

By: Representative Moody

To: Public Health and
Welfare

HOUSE BILL NO. 1046

1 AN ACT TO REENACT AND AMEND SECTION 41-67-1, MISSISSIPPI CODE
2 OF 1972, TO DEFINE THE PURPOSE OF THE "MISSISSIPPI INDIVIDUAL
3 ON-SITE WASTEWATER DISPOSAL SYSTEM LAW"; TO REENACT AND AMEND
4 SECTION 41-67-2, MISSISSIPPI CODE OF 1972, TO REDEFINE TERMS; TO
5 REENACT AND AMEND SECTION 41-67-3, MISSISSIPPI CODE OF 1972, TO
6 PROVIDE FOR STATE DEPARTMENT OF HEALTH INSPECTION AND APPROVAL OF
7 ALL NEW ON-SITE SYSTEM INSTALLATIONS PRIOR TO FINAL UTILITY
8 CONNECTION, TO REQUIRE ENGINEERS TO SUBMIT ALL PLANS FOR SYSTEMS
9 THEY WILL INSTALL FOR REVIEW BY THE DEPARTMENT AND TO ATTEND
10 CERTAIN TRAINING COURSES AND TO REQUIRE REGISTRATION OF
11 MANUFACTURERS OF ALTERNATIVE WASTEWATER TECHNOLOGY; TO REENACT AND
12 AMEND SECTION 41-67-5, MISSISSIPPI CODE OF 1972, TO PROVIDE
13 STANDARDS FOR THE INSTALLATION OF INDIVIDUAL ON-SITE WASTEWATER
14 DISPOSAL SYSTEMS WITH AND WITHOUT CENTRAL SEWERAGE SYSTEM
15 AVAILABILITY AND TO PROVIDE PROCEDURES FOR CONSTRUCTION PERMITS
16 WITH INFORMATION AND APPROVAL OF PROPER WASTEWATER DISPOSAL
17 SYSTEMS, AND TO PROVIDE REQUIREMENTS FOR A CENTRALIZED SEWERAGE
18 SYSTEM FOR SUBDIVISION DEVELOPMENT; TO REENACT AND AMEND SECTION
19 41-67-9, MISSISSIPPI CODE OF 1972, TO DEFINE THE RESPONSIBILITY OF
20 PROPERTY OWNERS TO REPAIR EXISTING MALFUNCTIONING INDIVIDUAL
21 ON-SITE WASTEWATER DISPOSAL SYSTEMS; TO REENACT AND AMEND SECTION
22 41-67-10, MISSISSIPPI CODE OF 1972, TO CLARIFY ACCREDITATION
23 REQUIREMENTS FOR AEROBIC TREATMENT SYSTEM CERTIFYING PROGRAMS; TO
24 REENACT AND AMEND SECTION 41-67-11, MISSISSIPPI CODE OF 1972, TO
25 PROVIDE REQUIREMENTS FOR TEMPORARY DISPOSAL SYSTEMS; TO REENACT
26 AND AMEND SECTION 41-67-12, MISSISSIPPI CODE OF 1972, TO INCREASE
27 THE INSTALLER ANNUAL CERTIFICATION FEE AND ADD A FEE FOR
28 DEPARTMENT REVIEW OF PROPOSED SUBDIVISIONS AND REVIEW OF ENGINEER
29 PLANS; TO REENACT AND AMEND SECTION 41-67-15, MISSISSIPPI CODE OF
30 1972, TO AUTHORIZE DECENTRALIZED ON-SITE WASTEWATER MANAGEMENT
31 DISTRICTS TO MAKE RULES; TO REENACT AND AMEND SECTIONS 41-67-25
32 AND 41-67-27, MISSISSIPPI CODE OF 1972, AND CODIFY SECTION
33 41-67-26, MISSISSIPPI CODE OF 1972, TO REQUIRE REGISTRATION OF
34 MANUFACTURERS OF ALTERNATIVE TREATMENT OR DISPOSAL COMPONENTS AND
35 TO PROVIDE STANDARDS FOR THE CERTIFICATION OF MAINTENANCE
36 PROVIDERS AND PERSONS ENGAGED IN REMOVING AND DISPOSING SLUDGE AND
37 SEPTAGE; TO REENACT AND AMEND SECTION 41-67-28, MISSISSIPPI CODE
38 OF 1972, TO REQUIRE THE DEPARTMENT TO PROVIDE A PROPERTY OWNER
39 WITH A MALFUNCTIONING SYSTEM A LIST OF REPAIR OR REPLACEMENT
40 OPTIONS, TO AUTHORIZE THE DEPARTMENT TO FILE CRIMINAL CHARGES OR
41 TO SEEK MANDATORY OR PROHIBITORY INJUNCTIVE RELIEF TO ENFORCE THIS
42 ACT AND ANY ORDER ISSUED PURSUANT TO THIS ACT; TO REENACT SECTIONS
43 41-67-19 AND 41-67-23, MISSISSIPPI CODE OF 1972; TO REPEAL
44 SECTIONS 41-67-4, 41-67-6, 41-67-7, 41-67-8, 41-67-16 AND
45 41-67-21, MISSISSIPPI CODE OF 1972, WHICH PRESCRIBE CERTAIN DUTIES
46 OF THE DEPARTMENT OF HEALTH RELATIVE TO INDIVIDUAL ON-SITE
47 WASTEWATER SYSTEM REGULATIONS, PROVIDE CERTAIN PENALTIES FOR
48 NONCOMPLIANCE, PROVIDE THE DETERMINATION OF APPLICABILITY OF THIS
49 ACT, REQUIRE A STUDY OF ON-SITE WASTEWATER SYSTEMS AND PROVIDE FOR
50 OWNER REPAIR OF MALFUNCTIONING SYSTEMS; TO AMEND SECTION 41-67-31,
51 MISSISSIPPI CODE OF 1972, TO EXTEND THE AUTOMATIC REPEALER ON THE
52 MISSISSIPPI INDIVIDUAL ON-SITE WASTEWATER DISPOSAL SYSTEM LAW; TO



