

By: Representative Franks

To: Conservation and Water
Resources; Public Health and
Human ServicesHOUSE BILL NO. 1226
(As Passed the House)

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) "Qualified homeowner" means the current owner of a
144 specific residence where that homeowner resides and where the
145 homeowner has met the requirements of the Department of Health
146 regulations.

147 (r) "Subdivision" means any tract or combination of
148 adjacent tracts of land that is subdivided into ten (10) or
149 more * * * tracts, sites or parcels for the purpose of commercial
150 or residential development.

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

153 41-67-3. (1) The State Board of Health shall have the
154 following duties and responsibilities:

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

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

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

174 (d) To suspend or revoke certifications issued to
175 persons engaging in the business of the design, construction or
176 installation of individual on-site wastewater disposal systems or
177 persons engaging in the removal and disposal of the sludge and
178 liquid waste from those systems, when it is determined the person
179 has violated this chapter or applicable rules and
180 regulations; * * *

181 (e) To require the submission of information deemed
182 necessary by the department to determine the suitability of
183 individual lots for individual on-site wastewater disposal
184 systems; and

185 (f) 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, as necessary to determine the
188 suitability of individual on-site wastewater disposal systems in
189 subdivisions.

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

207 in compliance with this law and the corresponding regulations, the
208 department shall approve the design * * * of the
209 system * * *. * * * Construction or installation before
210 department approval is prohibited.

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

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

218 (b) Certification of installers of individual on-site
219 wastewater disposal systems and persons engaging in the removal
220 and disposal of the sludge and liquid waste from those
221 systems; * * *

222 (c) Registration and requirements for testing and
223 listing of manufacturers of advanced treatment systems;

224 (d) Certification of certified maintenance providers;

225 (e) Certification of certified professional evaluators;

226 (f) Create regulations that authorize the original and

227 any subsequent homeowner to be trained by factory installers or

228 other factory representatives in order to educate the homeowner

229 with the necessary knowledge to provide maintenance to the

230 homeowner's system, thus allowing the homeowner to meet the

231 requirements of Section 41-67-6(8).

232 (4) In addition, the board shall adopt rules establishing
233 performance standards for individual on-site wastewater disposal
234 systems for single family residential generators and rules
235 concerning the operation and maintenance of individual on-site
236 wastewater disposal systems designed to meet those standards. The
237 performance standards shall be consistent with the federal Clean
238 Water Act, maintaining the wastes on the property of the generator
239 and protection of the public health. Rules for the operation and

240 maintenance of individual on-site wastewater disposal systems
241 designed to meet performance standards shall include rules
242 concerning the following:

243 (a) A standard application form and requirements for
244 supporting documentation;

245 (b) Application review;

246 (c) Approval or denial of authorization for proposed
247 systems;

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

250 (e) Enforcement of the requirements and conditions of
251 authorization; and

252 (f) Inspection, monitoring, sampling and reporting on
253 the performance of the system.

254 Any system proposed for authorization in accordance with
255 performance standards must be designed and certified by a
256 professional engineer registered in the State of Mississippi who
257 is a certified professional evaluator and must be authorized by
258 the board before installation. * * *

259 (5) To the extent practicable, all rules and regulations
260 adopted under this chapter shall give maximum flexibility to
261 persons installing individual on-site wastewater disposal systems
262 and a maximum number of options consistent with the federal Clean
263 Water Act, consistent with maintaining the wastes on the property
264 of the generator and consistent with protection of the public
265 health. In addition, all rules and regulations, to the extent
266 practicable, shall encourage the use of economically feasible
267 systems, including alternative techniques and technologies for
268 individual on-site wastewater disposal.

269 (6) All regulations shall be applied uniformly in all areas
270 of the state and shall take into consideration and make provision
271 for different types of soil in the state when performing soil and
272 site evaluations.

273 (7) No public utility supplying water shall make connection
274 to any dwelling house, mobile home or residence without the prior
275 written approval of the department certifying that the sewage
276 treatment and disposal system at the location of the property
277 complies with this chapter. Temporary connections of water
278 utilities may be made during construction if the department has
279 approved a plan for a sewage treatment and disposal system and the
280 owner of the property has agreed to have the system inspected and
281 approved by the department before the use or occupancy of the
282 property.

