

By: Representative Franks

To: Conservation and Water
Resources; Public Health and
Human Services

HOUSE BILL NO. 1226

1 AN ACT TO REENACT SECTIONS 41-67-1 THROUGH 41-67-15 AND
2 41-67-19 THROUGH 41-67-29, MISSISSIPPI CODE OF 1972, WHICH ARE THE
3 MISSISSIPPI INDIVIDUAL ON-SITE WASTEWATER DISPOSAL SYSTEM LAW; TO
4 AMEND REENACTED SECTION 41-67-1, MISSISSIPPI CODE OF 1972, TO
5 STATE PUBLIC POLICY REGARDING INDIVIDUAL ON-SITE WASTEWATER
6 DISPOSAL SYSTEMS; TO AMEND REENACTED SECTION 41-67-2, MISSISSIPPI
7 CODE OF 1972, TO DEFINE CERTAIN TERMS IN THE INDIVIDUAL ON-SITE
8 WASTEWATER DISPOSAL SYSTEM LAW; TO AMEND REENACTED SECTION
9 41-67-3, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT THE BOARD OF
10 HEALTH SHALL DETERMINE THE SUITABILITY OF INDIVIDUAL ON-SITE
11 WASTEWATER DISPOSAL SYSTEMS IN SUBDIVISIONS; TO REQUIRE THE STATE
12 BOARD OF HEALTH TO ADOPT RULES REGARDING CERTIFICATION OF
13 CERTIFIED MAINTENANCE PROVIDERS AND CERTIFIED PROFESSIONAL
14 EVALUATORS; TO REQUIRE BOARD OF HEALTH APPROVAL OF SYSTEMS BEFORE
15 PUBLIC WATER SOURCES MAY BE CONNECTED TO RESIDENCES; TO AMEND
16 REENACTED SECTION 41-67-6, MISSISSIPPI CODE OF 1972, TO REVISE
17 SYSTEM INSTALLATION DEADLINES AND PROCEDURES; TO INCREASE THE
18 ADMINISTRATIVE PENALTY FOR INSTALLATION OF SYSTEMS IN VIOLATION OF
19 LAW OR REGULATIONS; TO AMEND SECTION 41-67-11, MISSISSIPPI CODE OF
20 1972, TO PROVIDE REQUIREMENTS FOR THE USE OF TEMPORARY SYSTEMS; TO
21 AMEND REENACTED SECTION 41-67-15, MISSISSIPPI CODE OF 1972, TO
22 PROVIDE THAT THE DEPARTMENT OF HEALTH SHALL NOT ENFORCE LOCAL
23 ORDINANCES REGARDING SYSTEMS; TO AMEND REENACTED SECTION 41-67-25,
24 MISSISSIPPI CODE OF 1972, TO PROVIDE A PENALTY FOR INSTALLERS WHO
25 OPERATE WITHOUT CERTIFICATION FROM THE BOARD OF HEALTH; TO AMEND
26 REENACTED SECTION 41-67-27, MISSISSIPPI CODE OF 1972, TO CLARIFY
27 REGISTRATION REQUIREMENTS FOR MANUFACTURERS OF SYSTEMS; TO AMEND
28 REENACTED SECTION 41-67-28, MISSISSIPPI CODE OF 1972, TO PROVIDE
29 FOR AN ADMINISTRATIVE FINE FOR THE FAILURE OF PROPERTY OWNERS TO
30 KEEP A CONTINUING MAINTENANCE AGREEMENT FOR AN ALTERNATIVE SYSTEM;
31 TO AMEND REENACTED SECTIONS 41-67-5, 41-67-7, 41-67-9 AND
32 41-67-10, MISSISSIPPI CODE OF 1972, TO CONFORM TO THE OTHER
33 PROVISIONS OF THIS ACT; TO AUTHORIZE A HEARING FOR PERSONS
34 AGGRIEVED BY DISAPPROVAL OR REQUIREMENTS FOR A SYSTEM; TO PROVIDE
35 FOR THE CERTIFICATION OF CERTIFIED MAINTENANCE PROVIDERS; TO
36 PROVIDE FOR THE LICENSING OF PERSONS REMOVING AND DISPOSING OF
37 SLUDGE FROM SYSTEMS; TO PROVIDE FOR THE CERTIFICATION OF CERTIFIED
38 PROFESSIONAL EVALUATORS; TO REPEAL SECTION 41-67-16, MISSISSIPPI
39 CODE OF 1972, WHICH REQUIRED A STUDY OF ALL INDIVIDUAL ON-SITE
40 WASTEWATER DISPOSAL SYSTEMS; TO REPEAL SECTION 41-67-31,
41 MISSISSIPPI CODE OF 1972, WHICH PROVIDES FOR THE REPEAL OF THE
42 MISSISSIPPI INDIVIDUAL ON-SITE WASTEWATER DISPOSAL SYSTEM LAW; AND
43 FOR RELATED PURPOSES.

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

45 **SECTION 1.** Section 41-67-1, Mississippi Code of 1972, is
46 reenacted and amended as follows:

47 41-67-1. (1) This chapter shall be known and may be cited
48 as the "Mississippi Individual On-Site Wastewater Disposal System
49 Law."

