

By: Representative Ford

To: Public Health and Welfare

HOUSE BILL NO. 845
(As Sent to Governor)

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 41-67-4, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT IF A DEVELOPER
5 REQUESTS A DETERMINATION OF FEASIBILITY OF COMMUNITY SEWERAGE
6 SYSTEMS, THE COMMISSION ON ENVIRONMENTAL QUALITY MUST MAKE THE
7 DETERMINATION WITHIN FORTY-FIVE DAYS OR ALL SITES WITHIN THE
8 SUBDIVISION SHALL BE APPROVED; TO AMEND REENACTED SECTION 41-67-6,
9 MISSISSIPPI CODE OF 1972, TO PROVIDE THAT IF A PERSON REQUESTS
10 APPROVAL OF AN INDIVIDUAL ON-SITE WASTEWATER DISPOSAL SYSTEM, THE
11 DEPARTMENT OF HEALTH MUST APPROVE OR DISAPPROVE THE REQUEST WITHIN
12 FIFTEEN DAYS OR THE REQUEST SHALL BE DEEMED APPROVED; TO AMEND
13 SECTION 41-67-31, MISSISSIPPI CODE OF 1972, TO EXTEND THE REPEALER
14 ON THE MISSISSIPPI INDIVIDUAL ON-SITE WASTEWATER DISPOSAL SYSTEM
15 LAW; TO DIRECT THE ON-SITE WASTEWATER DISPOSAL SYSTEM ADVISORY
16 COMMITTEE OF THE DEPARTMENT TO STUDY AND RECOMMEND REVISIONS OF
17 THE INDIVIDUAL ON-SITE WASTEWATER DISPOSAL SYSTEM LAW; AND FOR
18 RELATED PURPOSES.

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

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

22 41-67-1. This chapter shall be known and may be cited as the
23 "Mississippi Individual On-Site Wastewater Disposal System Law."

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

26 41-67-2. For purposes of this chapter, the following words
27 shall have the meanings ascribed herein unless the context clearly
28 indicates otherwise:

29 (a) "Board" means the Mississippi State Board of
30 Health.

31 (b) "Commission" means the Commission on Environmental
32 Quality.

33 (c) "Department" means the Mississippi State Department
34 of Health.



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

38 (e) "Individual on-site wastewater disposal system"
39 means an approved method of sewage disposal designed and installed
40 in accordance with this law, and regulations of the board and the
41 commission.

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

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

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

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

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

61 41-67-3. (1) The State Board of Health shall have the
62 following duties and responsibilities:

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



68 comply with this chapter. To effectively administer this law, the
69 department and the Department of Environmental Quality shall enter
70 into a memorandum of understanding, which at a minimum shall
71 clearly define the jurisdiction of each department with regard to
72 wastewater disposal and procedures for interdepartmental
73 interaction and cooperation;

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

85 (c) To provide or deny certification for persons
86 engaging in the business of the design, construction or
87 installation of individual on-site wastewater disposal systems and
88 persons engaging in the removal and disposal of the sludge and
89 liquid waste from those systems;

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

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



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

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

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

123 (b) Certification of installers of individual on-site
124 wastewater disposal systems and persons engaging in the removal
125 and disposal of the sludge and liquid waste from those systems;
126 and

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

129 (4) In addition, the board shall adopt rules establishing
130 performance standards for individual on-site wastewater disposal
131 systems for single family residential generators and rules
132 concerning the operation and maintenance of individual on-site



133 wastewater disposal systems designed to meet those standards. The
134 performance standards shall be consistent with the federal Clean
135 Water Act, maintaining the wastes on the property of the generator
136 except as authorized under Section 41-67-8, and protection of the
137 public health. Rules for the operation and maintenance of
138 individual on-site wastewater disposal systems designed to meet
139 performance standards shall include rules concerning the
140 following:

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

143 (b) Application review;

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

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

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

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

152 Any system proposed for authorization in accordance with
153 performance standards must be designed and certified by a
154 professional engineer and must be authorized by the board before
155 installation. Appeals from a final decision of the board
156 regarding the authorization of an individual on-site wastewater
157 disposal system based upon performance standards shall be taken
158 using a procedure substantially equivalent to the procedure
159 specified for hospital licenses in Chapter 9 of Title 41.

