Testimony of

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Chairman Yaw, Chairman Yudichak, and members of the committee, thank you for the opportunity to submit testimony regarding the importance of the Pennsylvania Sewage Facilities Act (Act 537) and share some suggestions that DEP believes are needed to modernize the Act. I am particularly pleased to have been asked to represent DEP, as over the past 30 years, I have worked in and around the sewage facilities program. During that time, I have been a regulator at both DER and DEP, a consulting engineer who helped write Act 537 plans, a certified sewage enforcement officer, and a municipal engineer who implemented these plans. This experience has given me great perspective on the pros and cons of the Act.

To begin, for the past almost fifty years, there may be no more important statute in the Commonwealth for protection of public health at the most local level than Act 537. The post-World War II push of unregulated suburban development into rural areas resulted in ubiquitous problems with pollution to the environment that compromised public health and safety. Many citizens purchased newly-created lots and built their American dream home, only to find that the soils on which their sewage treatment and disposal systems were installed were unsuitable, and their purchased properties were greatly devalued. As a result of these significant public health and property value problems, in January 1966, the PA General Assembly, developed and passed what is currently and commonly known as Act 537.

Act 537, among other things, provides for municipal sewage facility planning, local permitting of onsite sewage treatment and disposal facilities, the training and certification of sewage enforcement officers, and the enforcement and continued compliance with regulatory standards and practices.

There have been 6 amendments to Act 537 since 1966: Act 177 of 1968, Act 43 of 1970, Act 208 of 1974, Act 26 of 1989, Act 149 of 1994 and Act 41 of 2013. The last significant amendment to Act 537 was in 1994 (Act 149 of 1994). These amendments were revisions to Act 537 that were, in essence, Band-Aid approaches to the problems perceived at those times. But the combined effects of these numerous and patchwork minor revisions have resulted in unintended, negative effects on the implementation of the Act through regulation and guidance, and have caused confusion for the public and local officials. These unintended consequences, as well as the antiquity of Act 537, have left the public and local officials frustrated and angry with the Act 537 requirements we have in place today.

DEP would like to see a complete overhaul of the statute to bring it up to modern standards and to ensure that public health and safety standards are maintained for Pennsylvania citizens. DEP has a number of focus areas that I will touch on today, but there are many others items that we would recommend in any overhaul of Act 537.

First, DEP suggests that counties, and their planning commissions or regional planning entities, should have a greater role in the sewage planning process. This recommended change would promote regionalization of sewerage facilities, which has been a goal of the Act since its inception.

In many municipal settings there is a lack of inter-municipal cooperation when it comes to planning and the sharing of resources for sustainable infrastructure development. We tend to have an easier time sending our children to school together than we do sending our sewage to the same location to be treated. This does not make economic or environmental sense. There can be significant cost savings when sewage treatment and disposal solutions are developed on a regional scale instead of on a single municipality basis. We have recently observed some successful regional solutions. One example is the West Branch Regional Authority that collects and treats waste from five municipalities in Lycoming County: Montgomery Borough, Muncy Borough, Clinton Township, Muncy Creek Township and Muncy Township. Another example, just down river from West Branch, is the Northern Neighbors effort in northern Northumberland County. This project included a regionalization effort between Watsontown Borough, Milton

Borough and Delaware Township to consolidate sewage systems, and importantly eliminate two small outdated and environmentally inefficient wastewater discharges with all wastewater now sent to the Milton Regional Sewer Authority.

We also have observed areas where regional facilities would have been a much better solution than what is currently in place. For example, just across the river from us, there are six major, individually owned and operated wastewater treatment works located in very close proximity to each other (Lower Allen Township, Hampden Township, East Pennsboro Township, Lemoyne Borough, Silver Spring Township and Mechanicsburg Borough). There is no doubt that an economy of scale could be realized if such facilities operated either as one entity, or, at the very least, shared the resources and costs associated with their sewerage facilities' needs.

