

Act 537 – The Sewage Facilities Act and RLUIPA Frequently Asked Questions (FAQ) July 30, 2025 Version 1.0

Background

The Department of Environmental Protection (DEP) oversees the municipal implementation of the Pennsylvania Sewage Facilities Act, Act 537 of 1965 (Act 537). The purpose of this FAQ is to provide guidance regarding the implementation of Act 537 with respect to the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA), 42 U.S.C. §§ 2000cc, et seq. This FAQ may be updated to address additional questions, policy, or guidance.

The stated policy of section 3(1) of Act 537 is: “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.” Municipalities and local agencies have obligations under Act 537 and its implementing regulations at 25 Pa. Code Chapters 71-73. These obligations include abating malfunctioning onlot systems and nuisances, planning to address long-term sewage needs, and permitting of onlot systems. There are several key provisions of Act 537 and the implementing regulations that provide authority for abating malfunctions and addressing nuisances. The implementation of these provisions is fundamental to the implementation of Act 537 and compliance of municipal and local agency responsibilities under Act 537.

Section 7 (a)(1) of Act 537 states (emphasis added) that: “No person shall install, construct, or award a contract for construction, or alter, repair or connect to an individual sewage system or community sewage system or construct, or request bid proposals for construction, or install or occupy any building or structure for which an individual sewage system or community sewage system is to be installed ***without first obtaining a permit indicating that the site and the plans and specifications of such system are in compliance with the provisions of this act and the standards adopted pursuant to this act.***”

Section 14 of Act 537 describes a nuisance as (emphasis added): “A violation of section 7 of this act or ***the discharge of untreated or partially treated sewage to the surface of the ground or into the waters of this Commonwealth***, except as specifically approved by the department under sections 202 and 207 of the act of June 22, 1937 (P.L.1987, No.394), known as “The Clean Streams Law,” or permitted by the local agency pursuant to section 7.3 of this act shall constitute a nuisance and shall be abatable in the manner provided by law.”

25 Pa. Code § 72.42 provides certain powers and duties to local agencies:

- Local agencies, and their authorized representatives, have the right to enter upon lands to perform inspections and tests to carry out the local agency's obligations.
- Local agencies can proceed under sections 7, 8, 12, 13, 13.1, 13.2(b), 14, 15, and 16 of Act 537 to abate nuisances in accordance with existing statutes, or as defined in Act 537.

Section 12(a) of Act 537 provides, in part, that a local agency or any municipality which is a member of a local agency can take legal action to restrain or prevent violations of section 7 of Act 537 within the jurisdiction of the local agency or municipality.

These are important tools for local agencies and Sewage Enforcement Officers (SEOs) to use when addressing nuisances and malfunctioning onlot systems. The remedy to address nuisances and malfunctioning onlot systems may be affected by specific factors, but ultimately, the malfunction or nuisance must be resolved. Local agencies and SEOs may be required to take actions to compel responsible parties to restrain violations of Act 537. The Department has the power and duty to train SEOs. The Department is also authorized to provide technical assistance to counties, municipalities, and authorities in coordinating official plans, so, the Department encourages SEOs and local agencies to contact DEP's Sewage Planning staff to help navigate these sometimes-difficult situations.

Nothing in this FAQ affects regulatory requirements. The interpretations herein are not an adjudication or a regulation. There is no intent on the part of DEP to give the interpretations in this FAQ that weight or deference. This FAQ provides a framework within which DEP will exercise administrative discretion in the future. DEP reserves the discretion to deviate from the interpretations in this FAQ if circumstances warrant.

Onlot Sewage Disposal Permitting to Abate Malfunctioning Onlot Systems and Nuisances

FAQ #1: A residential (or commercial) structure on a lot has been alleged to have a malfunctioning onlot system or to have an unpermitted discharge of sewage to the surface of the ground or to a waterway. What does the municipality do?

The municipality, pursuant to 25 Pa. Code § 72.42(a)(12) has the power and duty to make, or cause to be made, inspections and tests necessary to carry out the requirements of Act 537. The SEO authorized by the municipality must conduct an inspection of the alleged malfunction or unpermitted discharge. If a violation is discovered, the municipality has the power and duty to proceed under 25 Pa. Code § 72.42(a)(13) and Act 537 to restrain the violation.

