have the backflow preventer repaired and retested or shall install a new approved backflow preventer within thirty (30) days of the initial test. If a low hazard backflow preventer fails to function properly, the property owner shall have the
backflow preventer repaired and retested or shall install a new
approved backflow preventer within ninety (90) days of the initial
test.

(7) All inspection and testing of backflow preventers under
this section shall be conducted by a certified tester, unless
otherwise provided in the regulations of the commission.
Certified backflow preventer testers shall be licensed by the
department under those conditions as the department deems
appropriate. As a condition of certification, each certified
backflow preventer tester shall not charge a fee in excess of
Fifty Dollars ($50.00) for the inspection and testing of any low
hazard backflow preventer.

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

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

SECTION 20. Section 41-26-15, Mississippi Code of 1972, is
amended as follows:
41-26-15. The following acts and the causing of these acts
are prohibited:

(a) Failure by a supplier of water to comply with the
requirements of Section 41-26-13, or dissemination by that
supplier of any false or misleading information with respect to
notices required under Section 41-26-13, or with respect to
remedial actions being undertaken to achieve compliance with
Mississippi Primary Drinking Water Regulations;
(b) Failure by a supplier of water to comply with this chapter or applicable rules or regulations promulgated under this chapter, or with conditions of any variances or exemptions granted under this chapter;

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

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

(e) Contamination of a public water system;

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

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

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

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

41-26-17. (1) When the executive director or an employee of the department has reason to believe that a violation of this chapter, a rule or regulation promulgated under this chapter, any order of the executive director, or any limitation or condition of an approval has occurred, the executive director shall cause a written complaint to be served upon the alleged violator. The complaint shall specify the provisions of this chapter, rule or regulation, order or approval alleged to be violated and the facts alleged to constitute that violation. The complaint shall also
require the alleged violator to appear before the executive director at a time and place specified in the notice to answer the charges. The time of appearance shall be at least five (5) days from the date of the service of the complaint.

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

(3) The executive director shall afford an opportunity for a hearing to the alleged violator at the time and place specified in the notice. On the basis of the facts determined at the hearing, the presiding official shall make findings of fact and conclusions of law and enter an order. The executive director shall give written notice of that order to the alleged violator and to any other persons appearing at the hearing or making written request for notice of the order. In addition to ordering corrections in the operation or maintenance of a public water system, and other measures which, in the opinion of the executive director, are necessary to ensure compliance with this chapter or the federal
act or to safeguard the public health, the executive
director may
assess penalties as provided in Section 41-26-31.

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

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

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

(b) In any pending matters under this chapter, the
executive
director shall have the same powers to subpoena
witnesses, administer oaths, examine witnesses under oath and
conduct the hearing, as is now vested by law in the Mississippi
Public Service Commission, for hearings before it. In addition, the
executive
director may issue all subpoenas, both at the
instance of the petitioner and of the executive
director. At any
hearing the executive
director, the staff of the department, any
other petitioner or any other interested person, may offer proof,
present witnesses and submit evidence. At the discretion of the
presiding official, comments may be taken from members of the
public who are subscribers of the public water system. Witnesses
who are subpoenaed shall receive the same fees and mileage as in
civil actions. In case of contumacy or refusal to obey a notice
of hearing or subpoena issued under this section, the circuit
court shall have jurisdiction, upon application of the executive
director or the executive director's representative, to issue an
order requiring that person to appear and testify or produce
evidence as the case may require and any failure to obey that
order of the court may be punished by the court as contempt.

Failure to appear at any hearing, without prior authorization to
do so from the executive director or the executive director's
representative, may result in the executive director finding the
alleged violator guilty of the charges complained of by default.

An order may be entered, including the assessment of a penalty,
which, in the opinion of the director, will best further the
purposes of this chapter.

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

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

41-26-21. Following the hearing, the presiding official
shall enter an order which shall become a final order of the
executive director, unless the petitioner or other interested
person appearing at the hearing, shall, within ten (10) days after
the date of the final order was made, appeal to the Chancery Court
of the First Judicial District of Hinds County or the chancery
court of the county of the situs, in whole or in part. The
petitioner or other interested person shall give a cost bond with
sufficient sureties, payable to the state in the sum of not less than One Hundred Dollars ($100.00) nor more than Five Hundred Dollars ($500.00), to be fixed in the order appealed from. The cost bond shall be filed with and approved by the executive director, who shall certify the bond, together with a certified copy of the record of the hearing in the matter, to the chancery court, which shall be the record of the cause. Except as provided in this section, an appeal to the chancery court as provided in this section shall not stay the execution of a final order of the executive director.

