

By: Representative Ellington

To: Public Health and Welfare

HOUSE BILL NO. 1445

1 AN ACT TO REENACT SECTIONS 41-67-1 THROUGH 41-67-29,
2 MISSISSIPPI CODE OF 1972, WHICH ARE THE MISSISSIPPI INDIVIDUAL
3 ON-SITE WASTEWATER DISPOSAL LAW; TO AMEND REENACTED SECTION
4 41-67-5, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT NO PERMANENT
5 UTILITY CONNECTION SHALL BE PROVIDED TO ANY RESIDENCE, BUILDING OR
6 FACILITY UNLESS ITS INDIVIDUAL ON-SITE WASTEWATER DISPOSAL SYSTEM,
7 IF ANY, HAS BEEN APPROVED BY THE STATE DEPARTMENT OF HEALTH; TO
8 REQUIRE PUBLIC UTILITY SYSTEMS TO NOTIFY INDIVIDUALS OF THAT
9 REQUIREMENT AT THE TIME THAT UTILITY SERVICE IS REQUESTED; TO
10 AMEND REENACTED SECTION 41-67-6, MISSISSIPPI CODE OF 1972, TO
11 REQUIRE APPROVAL OF THE INSTALLATION OF INDIVIDUAL ON-SITE
12 WASTEWATER DISPOSAL SYSTEMS BY THE DEPARTMENT UNLESS OTHERWISE
13 PROVIDED IN THIS LAW; TO PROVIDE THAT THE DEPARTMENT SHALL APPROVE
14 THE INSTALLATION OF AN INDIVIDUAL ON-SITE WASTEWATER DISPOSAL
15 SYSTEM IF THE SYSTEM IS INSTALLED IN ACCORDANCE WITH THIS LAW AND
16 THE RULES AND REGULATIONS OF THE STATE BOARD OF HEALTH; TO AMEND
17 REENACTED SECTION 41-67-12, MISSISSIPPI CODE OF 1972, TO PROVIDE
18 FOR A FEE TO BE CHARGED BY THE DEPARTMENT FOR APPROVAL OF
19 INDIVIDUAL ON-SITE WASTEWATER DISPOSAL SYSTEMS; TO AMEND REENACTED
20 SECTION 41-67-21, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT THE
21 DEPARTMENT SHALL REQUIRE PROPERTY OWNERS TO REPAIR MALFUNCTIONING
22 INDIVIDUAL ON-SITE WASTEWATER DISPOSAL SYSTEMS ON THE OWNERS'
23 PROPERTY WITHIN A SPECIFIED TIME; TO AMEND REENACTED SECTION
24 41-67-25, MISSISSIPPI CODE OF 1972, TO REQUIRE WASTEWATER DISPOSAL
25 SYSTEM INSTALLERS TO POST A PERFORMANCE BOND; TO AMEND REENACTED
26 SECTIONS 41-67-3, 41-67-7, 41-67-9 AND 41-67-19, MISSISSIPPI CODE
27 OF 1972, IN CONFORMITY TO THE PRECEDING PROVISIONS; TO AMEND
28 SECTION 41-67-31, MISSISSIPPI CODE OF 1972, TO EXTEND THE REPEALER
29 ON THE MISSISSIPPI INDIVIDUAL ON-SITE WASTEWATER DISPOSAL LAW; AND
30 FOR RELATED PURPOSES.

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

32 SECTION 1. Section 41-67-1, Mississippi Code of 1972, is
33 reenacted as follows:

34 41-67-1. This chapter shall be known and may be cited as the
35 "Mississippi Individual On-Site Wastewater Disposal System Law."

36 SECTION 2. Section 41-67-2, Mississippi Code of 1972, is
37 reenacted as follows:

38 41-67-2. For purposes of this chapter, the following words
39 shall have the meanings ascribed herein unless the context clearly
40 indicates otherwise:

41 (a) "Board" means the Mississippi State Board of
42 Health.

43 (b) "Commission" means the Commission on Environmental
44 Quality.

45 (c) "Department" means the Mississippi State Department
46 of Health.