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

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

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

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

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

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

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

330 (2) No temporary or permanent water service connection shall
331 be provided to any mobile, modular or permanently constructed
332 residence, building or facility unless the owner, lessee or
333 developer shows proof of the submission of the notice of intent
334 required by this section.

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

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

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

342 41-67-6. (1) Within five (5) working days following receipt
343 of the notice of intent and plot plan by an owner, lessee or
344 developer of any lot or tract of land, the department shall
345 conduct a soil and site evaluation, except in cases where a
346 certified professional evaluator provides services relating to the
347 design, construction or installation of an individual on-site
348 wastewater disposal system to comply with this chapter. Within
349 ten (10) additional working days, the department shall make
350 recommendations to the owner, lessee or developer of the type or
351 types of individual on-site wastewater disposal systems suitable
352 for installation on the lot or tract, unless there are conditions
353 requiring further investigation that are revealed in the initial
354 evaluation. In making recommendations on the type or types of
355 individual on-site wastewater disposal systems suitable for
356 installation on a lot or tract, personnel of the department shall
357 use best professional judgment based on rules and regulations
358 adopted by the board, considering the type or types of systems
359 which are installed and functioning on lots or tracts near the
360 subject lot or tract. * * * To the extent practicable, the
361 recommendations shall give the owner, lessee or developer maximum
362 flexibility and a maximum number of options consistent with the
363 federal Clean Water Act, consistent with maintaining the wastes on
364 the property of the generator and consistent with protection of
365 the public health. The system or systems recommended shall be
366 environmentally sound and cost-effective. The department or a
367 certified professional evaluator shall provide complete
368 information, including all applicable requirements and regulations
369 on all systems recommended. The owner, lessee or developer shall
370 have the right to choose among systems. The department shall

371 provide the owner, lessee or developer with a form that specifies
372 all types of individual on-site wastewater disposal systems that
373 are suitable for installation on the lot or tract and lists all
374 installers of those systems that are certified by the department.
375 Approval of the design, construction or installation of an
376 individual on-site wastewater disposal system by the department
377 is * * * required. Upon completion of installation of the system,
378 the department shall approve the design, construction or
379 installation of that system, as requested, if the system is
380 designed, constructed and installed, as the case may be, in
381 accordance with the rules and regulations of the board. * * *
382 Whenever a person requests approval of an individual on-site
383 wastewater disposal system and has met the requirements in
384 subsection (7), the department must approve or disapprove the
385 request within five (5) working days. If the department
386 disapproves the request, the department shall state in writing the
387 reasons for the disapproval. If the department does not respond
388 to the request within ten (10) calendar days, the request for
389 approval of the individual on-site wastewater disposal system
390 shall be deemed approved.

391 * * *

392 (2) Within thirty (30) days of receipt of a request for
393 determination of suitability of individual on-site wastewater
394 disposal systems in a subdivision, the department shall advise the
395 developer in writing either that all necessary information needed
396 for determination of suitability has been received or state the
397 additional information needed by the department for determination
398 of suitability.

399 (3) Whenever a developer requests a determination of
400 suitability of individual on-site wastewater disposal systems in a
401 subdivision, the department must make the determination within
402 forty-five (45) days after receipt of all necessary information
403 needed for the determination of suitability from the developer.

404 The department shall state in writing the reasons for its
405 determination.

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

411 (b) An installer shall not cover his work with soil or
412 other surface material unless the installer has received
413 authorization to cover the system after an inspection by a county
414 department of health inspector.

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

419 (6) * * * If any person or contractor fails to comply with
420 all requirements and regulations in the installation of the
421 system, the board, after due notice and hearing, may levy an
422 administrative fine not to exceed Ten Thousand Dollars
423 (\$10,000.00). Each wastewater system installed not in compliance
424 with this chapter or applicable rules and regulations of the board
425 shall be considered a separate offense.

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

430 (a) A signed affidavit from the installer or certified
431 professional evaluator and any additional required documentation
432 that the system was installed in compliance with all requirements,
433 regulations and permit conditions applicable to the system
434 installed; and

435 (b) For any alternative on-site wastewater disposal
436 system, an affidavit from the property owner agreeing to a

437 continuing maintenance agreement on the installed system at the
438 end of the required manufacturer's maintenance agreement.

