

**Joint Legislative Committee on Performance
Evaluation and Expenditure Review (PEER)**

Report to
the Mississippi Legislature



A Review of the Department of Health's Onsite Wastewater Disposal System Program and Food Protection Program

The Mississippi State Department of Health (MSDH) is a multifaceted agency whose mission is to promote and protect the health of the citizens of Mississippi. Within the Department of Health, the Bureau of Environmental Health's Onsite Wastewater Disposal System Program recommends and approves individual wastewater disposal systems for small commercial buildings, restaurants, and single residential dwellings. The bureau's Food Protection Program inspects food establishments (other than those of churches, church-related and private schools, and other nonprofit or charitable organizations) to ensure compliance with state and federal laws, rules, and regulations.

Regarding the Onsite Wastewater Disposal System Program, PEER found that regulation of wastewater disposal systems has been subject to potential inconsistencies because for those homeowners choosing to have an engineer inspect their systems, an arrangement that is allowed by state law, MSDH does not require that the engineer redesign or alter an insufficient wastewater system to meet the department's standards. This could result in potential health hazards and the possible expense of replacing systems.

Regarding the Food Protection Program, MSDH environmentalists do not always adhere to program policy governing the frequency and timeliness of inspections of food facilities. This reduces assurance to the public that the food served at these facilities is safe.

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The Committee assigns top priority to written requests from individual legislators and legislative committees. The Committee also considers PEER staff proposals and written requests from state officials and others.

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December 19, 2003

Honorable Ronnie Musgrove, Governor
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On December 19, 2003, the PEER Committee authorized release of the report entitled **A Review of the Department of Health's Onsite Wastewater Disposal System Program and Food Protection Program.**

A handwritten signature in cursive script that reads "Mary Ann Stevens".

Representative Mary Ann Stevens, Chair

This report does not recommend increased funding or additional staff.

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A Review of the Department of Health's Onsite Wastewater Disposal System Program and Food Protection Program

Executive Summary

Introduction

PEER sought to determine whether the Mississippi State Department of Health (MSDH) effectively protects public health and welfare through its wastewater disposal system and food protection regulatory programs. PEER examined whether MSDH:

- uniformly administers these regulatory programs in accordance with policy and procedure;
- conducts inspections of locations and facilities in a timely manner; and,
- assures the quality of the regulatory programs by randomly inspecting regulatory actions and systematically investigating complaints.

Background

The State Department of Health is a multifaceted agency whose mission is to promote and protect the health of the citizens of Mississippi. For purposes of program delivery, MSDH's eighty-two county health departments are organized into nine districts. Each district employs a district environmentalist and county environmentalists to implement and deliver the onsite wastewater disposal and food protection programs, as well as other programs. Most environmentalists perform a variety of inspections and do not work in only one regulatory program.

The Department of Health's Onsite Wastewater Disposal System Program is responsible for recommending and approving individual wastewater disposal systems. The overall goal of the program is to reduce, as much as possible, the potential for the spread of disease through water and improper disposal of human waste and disease vectors. Districts are responsible for

implementation of the program and receive technical assistance from the state office.

The Department of Health's Food Protection Program is responsible for inspection of food establishments (other than those of churches, church-related and private schools, and other nonprofit or charitable organizations) to ensure compliance with state and federal laws, rules, and regulations. The department's regulations governing food protection require that all permitted food establishments be inspected at least once annually to receive or renew a food permit. County environmentalists are responsible for conducting inspections of food establishments and receive training and technical assistance from MSDH's food protection program specialists.

Conclusions on Management of the Onsite Wastewater Disposal System Program

Regulation of wastewater systems has been subject to potential inconsistencies because for those homeowners choosing to have an engineer inspect their systems, MSDH does not require that the engineer redesign or alter an insufficient wastewater system to meet the department's standards.

State law does not require homeowners to use the county health department for soil/site evaluation in preparation for an onsite wastewater disposal system. The law permits a professional engineer to conduct the soil/site evaluation and to recommend or design an appropriate wastewater disposal system.

If wastewater disposal systems designed and installed by professional engineers do not meet regulatory standards, the Department of Health does not require correction of those systems. This has affected the consistency of the quality of wastewater disposal systems, possibly resulting in systems that do not meet state requirements, with potential health hazards and possible expense of replacing systems.

In regulating wastewater disposal systems within its purview, MSDH has improved program administration since FY 2003.

Since July 2003, MSDH has operated an automated wastewater disposal system approval process that has improved uniformity in selection (and recommendation) of appropriate wastewater disposal systems and compliance with rules and regulations. Also since that time, the onsite wastewater disposal system program has utilized a computerized complaint administration system whereby complaints are systematically logged, investigated, and tracked to resolution.

In February 2003, MSDH implemented a centralized quality assurance function to ensure that environmentalists conduct all inspections uniformly and according to regulations.

Conclusions on the Management of the Food Protection Program

MSDH environmentalists do not always adhere to program policy governing the frequency and timeliness of inspections of food facilities.

MSDH requires food facilities to be inspected from one to four times per year, according to the risk level of the establishment. (Risk levels range from 1 to 5, with 1 being the facilities with the lowest risk [e.g., coffee carts] and 5 being the facilities with the highest risk [e.g., continuous operation buffets].) In FY 2003, MSDH environmentalists did not always adhere to program policy governing frequency of inspections. For example, in one district, 118, or approximately 58%, of the 204 risk level 4 facilities did not receive the required number of inspections.

MSDH policy directs environmentalists to conduct a follow-up inspection of a food establishment when a routine inspection reveals a violation of any critical item. However, MSDH environmentalists do not always conduct follow-up inspections in a timely manner. For example, in Fiscal Year 2003, in one district, 29% of follow-up inspections were not conducted within thirty days of the initial inspection that found the violation.

MSDH policy requires renewal inspections of food facilities within a period of up to sixty days prior to the permit date and no longer than five days after the permit date. Of the total 11,064 facilities requiring renewal permit inspections in FY 2003, PEER identified 2,526 for which the department did not adhere to its policy governing the timeliness of permit inspections.

MSDH has improved program oversight and control, which contributes to improved enforcement of food safety regulations.

The Food Protection Program began a quality assurance program about a year ago to ensure uniformity among regulatory staff in interpretation and application. Both Food Protection Program staff and MSDH's Division of Internal Audits staff now conduct quality assurance reviews to ensure that staff comply with policies and procedures regarding regulation of food facilities.