53 AMEND SECTION 41-26-103, MISSISSIPPI CODE OF 1972, TO EXTEND THE
54 REPEALER ON THE PROVISION OF LAW THAT REQUIRES THE DEPARTMENT OF
55 HEALTH TO IDENTIFY POTENTIALLY NONVIABLE COMMUNITY PUBLIC WATER
56 SYSTEMS AND PROVIDE NO COST TECHNICAL ASSISTANCE TO THOSE SYSTEMS;
57 AND FOR RELATED PURPOSES.

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

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

61 41-67-1. (1) This chapter shall be known and may be cited
62 as the "Mississippi Individual On-Site Wastewater Disposal System
63 Law."

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



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

89 41-67-2. For purposes of this chapter, the following words
90 shall have the meanings ascribed herein unless the context clearly
91 indicates otherwise:

92 (a) "Alternative system" means any on-site sewage
93 treatment and disposal system used in lieu of, including
94 modifications to, a standard aggregate subsurface system.

95 (b) "Board" means the Mississippi State Board of
96 Health.

97 (c) "Centralized sewerage system" means pipelines or
98 conduits, pumping stations, force mains, and all other
99 construction, devices and appliances appurtenant thereto, used for
100 the collection and conveyance of sewage to a treatment works or
101 point of ultimate disposal other than an individual on-site
102 wastewater disposal system or cluster system.

103 (d) "Certified maintenance provider" means any person
104 or business entity that holds a written certification issued by
105 the department allowing the person to provide maintenance services
106 associated with approved on-site wastewater treatment and disposal
107 systems.

108 (e) "Cluster system" means an on-site sewage
109 collection, treatment and disposal system designed to serve two
110 (2) or more sewage-generating units on separate legal tracts.

111 (f) "Commission" means the Commission on Environmental
112 Quality.

113 (g) "Conventional system" means an individual on-site
114 wastewater disposal system consisting of a septic tank and
115 gravity-fed subsurface aggregate disposal field.

116 (h) "Decentralized wastewater management" means a
117 system whereby a public or private entity undertakes the
118 centralized management and monitoring of that individual on-site
119 wastewater disposal system or systems or cluster wastewater



120 systems that service more than one (1) generator or individual
121 family housing unit, including, but not limited to, planning,
122 construction, operation, maintenance and financing programs
123 concerning those systems to be managed.

124 (i) "Department" means the Mississippi State Department
125 of Health.

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

129 (k) "Individual on-site wastewater disposal system"
130 means a sewage treatment and effluent disposal system, including,
131 but not limited to, a septic tank and underground absorption
132 system, that does not discharge into waters of the state, that
133 accepts only human sanitary waste and similar waste streams, and
134 that does not require a permit issued by the Mississippi
135 Environmental Quality Permit Board.

136 (l) "Installer" means any person engaging in the
137 practice of constructing, installing or repairing any portion of
138 an individual on-site wastewater disposal system.

139 (m) "Managed decentralized sewerage system" means an
140 individual on-site wastewater disposal system or cluster
141 wastewater system or systems, under management of a decentralized
142 management entity, that is or are used to treat and dispose of
143 relatively small volumes of wastewater, generally from dwellings
144 and businesses.

145 (n) "Performance-based system" means a system designed
146 to meet standards established to designate a level of treatment of
147 wastewater that an individual on-site wastewater disposal system
148 must meet, including, but not limited to, biochemical oxygen
149 demand, total suspended solids, nutrient reduction and fecal
150 coliform.

151 (o) "Person" means any individual, trust, firm,
152 joint-stock company, public or private corporation (including a



153 government corporation), partnership, association, state, or any
154 agency or institution thereof, municipality, commission, political
155 subdivision of a state or any interstate body, and includes any
156 officer or governing or managing body of any municipality,
157 political subdivision, or the United States, or any officer or
158 employee thereof.

159

(p) "Professional engineer" means any person who has
160 met the qualifications required under Section 73-13-23(1) and who
161 has been issued a certificate of registration as a professional
162 engineer in the State of Mississippi.

163

(q) "Property of the generator" means land owned by or
164 under permanent legal easement or lease to the generator.

165

(r) "Registered system" means any alternative
166 wastewater treatment and/or disposal system approved after July
167 1992.

168

(s) "Subdivision" means any tract or combination of
169 adjacent tracts of land that is subdivided into five (5) or
170 more * * * tracts, sites or parcels for the purpose of commercial
171 or residential development.