50 (2) It is the purpose of the Legislature through this
51 chapter to protect human health and the environment while
52 providing for reasonable use of individual on-site wastewater
53 disposal systems. The Legislature finds that continued
54 installation and operation of individual on-site wastewater
55 disposal systems in a faulty or improper manner, in a manner that
56 lacks essential maintenance for the system, or in areas where
57 unsuitable soil and population density adversely affect the
58 efficiency and functioning of these systems, has a detrimental
59 effect on the public health and welfare and the environment
60 through contamination of land, groundwater and surface waters.
61 The Legislature, therefore, expresses a general preference for the
62 installation and operation of centralized sewerage systems in
63 Mississippi, where feasible. The Legislature recognizes, however,
64 that individual on-site wastewater treatment and disposal systems
65 help meet the needs of the state's citizens, especially in rural
66 locations, and can be rendered ecologically safe and protective of
67 the public health if the systems are designed, installed,
68 constructed, maintained and operated properly. It is the intent
69 of the Legislature to allow the continued installation, use and
70 maintenance of individual on-site wastewater disposal systems in a
71 manner that will not jeopardize public health and welfare or the
72 environment.

73 **SECTION 2.** Section 41-67-2, Mississippi Code of 1972, is
74 reenacted and amended as follows:

75 41-67-2. For purposes of this chapter, the following words
76 shall have the meanings ascribed herein unless the context clearly
77 indicates otherwise:

78 (a) "Advanced treatment system" means individual
79 on-site wastewater treatment systems that comply with Section
80 47-67-10.

81 (b) "Alternative system" means any on-site sewage
82 treatment and disposal system used in lieu of a conventional
83 system.

84 (c) "Board" means the Mississippi State Board of
85 Health.

86 (d) "Centralized sewerage system" means pipelines or
87 conduits, pumping stations, force mains, and all other
88 construction, devices and appliances appurtenant thereto, used for
89 the collection and conveyance of sewage to a treatment works or
90 point of ultimate disposal other than an individual on-site
91 wastewater disposal system.

92 (e) "Certified maintenance provider" means any person
93 who holds a written certification issued by the department
94 allowing the person to provide maintenance services associated
95 with approved on-site wastewater treatment and disposal systems.

96 (f) "Certified professional evaluator" means any person
97 who has met the requirements of Section 23 of this act.

98 (g) "Conventional system" means an individual on-site
99 wastewater disposal system consisting of a septic tank and
100 gravity-fed subsurface disposal field.

101 (h) "Decentralized wastewater management entity" means
102 an entity certificated through the Public Service Commission that
103 undertakes the centralized management and monitoring of individual
104 on-site wastewater disposal system or systems, including, but not
105 limited to, planning, construction, operation, maintenance and
106 financing programs concerning those systems to be managed.

107 (i) "Department" means the Mississippi State Department
108 of Health.

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

112 (k) "Individual on-site wastewater disposal system"
113 means a sewage treatment and effluent disposal system that does
114 not discharge into waters of the state, that serves only one (1)
115 legal tract, that accepts only residential waste and similar waste
116 streams maintained on the property of the generator, and that is
117 designed and installed in accordance with this law and regulations
118 of the board.

119 (l) "Installer" means any person who has met the
120 requirements of Section 41-67-25.

121 (m) "Managed decentralized sewerage system" means an
122 individual on-site wastewater disposal system or systems, under
123 management of a decentralized management entity, used to treat and
124 dispose of relatively small volumes of wastewater, generally from
125 dwellings and businesses.

126 (n) "Performance-based system" means an individual
127 on-site wastewater disposal system designed to meet standards
128 established to designate a level of treatment of wastewater that
129 an individual on-site wastewater disposal system must meet,
130 including, but not limited to, biochemical oxygen demand, total
131 suspended solids, nutrient reduction and fecal coliform.

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

140 * * *

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

143 (q) "Subdivision" means any tract or combination of
144 adjacent tracts of land that is subdivided into two (2) or
145 more * * * tracts, sites or parcels for the purpose of commercial
146 or residential development.

147 **SECTION 3.** Section 41-67-3, Mississippi Code of 1972, is
148 reenacted and amended as follows:

149 41-67-3. (1) The State Board of Health shall have the
150 following duties and responsibilities:

151 (a) To exercise general supervision over the design,
152 construction, operation and maintenance of individual on-site
153 wastewater disposal systems;

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

165 (c) To provide or deny certification for persons
166 engaging in the business of the design, construction or
167 installation of individual on-site wastewater disposal systems and
168 persons engaging in the removal and disposal of the sludge and
169 liquid waste from those systems;

170 (d) To suspend or revoke certifications issued to
171 persons engaging in the business of the design, construction or
172 installation of individual on-site wastewater disposal systems or
173 persons engaging in the removal and disposal of the sludge and

174 liquid waste from those systems, when it is determined the person
175 has violated this chapter or applicable rules and
176 regulations; * * *

177 (e) To require the submission of information deemed
178 necessary by the department to determine the suitability of
179 individual lots for individual on-site wastewater disposal
180 systems; and

181 (f) To adopt, modify, repeal and promulgate rules and
182 regulations, after due notice and hearing, and where not otherwise
183 prohibited by federal or state law, as necessary to determine the
184 suitability of individual on-site wastewater disposal systems in
185 subdivisions.