Onsite Wastewater Disposal System Program

1. MSDH should increase its regulatory oversight of professionally engineered wastewater systems by requiring engineers to submit a plan of corrective action on deficient systems. MSDH should amend its policy and require issuance of a letter from the department addressing any concerns or problems with engineer-designed and installed systems that need final approval. In response to the letter, the engineer should submit a written corrective action plan to illustrate how he or she intends to correct the problem.
2. The Legislature should amend MISS. CODE ANN. § 41-67-3 (1972) to require that MSDH approve all onsite wastewater disposal systems to any dwelling house, mobile home or residence prior to the connection of electricity, water, or natural gas.

Food Protection Program

3. MSDH should inspect food establishments with the frequency required by regulations and adhere to the timeliness standards specified in regulations.
4. MSDH should review district resources to determine why some districts are not performing to regulatory guidelines. MSDH should evaluate staffing requirements to determine whether resources should be reallocated to fill vacant district environmentalists' positions to enhance program performance.
5. MSDH should require district environmentalists to utilize the restaurant inspection computer program monthly as a quality assurance tool to ensure that environmentalists are performing both renewal and minimum required inspections on a timely basis.
6. The MSDH Food Protection Program should implement a risk control plan for follow-up inspections to ensure that facilities are inspected in a timely manner. Depending on the severity of a non-critical violation, the program's staff should establish general guidelines and time frames for follow-up inspection. The food facility should submit a corrective action plan if the non-critical violation cannot be corrected during thirty days.

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A Review of the Department of Health's Onsite Wastewater Disposal System Program and Food Protection Program

Introduction

Authority

In response to a citizen's complaint, the PEER Committee reviewed the Mississippi State Department of Health's Onsite Wastewater Disposal System Program and Food Protection Program. PEER conducted the review pursuant to the authority granted by MISS. CODE ANN. Section 5-3-57 et seq. (1972).

Scope and Purpose

PEER sought to determine whether the Mississippi State Department of Health (MSDH) effectively protects public health and welfare through its wastewater disposal system and food protection regulatory programs by:

- regulating the installation and operation of wastewater disposal (sewerage) systems to assure sanitary environmental conditions; and,
- regulating food service establishments to assure food safety.

To assess MSDH's regulatory programs in each of these areas, PEER examined whether MSDH:

- uniformly administers its regulatory program in accordance with policy and procedure;
- conducts inspections of locations and facilities in a timely manner; and,
- assures the quality of the regulatory programs by randomly inspecting regulatory actions and systematically investigating complaints.

Method

In conducting this review, PEER:

- reviewed relevant sections of state laws regarding the MSDH and public health;
- analyzed data from both the onsite wastewater disposal system and food protection computer programs;
- interviewed personnel with the MSDH; and,
- analyzed MSDH's policies and procedures for the food protection and onsite wastewater disposal system regulatory programs.

Role of the Department of Health in Regulating Onsite Wastewater Disposal Systems and Food Protection

The Mississippi State Department of Health is a multifaceted agency whose mission is to promote and protect the health of the citizens of Mississippi.

The Mississippi State Department of Health is a multifaceted agency whose mission is to promote and protect the health of the citizens of Mississippi. The Department of Health operates under the policy guidance of the Board of Health. For purpose of program delivery, MSDH's eighty-two county health departments are organized into nine districts, each headed by a district health officer (see Exhibit 1, page 4). The districts are responsible for implementation and execution of public health programs for the state. The Department of Health is the regulatory body for all district and county health departments. The state agency provides technical assistance to the counties and publishes and interprets all relevant public health program policies.

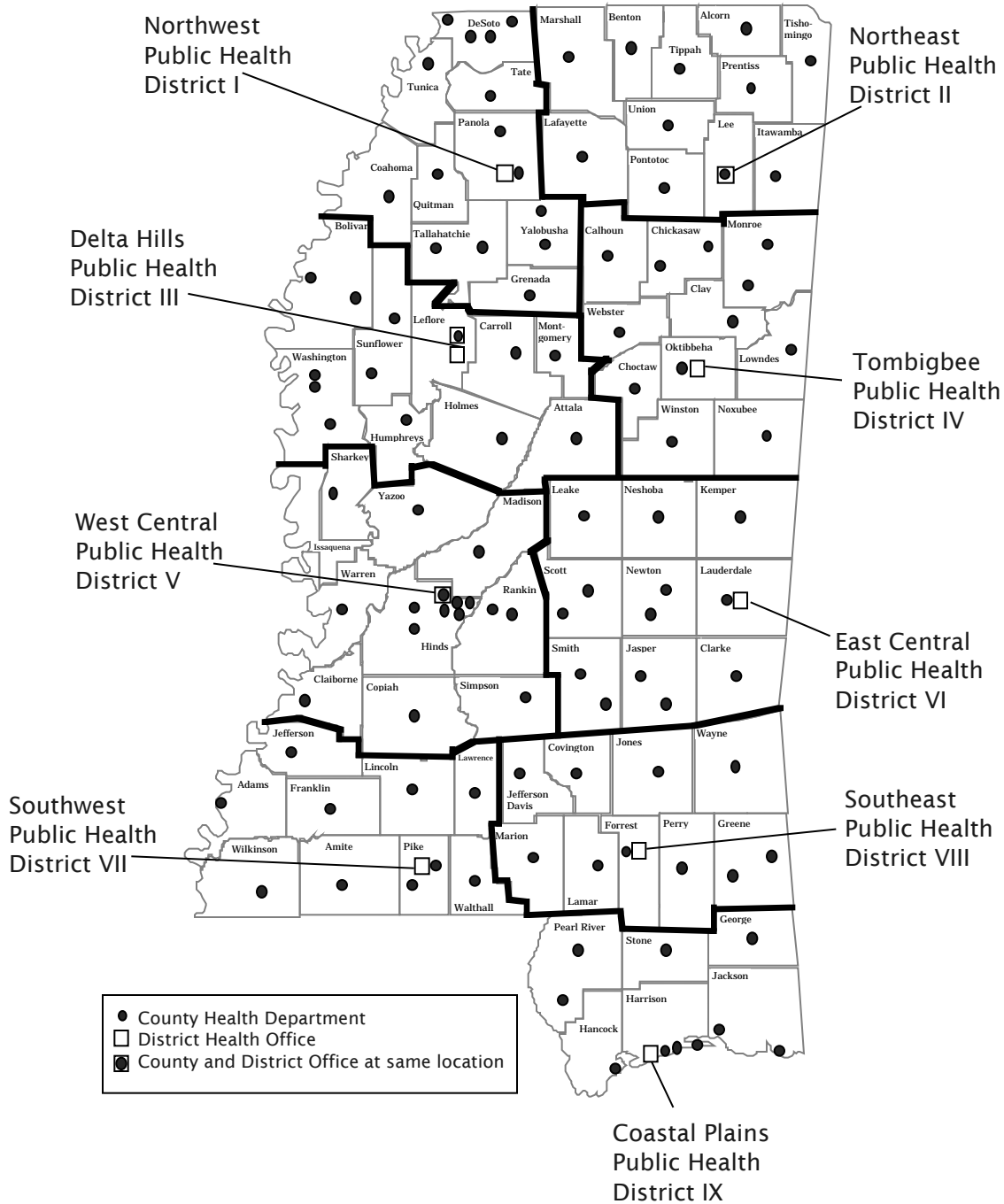
Each district employs a district environmentalist and county environmentalists to implement and deliver public health programs in Mississippi. As of November 17, 2003, 102 public health environmentalists, excluding district environmentalists, were distributed within the state's eighty-two counties. All county environmentalists are trained in various public health program capacities that include inspections related to food protection, recreational vehicle parks, onsite wastewater disposal systems, private water supplies, and tanning beds. Most environmentalists perform a variety of inspections and do not work in only one regulatory program.