172

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

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

176

(a) To exercise general supervision over the design,
177 construction, operation and maintenance of individual on-site
178 wastewater disposal systems with waste stream characteristics
179 similar to residential strength. To effectively administer this
180 law, the department and the Department of Environmental Quality
181 shall enter into a memorandum of understanding, which at a minimum
182 shall clearly define the jurisdiction of each department with
183 regard to wastewater disposal and procedures for interdepartmental
184 interaction and cooperation;



185 (b) To adopt, modify, repeal and promulgate rules and
186 regulations, after due notice and hearing, and where not otherwise
187 prohibited by federal or state law, to make exceptions to, to
188 grant exemptions from and to enforce rules and regulations
189 implementing or effectuating the duties of the board under this
190 chapter to protect the public health. The board may grant
191 variances from rules and regulations adopted under this chapter,
192 including requirements for buffer zones, or from setbacks required
193 under Section 41-67-7 where the granting of a variance shall not
194 subject the public to unreasonable health risks or jeopardize
195 environmental resources;

196 (c) To provide or deny certification or registration
197 for persons engaging in the business of the design, manufacture,
198 construction or installation of individual on-site wastewater
199 disposal systems and persons engaging in the removal and disposal
200 of the sludge and liquid waste from those systems;

201 (d) To suspend or revoke certifications or registration
202 issued to persons engaging in the business of the design,
203 manufacture, construction or installation of individual on-site
204 wastewater disposal systems or persons engaging in the removal and
205 disposal of the sludge and liquid waste from those systems, when
206 it is determined the person has violated this chapter or
207 applicable rules and regulations; * * *

208 (e) To require the submission of information deemed
209 necessary by the department to determine the suitability of
210 individual lots for individual on-site wastewater disposal
211 systems; and

212 (f) To approve or disapprove the construction of
213 individual on-site wastewater disposal systems based on
214 appropriate procedures specified in regulations to determine the
215 suitability of individual lots for individual on-site wastewater
216 disposal systems and to enforce violations of the board's
217 regulations.



218 (2) Nothing in this chapter shall preclude a professional
219 engineer from providing services relating to the design,
220 construction or installation of an individual on-site wastewater
221 disposal system to comply with this chapter. * * * Professional
222 engineers shall notify the department in writing of those services
223 being provided. If a professional engineer designs, constructs or
224 installs or directly supervises the construction or installation
225 of a design-based individual on-site wastewater disposal system
226 consistent with this chapter and stamps the appropriate
227 documentation with that professional engineer's seal, the
228 department shall approve the design, construction or installation
229 of the system, if requested. Professional engineers engaging in
230 the design, construction or installation of individual on-site
231 wastewater disposal systems shall not require certification under
232 this chapter.

233 (3) To assure the effective and efficient administration of
234 this chapter, the board shall adopt rules governing the design,
235 construction or installation, operation and maintenance of
236 individual on-site wastewater disposal systems, including rules
237 concerning the:

238 (a) Review and approval of individual on-site
239 wastewater disposal systems * * *;

240 (b) Certification of installers of individual on-site
241 wastewater disposal systems and persons engaging in the removal
242 and disposal of the sludge and liquid waste from those systems;
243 and

244 (c) Registration and requirements for testing and
245 listing of manufacturers of aerobic treatment systems.

246 (4) In addition, the board shall adopt rules establishing
247 performance standards for individual on-site wastewater disposal
248 systems for single family residential generators and rules
249 concerning the operation and maintenance of individual on-site
250 wastewater disposal systems designed to meet those standards. Any



251 system proposed for authorization in accordance with performance
252 standards must be designed and certified by a professional
253 engineer and must be authorized by the department before
254 installation. The performance standards shall be consistent with
255 the federal Clean Water Act, maintaining the wastes on the
256 property of the generator * * * and protection of the public
257 health. Rules for the operation and maintenance of individual
258 on-site wastewater disposal systems designed to meet performance
259 standards shall include rules concerning the following:

- 260 (a) A standard application form and requirements for
261 supporting documentation;
- 262 (b) Application review;
- 263 (c) Approval or denial of authorization for proposed
264 systems;
- 265 (d) Requirements, as deemed appropriate by the board,
266 for annual renewal of authorization;
- 267 (e) Enforcement of the requirements and conditions of
268 authorization; and
- 269 (f) Inspection, monitoring, sampling and reporting on
270 the performance of the system.

271 (5) * * * Appeals from a final decision of the board
272 regarding the authorization of an individual on-site wastewater
273 disposal system based upon performance standards shall be taken
274 using a procedure substantially equivalent to the procedure
275 specified for hospital licenses in Chapter 9 of Title 41.

276 * * *

277 (6) All regulations shall * * * take into consideration and
278 make provision for different types of soil in the state when
279 performing soil and site evaluations.

280 **SECTION 4.** Section 41-67-5, Mississippi Code of 1972, is
281 reenacted and amended as follows:

282 41-67-5. (1) No individual on-site wastewater disposal
283 system shall be constructed or installed unless the system is



284 designed, installed or constructed, and will operate so as to keep
285 all wastewater produced by the system on the residential or
286 business property that the system serves. In order to demonstrate
287 compliance with this section, a system must be designed to:

288 (a) Maintain all treated wastewater on the property of
289 the generator or responsible entity to be served by the system;

290 (b) Be installed only in an area where the soil type,
291 design of the system, and location and concentration of any other
292 systems in the same area will allow adequate treatment of all
293 wastewater processed by the system;

294 (c) Not allow or cause the direct discharge of
295 wastewater to surface water or to underground sources of drinking
296 water or cause the leaching or seepage of wastewater into surface
297 water or into underground sources of drinking water in a manner,
298 speed or amount that would detrimentally affect the source of
299 surface water or groundwater; and

300 (d) Process only sanitary wastewater (whether
301 originating from residences or businesses). No individual on-site
302 wastewater disposal system shall be approved for the disposal of a
303 waste stream that includes waste other than sanitary wastewater.

