

Title 41. Public Health

→ Chapter 26. Mississippi Safe Drinking Water Act of 1997 In General

§ 41-26-1. Short title

This chapter shall be known and cited as the "Mississippi Safe Drinking Water Act of 1997."

§ 41-26-2. Legislative findings; purpose; intent

(1) The Legislature finds that:

(a) An adequate supply of safe, pure drinking water is essential to the public health and welfare and the maintenance of that supply through viable water systems is an important natural resource in the economic development of the state;

(b) The federal Safe Drinking Water Act, as amended, provides a comprehensive framework for regulating the collection, treatment, storage and distribution of potable water; and

(c) It is in the public interest of the state to assume primary enforcement responsibility under the federal Safe Drinking Water Act, as amended.

(2) The purposes of this chapter shall be:

(a) To establish a state program to assure provision of safe drinking water to the public by establishing drinking water standards consistent with the federal act and developing a state program to implement and enforce the standards. The standards shall protect the public health and welfare to the extent feasible using technology, treatment techniques and other means which are generally available.

(b) To develop a process for implementing plans for the provision of safe drinking water in emergencies;

(c) To provide public notice of potentially hazardous conditions that may exist in a water supply; and

(d) To authorize the director to prevent the creation of new potentially non-viable community water systems, to provide technical assistance to existing potentially non-viable systems to help those systems become viable and to encourage the elimination of non-viable systems whose problems cannot be corrected.

(3) It is the intent of the Legislature that the board in implementing [Section 41-26-5\(3\)](#) shall work cooperatively with organizations which provide training and assistance to public water systems. The board shall, consistent with state and federal law and rules and regulations and subject to the availability of funds, contract annually with and provide funding for those organizations. Any contract and funding shall be contingent upon receipt of an acceptable scope of work and cost proposal, as determined by the department and upon the contractor satisfactorily meeting performance objectives established in the contract.

§ 41-26-3. Definitions

For purposes of this chapter, the following terms shall have the meaning ascribed herein unless the context clearly indicates otherwise:

- (a) "Administrator" means the Administrator of the U.S. Environmental Protection Agency or the administrator's designee.
- (b) "Board" means the Mississippi State Board of Health.
- (c) "Community public water system" means a public water system serving at least fifteen (15) individual service connections used by year-round consumers or regularly servicing at least twenty-five (25) individual consumers year-round.
- (d) "Construction" means any placement, assembly or installation of facilities or equipment, including contractual obligations to purchase those facilities or equipment, at the location where the equipment will be used, including any preparation work at any location.
- (e) "Contaminant" means any physical, chemical, biological or radiological substance or matter in water.
- (f) "Cross connection" means any direct interconnection between a public water system and a non-public water system or other source which may result in the contamination of the drinking water provided by the public water system.
- (g) "Department" means the Mississippi State Department of Health.
- (h) "Director" means the State Health Officer or the health officer's designee.
- (i) "Federal act" means the Safe Drinking Water Act of 1974, as amended, principally codified as [42 U.S.C. Section 300\(f\)](#) et seq.
- (j) "Federal agency" means any department, agency or instrumentality of the United States.
- (k) "Interested party" means any person claiming an interest in the water system operation that is the subject of the hearing and who may be affected by the water system.
- (l) "Maximum contaminant level" means the maximum permissible level of a contaminant in water which is delivered to any user of a public water system.
- (m) "Municipality" means a city, town, village or other public body created by state law, or an Indian tribal organization authorized by law.
- (n) "National primary drinking water regulations" means primary drinking water regulations promulgated by the administrator under the federal act.
- (o) "Nontransient, noncommunity public water system" means a public water system that is not a community water system and that regularly serves at least twenty-five (25) of the same persons over six (6) months per year.
- (p) "Person" means an individual, corporation, company, association, partnership, municipality or federal agency.
- (q) "Public water system" means a system for providing to the public piped water for human consumption through pipes or other constructed conveyances if the system has at least fifteen (15) service connections or regularly

serves at least twenty-five (25) individuals. The term includes but is not limited to:

(i) Any collection, treatment, storage and distribution facilities under control of the operator of the system and used primarily in connection with the system; and

(ii) Any collection or pre-treatment storage facilities not under the control which are used primarily in connection with the system.

(r) "Semi-public water system" means a system for the provision to the public of water for human consumption through pipes or other constructed conveyances if the system has more than one but less than fifteen (15) service connections.

(s) "Supplier of water" means any person who owns, or controls a public water system.

(t) "Violator" means a public water system, an officer or director of a public water system, an operator, certified or otherwise, or any other person designated by a public water system or the department as the official responsible for the operation of a public water system.