Second, DEP also suggests that changes to the Act should include requirements for third party testing and certification of new onsite sewage treatment and disposal systems. As the cost of the installation and operation of publicly owned gravity collection and interceptor sewer systems and centralized wastewater treatment plants have escalated, municipalities have become more reliant on the long term use use of individual or community onsite sewage treatment and disposal systems. These onsite systems are no longer considered to be a temporary solution until public sewers become available. They are and must be considered to be permanent wastewater treatment and disposal infrastructure.

The Act, and its implementing permitting regulations, currently define onsite sewage treatment and disposal systems in three categories: conventional, alternate and experimental. All three types of systems require a suitable soil profile in order to be considered acceptable for their use. Because of the growth in many rural areas of the Commonwealth, many areas previously thought not suitable for the use of onsite sewage treatment and disposal systems are now contemplating the use of alternate and/or experimental technologies. There have been many new developments in the area of onsite sewage treatment and disposal system technology that allow onsite systems to be used where the soil conditions do not meet the current requirements for planning purposes, meaning the laying out and sizing of lots. Many of these systems are considered alternate technologies, since they are not yet recognized as regulatory standard conventional technologies.

It is critical that any changes to the Act maintain soils testing requirements during planning that are site specific and blind to technology, to assure that the current practice of protecting public health is continued. We also recommend removing any references to technological evaluations or specific technologies that can be used for onsite sewage disposal systems. For example, local municipal officials certainly do not want new developments in which all of the sewage treatment and disposal systems installed are alternate technologies that are supposed to work in less than 20 inches of suitable soil. This multiple lot approach was not part of any testing protocol and may simply result in creating "treated sewage wetlands".

As implied, a key issue concerning alternate technologies is their testing and validation. We must ensure that these systems will function properly for the long term. While a testing and validation process exists in DEP regulation, it is implemented through technical guidance. There is no definitive requirement in Act 537 that testing of new technologies must be conducted under a routine, consistent and technically sound protocol. The testing for these systems should be rigorous and the results should be reproducible years after the initial testing. DEP recommends that a standardized testing regiment, performed by a qualified third party such as the National Sanitation Foundation (NSF), be mandatory for all new onsite technologies. A qualified third party such as NSF would place its seal on the successful testing and demonstration. Such a seal would be the approval needed for use in the Commonwealth. All properly tested and sealed systems would be considered acceptable for all situations. This third party approach would take DEP out of alternate technology approval development, allowing thorough testing, according to national best practices, to be conducted prior to any approval.

Third, as municipalities develop and the density of their populations grows, the need for onsite sewage treatment and disposal systems to function well over the long term as permanent infrastructure has become evident. This need has increased with the advent of new, complicated technologies. DEP believes that it is time to mandate that sewage management programs be adopted and implemented by local agencies. A sewage management program involves more than just septic tank pumping. A sewage management program includes periodic inspection of the system to ensure that it is still functioning properly and providing adequate treatment.

Sewage management programs help protect the investment made by homeowners by insuring that their property does not become devalued due to lack of adequate sewage disposal.

Local entities have cited lack of funding as a reason not to implement a sewage management program. The sewage management program requirement should allow fees to be charged by local agencies to residents that have onsite systems that would cover sewage management program costs. Onsite sewage disposal systems should be treated in the same manner as other sewage facility infrastructure. Allowing fees to be charged by local agencies to provide the planning and implementation of a sewage management program could make these types of plans more acceptable to the local officials. These fees should be dedicated for the purpose of running the sewage management program.

Fourth, changes to the Act should require that all municipal official sewage plans be evaluated and either adopted or re-adopted by the local agency at least every ten years. In many areas of the Commonwealth, the adopted and approved sewage facilities plans are seriously out of date. There are some municipalities that have never adopted their own Act 537 plans and rely on old county plans developed prior to 1967. In the Southcentral Region, approximately 25% of all plans are old county plans. To make this more pointed, 12% of all municipalities across the state have plans older than 40 years and 70% of all municipalities across the state have plans older than 10 years. (See attached map.)