Responsibilities of the Two Selected Regulatory Programs

PEER's review focused on two regulatory public health programs within the Office of Health Protection: the onsite wastewater disposal system program and the food protection program. Both programs are located within the Bureau of Environmental Health of the State Department of Health.

The Onsite Wastewater Disposal System Program is responsible for recommending and approving individual wastewater disposal systems. The overall goal of the onsite wastewater program is to reduce, as much as possible, the potential for the spread of disease through water and improper disposal of human waste and disease vectors. Districts are responsible for implementation of the program and receive technical assistance from the state office.

Exhibit 1: MSDH Public Health Districts and County Health Departments



SOURCE: Mississippi State Department of Health

The Food Protection Program is responsible for inspection of food establishments (other than those of churches, church-related and private schools, and other nonprofit or charitable organizations) to ensure compliance with state and federal laws, rules, and regulations. The department's regulations governing food protection require that all permitted food establishments be inspected at least once annually to receive or renew a food permit (MSDH 300, Sec. 10B-07). County environmentalists are responsible for conducting inspections of food establishments and receive training and technical assistance from MSDH's food protection program specialists.

Review of the MSDH Bureau of Environmental Health's Onsite Wastewater Disposal System Program

Background

Program Purpose

The Department of Health regulates individual wastewater systems of small commercial buildings, restaurants, and single residential dwellings. The Department of Environmental Quality regulates all other wastewater systems.

The primary objective of MSDH's wastewater program is to ensure that all individual wastewater systems are in accordance with the department's regulation governing individual wastewater disposal systems. The regulations establish standards regarding the design, installation, and approval of individual wastewater systems. The regulations also establish requirements for persons engaged in the installation of wastewater systems, septic tank pumping and disposal, and the manufacture of septic tanks and alternative individual wastewater disposal systems to the extent necessary to protect public health.

The Department of Health is responsible for regulation of individual wastewater systems. This includes small commercial buildings, restaurants, and single residential dwellings. The Department of Environmental Quality regulates all other wastewater systems, such as clusters (small residential areas hooked up to a treatment center or lagoon outside the regular municipal collection system) and central sewer systems (such as municipal sewerage systems).

Statutory Authority for Wastewater Protection

State law provides that either the Board of Health or a professional engineer is to supervise design, construction, operation, and maintenance of individual onsite wastewater disposal systems.

MSDH has statutory responsibilities regarding the manufacturing, installation, operation, and maintenance of individual onsite wastewater disposal systems in the state.

MISS. CODE ANN. Section 41-67-3 (1) (1972) authorizes the State Board of Health to exercise general supervision over the design, construction, operation, and maintenance of individual onsite wastewater disposal systems with flows substantially equivalent to a single-family residential generator, except when the property owner or lessee chooses to employ a professional engineer to comply with this chapter.

MISS. CODE ANN. 41-67-5 (1972) states that no owner, lessee, or developer shall construct or place any mobile, modular, or permanently constructed residence, building, or facility which may require the installation of an individual onsite wastewater disposal system without having first submitted a notice of intent to the department. Upon receipt of a notice of intent, the

department shall provide the owner, lessee, or developer with complete information on individual onsite wastewater disposal systems, including but not limited to, applicable rules and regulations regarding the design, construction, installation, operation, and maintenance of individual onsite wastewater disposal systems and requirements of lending institutions for approval of the systems.

MISS. CODE ANN. Section 41-67-6 (1972) states that within five working days following the receipt of notice and intent and plot plan by an owner, lessee, or developer of any lot or tract of land, the department shall conduct a soil and site evaluation, except in cases where a professional engineer provides services relating to the design, construction or installation of an individual onsite wastewater disposal system to comply with this chapter. The law requires within ten additional working days in which the department should make recommendations to the owner, lessee, or developer of the type or types of individual onsite wastewater disposal systems suitable for installation on the lot or tract, unless there are conditions requiring further investigation that are revealed in the initial evaluation. The law further states that the department or professional engineer shall provide complete information, including all applicable requirements and regulations on all systems recommended. According to the statute, the owner, lessee or developer shall have the right to choose among the systems.

Staffing

County environmentalists conduct wastewater soil/site inspections, as well as food facility inspections and other types of health inspections. In FY 2003, environmentalists conducted a total of 12,646 soil/site evaluations for onsite wastewater systems.

Wastewater soil/site inspections and approvals are performed by county environmentalists who are trained not only to perform these types of inspections, but also food facility inspections, tanning facility, recreational vehicle parks, family day care homes, and water sample collections. In FY 2003, environmentalists conducted a total of 12,646 soil/site evaluations for onsite wastewater systems. As of November 17, 2003, MSDH employed 102 public health environmentalists, excluding district supervisors. As of that same date, thirty-one public health environmentalist positions were vacant. MSDH employs three wastewater program specialists (located in the central office in Jackson) to oversee wastewater activities in each of the nine districts. Each program specialist is assigned districts and works with the district environmentalist and county environmentalist to ensure compliance with regulations and policies.