304 (2) No individual on-site wastewater disposal system shall
305 be installed in an area where a central sewerage system is
306 available for use and where connection to the central sewerage
307 system is feasible. In determining whether a central sewerage
308 system is available and feasible, the department shall consider,
309 at a minimum, the following:

310 (a) As to availability, whether the central system
311 includes the available capacity to accept the waste that would
312 otherwise be treated by an individual on-site wastewater disposal
313 system and will agree to accept that waste at a cost similar to
314 the cost borne by other users of the same central system;

315 (b) As to feasibility, whether a connection can be
316 established from the land where an individual on-site septic



317 system otherwise would be established to the appropriate point of
318 connection to an existing central system, or a new central system
319 can be built due to the location and concentration of the site or
320 sites in question, without requiring unreasonable costs to be
321 borne by the property owner in comparison to the cost of
322 installing and maintaining (including, when probable, the eventual
323 like-kind replacement of) an individual on-site wastewater
324 disposal system. For purposes of this subsection, "unreasonable
325 costs" shall mean costs that bear no reasonable relationship to
326 the pollution control benefits derived from the connection and to
327 any expected benefit to the current or future property value of
328 the property in question due to the connection (as compared to the
329 property's value if an individual on-site wastewater disposal
330 system was installed).

331 (3) The following process is required before any
332 construction or placement of any mobile, modular or permanently
333 constructed residence, building or facility that may require the
334 installation of an individual on-site wastewater disposal system:

335 (a) Any person, prior to the onset of construction of a
336 mobile homesite or pad, a modular homesite, or a permanently
337 constructed residence, building or facility, that may require the
338 installation of an individual on-site wastewater disposal system,
339 shall obtain an individual on-site wastewater disposal system
340 construction permit or similar approval from the department. In
341 order to apply for a construction permit, an individual shall
342 provide the department with a legal description of the homesite, a
343 plot plan and any additional documentation required by the
344 department.

345 (b) Within five (5) working days following receipt of a
346 complete application for a construction permit, the department
347 shall make a site evaluation, except in cases where a professional
348 engineer provides services relating to the design, construction or
349 installation of an individual on-site wastewater disposal system



350 to comply with this chapter. Within ten (10) additional working
351 days, the department shall provide the applicant with complete
352 information on all individual on-site wastewater disposal systems
353 that the site can support, unless there are conditions requiring
354 further investigation that are revealed in the initial evaluation.
355 In providing available options concerning individual on-site
356 wastewater disposal systems suitable for installation on a lot or
357 tract, personnel of the department shall use best professional
358 judgment based on rules and regulations adopted by the board.
359 These time requirements do not apply to subdivision developments.

360 (c) (i) The installer shall notify the department at
361 least forty-eight (48) hours prior to beginning construction of an
362 individual on-site wastewater disposal system and, at that time,
363 schedule a time for inspection of the system with the appropriate
364 county department of health.

365 (ii) An installer shall not cover his work with
366 soil or other surface material unless one (1) of the following has
367 occurred:

368 1. The installer has received authorization
369 to cover the system after an inspection by a county department of
370 health inspector; or

371 2. The county department of health inspector
372 has not rescheduled the appointment and is unable to keep the
373 system inspection appointment, and the installer has waited at
374 least thirty (30) minutes after the scheduled inspection time. In
375 this case, an installer that has obtained prior department
376 authorization may cover his work, and the department shall issue
377 its final approval based on the information provided pursuant to
378 paragraph (e).

379 (d) For lots, tracts, sites or parcels where the
380 department does not recommend a system due to physical limitations
381 of the site and the provisions of this chapter, a person may
382 retain a registered professional engineer for design, construction



383 or installation of a system. If a professional engineer designs,
384 constructs or installs or directly supervises the construction or
385 installation of a design-based individual on-site wastewater
386 disposal system consistent with this chapter, the professional
387 engineer shall notify the department in writing of those services
388 being provided and provide to the department appropriate
389 documentation relating to that particular installation with that
390 professional engineer's seal. If such system is contemplated, the
391 engineer shall submit the necessary documentation to the
392 department in order to apply for a construction permit. This
393 information shall be stamped with that professional engineer's
394 seal. The department shall review the application information and
395 either issue or deny the construction permit. No individual
396 on-site wastewater disposal system shall be installed at a site
397 where the department does not initially recommend the installation
398 of an individual on-site wastewater disposal system until and
399 unless a construction permit based on the application and
400 engineering plans is issued by the department.

401 (e) After construction or installation of the
402 individual on-site wastewater disposal system, the property owner
403 or his agent shall provide a Final Approval Request containing the
404 following to the department:

405 (i) A signed affidavit from the installer or
406 engineer and any additional required documentation that the system
407 was installed in compliance with all requirements, regulations and
408 permit conditions applicable to the system installed; and

409 (ii) For any system that contains an electric
410 operational component, a continuing maintenance contract signed by
411 the property owner and a certified maintenance provider.

