

# CHAPTER 72. ADMINISTRATION OF SEWAGE FACILITIES PERMITTING PROGRAM

Subchap.

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## Authority

The provisions of this Chapter 72 issued under section 9 of the act of January 24, 1966 (P. L. 1535, No. 537) (35 P. S. § 750.9); sections 5 and 402 of the act of June 22, 1937 (P. L. 1987, No. 394) (35 P. S. § § 691.5 and 691.402); and section 1920-A of the act of April 9, 1929 (P. L. 177, No. 175) (71 P. S. § 510-20), unless otherwise noted.

## Source

The provisions of this Chapter 72 adopted January 9, 1987, effective January 10, 1987, 17 Pa.B. 172, unless otherwise noted.

## Cross References

This chapter cited in 25 Pa. Code § 71.58 (relating to delegation of new land development planning); 25 Pa. Code § 73.64 (relating to chemical toilet or other portable toilet); and 25 Pa. Code § 73.167 (relating to operation and maintenance).

## Subchapter A. GENERAL

Sec.

[72.1.](#) Definitions.

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## Cross References

This subchapter cited in 25 Pa. Code § 72.2 (relating to scope); and 25 Pa. Code § 72.3 (relating to purposes).

### § 72.1. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

*Act*—The Pennsylvania Sewage Facilities Act (35 P. S. § § 750.1—750.20).

*Alternate sewage system*—A method of demonstrated onlot sewage treatment and disposal not described in this part.

*Certification Board*—The administrative board within the Department created by section 11 of the act (35 P. S. § 750.11).

*Clean Streams Law*—The Clean Streams Law (35 P. S. § § 691.1—691.1001).

*Conventional sewage system*—A system employing the use of demonstrated onlot sewage treatment and disposal technology in a manner specifically recognized by this part. The term does not include alternate sewage systems or experimental sewage systems.

*Days*—Calendar days as specified in 1 Pa.C.S. § 1908 (relating to computation of time). If a period time is referred to in this chapter, the period shall be computed to exclude the first and include the last day of the period. If the last day of the period falls on a Saturday or Sunday, or a day made a legal holiday by the statutes of the Commonwealth or of the United States, the day shall be omitted from the computation.

*Delegated agency*—A municipality, local agency, multimunicipal local agency or county or joint county department of health to which the Department has delegated the authority to review and approve subdivisions for new land developments as supplements to the official plan of a municipality in which the subdivision is located.

*Experimental sewage system*—A method of onlot sewage treatment and disposal not described in this title which is proposed for the purpose of testing and observation.

*Individual residential spray irrigation system*—An individual sewage system which serves a single dwelling and which treats and disposes of sewage using a system of piping, treatment tanks and soil renovation through spray irrigation.

*Large volume on lot sewage system*—An individual or community onlot sewage system with a design capacity to discharge subsurface sewage flows which are in excess of 10,000 gpd.

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*Local agency*—A municipality, or a combination of municipalities acting cooperatively or jointly under the statutes of the Commonwealth, county, county department of health or joint county department of health.

*Lot*—A part of a subdivision or a parcel of land used as a building site or intended to be used for building purposes, whether immediate or future, which would not be further subdivided. Whenever a lot is used for a multiple family dwelling or for commercial or industrial purposes, the lot shall be deemed to have been subdivided into an equivalent number of single family residential lots as determined by estimated sewage flows.

*Municipality*—A city, town, township, borough or home rule municipality other than a county.

*Official plan*—A comprehensive plan for the provision of adequate sewage systems adopted by a municipality possessing authority or jurisdiction over the provision of the systems and submitted to and approved by the Department as provided by the act and Chapter 71 (relating to the administration of the sewage facilities program).

*Official plan revision*—A change in the municipality's official plan to provide for additional, newly identified future or existing sewage facilities needs, which may include one or more of the following:

(i) *Update revision*—A comprehensive revision to an existing official plan required when the Department or municipality determines an official plan or one or more of its parts is inadequate for the existing or future sewage facilities needs of a municipality or its residents or landowners.

(ii) *Revision for new land development*—A revision to a municipality's official plan resulting from a proposed subdivision as defined in the act.

(iii) *Special study*—A study, survey, investigation, inquiry, research report or analysis which is directly related to an update revision. The studies provide documentation or other support necessary to solve specific problems identified in the update revision.

(iv) *Supplement*—A sewage facilities planning module for a subdivision for new land development which will not be served by sewage facilities requiring a new or modified permit from the Department under the Clean Streams Law, and which is reviewed and approved by a delegated agency.

(v) *Exception to the requirement to revise*—A process established in § 71.55 (relating to exceptions to the requirement to revise the official plan for new land development) which describes the criteria under which a revision for new land development is not required.

*Person*—An individual, association, public or private corporation for-profit or not-for-profit, partnership, firm, trust, estate, department, board, bureau or agency of the United States or the Commonwealth, political subdivision, municipality, district, authority or other legal entity which

is recognized by law as the subject of rights and duties. The term includes the members of an association, partnership or firm and the officers of a local agency or municipal, public or private corporation for profit or not-for-profit.

*Qualified registered professional engineer*—A person registered to practice engineering in this Commonwealth who has experience in the characterization, classification, mapping and interpretation of soils as they relate to the function of onlot sewage disposal systems.

*Qualified registered professional geologist*—A person registered to practice geology in this Commonwealth who has experience in the characterization, classification, mapping and interpretation of soils as they relate to the function of onlot sewage disposal systems.

*Qualified soil scientist*—A person certified as a sewage enforcement officer and who has documented 2-years' experience in the characterization, classification, mapping and interpretation of soils as they relate to the function of onlot sewage disposal systems (as defined in the Soil Science Society of America "Glossary of Soil Science") and either a bachelor of science degree in soils science from an accredited college or university or certification (certified professional soil scientist, certified professional soil classifier or certified professional soil specialist) by the American Registry of Certified Professionals in Agronomy, Crops and Soils (now known as ARCPACS: A Federation of Certifying Boards in Agriculture, Biology, Earth and Environmental Sciences).

*Reimburse*—To pay back money actually spent.

*Relative*—Spouses, children, parents, brothers, sisters, nieces, nephews, grandparents, uncles, aunts and first cousins whether related by blood or statute.

*Retaining tank*—A watertight receptacle which receives and retains sewage and is designed and constructed to facilitate ultimate disposal of the sewage at another site. The term includes, the following:

(i) *Chemical toilet*—A permanent or portable nonflushing toilet using chemical treatment in the retaining tank for odor control.

(ii)  *Holding tank*—A tank, whether permanent or temporary, to which sewage is conveyed by a water carrying system.

(iii) *Privy*—A tank designed to receive sewage where water under pressure is not available.

(iv) *Incinerating toilet*—A device capable of reducing waste materials to ashes.

(v) *Composting toilet*—A device for holding and processing human and organic kitchen waste employing the process of biological degradation through the action of microorganisms to produce a stable, humus-like material.

(vi) *Recycling toilet*—A device in which the flushing medium is restored to a condition suitable for reuse in flushing.

*Sewage*—A substance that contains waste products or excrement or other discharge from the bodies of human beings or animals and noxious or deleterious substances harmful or inimical to the public health, or to animal or aquatic life, or to the use of water for domestic water supply or for recreation. The term includes any substance which constitutes pollution under the Clean Streams Law.

*Sewage enforcement officer*—An official of the local agency who reviews permit applications and sewage facilities planning modules, issues permits as authorized by the act and conducts investigations and inspections that are necessary to implement the act and the regulations thereunder.

*Sewage facilities*—A system of sewage collection, conveyance, treatment and disposal which will prevent the discharge of untreated or inadequately treated sewage or other waste into waters of this Commonwealth or otherwise provide for the safe and sanitary treatment and disposal of sewage or other waste. The term includes:

(i) *Individual sewage system*—A system of piping, tanks or other facilities serving a single lot and collecting and disposing of sewage in whole or in part into the soil or into waters of this Commonwealth or by means of conveyance to another site for final disposal. The term includes:

(A) *Individual onlot sewage system*—An individual sewage system which uses a system of piping, tanks or other facilities for collecting, treating and disposing of sewage into a soil absorption area or spray field or by retention in a retaining tank.

(B) *Individual sewerage system*—A system which uses a method of sewage collection, conveyance, treatment and disposal other than renovation in a soil absorption area, or retention in a retaining tank.

(ii) *Community sewage system*—A sewage facility, whether publicly or privately owned, for the collection of sewage from two or more lots, or two or more equivalent dwelling units and the treatment or disposal, or both, of the sewage on one or more of the lots or at another site.

(A) *Community onlot sewage system*—A system of piping, tanks or other facilities serving two or more lots and collecting, treating and disposing of domestic sewage into a soil absorption area or retaining tank located on one or more of the lots or at another site.

(B) *Community sewerage system*—A publicly or privately owned community sewage system which uses a method of sewage collection, conveyance, treatment and disposal other than renovation in a soil absorption area or retention in a retaining tank.

*Sewage management program*—A program conforming to Chapter 71, Subchapter E (relating to sewage management programs), authorized by the official action of a municipality for the administration, management and regulation of the disposal of sewage.

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*Soil horizon*—A layer of soil approximately parallel to the soil surface, the chemical and physical characteristics of which are distinguishable by observation or other method of analysis from the chemical and physical characteristics in adjacent layers of soil.

*Soil profile*—The collection of soil horizons, including the natural organic layers on the surface.

*Soil mottling (redoximorphic features)*—A soil color pattern consisting of patches of different color or shades of color interspersed with the dominant soil color which results from prolonged saturation of the soil.

*Subdivision*—The division or redivision of a lot, tract or other parcel of land into two or more lots, tracts, parcels or other divisions of land including changes in existing lot lines. The enumerating of lots shall include as a lot that portion of the original tract or tracts remaining after other lots have been subdivided therefrom.

*Waters of this Commonwealth*—Rivers, streams, creeks, rivulets, impoundments, ditches, water courses, storm sewers, lakes, dammed water, ponds, springs and other bodies or channels of conveyance of surface and underground water, or parts thereof, whether natural or artificial, within or on the boundaries of this Commonwealth.

*Working day*—Calendar days as specified in 1 Pa.C.S. § 1908 (relating to computation of time) excluding Saturdays and Sundays, or a day made a legal holiday by the statutes of the Commonwealth or the United States. The period shall be calculated to exclude the first and include the last day of the period.

#### **Authority**

The provisions of this § 72.1 amended under section 9 of the Pennsylvania Sewage Facilities Act (35 P. S. § 750.9); The Clean Streams Law (35 P. S. § § 691.1—691.1001); and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20).