Conclusions on Management of the Onsite Wastewater Disposal System Program

Regulation of wastewater systems has been subject to potential inconsistencies because for those homeowners choosing to have an engineer inspect their systems, MSDH does not require that the engineer redesign or alter an insufficient wastewater system to meet the department's standards. In regulating wastewater disposal systems within its purview, MSDH has improved program administration since FY 2003 by implementing a systematic automated approval process, complaint administration process, and quality assurance function.

Exclusion of Professionally Engineered Systems from Compliance Requirements

If wastewater disposal systems designed and installed by professional engineers do not meet regulatory standards, the department does not require correction of those systems. As long as an engineer's seal accompanies the design, state law allows the system to be installed.

Approval Requirements

As noted on page 6, MISS. CODE ANN. Section 41-67-3 (1) (1972) does not require homeowners to use the county health department for the soil/site evaluation in preparation for an onsite wastewater disposal system. The law permits a professional engineer to conduct the soil/site evaluation and to recommend or design an appropriate wastewater system.

Although state law does not require county health departments to make all wastewater system recommendations, some counties have ordinances that require a homeowner to seek final approval from the county health department before a resident can inhabit the home or connect the utilities.

Although an environmentalist may note regulatory inconsistencies with a wastewater disposal system, MSDH's current practice is to allow final approval as long as the engineer's seal accompanies the design, without requiring redesign or alteration of the system based on the environmentalist's concerns.

Twenty-six of the eighty-two counties currently have ordinances regulating the disposal of wastewater. The county ordinances require the county environmentalist to either (a) return onsite after installation and make a final approval of the system recommended by the health department; or (b) make a final approval of the engineer designed system. In the second case, the engineer signs an affidavit that he/she installed the system according to all requirements and regulations applicable to the specific wastewater system. The department's policies require the environmentalist to then make a written response to the engineer that states concerns or problems with the wastewater system. Although the environmentalist notes any regulatory inconsistencies with the system, MSDH's current practice is to allow final approval as long as the engineer's seal accompanies the design, without requiring redesign or alteration of the system based on the environmentalist's concerns.

In those counties without ordinances regulating the disposal of wastewater and sewage, the homeowner can choose either the system recommended by the county health department or by a professional engineer, without the step of final approval by the county health department.

The present system of potentially bypassing the environmentalist's professional opinion reduces accountability and affects the consistency of the quality of wastewater disposal systems.

The problem that arises with the current approval requirements is that if a homeowner contracts with a professional engineer to design a wastewater disposal system, the engineer is trained in engineering techniques and is primarily concerned with the desires and cost requirements of the homeowner. The environmentalists who approve wastewater systems receive a year of specialized training that includes training on wastewater disposal systems and are charged with protecting the public health. The present system of potentially bypassing the environmentalist's professional opinion reduces accountability and affects the consistency of the quality of wastewater disposal systems. This could result in systems that do not meet state requirements, with potential health hazards and possible expense of replacing wastewater disposal systems. Examples of these problems have occurred in Jackson County, as discussed in the following section.

Jackson County Individual Wastewater System Problems

Two subdivisions in Jackson County have been plagued with problems due to malfunctioning wastewater systems that were designed and installed by engineers.

Two subdivisions in Jackson County have been plagued with problems due to malfunctioning wastewater systems that were designed and installed by engineers. According to wastewater program specialists, in Ocean Beach Estates, of the one hundred engineer-designed wastewater systems, eighty to ninety of the systems failed. Many of the systems were not designed to meet regulatory standards because the engineers made minor alterations to meet the homeowners' needs. The Ocean Beach Estate wastewater system malfunctions can be attributed to two issues: engineer-designed systems that did not meet regulatory standards and problems encountered because the coastal area possesses a high water table and sandy soil does not show evidence of water.

Another subdivision in Jackson County, Big Hill Acres, has experienced problems with engineered-designed systems. An engineer designed 353 systems for the subdivision and MSDH received eighty-seven complaints on individual systems; of those, thirty-eight were found to be malfunctioning, (e. g., discharging waste water that did not meet MSDH regulations). These were systems that neither the county health department nor MSDH had approved; the systems were accompanied by the professional engineer's seal.

MSDH's Wastewater Regulatory Efforts

Automated Approval Process

Since July 2003, MSDH has operated an automated wastewater system approval process that has improved uniformity in selection (and recommendation) of appropriate wastewater disposal systems and compliance with rules and regulations.

As discussed above, the Mississippi Department of Health, in conjunction with the county health departments, has a regulatory program in place to conduct onsite wastewater evaluations utilizing environmentalists in each of the nine health districts (although, as stated above, homeowners may choose to use professional engineers to conduct the evaluations). A homeowner submits a notice of intent to the county department of health with the fifty-dollar fee for the inspection and the environmentalist has five days to perform the evaluation. The environmentalist goes to the lot and performs a soil/site evaluation that includes testing the soil for texture, color, depth, and mottles (spots or blotches of different shades of color interspersed in the soil). Once the environmentalist completes the evaluation, he/she enters the information into the department's automated system for wastewater system selection. [County environmentalists have access to computer systems in the county health offices that are electronically linked to the central system operated in the Jackson MSDH office.]

Since July 1, 2003, environmentalists have used a computer program that recommends a wastewater system depending on data entered (unless the homeowner chooses to employ a professional engineer). The program analyzes data collected from the soil/site evaluation and utilizes regulation standards to determine what system will work, taking into consideration soil composition, lot size, and house placement.

Prior to July 1, 2003, environmentalists determined appropriate individual wastewater systems by utilizing regulations established by the MSDH, which used Federal Environmental Protection Agency (EPA) standards as a guideline and distributed in manuals to the county offices. For example, the environmentalist would consider lot size, water supply, the number of bedrooms and occupants, horizon and depth of the soil, texture of the soil, and soil color to determine the appropriate system. The environmentalist would consult the regulations and recommend an individual wastewater system. The previous system did not assure uniformity in application of regulations because the selection method relied on a number of different environmentalists deciding on an appropriate wastewater system, leaving room for judgment and human error. Also, the previous system did not provide for centralized logging of inspections and maintenance of a computerized database on which a random sample of cases could be selected for quality assurance review.

