

By: Representative Ford

To: Public Health and Welfare

HOUSE BILL NO. 845
(As Passed the House)

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 SYSTEM LAW; TO AMEND REENACTED SECTION
4 41-67-15, MISSISSIPPI CODE OF 1972, TO AUTHORIZE PUBLIC UTILITY
5 DISTRICTS TO ADOPT ORDINANCES THAT ARE MORE RESTRICTIVE THAN
6 PROVISIONS OF THE MISSISSIPPI INDIVIDUAL ON-SITE WASTEWATER
7 DISPOSAL SYSTEM LAW; TO AMEND SECTION 41-67-31, MISSISSIPPI CODE
8 OF 1972, TO EXTEND THE REPEALER ON THE MISSISSIPPI INDIVIDUAL
9 ON-SITE WASTEWATER DISPOSAL SYSTEM LAW; AND FOR RELATED PURPOSES.

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

11 **SECTION 1.** Section 41-67-1, Mississippi Code of 1972, is
12 reenacted as follows:

13 41-67-1. This chapter shall be known and may be cited as the
14 "Mississippi Individual On-Site Wastewater Disposal System Law."

15 **SECTION 2.** Section 41-67-2, Mississippi Code of 1972, is
16 reenacted as follows:

17 41-67-2. For purposes of this chapter, the following words
18 shall have the meanings ascribed herein unless the context clearly
19 indicates otherwise:

20 (a) "Board" means the Mississippi State Board of
21 Health.

22 (b) "Commission" means the Commission on Environmental
23 Quality.

24 (c) "Department" means the Mississippi State Department
25 of Health.

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

29 (e) "Individual on-site wastewater disposal system"
30 means an approved method of sewage disposal designed and installed



31 in accordance with this law, and regulations of the board and the
32 commission.

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

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

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

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

50 **SECTION 3.** Section 41-67-3, Mississippi Code of 1972, is
51 reenacted as follows:

52 41-67-3. (1) The State Board of Health shall have the
53 following duties and responsibilities:

54 (a) To exercise general supervision over the design,
55 construction, operation and maintenance of individual on-site
56 wastewater disposal systems with flows substantially equivalent to
57 a single family residential generator, except when the property
58 owner or lessee chooses to employ a professional engineer to
59 comply with this chapter. To effectively administer this law, the
60 department and the Department of Environmental Quality shall enter
61 into a memorandum of understanding, which at a minimum shall
62 clearly define the jurisdiction of each department with regard to



63 wastewater disposal and procedures for interdepartmental
64 interaction and cooperation;

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

76 (c) To provide or deny certification for persons
77 engaging in the business of the design, construction or
78 installation of individual on-site wastewater disposal systems and
79 persons engaging in the removal and disposal of the sludge and
80 liquid waste from those systems;

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

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

91 (2) Nothing in this chapter shall preclude a professional
92 engineer from providing services relating to the design,
93 construction or installation of an individual on-site wastewater
94 disposal system to comply with this chapter. Except as otherwise
95 required by subsection (4) of this section or Section 41-67-8, a



96 professional engineer shall notify the department in writing of
97 those services being provided. If a professional engineer
98 designs, constructs or installs or directly supervises the
99 construction or installation of a design-based individual on-site
100 wastewater disposal system consistent with this chapter and stamps
101 the appropriate documentation with that professional engineer's
102 seal, the department shall approve the design, construction or
103 installation of the system, if requested. Professional engineers
104 engaging in the design, construction or installation of individual
105 on-site wastewater disposal systems shall not require
106 certification under this chapter.

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

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

114 (b) Certification of installers of individual on-site
115 wastewater disposal systems and persons engaging in the removal
116 and disposal of the sludge and liquid waste from those systems;
117 and

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

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



129 individual on-site wastewater disposal systems designed to meet
130 performance standards shall include rules concerning the
131 following:

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

134 (b) Application review;

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

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

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

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

143 Any system proposed for authorization in accordance with
144 performance standards must be designed and certified by a
145 professional engineer and must be authorized by the board before
146 installation. Appeals from a final decision of the board
147 regarding the authorization of an individual on-site wastewater
148 disposal system based upon performance standards shall be taken
149 using a procedure substantially equivalent to the procedure
150 specified for hospital licenses in Chapter 9 of Title 41.