439 (8) The property owner shall keep a continuing maintenance
440 agreement with a certified maintenance provider or qualified
441 homeowner on all alternative on-site wastewater disposal systems
442 in perpetuity.

443 (a) All systems existing on July 1, 2007, shall be
444 grandfathered in until the system is reapproved, there is a change
445 in property ownership, a complaint is received by the department
446 on the system, or the system is replaced or repaired.

447 (b) Any person violating this subsection shall be
448 subject to the penalties and damages as provided in Section
449 41-67-28(5).

450 * * *

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

453 41-67-7. Individual on-site wastewater disposal systems
454 shall be considered acceptable on lots in areas or subdivisions
455 where prior to the sale of the lots, the following requirements
456 are met:

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

460 (a) Sewers are not available or feasible;

461 (b) The existing disposal systems in the area are
462 functioning satisfactorily;

463 (c) Soil types, soil texture, seasonal water tables and
464 other limiting factors are satisfactory for underground
465 absorption; and

466 (d) Any private water supply is located at a higher
467 elevation or it must be properly protected and at least fifty (50)
468 feet from the individual on-site wastewater disposal system and at

469 least one hundred (100) feet from the disposal field of the
470 system.

471 (2) Except for systems utilizing underground absorption,
472 alternative individual on-site wastewater disposal systems shall
473 be considered acceptable, provided the following requirements are
474 met:

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

476 (b) The systems meet applicable water quality
477 requirements of the federal Clean Water Act and also requirements
478 of the board and department.

479 * * *

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

482 41-67-9. (1) Existing individual on-site wastewater
483 disposal systems shall be considered acceptable, provided the
484 following requirements are met:

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

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

492 (c) The system is functioning properly with no evidence
493 that any insufficiently treated effluent is or has been seeping to
494 the surface of the ground and any discharge of treated effluent is
495 confined within the boundaries of the property of the generator;
496 and

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

502 (2) If an existing residential individual on-site wastewater
503 disposal system is malfunctioning, the system should be replaced,
504 where possible, with a system meeting all requirements of this
505 chapter and rules and regulations of the board. If replacement of
506 the existing system is not possible, the existing system shall be
507 repaired to reduce the volume of effluent, to adequately treat the
508 effluent and to the greatest extent possible, to confine the
509 discharge to the property of the generator. If repairs are made
510 to significantly upgrade the existing individual on-site
511 wastewater disposal system, the department shall approve the
512 system, if requested.

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

515 41-67-10. (1) Advanced aerobic treatment systems may be
516 installed only if they have been tested and are listed by a
517 third-party certifying program at the time of installation.
518 Advanced 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 which are incorporated by reference. * * * An approved
523 third-party certifying program shall comply with the following
524 provisions for systems which it has certified to be installed in
525 Mississippi:

526 (a) Be accredited by the American National Standards
527 Institute;

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

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

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

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

542 (b) All manufacturers of alternate disposal systems
543 certified in Mississippi shall provide technical training staff to
544 the department for utilization during the on-site maintenance
545 training program.

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

550 (d) All wastewater maintenance staff certified by
551 manufacturers whose alternate disposal systems are certified for
552 sale in Mississippi shall be certified by the department to
553 perform on-site wastewater maintenance on that manufacturer's
554 alternate disposal systems.

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

557 41-67-11. (1) Temporary individual on-site wastewater
558 disposal systems may be approved in an area where individual
559 on-site wastewater disposal systems otherwise would not be
560 approved because of the availability or feasibility of connection
561 to a centralized sewerage system only after a contract has been
562 awarded or other definite commitments as are deemed sufficient to
563 the department are formalized for the construction of municipal or
564 community sewers that upon completion will adequately serve the
565 property. Temporary individual on-site wastewater disposal
566 systems shall only be approved when the municipal or community

567 sewers will be completed and available for use within thirty-six
568 (36) months. The department may approve the installation of a
569 temporary system under these circumstances only if the system will
570 comply with the requirements of Section 41-67-5(1) and comply with
571 all construction requirements of the board. The temporary system
572 may be installed only after the developer has signed a written
573 agreement with the centralized sewer provider stating that the
574 developer will connect to the centralized sewer system when it
575 becomes available, and the provider of the centralized sewer
576 system being constructed certifies that the centralized sewer
577 system will have adequate capacity to accept the sewage to be
578 produced by the temporary systems. The developer shall install an
579 internal sewage collection system from each lot to the connection
580 point to the central sewer system as he develops the streets of
581 the subdivision. Upon completion of the sewer construction, all
582 systems shall be abandoned and all residences, buildings or
583 facilities connected to the sewer.

