

Act 34 of 2020

Frequently Asked Questions (FAQ)

October 13, 2021

The Sewage Facilities Act (SFA) as amended by Act 34 of 2020 (Act 34) provides that alternate and conventional sewage systems may be used in planning for new land development (NLD). The existing regulations only provide general site suitability (GSS) criteria requirements for conventional sewage systems, which include absorption areas and Individual Residential Spray Irrigation Systems (IRSIS) with standards in 25 Pa. Code Chapter 73 (Chapter 73). The Department of Environmental Protection (DEP) understands the desired outcome of Act 34 is to expand the use of on-lot alternate technology (OAT) sewage systems in sewage facilities planning to allow for development of lots that are currently unavailable for NLD. DEP understands that there is generally a desire to develop lots with soil depths less than 20 inches to a limiting zone where a spray field may currently be the only option for sewage disposal. In order to provide additional opportunities for NLD in a manner that provides safe, effective long-term sewage disposal while implementing the desired outcome of Act 34 (to expand the use of alternate systems in planning NLD) the sewage planning and on-lot permitting regulations, 25 Pa. Code Chapters. 71,72 and 73 must be revised. DEP has begun work on a rulemaking to address this and other issues. The following information is provided to help understand the implementation of Act 34 in the planning and permitting processes.

Planning based on Act 34 of 2020 (Act 34)

When an on-lot sewage disposal system is proposed for NLD, the sewage planning process requires a demonstration that the land proposed for subdivision meets GSS criteria. GSS requires the evaluation of multiple site conditions to determine if on-lot sewage disposal can safely be provided on the lots being created and the residual lot.

For subdivisions proposing the use of on-lot sewage systems for NLD, GSS must be established for the use of a conventional sewage system. GSS criteria are defined by regulation at: 25 Pa. Code §§ 71.62, 73.12, 73.13, 73.14, 73.15, 73.16 and 73.17. Additional testing or documentation may be necessary to determine if the GSS criteria are met. This testing may include, but is not limited to, permeability testing, hydrogeologic evaluation, soil morphology evaluation and additional soil profiles. A site may be considered generally suitable if a conventional sewage system, that meet all applicable Chapter 73 standards, can be sited on the proposed lot.

Once GSS is established for a lot, an OAT may be proposed as a substitute for a conventional sewage system. Individual residential NLD proposals that meet GSS for an IRSIS may be able to substitute an OAT sewage system, that is capable of meeting the conditions of the site, for the primary and, if necessary, the replacement on-lot sewage system, including on sites that have a shallow limiting zone (SLZ) and when slopes and soils are unsuitable for a conventional sewage system using an absorption area. SLZ soils are those soils where the depth to the limiting zone is less than 20-inches but meet the GSS criteria for an IRSIS. GSS criteria for an IRSIS can be found in the regulations at 25 Pa. Code §§ 71.62, 73.14(b), and 73.16(e). When substituting an OAT sewage system for an IRSIS, the minimum lot size must be based on the use of an IRSIS and must include the IRSIS area with horizontal isolation distances. One cannot change the size or shape of

the lot based on the substitution of an OAT sewage system. The lot must be large enough for the use of IRSIS and include the area where GSS for the IRSIS was established. GSS for the lot must be preserved for the IRSIS when substituting with an OAT sewage system. Except for the installation of the alternate sewage system using an absorption area, the IRSIS area must be preserved and protected from disturbance or installation of structures even after the OAT sewage system substitution.

Proposals for community residential, commercial, industrial, or institutional development must establish GSS for a conventional sewage system using an absorption area to substitute an OAT sewage system because IRSIS can only be used for an individual residence. Other sewage disposal options for these proposals on sites with SLZ soils, and/or on slopes not suitable for a conventional sewage system using an absorption area, may be land application via spray irrigation or other treatment and discharge/reuse options allowed by DEP under a Water Quality Management permit.

As part of the sewage planning process, siting a replacement absorption area may be required by local ordinance or selected as an option to address marginal site conditions for on-lot disposal. Any OAT sewage system, including a SLZ OAT sewage system, may be proposed for the replacement area for a residual lot that already has a sewage generating structure with a properly functioning on-lot system. If the residual lot with SLZ soils has not been developed, and does not currently have a sewage generating structure, a SLZ OAT sewage system may only be proposed as a substitute for an IRSIS; IRSIS can only be used for individual residential lots. In this situation, the residual lot must maintain the GSS area sited for the IRSIS replacement system.