#### **Source**

The provisions of this § 72.1 amended November 7, 1997, effective November 8, 1997, 27 Pa.B. 5877. Immediately preceding text appears at serial pages (221877) to (221880).

#### **§ 72.2. Scope.**

(a) This chapter is adopted in accordance with the duties imposed upon the Department under the act and the Clean Streams Law and applies to local agencies and sewage enforcement officers administering the act and to persons installing individual or community onlot sewage systems.

(b) This chapter is separated into four subchapters. Subchapter A relates to general provisions. Subchapter B relates to the permitting requirements of the act (35 P. S. § 750.7). Subchapter C relates to the administration of permits for individual and community onlot sewage systems (35 P. S. § 750.8 and 750.10). Subchapter D relates to certification of sewage enforcement officers (35 P. S. § § 750.8 and 750.11).

(c) This chapter governs the issuance of permits for retaining tanks, or for individual and community onlot sewage systems which employ renovation of sewage effluent in a soil absorption area or spray field, except for large volume onlot sewage systems. The use of large volume onlot sewage systems creates a danger of pollution of the waters of this Commonwealth, regulation of large volume onlot sewage systems by the Department is necessary to avoid the pollution, and large volume onlot sewage systems require permits issued by the Department under sections 201, 202, 207 and 402 of the Clean Streams Law (35 P.S. § § 691.201, 691.202, 691.207 and 691.402). No local agency or sewage enforcement officer may issue a permit for an individual or community onlot sewage system which does one of the following:

- (1) Discharges directly to the surface of the ground or to the surface waters of this Commonwealth except when the proposed sewage system is an individual residential spray irrigation system which conforms with the standards established under Chapter 73 (relating to standards for onlot sewage treatment facilities).
- (2) Is a large volume onlot sewage system.
- (3) Is proposing or designed for the disposal of substances defined as industrial wastes under the Clean Streams Law.
- (4) Violates this chapter, Chapter 71 or 73, the act or the Clean Streams Law.

#### **Authority**

The provisions of this § 72.2 amended under section 9 of the Pennsylvania Sewage Facilities Act (35 P. S. § 750.9); The Clean Streams Law (35 P. S. § § 691.1—691.1001); and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20).

#### **Source**

The provisions of this § 72.2 amended November 7, 1997, effective November 8, 1997, 27 Pa.B. 5877. Immediately preceding text appears at serial page (221880).

#### **§ 72.3. Purposes.**

(a) Subchapter A (relating to general) sets forth general information regarding the chapter including definitions, scope and purpose.

(b) Subchapter B (relating to permit requirements) establishes requirements for permitting the installation of individual and community onlot sewage systems to provide reliable sewage disposal facilities that will protect the public health and prevent pollution.

(c) Subchapter C (relating to administration of permitting requirements) regulates the administration of permitting functions by local agencies and sewage enforcement officers.

(d) Subchapter D (relating to certification of sewage enforcement officers) provides the requirements for certification of Sewage Enforcement Officers.

## **Subchapter B. PERMIT REQUIREMENTS**

Sec.

- [72.21.](#) General.
- [72.22.](#) Permit issuance.
- [72.23.](#) Limitation on onlot system permit issuance.
- [72.24.](#) Applications for permits.
- [72.25.](#) Issuance of permits.
- [72.26.](#) Denial of permits.
- [72.27.](#) Expiration and transfer of permits.
- [72.28.](#) Revocation of permits.
- [72.29.](#) Review of denials and revocations.
- [72.30.](#) Inspection.
- [72.31.](#) Conditions related to the installation of permit exempt systems.
- [72.32.](#) Sales contracts.
- [72.33.](#) Well isolation distance exemption.

### **Cross References**

This subchapter cited in 25 Pa. Code § 72.2 (relating to scope); and 25 Pa. Code § 72.3 (relating to purposes).

### **§ 72.21. General.**

(a) A local agency shall employ or contract with at least one sewage enforcement officer and one alternate sewage enforcement officer who have been certified by the Certification Board under Subchapter D (relating to certification of sewage enforcement officers). References to sewage enforcement officer in this part also apply to alternate sewage enforcement officers.

(b) A local agency shall employ an adequate number of sewage enforcement officers or contract with individuals, firms or corporations to adequately perform the services of sewage enforcement



officers to administer the applicable provisions of this chapter within the time periods in this chapter and in accordance with this chapter and Chapter 73 (relating to standards for onlot sewage treatment facilities).

(c) No local agency may issue a permit for the installation of an individual or community onlot sewage system except by and through a certified sewage enforcement officer employed or contracted by the local agency.

(d) The local agency by action of its sewage enforcement officer shall issue a permit for an individual or community onlot sewage system when the proposed system is in compliance with the act and this part.

(e) The actions of local agencies include actions of their designated sewage enforcement officers.

(f) A property owner proposing a bonded disposal system under § 73.77 (relating to bonded disposal systems) shall bear the cost of activities associated with conducting, observing or confirming percolation tests.

#### **Authority**

The provisions of this § 72.21 amended under sections 7.2 and 9 of the Pennsylvania Sewage Facilities Act (35 P. S. § § 750.7b and 750.9); The Clean Streams Law (35 P. S. § § 691.1—691.1001); and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20).

#### **Source**

The provisions of this § 72.21 amended November 1, 1996, effective November 2, 1996, 26 Pa.B. 5347; amended November 7, 1997, effective November 8, 1997, 27 Pa.B. 5877. Immediately preceding text appears at serial pages (221881) to (221882).

### **§ 72.22. Permit issuance.**

(a) No person may install, award a contract for construction or construct an individual or community onlot sewage system, or install, construct, occupy or use a building to be served by that system without first obtaining a permit from the local agency, except as provided in subsections (c)—(e).

(b) A permit shall be required by the local agency for alterations or connections to an existing individual or community onlot sewage system when the alteration or connection requires the repair, replacement or enlargement of a treatment tank or retention tank, or the repair, replacement, disturbance, modification or enlargement of a soil absorption area or spray field, or the soil within or under the soil absorption area or spray field.

(c) Multiple installations of chemical toilets or other portable toilets proposed for temporary use at a construction site, a recreation activity or a temporary facility shall be covered by one permit.

(d) A permit is not required for the installation of a recycling toilet, incinerating toilet, composting toilet or other type of water conservation device where the existing onlot system will not be altered.

(e) Except when a local agency or municipality requires a permit by ordinance, no permit or official plan revision is required for the installation of an individual onlot sewage system for a residential structure occupied or intended to be occupied by the property owner or a member of the property owner's immediate family on a contiguous tract of land 10 acres or more if the owner of the property was the owner of record as of January 10, 1987. For the purposes of this subsection, the term "immediate family" means a brother, sister, son, daughter, stepson, stepdaughter, grandson, granddaughter, father or mother of the property owner.

(f) The installation of a permit-exempt system under subsection (e) is not required to be approved by or meet the standards of the Department or local agency under their rules and regulations for the siting, design or installation of onlot sewage systems, except for the siting requirements of subsection (g), unless a permit is required by a regulation or ordinance of a local agency or municipality, or the person qualifying for the permit exemption chooses to not use the permit exemption. A permit exemption may also be granted where a 10-acre parcel or lot is subdivided from a parent tract after January 10, 1987. When one permit exemption has been granted for a lot, tract or parcel under this section, any lot, tract or parcel remaining after subdivision of the lot or parcel which received the permit exemption or any lots or parcels subdivided from either lot, tract or parcel in the future will not be eligible for a 10-acre permit exemption and shall meet the planning, permitting, siting and construction standards of the Department relating to onlot sewage systems. Owners of a lot, tract or parcel which otherwise qualified for the permit exemption, who do not choose to use the permit exemption remain exempt from the planning requirements of the act with respect to that lot, tract or parcel.

(g) Owners of property qualifying for a permit exemption under subsections (e) and (f) shall install permit-exempt systems in accordance with the following siting requirements.

(1) The perimeter of the septic tanks and absorption area shall be located at least 200 feet from the perimeter of any property line, nonutility right-of-way, 100-year floodplain or any river, stream, creek, impoundment, well, watercourse, storm sewer, lake, dammed water, pond, spring, ditch, wetland, water supply or any other body of surface water and 10 feet from any utility right-of-way.

(2) Before a person who meets the requirements of subsections (e) and (f) for a permit-exempt system installs a system, the person shall notify the local agency of the installation and shall provide documentation relating to the siting requirement of this subsection which is satisfactory to the local agency. The local agency may charge a fee, not to exceed \$25, to verify that the system is located in accordance with the siting requirements.

(h) A permit is not required when a new dwelling is proposed to replace a previously existing dwelling when the local agency determines that the size and anticipated use of the new dwelling, as determined under §§ 73.16 and 73.17 (relating to requirements for absorption areas; and sewage flows), are the same as or less than those of the previously existing dwelling and the

previously existing dwelling was in use within 1 year of the anticipated date of completion of construction of the new dwelling. This exception does not apply when an active investigation of a malfunction is under way by the local agency or the Department.

### **Authority**

The provisions of this § 72.22 amended under sections 7.2 and 9 of the Pennsylvania Sewage Facilities Act (35 P. S. §§ 750.7b and 750.9); The Clean Streams Act (35 P. S. §§ 691.1—691.1001); and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20).

### **Source**

The provisions of this § 72.22 amended November 1, 1996, effective November 2, 1996, 26 Pa.B. 5347; amended November 7, 1997, effective November 8, 1997, 27 Pa.B. 5877; corrected November 21, 1997, 27 Pa.B. 6079. Immediately preceding text appears at serial pages (221882) to (221883).

### **Cross References**

This section cited in 25 Pa. Code § 72.22 (relating to permit issuance).

### **§ 72.23. Limitation on onlot system permit issuance.**

(a) The local agency may not issue permits for individual or community onlot sewage systems unless the following exist:

(1) The proposed system is consistent with the method of sewage disposal contained in the approved official plan, special study or update revision of the municipality in which the system is to be located.

(2) The municipality is implementing its official plan, special study or update revision in accordance with a schedule approved by the Department.

(3) The municipality has received approval of a revision for new land development or exception to the requirement to revise from the Department, a supplement for new land development has been approved by the delegated agency serving the municipality or the Department or delegated agency has determined that no planning is required under § 71.51(b) (relating to general).

(b) Permits may not be issued when the municipality has one or more of the following:

(1) No approved official plan.

(2) Not received Department approval of an update revision or special study to the official plan.

(3) Not implemented its plan as required by this part or by an order of the Department.