412 (f) Upon receipt and approval of the Final Approval
413 Request, the department shall supply to the applicant a document
414 demonstrating the department's final approval of the installation
415 of the system.



416 (4) No new permanent utility connection shall be provided to
417 any mobile, modular or permanently constructed residence, building
418 or facility connected to or intending to use an individual on-site
419 wastewater disposal system unless the applicant for a connection
420 shows proof of the department's final approval of installation as
421 required by this section.

422 (5) (a) A centralized sewerage system must be provided for
423 any subdivision development. No individual on-site wastewater
424 disposal system shall be approved for installation at a site that
425 is within or part of a subdivision unless specifically authorized
426 under subsection (5) (b).

427 (b) The installation of an individual on-site
428 wastewater disposal system may be approved for a site that is
429 within or part of a subdivision if the department determines that:

430 (i) The individual on-site wastewater disposal
431 system proposed can meet all requirements of subsections (1) and
432 (2) of this section; and

433 (ii) The developer certifies to the department
434 that it has committed to the installation and operation of a
435 decentralized management system. The department may waive this
436 requirement (ii) if all sites or tracts within the subdivision are
437 no smaller than five (5) acres.

438 This finding may be made in consultation with the commission
439 and any relevant local planning authorities. Any subdivision
440 designed, laid out, platted or partially constructed before July
441 1, 1988, or for any subdivision that was platted and recorded
442 during the period from July 1, 1995, through June 30, 1996, is
443 exempt from this subsection (5).

444 (6) No person shall alter an individual on-site wastewater
445 disposal system from the design and installation approved by the
446 department, or in any way that decreases the effectiveness of
447 wastewater treatment afforded by the system, without first
448 obtaining the approval of the department.



449 **SECTION 5.** Section 41-67-9, Mississippi Code of 1972, is
450 reenacted and amended as follows:

451 41-67-9. (1) Existing individual on-site wastewater
452 disposal systems shall be considered acceptable, provided the
453 following requirements are met:

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

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

461 (c) At the time of inspection the system exhibits no
462 evidence that any insufficiently treated effluent is or has been
463 seeping to the surface of the ground and any discharge of treated
464 effluent is confined within the boundaries of the property of the
465 generator * * *; and

466 (d) If a private water supply well is present, the well
467 is * * * protected from surface contamination and has a concrete
468 slab of a thickness of at least four (4) inches extending at least
469 two (2) feet in all directions from the well casing.

470 (2) (a) If an existing * * * individual on-site wastewater
471 disposal system is malfunctioning, the property owner must repair
472 the system so that it meets all requirements of this chapter and
473 of the regulations of the board concerning the installation and
474 construction of an individual on-site wastewater disposal system.
475 The department shall provide the property owner a list of
476 recommendations for repair of the malfunctioning system. Repairs
477 must be made in consultation with the department to ensure that
478 the resulting system complies with this chapter and its
479 implementing regulations. Alternatively, the owner may replace
480 the system with a system that meets the requirements of this
481 chapter and the regulations of the board. If repair of the



482 existing system to meet the standards of this chapter and the
483 regulations of the board is not possible, the existing system
484 shall be repaired to reduce the volume of effluent, to adequately
485 treat the effluent and to the greatest extent possible, to confine
486 the discharge to the property of the generator or responsible
487 entity. If repairs are made to significantly upgrade the existing
488 individual on-site wastewater disposal system, the department may
489 approve the system, if requested, if the system is repaired in a
490 manner deemed adequate by the department to protect public health.

491 (b) The board or department may order a property owner
492 or lessee to repair a malfunctioning individual on-site wastewater
493 disposal system on the owner's or lessees' property within thirty
494 (30) days. If the malfunctioning system presents an immediate
495 health hazard, the board or the department may order the system to
496 be repaired or shut down in less than thirty (30) days. The
497 department shall provide the property owner a list of
498 recommendations for repair or replacement of the malfunctioning
499 system.

500 (3) The department may file an affidavit with the justice
501 court, or take administrative enforcement action as described in
502 this chapter, to require the replacement or repair of a system
503 after providing thirty (30) days' notice to the property owner of
504 the requirement of replacement or repair. The property owner
505 shall take adequate measures as soon as practicable to abate an
506 immediate health hazard, regardless of whether the department
507 initiates enforcement action.

508 (4) If central sewerage becomes available to a site using an
509 individual on-site wastewater disposal system and connection to
510 the system is feasible, under the standards of Section 41-67-5(2),
511 the property owner must properly abandon the system, as provided
512 in department regulations, and connect to the central sewerage
513 system.