186 (2) Nothing in this chapter shall preclude a certified
187 professional evaluator from providing services relating to the
188 design * * * of an individual on-site wastewater disposal system
189 to comply with this chapter, except for performance-based systems
190 as specified in subsection (4) of this section. A certified
191 engineer evaluator shall notify the department in writing of those
192 services being provided before construction or installation. If a
193 certified professional evaluator designs * * * a design-based
194 individual on-site wastewater disposal system consistent with this
195 chapter, the certified professional evaluator shall stamp the
196 appropriate documentation with that certified professional
197 evaluator licensure number, if applicable, and the department's
198 certification number and submit the stamped, appropriate
199 documentation to the department for review. Once the department
200 has concurred that the recommended system will adequately treat
201 and dispose of all waste, will maintain the waste on the property
202 of the generator, will not discharge to waters of the state and be
203 in compliance with this law and the corresponding regulations, the
204 department shall approve the design * * * of the
205 system * * *. * * * Construction or installation before
206 department approval is prohibited.

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

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

214 (b) Certification of installers of individual on-site
215 wastewater disposal systems and persons engaging in the removal
216 and disposal of the sludge and liquid waste from those
217 systems; * * *

218 (c) Registration and requirements for testing and
219 listing of manufacturers of advanced treatment systems;

220 (d) Certification of certified maintenance providers;
221 and

222 (e) Certification of certified professional evaluators.

223 (4) In addition, the board shall adopt rules establishing
224 performance standards for individual on-site wastewater disposal
225 systems for single family residential generators and rules
226 concerning the operation and maintenance of individual on-site
227 wastewater disposal systems designed to meet those standards. The
228 performance standards shall be consistent with the federal Clean
229 Water Act, maintaining the wastes on the property of the generator
230 and protection of the public health. Rules for the operation and
231 maintenance of individual on-site wastewater disposal systems
232 designed to meet performance standards shall include rules
233 concerning the following:

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

236 (b) Application review;

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

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

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

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

245 Any system proposed for authorization in accordance with
246 performance standards must be designed and certified by a
247 professional engineer registered in the State of Mississippi who
248 is a certified professional evaluator and must be authorized by
249 the board before installation. * * *

250 (5) To the extent practicable, all rules and regulations
251 adopted under this chapter shall give maximum flexibility to
252 persons installing individual on-site wastewater disposal systems
253 and a maximum number of options consistent with the federal Clean
254 Water Act, consistent with maintaining the wastes on the property
255 of the generator and consistent with protection of the public
256 health. In addition, all rules and regulations, to the extent
257 practicable, shall encourage the use of economically feasible
258 systems, including alternative techniques and technologies for
259 individual on-site wastewater disposal.

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

264 (7) No public utility supplying water shall make connection
265 to any dwelling house, mobile home or residence without the prior
266 written approval of the department certifying that the sewage
267 treatment and disposal system at the location of the property
268 complies with this chapter. Temporary connections of water
269 utilities may be made during construction if the department has
270 approved a plan for a sewage treatment and disposal system and the
271 owner of the property has agreed to have the system inspected and

272 approved by the department before the use or occupancy of the
273 property.

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

276 41-67-4. (1) The board shall determine the feasibility of
277 establishing community sewerage systems upon the submission by the
278 developer of a preliminary design and feasibility study prepared
279 by a professional engineer. The developer may request and obtain
280 a hearing before the board if the developer is dissatisfied with
281 the board's determination of feasibility. The determination that
282 a sewerage system must be established shall be made without regard
283 to whether the establishment of a sewerage system is authorized by
284 law or is subject to approval by one or more state or local
285 government or public bodies. Whenever a developer requests a
286 determination of feasibility, the board must make the
287 determination within forty-five (45) days after receipt of the
288 preliminary design and feasibility study from the developer. The
289 board shall state in writing the reasons for its determination.
290 If the board does not make a determination within forty-five (45)
291 days, all sites within the subdivision shall be approved, if a
292 certified installer attests that each site can be adequately
293 served by an individual on-site wastewater disposal system.

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

302 (3) No feasibility study or community sewerage system shall
303 be required for subdivisions designed, laid out, platted or
304 partially constructed before July 1, 1988, or for any subdivision

305 that was platted and recorded during the period from July 1, 1995,
306 through June 30, 1996.

307 **SECTION 5.** Section 41-67-5, Mississippi Code of 1972, is
308 reenacted and amended as follows:

309 41-67-5. (1) No owner, lessee or developer shall construct
310 or place any mobile, modular or permanently constructed residence,
311 building or facility, which may require the installation of an
312 individual on-site wastewater disposal system, without having
313 first submitted a notice of intent to the department. Upon
314 receipt of a notice of intent, the department shall provide the
315 owner, lessee or developer with complete information on individual
316 on-site wastewater disposal systems, including, but not limited
317 to, applicable rules and regulations regarding the design,
318 construction, installation, operation and maintenance of
319 individual on-site wastewater disposal systems and known
320 requirements of lending institutions for approval of the systems.