Any person who is aggrieved by any final order or other decision issued under this section may, within ten (10) days after the date of that order or decision, petition the Chancery Court of the First Judicial District of Hinds County or the chancery court of the county of the situs, in whole or in part, for an appeal with supersedeas. The chancellor shall grant a hearing on that petition. Upon good cause shown, the chancellor may grant the appeal with supersedeas. The appellant shall be required to post a bond with sufficient sureties according to law in an amount to be determined by the chancellor. Appeals shall be considered only upon the record as made at the hearing before the presiding official. The chancery court shall always be deemed open for hearing of appeals and the chancellor may hear the appeal in termtime or in vacation at any place in the chancellor's district. The appeal shall have precedence over all civil cases, except election contests. The chancery court shall review all questions of law and of fact. If no prejudicial error is found, the matter shall be affirmed and remanded to the executive director for enforcement. If a prejudicial error is found, the matter shall be reversed and the chancery court shall remand the matter to the executive director for appropriate action as may be indicated or necessary under the circumstances. Appeals may be taken from the chancery court to the Supreme Court in the manner as now required.
by law, but if a supersedeas is desired by the party appealing to
the chancery court, that party may apply for the supersedeas to
the chancellor, who shall award a writ of supersedeas, without
additional bond, if in the chancellor's judgment material damage
is not likely to result. If material damage is likely to result,
the chancellor shall require a supersedeas bond as deemed proper,
which shall be liable to the state for any damage.

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

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

(2) The department annually shall assess and collect fees
for water quality analysis and related activities as required by
the federal Safe Drinking Water Act, as amended, which shall not
exceed One Dollar and Ninety Cents ($1.90) per connection or Forty
Thousand Dollars ($40,000.00) per system, whichever is less. The
department annually shall adopt by rule, in accordance with the Administrative Procedures Law and following a public hearing, a fee schedule to cover all reasonable direct and indirect costs of water quality analysis and related activities as required by the federal Safe Drinking Water Act, as amended. In adopting a fee schedule, the department shall consider the recommendations of the advisory committee created in this section, if those recommendations are made in a timely manner as provided.

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

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

H. B. No. 1195  
*HR03/ R1027*
who recovers the fee required by this section or any portion thereof from any customer shall indicate on each statement rendered to customers that these fees are for water quality analyses required by the federal government under the Safe Drinking Water Act, as amended.

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

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

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

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

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

(3) The fund shall be treated as a special trust fund.

Interest earned on the principal shall be credited by the Treasurer to the fund.
The fund may receive monies from any available public or private source, including, but not limited to, collection of fines, penalties or fees, proceeds from bond or other financial security forfeitures, interest, grants, taxes, public and private donations, petroleum violation escrow funds or refunds, and appropriated funds.

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

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

(2) In addition to or in lieu of the penalty provided in subsection (1) of this section, the executive director may institute and maintain in the name of the state any proceedings necessary or appropriate to enforce this chapter, any rule or
regulation or written order of the executive director or any condition or limitation of an approval. The proceedings may be filed and heard in the appropriate circuit, chancery, county or justice court of the county in which venue may lie, or in the Circuit, Chancery or County Court of the First Judicial District of Hinds County, as the case may be. The executive director may obtain mandatory or prohibitory injunctive relief, either temporary or permanent. In cases of imminent and substantial hazard or endangerment, it shall not be necessary that the state plead or prove: (a) that irreparable damage would result if the injunction did not issue; (b) that there is no adequate remedy at law; or (c) that a written order has first been issued for the alleged violation.

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

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

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

(i) The physical consolidation of the system with one or more other viable public water systems;
(ii) The consolidation of significant management and administrative functions of the system with one or more other viable public water systems or contract or satellite management of the system; or
(iii) The transfer of ownership of the system.
(b) If the executive director approves the plan and the plan is fully implemented as determined by the executive director, the executive director shall waive any penalty assessed under this...
section for a violation identified in the approved plan before the
date on which the action specified in the approved plan was
completed.

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

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

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

(ii) All reasonable and practical efforts under
the circumstances have been made to obtain corrective actions from
the violators; and
(iii) It does not appear that corrective actions can or will be taken within an appropriate time as determined by the executive director, or it appears the facility has been abandoned.

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

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

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

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

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

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

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

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

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

(3) To avoid board members having to interfere with their jobs or employment, management training sessions may be divided into segments and, to the greatest extent possible, shall be scheduled for evening sessions. The department shall conduct
management training on a regional basis and shall use community
college or other public facilities for the convenience of board
members.