160 (5) To the extent practicable, all rules and regulations
161 adopted under this chapter shall give maximum flexibility to
162 persons installing individual on-site wastewater disposal systems
163 and a maximum number of options consistent with the federal Clean
164 Water Act, consistent with maintaining the wastes on the property
165 of the generator except as authorized under Section 41-67-8, and



166 consistent with protection of the public health. In addition, all
167 rules and regulations, to the extent practicable, shall encourage
168 the use of economically feasible systems, including alternative
169 techniques and technologies for individual on-site wastewater
170 disposal.

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

175 **SECTION 4.** Section 41-67-4, Mississippi Code of 1972, is
176 reenacted and amended as follows:

177 41-67-4. (1) The Commission on Environmental Quality shall
178 determine the feasibility of establishing community sewerage
179 systems upon the submission by the developer of a preliminary
180 design and feasibility study prepared by a professional engineer.
181 The developer may request and obtain a hearing before the
182 commission if the developer is dissatisfied with the commission's
183 determination of feasibility. The determination that a sewerage
184 system must be established shall be made without regard to whether
185 the establishment of a sewerage system is authorized by law or is
186 subject to approval by one or more state or local government or
187 public bodies. Whenever a developer requests a determination of
188 feasibility, the commission must make the determination within
189 forty-five (45) days after receipt of the preliminary design and
190 feasibility study from the developer. The commission shall state
191 in writing the reasons for its determination. If the commission
192 does not make a determination within forty-five (45) days, all
193 sites within the subdivision shall be approved, if a certified
194 installer attests that each site can be adequately served by an
195 individual on-site wastewater disposal system.

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



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

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

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

211 41-67-5. (1) No owner, lessee or developer shall construct
212 or place any mobile, modular or permanently constructed residence,
213 building or facility, which may require the installation of an
214 individual on-site wastewater disposal system, without having
215 first submitted a notice of intent to the department. Upon
216 receipt of a notice of intent, the department shall provide the
217 owner, lessee or developer with complete information on individual
218 on-site wastewater disposal systems, including, but not limited
219 to, applicable rules and regulations regarding the design,
220 construction, installation, operation and maintenance of
221 individual on-site wastewater disposal systems and known
222 requirements of lending institutions for approval of the systems.

223 (2) No new permanent water service connection shall be
224 provided to any mobile, modular or permanently constructed
225 residence, building or facility unless the owner, lessee or
226 developer shows proof of the submission of the notice of intent
227 required by this section.

228 (3) The department shall furnish to the county tax assessor
229 or collector, upon request, the name and address of the person
230 submitting a notice of intent and the section, township and range



231 of the lot or tract of land on which the individual on-site
232 wastewater disposal system will be installed.

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

235 41-67-6. (1) Within five (5) working days following receipt
236 of the notice of intent and plot plan by an owner, lessee or
237 developer of any lot or tract of land, the department shall
238 conduct a soil and site evaluation, except in cases where a
239 professional engineer provides services relating to the design,
240 construction or installation of an individual on-site wastewater
241 disposal system to comply with this chapter. Within ten (10)
242 additional working days, the department shall make recommendations
243 to the owner, lessee or developer of the type or types of
244 individual on-site wastewater disposal systems suitable for
245 installation on the lot or tract, unless there are conditions
246 requiring further investigation that are revealed in the initial
247 evaluation. In making recommendations on the type or types of
248 individual on-site wastewater disposal systems suitable for
249 installation on a lot or tract, personnel of the department shall
250 use best professional judgment based on rules and regulations
251 adopted by the board, considering the type or types of systems
252 which are installed and functioning on lots or tracts near the
253 subject lot or tract. If existing systems in the surrounding area
254 function properly, systems of that same type shall be approved.
255 To the extent practicable, the recommendations shall give the
256 owner, lessee or developer maximum flexibility and a maximum
257 number of options consistent with the federal Clean Water Act,
258 consistent with maintaining the wastes on the property of the
259 generator except as authorized under Section 41-67-8, and
260 consistent with protection of the public health. The system or
261 systems recommended shall be environmentally sound and
262 cost-effective. The department or a professional engineer shall
263 provide complete information, including all applicable