514 **SECTION 6.** Section 41-67-10, Mississippi Code of 1972, is
515 reenacted and amended as follows:

516 41-67-10. Aerobic treatment systems may be installed only
517 if they have been tested and listed by a third-party certifying
518 program. Aerobic treatment systems shall be in compliance with
519 standards for a Class I system as defined by the most current
520 revision of American National Standards Institute/National
521 Sanitation Foundation (ANSI/NSF) International Standard Number 40,
522 hereby incorporated by reference. * * * An approved third-party
523 certifying program shall accomplish the following * * * for
524 systems which it has certified to be installed in Mississippi:

525 (a) Demonstrate accreditation by the American National
526 Standards Institute;

527 (b) Have established procedures which send
528 representatives to distributors in Mississippi on a recurring
529 basis to conduct evaluations to assure that distributors of
530 certified aerobic treatment systems are providing proper
531 maintenance, have sufficient replacement parts available and are
532 maintaining service records;

533 (c) Notify the department of the results of monitoring
534 visits to manufacturers and distributors within sixty (60) days of
535 the conclusion of the monitoring; and

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

538 **SECTION 7.** Section 41-67-11, Mississippi Code of 1972, is
539 reenacted and amended as follows:

540 41-67-11. (1) Temporary individual on-site wastewater
541 disposal systems may be approved in an area where individual
542 on-site wastewater disposal systems otherwise would not be
543 approved because of the availability and/or feasibility of
544 connection to a centralized sewerage system only after a contract
545 has been awarded or other definite commitments as are deemed
546 sufficient to the department are formalized for the construction



547 of municipal or community sewers that upon completion will
548 adequately serve the property. Temporary individual on-site
549 wastewater disposal systems shall only be approved * * * when the
550 municipal or community sewers shall * * * be completed and
551 available for use within thirty-six (36) months * * *. The
552 department may approve the installation of a temporary system
553 under these circumstances only if the system shall comply with the
554 requirements of Section 41-67-5(1) and comply with all
555 construction requirements of the board. The temporary system may
556 be installed only after the developer has signed a written
557 agreement with the centralized sewer provider stating that the
558 developer will connect to the centralized sewer system when it
559 becomes available and the provider of the centralized sewer system
560 being constructed certifies that the centralized sewer system will
561 have adequate capacity to accept the sewage to be produced by the
562 temporary systems. The developer shall install an internal sewage
563 collection system from each lot to the connection point to the
564 central sewer system as he develops the curbs, gutters and streets
565 of the subdivision. Upon completion of the sewer construction all
566 systems shall be abandoned and all residences, buildings or
567 facilities connected to the sewer.

568 * * *

569 (2) The board may approve the installation of sewage holding
570 tanks in districts created under Sections 19-5-151 through
571 19-5-207 for the purpose of providing sewage services. The
572 district shall be required to maintain or provide for the
573 maintenance of those holding tanks. The board shall require that
574 residences be connected to a municipal or community sewage system
575 when that system is available * * *.

576 **SECTION 8.** Section 41-67-12, Mississippi Code of 1972, is
577 reenacted and amended as follows:

578 41-67-12. (1) The department shall assess fees in the
579 following amounts for the following purposes:



580 (a) A fee of Seventy-five Dollars (\$75.00) shall be
581 levied for a construction permit or inspection of an existing
582 individual on-site wastewater disposal system. This fee may be
583 waived by the department of the inspection of an existing system
584 for which a continuing maintenance contract exists.

585 (b) A fee of One Hundred Dollars (\$100.00) shall be
586 levied annually for the certification of installers and persons
587 engaging in the removal and disposal of the sludge and liquid
588 wastes from individual on-site wastewater disposal systems.

589 (c) A fee of Two Hundred Dollars (\$200.00) for each
590 product registered shall be levied annually for the registration
591 of manufacturers.

592 (d) A fee of Fifty Dollars (\$50.00) shall be levied
593 annually for the certification of maintenance providers engaging
594 in providing continuing maintenance of individual on-site
595 wastewater disposal systems; however, persons holding a certified
596 installer's certification or a pumper's license will be exempt
597 from this fee.

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

603 (3) The fee authorized under this section shall not be
604 assessed for any system operated by state agencies or
605 institutions, including without limitation, foster homes licensed
606 by the State Department of Human Services. The fee authorized
607 under this section shall not be charged again after payment of the
608 initial fee for any system that has been installed in accordance
609 with this chapter, within a period of twenty-four (24) months
610 following the date that the system was originally installed, or
611 for any system with a documented continuing maintenance agreement.



612 **SECTION 9.** Section 41-67-15, Mississippi Code of 1972, is
613 reenacted and amended as follows:

614 41-67-15. Nothing in this chapter shall limit the authority
615 of a municipality, board of supervisors, or decentralized
616 wastewater management utility district to adopt similar ordinances
617 which may be, in whole or in part, more restrictive than this
618 chapter, and in those cases the more restrictive ordinances will
619 govern.

620 **SECTION 10.** Section 41-67-19, Mississippi Code of 1972, is
621 reenacted as follows:

622 41-67-19. Each authorized agent of the department
623 implementing this chapter shall demonstrate to the department's
624 satisfaction that the person:

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

633 (b) Has successfully completed the installer
634 certification training program provided by the department.

635 **SECTION 11.** Section 41-67-23, Mississippi Code of 1972, is
636 reenacted as follows:

637 41-67-23. The department or its authorized representative
638 may enter onto property and make inspections of any individual
639 on-site wastewater disposal system as necessary to ensure that the
640 system is in compliance with this chapter and the rules adopted
641 under this chapter. The department shall give reasonable notice
642 to any property owner, lessee or occupant prior to entry onto the
643 property. The owner, lessee, owner's representative, or occupant
644 of the property on which the system is located shall give the



645 department or its authorized representative reasonable access to
646 the property at reasonable times to make necessary inspections.