151 (5) To the extent practicable, all rules and regulations
152 adopted under this chapter shall give maximum flexibility to
153 persons installing individual on-site wastewater disposal systems
154 and a maximum number of options consistent with the federal Clean
155 Water Act, consistent with maintaining the wastes on the property
156 of the generator except as authorized under Section 41-67-8, and
157 consistent with protection of the public health. In addition, all
158 rules and regulations, to the extent practicable, shall encourage
159 the use of economically feasible systems, including alternative
160 techniques and technologies for individual on-site wastewater
161 disposal.



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

166 **SECTION 4.** Section 41-67-4, Mississippi Code of 1972, is
167 reenacted as follows:

168 41-67-4. (1) The Commission on Environmental Quality shall
169 determine the feasibility of establishing community sewerage
170 systems upon the submission by the developer of a preliminary
171 design and feasibility study prepared by a professional engineer.
172 The developer may request and obtain a hearing before the
173 commission if the developer is dissatisfied with the commission's
174 determination of feasibility. The determination that a sewerage
175 system must be established shall be made without regard to whether
176 the establishment of a sewerage system is authorized by law or is
177 subject to approval by one or more state or local government or
178 public bodies.

179 (2) Where residential subdivisions are proposed which are
180 composed of fewer than thirty-five (35) building sites, and no
181 system of sanitary sewers is available to which collection sewers
182 may be feasibly connected, the board may waive the requirement for
183 a feasibility study. If the feasibility study is waived, all
184 sites within the subdivision shall be approved, if a certified
185 installer attests that each site can be adequately served by an
186 individual on-site wastewater disposal system.

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

192 **SECTION 5.** Section 41-67-5, Mississippi Code of 1972, is
193 reenacted as follows:



194 41-67-5. (1) No owner, lessee or developer shall construct
195 or place any mobile, modular or permanently constructed residence,
196 building or facility, which may require the installation of an
197 individual on-site wastewater disposal system, without having
198 first submitted a notice of intent to the department. Upon
199 receipt of a notice of intent, the department shall provide the
200 owner, lessee or developer with complete information on individual
201 on-site wastewater disposal systems, including, but not limited
202 to, applicable rules and regulations regarding the design,
203 construction, installation, operation and maintenance of
204 individual on-site wastewater disposal systems and known
205 requirements of lending institutions for approval of the systems.

206 (2) No new permanent water service connection shall be
207 provided to any mobile, modular or permanently constructed
208 residence, building or facility unless the owner, lessee or
209 developer shows proof of the submission of the notice of intent
210 required by this section.

211 (3) The department shall furnish to the county tax assessor
212 or collector, upon request, the name and address of the person
213 submitting a notice of intent and the section, township and range
214 of the lot or tract of land on which the individual on-site
215 wastewater disposal system will be installed.

216 **SECTION 6.** Section 41-67-6, Mississippi Code of 1972, is
217 reenacted as follows:

218 41-67-6. (1) Within five (5) working days following receipt
219 of the notice of intent and plot plan by an owner, lessee or
220 developer of any lot or tract of land, the department shall
221 conduct a soil and site evaluation, except in cases where a
222 professional engineer provides services relating to the design,
223 construction or installation of an individual on-site wastewater
224 disposal system to comply with this chapter. Within ten (10)
225 additional working days, the department shall make recommendations
226 to the owner, lessee or developer of the type or types of



