

By: Representative Warren

To: Public Health and Human Services

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 287

1 AN ACT TO REENACT SECTIONS 41-67-1 THROUGH 41-67-29,
2 MISSISSIPPI CODE OF 1972, WHICH ESTABLISH THE INDIVIDUAL ON-SITE
3 WASTEWATER DISPOSAL SYSTEM LAW, PRESCRIBES THE DUTIES AND
4 RESPONSIBILITIES OF THE COMMISSION ON ENVIRONMENTAL QUALITY AND
5 THE BOARD OF HEALTH AND REGULATES THE PROCEDURE FOR APPROVAL OF
6 DISPOSAL SYSTEMS; TO AMEND SECTION 41-67-31, MISSISSIPPI CODE OF
7 1972, TO EXTEND THE DATE OF THE REPEALER ON THE SECTION OF LAW
8 THAT REGULATES INDIVIDUAL ON-SITE WASTEWATER DISPOSAL SYSTEMS; AND
9 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. Whenever a developer requests a determination of
179 feasibility, the commission must make the determination within
180 forty-five (45) days after receipt of the preliminary design and
181 feasibility study from the developer. The commission shall state
182 in writing the reasons for its determination. If the commission
183 does not make a determination within forty-five (45) days, 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 (2) Where residential subdivisions are proposed which are
188 composed of fewer than thirty-five (35) building sites, and no
189 system of sanitary sewers is available to which collection sewers
190 may be feasibly connected, the board may waive the requirement for
191 a feasibility study. If the feasibility study is waived, all
192 sites within the subdivision shall be approved, if a certified
193 installer attests that each site can be adequately served by an
194 individual on-site wastewater disposal system.

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

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

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

214 (2) No new permanent water service connection shall be
215 provided to any mobile, modular or permanently constructed
216 residence, building or facility unless the owner, lessee or
217 developer shows proof of the submission of the notice of intent
218 required by this section.

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

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

226 41-67-6. (1) Within five (5) working days following receipt
227 of the notice of intent and plot plan by an owner, lessee or

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

261 systems that are certified by the department. Approval of the
262 design, construction or installation of an individual on-site
263 wastewater disposal system by the department is not required. If
264 any property owner, lessee or the owner's or lessee's lending
265 institution requests the department to approve the design,
266 construction or installation of any system on the owner's or
267 lessee's property, the department shall approve the design,
268 construction or installation of that system, as requested, if the
269 system is designed, constructed and installed, as the case may be,
270 in accordance with the rules and regulations of the board. The
271 department shall not approve any individual on-site wastewater
272 disposal system that has a direct or point source discharge,
273 unless the Permit Board has issued a permit for that system under
274 Section 41-67-8. Whenever a person requests approval of an
275 individual on-site wastewater disposal system, the department must
276 approve or disapprove the request within fifteen (15) working
277 days. If the department disapproves the request, the department
278 shall state in writing the reasons for the disapproval. If the
279 department does not respond to the request within fifteen (15)
280 working days, the request for approval of the individual on-site
281 wastewater disposal system shall be deemed approved.

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

284 (3) If the department has been requested to approve the
285 design, construction or installation of an individual on-site
286 wastewater disposal system, an installer may not begin the design,
287 construction or installation of the individual on-site wastewater
288 disposal system, unless the installer notifies the department of
289 the date on which the installer plans to begin work on the system.

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

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

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

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

309 41-67-7. Individual on-site wastewater disposal systems
310 shall be considered acceptable on lots in areas or subdivisions
311 where prior to the sale of the lots, the following requirements
312 are met:

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

316 (a) Sewers are not available or feasible;

317 (b) The existing disposal systems in the area are
318 functioning satisfactorily;

319 (c) Soil types, soil texture, seasonal water tables and
320 other limiting factors are satisfactory for underground
321 absorption; and

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

326 (2) Except for systems utilizing underground absorption,
327 alternative individual on-site wastewater disposal systems shall
328 be considered acceptable, provided the following requirements are
329 met:

330 (a) Sewers are not available or feasible;

331 (b) The systems meet applicable water quality
332 requirements of the federal Clean Water Act and also requirements
333 of the board and department; and

334 (c) Any discharge is confined within the boundaries of
335 the property of the generator except as authorized under Section
336 41-67-8.