264 requirements and regulations on all systems recommended. The
265 owner, lessee or developer shall have the right to choose among
266 systems. The department shall provide the owner, lessee or
267 developer with a form that specifies all types of individual
268 on-site wastewater disposal systems that are suitable for
269 installation on the lot or tract and lists all installers of those
270 systems that are certified by the department. Approval of the
271 design, construction or installation of an individual on-site
272 wastewater disposal system by the department is not required. If
273 any property owner, lessee or the owner's or lessee's lending
274 institution requests the department to approve the design,
275 construction or installation of any system on the owner's or
276 lessee's property, the department shall approve the design,
277 construction or installation of that system, as requested, if the
278 system is designed, constructed and installed, as the case may be,
279 in accordance with the rules and regulations of the board. The
280 department shall not approve any individual on-site wastewater
281 disposal system that has a direct or point source discharge,
282 unless the Permit Board has issued a permit for that system under
283 Section 41-67-8. Whenever a person requests approval of an
284 individual on-site wastewater disposal system, the department must
285 approve or disapprove the request within fifteen (15) working
286 days. If the department disapproves the request, the department
287 shall state in writing the reasons for the disapproval. If the
288 department does not respond to the request within fifteen (15)
289 working days, the request for approval of the individual on-site
290 wastewater disposal system shall be deemed approved.

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

293 (3) If the department has been requested to approve the
294 design, construction or installation of an individual on-site
295 wastewater disposal system, an installer may not begin the design,
296 construction or installation of the individual on-site wastewater



297 disposal system, unless the installer notifies the department of
298 the date on which the installer plans to begin work on the system.

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

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

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

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

318 41-67-7. Individual on-site wastewater disposal systems
319 shall be considered acceptable on lots in areas or subdivisions
320 where prior to the sale of the lots, the following requirements
321 are met:

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

325 (a) Sewers are not available or feasible;

326 (b) The existing disposal systems in the area are
327 functioning satisfactorily;



328 (c) Soil types, soil texture, seasonal water tables and
329 other limiting factors are satisfactory for underground
330 absorption; and

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

335 (2) Except for systems utilizing underground absorption,
336 alternative individual on-site wastewater disposal systems shall
337 be considered acceptable, provided the following requirements are
338 met:

339 (a) Sewers are not available or feasible;

340 (b) The systems meet applicable water quality
341 requirements of the federal Clean Water Act and also requirements
342 of the board and department; and

343 (c) Any discharge is confined within the boundaries of
344 the property of the generator except as authorized under Section
345 41-67-8.

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

348 41-67-8. (1) This section shall be applicable only after
349 the department has determined that there is no type of individual
350 on-site wastewater disposal system authorized under subsection (3)
351 or (4) of Section 41-67-3 or rules or regulations of the board
352 that can maintain the wastes on the property of the generator.

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

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



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

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

365 41-67-9. (1) Existing individual on-site wastewater
366 disposal systems shall be considered acceptable, provided the
367 following requirements are met:

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

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

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

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

385 (2) If an existing residential individual on-site wastewater
386 disposal system is malfunctioning, the system should be replaced,
387 where possible, with a system meeting all requirements of this
388 chapter and rules and regulations of the board. If replacement of
389 the existing system is not possible, the existing system shall be
390 repaired to reduce the volume of effluent, to adequately treat the
391 effluent and to the greatest extent possible, to confine the
392 discharge to the property of the generator except as authorized
393 under Section 41-67-8. If repairs are made to significantly



394 upgrade the existing individual on-site wastewater disposal
395 system, the department shall approve the system, if requested.