(c) Permit limitations under this section shall be restricted to those areas of the municipality identified in writing to the municipality by the Department as posing a serious risk to the health, safety and welfare of persons within or adjacent to the municipality because of the municipality's failure to revise or implement its plan. The limitations shall remain in effect until the municipality has submitted the official plan, update revision or special study to the official plan to, and received the approval of the Department, or has commenced implementation of its plan, update revision or special study in accordance with a schedule approved by the Department.

(d) The limitations on permit issuance contained in this section do not apply:

(1) To those areas of the municipality where the Department or the local agency finds that a replacement soil absorption area or spray field could be installed on the lot if the original system failed. This determination shall be based on the results of a minimum of two complete soils and site evaluations confirmed by the local agency's sewage enforcement officer.

(2) To those areas of the municipality outside of the areas delineated in an order of the Department as requiring an update revision.

(3) To existing subdivisions or sections thereof where the Department or delegated agency finds that either lots or homes in the subdivision or sections thereof have been sold in good faith to a purchaser for value prior to May 15, 1972, and not for the purpose of avoiding the permit limitation provisions of this section. This paragraph does not relieve the municipality of its planning responsibilities as specified in the act.

(4) When the Department or the local agency finds it necessary to issue permits for the abatement of pollution or the correction of health hazards, or both.

(5) To interim repairs to or the replacement of existing malfunctioning onlot sewage systems.

#### **Authority**

The provisions of this § 72.23 amended under section 9 of the Pennsylvania Sewage Facilities Act (35 P. S. § 750.9); The Clean Streams Law (35 P. S. § § 691.1—691.1001); and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20).

#### **Source**

The provisions of this § 72.23 amended November 7, 1997, effective November 8, 1997, 27 Pa.B. 5877. Immediately preceding text appears at serial page (221883).

#### **Cross References**

This section cited in 25 Pa. Code § 71.32 (relating to Department responsibility to review and act upon official plans); and 25 Pa. Code § 71.54 (relating to Department administration of new land development planning requirements for revisions).

#### **§ 72.24. Applications for permits.**

(a) Application for a permit to install an individual or community onlot sewage system shall be made by the owner, owner in equity or a person who is an authorized agent of the owner or owner in equity to the local agency, on a form provided by the Department. For purposes of this section, an authorized agent shall have written permission to apply for a permit, signed by the owner or owner in equity of the lot for which the application is made.

(b) The local agency may require additional information consistent with the act needed to assure that the system or the site will comply with the requirements of the act and this part.

(c) The local agency shall maintain and make available for public inspection a permanent record of all permit applications submitted, indicating the date received, type of submission and date of disposition.

#### **Authority**

The provisions of this § 72.24 amended under section 9 of the Pennsylvania Sewage Facilities Act (35 P. S. § 750.9); The Clean Streams Law (35 P. S. § § 691.1—691.1001); and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20).

#### **Source**

The provisions of this § 72.24 amended November 7, 1997, effective November 8, 1997, 27 Pa.B. 5877. Immediately preceding text appears at serial page (221884).

#### **§ 72.25. Issuance of permits.**

(a) A permit shall be issued when the local agency has determined that the application is complete and meets the requirements of the act and this part.

(b) The local agency shall issue or deny a permit for a conventional system in writing within 7 days after receiving a complete initial application.

(c) If the local agency determines that an initial application is incomplete or that it is unable to verify the information contained in an application, the local agency shall notify the applicant in writing within 7 days of receipt of the application. The notice shall include the reasons why the application is not acceptable. When the required information is received, the local agency shall act upon the application within 15 days.

(d) A person desiring to install an experimental onlot sewage system shall submit complete preliminary design plans and specifications to the sewage enforcement officer and the

Department for review and comment at least 60 days prior to submitting an application for a permit. The Department will determine if classification as an experimental system is appropriate for the submission and provide review comments within 60 days to the sewage enforcement officer.

(e) Applications for alternate system permits submitted to municipalities or local agencies which are not delegated agencies, shall be reviewed for completeness, and, if found to be incomplete, the nature of the deficiency shall be communicated by the municipality or local agency to the applicant in writing within 15 days of receipt of the application.

(1) Applications for alternate system permits found to be complete shall be submitted to the Department within 5 days of the determination of completeness by the local agency or authorized representative for the Department's determination whether the classification as alternate is appropriate for the submission and the Department's review of comments.

(2) Permits for alternate systems shall be issued or denied by the local agency within 45 days of transmittal of a complete application to the Department. The local agency shall consider the written comments submitted by the Department regarding the application.

(3) In municipalities or local agencies which are delegated agencies or which employ or contract with sewage enforcement officers authorized to review alternate sewage systems under § 72.43(1) (relating to powers and duties of the Department), permit applications for alternate systems shall be reviewed for completeness, and, if found to be incomplete, the nature of the deficiency shall be communicated to the applicant in writing within 15 days of receipt of the application. Permits for alternate systems shall be issued or denied by the local agency within 30 days of receipt of a complete application.

(f) Failure of a local agency to act on an application does not constitute permit approval. If the local agency does not act upon an application within 7 days of receipt, or within 15 days of receipt of supplemental information under subsection (c), the applicant may request a hearing before the local agency.

(g) A local agency may not issue individual or community onlot sewage system permits for the following systems; permits for these systems are issued by the Department:

(1) A large volume onlot sewage system.

(2) Subsurface disposal or other method of disposal of a substance defined as industrial waste under the Clean Streams Law.

(3) A method of sewage disposal other than renovation of sewage in a subsurface absorption area, an individual residential spray irrigation system or temporary storage in a retaining tank.

(h) Prior to the issuance of a permit for an ~~individual residential spray irrigation onlot sewage treatment~~ system, the local agency shall require documentation that the municipality in which the system is to be located, has taken action to assure compliance of the system with ~~§ 73.167~~

~~(relating to operation and maintenance of individual residential spray irrigation systems)~~ all applicable regulations for the life of the system. The assurance shall be established through one or a combination of the following options which have been established or approved in writing by the municipality:

(1) A maintenance agreement between the property owner and an individual, firm or corporation experienced in the operation and maintenance of sewage treatment systems.

(2) A maintenance agreement between the property owner and municipality or its designated local agency which establishes the property owner's responsibility for operating and maintaining the system and the responsibility of the municipality or local agency for oversight of the system.

(3) A municipal ordinance which requires individual ~~residential spray irrigation onlot sewage treatment~~ systems to be operated and maintained through a maintenance agreement between the property owner and an individual, firm or corporation experienced in the operation and maintenance of sewage treatment systems.

(4) Municipal ownership of the system.

(5) Inclusion of the system under a sewage management agency developed in accordance with § 71.73 (relating to sewage management programs for sewage facilities permitted by local agencies) operated by the municipality.

(6) A properly chartered association, trust or other private legal entity which is structured to manage the system.

(7) Bonding, escrow or other security established prior to the issuance of a permit for an individual residential spray irrigation system and forfeited to the municipality upon notice of continuing noncompliance of the system with the operation and maintenance standards in § 73.167 and monitoring standards in § 72.42(a)(24) (relating to powers and duties of local agencies). The municipality shall use the forfeited security to cover the costs of repair or future operation and maintenance of the system over its design life. The bonding, escrow or other security shall be for an amount up to a maximum of 50% for each of the first 2 years of operation. After 2 years of operation, the bond agreement shall provide for a refund of a portion of the original bond so that only 10% of the cost of equipment and installation is retained by the bondholder. The remaining bond totalling 10% of the cost of equipment and installation shall be maintained for the life of the system.

(i) When a local agency has issued a permit under this section and the Department disagrees with the basis for the issuance of the permit, the Department will not require the revocation of that permit unless the Department has provided to the local agency justification for its decision based on the specific provisions of statute or regulation.

#### **Authority**

The provisions of this § 72.25 amended under section 9 of the Pennsylvania Sewage Facilities Act (35 P. S. § 750.9); The Clean Streams Law (35 P. S. § § 691.1—691.1001); and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20).

### Source

The provisions of this § 72.25 amended November 7, 1997, effective November 8, 1997, 27 Pa.B. 5877. Immediately preceding text appears at serial pages (221884) to (221885).

### Notes of Decisions

#### *Incomplete Application*

Since the Department had already addressed the township supervisor's concerns when it granted an exception to the sewage permit ban for the appellant's lot, the supervisors lacked authority to require that appellant's test for backup sewage facility sites before considering their application. *Otte v. Covington Township Supervisors*, 613 A.2d 183 (Pa. Cmwlth. 1992); appeal granted 629 A.2d 1385 (Pa. 1993); affirmed 650 A.2d 412 (Pa. 1994).

### Cross References

This section cited in 25 Pa. Code § 71.62 (relating to individual and community onlot sewage systems); and 25 Pa. Code § 73.167 (relating to operation and maintenance).

### § 72.26. Denial of permits.

(a) Notice of denial of a permit shall be in writing to the applicant and shall include the reasons for denial and advise the applicant of the right to a hearing before the local agency. The local agency shall provide the Department with a copy of the notice of denial within 7 days of issuance.

(b) The sewage enforcement officer shall accept prior testing data and information obtained by a previous sewage enforcement officer, provided that the site and prior testing is certified by the previous sewage enforcement officer and meets all of the criteria contained in paragraphs (1)—(10) and the current sewage enforcement officer certifies the data to the local agency using a “Verification of Prior Testing” Form provided by the Department. There shall be a presumption that, unless the prior sewage enforcement officer's certification has been revoked or suspended by the Department or the prior sewage enforcement officer's certification has been voluntarily surrendered to the Department or Certification Board, the testing data and information obtained by the prior sewage enforcement officer is valid unless the currently employed sewage enforcement officer finds that one or more of the criteria in the following paragraphs are not met:

(1) The soil testing performed on the property in question has not been cited in a revocation, suspension or other agreement to surrender certification which indicates violations of soil testing procedures by the previous sewage enforcement officer.



(2) The exact location of the test to be used for issuance of a permit shall be verifiable by at least one of the following methods:

(i) Location of the test pit and percolation hole remnants on the lot by the current sewage enforcement officer.

(ii) The existence of recorded measurements from at least two permanent landmarks on the property in question establishing the original test location.

(iii) A scale drawing of the lot or property in question indicating the location of the tests by reference to at least two permanent landmarks.

(iv) Identification of the exact location of the tests by the prior sewage enforcement officer, provided that the certification has not been revoked, suspended or voluntarily surrendered to the Department or Certification Board.

(3) Verification that the percolation test and soils evaluation were conducted in accordance with the applicable regulations.

(4) Soils description and percolation test data are available and recorded on the prescribed form, or its equivalent, in sufficient quantity and quality to be interpreted by others.

(5) The soil probes were conducted within 10 feet of the proposed absorption area.