§ 41-26-5. Primary Drinking Water Regulations

(1) In addition to any other duties required by law, the board shall have the following powers and duties concerning safe drinking water:

(a) To establish policies, requirements or standards governing the source, collection, distribution, purification, treatment and storage of water for public water systems as it deems necessary for the provision of safe drinking water;

(b) To adopt, modify, repeal and promulgate, after due notice and hearing and in accordance with the Mississippi Administrative Procedures Law and [Section 41-26-6](#), and where not otherwise prohibited by federal or state law, to make exceptions to and grant exemptions and variances from, and to enforce rules and regulations implementing the powers and duties of the board under this chapter;

(c) To enter into, and to authorize the director to execute contracts, grants and cooperative agreements with, any federal or state agency or subdivision thereof, interstate agency, or any other person in connection with carrying out this chapter; and

(d) To discharge other powers, duties and responsibilities which may be necessary to implement this chapter.

(2)(a) Except as provided in Section 41-26-5(2)(b), regulations adopted under this section shall apply to each public water system in the state.

(b) Regulations shall not apply to a public water system:

(i) Which consists only of distribution and storage facilities, and which does not have any collection and treatment facilities;

(ii) Which obtains all of its water from, but is not owned or operated by, a public water system to which such regulations apply;

(iii) Which does not sell water to any person; and

(iv) Which is not a carrier which conveys passengers in interstate commerce.

(3) The board shall develop and implement a technical assistance program to help existing potentially non-viable community public water systems to become viable and to improve the technical, managerial or financial capabilities of small community public water systems. In developing this program, the board shall work cooperatively with organizations which currently provide training and assistance to public water systems.

§ 41-26-6. Public water system rules and regulations

(1) The board may adopt rules and regulations governing public water systems, but those rules and regulations shall, except as expressly required by law, be no more stringent or extensive in scope, coverage and effect than regulations promulgated by the United States Environmental Protection Agency.

(2) If federal regulations do not provide a standard, criteria or guidance addressing public water systems, the board may promulgate rules and regulations to address these matters when the board determines that the rules and regulations are necessary to protect the public health and welfare.

(3) Nothing in this section shall prohibit the director by order or in the approval of plans for construction or changes from placing additional requirements on a public water system on a case by case basis in order to provide for the quantity and quality of drinking water or to protect the public health and welfare.

§ 41-26-7. Director; powers and duties

(1) In addition to any other duties required by law, the director shall have the following powers and duties concerning safe drinking water:

(a) To exercise general supervision over the administration and enforcement of this chapter and applicable rules and regulations;

(b) To make inspections and investigations, collect samples and carry on research and analyses as may be necessary to carry out this chapter and applicable rules and regulations;

(c) To enter at all reasonable times onto any property other than the interior of a private dwelling to make inspections, conduct investigations or studies or enforce this chapter and applicable rules and regulations;

(d) To enter into contracts, grants or cooperative arrangements with any federal or state agency or subdivision thereof, interstate agency or any other person;

(e) To receive financial and technical assistance from the federal government and other public or private agencies or organizations;

(f) To participate in related programs of the federal government, other states, interstate agencies, or other public or private agencies or organizations;

(g) To establish adequate fiscal controls and accounting procedures to assure proper disbursement of and account for funds appropriated or otherwise necessary to carry out this chapter;

(h) To hold hearings, issue, modify or revoke orders, levy and collect any administrative fine or penalty and to enforce the laws, rules and regulations governing safe drinking water;

(i) To keep any records and make reports with respect to the activities of the department;

(j) To delegate any powers, duties and responsibilities as deemed appropriate to administer this chapter including delegation of any powers and duties regarding administrative enforcement to a designated administrative law judge or hearing officer; and

(k) To perform all acts necessary to carry out this chapter or the federal act.

§ 41-26-8. Public water systems; construction and operation; supervision by director

(1) The director shall exercise general supervision over the construction and operation of public water systems throughout the state. The general supervision shall include all of the features of construction and operation of public water systems which do or may affect the sanitary quality or the quantity of the water supply.

(2)(a) No person shall construct or change any community public water system or nontransient, noncommunity public water system until the plans for that construction or change have been submitted to and approved by the director. Plans for the construction or change must be prepared by a professional engineer registered in this state.

(b) In addition, each applicant for a new community public water system or nontransient, noncommunity public water system shall submit an operation and maintenance plan for review and approval by the director. The plan must be approved before beginning construction.

(c) In granting any approval under this section, the director may specify any modifications, conditions or limitations as may be required for the protection of the public health and welfare.

(d) The director may also review the source of the water and the quantity of water to be withdrawn.