227 individual on-site wastewater disposal systems suitable for
228 installation on the lot or tract, unless there are conditions
229 requiring further investigation that are revealed in the initial
230 evaluation. In making recommendations on the type or types of
231 individual on-site wastewater disposal systems suitable for
232 installation on a lot or tract, personnel of the department shall
233 use best professional judgment based on rules and regulations
234 adopted by the board, considering the type or types of systems
235 which are installed and functioning on lots or tracts near the
236 subject lot or tract. If existing systems in the surrounding area
237 function properly, systems of that same type shall be approved.
238 To the extent practicable, the recommendations shall give the
239 owner, lessee or developer maximum flexibility and a maximum
240 number of options consistent with the federal Clean Water Act,
241 consistent with maintaining the wastes on the property of the
242 generator except as authorized under Section 41-67-8, and
243 consistent with protection of the public health. The system or
244 systems recommended shall be environmentally sound and
245 cost-effective. The department or a professional engineer shall
246 provide complete information, including all applicable
247 requirements and regulations on all systems recommended. The
248 owner, lessee or developer shall have the right to choose among
249 systems. The department shall provide the owner, lessee or
250 developer with a form that specifies all types of individual
251 on-site wastewater disposal systems that are suitable for
252 installation on the lot or tract and lists all installers of those
253 systems that are certified by the department. Approval of the
254 design, construction or installation of an individual on-site
255 wastewater disposal system by the department is not required. If
256 any property owner, lessee or the owner's or lessee's lending
257 institution requests the department to approve the design,
258 construction or installation of any system on the owner's or
259 lessee's property, the department shall approve the design,



260 construction or installation of that system, as requested, if the
261 system is designed, constructed and installed, as the case may be,
262 in accordance with the rules and regulations of the board. The
263 department shall not approve any individual on-site wastewater
264 disposal system that has a direct or point source discharge,
265 unless the Permit Board has issued a permit for that system under
266 Section 41-67-8.

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

269 (3) If the department has been requested to approve the
270 design, construction or installation of an individual on-site
271 wastewater disposal system, an installer may not begin the design,
272 construction or installation of the individual on-site wastewater
273 disposal system, unless the installer notifies the department of
274 the date on which the installer plans to begin work on the system.

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

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

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



292 **SECTION 7.** Section 41-67-7, Mississippi Code of 1972, is
293 reenacted as follows:

294 41-67-7. Individual on-site wastewater disposal systems
295 shall be considered acceptable on lots in areas or subdivisions
296 where prior to the sale of the lots, the following requirements
297 are met:

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

301 (a) Sewers are not available or feasible;

302 (b) The existing disposal systems in the area are
303 functioning satisfactorily;

304 (c) Soil types, soil texture, seasonal water tables and
305 other limiting factors are satisfactory for underground
306 absorption; and

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

311 (2) Except for systems utilizing underground absorption,
312 alternative individual on-site wastewater disposal systems shall
313 be considered acceptable, provided the following requirements are
314 met:

315 (a) Sewers are not available or feasible;

316 (b) The systems meet applicable water quality
317 requirements of the federal Clean Water Act and also requirements
318 of the board and department; and

319 (c) Any discharge is confined within the boundaries of
320 the property of the generator except as authorized under Section
321 41-67-8.

322 **SECTION 8.** Section 41-67-8, Mississippi Code of 1972, is
323 reenacted as follows:



324 41-67-8. (1) This section shall be applicable only after
325 the department has determined that there is no type of individual
326 on-site wastewater disposal system authorized under subsection (3)
327 or (4) of Section 41-67-3 or rules or regulations of the board
328 that can maintain the wastes on the property of the generator.

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

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

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

339 **SECTION 9.** Section 41-67-9, Mississippi Code of 1972, is
340 reenacted as follows:

341 41-67-9. (1) Existing individual on-site wastewater
342 disposal systems shall be considered acceptable, provided the
343 following requirements are met:

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

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

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



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

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

372 **SECTION 10.** Section 41-67-10, Mississippi Code of 1972, is
373 reenacted as follows:

374 41-67-10. Aerobic treatment systems may be installed only
375 if they have been tested and listed by a third-party certifying
376 program. Aerobic treatment systems shall be in compliance with
377 standards for a Class I system as defined by the most current
378 revision of American National Standards Institute/National
379 Sanitation Foundation (ANSI/NSF) International Standard Number 40,
380 hereby incorporated by reference. Beginning on October 1, 1996,
381 an approved third-party certifying program shall comply with the
382 following provisions for systems which it has certified to be
383 installed in Mississippi:

384 (a) Be accredited by the American National Standards
385 Institute;

386 (b) Have established procedures which send
387 representatives to distributors in Mississippi on a recurring
388 basis to conduct evaluations to assure that distributors of



389 certified aerobic treatment systems are providing proper
390 maintenance, have sufficient replacement parts available and are
391 maintaining service records;

392 (c) Notify the department of the results of monitoring
393 visits to manufacturers and distributors within sixty (60) days of
394 the conclusion of the monitoring; and