Planning approval based on Act 26 of 2017 (Act 26)

Municipalities may have received NLD plan revisions or supplement proposals for lots with SLZ soils based on the draft *Pennsylvania Sewage Facilities Act Program Guidance; Site Suitability and Alternatives Analysis Guidelines for New Land Development Proposing On-lot Sewage Disposal*, 385-2207-001 published on August 31, 2019 (Draft Act 26 Planning Guidance). In order to transition from Act 26 to Act 34 implementation, planning proposals for alternates on SLZ soil sites may be considered if:

- Initial site investigation, including soil test pits and slope measurements, were completed prior to **February 23, 2021**, and the local agency SEO's verification of the testing occurred for all testing completed prior to February 23, 2021.
- The proposal is consistent with the Draft Act 26 Planning Guidance.

Sewage planning proposals for SLZ soil sites submitted to the municipality after June 1, 2021 must be consistent with the requirements in "Planning based on Act 34" section of this FAQ. If a local agency or SEO has questions on these proposals, they should contact the DEP's regional office for clarification. All resubmissions of previously denied or withdrawn proposals resubmitted to the municipality after June 1, 2021 must be consistent with the requirements in "Planning based on Act 34" section of this FAQ.

Permitting of OAT sewage systems on existing lots

Systems using an OAT must be designed and installed in accordance with the requirements stated in DEP's OAT Listing, ([Onlot Alternate Technology Listings \(pa.gov\)](#)), and 25 Pa. Code § 73.72(b). Classification of alternate systems by DEP allows SEOs to issue permits for OAT sewage systems under specific design requirements and site conditions, therefore deviation from the OAT Listings is not permitted. It is important to note, if the existing lot meets GSS, then an on-lot system must be installed on the lot in an area that meets GSS.

An SEO may permit an OAT sewage system if the lot was created via a sewage planning approval under the Draft Act 26 Planning Guidance for a primary and replacement SLZ OAT sewage system (see the "Planning approval based on Act 26" section of this FAQ for additional info).

The SEO may permit an OAT sewage system on a site that meets GSS. An OAT sewage system can be used as a substitute for a conventional sewage system on the area of the lot where the conventional sewage system could be sited. If a lot has SLZ soils, and it meets GSS for the use of IRSIS, the SEO may permit a SLZ OAT sewage system on the portion of the site that's suitable for an IRSIS since the SLZ OAT sewage system would be a substitution for a conventional system.

An SEO may permit an OAT sewage system to resolve a malfunctioning on-lot system consistent with DEP policy and training on resolving malfunctions (see "Technical Decision Making and the use of Conventional Technology, Alternate Technology, Experimental Technology, and Best Technical Guidance (BTG) in Onlot Sewage System Repair Situations" (DEP Doc. ID No. 362-2208-003)).

An SEO may find existing lots created after June 10, 1989 that do not meet GSS for a conventional sewage system; these lots are not suitable for on-lot sewage disposal. These lots will need to complete sewage facilities planning to determine an alternative method for sewage disposal other than on-lot. If an alternative method for sewage disposal is found and a sewage facilities plan is approved, a permit may be issued in accordance with applicable requirements.

If an existing lot does not meet GSS for a conventional sewage system and the lot was created prior to June 10, 1989, but after May 15, 1972, the local agency may need to require sewage planning consistent with "Municipal Guidance – Reconstructive Planning Guidance" (DEP Doc. ID No. 362-2208-002). If the local agency determines planning is necessary, then the SEO may not issue a permit until sewage planning has been completed.

If an existing lot does not meet GSS for a conventional sewage system and the lot was created prior to June 10, 1989, and the local agency has determined sewage planning is not required, an OAT sewage system may be permitted on the lot.

Proposals for community residential, commercial, industrial, and institutional proposals for on-lot sewage systems that cannot establish GSS for a conventional sewage system using an absorption area have no other means of on-lot sewage disposal. Other options for sewage disposal will have to be evaluated by the developer. Other sewage disposal options for these proposals may be land application via spray irrigation or other treatment and discharge/reuse options allowed by DEP under a Water Quality Management permit.

Non-building lots do not meet the definition of a lot per the SFA and are not considered *existing lots*. Any “lot or lots” created using a non-building waiver or other method that did not follow the SFA must go through sewage facilities planning prior to development. An SEO may not issue an on-lot permit for a system on these lots.

The following set of frequently asked questions will help to clarify Act 34 implementation and on-lot sewage planning and permitting. For the purpose of this document when the Department references OATs, we are referencing the Department classified on-lot sewage pretreatment components and on-lot sewage systems listings on our website. When referencing SLZ OAT, we are referencing only those OATs that the Department classified for use on SLZs.

FAQ #1 – A property owner is proposing a subdivision with individual residential lots and soil testing revealed only soils with SLZs. The lots are generally suitable for an IRSIS. A SLZ OAT sewage system is being substituted for the IRSIS. What planning mechanisms may be used?