584 (2) The board may approve the installation of sewage holding
585 tanks in districts created under Sections 19-5-151 through
586 19-5-207 for the purpose of providing sewage services. The
587 district shall be required to maintain or provide for the
588 maintenance of those holding tanks. The board shall require that
589 residences be connected to a municipal or community sewage system
590 when that system is available * * *.

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

593 41-67-12. (1) The department shall assess fees in the
594 following amounts for the following purposes:

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

598 (b) A fee of Fifty Dollars (\$50.00) shall be levied
599 annually for the certification of installers and persons engaging

600 in the removal and disposal of the sludge and liquid wastes from
601 individual on-site wastewater disposal systems.

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

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

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

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

619 41-67-15. Nothing in this chapter shall limit the authority
620 of a municipality or board of supervisors to adopt similar
621 ordinances which may be, in whole or in part, more restrictive
622 than this chapter, and in those cases the more restrictive
623 ordinances will govern. The department shall not enforce any
624 ordinance adopted by a municipality or board of supervisors.

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

627 41-67-19. Each authorized agent of the department
628 implementing this chapter shall demonstrate to the department's
629 satisfaction that the person:

630 (a) Is competent to review and provide any requested
631 approval of design, construction and installation of individual
632 on-site wastewater disposal systems, as well as the operation,

633 repair or maintenance of those systems, to make soil permeability
634 tests or soil and site evaluations, and to conduct inspections of
635 individual on-site wastewater disposal systems in accordance with
636 this chapter and rules and regulations adopted under this chapter;
637 and

638 (b) Has successfully completed the installer
639 certification training program provided by the department.

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

642 41-67-21. (1) The board or the department may require a
643 property owner or lessee to repair a malfunctioning individual
644 on-site wastewater disposal system on the owner's or lessee's
645 property before the thirtieth day after the date on which the
646 owner or lessee is notified by the department of the
647 malfunctioning system.

648 (2) The property owner or lessee shall take adequate
649 measures as soon as practicable to abate an immediate health
650 hazard.

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

656 (4) The board may assess the property owner or lessee of an
657 individual on-site wastewater disposal system authorized pursuant
658 to Section 41-67-3(4) a civil penalty not to exceed Fifty Dollars
659 (\$50.00) for each day the system fails to meet the performance
660 standards of that system after the thirty-day period specified in
661 subsection (1) of this section.

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

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

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

668 41-67-23. The department or its authorized representative
669 may enter onto property and make inspections of any individual
670 on-site wastewater disposal system as necessary to ensure that the
671 system is in compliance with this chapter and the rules adopted
672 under this chapter. The department shall give reasonable notice
673 to any property owner, lessee or occupant prior to entry onto the
674 property. The owner, lessee, owner's representative, or occupant
675 of the property on which the system is located shall give the
676 department or its authorized representative reasonable access to
677 the property at reasonable times to make necessary inspections.

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

680 41-67-25. (1) A person may not operate as an installer of
681 individual on-site wastewater disposal systems unless that person
682 is currently certified by the department. A person who installs
683 an individual on-site wastewater disposal system on his own
684 property for his primary residence is not considered an installer
685 for purposes of this subsection.

686 (2) An installer of alternative systems or products must be
687 a factory-trained and authorized representative. The manufacturer
688 must furnish documentation to the department certifying the
689 satisfactory completion of factory training and the establishment
690 of the installer as an authorized manufacturer's representative.

