



pennsylvania
DEPARTMENT OF ENVIRONMENTAL
PROTECTION

Testimony of

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Pennsylvania Department of Environmental Protection

Hearing on the Implementation of Act 34 of 2020

Joint House and Senate Environmental Resources & Energy Committee

Meeting

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Good morning Chairman Yaw, Chair Comitta, Chairman Metcalfe, Chairman Vitali, and members of the respective committees. On behalf of the Department of Environmental Protection, I would like to thank you for the opportunity to discuss DEP's implementation of the Pennsylvania Sewage Facilities Act, Act 537 of 1965, as most recently amended by Act 34 of 2020. I would like to begin with a brief history and overview of the Sewage Facilities Act.

For more than fifty years, the Pennsylvania Sewage Facilities Act has been a fundamental statute for the protection of public health and the environment at the most local level across the Commonwealth. The post-World War II push of unregulated suburban development into rural areas resulted in pollution that compromised public health and safety, the environment, and property values. In the decades following World War II, many Pennsylvanians purchased newly-created lots and built their dream homes, only to find that the soils on those lots were unsuitable for on-lot sewage treatment and disposal, resulting in pollution and the devaluation of their homes. As a direct result of this widespread property devaluation and associated public health and environmental issues, the Pennsylvania General Assembly passed what became the Pennsylvania Sewage Facilities Act, which was signed into law by Governor Scranton in January 1966.

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

DEP is committed to implementing Act 537 in a way that achieves the goals stated in the Act, which include:

- to protect the public health, safety, and welfare of Pennsylvanians through the development and implementation of plans for the sanitary disposal of sewage waste;
- to prevent and eliminate pollution of waters of the Commonwealth by coordinating planning for the sanitary disposal of sewage wastes with a comprehensive program of water quality management;
- to provide for the issuance of permits for on-lot sewage disposal systems by local government in accordance with uniform standards; and
- to encourage the use of the best available technology for on-site sewage disposal systems.

Act 34 of 2020, the most recent amendment to Act 537, seeks to address a concern regarding sewage facilities planning that has been around for some time, namely the development of land with soils that have been considered unsuitable through the use of alternate on-lot sewage treatment and disposal technologies.

The planning provisions of Act 537 aim to ensure that adequate sewage disposal methods are available for each lot prior to the development or creation of those lots, and that long-term sewage disposal can be provided by the proposed sewage facilities on those lots. Ensuring the availability of adequate sewage disposal on each lot protects public health, prevents pollution, and protects property values. Section 5 of Act 537 requires each municipality submit to DEP an officially adopted plan for sewage services for areas within the municipality's jurisdiction. Section 5 of Act 537 also establishes the framework for review and approval of these official plans by both the municipality and DEP. These official plans are revised and updated as each sewage planning

proposal for subdivision is approved. Sewage planning approval is required for subdivisions with few exceptions.

Act 34 of 2020 amended Section 5(c.1) to provide for the use of alternate or conventional systems in planning for new land development. The language of Section 5(c.1) of Act 537, as amended by Act 34 of 2020, states:

“When proposing a new land development, the applicant may submit and the department shall accept, for the purpose of satisfying general site suitability requirements, any conventional sewage system or alternate sewage system that meets site conditions present at the proposed new land development.”

Section 5(c.1) allows for the use of conventional and alternate on-lot systems on sites that meet general site suitability. It is DEP’s understanding that some parties contend that the language of Act 34 means that alternate system should have been allowed in sewage facilities planning for new land development as of the effective date of the Act; August 2020. However, that is not the case. In order to implement Act 34 in a way that meets our obligations under other parts of the Sewage Facilities Act and the Clean Streams Law to ensure adequate long-term sewage treatment and disposal, a rulemaking is needed to amend the sewage facilities regulations. Additionally, it is our understanding that some parties interpret the phrase “... any conventional sewage system or alternate sewage system that meets site conditions present at the proposed new land development” to mean that, if an alternate system can physically be sited on a proposed lot based on the requirements in DEP’s listing for the alternate system, then the lot meets general site suitability requirements. That interpretation is not consistent with the plain language of the amendment. The

language provides that site condition requirements exist, and that those criteria should be used to make the determination that a site can or cannot provide adequate, long-term sewage treatment and disposal using an alternate or conventional on-lot system. While the term “general site suitability requirements” is not defined in the Sewage Facilities Act; it is used in the regulations implementing the Sewage Facilities Act, particularly 25 Pa. Code § 71.62. The regulations require sewage facilities plans and plan revisions proposing on-lot sewage systems evaluate the site conditions – including soils, hydrology, and topography – of the proposed site to establish that on-lot sewage systems can provide adequate long-term sewage disposal on the proposed lot.