(6) The percolation test on the lot was performed on the site of the proposed absorption area.

(7) The person who originally observed, confirmed or conducted the testing was certified under the current certification requirements of the act.

(8) No inaccuracies or falsifications of the test data are apparent or identifiable.

(9) No changes to the site have occurred since the time of the original testing which will materially affect the siting or operation of an individual or community onlot sewage disposal system.

(10) Receipt of a notarized statement from the property owner which indemnifies and holds harmless the new sewage enforcement officer, municipality and local agency for the actions of the new sewage enforcement officer in verifying the prior testing data and information obtained by a previous sewage enforcement officer.

(c) If, after conducting a verification of prior testing under subsection (b), the currently employed sewage enforcement officer denies an application for a permit or rejects the previous tests performed within the immediately preceding 6 years, retesting and reapplication fees shall be waived to the applicant and the local agency shall pay for any equipment and operators required for a retest and for any necessary redesign of the system if:

- (1) The tests were certified by signature of a sewage enforcement officer.
- (2) Local agency records document that the sewage enforcement officer who certified the tests was employed or under contract with the local agency at the time the testing was conducted and certified.
- (3) The testing documents soils and site suitability for onlot sewage disposal.
- (d) Subsection (c) does not apply if the local agency documents that one of the following exists:
- (1) Changes have occurred in the physical condition of lands which will materially affect the siting or operation of an individual or community onlot sewage disposal system covered by a permit as verified by the sewage enforcement officer conducting the testing in accordance with the criteria outlined in subsection (b).
- (2) The original soils testing was performed by a sewage enforcement officer whose certification was one of the following:
- (i) Revoked by the Department and any subsequent appeal denied.
- (ii) Voluntarily surrendered to avoid prosecution or a hearing.
- (iii) Suspended by the Department for violations related to the siting, design or installation inspection of onlot systems.
- (3) The soils testing and redesign required by the new sewage enforcement officer has been conducted by the local agency using its staff and equipment or contracted services.
- (4) The testing under review was conducted more than 6 years prior to the date of the submittal of a permit application for the lot in question.
- (e) A person aggrieved by the action of a sewage enforcement officer in the issuance or denial of a permit, or another action taken under section 7 of the act (35 P. S. § 750.7) other than a permit revocation, may within 30 days of receipt of notice of the action, file a request for a hearing before the local agency. The request shall be in writing.

#### **Authority**

The provisions of this § 72.26 amended under section 9 of the Pennsylvania Sewage Facilities Act (35 P. S. § 750.9); The Clean Streams Law (35 P. S. §§ 691.1—691.1001); and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20).

#### **Source**

The provisions of this § 72.26 amended November 7, 1997, effective November 8, 1997, 27 Pa.B. 5877. Immediately preceding text appears at serial page (221885).

## Cross References

This section cited in 25 Pa. Code § 72.27 (relating to expiration and transfer of permits); and 25 Pa. Code § 72.41 (relating to powers and duties of sewage enforcement officers).

### § 72.27. Expiration and transfer of permits.

(a) A permit shall expire if construction or installation of an individual or community onlot sewage system and the structure for which the system is to be installed has not begun within 3 years after permit issuance. A new permit shall be obtained prior to beginning the construction or installation. When issuing a new permit the local agency may require information necessary to confirm the validity of the original application as provided by § 72.26(b) (relating to denial of permits).

(b) A permit may be transferred from the permit holder to a new property owner with the transfer of the property. Transfers are not valid until approved in writing by the local agency, and until new property owners receive a copy of the application under which the permit was issued.

#### Authority

The provisions of this § 72.27 amended under sections 7.2 and 9 of the Pennsylvania Sewage Facilities Act (35 P. S. § § 750.7b and 750.9); The Clean Streams Act (35 P. S. § § 691.1—691.1001); and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20).

#### Source

The provisions of this § 72.27 amended November 1, 1996, effective November 2, 1996, 26 Pa.B. 5347; amended November 7, 1997, effective November 8, 1997, 27 Pa.B. 5877. Immediately preceding text appears at serial page (221885).

### § 72.28. Revocation of permits.

(a) A permit shall be revoked by the local agency at any time for one or more of the following reasons:

(1) When a change has occurred in the physical conditions of lands which will materially affect the operation of an individual or community onlot sewage disposal system covered by a permit issued by the local agency under this chapter.

(2) When one or more tests material to the issuance of the permit has not been properly conducted.

(3) When information relevant to the issuance of the permit has been falsified.

(4) When the original decision of the local agency otherwise failed to conform with the act and this part.

(5) When the permittee has violated the act, this part or the requirements of the permit.

(b) The notice of revocation of a permit shall be in writing to the permit holder and shall include the reasons for revocation, notice of the permit holder's opportunity to request a hearing before the local agency within 10 days of receipt of the revocation notice, and notice that no further construction or use of either the sewage system or the structure for which it is intended may take place until a new permit is issued or the revocation is reversed by the local agency.

(c) If a permit holder fails to file a written request for a hearing under this chapter within 10 days after receipt of notice of revocation, revocation shall be final.

#### **Authority**

The provisions of this § 72.28 amended under section 9 of the Pennsylvania Sewage Facilities Act (35 P. S. § 750.9); The Clean Streams Law (35 P. S. § § 691.1—691.1001); and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20).

#### **Source**

The provisions of this § 72.28 amended November 7, 1997, effective November 8, 1997, 27 Pa.B. 5877. Immediately preceding text appears at serial pages (221885) to (221886).

#### **Cross References**

This section cited in 25 Pa. Code § 72.30 (relating to inspection).

#### **§ 72.29. Review of denials and revocations.**

(a) The local agency shall hold a hearing for denials or revocations within 30 days after receipt of a written request for a hearing. Hearing requests shall state concisely all reasons for the appeal. The Department shall be notified of the hearing by the local agency at least 3 days prior to the hearing date. This notification shall include a statement of the reasons for the appeal.

(b) Hearings under this section and a subsequent appeal shall be conducted under 2 Pa.C.S. § § 551—555 (relating to the Local Agency Law). The local agency shall defend its actions during the course of a subsequent appeal.

(c) The Attorney General and the Department shall be notified in writing by the appellant of an appeal challenging the constitutionality of the act or the validity of this part.

#### **Cross References**

This section cited in 25 Pa. Code § 72.30 (relating to inspection).

#### **§ 72.30. Inspection.**

(a) No part of an individual or community onlot sewage system may be covered until a final inspection is conducted and final written approval is given by the local agency.

(b) The sewage system shall be inspected, approved and covered before the structure is occupied by a person.

(c) The applicant shall notify the local agency when the installation of the sewage system is completed and ready for inspection.

(d) The applicant may cover the individual or community onlot sewage system upon receipt of written approval by the local agency. If 72 hours have passed, excepting Sundays and holidays, since the local agency received the notification of completion required by subsection (c), the applicant may cover the sewage system unless final written approval to cover has been refused by the local agency.

(e) The local agency may inspect and make tests before, during or after construction and may by order require a sewage system to be uncovered at the expense of the applicant, if the sewage system has been covered contrary to this chapter.

(f) When the inspection reveals that the installation of the sewage system is contrary to the permit application or in violation of the act or this part, the permit shall be revoked and the provisions of § § 72.28(b) and (c) and 72.29 (relating to revocation of permits; and review of denials and revocations) apply.

### **§ 72.31. Conditions related to the installation of permit exempt systems.**

A person installing a permit-exempt system shall indemnify and hold harmless the Commonwealth, the local agency, the sewage enforcement officer serving the municipality in which the system is located and the municipality where the system is located from and against damages to property or injuries to any persons and other losses, damages, expenses, claims, demands, suits and actions by any party against the Commonwealth, the local agency, sewage enforcement officer and the municipality in connection with the malfunctioning of the onlot sewage system installed under the permit exemption provisions of this chapter. It is the sole responsibility of the property owner who installed or contracted for the installation of a sewage system under the permit exemption provisions of this chapter or the property owner who accepted responsibility for the system upon purchase of the property under the disclosure provisions of § 72.32(a) (relating to sales contracts) to correct or have corrected any system malfunction which contaminates surface water or groundwater or discharges to the surface of the ground. Malfunctions of systems installed under this chapter which contaminate groundwater or surface water or discharge to the surface of the ground shall constitute a nuisance and shall be abatable in a manner provided by law.

### **Authority**

The provisions of this § 72.31 amended under sections 7.2 and 9 of the Pennsylvania Sewage Facilities Act (35 P. S. § § 750.7b and 750.9); The Clean Streams Act (35 P. S. § § 691.1—691.1001); and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20).

### Source

The provisions of this § 72.31 adopted November 1, 1996, effective November 2, 1996, 26 Pa.B. 5347; amended November 7, 1997, effective November 8, 1997, 27 Pa.B. 5877. Immediately preceding text appears at serial pages (221887) to (221888).

### § 72.32. Sales contracts.

(a) Every contract for the sale of a lot which is served by an individual sewage system which was installed under the 10-acre permit exemption provisions of § 72.22(e)—(g) (relating to permit issuance) shall contain a statement in the contract that clearly indicates to the buyer that soils and site testing were not conducted and that the owner of the property or properties served by the system, at the time of a malfunction, may be held liable for any contamination, pollution, public health hazard or nuisance which occurs as the result of the malfunction of a sewage system installed in accordance with the 10-acre permit exemption provisions of § 72.22(e)—(g).

(b) Every contract for the sale of a lot served by a holding tank, whether permanent or temporary, to which sewage is conveyed by a water carrying system and which is designed and constructed to facilitate ultimate disposal of the sewage at another site, shall contain a statement in the contract that clearly indicates that the property is served by such a tank and shall provide a history of the annual cost of maintaining the tank from the date of its installation or December 15, 1995, whichever is later.

(c) Every contract for sale of a lot which is served by an individual sewage system which was installed under § 72.33 (relating to well isolation distance exemption) with an isolation distance less than the distance specified by § 73.13 (relating to minimum horizontal isolation distances) shall contain a statement in the contract that clearly indicates to the buyer that the isolation distances required by regulation between the individual onlot system components and the well on the property being sold were not met.

(d) Every contract for the sale of a lot which is within an area in which permit limitations are in effect shall contain a statement in the contract that clearly indicates to the buyer that sewage facilities are not available for that lot and construction of a structure to be served by sewage facilities may not begin until the municipality completes a major planning requirement.

(e) Every contract for the sale of a lot for which a required revision for new land development, exception to the requirement to revise or a required supplement has not been approved shall contain a statement that clearly indicates to the buyer that sewage facilities are not available for that lot and that sewage facilities will not be available nor may construction begin until sewage facilities planning has been approved.