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

397 **SECTION 11.** Section 41-67-11, Mississippi Code of 1972, is
398 reenacted as follows:

399 41-67-11. (1) Temporary individual on-site wastewater
400 disposal systems may be approved in otherwise unapprovable areas
401 only after a contract has been awarded for the construction of
402 municipal or community sewers that upon completion will adequately
403 serve the property. Temporary individual on-site wastewater
404 disposal systems shall only be approved under the following
405 conditions:

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

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



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

425 (2) The board may approve the installation of sewage holding
426 tanks in districts created under Sections 19-5-151 through
427 19-5-207 for the purpose of providing sewage services. The
428 district shall be required to maintain or provide for the
429 maintenance of those holding tanks. The board shall require that
430 residences be connected to a municipal or community sewage system
431 when that system is available and ready to use.

432 **SECTION 12.** Section 41-67-12, Mississippi Code of 1972, is
433 reenacted as follows:

434 41-67-12. (1) The department shall assess fees in the
435 following amounts for the following purposes:

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

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

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

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

450 (3) The fee authorized under this section shall not be
451 assessed for any system operated by state agencies or
452 institutions, including without limitation, foster homes licensed
453 by the State Department of Human Services. The fee authorized
454 under this section shall not be charged again after payment of the



455 initial fee for any system that has been installed in accordance
456 with this chapter, within a period of twenty-four (24) months
457 following the date that the system was originally installed.

458 **SECTION 13.** Section 41-67-15, Mississippi Code of 1972, is
459 reenacted and amended as follows:

460 41-67-15. Nothing in this chapter shall limit the authority
461 of a municipality, public utility district or board of supervisors
462 to adopt similar ordinances which may be, in whole or in part,
463 more restrictive than this chapter, and in those cases the more
464 restrictive ordinances will govern.

465 **SECTION 14.** Section 41-67-16, Mississippi Code of 1972, is
466 reenacted as follows:

467 41-67-16. (1) Before January 1, 1997, the department shall
468 conduct a study of all individual on-site wastewater disposal
469 systems currently being recommended for use in the state to
470 determine the suitability of using those systems on lots or tracts
471 in areas of the state given the various soil types and
472 classifications. In conducting the study, the department shall
473 consider the type of system, lot size, effluent quality and other
474 recommended limitations which should be placed on the use of each
475 system.

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

478 **SECTION 15.** Section 41-67-19, Mississippi Code of 1972, is
479 reenacted as follows:

480 41-67-19. Each authorized agent of the department
481 implementing this chapter shall demonstrate to the department's
482 satisfaction that the person:

483 (a) Is competent to review and provide any requested
484 approval of design, construction and installation of individual
485 on-site wastewater disposal systems, as well as the operation,
486 repair or maintenance of those systems, to make soil permeability
487 tests or soil and site evaluations, and to conduct inspections of



488 individual on-site wastewater disposal systems in accordance with
489 this chapter and rules and regulations adopted under this chapter;
490 and

491 (b) Has successfully completed the installer
492 certification training program provided by the department.

493 **SECTION 16.** Section 41-67-21, Mississippi Code of 1972, is
494 reenacted as follows:

495 41-67-21. (1) The board or the department may require a
496 property owner or lessee to repair a malfunctioning individual
497 on-site wastewater disposal system on the owner's or lessee's
498 property before the thirtieth day after the date on which the
499 owner or lessee is notified by the department of the
500 malfunctioning system.

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

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

509 (4) The board may assess the property owner or lessee of an
510 individual on-site wastewater disposal system authorized pursuant
511 to Section 41-67-3(4) a civil penalty not to exceed Fifty Dollars
512 (\$50.00) for each day the system fails to meet the performance
513 standards of that system after the thirty-day period specified in
514 subsection (1) of this section.

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

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

519 **SECTION 17.** Section 41-67-23, Mississippi Code of 1972, is
520 reenacted as follows:



521 41-67-23. The department or its authorized representative
522 may enter onto property and make inspections of any individual
523 on-site wastewater disposal system as necessary to ensure that the
524 system is in compliance with this chapter and the rules adopted
525 under this chapter. The department shall give reasonable notice
526 to any property owner, lessee or occupant prior to entry onto the
527 property. The owner, lessee, owner's representative, or occupant
528 of the property on which the system is located shall give the
529 department or its authorized representative reasonable access to
530 the property at reasonable times to make necessary inspections.