Planning exemption using a DEP mailer if you can meet the requirements in 25 Pa. Code §71.51(b)(1); or

Planning exception or supplement using a Component 1 planning module if you can meet the requirements in 25 Pa. Code § 71.55; or

Planning revision or a supplement using a Component 2 planning module if you can meet the requirements in 25 Pa. Code § 71.52.

FAQ #2 – A property owner is applying for a planning exemption for their individual residential subdivision. Soil testing has revealed only soils with SLZs are present on the lot. Can a planning exemption be approved?

Yes, if the lot provides for a primary and replacement IRSIS on the lot, and the requirements of 25 Pa. Code §71.51(b)(1) are met.

FAQ #3 - Is a lot considered to have marginal site conditions if an IRSIS can be sited?

No.

FAQ #4 – A property owner is substituting a SLZ OAT sewage system for an IRSIS on an individual residential lot. Can the lot be sized based on the use of a SLZ OAT sewage system?

No, you must maintain GSS with the area needed to site the IRSIS. The lot size is dependent on sufficient suitable land area for the IRSIS for all lots in the subdivision.

FAQ #5 – A property owner is proposing a subdivision with individual residential lots and soil testing revealed the soils do not have a SLZ, but due to the steepness of the slope, only an IRSIS can be sited. Can an OAT sewage system be substituted for the IRSIS and planned for?

Yes, if you can meet all the siting and design requirements in the OAT Listing.

FAQ #6 – A property owner is proposing a subdivision with sewage planning for a community, commercial, institutional, or industrial on-lot system and soil testing revealed only soils with SLZs. Can a SLZ OAT sewage system be planned for?

No, SLZ OAT sewage systems may only be proposed as a substitute for an IRSIS on individual residential lots.

FAQ #7 – A property owner is proposing a subdivision for a community, commercial, institutional, or industrial on-lot system and soil testing revealed the soils do not have a SLZ, but due to the steepness of the slope, a conventional absorption area is unable to be sited. Can a drip irrigation OAT sewage system be planned for?

No, you must be able to site a conventional sewage system before you can substitute an OAT for these types of proposals.

FAQ #8 – A property owner is proposing a subdivision with sewage planning for a community, commercial, institutional, or industrial on-lot system and soil testing revealed only soils with SLZ are present. Can the DEP permit a SLZ OAT sewage system?

No, regardless of the entity permitting the proposal (DEP, or a Sewage Enforcement Officer (SEO)), the same sewage planning requirements apply. A SLZ OAT sewage system may only be substituted on individual residential lots that are generally suitable for an IRSIS.

FAQ #9 – A property owner is subdividing their property and due to the presence of marginal site conditions or as required by a municipal ordinance, a replacement on-lot sewage system must be sited on the residual tract. The residual tract currently has a sewage-generating structure with a permitted on-lot sewage system that is not malfunctioning. Soil testing revealed the residual lot has SLZ soils. Can a SLZ OAT sewage system be planned for as the replacement system on the residual lot?

Yes.

FAQ #10 - Can a SLZ OAT sewage system be used for repair of a malfunctioning system?

Yes, if you can meet all the siting and design requirements in the SLZ OAT Listing.

FAQ #11 - An individual residential subdivision was approved with a primary conventional sewage system using an absorption area and a replacement SLZ OAT sewage system. Can an IRSIS be sited, substituted with a SLZ OAT sewage system, and used as the primary system?

Yes, if additional site testing verified the lot is GSS for an IRSIS and the system can be designed in accordance with the SLZ OAT Listing, the SLZ OAT sewage system can be used as the primary sewage system. If the lot is not suitable for an IRSIS then the SLZ OAT sewage system cannot be installed as the primary sewage system.

FAQ #12 - A subdivision was approved for a conventional sewage system using an absorption area. Testing revealed a percolation rate of between 3 and 60 minutes per inch. Now, at permitting, the property owner wants to install an OAT sewage system that provides secondary or advanced secondary treatment to reduce the size of the absorption area. Can the OAT sewage system be permitted?

Yes, providing that the system can be designed in accordance with the OAT Listing.

FAQ #13 – A subdivision for an individual residential lot was approved with a primary IRSIS. Now, at permitting, the property owner wants to install a SLZ OAT sewage system. Can a SLZ OAT sewage system be permitted?

Yes, if you can meet all the siting and design requirements in the SLZ OAT Listing.

FAQ #14 – A subdivision was approved for community, commercial, institutional, or industrial subdivision siting a conventional sewage system using an absorption area. For convenience, the property owner wishes to install the on-lot system on a different part of the lot that does not meet GSS for an absorption area but can support a SLZ OAT sewage system. Can a SLZ sewage system be permitted?

No, SLZ OAT sewage systems may only be substituted at permitting on a site that meets GSS for an IRSIS. IRSIS may only be used for individual residential lots.

