

## Sewage Facilities Planning and Regulation

**Background:** Pennsylvania's approach to sewage facilities planning and regulation are long overdue for comprehensive review, updating and modernization. Adopted more than 40 years ago, the Sewage Facilities Act (Act 537) is built upon an outdated and cumbersome approach for both planning and permitting.

**Pennsylvania's Challenges:** The cornerstone of Act 537, the adoption of sewage facilities plans by each of Pennsylvania's more than 2,560 municipalities, has become one of the Commonwealth's weakest links in the sewage facilities planning and permitting process. The process is poorly, if at all, integrated into broader water resources and other environmental protection efforts, as most municipal plans have gone without updating for decades, with planning largely devolved to development specific "modules" guided by system suitability criteria and other requirements that are themselves out of date. With state funding for sewage planning dropped from the state budget, and municipalities largely relying upon part-time sewage enforcement officers, in many parts of the Commonwealth, the sewage facilities program lacks a cohesive and reliable approach to managing and maintaining such systems over the long run.

**Policy Considerations:** The CAC has identified both near and long-term priorities in relation to updating the sewage facilities program. In the short-term, the CAC has recommended the Department's examination of its regulations to facilitate the use of well-tested and proven alternate technologies in the onlot sewage planning phase of development. As a long-term goal, the CAC 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.

***Allowing Use of Tested and Proven "Alternate Technology" Systems in Onlot Sewage Planning:*** As an immediate or short-term goal, the CAC in April 2014 urged the Department to identify and implement remedies to allow the consideration of alternative technologies in the onlot sewage planning process. Act 537 provides for the use of both "conventional sewage systems" (those systems employing the use of demonstrated on-lot 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).

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 Chapter 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.

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 on-lot sewage systems. But the current approach to sewage facilities planning has created an impediment to the consideration of alternate systems at the sewage planning step – an impediment that precludes identification of situations and areas where such systems may well be the most appropriate approach, and also an impediment to assuring that plans contain appropriate mechanisms for assuring proper long-term management of such alternative systems.

The impediment arises from specific provisions of the Department’s Chapter 71 regulations and how the Department has chosen to interpret those provisions. 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 on-lot 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 have 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 on-lot 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 then after the Act 537 plan was approved, would be permitted by the Department to use an alternate system from those included on DEP’s acceptable alternate systems list.

Aside from the illogical disconnect between planning and permitting, the current Act 357 approach results in a concern that the criteria applied to mandate only consideration of “conventional” systems forces new land development into competition with good farmland. Clarifying the regulations to provide for use of more limited agricultural soils for residential utilization, with use of alternative systems where appropriate, could help reduce the pressure

on farmland and allow houses to be built where they would be less likely to compete for the land where we grow our food.

Accordingly, the CAC recommends that in the near term, the Department pursue a focused and concise rulemaking package that allows sewage facility plans to consider both conventional and established alternative systems, with those planning considerations to be guided by the suitability criteria for each respective system. Whether the systems are conventional or alternative, sewage facilities plans should identify whether lots in a proposed development are arranged with size and topography such as to support such systems and the plans must contain provisions for long-term maintenance of such systems.

In response to the CAC's recommendation, which was supported by the Department's Sewage Advisory Committee (SAC), in the fall of 2014 DEP developed a draft rulemaking package for consideration by the SAC. The draft is currently being reviewed by a workgroup of the SAC. The CAC encourages DEP's continued dialogue with the SAC and its workgroup on this draft regulation to assure continued progress on it.

***Comprehensive Review of the Act 537 Program and Planning Process in Pennsylvania:*** The sewage disposal statute rests on a framework developed in the 1960 and its associated regulations have not been updated in nearly 20 years and need to be brought up-to-date. The CAC 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 at 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 is no longer justified. The CAC 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.

Considering the limited resources available to most of the municipalities now charged with Act 537 planning and administration, and the fact that wastewater, stormwater and other water functions present challenges that are fundamentally watershed-based (crossing many municipal boundaries), the time has come to think afresh about where such functions might be most efficiently and effectively performed. Certainly consideration should be given to shifting the

sewage planning function to coincide with the stormwater planning function, which is now being performed at the county level under Act 67.

The CAC urges the Wolf Administration to work with knowledgeable stakeholders and the General Assembly to examine the effectiveness and direction of the entire sewage planning and permitting program in Pennsylvania.