647 **SECTION 12.** Section 41-67-25, Mississippi Code of 1972, is
648 reenacted and amended as follows:

649 41-67-25. (1) A person may not operate as an installer of
650 individual on-site wastewater disposal systems in this state
651 unless that person is currently certified by the department. A
652 person who installs an individual on-site wastewater disposal
653 system on his own property as his primary residence is not
654 considered an installer for purposes of this subsection. The
655 requirements of this subsection shall not apply to professional
656 engineers registered in the state.

657 (2) An installer of registered systems or products must be a
658 factory-trained and authorized representative. The manufacturer
659 must furnish documentation to the department certifying the
660 satisfactory completion of factory training and the establishment
661 of the installer as an authorized manufacturer's representative.

662 (3) The department shall issue a certification to an
663 installer if the installer:

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

666 (b) Satisfactorily completes the training program
667 provided by the department;

668 (c) Pays the annual certification fee; and

669 (d) Provides proof of having a performance bond or
670 surety in effect with liability limits of at least Fifty Thousand
671 Dollars (\$50,000.00) per occurrence and at least One Hundred
672 Thousand Dollars (\$100,000.00) in total aggregate amount.

673 (4) Each installer shall furnish proof of certification to
674 the property owner and to the department, * * * if requested,
675 prior to the installation or repair of an individual on-site
676 wastewater disposal system.



677 (5) The department shall provide for annual renewal of
678 certifications.

679 (6) (a) An installer's certification may be suspended or
680 revoked by the department after notice and hearing if the
681 installer violates this chapter or any rule or regulation adopted
682 under this chapter.

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

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

688 **SECTION 13.** The following provision shall be codified as
689 Section 41-67-26, Mississippi Code of 1972:

690 41-67-26. (1) A person may not operate as a maintenance
691 provider in this state unless that person is currently certified
692 by the department.

693 (2) A maintenance provider for mechanical or proprietary
694 systems must be a factory trained and authorized representative.
695 The manufacturer must furnish documentation to the department
696 certifying the satisfactory completion of factory training and the
697 establishment of the maintenance provider as an authorized
698 manufacturer's representative.

699 (3) The department shall issue a certification to a
700 maintenance provider if the maintenance provider:

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

703 (b) Satisfactorily completes the maintenance provider
704 training program provided by the department or currently holds a
705 certified installer's certificate; and

706 (c) Pays the annual certification fee.

707 (4) Provides proof of having a performance bond or surety in
708 effect with liability limits of at least Fifty Thousand Dollars



709 (\$50,000.00) per occurrence and at least One Hundred Thousand
710 Dollars (\$100,000.00) in total aggregate amount.

711 (5) Each maintenance provider shall furnish proof of
712 certification to an individual prior to entering a contract with
713 that individual for the continuing maintenance of an individual
714 on-site wastewater disposal system.

715 (6) The department shall provide for annual renewal of
716 certifications.

717 (7) The department semiannually shall disseminate to the
718 public an official list of certified maintenance providers and
719 provide to county health departments a monthly update of the list.

720 (8) A person may not be engaged in the business of removing
721 and disposing of the sludge and liquid waste (septage) from
722 individual on-site wastewater disposal systems in this state
723 unless that person has a valid license issued by the department.

724 (9) The department shall issue a license to a pumper if the
725 pumper:

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

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

730 (c) Provides documentation of a disposal site approved
731 by the Department of Environmental Quality, Office of Pollution
732 Control;

733 (d) Pays the annual license fee; and

734 (e) Provides proof of having a performance bond or
735 surety in effect with liability limits of at least Fifty Thousand
736 Dollars (\$50,000.00) per occurrence and at least One Hundred
737 Thousand Dollars (\$100,000.00) in total aggregate amount.

738 (10) Each pumper shall furnish proof of licensure to an
739 individual prior to entering a contract with that individual for
740 the removing and disposing of the sludge and liquid waste
741 (septage) from an individual on-site wastewater disposal system.



742 (11) A septage pumper who shall show proof that he/she was
743 in the septage business in Mississippi prior to July 1, 1987,
744 shall be exempt from the license fee required by this section.

745 **SECTION 14.** Section 41-67-27, Mississippi Code of 1972, is
746 reenacted and amended as follows:

747 41-67-27. It is unlawful for a manufacturer of an individual
748 on-site wastewater disposal system or alternative treatment or
749 disposal components to operate a business in or to do business in
750 the State of Mississippi without holding a valid registration
751 issued by the department.

752 **SECTION 15.** Section 41-67-28, Mississippi Code of 1972, is
753 reenacted and amended as follows:

754 41-67-28. (1) **Administrative enforcement of regulations.**

755 (a) Any person who has knowingly violated this chapter
756 shall be subject to administrative enforcement action by the
757 department. Except for administrative action against a certified
758 installer, maintenance provider or licensed pumper, the department
759 shall provide the alleged violator thirty (30) days' notice of the
760 violation and the appropriate action to be taken to come into
761 compliance with this chapter or department regulations, rules or
762 orders. If, after the thirty-day notification period, the alleged
763 violator has not taken appropriate measures to come into
764 compliance, the department may take administrative enforcement
765 action against that person.

766 (b) If any certified installer or engineer files an
767 affidavit with the department containing false or incorrect
768 information that the installer or engineer knows to be false or
769 incorrect, the board, after due notice and hearing, shall levy an
770 administrative fine of up to Two Thousand Dollars (\$2,000.00).