(f) Every contract for the sale of a lot for which there is no currently existing community sewage system available shall contain a statement in the contract clearly indicating to the buyer that there is no community sewage system available, that a permit for an individual sewage system will have to be obtained and the buyer should contact the local agency charged with administering the act before signing the contract to determine the procedure and requirements for obtaining a permit for an individual sewage system if one has not already been obtained.

(g) A contract for the sale of a lot which does not conform to the requirements of this section is not enforceable by the seller against the buyer. Any term of the contract purporting to waive the rights of the buyer to the disclosures required in this section is void.

#### **Authority**

The provisions of this § 72.32 amended under section 9 of the Pennsylvania Sewage Facilities Act (35 P. S. § 750.9); The Clean Streams Law (35 P. S. § § 691.1—691.1001); and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20).

#### **Source**

The provisions of this § 72.32 adopted November 7, 1997, effective November 8, 1997, 27 Pa.B. 5877.

#### **Cross References**

This section cited in 25 Pa. Code § 72.31 (relating to conditions related to the installation of permit exempt system).

### **§ 72.33. Well isolation distance exemption.**

(a) Any minimum distance requirement between a private well and a proposed absorption area specified in Chapter 73 (relating to standards for onlot sewage treatment facilities) is not applicable if the local agency finds that the installation of a proposed individual sewage system does not pose a threat of pollution to any well on the same lot within the distance specified by regulation. The minimum distance between a proposed individual sewage system on the applicant's lot and any wells on any other lot, regardless of the ownership of that lot, shall meet the minimum horizontal isolation distances in § 73.13 (relating to minimal horizontal isolation distances) except as provided in § 73.3(b) (relating to policy).

(b) If a repair to a malfunctioning onlot system is being considered under § 73.3(b), the requirements of this section may be waived at the sole discretion of the local agency.

(c) The applicant shall submit a formal written request for a well isolation distance exemption to the local agency. The request shall include:

- (1) Appropriate groundwater studies.

(2) Payment of fees or costs incurred by the local agency to review the groundwater study.

(d) Upon receipt of the items required in subsection (c), a local agency, other than a delegated agency, shall act upon an application for an exemption under this section within 45 days after receipt of a request for an exemption. A delegated agency shall act on any application for an exemption under this section within 30 days after receipt of a request for exemption.

(e) The local agency, municipality, sewage enforcement officer and Department will incur no liability as a result of the local agency granting an exemption under this section.

#### **Authority**

The provisions of this § 72.33 amended under section 9 of the Pennsylvania Sewage Facilities Act (35 P. S. § 750.9); The Clean Streams Law (35 P. S. §§ 691.1—691.1001); and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20).

#### **Source**

The provisions of this § 72.33 adopted November 7, 1997, effective November 8, 1997, 27 Pa.B. 5877.

#### **Cross References**

This section cited in 25 Pa. Code § 72.32 (relating to sales contracts); 25 Pa. Code § 73.3 (relating to policy); and 25 Pa. Code § 73.13 (relating to minimum horizontal isolation distances).

## **Subchapter C. ADMINISTRATION OF PERMITTING REQUIREMENTS**

Sec.

- [72.41.](#) Powers and duties of Sewage Enforcement Officers.
- [72.42.](#) Powers and duties of local agencies.
- [72.43.](#) Powers and duties of the Department.
- [72.44.](#) Reimbursement.

#### **Cross References**



This subchapter cited in 25 Pa. Code § 72.2 (relating to scope); and 25 Pa. Code § 72.3 (relating to purposes).

**§ 72.41. Powers and duties of sewage enforcement officers.**

(a) A sewage enforcement officer has the power and duty to issue, deny and revoke permits, and to take all other actions necessary to administer and enforce section 7 of the act (35 P. S. § 750.7), except that a sewage enforcement officer may not conduct hearings under section 16 of the act (35 P. S. § 750.16).

(b) A sewage enforcement officer shall issue permits only within the jurisdiction of the local agency in which the sewage enforcement officer is employed. When a sewage enforcement officer encounters a conflict of interest as specified in subsections (f)—(k), the local agency shall employ a certified sewage enforcement officer not having a conflict of interest regarding the system or lot.

(c) The local agency shall notify the sewage enforcement officer and the Department in writing of the specific conditions of employment, including, but not limited to, the following:

- (1) The geographic boundaries.
- (2) The specific permit applications to be processed.
- (3) The rate of compensation to the sewage enforcement officer.
- (4) The duration of employment.

(d) A sewage enforcement officer shall accept payment only from the local agency for services performed in conjunction with administration of the act.

(e) A sewage enforcement officer shall only accept an application or other processing fees for the local agency under the following conditions:

- (1) The fee is in the amount prescribed by the local agency's adopted fee schedule.
- (2) The fee is rendered in accordance with the local agency's adopted receipt system as required by § 72.42(a)(7) (relating to powers and duties of local agencies).
- (3) The sewage enforcement officer has received written direction from the local agency to accept these fees on behalf of the local agency.

(f) A sewage enforcement officer may advise an applicant regarding available options for the planning, design and construction of an individual or community onlot disposal system, but may not select the final system design, as specified in subsection (g) except as provided by subsection (i).

(g) A sewage enforcement officer may not plan, design, construct, sell or install an individual or community onlot sewage system within the geographic boundaries of the sewage enforcement officer's authority, as specified by the local agency.

(h) A sewage enforcement officer may not, orally or in writing, suggest, recommend or require the use of any particular consultant, soil scientist or professional engineer, or any individual or firm providing these services where these services may be required or are subject to review under this article.

(i) A sewage enforcement officer may not perform consulting or design work or related services required or regulated under the act within the municipality or local agency by which the officer is employed or with which the officer has a contractual relationship unless the services are set in the fee schedule of the local agency, the fees are paid directly to the local agency and the records and products relating to consultation or design work are reviewed by and any subsequent permit is issued by another sewage enforcement officer employed by or under contract with the same local agency.

(j) A sewage enforcement officer may not conduct a test, issue a permit, participate in the official processing of an application or official review of a planning module for an individual or community onlot sewage system in which the sewage enforcement officer, a relative of the sewage enforcement officer, a business associate of the sewage enforcement officer or an employer of the sewage enforcement officer, other than the local agency, has a financial interest.

(k) For purposes of subsection (j), a financial interest includes full or partial ownership, agreement or option to purchase, leasehold, mortgage or another financial or proprietary interest in; or serving as an officer, director, employe, contractor, consultant, or another legal or fiduciary representative of a corporation, partnership, joint venture or other legal entity which has a proprietary interest in one or more of the following:

(1) One or more lots to be served by the system.

(2) The development or sale of the lots to be served by the system.

(3) A contract, either written or oral, to perform a service in the development of one or more of the lots to be served by the system. The service may be before or after the fact of development and may include professional as well as other services.

(4) A contract, either written or oral, to sell, plan, design, construct, install or provide materials or component parts for the system.

(l) Prior to issuing a permit, the sewage enforcement officer shall conduct personally, observe or otherwise confirm in a manner approved by the Department all tests used to determine the suitability of a site for an individual or community onlot sewage system. A sewage enforcement officer shall accept testing conducted by a prior sewage enforcement officer for the local agency provided the site, data and prior testing meet the criteria specified in § 72.26(b)—(d). When a sewage enforcement officer accepts testing by a prior officer, a copy of the Department's

“Verification of Prior Testing” form or other form as may be specified by the Department, shall be attached to each copy of the permit application.

(m) Prior to issuing a permit, the sewage enforcement officer shall confirm that the application is complete and that the proposed system design is in compliance with the requirements of the act and this part.

(n) The sewage enforcement officer shall give timely written notice to applicants or permittees of approval, denial or revocation of a permit under this chapter.

(o) The sewage enforcement officer shall advise the local agency of a violation of the act or this part, known to the sewage enforcement officer, which occurs within the local agency’s jurisdiction.

(p) The sewage enforcement officer shall advise the local agency of its responsibility to restrain a violation of the act or this part and shall independently take action within the scope of his authority necessary to restrain or correct the violation.

(q) The sewage enforcement officer shall submit the Department’s copy of the completed Application For Sewage Disposal System, with necessary attachments, within 7 days of acting upon the application.

#### **Authority**

The provisions of this § 72.41 amended under sections 7.2 and 9 of the Pennsylvania Sewage Facilities Act (35 P. S. § § 750.7b and 750.9); The Clean Streams Act (35 P. S. § § 691.1—691.1001); and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20).

#### **Source**

The provisions of this § 72.41 amended November 1, 1996, effective November 2, 1996, 26 Pa.B. 5347; amended November 7, 1997, effective November 8, 1997, 27 Pa.B. 5877. Immediately preceding text appears at serial pages (221888) to (221890).

#### **Cross References**

This section cited in 25 Pa. Code § 72.43 (relating to powers and duties of the Department).

#### **§ 72.42. Powers and duties of local agencies.**

(a) The local agency has the power and duty to:

(1) Employ or contract with sewage enforcement officers to administer section 7 of the act (35 P. S. § 750.7) and this part.

(2) Employ or contract with other technical and administrative personnel necessary to support the activities of the sewage enforcement officer.

(3) Set rates of compensation for the sewage enforcement officer and other employees necessary for the administration of the act by the local agency.

(4) Maintain offices and purchase equipment and supplies necessary for the administration of the act.

(5) Establish a schedule of fees for the processing of applications and other services provided by the local agency. This fee schedule may establish different charges for various activities and types of systems consistent with the administrative costs of reviewing applications, conducting necessary tests and investigations and supervising the installation of the system.

(6) Collect the appropriate fees as designated in the established fee schedule. The local agency shall maintain records of income, expenses and transactions of the local agency in a manner consistent with accepted accounting practices.

(7) Establish a system of receipts for monetary transactions. The receipt system shall provide to the local agency and to the applicant a record of the amount tendered to the local agency and the specific purpose of the transaction.

(8) Adopt and maintain standards and procedures for applications and permits for individual and community onlot sewage systems identical to those of the Department, as contained in this part.

(9) Adopt and maintain other regulations the local agency deems necessary for the administration and enforcement of section 7 of the act as long as they are consistent with the act and this part.

(10) Submit reports and data to the Department as required by this part or an order of the Department.

(11) Submit to the Department annually the name and address of its certified sewage enforcement officer and alternate sewage enforcement officer.

(12) Make or cause to be made inspections and tests necessary to carry out sections 7, 8, 12, 13, 13.1, 14, 15 and 16 of the act. For this purpose, the authorized representatives of the local agency have the right to enter upon lands.