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

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

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

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

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

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

356 41-67-9. (1) Existing individual on-site wastewater
357 disposal systems shall be considered acceptable, provided the
358 following requirements are met:

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

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

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

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

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

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

389 41-67-10. Aerobic treatment systems may be installed only if
390 they have been tested and listed by a third-party certifying
391 program. Aerobic treatment systems shall be in compliance with

392 standards for a Class I system as defined by the most current
393 revision of American National Standards Institute/National
394 Sanitation Foundation (ANSI/NSF) International Standard Number 40,
395 hereby incorporated by reference. Beginning on October 1, 1996,
396 an approved third-party certifying program shall comply with the
397 following provisions for systems which it has certified to be
398 installed in Mississippi:

399 (a) Be accredited by the American National Standards
400 Institute;

401 (b) Have established procedures which send
402 representatives to distributors in Mississippi on a recurring
403 basis to conduct evaluations to assure that distributors of
404 certified aerobic treatment systems are providing proper
405 maintenance, have sufficient replacement parts available and are
406 maintaining service records;

407 (c) Notify the department of the results of monitoring
408 visits to manufacturers and distributors within sixty (60) days of
409 the conclusion of the monitoring; and

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

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

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

421 (a) When the municipal or community sewers shall not be
422 completed and available for use within six (6) months, a complete
423 individual on-site wastewater disposal system complying with all
424 requirements of the board may be installed. Upon completion of

425 the sewer construction all systems shall be abandoned and all
426 residences, buildings or facilities connected to the sewer.

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

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

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

449 41-67-12. (1) The department shall assess fees in the
450 following amounts for the following purposes:

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

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

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

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

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

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

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

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

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

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

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

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

498 (a) Is competent to review and provide any requested
499 approval of design, construction and installation of individual
500 on-site wastewater disposal systems, as well as the operation,
501 repair or maintenance of those systems, to make soil permeability
502 tests or soil and site evaluations, and to conduct inspections of
503 individual on-site wastewater disposal systems in accordance with
504 this chapter and rules and regulations adopted under this chapter;
505 and

506 (b) Has successfully completed the installer
507 certification training program provided by the department.

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

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

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

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

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

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

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

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

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

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

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

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

556 training and the establishment of the installer as an authorized
557 manufacturer's representative.

558 (3) The board shall issue a certification to an installer if
559 the installer:

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

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

564 (c) Pays the annual certification fee; and

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

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

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

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

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

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

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

588 41-67-27. It is unlawful for a manufacturer of an individual
589 on-site wastewater disposal system to operate a business in or to
590 do business in the State of Mississippi without holding a valid
591 registration issued by the department.

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

594 41-67-28. (1) Except as otherwise provided in this chapter,
595 any person who shall knowingly violate this chapter or any rule or
596 regulation or written order of the board in pursuance thereof is,
597 upon conviction, guilty of a misdemeanor and shall be punished as
598 provided in Section 41-3-59.

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

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

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

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

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

619 (b) Nothing in this chapter shall be construed to
620 permit any class action or suit, but every private action must be

621 maintained in the name of and for the sole use and benefit of the
622 individual person.

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

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

637 41-67-29. Any person who is aggrieved by any final decision
638 of the board may appeal that final decision to the chancery court
639 of the county of the situs in whole or in part of the subject
640 matter. The appellant shall give a cost bond with sufficient
641 sureties, payable to the state in a sum to be fixed by the board
642 or the court and to be filed with and approved by the clerk of the
643 court. The aggrieved party may, within thirty (30) days following
644 a final decision of the board, petition the chancery court for an
645 appeal with supersedeas and the chancellor shall grant a hearing
646 on the petition. Upon good cause shown the chancellor may grant
647 the appeal with supersedeas. The appellant shall be required to
648 post a bond with sufficient sureties according to law in an amount
649 to be determined by the chancellor. The chancery court shall
650 always be deemed open for hearing of appeals and the chancellor
651 may hear the appeal in termtime or in vacation at any place in his
652 district. The appeal shall have precedence over all civil cases,
653 except election contests. The chancery court shall review all

654 questions of law and of fact and may enter a final order or remand
655 the matter to the board for appropriate action as may be indicated
656 or necessary under the circumstances. Appeals may be taken from
657 the chancery court to the Supreme Court in the manner as now
658 required by law, but if a supersedeas is desired by the party
659 appealing to the chancery court, that party may apply therefor to
660 the chancellor, who shall award a writ of supersedeas, without
661 additional bond, if in the chancellor's judgment material damage
662 is not likely to result. If material damage is likely to result,
663 the chancellor shall require a supersedeas bond as deemed proper,
664 which shall be liable to the state for any damage.

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

667 41-67-31. Sections 41-67-1 through 41-67-29 shall stand
668 repealed on July 1, 2010.

669 **SECTION 23.** This act shall take effect and be in force from
670 and after July 1, 2005.