691 (3) The board shall issue a certification to an installer if
692 the installer:

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

695 (b) Satisfactorily completes the training program
696 provided by the department;

697 (c) Pays the annual certification fee; and

698 (d) Provides proof of having a valid general business
699 liability insurance policy in effect with liability limits of at
700 least Fifty Thousand Dollars (\$50,000.00) per occurrence and at
701 least One Hundred Thousand Dollars (\$100,000.00) in total
702 aggregate amount.

703 (4) Each installer shall furnish proof of certification to a
704 property owner, lessee, the owner's representative or occupant of
705 the property on which an individual on-site wastewater disposal
706 system is to be designed, constructed, repaired or installed by
707 that installer and to the department or its authorized
708 representative, if requested.

709 (5) The department shall provide for annual renewal of
710 certifications.

711 (6) (a) An installer's certification may be suspended or
712 revoked by the board after notice and hearing if the installer
713 violates this chapter or any rule or regulation adopted under this
714 chapter.

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

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

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

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

726 41-67-27. It is unlawful for a manufacturer of an individual
727 on-site wastewater disposal system or alternative treatment or
728 disposal components to operate a business in or to do business in
729 the State of Mississippi without holding a valid manufacturer's
730 registration issued by the department.

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

733 41-67-28. (1) Except as otherwise provided in this chapter,
734 any person who shall knowingly violate this chapter or any rule or
735 regulation or written order of the board in pursuance thereof is,
736 upon conviction, guilty of a misdemeanor and shall be punished as
737 provided in Section 41-3-59.

738 (2) Each day of a continuing violation is a separate
739 violation.

740 (3) (a) In addition to all other statutory and common law
741 rights, remedies and defenses, any person who purchases an
742 individual on-site wastewater disposal system and suffers any
743 ascertainable loss of money or property, real or personal, may
744 bring an action at law in the court having jurisdiction in the
745 county in which the installer or manufacturer has the principal
746 place of business, where the act allegedly occurred, to recover
747 any loss of money or damages for the loss of any property
748 resulting from any of the following:

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

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

755 (iii) Failure of an individual on-site wastewater
756 disposal system to operate properly due to defective design or
757 construction.

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

762 (4) A person who violates this chapter thereby causing a
763 discharge off the property of the generator shall be liable to the

764 party aggrieved or damaged by that violation for the actual
765 damages and additional punitive damages equal to a maximum of
766 twenty-five percent (25%) of the actual damages proven by the
767 aggrieved party, to be taxed by the court where the suit is heard
768 on an original action, by appeal or otherwise and recovered by a
769 suit at law in any court of competent jurisdiction. In addition,
770 the court may award the prevailing party reasonable attorney's
771 fees and court costs. Before filing suit, the party aggrieved or
772 damaged must give thirty (30) days' written notice of its intent
773 to file suit to the alleged violator.

774 (5) (a) Any person who violates Section 41-67-6(8) may be
775 assessed a fine in the amount of Five Hundred Dollars (\$500.00)
776 and the public water system may discontinue service to that
777 property owner until the failure to comply with Section 41-67-6(8)
778 has been corrected.

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

781 (c) Any violator shall have the right to appeal an
782 adverse determination through the procedures set out in Section
783 41-67-29.

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

786 41-67-29. Any person who is aggrieved by any final decision
787 of the board may appeal that final decision to the chancery court
788 of the county of the situs in whole or in part of the subject
789 matter. The appellant shall give a cost bond with sufficient
790 sureties, payable to the state in a sum to be fixed by the board
791 or the court and to be filed with and approved by the clerk of the
792 court. The aggrieved party may, within thirty (30) days following
793 a final decision of the board, petition the chancery court for an
794 appeal with supersedeas and the chancellor shall grant a hearing
795 on the petition. Upon good cause shown the chancellor may grant
796 the appeal with supersedeas. The appellant shall be required to

797 post a bond with sufficient sureties according to law in an amount
798 to be determined by the chancellor. The chancery court shall
799 always be deemed open for hearing of appeals and the chancellor
800 may hear the appeal in termtime or in vacation at any place in his
801 district. The appeal shall have precedence over all civil cases,
802 except election contests. The chancery court shall review all
803 questions of law and of fact and may enter a final order or remand
804 the matter to the board for appropriate action as may be indicated
805 or necessary under the circumstances. Appeals may be taken from
806 the chancery court to the Supreme Court in the manner as now
807 required by law, but if a supersedeas is desired by the party
808 appealing to the chancery court, that party may apply therefor to
809 the chancellor, who shall award a writ of supersedeas, without
810 additional bond, if in the chancellor's judgment material damage
811 is not likely to result. If material damage is likely to result,
812 the chancellor shall require a supersedeas bond as deemed proper,
813 which shall be liable to the state for any damage.