321 (2) No temporary or permanent water service connection shall
322 be provided to any mobile, modular or permanently constructed
323 residence, building or facility unless the owner, lessee or
324 developer shows proof of the submission of the notice of intent
325 required by this section.

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

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

333 41-67-6. (1) Within five (5) working days following receipt
334 of the notice of intent and plot plan by an owner, lessee or
335 developer of any lot or tract of land, the department shall
336 conduct a soil and site evaluation, except in cases where a
337 certified professional evaluator provides services relating to the

338 design, construction or installation of an individual on-site
339 wastewater disposal system to comply with this chapter. Within
340 ten (10) additional working days, the department shall make
341 recommendations to the owner, lessee or developer of the type or
342 types of individual on-site wastewater disposal systems suitable
343 for installation on the lot or tract, unless there are conditions
344 requiring further investigation that are revealed in the initial
345 evaluation. In making recommendations on the type or types of
346 individual on-site wastewater disposal systems suitable for
347 installation on a lot or tract, personnel of the department shall
348 use best professional judgment based on rules and regulations
349 adopted by the board, considering the type or types of systems
350 which are installed and functioning on lots or tracts near the
351 subject lot or tract. * * * To the extent practicable, the
352 recommendations shall give the owner, lessee or developer maximum
353 flexibility and a maximum number of options consistent with the
354 federal Clean Water Act, consistent with maintaining the wastes on
355 the property of the generator and consistent with protection of
356 the public health. The system or systems recommended shall be
357 environmentally sound and cost-effective. The department or a
358 certified professional evaluator shall provide complete
359 information, including all applicable requirements and regulations
360 on all systems recommended. The owner, lessee or developer shall
361 have the right to choose among systems. The department shall
362 provide the owner, lessee or developer with a form that specifies
363 all types of individual on-site wastewater disposal systems that
364 are suitable for installation on the lot or tract and lists all
365 installers of those systems that are certified by the department.
366 Approval of the design, construction or installation of an
367 individual on-site wastewater disposal system by the department
368 is * * * required. Upon completion of installation of the system,
369 the department shall approve the design, construction or
370 installation of that system, as requested, if the system is

371 designed, constructed and installed, as the case may be, in
372 accordance with the rules and regulations of the board. * * *
373 Whenever a person requests approval of an individual on-site
374 wastewater disposal system and has met the requirements in
375 subsection (7), the department must approve or disapprove the
376 request within five (5) working days. If the department
377 disapproves the request, the department shall state in writing the
378 reasons for the disapproval. If the department does not respond
379 to the request within ten (10) calendar days, the request for
380 approval of the individual on-site wastewater disposal system
381 shall be deemed approved.

382 * * *

383 (2) Within thirty (30) days of receipt of a request for
384 determination of suitability of individual on-site wastewater
385 disposal systems in a subdivision, the department shall advise the
386 developer in writing either that all necessary information needed
387 for determination of suitability has been received or state the
388 additional information needed by the department for determination
389 of suitability.

390 (3) Whenever a developer requests a determination of
391 suitability of individual on-site wastewater disposal systems in a
392 subdivision, the department must make the determination within
393 forty-five (45) days after receipt of all necessary information
394 needed for the determination of suitability from the developer.
395 The department shall state in writing the reasons for its
396 determination.

397 (4) (a) The installer or certified professional evaluator
398 shall notify the department at least forty-eight (48) hours before
399 beginning construction of an individual on-site wastewater
400 disposal system and, at that time, schedule a time for inspection
401 of the system with the appropriate county department of health.

402 (b) An installer shall not cover his work with soil or
403 other surface material unless the installer has received

404 authorization to cover the system after an inspection by a county
405 department of health inspector.

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

410 (6) * * * If any person or contractor fails to comply with
411 all requirements and regulations in the installation of the
412 system, the board, after due notice and hearing, may levy an
413 administrative fine not to exceed Ten Thousand Dollars
414 (\$10,000.00). Each wastewater system installed not in compliance
415 with this chapter or applicable rules and regulations of the board
416 shall be considered a separate offense.

417 (7) After construction or installation of the individual
418 on-site wastewater disposal system, the property owner or his
419 agent shall provide a final approval request containing the
420 following to the department:

421 (a) A signed affidavit from the installer or certified
422 professional evaluator and any additional required documentation
423 that the system was installed in compliance with all requirements,
424 regulations and permit conditions applicable to the system
425 installed; and

426 (b) For any alternative on-site wastewater disposal
427 system, an affidavit from the property owner agreeing to a
428 continuing maintenance agreement on the installed system at the
429 end of the required manufacturer's maintenance agreement.

430 (8) The property owner shall keep a continuing maintenance
431 agreement with a certified maintenance provider on all alternative
432 on-site wastewater disposal systems in perpetuity.

433 (a) All systems existing on July 1, 2006, shall be
434 grandfathered in until the system is reapproved, there is a change
435 in property ownership, a complaint is received by the department
436 on the system, or the system is replaced or repaired.