After July 1, 2003, the evaluation process changed and a computer program now recommends a wastewater system depending on data entered by the county environmentalist (again, unless the homeowner chooses to employ a professional engineer to recommend a system). County environmentalists continue to perform the onsite evaluations, but then enter collected data into the computer program and the program determines an appropriate system. The computer program is built around the department's regulations and incorporates information from MSDH Policy and Procedure for Governing Individual Onsite Wastewater Disposal. The program analyzes the data collected

from the soil/site evaluation and utilizes regulation standards to determine what system will work, taking into consideration soil composition, lot size, and house placement. The department then sends a letter to the homeowner that recommends an approved wastewater system or disapproves the lot for any type of system.

Complaint Administration Process

Since July 2003, the onsite wastewater disposal program has utilized a computerized complaint administration system whereby complaints are systematically logged, investigated, and tracked to resolution.

When a complaint is lodged with either the county health department or the state health department regarding a wastewater disposal system, program staff enter the complaint into the computerized complaint administration system. It is the responsibility of the district environmentalist to ensure that all complaints receive the appropriate follow-up. The appropriate follow-up procedures are dependent upon the nature of the complaint. For example, if a homeowner complains that a neighbor's wastewater is running into his or her yard, an environmentalist goes onsite and evaluates the problem. The environmentalist evaluates the complaint and takes appropriate action. An individual can also lodge a complaint online and the districts follow the same procedures.

Quality Assurance Function

In February 2003, MSDH implemented a centralized quality assurance function to ensure that environmentalists conduct all inspections uniformly and according to regulations.

In February 2003, MSDH implemented a wastewater quality assurance function. In the past it had been the responsibility of the districts to monitor county environmentalists to ensure all necessary policies and procedures were being followed. The new quality assurance program involves both the district environmentalist and an MSDH program specialist to ensure that county environmentalists are performing soil/site evaluations uniformly across the state. The district environmentalist reviews both computer files and the hard copies of soil/site evaluations to determine whether environmentalists are recommending appropriate wastewater systems. Once a quarter, the district environmentalist examines a representative sample of approved systems (based on county population) and analyzes the soil/site evaluation with the system recommended for use. The district environmentalist goes to the site and performs his or her own soil/site evaluation to ensure the inspection was in accordance with proper policies and regulations.

After the district environmentalist reviews the files, the central office program specialist assigned to the district also reviews the sample for accuracy. The program specialist is responsible for

reviewing both the district and county environmentalists' work. For the first six months, district environmentalists and program specialists conducted reviews every month. If discrepancies were discovered in the environmentalists' work, these individuals attended refresher training courses.

Review of the MSDH Bureau of Environmental Health's Food Protection Program

Background

Program Purpose

The program's primary objective is to prevent foodborne illnesses resulting from the consumption of food at public eating establishments.

The primary objective of MSDH's food protection program is to prevent foodborne illnesses resulting from the consumption of food at public eating establishments. The program focuses on food handling and safety from the point at which food is received by the public eating establishment through the service or sale of the food to the customer. In order to serve food legally to the public, an eating establishment must first obtain an operating permit from MSDH following an onsite inspection for compliance with MSDH food safety and handling policies and procedures. In addition to the issuance of permits, MSDH's primary food protection regulatory activities include periodic health and sanitation inspections of permitted eating establishments and investigations of cases of reported foodborne illness.

Statutory Authority for Food Protection

The Board of Health regulates eating establishments where food or drink is regularly prepared, handled, and served for pay. It does not regulate food service of churches, church-related and private schools, and other nonprofit or charitable organizations.

State law authorizes the Board of Health to issue permits for public eating establishments, make rules and regulations, assess fees, and collect fines for non-compliance. MISS. CODE ANN. § 41-3-15 (4) (i) (1972) authorizes the Board of Health to establish standards for, and issue permits and exercise control over, any cafés, restaurants, and all other establishments, other than churches, church-related and private schools, and other nonprofit or charitable organizations, where food or drink is regularly prepared, handled, and served for pay. This section also requires that a permit be obtained from the Department of Health before such operations begin.

MISS. CODE ANN. §41-3-17 (1972) authorizes the Board of Health to make rules and regulations necessary to enable it to discharge its duties and powers and carry out the purposes and objectives of its creation. This section further authorizes the department to make sanitation rules and regulations to be enforced in the counties by the county health officer under the supervision and control of the Board of Health.

MISS. CODE ANN. §41-3-18 (1972) states that the Board of Health shall assess annual permit fees on food establishments as follows:

Assessment Category 1	\$15
Assessment Category 2	\$30
Assessment Category 3	\$70
Assessment Category 4	\$100
Assessment Category 5	\$150

A food establishment's assessment category is determined by the type of consumer served and the type of food preparation being utilized.

These assessment categories correspond to the food facility risk levels listed on page 17, with 1 being the level of facilities with the lowest risk and 5 being the level of facilities with highest risk.

This CODE section also authorizes the board to develop reasonable standards, rules, and regulations to define clearly each assessment category, based on factors such as the type of consumer served by the establishment (e.g., schools) and the type of food preparation being utilized (e.g., fast food).

MISS. CODE ANN. § 41-3-59 (1972) states that any person who knowingly violates provisions of the chapter is guilty of a misdemeanor and, on conviction, shall be punished by a fine not more than five hundred dollars or by imprisonment in the county jail for not more than six months, or by both.

Federal Regulations

MSDH derived its Food Code from the federal Food and Drug Administration's Recommended National Retail Food Regulatory Program Standards.

MSDH derived its revised 2001 Food Code, which serves as a guide to retail outlets on how to prevent foodborne illness, from the federal Food and Drug Administration's Recommended National Retail Food Regulatory Program Standards. The Food Code incorporates Hazard Analysis Critical Control Point (HACCP) principles in retail food inspection. HACCP systems are designed to prevent the occurrence of potential food safety problems by addressing the primary causes of foodborne illness. This is achieved by assessing the inherent risks attributable to a product or process and then determining the necessary steps that will control the identified risks. Adoption of HACCP principles by MSDH should aid the Food Protection Program's ability to protect public health by identifying critical risks prior to evolution into foodborne illness.

Staffing

Environmentalists conduct food facility inspections, as well as other types of health inspections. In FY 2003, environmentalists conducted 30,075 inspections of 11,064 food establishments.