FAQ #15 - An *existing lot* is unable to support a conventional or OAT sewage system without violating horizontal isolation distances described in 25 Pa. Code § 73.13. Can Best Technical Guidance (BTG) be used for new construction on the existing lot?

No. BTG cannot be used for new construction. BTG is only available to address malfunctioning on-lot systems as provided in 25 Pa. Code § 73.3.

FAQ # 16 - An *existing lot* was created after May 15, 1972 but before June 10, 1989 and did not go through the sewage planning process. The municipality is not requiring reconstructive planning and has provided a letter to DEP with this decision. The site cannot support a conventional system. Can a SLZ OAT sewage system be permitted?

Yes, if you can meet all the siting and design requirements in the SLZ OAT Listing.

FAQ # 17 - An *existing lot* demonstrates that it meets GSS for a conventional sewage system using an absorption area. For convenience, the property owner wishes to install the on-lot system on a different part of the lot that does not meet GSS but is able to support an OAT sewage system. Can the OAT sewage system be permitted at this location?

No. When available, you must use the generally suitable site for your absorption area. You may substitute an OAT sewage system on GSS soils if you can meet all the siting and design requirements in the OAT Listing.

FAQ # 18 – A property owner has an individual residential *existing lot* and the municipality and/or DEP has determined that the lot needs planning. Testing revealed

soils with SLZs, and that the lot is GSS for an IRSIS. Can a SLZ OAT sewage system be planned for?

Yes, if you can meet all the siting and design requirements in the SLZ OAT Listing.

FAQ #19 – A property owner has a community residential, commercial, institutional, or industrial *existing lot* and the municipality and/or DEP has determined that the lot needs planning. Testing revealed soils with SLZs. Can a SLZ OAT sewage system be planned for?

No.

FAQ #20 – A property owner has an *existing lot*, created before May 15, 1972, and sewage facilities planning is not required. The site cannot support a conventional sewage system. Can a SLZ OAT sewage system be permitted?

Yes, if you can meet all the siting and design requirements in the SLZ OAT Listing.

FAQ #21 – A property owner has an individual residential *existing lot* and the lot has a site that meets GSS for a conventional sewage system using an absorption area. Can an OAT sewage system be permitted on the generally suitable site?

Yes, if you can meet all the siting and design requirements in the OAT Listing. SLZ OATs are not suitable on sites that meet GSS for a conventional absorption area, therefore cannot be permitted.

FAQ #22 - A lot was created as a non-building lot and now the property owner wants to develop it as an individual residential lot; sewage facilities planning is required. Testing revealed soils with SLZs and that the site is GSS for an IRSIS. Additional testing revealed the site is suitable for a SLZ OAT sewage system. Can a SLZ OAT sewage system be planned for?

Yes, planning may proceed in accordance with the relevant regulations.

FAQ #23 - A lot was created as a non-building lot and now the property owner wants to develop it with a community, commercial, institutional, or an industrial on-lot sewage system; sewage facilities planning is required. Can a SLZ OAT sewage system be planned for?

No.

FAQ #24 - Do the OAT Listings provide site suitability criteria for OATs?

No. Although the existing OAT approvals provide various requirements for each approved technology, the approvals do not include sewage facilities planning requirements or criteria. As such, for purposes of sewage facilities planning, the only site suitability criteria that currently exist are the GSS criteria described in the regulations.

FAQ #25 - If a lot can support a conventional sewage system, does that mean the lot meets GSS as per 25 Pa. Code § 71.62?

Yes. A simple way to determine if the lot meets GSS is to verify that the lot can support a conventional sewage system.

FAQ #26 – The property owner is proposing a subdivision with individual residential lots. The soil testing and site evaluation revealed the soils do not have a SLZ. The site slopes are between 12%-15% and the soil depth to limiting zone is less than 60 inches so a conventional sewage system absorption area cannot be sited. Can an OAT sewage system that can be sited on lots with slopes up to a 15% be planned for?

Yes. The planning must establish that the proposed lot(s) are generally suitable for an IRSIS and then an OAT sewage system whose listing allows for siting on lots with slopes between 12% and 15% can be planned for and permitted. If the proposed lots do not allow for an IRSIS to be sited, an OAT sewage system cannot be proposed.

FAQ #27 – The property owner is proposing a subdivision with individual residential lots. The soil testing and site evaluation revealed the soils do not have SLZs. The site slopes are between 12%-15% and the soil depth to limiting zone is less than 60 inches so a conventional sewage system absorption area cannot be sited. Is the proposal eligible for a planning exemption if site can support a primary and replacement OAT sewage system?

No, the proposal would not be eligible for a planning exemption. In order to be eligible for an exemption, the proposal must show that a primary and replacement conventional sewage system are capable of being sited.

Version History

Date	Version	Revision Reason
5/17/2021	1.0	Original
10/13/2021	2.0	Simplification and Reorganization