(e) Records of construction, including plans and descriptions of existing portions of a public water system, shall be made available to the department upon request.

(f) Each applicant for a new community public water system or nontransient, noncommunity public water system shall submit financial and managerial information as required by the public utilities staff. Following review of that information, the executive director of the public utilities staff shall certify in writing to the director the financial and managerial viability of the system if the executive director determines the system is viable. The director shall not approve the construction until that certification is received.

(g) The director shall not approve any plans for changes to an existing community public water system or nontransient, noncommunity public water system, if the director determines the changes would threaten the viability of the system or if the changes may overload the operational capabilities of the system.

(h) Those public water systems determined by the director to be appropriately providing corrosion control treatment shall effectively operate and maintain the system's water treatment facilities in order to continuously provide the optimum pH of the treated water or optimum dosage of corrosion inhibitor. This paragraph shall repeal on July 1, 2010.

(3) Each semipublic water system shall notify the department of its location, a responsible party and the number of

connections served. The department shall, to the extent practicable, take appropriate actions to ensure that records on semipublic water systems are up-to-date. The board may require water well drillers to provide information on wells drilled for use by semipublic water systems. The department shall at least annually collect a sample from each semipublic water system and shall analyze that sample at no cost to the semipublic water system for microbiological contaminants and any other contaminants deemed appropriate by the department. If the department finds levels of contaminants exceeding the Mississippi Primary Drinking Water Standards, the department shall notify the responsible party and shall provide technical assistance to the system to correct the problem. No semipublic water system shall be subject to the penalty provided under [Section 41-26-31](#).

§ 41-26-9. Actions authorized against contaminants

The director, upon receipt of information that a contaminant which is present in or is likely to enter a public water system may present an imminent and substantial endangerment to the public health, may take any actions deemed necessary to protect the public health. The actions may include, but shall not be limited to:

- (a) Issuing any orders either on the initiative of the director or through a designated administrative law judge or hearing officer as may be necessary to protect the public health of users of the system, including travelers; and
- (b) Commencing a civil action for appropriate relief, including a restraining order or permanent or temporary injunction.

§ 41-26-11. Safe drinking water in emergencies

The director shall develop an adequate plan for the provision of safe drinking water under emergency circumstances. If, in the judgment of the director, emergency circumstances exist in the state for safe drinking water, the director may take any actions deemed necessary to provide safe drinking water where it otherwise would not be available.

§ 41-26-13. Public notice

(1) A public water system shall, as soon as practicable, notify the county or district health department, the board and the administrator if one (1) of the following conditions exist: (a) the system is not in compliance with the Mississippi Primary Drinking Water Regulations; (b) the system fails to perform monitoring required by regulations adopted by the board; (c) the system is subject to a variance granted for an inability to meet a maximum contaminant level requirement; (d) the system is subject to an exemption; or (e) the system fails to comply with the requirements prescribed by a variance or exemption.

(2) In addition, the system shall provide public notice. The notice shall be published at least once every three (3) months in a newspaper of general circulation in the area which is served by the water system, as determined by the director. The notice shall not be placed in the legal section of the newspaper. The notice shall be furnished to the other communications media serving the area as soon as practicable after the discovery of any condition for which the notice is required. If the water bills of a public water system are issued more often than once every three (3) months, the notice shall be included in at least one (1) water bill of the system every three (3) months, and if a public water system issues its water bills less often than once every three (3) months, the notice shall be included in each water bill issued by the system.

§ 41-26-14. Cross connection control program

(1) The department shall develop and implement a cross connection control program in accordance with this section. Before development of the cross connection control program, the department shall consult with the United States Environmental Protection Agency regarding the development of a federal cross connection control program.

It is the intent of the Legislature that any cross connection control program developed and implemented by the department be equivalent to a federal program, unless otherwise provided in this section.

(2) (a) The board shall adopt regulations defining a high hazard cross connection and a low hazard cross connection. The board shall determine which low hazard cross connections pose a very low risk and therefore are below regulatory concern. Those low hazard cross connections posing a very low risk shall be exempt from the requirements of this section and shall not be required to have a backflow preventer device. In addition, the regulations shall specify those backflow preventer devices which are recommended to address both high hazard and low hazard cross connections.