This lack of implementation of the basic function of Act 537, local sewage facilities planning, means that sewage planning decisions are being made via a patchwork plan amendment process, known as the planning module process. This is not the intended purpose of the Act, and it adds delay and unnecessary expense to the development process.

Having plans reviewed and updated as necessary every ten years will ensure that plans are up to date, avoiding the need for DEP review of each and every new development, and possibly avoiding situations where development projects are prohibited simply because a plan was out of date, or worse, never even adopted. Having up-to-date plans will also minimize, and possibly eliminate, the surprise factor to new municipal officials or residents moving into a community.

Such a review would not require that currently developed and approved plans be updated unless it is needed because they are not adequate to address the sewage facility needs and they do not offer the current required protections.

Fifth, the Department has experienced, and is currently experiencing, some problems with sewage enforcement officers (SEOs). Specifically, Act 537 revisions should include provisions for a more robust SEO continuing education program. The program specifics can be administered through regulation, however, the basis for the requirements should be included in statute. The regulation should cover the required hours, types of course material, how to qualify as a training provider, and the fees that SEOs pay to maintain their certification. In addition, the regulation could allow SEOs to perform inspections of onsite single residence sewage treatment plants.

Sixth, we would request removal of language related to fees, and, instead, authorize DEP to adopt fees by way of regulation. This includes those fees related to DEP review as well as local agency activities. The current fee structure has been in place since 1994 and needs to be updated to reflect the cost of carrying out various services. Regulations place these fees in a more manageable place, where they would be subject to regular periodic reviews that would determine the appropriateness of the fees. Promulgation of fees through regulation would still be subject to a rigorous public review, including a review by this committee.

Seventh, we believe it is past time to eliminate the ten-acre permit exemption. This exemption allows new land development without sewage facility planning on parcels ten acres or more in size that existed prior to January 10, 1987. This provision was initially provided to guarantee that historic, large land owners were not tasked, or their land investments threatened, by the new facility planning requirements. In addition, this exemption allows for any onlot sewage treatment and disposal system on ten-acre exempt properties to be sited, designed and installed with minimal or no standards. These systems are exempt from the local agency permitting process. Although a property owner would be remiss to install a system that is likely to fail, it has been done under the ten-acre exemption planning and permitting loophole. After almost fifty

years of Act 537 implementation, the applicability of this exemption is rare. DEP believes that all new land development should go through the sewage facilities planning process.

Lastly, any revisions to the Act should address the Sewage Advisory Committee (SAC). SAC's current size and composition need to be evaluated and modernized. The group has become too large to serve its intended purpose of advising the Department. Its composition is outdated and questionably appropriate. As an example, in spelling out the membership of SAC, Act 537 contains provisions for entities that are defunct (Pennsylvania Environmental Health Association) or whose responsibilities have been reassigned (Office of State Planning and Development, Pennsylvania Department of Commerce, and Pennsylvania Department of Community Affairs.) The Department also is concerned that some members of the SAC do not serve the role of their appointing organization. In some circumstances, this has resulted in a lack of consensus among members relating to recommendations provided to DEP. For example, we recently received comments from SAC and separate comments from a group that is represented on SAC that presented opposing views. The Department is also concerned that some individuals have been on the committee for a very long time and suggests limiting the number of terms individuals can serve as a designated representative.

As stated, this testimony reflects a number of areas of focus for which DEP would recommend changes to Act 537. There are many other points we would like to discuss. Should this committee recommend that changes are needed for this Act, DEP recommends a comprehensive overhaul and not patchwork efforts designed to address any one group's frustration with the current statute. DEP stands ready to assist with such an overhaul, and we look forward to working with the General Assembly to re-write Act 537 in a way that modernizes and strengthens sewage facilities planning and permitting to benefit all Pennsylvanians.

That concludes my testimony. I would be happy to answer any questions from the committee at this time.