(13) Proceed under sections 7, 8, 12, 13, 13.1, 13.2(b) 14, 15, and 16 of the act to restrain violations of the act and this part, and to abate nuisances in accordance with existing statutes, or as defined in the act.

(14) Notify the Department in writing within 15 days of a change in the sewage enforcement officer or his address.

(15) Cease issuing permits in designated areas when ordered to do so by the Department under section 10(7) of the act (35 P. S. § 750.10(7)), after notice and opportunity for a Departmental hearing. The local agency may issue permits in these areas for the abatement of existing health hazards and public nuisances.

(16) When applicable, establish a program for requiring, verifying, forfeiting, administering and enforcing the provision of financial assurances under § 73.151 (relating to standards for financial assurances). Costs for administering this program shall be included in the fee schedule of the local agency.

(17) Adopt by resolution a list of individuals who are sewage enforcement officers employed by companies or corporations under contract with the local agency to perform the services of sewage enforcement officers.

(18) Set and collect fees necessary to support the administrative and personnel costs of a maintenance inspection and enforcement program.

(19) Charge for engineering or consulting services required by the local agency to complete its review of a permit application. The application or review fees charged for these services shall be reasonable and in accordance with the ordinary and customary charges by the engineer or consultant for similar service in the community, and fees may not exceed the rate or cost charged by the engineer or consultant to the local agency when fees are not reimbursed by or otherwise imposed on applicants.

(i) If the applicant disputes the amount of the fees or charges, the applicant shall, within 10 working days of the date of billing, notify the local agency that the fees or expenses are disputed as unreasonable or unnecessary, in which case the local agency may not delay or disapprove an application for any approval or permit due to the applicant's dispute over fees or charges.

(ii) If, within 20 days from the date of billing, the local agency and the applicant cannot agree on the amount of fees or charges which are reasonable and necessary, the applicant and local agency shall comply with the procedure established in section 8(b)(4) of the act (35 P. S. § 750.8(b)(4)) to resolve the fee or charge dispute.

(20) Complete and provide to the applicant the results of any site suitability review, soil probe testing and soil percolation testing within 20 working days of the local agency's receipt of a permit application.

(i) The testing and results of the testing may be deferred to a later date that the applicant may request in writing or by a later date agreed to by the sewage enforcement officer and the applicant, which is confirmed in writing by the sewage enforcement officer.

(ii) A one-call system serial number shall be obtained prior to soil testing by the permit applicant or the contractor retained by the applicant to perform the test excavation. This notification shall take place no less than 3 and no more than 10 working days prior to the

excavation. The deadline for permit review by the local agency in this subsection does not apply to an applicant who fails to comply with the one-call system notification requirement.

(iii) It is the obligation of the applicant to have the site prepared in the manner required by written instructions provided to the applicant after receipt of at least 48 hours' notice from the local agency or sewage enforcement officer of the anticipated time the soils tests will be performed. Written instructions shall include provisions for deferral of testing due to weather.

(iv) Failure of the local agency to comply with these time limits shall entitle the applicant, upon request, to a refund of fees paid by the applicant for soil testing that was not performed by the local agency, and the applicant shall be entitled to submit results of soils tests, on forms provided by the Department conducted in a manner consistent with this article by a certified sewage enforcement officer, who need not be employed by or under contract with the local agency. These test results shall be accepted by the local agency and its sewage enforcement officer, who shall rely upon the results of these tests in acting on an application.

(v) An applicant who, after receiving the notice of testing, fails to have the site prepared for soil testing in a manner required by the local agency, does not have the right to submit the results of soils testing performed by a certified sewage enforcement officer not employed by or under contract with the local agency, nor is the applicant entitled to a refund of fees paid for soil testing as provided in this section.

(vi) Neither the municipality, local agency, local agency's sewage enforcement officer nor the Department will be held liable on a cause of action arising out of soil tests performed under this section by a certified sewage enforcement officer not employed by or under contract with the local agency.

(21) Make inspections of and verify measurements made by applicants on public or private properties which are determined by the local agency's authorized representative to have natural or manmade features from which specific isolation distances are required prior to the approval of onlot sewage disposal system usage in subdivisions or individual lots. The local agency's authorized representative shall have the right to enter upon lands for these purposes.

(22) Determine if a proposed individual residential spray irrigation system will create a nuisance or adversely impact existing and proposed drinking water supplies and report this information to any affected municipality served by the local agency.

(23) Assure that an individual residential spray irrigation system discharge is sampled at least once per year by the property owner through a testing laboratory for fecal coliforms, carbonaceous biological oxygen demand, suspended solids and disinfectant residual or effectiveness. Individual effluent samples may not exceed a BOD<sub>5</sub> of 25 mg/l and suspended solids concentration of 30 mg/l. Free chlorine residual shall be maintained at a range of 0.2—2.0 PPM unless a higher level is required to control disease producing organisms. This disinfection shall produce an effluent which will contain a concentration not greater than 200 fecal coliform organisms per 100 milliliters in a single sample. The local agency shall review the results of these samples and the most recent system inspection conducted under § 73.167 (relating to

operation and maintenance) and take any necessary action to resolve operational or maintenance problems identified through the sample results. Additional sampling may be required by the local agency if the annual sample indicates a violation of the limitations specified in this paragraph.

(24) A county health department and joint county departments of health may also administer the continuing maintenance provisions of § 71.73 (relating to sewage management programs) when the municipality relinquishes and the county health department or joint county department of health accepts the authority and conforms with § 71.73.

(b) The local agency may offer a program to provide financial assurance, for a fee, for systems installed under § 73.77 (relating to general requirements for bonded disposal systems). Financial assurance provided by the local agency shall comply with § 73.151.

(c) The local agency may not orally or in writing, suggest, recommend or require the use of a particular consultant, soil scientist or professional engineer, or an individual or firm providing these services when these services may be required or are subject to review under this part.

#### **Authority**

The provisions of this § 72.42 amended under sections 7.2 and 9 of the Pennsylvania Sewage Facilities Act (35 P. S. §§ 750.7b and 750.9); The Clean Streams Act (35 P. S. §§ 691.1—691.1001); and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20).

#### **Source**

The provisions of this § 72.42 amended November 1, 1996, effective November 2, 1996, 26 Pa.B. 5347; amended November 7, 1997, effective November 8, 1997, 27 Pa.B. 5877. Immediately preceding text appears at serial pages (221891) to (221892).

#### **Cross References**

This section cited in 25 Pa. Code § 72.41 (relating to powers and duties of Sewage Enforcement Officers).

### **§ 72.43. Powers and duties of the Department.**

(a) The Department is empowered to review the performance of local agencies and their sewage enforcement officers in the administration of sections 7, 8, 12, 13, 13.1, 13.2(b), 14, 15 and 16 of the act (35 P.S. § 750.7, 750.8, 750.12, 750.13, 730.13a, 750.13b(b) and 750.14—750.16).

(b) The Department and its authorized representatives may enter upon lands, make inspections and require the submission of papers, books and records by the local agency, or its sewage enforcement officer.

(c) If the Department finds that a local agency has failed to effectively administer section 7, 8, 12, 13, 13.1, 13.2(b), 14, 15 or 16 of the act or this part, the Department, in addition to other

remedies it may seek at law or in equity, may order the local agency to take actions the Department deems necessary to obtain effective administration. These actions may include, but are not limited to:

- (1) Negotiation with other local agencies for cooperation in areawide administration.
  - (2) Modification of administrative, testing or reporting procedures.
  - (3) Retention of expert consultants.
  - (4) Employment of additional personnel.
  - (5) Satisfactory participation by the local agency's sewage enforcement officer in special training programs designed to strengthen a specific weakness in the administration of the act and this part.
  - (6) Coordination of permit issuance for sewage systems with building permit issuance or with subdivision approval under local ordinances that the local agency may be administering at the time of the order.
- (d) The Department has the duty to establish a training program for sewage enforcement officers. The Department will require timely and satisfactory completion by sewage enforcement officers of training courses sponsored by the Department. Satisfactory completion means attendance at all sessions of training and attainment of a minimum grade of 70% on tests given as part of the training course.
- (e) The Department is empowered to revoke or suspend the certification of sewage enforcement officers for cause, or to reinstate the certification under this part. The actions of the Department will become final only after provision of notice and an opportunity for hearing before the Certification Board, under § 72.58 (relating to Certification Board hearings and procedures).
- (f) The Department will suspend a sewage enforcement officer's certification if the Department determines that the sewage enforcement officer has done one of the following:
- (1) Demonstrated incompetence to act as a sewage enforcement officer as evidenced by errors in planning, administration or permit issuance duties which evidence a failure or inability to understand and apply the requirements of the act and this part.
  - (2) Failed to complete satisfactorily a sewage enforcement officer's training course required by the Department under subsection (k).
  - (3) Demonstrated negligence or provided false information related to the administration of the act or this part or committed violations of this part which are not related to the issuance of a permit.



(g) The Department may reinstate the certification of a person within 2 years from the date of suspension or after 2 years following the effective date of a revocation. Prior to reinstatement, the Department will require, as a minimum, that the person take and pass the appropriate certification examination administered by the Certification Board. The Department may require satisfactory completion of a special training program designed to strengthen a specific weakness in the sewage enforcement officer's administration of the act or this part. The program may entail the use of testing procedures including, but not limited to:

- (1) Field evaluation of technical performance.
- (2) Written or oral examination of standards and procedures.

(h) The Department will revoke the certification of a sewage enforcement officer whenever the Department determines that the sewage enforcement officer has done one of the following:

- (1) Demonstrated a willful disregard of, or willfully or repeatedly issued permits in violation of the act or this part.
- (2) Failed repeatedly to attend mandated sewage enforcement officer's training required by the Department under subsection (k).
- (3) Failed to comply with the applicable terms of a Departmental order for effective administration of sections 7, 8, 12, 13, 13.1, 13.2(b), 14, 15 and 16 of the act.
- (4) Issued a permit at a time when his certification was suspended.
- (5) Willfully issued a permit outside of the geographic boundaries of authority specified by the local agency.
- (6) Issued a permit which he believed to be in violation of the act or this part before being directed to do so by the local agency under a hearing.
- (7) Failed to advise the local agency of a violation of the act, this part or the responsibility of the local agency to restrain the violation.
- (8) Failed to take the necessary action to restrain a violation of the act or this part.
- (9) Knowingly and willfully submitted false information to the Department or to the local agency in a report or form required by the act, this part or by order of the Department or the local agency.
- (10) Committed an act requiring suspension under subsection (f) and had his certification suspended previously.
- (11) Issued a permit in violation of § 72.41 (relating to powers and duties of sewage enforcement officers).