(b) For the purposes of this section, the following cross connections shall be considered as low hazard cross connections posing a very low risk:

(i) Any lawn sprinkler system or lawn irrigation system that is connected to a public water system and was professionally installed, regardless of whether the system is underground or above ground or whether the system has pop-up sprinkler heads;

(ii) Any swimming pool that is connected to a public water system and was professionally installed, or any swimming pool that is connected to a public water system and has a fill line with an anti-siphon air gap;

(iii) Any water fountain or cooler that provides drinking water for human consumption, that is connected to a public water system and was professionally installed;

(iv) Any fire sprinkler system that contains only water or a dry pipe and no chemicals, that is connected to a public water system and was professionally installed; and

(v) Any commercial establishment that is connected to a public water system, that contains no cross connections directly with a dangerous or hazardous substance or material.

(c) For the purposes of this section, any lawn sprinkler system or lawn irrigation system that is connected to a public water system and either injects or stores lawn chemicals or is connected to a wastewater supply shall be considered as high hazard cross connections and not exempt from the requirements of this section; however, the local public water system shall not be required to conduct an on-site inspection to identify any such system under this paragraph (c).

(d) Any regulations that were adopted before April 12, 2001, to implement a cross connection control program shall be void to the extent those regulations are in conflict or inconsistent with this section.

(3) Before December 31, 2000, each public water system shall develop and implement a cross connection control program and shall conduct a survey and on-site visits, as necessary, to locate cross connections within its system. Single family dwellings and multifamily dwellings shall be excluded from the survey, unless the public water system has reason to believe a cross connection exists.

(4) Before June 30, 2001, each property owner identified by the public water system as having a high hazard cross connection shall install a backflow preventer device. If the property owner already has a backflow preventer device installed and the backflow preventer device functions properly, the public water system shall consider the backflow preventer device approved and shall allow the installed backflow preventer device to remain in place until the backflow preventer device fails to function properly. Additional backflow preventer devices shall not be required for carbonated beverage dispensers if (a) the water supply connection to the carbonated beverage dispenser is protected against backflow by a backflow preventer device conforming to ASSE 1022 or by an air gap, and (b) the backflow

preventer device and the piping downstream from the device are not affected by carbon dioxide gas.

(5) Before June 30, 2004, each property owner identified by the public water system as having a low hazard cross connection shall install a backflow preventer device. This requirement does not apply to any low hazard cross connection that poses a very low risk. If the property owner already has a backflow preventer device installed and the backflow preventer device functions properly, the public water system shall consider the backflow preventer device approved and shall allow the installed backflow preventer device to remain in place until the backflow preventer device fails to function properly.

(6) Each high hazard backflow preventer device shall be inspected and tested at least annually. If a high hazard backflow preventer device fails to function properly, the property owner shall have the backflow preventer device repaired and retested or shall install a new approved backflow preventer device within thirty (30) days of the initial test. If a low hazard backflow preventer device fails to function properly, the property owner shall have the backflow preventer device repaired or shall install a new backflow preventer device within ninety (90) days after the date the backflow preventer device first fails to function properly.

(7) All inspection and testing of backflow preventer devices under this section shall be conducted by a certified tester, unless otherwise provided in the regulations of the board. Certified backflow preventer device testers shall be licensed by the department under those conditions as the department deems appropriate.

(8) If a property owner fails to install a backflow preventer device or fails to have a backflow preventer device tested as required by this section, the public water system may discontinue service to that property owner until the failure is corrected.

(9) After the dates specified in subsections (4) and (5) of this section, it is unlawful to install or allow the installation or maintenance of any cross connection, auxiliary intake or bypass, unless the source and quality of water from the auxiliary supply, the method of connection and the use and operation of that cross connection, auxiliary intake or bypass has been approved by the director. However, this subsection does not authorize the director to modify, supersede or suspend any provision of this section regarding backflow preventer devices.

(10)(a) A municipality, county or public water system shall not adopt or implement any ordinance, rule, regulation, standard or policy regarding cross connections or backflow preventer devices that is more stringent or extensive in scope, coverage or effect than the provisions of this section or any rules or regulations adopted by the board to implement this section, or is in conflict or inconsistent with the provisions of this section or any rules or regulations adopted by the board to implement this section. Any such ordinance, rule, regulation, standard or policy regarding cross connections or backflow preventer devices that was adopted before April 12, 2001, is void to the extent that it is more stringent or extensive in scope, coverage or effect than the provisions of this section or any rules or regulations adopted by the board to implement this section, or is in conflict or inconsistent with the provisions of this section or any rules or regulations adopted by the board to implement this section.

(b) If any municipality or county adopts or has previously adopted a building code, plumbing code or any other code that contains requirements or standards regarding cross connections or backflow preventer devices, the municipality or county or any public water system operating in the municipality or county shall not implement or enforce any such requirements or standards that are more stringent or extensive in scope, coverage or effect than the provisions of this section or any rules or regulations adopted by the board to implement this section, or are in conflict or inconsistent with the provisions of this section or any rules or regulations adopted by the board to implement this section.