437 (b) Any person violating this subsection shall be
438 subject to the penalties and damages as provided in Section
439 41-67-28(5).

440 * * *

441 **SECTION 7.** Section 41-67-7, Mississippi Code of 1972, is
442 reenacted and amended as follows:

443 41-67-7. Individual on-site wastewater disposal systems
444 shall be considered acceptable on lots in areas or subdivisions
445 where prior to the sale of the lots, the following requirements
446 are met:

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

450 (a) Sewers are not available or feasible;

451 (b) The existing disposal systems in the area are
452 functioning satisfactorily;

453 (c) Soil types, soil texture, seasonal water tables and
454 other limiting factors are satisfactory for underground
455 absorption; and

456 (d) Any private water supply is located at a higher
457 elevation or it must be properly protected and at least fifty (50)
458 feet from the individual on-site wastewater disposal system and at
459 least one hundred (100) feet from the disposal field of the
460 system.

461 (2) Except for systems utilizing underground absorption,
462 alternative individual on-site wastewater disposal systems shall
463 be considered acceptable, provided the following requirements are
464 met:

465 (a) Sewers are not available or feasible; and

466 (b) The systems meet applicable water quality
467 requirements of the federal Clean Water Act and also requirements
468 of the board and department.

469 * * *

470 **SECTION 8.** Section 41-67-9, Mississippi Code of 1972, is
471 reenacted and amended as follows:

472 41-67-9. (1) Existing individual on-site wastewater
473 disposal systems shall be considered acceptable, provided the
474 following requirements are met:

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

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

482 (c) The system is functioning properly with no evidence
483 that any insufficiently treated effluent is or has been seeping to
484 the surface of the ground and any discharge of treated effluent is
485 confined within the boundaries of the property of the generator;
486 and

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

492 (2) If an existing residential individual on-site wastewater
493 disposal system is malfunctioning, the system should be replaced,
494 where possible, with a system meeting all requirements of this
495 chapter and rules and regulations of the board. If replacement of
496 the existing system is not possible, the existing system shall be
497 repaired to reduce the volume of effluent, to adequately treat the
498 effluent and to the greatest extent possible, to confine the
499 discharge to the property of the generator. If repairs are made
500 to significantly upgrade the existing individual on-site
501 wastewater disposal system, the department shall approve the
502 system, if requested.

503 **SECTION 9.** Section 41-67-10, Mississippi Code of 1972, is
504 reenacted and amended as follows:

505 41-67-10. (1) Advanced aerobic treatment systems may be
506 installed only if they have been tested and are listed by a
507 third-party certifying program at the time of installation.
508 Advanced aerobic treatment systems shall be in compliance with
509 standards for a Class I system as defined by the most current
510 revision of American National Standards Institute/National
511 Sanitation Foundation (ANSI/NSF) International Standard Number 40,
512 which are incorporated by reference. * * * An approved
513 third-party certifying program shall comply with the following
514 provisions for systems which it has certified to be installed in
515 Mississippi:

516 (a) Be accredited by the American National Standards
517 Institute;

518 (b) Have established procedures which send
519 representatives to distributors in Mississippi on a recurring
520 basis to conduct evaluations to assure that distributors of
521 certified advanced treatment systems are providing proper
522 maintenance, have sufficient replacement parts available and are
523 maintaining service records;

524 (c) Notify the department of the results of monitoring
525 visits to manufacturers and distributors within sixty (60) days of
526 the conclusion of the monitoring; and

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

529 (2) (a) The department shall implement an on-site
530 maintenance training program inclusive of all systems authorized
531 to do business and certified in the State of Mississippi.

532 (b) All manufacturers of alternate disposal systems
533 certified in Mississippi shall provide technical training staff to
534 the department for utilization during the on-site maintenance
535 training program.

536 (c) All persons successfully completing the
537 department's on-site maintenance training program will be issued a
538 Department of Health on-site wastewater maintenance certification,
539 which shall be valid for two (2) years.

540 (d) All wastewater maintenance staff certified by
541 manufacturers whose alternate disposal systems are certified for
542 sale in Mississippi shall be certified by the department to
543 perform on-site wastewater maintenance on that manufacturer's
544 alternate disposal systems.

545 **SECTION 10.** Section 41-67-11, Mississippi Code of 1972, is
546 reenacted and amended as follows:

547 41-67-11. (1) Temporary individual on-site wastewater
548 disposal systems may be approved in an area where individual
549 on-site wastewater disposal systems otherwise would not be
550 approved because of the availability or feasibility of connection
551 to a centralized sewerage system only after a contract has been
552 awarded or other definite commitments as are deemed sufficient to
553 the department are formalized for the construction of municipal or
554 community sewers that upon completion will adequately serve the
555 property. Temporary individual on-site wastewater disposal
556 systems shall only be approved when the municipal or community
557 sewers will be completed and available for use within thirty-six
558 (36) months. The department may approve the installation of a
559 temporary system under these circumstances only if the system will
560 comply with the requirements of Section 41-67-5(1) and comply with
561 all construction requirements of the board. The temporary system
562 may be installed only after the developer has signed a written
563 agreement with the centralized sewer provider stating that the
564 developer will connect to the centralized sewer system when it
565 becomes available, and the provider of the centralized sewer
566 system being constructed certifies that the centralized sewer
567 system will have adequate capacity to accept the sewage to be
568 produced by the temporary systems. The developer shall install an

569 internal sewage collection system from each lot to the connection
570 point to the central sewer system as he develops the streets of
571 the subdivision. Upon completion of the sewer construction, all
572 systems shall be abandoned and all residences, buildings or
573 facilities connected to the sewer.