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

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

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

* * *

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

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

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

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

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

(f) "Professional engineer" means any person who has
met the qualifications required under Section 73-13-23(1) and who
has been issued a certificate of registration as a professional engineer.

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

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

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

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

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

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

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

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

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

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

(a) Review and approval of individual on-site wastewater disposal systems in accordance with Section 41-67-6;
(b) Certification of installers of individual on-site wastewater disposal systems and persons engaging in the removal and disposal of the sludge and liquid waste from those systems; and

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

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

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

(b) Application review;

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

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

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

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

Any system proposed for authorization in accordance with performance standards must be designed and certified by a professional engineer and must be authorized by the commission before installation. Appeals from a final decision of the
(5) To the extent practicable, all rules and regulations adopted under this chapter shall give maximum flexibility to persons installing individual on-site wastewater disposal systems and a maximum number of options consistent with the federal Clean Water Act, consistent with maintaining the wastes on the property of the generator except as authorized under Section 41-67-8, and consistent with protection of the public health. In addition, all rules and regulations, to the extent practicable, shall encourage the use of economically feasible systems, including alternative techniques and technologies for individual on-site wastewater disposal.

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

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

41-67-4. (1) The Commission on Environmental Quality shall determine the feasibility of establishing community sewerage systems upon the submission by the developer of a preliminary design and feasibility study prepared by a professional engineer.

The developer may request and obtain a hearing before the commission if the developer is dissatisfied with the commission's determination of feasibility. The determination that a sewerage system must be established shall be made without regard to whether the establishment of a sewerage system is authorized by law or is subject to approval by one or more state or local government or public bodies.
(2) Where residential subdivisions are proposed which are composed of fewer than thirty-five (35) building sites, and no system of sanitary sewers is available to which collection sewers may be feasibly connected, the commission may waive the requirement for a feasibility study. If the feasibility study is waived, all sites within the subdivision shall be approved, if a certified installer attests that each site can be adequately served by an individual on-site wastewater disposal system.

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

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

41-67-6. (1) Within five (5) working days following receipt of the notice of intent and plot plan by an owner, lessee or developer of any lot or tract of land, the department shall conduct a soil and site evaluation, except in cases where a professional engineer provides services relating to the design, construction or installation of an individual on-site wastewater disposal system to comply with this chapter. Within ten (10) additional working days, the department shall make recommendations to the owner, lessee or developer of the type or types of individual on-site wastewater disposal systems suitable for installation on the lot or tract, unless there are conditions requiring further investigation that are revealed in the initial evaluation. In making recommendations on the type or types of individual on-site wastewater disposal systems suitable for installation on a lot or tract, personnel of the department shall use best professional judgment based on rules and regulations adopted by the commission, considering the type or types of systems which are installed and functioning on lots or tracts near...
the subject lot or tract. If existing systems in the surrounding area function properly, systems of that same type shall be approved. To the extent practicable, the recommendations shall give the owner, lessee or developer maximum flexibility and a maximum number of options consistent with the federal Clean Water Act, consistent with maintaining the wastes on the property of the generator except as authorized under Section 41-67-8, and consistent with protection of the public health. The system or systems recommended shall be environmentally sound and cost-effective. The department or a professional engineer shall provide complete information, including all applicable requirements and regulations on all systems recommended. The owner, lessee or developer shall have the right to choose among systems. The department shall provide the owner, lessee or developer with a form that specifies all types of individual on-site wastewater disposal systems that are suitable for installation on the lot or tract and lists all installers of those systems that are certified by the department. Approval of the design, construction or installation of an individual on-site wastewater disposal system by the department is not required. If any property owner, lessee or the owner's or lessee's lending institution requests the department to approve the design, construction or installation of any system on the owner's or lessee's property, the department shall approve the design, construction or installation of that system, as requested, if the system is designed, constructed and installed, as the case may be, in accordance with the rules and regulations of the commission. The department shall not approve any individual on-site wastewater disposal system that has a direct or point source discharge, unless the Permit Board has issued a permit for that system under Section 41-67-8.

(2) Evaluations and recommendations for a subdivision shall not be subject to the time constraints in this section.
(3) If the department has been requested to approve the design, construction or installation of an individual on-site wastewater disposal system, an installer may not begin the design, construction or installation of the individual on-site wastewater disposal system, unless the installer notifies the department of the date on which the installer plans to begin work on the system.

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

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

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

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

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

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

(a) Sewers are not available or feasible;
(b) The existing disposal systems in the area are functioning satisfactorily;
(c) Soil types, soil texture, seasonal water tables and other limiting factors are satisfactory for underground absorption; and
(d) Any private water supply is located at a higher elevation and at least fifty (50) feet from the individual on-site wastewater disposal system and at least one hundred (100) feet from the disposal field of the system.