§ 41-26-15. Prohibited conduct

The following acts and the causing of these acts are prohibited:

- (a) Failure by a supplier of water to comply with the requirements of [Section 41-26-13](#), or dissemination by that supplier of any false or misleading information with respect to notices required under [Section 41-26-13](#), or with respect to remedial actions being undertaken to achieve compliance with Mississippi Primary Drinking Water Regulations;
- (b) Failure by a supplier of water to comply with this chapter or applicable rules or regulations promulgated under this chapter, or with conditions of any variances or exemptions granted under this chapter;
- (c) Failure by any person to comply with any order issued by the director, administrative law judge or hearing officer under this chapter;
- (d) Refusal by a supplier of water to allow an authorized representative of the department to inspect any public water system;
- (e) Contamination of a public water system;
- (f) Intentionally damaging any pipe or other part of a public water system;
- (g) Discharge of sewage or other waste at any location that may come into contact with a public water system intake, unless that discharge is permitted or authorized by a state or federal agency; and
- (h) Abandonment or other termination of water services to more than fifty percent (50%) of the customers of a system by a supplier of water, without providing at least sixty (60) days' notice to all customers served by the public water system and the department.

[§ 41-26-17. Violations; complaint; notice](#)

(1) When the director or an employee of the department has reason to believe that a violation of this chapter, a rule or regulation promulgated under this chapter, any order of the director, or any limitation or condition of an approval has occurred, the director shall cause a written complaint to be served upon the alleged violator. The complaint shall specify the provisions of this chapter, rule or regulation, order or approval alleged to be violated and the facts alleged to constitute that violation. The complaint shall also require the alleged violator to appear before the director at a time and place specified in the notice to answer the charges. The time of appearance shall be at least five (5) days from the date of the service of the complaint.

(2) Except as provided in subsection (1) of this section, upon the filing of a complaint by any person alleging a violation of this chapter, a rule or regulation promulgated under this chapter, any order of the director or any limitation or condition of an approval, the director shall conduct an investigation of the complaint. Any complaint filed under this subsection shall be in writing, signed by the person making the allegation and filed with the director. If the director finds a basis for the complaint, the director shall cause written notice of the complaint, specifying the charges or allegations made, to be served upon the alleged violator. The notice shall also require the alleged violator to appear before the director at a time and place specified in the notice to answer the charges. The time of appearance shall be at least five (5) days from the date of the service of the complaint. If the director finds no basis for the complaint, the director shall dismiss the complaint.

(3) The director shall afford an opportunity for a hearing to the alleged violator at the time and place specified in the notice. On the basis of the facts determined at the hearing, the presiding official shall make findings of fact and

conclusions of law and enter an order. The director shall give written notice of that order to the alleged violator and to any other persons appearing at the hearing or making written request for notice of the order. In addition to ordering corrections in the operation or maintenance of a public water system, and other measures which, in the opinion of the director, are necessary to ensure compliance with this chapter or the federal act or to safeguard the public health, the director may assess penalties as provided in [Section 41-26-31](#).

(4) Except as otherwise expressly provided, any notice or other instrument issued by or under authority of this chapter may be served on any person affected and proof of that service may be made in like manner as in case of service of a summons in a civil action. Proof of service shall be filed in the office of the director. In addition, service may be made by mailing a copy of the notice, order or other instrument by certified mail, directed to the person affected at the person's last known post office address as shown by the files or records of the department, and proof thereof may be made by the affidavit of the person who did the mailing, filed in the office of the director.

§ 41-26-19. Authority of director; hearings

(1)(a) Any hearing under this chapter may be conducted by the director or an administrative law judge or an administrative hearing officer designated by the director. The presiding official may conduct the hearings in the name of the director at any time and place as conditions and circumstances may warrant. The presiding official shall have the record of any hearing prepared which the official has conducted for the director.

(b) In any pending matters under this chapter, the director shall have the same powers to subpoena witnesses, administer oaths, examine witnesses under oath and conduct the hearing, as is now vested by law in the Mississippi Public Service Commission, for hearings before it. In addition, the director may issue all subpoenas, both at the instance of the petitioner and of the director. At any hearing the director, the staff of the department, any other petitioner or any other interested person, may offer proof, present witnesses and submit evidence. At the discretion of the presiding official, comments may be taken from members of the public who are subscribers of the public water system. Witnesses who are subpoenaed shall receive the same fees and mileage as in civil actions. In case of contumacy or refusal to obey a notice of hearing or subpoena issued under this section, the circuit court shall have jurisdiction, upon application of the director or the director's representative, to issue an order requiring that person to appear and testify or produce evidence as the case may require and any failure to obey that order of the court may be punished by the court as contempt. Failure to appear at any hearing, without prior authorization to do so from the director or the director's representative, may result in the director finding the alleged violator guilty of the charges complained of by default. An order may be entered, including the assessment of a penalty, which, in the opinion of the director, will best further the purposes of this chapter.