In FY 2003, MSDH's Food Protection Program performed 30,075 inspections of 11,064 permitted food establishments (an average of 2.7 inspections per establishment). These permitted establishments include temporary establishments permitted for a specific event or occasion. As of November 17, 2003, MSDH employed 102 public health environmentalists (excluding district supervisors) whose responsibilities, in some cases, not only include inspections related to the food protection program, but inspections related to recreational vehicle parks, onsite wastewater disposal systems, private water supplies, and tanning beds (see Exhibit 2, below). As of that same date, thirty-one public health environmentalist positions were vacant. The exhibit shows the number of permitted establishments in each health district and the number of currently filled environmentalist positions.

Exhibit 2: Number of Food Facilities and Staff Environmentalists by Health District

<u>District</u>	<u>Total Establishments</u>	<u>Total Filled Environmentalist Positions</u>
1	1,076	11
2	1,414	14
3	921	10
4	817	8
5	2,241	21
6	756	7
7	675	7
8	1,028	9
9	<u>2,136</u>	<u>15</u>
Grand Total	<u>11,064</u>	<u>102</u>

NOTE: These establishments include temporary establishments permitted for a specific event or occasion.

SOURCE: Compiled by PEER from MSDH data.

Conclusions on Management of the Food Protection Program

Although PEER identified cases in which MSDH environmentalists do not adhere to program policy governing the frequency of inspection and timeliness of follow-up inspection, MSDH has improved program oversight and control, which contributes to improved enforcement of food safety regulations.

In assessing the regulatory function of the Food Protection Program, PEER evaluated food facility inspection computer files. In reviewing food facility inspection, PEER found annual permit inspections and follow-up inspections conducted after a failed inspection were not completed within the time frame prescribed by the department's policy.

Frequency of Inspection

MSDH environmentalists do not always adhere to program policy governing the frequency of inspections.

MSDH policy requires food facilities to be inspected from 1 to 4 times per year, based upon the risk category of the establishment.

MSDH Sanitation Regulation and Policies state that all inspections are to be conducted using the principles of HACCP as a basis for recommendations and enforcement actions. According to HACCP, inspections and enforcement focus upon items of critical risk. The frequency of inspections is variable and determined by public health priority calculated by the Food Establishment Public Health Risk Assessment. This is a tool developed by MSDH according to 2001 Food Code requirements.

Based on the priority calculated, MSDH requires facilities to be inspected from one to four times per year. Exhibit 3, on page 17, displays the food facility risk levels and inspection frequencies as assigned by MSDH.

Exhibit 3: MSDH Food Facility Risk Levels and Inspection Frequency

<u>Risk Level</u>	<u>Minimum Number of Inspections Required Per Year</u>	<u>Examples of Food Establishments (including but not limited to)</u>
1	1	Bar lounges, sno-ball stands, coffee carts, warehouses handling dry products only. Convenience stores with hot dogs and/or nachos.
2	1 to 2	Bakeries, which serve only baked goods. Convenience stores with sausage biscuits, soft-serve prep. Concession stands at theaters, or skating rinks. Small child care centers with limited food preparation.
3	2 to 3	"Fast" Food restaurants, schools, and child care facilities.
4	3 to 4	Large delicatessens, major supermarkets, and buffet chains. Nursing homes and community hospitals.
5	3 to 4	Large continuous operation buffets-(e.g., casinos, large food operations open 24 hours) and major hospitals.

SOURCE: Compiled by PEER from sanitation rules and regulations

MSDH's data shows that in FY 2003 many districts did not perform all the required food facility inspections for various risk levels. The effect of this is reduced assurance that the public receives safe food from these establishments.

MSDH provided data on food facilities by risk level and required number of inspections (the required number of inspections for a particular risk level). The data shows that many of these districts did not perform all the required inspections for various risk levels in FY 2003 (see Exhibit 4, page 18). For example, in District Four, 28 of the 42 (66.7%) risk level four food facilities did not receive three to four inspections. These risk level 4 facilities maintain numerous practices that have the potential to impact public health (e.g., extensive handling of raw ingredients). In District Six, 16 of the 26 (64.0%) did not receive the minimum number of inspections. The effect of this is reduced assurance that the public receives safe food from these establishments.

According to food protection program staff, the reason that the program staff does not conduct mandated inspections in a timely manner is due to a lack of environmentalists. PEER did not confirm this perceived shortage with a staffing analysis.

Exhibit 4: Percent of Food Establishments by District and Risk Level Inspected In Compliance With Specified Frequency Requirements (for Fiscal Year 2003)

		Total Establishments	Number of Establishments Not Receiving The Minimum Required Inspections	Percent Of Establishments Not Receiving The Required Inspections
District 1	Risk Level 1	145	24	16.6%
	Risk Level 2	360	105	29.2%
	Risk Level 3	80	11	13.8%
	Risk Level 4	39	20	51.3%
	Risk Level 5	0	0	
	District Totals	624	160	25.6%
District 2	Risk Level 1	69	5	7.2%
	Risk Level 2	169	52	30.8%
	Risk Level 3	396	83	21.0%
	Risk Level 4	49	19	38.8%
	Risk Level 5	7	1	14.3%
	District Totals	690	160	23.2%
District 3	Risk Level 1	66	9	13.6%
	Risk Level 2	180	61	33.9%
	Risk Level 3	236	49	20.8%
	Risk Level 4	42	11	26.2%
	Risk Level 5	1	1	100.0%
	District Totals	525	131	25.0%
District 4	Risk Level 1	34	10	29.4%
	Risk Level 2	178	103	57.9%
	Risk Level 3	204	118	57.8%
	Risk Level 4	42	28	66.7%
	Risk Level 5	0	0	
	District Totals	458	259	56.6%
District 5	Risk Level 1	247	21	8.5%
	Risk Level 2	375	100	26.7%
	Risk Level 3	501	83	16.6%
	Risk Level 4	182	64	35.2%
	Risk Level 5	16	5	31.3%
	District Totals	1,321	273	20.7%
District 6	Risk Level 1	59	2	3.4%
	Risk Level 2	124	21	16.9%
	Risk Level 3	165	29	17.6%
	Risk Level 4	40	11	27.5%
	Risk Level 5	25	16	64.0%
	District Totals	413	79	19.1%
District 7	Risk Level 1	82	11	13.4%
	Risk Level 2	134	62	46.3%
	Risk Level 3	113	21	18.6%
	Risk Level 4	55	17	30.9%
	Risk Level 5	11	6	54.5%
	District Totals	395	117	29.6%
District 8	Risk Level 1	107	11	10.3%
	Risk Level 2	128	24	18.8%
	Risk Level 3	180	25	13.9%
	Risk Level 4	113	13	11.5%
	Risk Level 5	1	0	0.0%
	District Totals	529	73	13.8%
District 9	Risk Level 1	180	17	9.4%
	Risk Level 2	220	47	21.4%
	Risk Level 3	449	57	12.7%
	Risk Level 4	331	66	19.9%
	Risk Level 5	156	18	11.5%
	District Totals	1,336	205	15.3%
Grand Totals		6,291	1,457	23.2%

NOTE: Temporarily permitted establishments are not included in this assessment by risk level.
SOURCE: Compiled by PEER using MSDH food inspection data

Timeliness of Follow-up Inspections

MSDH environmentalists do not always conduct follow-up inspections in a timely manner.

