

The Pennsylvania Sewage Facilities Act (35 P.S. §§ 750.1-750.20a), commonly known as “Act 537”, establishes the framework for the development and implementation of plans for the sanitary disposal of sewage waste. Effective treatment and disposal of sewage waste is essential to maintaining the quality of waters of the Commonwealth and the economic value of residential and other properties.<sup>1</sup> Section 5 of Act 537 requires each municipality to submit to the Department of Environmental Protection (DEP) an officially adopted plan for sewage services for areas within its jurisdiction and establishes the framework for review and approval of these official plans by both the municipality and DEP. On July 20, 2017, amendments to Act 537 were enacted (Act 26 of 2017) to revise the sewage planning process to allow for the consideration of alternate onlot sewage systems during the planning process. These amendments became effective on September 18, 2017.

Section 5 of Act 537 has been amended to add the following as subsection (c.1): “When proposing a plan supplement or plan revision for new land development, the applicant may submit and the department shall accept, for the purpose of satisfying general site suitability requirements, any conventional or alternate onlot system permissible by a sewage enforcement officer.” The current general site suitability requirements in § 71.62 were promulgated for consideration of conventional onlot sewage systems under 25 Pa. Code Chapter 73 (relating to standards for onlot sewage treatment facilities). Act 537 now directs that alternate onlot systems also be available for use in the planning process based on general site suitability requirements when such systems can be permitted by a sewage enforcement officer (SEO). To fully implement this new requirement, general site suitability requirements will need to be developed for alternate onlot systems.

Section 5 of Act 537 has been further amended by Act 26 to require the Department to “develop scientific, technical and field testing standards upon which an evaluation of each onlot sewage system that has been classified as an alternate system in accordance with 25 Pa. Code § 73.72 (relating to alternate sewage systems) shall be based.” These standards are to be developed in consultation with the Sewage Advisory Committee (SAC).

While the existing regulations do not provide general site suitability requirements for consideration of alternate onlot sewage systems during the planning process, the regulations do establish criteria for evaluation of alternate systems on a case-by-case basis. 25 Pa. Code § 73.72. The regulations were developed primarily to address malfunctioning onlot sewage systems on existing lots that have specific site suitability deficiencies or engineering problems. A local agency can issue a permit for an alternate system under the current regulations in certain circumstances even though the alternate system is not consistent with the method of sewage disposal contained in the municipality’s approved official plan, special study or update revision. 25 Pa. Code § 72.23(d). The regulations require a person desiring to install an alternate system to submit complete preliminary design plans and specifications to the SEO and DEP for review and comment prior to applying to the local agency for a permit. 25 Pa. Code § 73.72(b).

When DEP initially evaluates an alternate technology based on the criteria in 25 Pa. Code § 73.72(c), DEP typically develops general requirements that must be considered by an SEO before issuing a permit for the use of the alternate technology in a proposed onlot system. The local agency is responsible for issuing the permit for the system based on consideration of DEP comments. DEP makes its general

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<sup>1</sup> 35 P.S. § 750.3 (Declaration of policy) (“It is hereby declared to be the policy of the Commonwealth of Pennsylvania through this act: (1) To protect the public health, safety and welfare of its citizens through the development and implementation of plans for the sanitary disposal of sewage waste. ...”)

requirements for evaluated onlot alternate technologies available for use by SEOs through listing on its website.<sup>2</sup> DEP does not require persons seeking to use these listed alternate technologies to submit their proposals to DEP for further review, and SEOs can issue permits for these listed alternate technologies when the general requirements of the listing are satisfied. If a person proposes to install an alternate technology that DEP has not previously evaluated or has not developed general requirements through its listing process, the person would need to submit the proposed alternate technology to both DEP and the SEO for review.

In addition to establishing criteria for evaluating the use of alternate systems on a case-by-case basis, the existing regulations allow for the use of experimental systems. 25 Pa. Code § 73.71. DEP has developed guidance for the review of experimental systems, Experimental Onlot Wastewater Technology Verification Program, DEP Doc ID 381-2208-001 (TVP Guidance) (copy attached). This guidance recommends a process for testing and verifying the performance of experimental technologies that are applicable to onlot collection, treatment and disposal to satisfy the criteria in § 73.71(c) for the successful design and use of experimental systems.

Prior to issuance of the TVP Guidance, monitoring, observation and testing requirements for experimental technologies were established on a case-by-case basis and resulted in inconsistencies, inappropriate use of experimental technologies and a delay in making promising technologies available for general use. The TVP Guidance allows for a two-step approach for evaluation of a new technology: (1) performance verification at a test center, and (2) field testing performance of the technology. The performance verification would be conducted by a qualified independent third party testing organization such as NSF International, following an approved industry protocol developed by or in cooperation with the American National Standards Institute (ANSI). Based on the test center performance verification and field testing of the technology, DEP can develop a recommendation on whether use of the technology throughout Pennsylvania is appropriate. After the technology is approved, it would be monitored to ensure long term performance.

DEP will implement the process outlined in the TVP Guidance be used to evaluate the existing onlot alternate technologies listed on DEP's website. The data generated by the process outlined in the TVP Guidance would provide the basis for a recommended rulemaking to include the new technology as a conventional onlot sewage system in Chapter 73.

DEP will provide opportunity for public comment on the requirements developed for an alternate technology following the evaluation process described above for existing onlot alternate technologies listed on its website and any new technology proposed in the future. This opportunity for public comment will be beneficial in evaluating proposed regulatory changes for adding any new technology as a "conventional" sewage system.

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<sup>2</sup> These onlot alternate technology listings are available on DEP's website at <http://www.dep.pa.gov/Business/Water/CleanWater/WastewaterMgmt/Act537/OnlotDisposal/Pages/OnlotAlternateTechnologyListings.aspx>.