(2) Except for systems utilizing underground absorption, alternative individual on-site wastewater disposal systems shall be considered acceptable, provided the following requirements are met:
(a) Sewers are not available or feasible;
(b) The systems meet applicable water quality requirements of the federal Clean Water Act and also requirements of the * * * department; and
(c) Any discharge is confined within the boundaries of the property of the generator except as authorized under Section 41-67-8.

SECTION 33. Section 41-67-8, Mississippi Code of 1972, is amended as follows:
41-67-8. (1) This section shall be applicable only after the department has determined that there is no type of individual on-site wastewater disposal system authorized under subsection (3) or (4) of Section 41-67-3 or rules or regulations of the commission that can maintain the wastes on the property of the generator.
(2) The owner of any individual on-site wastewater disposal system from which effluent is discharged off the property of the generator shall obtain a permit for that discharge, if required under Section 49-17-29, from the Permit Board created under Section 49-17-28.
(3) The Permit Board may issue general permits for individual on-site wastewater disposal systems as provided in Section 49-17-29.

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

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

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

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

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

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

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

(2) If an existing residential individual on-site wastewater disposal system is malfunctioning, the system should be replaced, where possible, with a system meeting all requirements of this chapter and rules and regulations of the commission. If replacement of the existing system is not possible, the existing system shall be repaired to reduce the volume of effluent, to
adequately treat the effluent and to the greatest extent possible, to confine the discharge to the property of the generator except as authorized under Section 41-67-8. If repairs are made to significantly upgrade the existing individual on-site wastewater disposal system, the department shall approve the system, if requested.

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

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

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

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

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

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

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

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

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

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

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

(3) The fee authorized under this section shall not be assessed for any system operated by state agencies or institutions, including without limitation, foster homes licensed by the State Department of Human Services. The fee authorized under this section shall not be charged again after payment of the initial fee for any system that has been installed in accordance
with this chapter, within a period of twenty-four (24) months following the date that the system was originally installed.

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

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

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

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

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

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

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

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

41-67-25. (1) A person may not operate as an installer in this state unless that person is certified by the department except any individual who installs an individual on-site.
wastewater disposal system on his own property or a professional engineer.

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

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

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

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

(c) Pays the annual certification fee.

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

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

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

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

(7) The department semiannually shall disseminate to the public an official list of certified installers and provide to county health departments a monthly update of the list.
SECTION 39. Section 41-67-28, Mississippi Code of 1972, is amended as follows:

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

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

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

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

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

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

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

(4) A person who violates this chapter thereby causing a discharge off the property of the generator shall be liable to the
party aggrieved or damaged by that violation for the actual
damages and additional punitive damages equal to a maximum of
twenty-five percent (25%) of the actual damages proven by the
aggrieved party, to be taxed by the court where the suit is heard
on an original action, by appeal or otherwise and recovered by a
suit at law in any court of competent jurisdiction. In addition,
the court may award the prevailing party reasonable attorneys fees
and court costs. Before filing suit, the party aggrieved or
damaged must give thirty (30) days' written notice of its intent
to file suit to the alleged violator.

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

41-67-29. Any person who is aggrieved by any final decision
of the commission may appeal that final decision to the chancery
court of the county of the situs in whole or in part of the
subject matter. The appellant shall give a cost bond with
sufficient sureties, payable to the state in a sum to be fixed by
the commission or the court and to be filed with and approved by
the clerk of the court. The aggrieved party may, within thirty
(30) days following a final decision of the commission, petition
the chancery court for an appeal with supersedeas and the
chancellor shall grant a hearing on the petition. Upon good cause
shown the chancellor may grant the appeal with supersedeas. The
appellant shall be required to post a bond with sufficient
sureties according to law in an amount to be determined by the
chancellor. The chancery court shall always be deemed open for
hearing of appeals and the chancellor may hear the appeal in
termtime or in vacation at any place in his district. The appeal
shall have precedence over all civil cases, except election
contests. The chancery court shall review all questions of law
and of fact and may enter a final order or remand the matter to
the commission for appropriate action as may be indicated or
necessary under the circumstances. Appeals may be taken from the
chancery court to the Supreme Court in the manner as now required by law, but if a supersedeas is desired by the party appealing to the chancery court, that party may apply therefor to the chancellor, who shall award a writ of supersedeas, without additional bond, if in the chancellor's judgment material damage is not likely to result. If material damage is likely to result, the chancellor shall require a supersedeas bond as deemed proper, which shall be liable to the state for any damage.

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