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

50 (e) "Individual on-site wastewater disposal system"
51 means an approved method of sewage disposal designed and installed
52 in accordance with this law, and regulations of the board and the
53 commission.

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

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

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

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

71 SECTION 3. Section 41-67-3, Mississippi Code of 1972, is
72 reenacted and amended as follows:

73 41-67-3. (1) The State Board of Health shall have the
74 following duties and responsibilities:

75 (a) To exercise general supervision over the design,
76 construction, operation and maintenance of individual on-site
77 wastewater disposal systems with flows substantially equivalent to
78 a single family residential generator, except when the property
79 owner or lessee chooses to employ a professional engineer to
80 comply with this chapter. To effectively administer this law, the
81 department and the Department of Environmental Quality shall enter
82 into a memorandum of understanding, which at a minimum shall
83 clearly define the jurisdiction of each department with regard to
84 wastewater disposal and procedures for interdepartmental
85 interaction and cooperation;

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

97 (c) To provide or deny certification for persons
98 engaging in the business of the design, construction or
99 installation of individual on-site wastewater disposal systems and
100 persons engaging in the removal and disposal of the sludge and
101 liquid waste from those systems;

102 (d) To suspend or revoke certifications issued to
103 persons engaging in the business of the design, construction or

104 installation of individual on-site wastewater disposal systems or
105 persons engaging in the removal and disposal of the sludge and
106 liquid waste from those systems, when it is determined the person
107 has violated this chapter or applicable rules and regulations; and

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

112 (2) Nothing in this chapter shall preclude a professional
113 engineer from providing services relating to the design,
114 construction or installation of an individual on-site wastewater
115 disposal system to comply with this chapter. Except as otherwise
116 required by subsection (4) of this section or Section 41-67-8, a
117 professional engineer shall notify the department in writing of
118 those services being provided. If a professional engineer
119 designs, constructs or installs or directly supervises the
120 construction or installation of a design-based individual on-site
121 wastewater disposal system consistent with this chapter and stamps
122 the appropriate documentation with that professional engineer's
123 seal, the department shall approve the design, construction or
124 installation of the system, * * *. Professional engineers
125 engaging in the design, construction or installation of individual
126 on-site wastewater disposal systems shall not require
127 certification under this chapter.

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

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

135 (b) Certification of installers of individual on-site
136 wastewater disposal systems and persons engaging in the removal

137 and disposal of the sludge and liquid waste from those systems;
138 and

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

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

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

155 (b) Application review;

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

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

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

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

164 Any system proposed for authorization in accordance with
165 performance standards must be designed and certified by a
166 professional engineer and must be authorized by the board before
167 installation. Appeals from a final decision of the board
168 regarding the authorization of an individual on-site wastewater
169 disposal system based upon performance standards shall be taken

170 using a procedure substantially equivalent to the procedure
171 specified for hospital licenses in Chapter 9 of Title 41.

172 (5) To the extent practicable, all rules and regulations
173 adopted under this chapter shall give maximum flexibility to
174 persons installing individual on-site wastewater disposal systems
175 and a maximum number of options consistent with the federal Clean
176 Water Act, consistent with maintaining the wastes on the property
177 of the generator except as authorized under Section 41-67-8, and
178 consistent with protection of the public health. In addition, all
179 rules and regulations, to the extent practicable, shall encourage
180 the use of economically feasible systems, including alternative
181 techniques and technologies for individual on-site wastewater
182 disposal.

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

187 SECTION 4. Section 41-67-4, Mississippi Code of 1972, is
188 reenacted as follows:

189 41-67-4. (1) The Commission on Environmental Quality shall
190 determine the feasibility of establishing community sewerage
191 systems upon the submission by the developer of a preliminary
192 design and feasibility study prepared by a professional engineer.
193 The developer may request and obtain a hearing before the
194 commission if the developer is dissatisfied with the commission's
195 determination of feasibility. The determination that a sewerage
196 system must be established shall be made without regard to whether
197 the establishment of a sewerage system is authorized by law or is
198 subject to approval by one or more state or local government or
199 public bodies.