(12) Had his certification suspended for more than 2 years.

(13) Demonstrated negligence or knowingly provided false information related to the administration of the act or this part or knowingly committed violations of the act or this part which are not related to the issuance of a permit.

(i) The Department will consider complaints filed by local agencies or the public relating to the performance of local sewage enforcement officers as part of the Department's evaluation of the local agency and sewage enforcement officer.

(j) The Department may establish minimum training requirements using a Department curriculum of training as a prerequisite for applicants for certification as sewage enforcement officers. The curriculum may include a period of training under another certified sewage enforcement officer selected by the Department as a prerequisite to certification for candidates who pass the certification test.

(k) The Department may require a certified sewage enforcement officer whose performance has been evaluated and found deficient to complete a training course which may include a curriculum of training or a period of training under the direction of another certified sewage enforcement officer selected by the Department for a time period established by the Department.

(1) The Department may require this training as an alternative to suspension or as a requirement for reinstatement of a suspended certification.

(2) The local agency employing the training sewage enforcement officer shall authorize that officer to provide the training services within the jurisdiction of that local agency.

(3) The costs of Department-required training incurred by the training sewage enforcement officer and the local agency employing the training sewage enforcement officer shall be paid by the Department from funds made available under section 13.2 of the act (35 P. S. § 750.13b).

(l) The Department may delegate the review of certain alternate sewage systems as designated by the Department to sewage enforcement officers, within the area of their jurisdiction, qualified by the Department to review the systems.

(m) The Department has the duty to require local agencies to take necessary action to provide timely service, including, but not limited to, utilizing the services of an alternate sewage enforcement officer, employing temporary sewage enforcement officers and entering into contracts for service.

### **Authority**

The provisions of this § 72.43 amended under section 9 of the Pennsylvania Sewage Facilities Act (35 P. S. § 750.9); The Clean Streams Law (35 P. S. § 691.1—691.1001); and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20).

## Source

The provisions of this § 72.43 amended November 7, 1997, effective November 8, 1997, 27 Pa.B. 5877. Immediately preceding text appears at serial pages (221892) to (221894).

## Cross References

This section cited in 25 Pa. Code § 72.25 (relating to issuance of permit); and 25 Pa. Code § 72.52 (relating to conditions of certification).

### § 72.44. Reimbursement.

- (a) Reimbursement may not exceed the total program cost minus total program income.
- (b) Except as provided in subsection (c) the Department will reimburse local agencies to the extent of the appropriations made by the General Assembly for that purpose. Reimbursement shall be made annually in an amount equal to 1/2 of eligible expenses of administering and enforcing sections 7, 8, 12, 13, 13.1, 14, 15 and 16 of the act (35 P.S. § § 750.7, 750.8, 750.12, 750.13, 750.13a and 750.14—750.16), as defined by subsections (h)—(j).
- (c) A local agency complying with the act in a manner deemed satisfactory by the Department will be reimbursed in an amount equal to 85% of the cost of the expenses incurred in the administration and enforcement of the act from funds specifically appropriated by the General Assembly for this purpose if the local agency submits documentation which supports that it qualifies for the increased reimbursement as provided in subsection (d). Eligible expenses are defined in subsections (h)—(j).
- (d) To qualify for 85% reimbursement, a local agency shall:
  - (1) Document the acceptance, delegation or transfer of the administration of sections 7, 8, 12, 13, 13.1, 14, 15 and 16 of the act from one or more municipalities.
  - (2) Employ or contract with at least one sewage enforcement officer actively engaged in activities related to the administration of the act in that local agency at least 1,200 hours per year, including leave and holidays.
  - (3) Employ or contract with adequate administrative support staff.
  - (4) Employ or contract with one alternate sewage enforcement officer.
  - (5) Employ or contract with a qualified soil scientist.
  - (6) Submit to the Department for review and comment administrative procedures, permit procedures, ordinances of the member municipalities related to the administration of the act, rules, regulations, permit-related fee schedules and contracted services proposed for use in the local agency.

(7) Employ or have a contractual arrangement with sufficient technical staff to provide for local agency response to signed written requests for service within the time frames established by the administrative procedures and regulations of the local agency.

(e) Applications for reimbursement shall be in quadruplicate, on the appropriate form supplied by the Department, and received by the Department of Environmental Protection, Post Office Box 8466, Harrisburg, Pennsylvania 17105-8466, no later than March 1 each year for expenses incurred during the prior calendar year. Upon cause shown, the Secretary may extend the March 1 deadline for the filing of applications for reimbursement for not more than 60 days.

(f) Applications for reimbursement shall include the following:

(1) An itemized statement in the form of an employe time and activity record.

(2) A report of total fees, fines and other money collected by the local agency during the calendar year in the enforcement of the act.

(3) The Department central file copies of the Application for Sewage Disposal System permit denials, final inspections and expirations during the prior calendar year.

(4) Municipal ordinances, acts, regulations or procedures used in enforcing the act for local agencies applying for reimbursement for the first time or when major changes are made.

(5) Copies of additions, deletions and amendments made during the preceding calendar year to municipal ordinances, acts or procedures used in enforcing the act.

(6) Proof of payment of expenses claimed, as specified in subsection (k).

(7) A copy of the schedule of fees charged to the permit applicant.

(g) An employe time and activity record shall be kept by the local agency. This is an itemized record noting the employe's name, the date of duty and application number for each task performed, the complaint or malfunction investigated, related administrative or clerical duties performed, hours spent, miles travelled and applicable hourly rate of pay, not including fringe benefits.

(h) Costs associated with the following are eligible for reimbursement, when related to enforcement and administration of the sewage facilities permitting program:

(1) Permit application processing activities, including soil evaluation and testing procedures.

(2) Administrative, management or clerical activities.

(3) Postage, office supplies and duplicating.

(4) Nonmechanically powered tools for the sewage enforcement officer's use.

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(5) Costs of purchasing office equipment and maintaining offices, including building maintenance and utilities prorated on an equitable basis with other services.

(6) Employer costs for social security, workers' compensation, unemployment compensation and the following fringe benefits:

(i) Health care.

(ii) Pension programs.

(iii) Life insurance.

(iv) Errors and omissions insurance written specifically and billed separately to cover the sewage enforcement officer's enforcement responsibilities where the defense of official immunity, under 42 Pa.C.S. § 8546 (relating to defense of official immunity), is not applicable to the sewage enforcement officer.

(7) Mileage expenses at the Commonwealth rate for application processing, complaint and malfunction investigations, and required Department training courses or other related meetings or functions required by the Department. The reimbursement of mileage expenses at the Commonwealth rate includes the cost to maintain automotive insurance coverage, and shall be the exclusive means for reimbursement of the costs.

(8) Expenses for sewage enforcement officers to attend required Department training courses or other related meetings or functions required by the Department including:

(i) Regular rate of pay for the actual hours of attendance at the course.

(ii) Lodging, meals and subsistence at the Commonwealth rate when the course is outside a 50-mile radius of both the sewage enforcement officer's place of employment and residence and no course has been scheduled within that 50-mile radius.

(9) Chemical and bacteriological supplies and analysis for confirming violations.

(10) The legal daily rate and mileage expenses for subpoenaed witnesses at a hearing.

(11) Legal services costs incurred for:

(i) Prosecuting or restraining violations and defending against appeals.

(ii) Preparing ordinances consistent with and necessary for enforcement of the act and this part.

(iii) Preparing for and conducting hearings.

(12) The legal daily rate and mileage expenses for subpoenaed witnesses at a hearing before a magistrate, when the witnesses are essential to substantiate a violation.

(13) Fees for special consultants retained by the local agency for technical consultation on specific permits.

(14) Investigations and inspections related to complaints and malfunctions.

(i) Costs associated with the staffing and administration of a sewage management program under Chapter 71, Subchapter E (relating to sewage management programs) are eligible costs.

(g) Ineligible costs include, but are not limited, to the following:

(1) Retainer fees.

(2) Legal fees resulting from an appeal or suit against the Commonwealth.

(3) Expenses for use of earth moving or excavating equipment.

(4) Clothing purchase or allowance.

(5) Development or duplication of maps.

(6) Payment for surveillance activities by employees other than sewage enforcement officers.

(7) Sewage enforcement officer certification or renewal fees and other related expenses, such as mileage and travel expenses to the certification examination.

(8) Activities and costs associated with improper administration of the act.

(9) Cost to the local agency to maintain insurance coverage in the following areas:

(i) Errors and omissions except as provided in subsection (h)(6)(iv).

(ii) Liability.

(10) Expenses for activities resulting from the submission of additional information to supplement a reimbursement application or from activities performed as a result of a Department audit.

(11) Expenses for employe attendance at local agency meetings which do not pertain to administration of section 7, 8, 12, 13, 13.1, 14, 15 or 16 of the act.

(12) Fixed or indirect costs other than those in subsection (h)(5).

(k) Proof of payment of expenses claimed shall, at a minimum, include the following:

(1) Payroll records or copies of both sides of cancelled checks stating the gross amount paid or a statement from the sewage enforcement officer certifying that he has received salaries or wages from the municipality of which he is a full-time employe.

(2) One copy of the time and activity record or receipted itemized invoices.

(3) Proof of attendance at training courses required by the Department. Reimbursable expenses for attendance at the courses shall be identified separately under “other expenses” in the reimbursement application.

(4) Copies of hotel receipts for overnight lodging.

(5) Minutes of local agency meetings for which employe attendance is claimed as a reimbursable expense which reflect discussions involving the administration of section 7, 8, 12, 13, 13.1, 14, 15 or 16 of the act.

(l) The Department may withhold reimbursement for falsification of information included in or submitted in support of the application, or for intentional omission of information required to be submitted with the application.

#### **Authority**

The provisions of this § 72.44 amended under section 9 of the Pennsylvania Sewage Facilities Act (35 P. S. § 750.9); The Clean Streams Law (35 P. S. § § 691.1—691.1001); and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20).

#### **Source**

The provisions of this § 72.44 amended November 7, 1997, effective November 8, 1997, 27 Pa.B. 5877. Immediately preceding text appears at serial pages (221894) to (221897).

#### **Cross References**

This section cited in 25 Pa. Code § 71.58 (relating to delegation of new land development planning); and 25 Pa. Code § 71.73 (relating to sewage management programs for sewage facilities permitted by local agencies).

## **Subchapter D. CERTIFICATION OF SEWAGE ENFORCEMENT OFFICERS**

Sec.