FAQ #2: The SEO has confirmed a malfunctioning onlot system on a property. The landowner demonstrates that their sincerely held religious beliefs would be substantially burdened by compliance with the regulations. What does the municipality do?

The municipality has the power and duty to proceed under sections 7, 8, 12, 13, 13.1, 13.2(b), 14, 15, and 16 of Act 537 to restrain any violations and to abate nuisances. Although the remedy to the violation may need to be evaluated, on a case-by-case basis, to take into consideration the

burden on the sincerely held religious beliefs of the landowner, the violation must be remedied to protect the landowner, the public, and the waters of the Commonwealth from the discharge of untreated sewage to the environment. The municipality should explore remedy options with the landowner that would not be substantially burdensome to the landowner's sincerely held religious beliefs.

FAQ #3: A lot has a confirmed malfunction and does not have any water under pressure available to the lot. The site qualifies for a privy per 25 Pa. Code § 71.63(g)(1). What are the next steps?

The site must be evaluated for use of possible onlot repair systems that comply with 25 Pa. Code Chapter 73. A privy may be proposed if there is no water under pressure and no piped wastewater from the structure to a privy vault or to an unpermitted disposal system on the lot. If the lot is a lot of record in existence prior to May 15, 1972, and otherwise qualifies for the use of a privy per 25 Pa. Code § 71.63(g)(1), a privy permit may be issued if the proposed privy complies with standards for privies provided for in 25 Pa. Code § 73.63 (relating to standards for privies).

If the lot is not a lot of record in existence prior to May 15, 1972, 25 Pa. Code § 71.63(g)(1) does not apply and sewage facilities planning must occur pursuant to 25 Pa. Code § 71.63(b) and (f) before a privy permit may be issued.

FAQ #4: A lot has a confirmed onlot system malfunction and has water under pressure available on the lot. What are the next steps?

A site investigation must be conducted. If no repair to an existing system can be made, soils testing must be conducted to evaluate site suitability for an onlot sewage disposal on the lot. Soils testing will determine if a conventional or alternate onlot system can be sited on the lot. A privy may be used in conjunction with an onlot sewage absorption area as provided in the [Alternate Technology Listing A2014-0018-0002](#). The listing provides for a reduction in the size of the absorption area up to 40% when a privy is used in conjunction with an absorption area for gray water disposal. Either a conventional, alternate, or experimental technology onlot sewage disposal system must be permitted and installed.

FAQ #5: A lot has an onlot system malfunction and the site was found to be unsuitable for an onlot soil absorption area. What are the next steps?

If an onlot system cannot be utilized on the lot in question, a holding tank permit can be issued under 25 Pa. Code § 71.63(d) to abate a nuisance or health hazard. A small flow treatment facility (SFTF) may also be a viable option if a discharge point is feasible. Use of an SFTF requires sewage facilities planning approval via a [Component 3s planning module](#). DEP regional office staff can provide guidance on SFTF permitting and sewage planning requirements.

FAQ #6: A lot has an onlot system malfunction and the site was found to be suitable for an onlot soil absorption area, but the landowner demonstrates that the use of an onlot system is substantially burdensome to the sincerely held religious beliefs of the landowner. What is required?

If a violation of Act 537 is discovered, the municipality has the power and duty to proceed under 25 Pa. Code § 72.42(a)(13) and Act 537 to restrain the violation. A holding tank permit can be issued under 25 Pa. Code § 71.63(d) to abate a nuisance or health hazard. If the municipality determines that an onlot disposal system able to be permitted by the SEO is substantially burdensome to the sincerely held beliefs of the landowner for a long-term sewage disposal alternative to replace the holding tank, a revision or update to the municipal Official Sewage Facilities Plan (Revision or Update Revision) must be completed. The Act 537 Revision or Update Revision must evaluate all possible sewage disposal alternatives permissible by regulation and may choose the alternative that is the least burdensome to the property owners' sincerely held religious beliefs.

Abating Malfunctioning Onlot Systems in Areas Served by Public Sewers

FAQ #7: A resident resides in an area identified in the official plan to be served by public sewers and the SEO has confirmed a malfunction on the property. The landowner demonstrates that they have a sincerely held religious belief that would be substantially burdened by the connection to the public sewer. What does the municipality do?