574 (2) The board may approve the installation of sewage holding
575 tanks in districts created under Sections 19-5-151 through
576 19-5-207 for the purpose of providing sewage services. The
577 district shall be required to maintain or provide for the
578 maintenance of those holding tanks. The board shall require that
579 residences be connected to a municipal or community sewage system
580 when that system is available * * *.

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

583 41-67-12. (1) The department shall assess fees in the
584 following amounts for the following purposes:

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

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

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

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

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

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

607 **SECTION 12.** Section 41-67-15, Mississippi Code of 1972, is
608 reenacted and amended as follows:

609 41-67-15. Nothing in this chapter shall limit the authority
610 of a municipality or board of supervisors to adopt similar
611 ordinances which may be, in whole or in part, more restrictive
612 than this chapter, and in those cases the more restrictive
613 ordinances will govern. The department shall not enforce any
614 ordinance adopted by a municipality or board of supervisors.

615 **SECTION 13.** Section 41-67-19, Mississippi Code of 1972, is
616 reenacted as follows:

617 41-67-19. Each authorized agent of the department
618 implementing this chapter shall demonstrate to the department's
619 satisfaction that the person:

620 (a) Is competent to review and provide any requested
621 approval of design, construction and installation of individual
622 on-site wastewater disposal systems, as well as the operation,
623 repair or maintenance of those systems, to make soil permeability
624 tests or soil and site evaluations, and to conduct inspections of
625 individual on-site wastewater disposal systems in accordance with
626 this chapter and rules and regulations adopted under this chapter;
627 and

628 (b) Has successfully completed the installer
629 certification training program provided by the department.

630 **SECTION 14.** Section 41-67-21, Mississippi Code of 1972, is
631 reenacted as follows:

632 41-67-21. (1) The board or the department may require a
633 property owner or lessee to repair a malfunctioning individual
634 on-site wastewater disposal system on the owner's or lessee's

635 property before the thirtieth day after the date on which the
636 owner or lessee is notified by the department of the
637 malfunctioning system.

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

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

646 (4) The board may assess the property owner or lessee of an
647 individual on-site wastewater disposal system authorized pursuant
648 to Section 41-67-3(4) a civil penalty not to exceed Fifty Dollars
649 (\$50.00) for each day the system fails to meet the performance
650 standards of that system after the thirty-day period specified in
651 subsection (1) of this section.

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

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

656 **SECTION 15.** Section 41-67-23, Mississippi Code of 1972, is
657 reenacted as follows:

658 41-67-23. The department or its authorized representative
659 may enter onto property and make inspections of any individual
660 on-site wastewater disposal system as necessary to ensure that the
661 system is in compliance with this chapter and the rules adopted
662 under this chapter. The department shall give reasonable notice
663 to any property owner, lessee or occupant prior to entry onto the
664 property. The owner, lessee, owner's representative, or occupant
665 of the property on which the system is located shall give the
666 department or its authorized representative reasonable access to
667 the property at reasonable times to make necessary inspections.

668 **SECTION 16.** Section 41-67-25, Mississippi Code of 1972, is
669 reenacted and amended as follows:

670 41-67-25. (1) A person may not operate as an installer of
671 individual on-site wastewater disposal systems unless that person
672 is currently certified by the department. A person who installs
673 an individual on-site wastewater disposal system on his own
674 property for his primary residence is not considered an installer
675 for purposes of this subsection.

676 (2) An installer of alternative systems or products must be
677 a factory-trained and authorized representative. The manufacturer
678 must furnish documentation to the department certifying the
679 satisfactory completion of factory training and the establishment
680 of the installer as an authorized manufacturer's representative.

681 (3) The board shall issue a certification to an installer if
682 the installer:

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

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

687 (c) Pays the annual certification fee; and

688 (d) Provides proof of having a valid general business
689 liability insurance policy in effect with liability limits of at
690 least Fifty Thousand Dollars (\$50,000.00) per occurrence and at
691 least One Hundred Thousand Dollars (\$100,000.00) in total
692 aggregate amount.

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

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

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

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

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

710 (8) If any person is operating in the state as an installer
711 without certification by the board, the board, after due notice
712 and opportunity for a hearing, may impose a monetary penalty not
713 to exceed Ten Thousand Dollars (\$10,000.00) for each violation.

714 **SECTION 17.** Section 41-67-27, Mississippi Code of 1972, is
715 reenacted and amended as follows:

716 41-67-27. It is unlawful for a manufacturer of an individual
717 on-site wastewater disposal system or alternative treatment or
718 disposal components to operate a business in or to do business in
719 the State of Mississippi without holding a valid manufacturer's
720 registration issued by the department.

