



Citizens Advisory Council

to the Department of Environmental Protection

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The Honorable E. Christopher Abruzzo
Secretary
Department of Environmental Protection
Rachael Carson State Office Building, 16th Floor
Harrisburg, PA 17105

Dear Secretary Abruzzo:

Thank you for your recent invitation to the Citizens Advisory Council (Council) to identify the Department of Environmental Protection's (Department) priorities for 2014. Council did not take your request lightly and appreciates the opportunity your call has provided to further strengthen a productive working relationship between the Department and Council.

After thoughtful and careful consideration, Council believes an examination of the Commonwealth's Act 537 sewage planning and management program should be prioritized for Department action in 2014. Council has identified both short-term and long-term priorities associated with the Department's review of this program. In the short-term, Council calls for the Department's examination of its current policies and procedures to facilitate the use of well-tested and proven alternate technology in the onlot sewage planning phase of development. As a long-term goal, Council encourages the Department to work with appropriate stakeholders in order to complete a comprehensive review of the Act 537 program and planning process to identify programmatic improvements. Details associated with Council's recommendations are elaborated below.

Short-Term Goal: Approve the Use of Tested and Proven "Alternate Technology" Systems in Onlot Sewage Planning

As an immediate or short-term goal, Council requests that the Department identify and implement remedies to allow the consideration of alternative technologies in the onlot sewage planning process. Through dialogue with the Department's Sewage Advisory Committee (SAC), Council has learned of impediments that have resulted in the Department only considering the use of conventional sewage systems for onlot sewage planning. Council understands that the SAC has written to you to express its concerns regarding this matter and Council concurs with those concerns articulated by the SAC.

Act 537 provides for the use of both “conventional sewage systems” (those systems employing the use of demonstrated onlot sewage treatment and disposal technology in a manner recognized by the Commonwealth’s regulations) and “alternate sewage systems” (methods of demonstrated onlot sewage treatment and disposal not described in Pennsylvania’s regulations). As the Department knows, sewage treatment technology in Pennsylvania moves through a lengthy review and demonstration process. First, under *25 Pa. Code* §73.71, the technology is academically tested, such as the tests conducted by Delaware Valley College, and is then added to a list of “experimental” systems that may be installed under special oversight in limited locations. After new technologies have operated over a sufficient period of time and sufficiently demonstrate that they perform adequately and reliably, such systems are moved to the “alternate” system list. It evidently was the intention of the framers of Act 537 and the Commonwealth’s *25 Pa. Code* Chapters 71-73 regulations that such systems would eventually be included and described in the regulations, becoming “conventional” systems to be permitted by Sewage Enforcement Officers. Over the years, however, rather than reopen and amend *25 Pa. Code* Chapter 73 every time a new technology was accepted, the Department has added such systems to a “list” of acceptable alternate systems. It is important to emphasize, however, that many of the systems on the “alternate” list have endured 15 years and more of successful field use, and, in short order, work.

This brings us to the impediment concerning the current sewage facilities planning process that is of concern to both Council and the SAC. Act 537 requires each municipality to prepare an official sewage facilities plan. Such a plan is to provide for adequate sewage treatment facilities to manage sewage generated in the community, provide for the orderly extension of sewage systems, and identify those areas that will be served by onlot sewage systems. The Department’s *25 Pa. Code* Chapter 71 regulations governing sewage plans provide in *25 Pa. Code* §71.62(a) that plans which propose use of individual and community onlot sewage systems must evaluate the “general site suitability” to establish onlot system use as a feasible alternative. Subsection *25 Pa. Code* §71.62(b), in turn, requires plans which propose renovation of sewage effluent by means of subsurface absorption areas or spray irrigation systems to include certain information, including documentation that the soil and geology of the proposed site are generally suitable for the installations of the proposed systems.

The Department’s staff has historically interpreted that the above regulatory provisions mean that only “conventional” onlot systems (standard absorption field or sand mound type systems) whose details are described in *25 Pa. Code* Chapter 73 can be considered in the sewage facilities planning process. This interpretation effectively precludes consideration in the planning process of any “alternate” systems which have been demonstrated to provide acceptable, environmentally responsible treatment and disposal after extensive testing. The Department’s interpretation has led to unreasonable situations, where a community could not reflect in its sewage facility plans the potential use of well-established alternative systems in areas that would not support conventional systems, but after the Act 537 plan was approved, would be permitted by the Department to use an alternate system from those included on the Department’s acceptable alternate systems list.

Council recommends that the Department reexamine the regulations and how they are applied and interpreted by Department staff. A reading of *25 Pa. Code* §71.62(a) shows that sewage facility plans proposing use of onlot sewage systems must evaluate the “general site suitability” to establish their use as a feasible alternative; however, that section does **not** say that all such systems must be “conventional systems”. Further, while *25 Pa. Code* §71.62(b) calls for certain information, it does **not** mandate that every system under consideration meet the same “general site suitability” criteria. Council believes that the Department can and should reasonably interpret *25 Pa. Code* §71.62 to allow municipalities to accurately plan and the Department to ultimately approve, plans that consider any conventional or alternate system after giving reasoned consideration as to whether the information presented shows that the site meets “general site suitability” for the particular type of system under consideration. Council firmly believes that sewage planning should be based on the **current science** and **currently accepted technologies**. The use of onlot systems – be it conventional or alternate – is feasible as part of protective Act 537 planning.

Council recommends that if such a reasonable interpretation by the Department of its regulations is not feasible without formal amendment of *25 Pa. Code* Chapters 71-73, that it immediately pursues plans to make such a regulatory change amongst a broader proposal to strengthen the overall Act 537 program in Pennsylvania.

Long-Term Goal: A Comprehensive Review of the Act 537 Program and Planning Process in Pennsylvania

The sewage disposal program and its associated regulations have not been updated in nearly 20 years and need to be brought up-to-date. Council believes that the time has come for the Department to step back to review the overall effectiveness and direction of the sewage facilities planning program and process and to reexamine and update the regulations found in *25 Pa. Code* Chapters 71-73.

The 1966 passage of Act 537 nearly 50 years ago predates many of the current environmental laws, court decisions, planning processes, infrastructure improvements and other developments. Many municipal sewage plans are old and outdated, and the funding and resources available for updating such plans is limited. The entire Act 537 Planning and Permitting process is inefficient for both the regulated and regulating communities and does not serve the needs of the public.

Moreover, continued pursuit of sewage facilities planning in completely separate planning processes from other water resource planning activities may no longer be justified. Council notes, for example, the recommendations made by the Pennsylvania State Water Plan calling for the development of an “integrated” planning process addressing sewage, water resources, stormwater and related issues, as the many aspects of water and wastewater management are closely related.

Council urges the Department to work with knowledgeable stakeholders to examine the effectiveness and direction of the entire sewage planning and permitting program in

Pennsylvania. While the SAC will most likely be the prime advisory board utilized by the Department in such a review, Council is available to assist and be part of the process to reshape the Commonwealth's Act 537 sewage planning and management program.

I appreciate the collaboration you are fostering between Council and the Department as demonstrated by your invitation for Council to help define the Department's priorities for 2014. Council looks forward to the Department's progress on the important issues highlighted in this letter and suggests that the Department's monthly written report be one of the venues to provide Council with updates on the progress associated with any initiatives to improve the Act 537 sewage management and planning program in Pennsylvania.

Sincerely,

A handwritten signature in cursive script that reads "Terry L. Dayton".

Terry L. Dayton
Chair

Citizens Advisory Council

cc: Duane Mowery, Chairman, Sewage Advisory Committee
Sewage Advisory Committee Members and Alternates