(2) All hearings shall be recorded either by a court reporter or by tape or mechanical recorders and subject to transcription upon order of the director or any interested person. If the request for transcription originates with an interested person, that person shall pay the cost prior to the production of the transcription.

§ 41-26-21. Final order; appeal procedure

Following the hearing, the presiding official shall enter an order which shall become a final order of the director, unless the petitioner or other interested person appearing at the hearing, shall, within ten (10) days after the date of the final order was made, appeal to the Chancery Court of the First Judicial District of Hinds County or the chancery court of the county of the situs, in whole or in part. The petitioner or other interested person shall give a cost bond with sufficient sureties, payable to the state in the sum of not less than One Hundred Dollars (\$100.00) nor more than Five Hundred Dollars (\$500.00), to be fixed in the order appealed from. The cost bond shall be filed with and approved by the director, who shall certify the bond, together with a certified copy of the record of the hearing in the matter, to the chancery court, which shall be the record of the cause. Except as provided in this section, an appeal to the chancery court as provided in this section shall not stay the execution of a final order of the director.

Any person who is aggrieved by any final order or other decision issued under this section may, within ten (10) days after the date of that order or decision, petition the Chancery Court of the First Judicial District of Hinds County or the chancery court of the county of the situs, in whole or in part, for an appeal with supersedeas. The chancellor shall grant a hearing on that petition. Upon good cause shown, the chancellor may grant the appeal with supersedeas. The appellant shall be required to post a bond with sufficient sureties according to law in an amount to be determined by the chancellor. Appeals shall be considered only upon the record as made at the hearing before the presiding official. The chancery court shall always be deemed open for hearing of appeals and the chancellor may hear the appeal in termtime or in vacation at any place in the chancellor's district. The appeal shall have precedence over all civil cases, except election contests. The chancery court shall review all questions of law and of fact. If no prejudicial error is found, the matter shall be affirmed and remanded to the director for enforcement. If a prejudicial error is found, the matter shall be reversed and the chancery court shall remand the matter to the director for appropriate action as may be indicated or necessary under the circumstances. Appeals may be taken from the chancery court to the Supreme Court in the manner as now required by law, but if a supersedeas is desired by the party appealing to the chancery court, that party may apply for the supersedeas to the chancellor, who shall award a writ of supersedeas, without additional bond, if in the chancellor's judgment material damage is not likely to result. If material damage is likely to result, the chancellor shall require a supersedeas bond as deemed proper, which shall be liable to the state for any damage.

§ 41-26-23. Drinking Water Quality Analysis Fund

(1) There is created in the State Treasury a fund to be designated as the "Drinking Water Quality Analysis Fund." The fund shall be treated as a special trust fund. Interest earned on the principal in the fund shall be credited by the Treasurer to the fund. The fund may receive monies from any available public or private source, including fees, proceeds and grants. The department shall expend or utilize monies in the fund to pay all reasonable direct and indirect costs of water quality analysis and related activities as required by the federal Safe Drinking Water Act, as amended. Monies in the fund at the end of the fiscal year shall be retained in the fund for use in the succeeding fiscal year. Except as provided in subsection (5) of this section, if the annual fees collected exceed the cost of administering the water quality analysis program in that fiscal year, the excess shall be applied to the cost of administering the program in the succeeding fiscal year. In the succeeding fiscal year, the total to be collected from fees shall be reduced by the excess retained in the fund and the assessment rates shall be adjusted proportionately.

(2) The department annually shall assess and collect fees for water quality analysis and related activities as required by the federal Safe Drinking Water Act, as amended, which shall not exceed Three Dollars (\$3.00) per connection or Forty Thousand Dollars (\$40,000.00) per system, whichever is less. The department annually shall adopt by rule, in accordance with the Administrative Procedures Law and following a public hearing, a fee schedule to cover all reasonable direct and indirect costs of water quality analysis and related activities as required by the federal Safe Drinking Water Act, as amended. In adopting a fee schedule, the department shall consider the recommendations of the advisory committee created in this section, if those recommendations are made in a timely manner as provided.