MSDH conducts a follow-up inspection when a facility fails the initial inspection. If, after a follow-up inspection, a facility continues to be in violation, MSDH issues an enforcement notice.

MSDH policy directs environmentalists to conduct a follow-up inspection of a food establishment when a routine inspection of the establishment reveals a violation of any critical item. A critical item, as defined in the 2001 Food Code, means “a provision of this Code that, if in non-compliance, is more likely than other violations to contribute to food contamination, illness, or environmental health hazard.”

MSDH notifies the owner/operator that the establishment is not in compliance with MSDH rules and that a follow-up to the inspection will be necessary. The severity of the violations and the history of the establishment determine the method of follow-up. MSDH regulations specify that inspectors follow up within twenty-four to seventy-two hours on severe critical items (such as items’ food temperatures or cross contamination of ready-to-eat foods) that are not or cannot be corrected during the inspection. If the violations are not of a critical nature and the history of the establishment has demonstrated that the violations may not be corrected without a follow-up inspection, inspectors reinspect the facility within a time frame agreed upon in writing by the owner/operator and the environmentalist.

MSDH policy further states that the environmentalist must document on the follow-up inspection report all corrections and continued violations of critical items. Upon finding a continued violation in a follow-up inspection, the environmentalist must issue an enforcement notice stating that if the facility does not correct the violation within a stated time frame, MSDH will suspend its permit to operate.

In some cases, MSDH did not complete follow-up inspections within the scheduled time frame.

To determine whether environmentalists adhered to follow-up inspection standards, PEER reviewed FY 2003 files for all facilities that failed one inspection and required a follow-up. PEER examined records to determine whether follow-up inspections were conducted within thirty days of the failed inspection, although as noted above MSDH regulations do not specify a required time frame for non-critical follow-up inspections. PEER determined that many of the districts do not conduct inspections in a timely manner and do not adhere to MSDH regulations. In most cases, MSDH does not close a food facility after it is found in violation of one of more HACCP principles. Therefore, to reduce the likelihood of foodborne illness, it is crucial that the environmentalist perform the follow-up inspection within a reasonable time frame. PEER examined records by district and found that districts Three, Four, and Five had the highest percentages of follow-up inspections not conducted and that all three districts’ percentages had increased since FY 2002. (See Exhibit 5, page 20.)

According to food protection program staff, the reason that the program staff does not conduct mandated inspections in a timely manner is due to a lack of environmentalists. PEER did not confirm this perceived shortage with a staffing analysis.

Exhibit 5: Percentage of Follow-Up Inspections Not Conducted Within the Specified Time Frame (for Fiscal Year 2003)

<u>District</u>	<u>Total Follow-up Inspections To Be Conducted</u>	<u>Number of Follow-up Inspections Not Conducted</u>	<u>Percentages</u>
1	595	24	4.0%
2	251	12	4.8%
3	50	8	16.0%
4	31	9	29.0%
5	396	36	9.1%
6	105	0	0.0%
7	40	3	7.5%
8	294	11	3.7%
9	930	13	1.4%
Totals	<u>2692</u>	<u>116</u>	<u>4.3%</u>

SOURCE: Compiled by PEER from MSDH data.

Timeliness of Renewal Permit Inspections

Of the total 11,064 facilities requiring renewal permit inspections in FY 2003, PEER identified 2,526 for which the department did not adhere to the policy governing the timeliness of permit inspections.

When MSDH environmentalists do not conduct permit inspections in a timely manner, the facility may be hindered in obtaining insurance and, more importantly, the department may reduce assurance to the public that the food served at the facility is safe.

MSDH policy requires county health departments to conduct renewal inspections within a period of up to sixty days prior to the permit date and no longer than five days after the permit date or such time as necessary. PEER reviewed computer files to determine if environmentalists conduct renewal inspections in a timely manner. In many of the districts, environmentalists did not conduct the majority of renewal inspections within the time frame specified by the regulations. PEER identified 2,526 establishments that did not receive a permit inspection within the time frame specified by MSDH regulations.

Food facilities require permits to obtain and renew insurance. When MSDH environmentalists do not conduct permit inspections in a timely manner, the facility may be hindered in obtaining insurance and, more importantly, the department may reduce assurance to the public that the food served at the facility is safe.

As shown in Exhibit 6, below, all districts other than Six and Eight have not inspected at least 20% of their facilities within the required timeframe.

Exhibit 6: Timeliness of Renewal Permit Inspections, Fiscal Year 2003

<u>District</u>	<u>Total Facility Inspections Conducted</u>	<u>Before 60 Days Of The Permit Date</u>	<u>More Than 5 Days After The Permit Date</u>	<u>Establishments Not Inspected Within Required Timeframe</u>	<u>Percentage Not Inspected Within Required Timeframe</u>
1	1,076	27	243	270	25.1%
2	1,414	31	277	308	21.8%
3	921	67	205	272	29.5%
4	817	31	244	275	33.7%
5	2,241	123	417	540	24.1%
6	756	13	36	49	6.5%
7	675	27	144	171	25.3%
8	1,028	29	88	117	11.4%
9	2,136	62	462	524	24.5%
Totals	11,064	410	2,116	2,526	22.8%

SOURCE: State Department of Health

MSDH's Efforts to Improve Program Oversight and Monitoring

In FY 2003, the MSDH Environmental Health Bureau's Food Protection Program implemented a centralized automated system to capture and track food establishment inspections and publish inspection findings online.