721 **SECTION 18.** Section 41-67-28, Mississippi Code of 1972, is
722 reenacted and amended as follows:

723 41-67-28. (1) Except as otherwise provided in this chapter,
724 any person who shall knowingly violate this chapter or any rule or
725 regulation or written order of the board in pursuance thereof is,
726 upon conviction, guilty of a misdemeanor and shall be punished as
727 provided in Section 41-3-59.

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

730 (3) (a) In addition to all other statutory and common law
731 rights, remedies and defenses, any person who purchases an
732 individual on-site wastewater disposal system and suffers any
733 ascertainable loss of money or property, real or personal, may

734 bring an action at law in the court having jurisdiction in the
735 county in which the installer or manufacturer has the principal
736 place of business, where the act allegedly occurred, to recover
737 any loss of money or damages for the loss of any property
738 resulting from any of the following:

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

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

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

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

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

764 (5) (a) Any person who violates Section 41-67-6(8) may be
765 assessed a fine in the amount of Five Hundred Dollars (\$500.00)
766 and the public water system may discontinue service to that

767 property owner until the failure to comply with Section 41-67-6(8)
768 has been corrected.

769 (b) All violators shall be given thirty (30) days
770 notice before any adverse action.

771 (c) Any violator shall have the right to appeal an
772 adverse determination through the procedures set out in Section
773 41-67-29.

774 **SECTION 19.** Section 41-67-29, Mississippi Code of 1972, is
775 reenacted as follows:

776 41-67-29. Any person who is aggrieved by any final decision
777 of the board may appeal that final decision to the chancery court
778 of the county of the situs in whole or in part of the subject
779 matter. The appellant shall give a cost bond with sufficient
780 sureties, payable to the state in a sum to be fixed by the board
781 or the court and to be filed with and approved by the clerk of the
782 court. The aggrieved party may, within thirty (30) days following
783 a final decision of the board, petition the chancery court for an
784 appeal with supersedeas and the chancellor shall grant a hearing
785 on the petition. Upon good cause shown the chancellor may grant
786 the appeal with supersedeas. The appellant shall be required to
787 post a bond with sufficient sureties according to law in an amount
788 to be determined by the chancellor. The chancery court shall
789 always be deemed open for hearing of appeals and the chancellor
790 may hear the appeal in termtime or in vacation at any place in his
791 district. The appeal shall have precedence over all civil cases,
792 except election contests. The chancery court shall review all
793 questions of law and of fact and may enter a final order or remand
794 the matter to the board for appropriate action as may be indicated
795 or necessary under the circumstances. Appeals may be taken from
796 the chancery court to the Supreme Court in the manner as now
797 required by law, but if a supersedeas is desired by the party
798 appealing to the chancery court, that party may apply therefor to
799 the chancellor, who shall award a writ of supersedeas, without

800 additional bond, if in the chancellor's judgment material damage
801 is not likely to result. If material damage is likely to result,
802 the chancellor shall require a supersedeas bond as deemed proper,
803 which shall be liable to the state for any damage.

804 SECTION 20. (1) The department shall adopt and use
805 procedures for conducting reviews requested by any person
806 aggrieved by the disapproval or requirements for an on-site
807 wastewater disposal system as provided by the department in
808 written form under Section 41-67-6. The procedures shall include
809 that the person may request review by submitting a written request
810 of review to the Director of the Office of Environmental Health.
811 The request for review shall identify the matter contested and
812 state the person's name, mailing address and home and daytime
813 phone numbers. Within ten (10) business days of the receipt of
814 the request for review, the department shall issue in writing a
815 ruling and determination to the person and if any corrections are
816 necessary to any form previously issued by the department, then
817 new forms shall be submitted to the person.

818 (2) Any person aggrieved by the ruling issued by the
819 Director of the Office of Environmental Health may apply for a
820 hearing. Any hearing shall be conducted by a hearing officer
821 designated by the department. At the hearing, the hearing officer
822 may conduct reasonable questioning of persons who make relevant
823 factual allegations concerning the proposal. The hearing officer
824 shall require that all persons be sworn before they may offer any
825 testimony at the hearing, and the hearing officer is authorized to
826 administer oaths. Any person so choosing may be represented by
827 counsel at the hearing. A record of the hearing shall be made,
828 which shall consist of a transcript of all testimony received, all
829 documents and other material introduced, the staff report and
830 recommendation, and any other material as the hearing officer
831 considers relevant. He shall make a recommendation within a
832 reasonable period of time after the hearing is closed and after he

833 has had an opportunity to review, study and analyze the evidence
834 presented during the hearing. The completed record shall be
835 certified to the State Health Officer, who shall consider only the
836 record in making his decision, and shall not consider any evidence
837 or material that is not included. All final decisions regarding
838 the disapproval or requirements for an on-site wastewater disposal
839 system shall be made by the State Health Officer. The State
840 Health Officer shall make his written findings and issue his order
841 after reviewing the record, not to exceed thirty (30) days
842 following his receipt of the record.