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

398 41-67-10. Aerobic treatment systems may be installed only if
399 they have been tested and listed by a third-party certifying
400 program. Aerobic treatment systems shall be in compliance with
401 standards for a Class I system as defined by the most current
402 revision of American National Standards Institute/National
403 Sanitation Foundation (ANSI/NSF) International Standard Number 40,
404 hereby incorporated by reference. Beginning on October 1, 1996,
405 an approved third-party certifying program shall comply with the
406 following provisions for systems which it has certified to be
407 installed in Mississippi:

408 (a) Be accredited by the American National Standards
409 Institute;

410 (b) Have established procedures which send
411 representatives to distributors in Mississippi on a recurring
412 basis to conduct evaluations to assure that distributors of
413 certified aerobic treatment systems are providing proper
414 maintenance, have sufficient replacement parts available and are
415 maintaining service records;

416 (c) Notify the department of the results of monitoring
417 visits to manufacturers and distributors within sixty (60) days of
418 the conclusion of the monitoring; and

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

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

423 41-67-11. (1) Temporary individual on-site wastewater
424 disposal systems may be approved in otherwise unapprovable areas
425 only after a contract has been awarded for the construction of
426 municipal or community sewers that upon completion will adequately



427 serve the property. Temporary individual on-site wastewater
428 disposal systems shall only be approved under the following
429 conditions:

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

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

449 (2) The board may approve the installation of sewage holding
450 tanks in districts created under Sections 19-5-151 through
451 19-5-207 for the purpose of providing sewage services. The
452 district shall be required to maintain or provide for the
453 maintenance of those holding tanks. The board shall require that
454 residences be connected to a municipal or community sewage system
455 when that system is available and ready to use.

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

458 41-67-12. (1) The department shall assess fees in the
459 following amounts for the following purposes:



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

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

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

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

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

482 **SECTION 13.** Section 41-67-15, Mississippi Code of 1972, is
483 reenacted as follows:

484 41-67-15. Nothing in this chapter shall limit the authority
485 of a municipality or board of supervisors to adopt similar
486 ordinances which may be, in whole or in part, more restrictive
487 than this chapter, and in those cases the more restrictive
488 ordinances will govern.

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

491 41-67-16. (1) Before January 1, 1997, the department shall
492 conduct a study of all individual on-site wastewater disposal



493 systems currently being recommended for use in the state to
494 determine the suitability of using those systems on lots or tracts
495 in areas of the state given the various soil types and
496 classifications. In conducting the study, the department shall
497 consider the type of system, lot size, effluent quality and other
498 recommended limitations which should be placed on the use of each
499 system.

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

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

504 41-67-19. Each authorized agent of the department
505 implementing this chapter shall demonstrate to the department's
506 satisfaction that the person:

507 (a) Is competent to review and provide any requested
508 approval of design, construction and installation of individual
509 on-site wastewater disposal systems, as well as the operation,
510 repair or maintenance of those systems, to make soil permeability
511 tests or soil and site evaluations, and to conduct inspections of
512 individual on-site wastewater disposal systems in accordance with
513 this chapter and rules and regulations adopted under this chapter;
514 and

515 (b) Has successfully completed the installer
516 certification training program provided by the department.

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

519 41-67-21. (1) The board or the department may require a
520 property owner or lessee to repair a malfunctioning individual
521 on-site wastewater disposal system on the owner's or lessee's
522 property before the thirtieth day after the date on which the
523 owner or lessee is notified by the department of the
524 malfunctioning system.



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

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

533 (4) The board may assess the property owner or lessee of an
534 individual on-site wastewater disposal system authorized pursuant
535 to Section 41-67-3(4) a civil penalty not to exceed Fifty Dollars
536 (\$50.00) for each day the system fails to meet the performance
537 standards of that system after the thirty-day period specified in
538 subsection (1) of this section.