(3) An advisory committee is created to study the program needs and costs for the implementation of the water quality analysis program and to conduct an annual review of the needs and costs of administering that program. The annual review shall include an independent recommendation on an equitable fee schedule for the succeeding fiscal year. Each annual review report shall be due to the department by May 1. The advisory committee shall consist of one (1) member appointed by the Mississippi Rural Water Association, one (1) member appointed by the Mississippi Municipal Association, one (1) member appointed by the Mississippi Association of Supervisors and one (1) member appointed by the Mississippi Water and Pollution Control Operators Association, Inc.

(4) All suppliers of water for which water quality analysis and related activities as required by the federal Safe Drinking Water Act, as amended, are performed by the State Department of Health shall pay the water quality analysis fee within forty-five (45) days following receipt of an invoice from the department. In the discretion of the

department, any supplier of water required to pay the fee shall be liable for a penalty equal to a maximum of two (2) times the amount of fees due and payable plus an amount necessary to reimburse the costs of delinquent fee collection for failure to pay the fee within ninety (90) days following the receipt of the invoice. Any person making sales to customers of water for residential, noncommercial or nonagricultural use and who recovers the fee required by this section or any portion thereof from any customer shall indicate on each statement rendered to customers that these fees are for water quality analyses required by the federal government under the Safe Drinking Water Act, as amended.

(5) There is created within the Drinking Water Quality Analysis Fund an equipment capital expenditure account, hereinafter referred to as the "account." The department may transfer any excess fees, not exceeding ten percent (10%) of the total fees assessed under this section, to the account. The balance in the account shall not exceed Five Hundred Thousand Dollars (\$500,000.00). Funds in the account shall be used by the department, as appropriated by the Legislature, to defray the costs of purchasing new equipment or repairing existing equipment for the analysis of drinking water.

§ 41-26-25. Public Water System Assistance Fund

(1)(a) There is created in the State Treasury a fund to be designated as the "Public Water System Assistance Fund." The fund shall contain two (2) accounts, designated as the "Public Water System Technical Assistance Account" and the "Public Water Systems Bond Operations Account."

(b) Monies in the Public Water System Technical Assistance Account shall be used to pay the reasonable direct and indirect costs of providing technical assistance to public water systems under the program established in [Section 41-26-5](#). Monies in the Public Water Systems Bond Operations Account shall be used as ordered by the court under [Section 41-26-31](#).

(2) Expenditures may be made from the fund upon requisition by the director.

(3) The fund shall be treated as a special trust fund. Interest earned on the principal shall be credited by the Treasurer to the fund.

(4) The fund may receive monies from any available public or private source, including, but not limited to, collection of fines, penalties or fees, proceeds from bond or other financial security forfeitures, interest, grants, taxes, public and private donations, petroleum violation escrow funds or refunds, and appropriated funds.

§ 41-26-31. Penalties for violation of chapter; enforcement procedures

(1) If the director finds any person guilty of a violation of this chapter, any rule or regulation or written order of the director or any condition or limitation of an approval, the director may assess and levy a civil penalty of not more than Twenty-five Thousand Dollars (\$25,000.00) for each violation, except as provided in [Section 41-26-8\(3\)](#). Each day of a continuing violation is a separate violation. Any penalty shall be assessed and levied by the director after a hearing as provided in this chapter. Appeals from the imposition of the civil penalty may be taken to the Chancery Court of the First Judicial District of Hinds County or the chancery court of the county of the situs, in whole or in part, as provided in [Section 41-26-15](#). If the appellant desires to stay the execution of a civil penalty assessed under this section, the appellant shall give bond with sufficient sureties of one or more guaranty or surety companies authorized to do business in this state, payable to the State of Mississippi, in an amount equal to double the amount of any civil penalty assessed by the director, as to which the stay of execution is desired. If the judgment is affirmed, the appellant shall pay all costs of the assessment entered against the appellant.

(2) In addition to or in lieu of the penalty provided in subsection (1) of this section, the director may institute and

maintain in the name of the state any proceedings necessary or appropriate to enforce this chapter, any rule or regulation or written order of the director or any condition or limitation of an approval. The proceedings may be filed and heard in the appropriate circuit, chancery, county or justice court of the county in which venue may lie, or in the Circuit, Chancery or County Court of the First Judicial District of Hinds County, as the case may be. The director may obtain mandatory or prohibitory injunctive relief, either temporary or permanent. In cases of imminent and substantial hazard or endangerment, it shall not be necessary that the state plead or prove: (a) that irreparable damage would result if the injunction did not issue; (b) that there is no adequate remedy at law; or (c) that a written order has first been issued for the alleged violation.

(3) In determining the amount of any penalty under this section, the director shall consider at a minimum:

- (a) The willfulness of the violation;
- (b) Costs of restoration and abatement;
- (c) Economic benefit as a result of noncompliance;
- (d) The seriousness of the violation, including any harm or hazard to the public health and welfare; and
- (e) Past performance history.