If a violation of Act 537 is discovered, the municipality has the power and duty to proceed under 25 Pa. Code § 72.42(a)(13) and Act 537 to restrain those violations. If the municipality determines that connection to the available public sewer is substantially burdensome to the resident's sincerely held religious beliefs, and the municipality wishes to provide for an exemption from connection to the public sewer through an amendment to the municipality's existing rules and regulations, a revision or update revision to the municipal Official Sewage Facilities Plan (Revision or Update Revision) must be completed. The Act 537 Revision or Update Revision must evaluate all possible sewage disposal alternatives permissible by regulation and may choose the alternative that is the least burdensome to the property owners' sincerely held religious beliefs. If a privy is proposed, 25 Pa. Code § 71.63(f)(1)-(2) applies. If a holding tank is proposed, 25 Pa. Code § 71.63(c)(1)-(3) applies. In all cases, planning must be completed to update the official plan.

New Land Development, Subdivision Proposals

FAQ #8: A residential or nonresidential subdivision is proposed in an area of a municipality identified in the official plan for onlot sewage disposal. The owner of the parcel proposed for subdivision and the proposed owner of the subdivided lot attest to having sincerely held religious beliefs that would be substantially burdened by sewage disposal. What are the requirements?

A revision or update revision to the municipal Official Sewage Facilities Plan (Revision or Update Revision) must be completed. The Act 537 Revision or Update Revision must evaluate all possible sewage disposal alternatives permissible by regulation and may choose the alternative that is: (1) the least burdensome to the property owners' sincerely held religious beliefs; and (2) is in compliance with the regulations.

FAQ #9: A residential or nonresidential subdivision is proposed in an area of a municipality identified in the official plan for publicly sewerage disposal. The owner of the parcel proposed for subdivision and the proposed owner of the subdivided lot demonstrate that the public sewage disposal would be substantially burdensome on the owners' sincerely held religious beliefs. What are the requirements?

A revision or update revision to the municipal Official Sewage Facilities Plan (Revision or Update Revision) must be completed. The Act 537 Revision or Update Revision must evaluate all possible sewage disposal alternatives permissible by regulation and may choose the alternative that is: (1) the least burdensome to the property owners' sincerely held religious beliefs; and (2) is in compliance with the regulations.

Example

FAQ #10: A landowner proposes a subdivision and intends to utilize a privy. What are the requirements?

A revision or update revision to the municipal Official Sewage Facilities Plan must be completed to provide for the use of privies on the lot. The official plan must be revised with a [Component 2 planning module](#) (25 Pa. Code § 71.63(f) (relating to retaining tanks)) or an update revision. The Component 2 must document, among other things, that soil and site suitability testing of the lot has been conducted and the site meets the requirements for sewage disposal by one of the systems described in 25 Pa. Code Chapter 73. Applicable municipal ordinances for management of the sewage disposal option must be in place. If greywater will be generated by the proposal, treatment and disposal by a method provided by regulation must be accounted for in the Component 2 planning module.

FAQ #11: A landowner is proposing a sewage disposal system other than a system described in Chapter 73 or an Alternate Onlot Sewage System. Are there other options for approving a sewage treatment and disposal system for use?

Two potential options for permitting of a sewage disposal system not described in Chapter 73 or as a DEP-approved alternate onlot sewage system are: (1) experimental onlot systems as provided for in 25 Pa. Code § 73.71; or (2) treatment and disposal systems permitted through DEP's Water Quality Management (WQM) Permitting Program as provided in 25 Pa. Code Chapter 91 (relating to general provisions). If the proposed design can be classified as an experimental onlot sewage disposal system and the SEO is able to permit that system, then 25 Pa. Code § 73.71 applies. If a proposed design cannot be classified as an onlot sewage disposal system with a permit that can be issued by the SEO, a WQM permit, issued by DEP, can be pursued. The application must include a Design Engineer's Report, drawings and specifications clearly showing the proposed project, and the basis of the design. The application form, Design Engineer's Report, and the front cover of each set of drawings and specifications must bear the name, signature, and seal of the licensed professional engineer authorized to practice in Pennsylvania responsible for preparing the application. Each drawing must also bear the imprint, or reasonable facsimile, of this seal.