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

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

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

545 41-67-23. The department or its authorized representative
546 may enter onto property and make inspections of any individual
547 on-site wastewater disposal system as necessary to ensure that the
548 system is in compliance with this chapter and the rules adopted
549 under this chapter. The department shall give reasonable notice
550 to any property owner, lessee or occupant prior to entry onto the
551 property. The owner, lessee, owner's representative, or occupant
552 of the property on which the system is located shall give the
553 department or its authorized representative reasonable access to
554 the property at reasonable times to make necessary inspections.

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



557 41-67-25. (1) A person may not operate as an installer in
558 this state unless that person is certified by the board except any
559 individual who installs an individual on-site wastewater disposal
560 system on his own property or a professional engineer.

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

567 (3) The board shall issue a certification to an installer if
568 the installer:

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

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

573 (c) Pays the annual certification fee; and

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

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

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

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



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

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

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

597 41-67-27. It is unlawful for a manufacturer of an individual
598 on-site wastewater disposal system to operate a business in or to
599 do business in the State of Mississippi without holding a valid
600 registration issued by the department.

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

603 41-67-28. (1) Except as otherwise provided in this chapter,
604 any person who shall knowingly violate this chapter or any rule or
605 regulation or written order of the board in pursuance thereof is,
606 upon conviction, guilty of a misdemeanor and shall be punished as
607 provided in Section 41-3-59.

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

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

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

621 (ii) Failure of an individual on-site wastewater
622 disposal system to operate properly due to failure to install the



623 system in accordance with any requirements of the manufacturer or
624 in compliance with any rules and regulations of the board; or
625 (iii) Failure of an individual on-site wastewater
626 disposal system to operate properly due to defective design or
627 construction.

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

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

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

646 41-67-29. Any person who is aggrieved by any final decision
647 of the board may appeal that final decision to the chancery court
648 of the county of the situs in whole or in part of the subject
649 matter. The appellant shall give a cost bond with sufficient
650 sureties, payable to the state in a sum to be fixed by the board
651 or the court and to be filed with and approved by the clerk of the
652 court. The aggrieved party may, within thirty (30) days following
653 a final decision of the board, petition the chancery court for an
654 appeal with supersedeas and the chancellor shall grant a hearing
655 on the petition. Upon good cause shown the chancellor may grant



656 the appeal with supersedeas. The appellant shall be required to
657 post a bond with sufficient sureties according to law in an amount
658 to be determined by the chancellor. The chancery court shall
659 always be deemed open for hearing of appeals and the chancellor
660 may hear the appeal in termtime or in vacation at any place in his
661 district. The appeal shall have precedence over all civil cases,
662 except election contests. The chancery court shall review all
663 questions of law and of fact and may enter a final order or remand
664 the matter to the board for appropriate action as may be indicated
665 or necessary under the circumstances. Appeals may be taken from
666 the chancery court to the Supreme Court in the manner as now
667 required by law, but if a supersedeas is desired by the party
668 appealing to the chancery court, that party may apply therefor to
669 the chancellor, who shall award a writ of supersedeas, without
670 additional bond, if in the chancellor's judgment material damage
671 is not likely to result. If material damage is likely to result,
672 the chancellor shall require a supersedeas bond as deemed proper,
673 which shall be liable to the state for any damage.

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

676 41-67-31. Sections 41-67-1 through 41-67-29 shall stand
677 repealed on July 1, 2005.

678 **SECTION 23.** The on-site wastewater disposal system advisory
679 committee of the State Department of Health shall study and review
680 the statutory provisions governing individual on-site wastewater
681 disposal systems and make recommendations for revisions that will
682 ensure that the state has a coherent and comprehensive law
683 regulating individual on-site wastewater disposal systems. The
684 committee shall examine all aspects of the law and health and
685 environmental concerns, including the economic feasibility and
686 availability of sewers as required by Section 41-67-7, and make
687 recommendations to the Legislature on or before September 1, 2004.



688 **SECTION 24.** This act shall take effect and be in force from
689 and after its passage.