(4)(a) The owner of any public water system found in violation of this chapter may submit to the director a plan for:

- (i) The physical consolidation of the system with one or more other viable public water systems;
- (ii) The consolidation of significant management and administrative functions of the system with one or more other viable public water systems or contract or satellite management of the system; or
- (iii) The transfer of ownership of the system.

(b) If the director approves the plan and the plan is fully implemented as determined by the director, the director shall waive any penalty assessed under this section for a violation identified in the approved plan before the date on which the action specified in the approved plan was completed.

(5)(a) In addition to or in lieu of any other penalty imposed under this section, the director may require the owner of any public water system found in violation to provide a performance bond or other acceptable financial security instrument including, but not limited to, cash, negotiable bonds of the United States government or the state, or negotiable certificates of deposit or a letter of credit of any bank organized or transacting business in the state and insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation or a similar federal banking or savings and loan insurance organization to the department. The bond or financial security must be approved by the director. The purpose of the bond or other financial security shall be the protection of the health and welfare of the customers of the system. The board shall establish by regulation the acceptable forms of financial security and the amount of financial security required for the various types and sizes of facilities. The director shall notify the owner, in writing, of the form and amount of security required.

(b) The director may petition the Chancery Court of the First Judicial District of Hinds County for forfeiture of the bond or other financial security, if the director determines that:

- (i) The continued operation or lack of operation of the system covered by this section represents a threat to the

public health and welfare;

(ii) All reasonable and practical efforts under the circumstances have been made to obtain corrective actions from the violators; and

(iii) It does not appear that corrective actions can or will be taken within an appropriate time as determined by the director, or it appears the facility has been abandoned.

(c) The proceeds of any forfeiture shall be deposited in the Public Water Systems Bond Operations Account of the Public Water Systems Assistance Fund and shall be used as ordered by the court to address or correct the noncompliance at the system. The proceeds shall be in addition to any other funds otherwise appropriated to the department and may be expended under the authority of this section without additional action of the Legislature or the Department of Finance and Administration.

(d) If the court finds that a system has been abandoned or that services of a system have been terminated, the court may enter any orders regarding continued operations of that system as it deems necessary to protect the public health and welfare.

(6)(a) Any penalty assessed by the director under this section shall be due and payable within thirty (30) days after notification of the violator of the order, and shall be due and payable jointly or severally, as the order may require or allow.

(b) If the assessed penalty is not paid within the thirty (30) days, or within any additional time as the director may allow, the director may file suit in the Circuit Court of the First Judicial District of Hinds County or any other court with appropriate jurisdiction to enforce the order, collect the penalty and recover reasonable attorney's fees and all court costs.

(c) A copy of the administrative order shall be sufficient proof as to the decision of the director.

(7) All fines and penalties recovered or collected by the director under subsection 1 of this section shall be deposited in the Public Water Systems Technical Assistance Account of the Public Water Systems Assistance Fund.

Community Public Water System

§ 41-26-101. Management training for board members

(1) Each member elected or reelected after June 30, 1998, to serve on a governing board of any community public water system, except systems operated by municipalities with a population greater than ten thousand (10,000), shall attend a minimum of eight (8) hours of management training within two (2) years following the election of that board member. Any member failing to complete the management training within two (2) years after his election shall be subject to removal from the board by the remaining members. If a board member has undergone training and is reelected to the board, that board member shall not be required to attend training as provided by this subsection.

(2) The management training shall be organized by the State Department of Health, in cooperation with the Mississippi Rural Water Association and other organizations. The management training shall include information on water system management and financing, rate setting and structures, operations and maintenance, applicable laws and regulations, ethics, the duties and responsibilities of a board member and other information deemed necessary by the department after consultation with the association and other organizations. The department shall develop and

provide all training materials. The department may charge a fee not to exceed Seventy-five Dollars (\$75.00) per member to defray the actual costs of providing the materials and training. These costs shall be reimbursed to the board member as an expense of the community public water system.

(3) To avoid board members having to interfere with their jobs or employment, management training sessions may be divided into segments and, to the greatest extent possible, shall be scheduled for evening sessions. The department shall conduct management training on a regional basis and shall use community college or other public facilities for the convenience of board members.

(4) The department may make exceptions to and grant exemptions and variances to the requirements of this section for good cause shown.

[§ 41-26-103. Repealed by Laws 2002, Ch. 388, § 1, eff. July 1, 2003](#)

Current through End of the 2007 Regular Session and 1st Ex. Session