843 SECTION 21. (1) A person may not operate as a certified
844 maintenance provider in this state unless that person is currently
845 certified by the department.

846 (2) The department shall issue a certification to a
847 maintenance provider if the maintenance provider:

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

850 (b) Satisfactorily completes the certified maintenance
851 provider training program provided by the department;

852 (c) Pays the annual certification fee; and

853 (d) Provides proof of having a valid general business
854 liability insurance policy in effect with liability limits of at
855 least Fifty Thousand Dollars (\$50,000.00) per occurrence and at
856 least One Hundred Thousand Dollars (\$100,000.00) in total
857 aggregate amount.

858 (3) Each certified maintenance provider shall furnish proof
859 of certification to an individual before entering a contract with
860 that individual for the continuing maintenance of an individual
861 on-site wastewater disposal system.

862 (4) The department shall provide for annual renewal of
863 certifications.

864 (5) The department semiannually shall disseminate to the
865 public an official list of certified maintenance providers and
866 provide to county health departments a monthly update of the list.

867 (6) If any person operates in the state as a certified
868 maintenance provider without certification by the board, the
869 board, after due notice and opportunity for a hearing, may impose
870 a monetary penalty not to exceed Ten Thousand Dollars (\$10,000.00)
871 for each violation.

872 **SECTION 22.** (1) A person may not be engaged in the business
873 of removing and disposing of the sludge and liquid waste (septage)
874 from individual on-site wastewater disposal systems in this state
875 unless that person has a valid license issued by the department.

876 (2) The department shall issue a license to a pumper if the
877 pumper:

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

880 (b) Satisfactorily complies with the requirements of
881 his/her pumping and hauling equipment;

882 (c) Provides documentation of a disposal site approved
883 by the Department of Environmental Quality, Office of Pollution
884 Control;

885 (d) Pays the annual license fee; and

886 (e) Provides proof of having a valid general business
887 liability insurance policy in effect with liability limits of at
888 least Fifty Thousand Dollars (\$50,000.00) per occurrence and at
889 least One Hundred Thousand Dollars (\$100,000.00) in total
890 aggregate amount.

891 (3) Each pumper shall furnish proof of licensure to an
892 individual before entering a contract with that individual for the
893 removing and disposing of the sludge and liquid waste (septage)
894 from an individual on-site wastewater disposal system.

895 (4) The department semiannually shall disseminate to the
896 public an official list of licensed pumpers and provide to county
897 health departments a monthly update of the list.

898 (5) If any person operates in the state as a licensed pumper
899 without a license by the board, the board, after due notice and
900 opportunity for a hearing, may impose a monetary penalty not to
901 exceed Ten Thousand Dollars (\$10,000.00) for each violation.

902 **SECTION 23.** (1) A person may not operate as a certified
903 professional evaluator in this state unless that person is
904 currently certified by the department.

905 (2) A person must meet one (1) of the following
906 requirements, in addition to the additional requirements set forth
907 in other sections of this chapter and rules and regulations of the
908 board, in order to be eligible to become a certified professional
909 evaluator:

910 (a) Be a professional engineer registered in the State
911 of Mississippi;

912 (b) Be a professional geologist registered in the State
913 of Mississippi;

914 (c) Be a professional soil classifier licensed in the
915 State of Mississippi; or

916 (d) Be a person who possesses a demonstrable, adequate
917 and appropriate record of professional experience and/or training
918 as determined by the department.

919 (3) The department shall issue a certification to a
920 certified professional evaluator if the certified professional
921 evaluator:

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

924 (b) Satisfactorily completes the certified professional
925 evaluator training program provided by the department;

926 (c) Pays the annual certification fee; and

927 (d) Provides proof of having an errors and omissions
928 policy or surety in effect with liability limits of at least Fifty
929 Thousand Dollars (\$50,000.00) per occurrence and at least One
930 Hundred Thousand Dollars (\$100,000.00) in total aggregate amount.

931 (4) Each certified professional evaluator shall furnish
932 proof of certification to a property owner or the owner's
933 representative of the property before performing a site evaluation
934 of the property on which an individual on-site wastewater disposal
935 system is to be designed, constructed, repaired or installed by
936 the certified professional evaluator and to the department or its
937 authorized representative, if requested.

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

940 (6) The department semiannually shall disseminate to the
941 public an official list of certified professional evaluators and
942 provide to county health departments a monthly update of the list.

943 (7) If any person operates in the state as a certified
944 professional evaluator without certification by the board, the
945 board, after due notice and opportunity for a hearing, may impose
946 a monetary penalty not to exceed Ten Thousand Dollars (\$10,000.00)
947 for each violation.

948 **SECTION 24.** Section 41-67-16, Mississippi Code of 1972,
949 which required a study of all individual on-site wastewater
950 disposal systems, is repealed.

951 **SECTION 25.** Section 41-67-31, Mississippi Code of 1972,
952 which is the automatic repealer on the Mississippi Individual
953 On-Site Wastewater System Law, is repealed.

954 **SECTION 26.** This act shall take effect and be in force from
955 and after June 30, 2007.