200 (2) Where residential subdivisions are proposed which are
201 composed of fewer than thirty-five (35) building sites, and no
202 system of sanitary sewers is available to which collection sewers

203 may be feasibly connected, the board may waive the requirement for
204 a feasibility study. If the feasibility study is waived, all
205 sites within the subdivision shall be approved, if a certified
206 installer attests that each site can be adequately served by an
207 individual on-site wastewater disposal system.

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

213 SECTION 5. Section 41-67-5, Mississippi Code of 1972, is
214 reenacted and amended as follows:

215 41-67-5. (1) No owner, lessee or developer shall construct
216 or place any mobile, modular or permanently constructed residence,
217 building or facility, which may require the installation of an
218 individual on-site wastewater disposal system, without having
219 first submitted a notice of intent to the department. Upon
220 receipt of a notice of intent, the department shall provide the
221 owner, lessee or developer with complete information on individual
222 on-site wastewater disposal systems, including but not limited to
223 applicable rules and regulations regarding the design,
224 construction, installation, operation and maintenance of
225 individual on-site wastewater disposal systems and known
226 requirements of lending institutions for approval of the systems.

227 (2) No new permanent utility service connection shall be
228 provided to any mobile, modular or permanently constructed
229 residence, building or facility unless its individual on-site
230 wastewater disposal system, if any, has been approved by the
231 department. Public utility systems shall notify individuals of
232 the requirements of this section at the time that utility service
233 is requested.

234 SECTION 6. Section 41-67-6, Mississippi Code of 1972, is
235 reenacted and as follows:

236 41-67-6. (1) Within five (5) working days following receipt
237 of the notice of intent and plot plan by an owner, lessee or
238 developer of any lot or tract of land, the department shall
239 conduct a soil and site evaluation, except in cases where a
240 professional engineer provides services relating to the design,
241 construction or installation of an individual on-site wastewater
242 disposal system to comply with this chapter. Within ten (10)
243 additional working days, the department shall make recommendations
244 to make recommendations to the owner, lessee or developer of the
245 type or types of individual on-site wastewater disposal systems
246 acceptable for installation on the lot or tract, unless there are
247 conditions requiring further investigation that are revealed in
248 the initial evaluation. In making recommendations on the type or
249 types of individual on-site wastewater disposal systems acceptable
250 for installation on a lot or tract, personnel of the department
251 shall use best professional judgment based on rules and
252 regulations adopted by the board, considering the type or types of
253 systems which are installed and functioning on lots or tracts near
254 the subject lot or tract. If existing systems in the surrounding
255 area function properly, systems of that same type shall be
256 acceptable. To the extent practicable, the recommendations shall
257 give the owner, lessee or developer maximum flexibility and a
258 maximum number of options consistent with the federal Clean Water
259 Act, consistent with maintaining the wastes on the property of the
260 generator except as authorized under Section 41-67-8, and
261 consistent with protection of the public health. The system or
262 systems recommended shall be environmentally sound and
263 cost-effective. The department or a professional engineer shall
264 provide complete information, including all applicable
265 requirements and regulations on all systems recommended. The
266 owner, lessee or developer shall have the right to choose among
267 acceptable systems. The department shall provide the owner,
268 lessee or developer with a form that specifies all types of

269 individual on-site wastewater disposal systems that are acceptable
270 for installation on the lot or tract and lists all installers of
271 those systems that are certified by the department.

272 The installation of an individual on-site wastewater disposal
273 system must be approved by the department unless otherwise
274 provided in this chapter. The department shall approve the * * *
275 installation of an individual on-site wastewater disposal
276 system * * * if the system is * * * installed * * * in accordance
277 with this chapter and the rules and regulations of the board. The
278 department shall not approve any individual on-site wastewater
279 disposal system that has a direct or point source discharge,
280 unless the Permit Board has issued a permit for that system under
281 Section 41-67-8.

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

284 (3) * * * An installer may not begin the design,
285 construction or installation of any individual on-site wastewater
286 disposal system unless the installer notifies the department of
287 the date on which the installer plans to begin work on the system.

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

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

300 (6) Any provisions of this chapter regarding the
301 department's approval of the design, construction and installation

302 of an individual on-site wastewater disposal system shall not
303 apply to a residence, building or facility that is located on a
304 land tract that is two (2) acres or larger.