531 **SECTION 18.** Section 41-67-25, Mississippi Code of 1972, is
532 reenacted as follows:

533 41-67-25. (1) A person may not operate as an installer in
534 this state unless that person is certified by the board except any
535 individual who installs an individual on-site wastewater disposal
536 system on his own property or a professional engineer.

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

543 (3) The board shall issue a certification to an installer if
544 the installer:

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

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

549 (c) Pays the annual certification fee; and

550 (d) Provides proof of having a valid public liability
551 insurance policy in effect with liability limits of at least Fifty
552 Thousand Dollars (\$50,000.00) per occurrence and at least One
553 Hundred Thousand Dollars (\$100,000.00) in total aggregate amount.



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

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

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

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

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

571 **SECTION 19.** Section 41-67-27, Mississippi Code of 1972, is
572 reenacted as follows:

573 41-67-27. It is unlawful for a manufacturer of an individual
574 on-site wastewater disposal system to operate a business in or to
575 do business in the State of Mississippi without holding a valid
576 registration issued by the department.

577 **SECTION 20.** Section 41-67-28, Mississippi Code of 1972, is
578 reenacted as follows:

579 41-67-28. (1) Except as otherwise provided in this chapter,
580 any person who shall knowingly violate this chapter or any rule or
581 regulation or written order of the board in pursuance thereof is,
582 upon conviction, guilty of a misdemeanor and shall be punished as
583 provided in Section 41-3-59.

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



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

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

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

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

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

608 (4) A person who violates this chapter thereby causing a
609 discharge off the property of the generator shall be liable to the
610 party aggrieved or damaged by that violation for the actual
611 damages and additional punitive damages equal to a maximum of
612 twenty-five percent (25%) of the actual damages proven by the
613 aggrieved party, to be taxed by the court where the suit is heard
614 on an original action, by appeal or otherwise and recovered by a
615 suit at law in any court of competent jurisdiction. In addition,
616 the court may award the prevailing party reasonable attorneys fees
617 and court costs. Before filing suit, the party aggrieved or



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

620 **SECTION 21.** Section 41-67-29, Mississippi Code of 1972, is
621 reenacted as follows:

622 41-67-29. Any person who is aggrieved by any final decision
623 of the board may appeal that final decision to the chancery court
624 of the county of the situs in whole or in part of the subject
625 matter. The appellant shall give a cost bond with sufficient
626 sureties, payable to the state in a sum to be fixed by the board
627 or the court and to be filed with and approved by the clerk of the
628 court. The aggrieved party may, within thirty (30) days following
629 a final decision of the board, petition the chancery court for an
630 appeal with supersedeas and the chancellor shall grant a hearing
631 on the petition. Upon good cause shown the chancellor may grant
632 the appeal with supersedeas. The appellant shall be required to
633 post a bond with sufficient sureties according to law in an amount
634 to be determined by the chancellor. The chancery court shall
635 always be deemed open for hearing of appeals and the chancellor
636 may hear the appeal in termtime or in vacation at any place in his
637 district. The appeal shall have precedence over all civil cases,
638 except election contests. The chancery court shall review all
639 questions of law and of fact and may enter a final order or remand
640 the matter to the board for appropriate action as may be indicated
641 or necessary under the circumstances. Appeals may be taken from
642 the chancery court to the Supreme Court in the manner as now
643 required by law, but if a supersedeas is desired by the party
644 appealing to the chancery court, that party may apply therefor to
645 the chancellor, who shall award a writ of supersedeas, without
646 additional bond, if in the chancellor's judgment material damage
647 is not likely to result. If material damage is likely to result,
648 the chancellor shall require a supersedeas bond as deemed proper,
649 which shall be liable to the state for any damage.



650 **SECTION 22.** Section 41-67-31, Mississippi Code of 1972, is
651 amended as follows:

652 41-67-31. Sections 41-67-1 through 41-67-29 shall stand
653 repealed on July 1, 2004.

654 **SECTION 23.** This act shall take effect and be in force from
655 and after July 1, 2003.