771 (c) In circumstances where an alleged violation
772 involves a malfunctioning system that could result or has resulted
773 in a substantial endangerment to human health or the environment,
774 including, but not limited to, a discharge of pollutants into the



775 waters of the state, the department may institute an
776 administrative proceeding as a complainant before the commission.
777 Any action taken by the commission, and appeals thereof, shall
778 proceed pursuant to Sections 49-17-31 through 49-17-43 and shall
779 be either in addition to or in lieu of other remedies provided for
780 the department in this chapter.

781 (d) The department may assess a penalty not to exceed
782 One Hundred Dollars (\$100.00) for a violation of this chapter or
783 its implementing regulations, rules, orders or permits. Each day
784 that a violation continues shall be considered a separate
785 violation. All penalties collected by the board under this
786 section shall be deposited in the State General Fund.

787 (e) In circumstances where the State Health Officer has
788 determined that a health threat may be imminent, the department
789 may require a water utility to discontinue service until the
790 imminent health threat may be abated.

791 (2) **Criminal enforcement of regulations and orders.**

792 Except as otherwise provided in this chapter, any person who
793 shall knowingly violate this chapter or any rule or regulation or
794 written order of the board in pursuance thereof is, upon
795 conviction, guilty of a misdemeanor and shall be punished as
796 provided in Section 41-3-59. The department may file an affidavit
797 in any court of appropriate jurisdiction to prosecute violations
798 of this chapter or its implementing regulations. In the event
799 that a malfunctioning system presents an immediate health hazard,
800 an action for abatement may be filed in the circuit court for the
801 county in which the property lies.

802 (3) **Civil suits.**

803 (a) In addition to the penalties provided in this
804 section and any other available remedies, the department may seek
805 mandatory or prohibitory injunctive relief to enforce this
806 chapter, any regulation, or any order issued pursuant to this



807 chapter in the chancery court for the county in which the property
808 lies.

809 * * *

810 (b) In addition to all other statutory and common law
811 rights, remedies and defenses, any person who purchases an
812 individual on-site wastewater disposal system and suffers any
813 ascertainable loss of money or property, real or personal, may
814 bring an action at law in the court having jurisdiction in the
815 county where the installer or the manufacturer has the principal
816 place of business, or where the act allegedly occurred, to recover
817 any loss of money or damages for the loss of any property
818 resulting from: improper installation of a system due to faulty
819 workmanship; failure of a system to operate properly due to
820 noncompliance with manufacturer requirements or board regulations;
821 and failure of a system to operate properly due to defective
822 design or construction.

823 (c) A person who is aggrieved or damaged by a discharge
824 caused by a violation of this chapter or its implementing
825 regulations may sue the violator for the actual damages and
826 additional punitive damages equal to a maximum of twenty-five
827 percent (25%) of the actual damages proven by the aggrieved party,
828 to be taxed by the court where the suit is heard on an original
829 action, by appeal or otherwise and recovered by a suit at law in
830 any court of competent jurisdiction. In addition, the court may
831 award the prevailing party reasonable attorney's fees and court
832 costs. Before filing suit, the party aggrieved or damaged must
833 give thirty (30) days' written notice of its intent to file suit
834 to the alleged violator.

835 **SECTION 16.** Section 41-67-31, Mississippi Code of 1972, is
836 amended as follows:

837 41-67-31. Sections 41-67-1 through 41-67-29 shall stand
838 repealed on July 1, 2006.



839 **SECTION 17.** Section 41-26-103, Mississippi Code of 1972, is
840 amended as follows:

841 41-26-103. (1) The department shall develop annually a list
842 of community public water systems that the department, after
843 consultation with the Public Utilities Staff created in Section
844 77-2-1, considers to be potentially nonviable or experiencing
845 other problems that may make the system potentially nonviable.
846 The list shall state the areas of concern and shall be prioritized
847 based upon viability considerations. The department shall notify
848 at a minimum those systems shown in top ten (10) places on the
849 list and shall offer to provide each of those systems with
850 technical assistance pertaining to the areas of concern for the
851 system at no cost to the system. If the notified community public
852 water system refuses the offer of technical assistance at no cost
853 to the system or fails to respond within sixty (60) days of the
854 written offer, the department shall notify the Public Utilities
855 Staff in writing.

856 (2) Following receipt of notification from the department
857 that a community public water system has refused to accept
858 technical assistance or failed to respond, the Public Utilities
859 Staff may conduct a financial or managerial review, or both, of
860 the system and shall submit a copy of any report to the
861 department. The Public Utilities Staff may assess and collect the
862 cost of any financial or management review, or both, from the
863 community public water system on which the review or reviews are
864 conducted.

865 (3) This section shall be repealed on July 1, 2006.

866 **SECTION 18.** Sections 41-67-4, 41-67-6, 41-67-7, 41-67-8,
867 41-67-16 and 41-67-21, Mississippi Code of 1972, which prescribe
868 certain duties of the Department of Health relative to individual
869 on-site wastewater system regulations, provide certain penalties
870 for noncompliance, provide the determination of applicability of
871 this act, require a study of on-site wastewater systems and



872 provide for owner repair of malfunctioning systems, are hereby
873 repealed.

874 **SECTION 19.** This act shall take effect and be in force from
875 and after June 30, 2003.