305 SECTION 7. Section 41-67-7, Mississippi Code of 1972, is
306 reenacted and amended as follows:

307 41-67-7. Individual on-site wastewater disposal systems may
308 be approved on lots in areas or subdivisions where prior to the
309 sale of the lots, the following requirements are met:

310 (1) Individual on-site wastewater disposal systems with
311 underground absorption fields may be approved, provided the
312 following requirements are met:

313 (a) Sewers are not available or feasible;

314 (b) The existing disposal systems in the area are
315 functioning satisfactorily;

316 (c) Soil types, soil texture, seasonal water tables and
317 other limiting factors are satisfactory for underground
318 absorption; and

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

323 (2) Except for systems utilizing underground absorption,
324 alternative individual on-site wastewater disposal systems may be
325 approved, provided the following requirements are met:

326 (a) Sewers are not available or feasible;

327 (b) The systems meet applicable water quality
328 requirements of the federal Clean Water Act and also requirements
329 of the board and department; and

330 (c) Any discharge is confined within the boundaries of
331 the property of the generator except as authorized under Section
332 41-67-8.

333 SECTION 8. Section 41-67-8, Mississippi Code of 1972, is
334 reenacted as follows:

335 41-67-8. (1) This section shall be applicable only after
336 the department has determined that there is no type of individual
337 on-site wastewater disposal system authorized under subsection (3)
338 or (4) of Section 41-67-3 or rules or regulations of the board
339 that can maintain the wastes on the property of the generator.

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

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

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

350 SECTION 9. Section 41-67-9, Mississippi Code of 1972, is
351 reenacted and amended as follows:

352 41-67-9. (1) Existing individual on-site wastewater
353 disposal systems may be approved, provided the following
354 requirements are met:

355 (a) The lot is located in an area or subdivision where
356 individual on-site wastewater disposal systems may be considered
357 for approval under this chapter;

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

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

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

372 (2) If an existing residential individual on-site wastewater
373 disposal system is malfunctioning, the system should be replaced,
374 where possible, with a system meeting all requirements of this
375 chapter and rules and regulations of the board. If replacement of
376 the existing system is not possible, the existing system shall be
377 repaired to reduce the volume of effluent, to adequately treat the
378 effluent and * * * to confine the discharge to the property of the
379 generator except as authorized under Section 41-67-8. If repairs
380 are made to significantly upgrade the existing individual on-site
381 wastewater disposal system, * * * the system must be approved by
382 the department.

383 SECTION 10. Section 41-67-10, Mississippi Code of 1972, is
384 reenacted as follows:

385 41-67-10. Aerobic treatment systems may be installed only if
386 they have been tested and listed by a third party certifying
387 program. Aerobic treatment systems shall be in compliance with
388 standards for a Class I system as defined by the most current
389 revision of American National Standards Institute/National
390 Sanitation Foundation (ANSI/NSF) International Standard Number 40,
391 hereby incorporated by reference. Beginning on October 1, 1996,
392 an approved third party certifying program shall comply with the
393 following provisions for systems which it has certified to be
394 installed in Mississippi:

395 (a) Be accredited by the American National Standards
396 Institute;

397 (b) Have established procedures which send
398 representatives to distributors in Mississippi on a recurring
399 basis to conduct evaluations to assure that distributors of

400 certified aerobic treatment systems are providing proper
401 maintenance, have sufficient replacement parts available and are
402 maintaining service records;

403 (c) Notify the department of the results of monitoring
404 visits to manufacturers and distributors within sixty (60) days of
405 the conclusion of the monitoring; and

406 (d) Submit completion reports on testing and any other
407 information as the department may require for its review.

408 SECTION 11. Section 41-67-11, Mississippi Code of 1972, is
409 reenacted as follows:

410 41-67-11. (1) Temporary individual on-site wastewater
411 disposal systems may be approved in otherwise unapprovable areas
412 only after a contract has been awarded for the construction of
413 municipal or community sewers that upon completion will adequately
414 serve the property. Temporary individual on-site wastewater
415 disposal systems shall only be approved under the following
416 conditions:

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

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

433 completed within six (6) months, and the owner of the temporary
434 system has certified in writing that connection to the public
435 sewer shall be made as soon as it becomes available.