- [72.51.](#) Requirement for certification.
- [72.52.](#) Conditions of certification or reinstatement of certification.
- [72.53.](#) Certification examination.
- [72.54.](#) Applications for certification.
- [72.55.](#) Certification renewal.
- [72.56.](#) Change of address.
- [72.57.](#) Secretary of the Certification Board.
- [72.58.](#) Certification Board hearings and procedures.

#### **Cross References**

This subchapter cited in 25 Pa. Code § 72.2 (relating to scope); 25 Pa. Code § 72.3 (relating to purposes); and 25 Pa. Code § 72.21 (relating to general).

#### **§ 72.51. Requirement for certification.**

No person may issue a permit for an individual or community onlot sewage system unless that person has been found qualified after examination and has been issued a Sewage Enforcement Officer Certificate by the Certification Board.

#### **§ 72.52. Conditions of certification or reinstatement of certification.**

(a) The Certification Board shall issue a sewage enforcement officer certificate to a person who meets the following:

(1) Is a natural person or individual. Associations, partnerships or corporate entities are not qualified for certification.

(2) Has passed an applicable examination prepared by the Department.

(3) Has not had his certification revoked previously. After 2 years from a previous revocation, the Certification Board may reexamine and reinstate the certification of a person if that person requests reinstatement. In determining fitness for reinstatement, the Certification Board shall consider the nature and gravity of the misconduct which resulted in the previous revocation and the recommendation of the Department.

(4) Has not had his certification lapsed due to failure to complete mandatory training during a previous renewal cycle unless the training has been subsequently completed.

(b) Certification shall be for a period of up to 2 years. Upon the payment of a fee of \$50 by the certificateholder, the Certification Board shall renew a valid certificate of a qualified applicant, except that applicants for renewal who are employed by the Commonwealth in administering the act and whose activities under the act are limited solely to Commonwealth service are not subject to the fee requirements of this subsection. Fees collected in excess of the actual administrative cost to the Certification Board to process certification renewals shall be dedicated to training sewage enforcement officers.



(c) If the Certification Board does not meet within 30 days of receiving the examination results from the certification testing contractor, an applicant for certification who meets the requirements of subsection (a) will be deemed certified, except that an applicant who is in violation of the regulations under the act or who is restrained from certification by § 72.43 (relating to powers and duties of the Department) will not be deemed certified.

#### **Authority**

The provisions of this § 72.52 amended under sections 7.2 and 9 of the Pennsylvania Sewage Facilities Act (35 P. S. §§ 750.7b and 750.9); The Clean Streams Act (35 P. S. §§ 691.1—691.1001); and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20).

#### **Source**

The provisions of this § 72.52 amended November 1, 1996, effective November 2, 1996, 26 Pa.B. 5347; amended November 7, 1997, effective November 8, 1997, 27 Pa.B. 5877. Immediately preceding text appears at serial page (221898).

#### **Cross References**

This section cited in 25 Pa. Code § 72.55 (relating to certification renewal).

#### **§ 72.53. Certification examination.**

(a) The Department will prepare an examination to be used by the Certification Board in determining the fitness of candidates for certification and will establish the passing grade for the examination and for each part of the examination in the areas of sewage facilities planning, program administration, technical criteria and enforcement.

(b) The Department will submit the examination to the Certification Board, which shall by letter to applicants at least 25 days prior to each examination announce the location, time, scope and passing grade for the examination. Annually, the Board will publish in the *Pennsylvania Bulletin* the dates, sites, scope and passing grade for all examinations scheduled in that calendar year.

(c) The Certification Board will schedule a date for the examination at least four times in each calendar year.

(d) An individual who takes, but does not successfully pass the examination on three occasions, is not permitted to retake the examination administered by the Certification Board for 1 year, and until the applicant has completed a training course approved by the Department. Thereafter, a candidate may take the examination only once in a calendar year until the examination is passed.

#### **Authority**

The provisions of this § 72.53 amended under sections 7.2 and 9 of the Pennsylvania Sewage Facilities Act (35 P. S. § § 750.7b and 750.9); The Clean Streams Act (35 P. S. § § 691.1—691.1001); and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20).

#### **Source**

The provisions of this § 72.53 amended November 1, 1996, effective November 2, 1996, 26 Pa.B. 5347; amended November 7, 1997, effective November 8, 1997, 27 Pa.B. 5877. Immediately preceding text appears at serial pages (221898) to (221899).

#### **§ 72.54. Applications for certification.**

- (a) Correctly completed applications and an application fee of \$25 shall be received by the Board at least 30 days prior to the scheduled examinations. In addition, the applicant shall provide documentation of the successful completion of required precertification training courses to the Board no later than the commencement of the scheduled examination for which the precertification training course was held.
- (b) Incomplete or erroneous applications shall be returned to the applicant.
- (c) The application fee is a processing fee and will not be refunded.

#### **Authority**

The provisions of this § 72.54 amended under section 9 of the Pennsylvania Sewage Facilities Act (35 P. S. § 750.9); The Clean Streams Law (35 P. S. § § 691.1—691.1001); and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20).

#### **Source**

The provisions of this § 72.54 amended November 7, 1997, effective November 8, 1997, 27 Pa.B. 5877; amended October 1, 1999, effective October 2, 1999, 29 Pa.B. 5088. Immediately preceding text appears at serial pages (237000) to (237001).

#### **§ 72.55. Certification renewal.**

- (a) Application for renewal will be sent to certified sewage enforcement officers at least 2 months prior to renewal date. In addition to the application, a curriculum of mandatory training will be sent to any sewage enforcement officer who has not completed the required training.
- (b) An applicant for renewal of certification shall submit a signed application for renewal, with fee, to the Certification Board by the renewal date. When the application for renewal is submitted later than the renewal date, but no later than 2 years after the renewal date, the Certification Board may renew a certification for good cause shown.

(c) If the applicant has not completed a training course required by the Department for certification renewal by the renewal date, the certificate will lapse.

(d) If a sewage enforcement officer's certification lapses, a new certification shall be obtained under § 72.52 (relating to conditions of certification).

#### **Authority**

The provisions of this § 72.55 amended under section 9 of the Pennsylvania Sewage Facilities Act (35 P. S. § 750.9); The Clean Streams Law (35 P. S. §§ 691.1—691.1001); and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20).

#### **Source**

The provisions of this § 72.55 amended November 7, 1997, effective November 8, 1997, 27 Pa.B. 5877. Immediately preceding text appears at serial page (221899).

#### **§ 72.56. Change of address.**

(a) The Certification Board will compile and keep current a register showing the names and addresses of certified sewage enforcement officers. Copies of this register will be furnished on request.

(b) The sewage enforcement officer shall promptly notify the Certification Board of a change of address.

#### **Authority**

The provisions of this § 72.56 amended under sections 7.2 and 9 of the Pennsylvania Sewage Facilities Act (35 P. S. §§ 750.7b and 750.9); The Clean Streams Act (35 P. S. §§ 691.1—691.1001); and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20).

#### **Source**

The provisions of this § 72.56 amended November 1, 1996, effective November 2, 1996, 26 Pa.B. 5347. Immediately preceding text appears at serial page (169961).

#### **§ 72.57. Secretary of the Certification Board.**

The Certification Board may select a Secretary who is not a member of the Board. The Secretary shall maintain the records and papers of the Board, prepare subpoenas and notices, certify actions and perform other services that the chairman and the Certification Board shall direct.

#### **§ 72.58. Certification Board hearings and procedures.**

(a) Actions by the Department to revoke or suspend sewage enforcement officer certifications become final only after notice and opportunity for a hearing before the Certification Board. The filing of an appeal with the Certification Board does not operate as an automatic supersedeas of the action of the Department. If no request for a hearing is filed with the Secretary of the Certification Board within 30 days of receipt of notice of the action by the certificate holder, the action becomes final. Requests for a hearing shall set forth with specificity the grounds for the appeal, including objections to the Department's action. If the request for a hearing does not specify the grounds for the appeal, the certificateholder shall, upon notification from the Secretary of the Certification Board, be given the opportunity to file an amended request for a hearing within 30 days of receipt of the notification. The amended request shall conform to the content requirements for a request for a hearing. The Certification Board may dismiss an appeal if a certificate holder fails to file an amended request for a hearing or to comply with the requirements for filing an amended request for a hearing. The adjudications of the Certification Board shall otherwise be in accordance with 1 Pa. Code Part II (relating to general rules of administrative practice and procedure).

(b) In hearings before the Certification Board, 1 Pa. Code Part II (relating to general rules of administrative practice and procedure) applies, unless it is inconsistent with this chapter. Discovery in hearings before the Certification Board shall be permitted as provided in the Pa.R.C.P.

(c) In proceedings before the Certification Board, the burden of proceeding and the burden of proof is the same as at common law, in that the burden normally rests with the party asserting the affirmative of an issue. The affirmative of the issue shall be established by a preponderance of the evidence. The Certification Board may require the other party to assume the burden of proceeding with the evidence in whole or in part, if that party is in possession of facts or should have knowledge of facts relevant to the issue.

(d) Actions and adjudications of the Certification Board shall be by a vote of a majority of members present at a meeting called for consideration of the action or adjudication. Three members of the Certification Board constitute a quorum.

(e) The Certification Board may hear matters brought before it as a whole or may appoint hearing examiners. Hearings held by hearing examiners not members of the Certification Board shall be decided by the Board based upon its review of the record and the examiner's proposed adjudication.

(f) An applicant is not entitled to a hearing when a certificate was denied because the applicant failed to pass the certification examination or failed to successfully complete a training program required by the Department.

### **Authority**

The provisions of this § 72.58 amended under sections 7.2 and 9 of the Pennsylvania Sewage Facilities Act (35 P. S. §§ 750.7b and 750.9); The Clean Streams Act (35 P. S. §§ 691.1—691.1001); and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20).

## Source

The provisions of this § 72.58 amended November 1, 1996, effective November 2, 1996, 26 Pa.B. 5347; amended November 7, 1997, effective November 8, 1997, 27 Pa.B. 5877. Immediately preceding text appears at serial pages (221900) and (234449).

## Notes of Decisions

### *Quorum*

A majority vote is required to uphold a revocation. *Kuszyk v. Zoning Hearing Board of Amity Township*, 834 A.2d 661, 665 Note 5 (Pa. Cmwlth. 2003)

A majority of the State Board for Certification of Sewage Enforcement Officers failed to affirm the revocation of the applicant's certificate when two of four board members dissented from a decision to sustain the revocation since evenly divided voters insufficient. *Young v. Department of Environmental Resources*, 600 A.2d 667 (Pa. Cmwlth. 1991); appeal denied 609 A.2d 169 (Pa. 1992).

## Cross References

This section cited in 25 Pa. Code § 72.43 (relating to powers and duties of the Department).

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