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

828 (2) Any person aggrieved by the ruling issued by the
829 Director of the Office of Environmental Health may apply for a

830 hearing. Any hearing shall be conducted by a hearing officer
831 designated by the department. At the hearing, the hearing officer
832 may conduct reasonable questioning of persons who make relevant
833 factual allegations concerning the proposal. The hearing officer
834 shall require that all persons be sworn before they may offer any
835 testimony at the hearing, and the hearing officer is authorized to
836 administer oaths. Any person so choosing may be represented by
837 counsel at the hearing. A record of the hearing shall be made,
838 which shall consist of a transcript of all testimony received, all
839 documents and other material introduced, the staff report and
840 recommendation, and any other material as the hearing officer
841 considers relevant. He shall make a recommendation within a
842 reasonable period of time after the hearing is closed and after he
843 has had an opportunity to review, study and analyze the evidence
844 presented during the hearing. The completed record shall be
845 certified to the State Health Officer, who shall consider only the
846 record in making his decision, and shall not consider any evidence
847 or material that is not included. All final decisions regarding
848 the disapproval or requirements for an on-site wastewater disposal
849 system shall be made by the State Health Officer. The State
850 Health Officer shall make his written findings and issue his order
851 after reviewing the record, not to exceed thirty (30) days
852 following his receipt of the record.

853 **SECTION 21.** (1) A person may not operate as a certified
854 maintenance provider in this state unless that person is currently
855 certified by the department.

856 (2) The department shall issue a certification to a
857 maintenance provider if the maintenance provider:

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

860 (b) Satisfactorily completes the certified maintenance
861 provider training program provided by the department;

862 (c) Pays the annual certification fee; and

863 (d) Provides proof of having a valid general business
864 liability insurance policy in effect with liability limits of at
865 least Fifty Thousand Dollars (\$50,000.00) per occurrence and at
866 least One Hundred Thousand Dollars (\$100,000.00) in total
867 aggregate amount.

868 (3) Each certified maintenance provider shall furnish proof
869 of certification to an individual before entering a contract with
870 that individual for the continuing maintenance of an individual
871 on-site wastewater disposal system.

872 (4) The department shall provide for annual renewal of
873 certifications.

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

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

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

886 (2) The department shall issue a license to a pumper if the
887 pumper:

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

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

892 (c) Provides documentation of a disposal site approved
893 by the Department of Environmental Quality, Office of Pollution
894 Control;

895 (d) Pays the annual license fee; and

896 (e) Provides proof of having a valid general business
897 liability insurance policy in effect with liability limits of at
898 least Fifty Thousand Dollars (\$50,000.00) per occurrence and at
899 least One Hundred Thousand Dollars (\$100,000.00) in total
900 aggregate amount.

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

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

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

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

915 (2) A person must meet one (1) of the following
916 requirements, in addition to the additional requirements set forth
917 in other sections of this chapter and rules and regulations of the
918 board, in order to be eligible to become a certified professional
919 evaluator:

920 (a) Be a professional engineer registered in the State
921 of Mississippi;

922 (b) Be a professional geologist registered in the State
923 of Mississippi;

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

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

929 (3) The department shall issue a certification to a
930 certified professional evaluator if the certified professional
931 evaluator:

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

934 (b) Satisfactorily completes the certified professional
935 evaluator training program provided by the department;

936 (c) Pays the annual certification fee; and

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

941 (4) Each certified professional evaluator shall furnish
942 proof of certification to a property owner or the owner's
943 representative of the property before performing a site evaluation
944 of the property on which an individual on-site wastewater disposal
945 system is to be designed, constructed, repaired or installed by
946 the certified professional evaluator and to the department or its
947 authorized representative, if requested.

948 (5) The department shall provide for annual renewal of
949 certifications.

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

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

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

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

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