436 (2) The board may approve the installation of sewage holding
437 tanks in districts created under Sections 19-5-151 through
438 19-5-207 for the purpose of providing sewage services. The
439 district shall be required to maintain or provide for the
440 maintenance of those holding tanks. The board shall require that
441 residences be connected to a municipal or community sewage system
442 when that system is available and ready to use.

443 SECTION 12. Section 41-67-12, Mississippi Code of 1972, is
444 reenacted and amended as follows:

445 41-67-12. (1) The department shall assess fees in the
446 following amounts for the following purposes:

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

450 (b) A fee of Fifty Dollars (\$50.00) shall be levied for
451 approval of individual on-site wastewater disposal systems.

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

456 (d) A fee of One Hundred Dollars (\$100.00) shall be
457 levied annually for the registration of manufacturers.

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

463 (3) The fee authorized under this section shall not be
464 assessed for any system operated by state agencies or
465 institutions, including without limitation, foster homes licensed

466 by the State Department of Human Services. The fee authorized
467 under this section shall not be charged again after payment of the
468 initial fee for any system that has been installed in accordance
469 with this chapter, within a period of twenty-four (24) months
470 following the date that the system was originally installed.

471 SECTION 13. Section 41-67-15, Mississippi Code of 1972, is
472 reenacted as follows:

473 41-67-15. Nothing in this chapter shall limit the authority
474 of a municipality or board of supervisors to adopt similar
475 ordinances which may be, in whole or in part, more restrictive
476 than this chapter, and in those cases the more restrictive
477 ordinances will govern.

478 SECTION 14. Section 41-67-16, Mississippi Code of 1972, is
479 reenacted as follows:

480 41-67-16. (1) Before January 1, 1997, the department shall
481 conduct a study of all individual on-site wastewater disposal
482 systems currently being recommended for use in the state to
483 determine the suitability of using those systems on lots or tracts
484 in areas of the state given the various soil types and
485 classifications. In conducting the study, the department shall
486 consider the type of system, lot size, effluent quality and other
487 recommended limitations which should be placed on the use of each
488 system.

489 (2) The department shall prepare and submit a report to the
490 Governor and the Legislature describing the results of its study.

491 SECTION 15. Section 41-67-19, Mississippi Code of 1972, is
492 reenacted and amended as follows:

493 41-67-19. Each authorized agent of the department
494 implementing this chapter shall demonstrate to the department's
495 satisfaction that the person:

496 (a) Is competent to review and provide * * * approval
497 of design, construction and installation of individual on-site
498 wastewater disposal systems, as well as the operation, repair or

499 maintenance of those systems, to make soil permeability tests or
500 soil and site evaluations, and to conduct inspections of
501 individual on-site wastewater disposal systems in accordance with
502 this chapter and rules and regulations adopted under this chapter;
503 and

504 (b) Has successfully completed the installer
505 certification training program provided by the department.

506 SECTION 16. Section 41-67-21, Mississippi Code of 1972, is
507 reenacted and amended as follows:

508 41-67-21. (1) The board or the department shall require a
509 property owner or lessee to repair a malfunctioning individual
510 on-site wastewater disposal system on the owner's or lessee's
511 property before the thirtieth day after the date on which the
512 owner or lessee is notified by the department of the
513 malfunctioning system.

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

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

522 (4) The board may assess the property owner or lessee of an
523 individual on-site wastewater disposal system authorized pursuant
524 to Section 41-67-3(4) a civil penalty not to exceed Fifty Dollars
525 (\$50.00) for each day the system fails to meet the performance
526 standards of that system after the thirty-day period specified in
527 subsection (1) of this section.

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

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

532 SECTION 17. Section 41-67-23, Mississippi Code of 1972, is
533 reenacted as follows:

534 41-67-23. The department or its authorized representative
535 may enter onto property and make inspections of any individual
536 on-site wastewater disposal system as necessary to ensure that the
537 system is in compliance with this chapter and the rules adopted
538 under this chapter. The department shall give reasonable notice
539 to any property owner, lessee or occupant prior to entry onto the
540 property. The owner, lessee, owner's representative, or occupant
541 of the property on which the system is located shall give the
542 department or its authorized representative reasonable access to
543 the property at reasonable times to make necessary inspections.