In FY 2003, the MSDH Environmental Health Bureau's Food Protection Program implemented a centralized automated system to capture and track food establishment inspections and publish inspection findings online. County environmentalists conduct a restaurant inspection and then enter the restaurant's information into the system. The public is able to access this information using the MSDH's website. Patrons are able to locate restaurants by county and/or facility type and can examine whether a restaurant failed any HAACP items. The department implemented the computer system to make restaurant inspections more consistent because environmentalists must now mark all critical items on the computer record. For example, one critical item involves temperature observations and if no cooking is occurring at the time of the inspection, the environmentalist must return when restaurant is preparing food.

Quality Assurance Function

Both Food Protection Program staff and MSDH's Division of Internal Audits staff conduct quality assurance reviews to ensure that staff comply with policies and procedures regarding regulation of food facilities.

Similar to the Wastewater Disposal Program, the Food Protection Program utilizes three centralized program specialists to provide technical and administrative support to county environmentalists. The program specialist also conducts quality assurance reviews in each district. The quality assurance program began about a year ago and the purpose is to ensure uniformity among regulatory staff in the interpretation and application of regulatory requirements, policies, and procedures.

Every three years a program specialist accompanies a county environmentalist on restaurant inspections. The program specialist chooses facilities to inspect and both the environmentalist and the program specialist conduct independent inspections. The two then compare inspection notes to ensure the environmentalist is complying with all required regulations. In addition to the independent inspections, the environmentalist must complete twenty hours of training every three years.

MSDH's Internal Audit Division conducts audits on all county health departments and reviews the frequency of inspections, timeliness of permit inspections, and whether the department collected permit fees. The Internal Audits Division conducts audits on two-thirds of the counties every other year and one-third of the counties every year.

Recommendations

Onsite Wastewater Disposal System Program

1. MSDH should increase its regulatory oversight of professionally engineered wastewater systems by requiring engineers to submit a plan of corrective action on deficient systems. MSDH should amend its policy and require issuance of a letter from the department addressing any concerns or problems with engineer-designed and installed systems that need final approval. In response to the letter, the engineer should submit a written corrective action plan to illustrate how he or she intends to correct the problem.
2. The Legislature should amend MISS. CODE ANN. § 41-67-3 (1972) to require that MSDH approve all onsite wastewater disposal systems to any dwelling house, mobile home, or residence prior to the connection of electricity, water, or natural gas.

Food Protection Program

3. MSDH should inspect food establishments with the frequency required by regulations and adhere to the timeliness standards specified in regulations.
4. MSDH should review district resources to determine why some districts are not performing to regulatory guidelines. MSDH should evaluate staffing requirements to determine whether resources should be reallocated to fill vacant district environmentalists' positions to enhance program performance.
5. MSDH should require district environmentalists to utilize the restaurant inspection computer program monthly as a quality assurance tool to ensure that environmentalists are performing both renewal and minimum required inspections on a timely basis.
6. The MSDH Food Protection Program should implement a risk control plan for follow-up inspections to ensure facilities are inspected in a timely manner. Depending on the severity of a violation, the program's staff should establish general guidelines and time frames for follow-up inspection. The food facility should submit a corrective action plan if the non-critical violation cannot be corrected within thirty days.

Agency Response



MISSISSIPPI STATE DEPARTMENT OF HEALTH

December 17, 2003

Joint Legislative Committee on Performance Evaluation
and Expenditure Review
Woolfolk State Office Building
Jackson, Mississippi

HAND DELIVERED

Ladies and Gentlemen:

Thank you for the opportunity to provide a written response to your report, *A Review of the Mississippi State Department of Health's Onsite Wastewater Disposal System Program and Food Protection Program*. The report provides the Mississippi State Department of Health with an opportunity to continue its efforts aimed at improving its delivery of services to the citizens of Mississippi.

The department's responses to the Committee's recommendations (underlined) are shown below:

MSDH should increase its regulatory oversight of professionally engineered wastewater systems by requiring engineers to submit a plan of correction action on deficient systems.

Mississippi State Health Department staff will forward the recommendation by the Legislative PEER Committee to the Board of Health for consideration as an amendment to the Board's regulations governing individual onsite wastewater systems.

The Legislature should amend Miss. Code Ann. Section 41-67-3 to require all counties to enact ordinances that require final approval of wastewater systems by the county health department.

The staff of the Mississippi State Department of Health stands ready to work with the Legislature to enact additional guidelines for final approval of individual onsite wastewater systems.

Brian W. Amy, MD, MHA, MPH, State Health Officer

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Eq. & Off. of the Mississippi Department of Health

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MSDH should inspect food establishments with the frequency required by regulation and adhere to the timeliness standards specified in regulations.

The primary funding source for this program is state general funding. The Mississippi State Board of Health is requesting that the 2004 Legislature authorize an increase in the statutory fees food service establishments. This increased funding will provide additional resources to offset declining state general funds and address the needs identified by the department and the PEER Committee.

MSDH should review district resources to determine why certain districts are not performing to regulatory guidelines.

Effective July 1, 2003, the Mississippi State Department of Health implemented a performance measurement system for public health districts. Food service establishment inspections are among the measurements being monitored by the Office of Organizational Quality and reported to the State Board of Health on a quarterly basis. The Office of Organizational Quality is charged with initiating performance improvement projects to investigate and correct deficiencies identified through this performance measurement system.

MSDH should require district environmentalists to utilize the restaurant inspection computer program monthly as a quality assurance tool to ensure environmentalists are performing both renewal and optimum inspections on a timely basis.

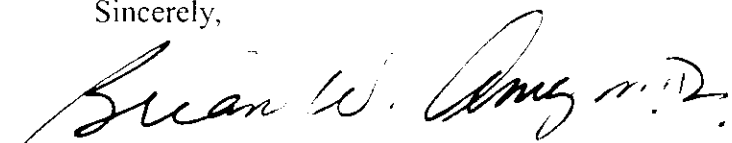
The Mississippi State Department of Health will develop a procedure to verify that district environmentalists utilize the restaurant inspection computer system to ensure environmentalists are performing both renewal and optimum inspections on a timely basis.

MSDH Food Protection Program should implement a risk control plan for follow-up inspections to ensure facilities are inspected in a timely manner.

The Food Protection Program will implement a risk control plan that is responsive to the recommendations of the Legislative PEER Committee.

If you should need any additional information please feel free to contact me at 576-7634.

Sincerely,



Brian W. Amy, MD, MHA, MPH
State Health Officer

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