544 SECTION 18. Section 41-67-25, Mississippi Code of 1972, is
545 reenacted and amended as follows:

546 41-67-25. (1) A person may not operate as an installer in
547 this state unless that person is certified by the board except any
548 individual who installs an individual on-site wastewater disposal
549 system on his own property or a professional engineer.

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

556 (3) The board shall issue a certification to an installer if
557 the installer:

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

560 (b) Satisfactorily completes the training program
561 provided by the department; * * *

562 (c) Pays the annual certification fee; and

563 (d) Provides proof of holding a valid performance bond.

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

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

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

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

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

581 SECTION 19. Section 41-67-27, Mississippi Code of 1972, is
582 reenacted as follows:

583 41-67-27. It is unlawful for a manufacturer of an individual
584 on-site wastewater disposal system to operate a business in or to
585 do business in the State of Mississippi without holding a valid
586 registration issued by the department.

587 SECTION 20. Section 41-67-28, Mississippi Code of 1972, is
588 reenacted as follows:

589 41-67-28. (1) Except as otherwise provided in this chapter,
590 any person who shall knowingly violate this chapter or any rule or
591 regulation or written order of the board in pursuance thereof is,
592 upon conviction, guilty of a misdemeanor and shall be punished as
593 provided in Section 41-3-59.

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

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

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

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

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

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

618 (4) A person who violates this chapter thereby causing a
619 discharge off the property of the generator shall be liable to the
620 party aggrieved or damaged by that violation for the actual
621 damages and additional punitive damages equal to a maximum of
622 twenty-five percent (25%) of the actual damages proven by the
623 aggrieved party, to be taxed by the court where the suit is heard
624 on an original action, by appeal or otherwise and recovered by a
625 suit at law in any court of competent jurisdiction. In addition,
626 the court may award the prevailing party reasonable attorneys fees
627 and court costs. Before filing suit, the party aggrieved or

628 damaged must give thirty (30) days' written notice of its intent
629 to file suit to the alleged violator.

630 SECTION 21. Section 41-67-29, Mississippi Code of 1972, is
631 reenacted as follows:

632 41-67-29. Any person who is aggrieved by any final decision
633 of the board may appeal that final decision to the chancery court
634 of the county of the situs in whole or in part of the subject
635 matter. The appellant shall give a cost bond with sufficient
636 sureties, payable to the state in a sum to be fixed by the board
637 or the court and to be filed with and approved by the clerk of the
638 court. The aggrieved party may, within thirty (30) days following
639 a final decision of the board, petition the chancery court for an
640 appeal with supersedeas and the chancellor shall grant a hearing
641 on the petition. Upon good cause shown the chancellor may grant
642 the appeal with supersedeas. The appellant shall be required to
643 post a bond with sufficient sureties according to law in an amount
644 to be determined by the chancellor. The chancery court shall
645 always be deemed open for hearing of appeals and the chancellor
646 may hear the appeal in termtime or in vacation at any place in his
647 district. The appeal shall have precedence over all civil cases,
648 except election contests. The chancery court shall review all
649 questions of law and of fact and may enter a final order or remand
650 the matter to the board for appropriate action as may be indicated
651 or necessary under the circumstances. Appeals may be taken from
652 the chancery court to the Supreme Court in the manner as now
653 required by law, but if a supersedeas is desired by the party
654 appealing to the chancery court, that party may apply therefor to
655 the chancellor, who shall award a writ of supersedeas, without
656 additional bond, if in the chancellor's judgment material damage
657 is not likely to result. If material damage is likely to result,
658 the chancellor shall require a supersedeas bond as deemed proper,
659 which shall be liable to the state for any damage.

660 SECTION 22. Section 41-67-31, Mississippi Code of 1972, is
661 amended as follows:

662 41-67-31. Sections 41-67-1 through 41-67-29 shall stand
663 repealed on July 1, 2005.

664 SECTION 23. This act shall take effect and be in force from
665 and after June 30, 2001.