Although the existing alternate on-lot systems 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 general site suitability criteria described in the regulations. Some of the Department’s approved alternate systems are approved for use on sites with shallow soils. However, these alternate on-lot system approvals were never intended to be used for sewage facilities planning purposes to determine if a site can or cannot provide adequate, long-term sewage treatment. The alternate system approvals were designed so that these alternate on-lot systems can be used to provide solutions for: (1) malfunctioning on-lot systems on sites where there are no other options; (2) existing lots where the lots were created prior to the current sewage planning requirements; or (3) as a substitute on sites that meet regulatory standards for installing a conventional on-lot system. In situations where an alternate system is used to replace an existing malfunctioning on-lot system, the alternate system addresses an existing pollution and public health issue where there are no other options. In these situations, the threat is already occurring, so using an alternate on-lot system to address the threat, while not ideal, is better than the current

situation. The use of alternate on-lot systems in these limited, urgent circumstances is very different from the use of alternate on-lot systems in sewage facility planning for new land development. Sewage facilities planning must ensure that newly created lots utilizing on-lot sewage treatment and disposal can provide sufficient long-term treatment and disposal of sewage waste using on-lot sewage treatment and disposal. Establishment of new lots requires a more robust set of criteria and evaluation than the use of alternate on-lot systems to address an existing threat to public health, the environment, and property values. In fact, if alternate on-lot systems were approved for use in sewage facilities planning for new land development without such criteria in place, that would likely create more threats to public health, the environment, and property values where alternate on-lot systems are installed on unsuitable lots. These alternate on-lot systems could pollute the same wells that the homes they are serving rely on as a drinking water supply. Also, these alternate onlot systems could result in sewage wetlands created on these properties. In any event, we would be placing municipalities in the position of having to address these malfunctioning systems and potentially be leaving owners of these homes with devalued properties. Any requirements allowing the use of alternate on-lot systems in sewage facilities planning for new land development must provide for the prevention and elimination of pollution caused by sewage generated on these lots in accordance with the Sewage Facilities Act and its implementing regulations.

DEP understands the intent of recent amendments to the Sewage Facilities Act, including by Act 34 of 2020, is to expand the use of alternate systems in sewage facilities planning to allow for development of lots that are currently unavailable for new land development. DEP understands that land developers and others want to be able to develop lots with shallow soils where a spray field may currently be the only option available for on-lot disposal. As presently written, the

regulations limit the issuance of permits for sites that do not meet the general site suitability requirements provided in the current regulations. To provide additional opportunities for new land development in a manner that provides safe, effective long-term sewage disposal while implementing the goals of recent amendments to the Sewage Facilities Act to expand the use of alternate systems in planning for new land development, a rulemaking is needed to include general site suitability provisions for the use of alternate systems on sites that do not meet the current general site suitability requirements. DEP has begun work on a rulemaking to address this and other issues with the sewage facilities regulations.

As you know, the rulemaking process takes time. We are initiating a rulemaking which will likely include updates to Chapters 71, 72 and 73. We plan to consult with the Sewage Advisory Committee on the proposed rulemaking development with a goal of presenting a proposed rulemaking to the Environmental Quality Board in 2022. Until a rulemaking can be developed and finalized to fully implement the provisions of the Sewage Facilities Act as amended by Act 34 of 2020, DEP has provided guidance which allows for the consideration of alternate on-lot sewage systems during the sewage facilities planning process for new land development.

DEP also understands that sewage enforcement officers, local agencies, land developers, and consultants have questions on implementation of the Sewage Facilities Act as amended by Act 34 of 2020. We have developed a Frequently Asked Questions (FAQ) document on the implementation of the Sewage Facilities Act as amended by Act 34 of 2020. We plan to send this FAQ document to sewage enforcement officers as soon as possible. We will be updating this FAQ document as we receive questions from the sewage enforcement officers, local agencies, developers, and the regulated community.

Our goal is to implement the Sewage Facilities Act, as amended by Act 34 of 2020, in a manner that provides safe, effective long-term sewage disposal by expanding the use of alternate systems in sewage facilities planning for new land development consistent with the plain language of the statutory amendments. Achieving this goal requires modifications to regulatory standards for the preparation, review, and acceptance of sewage facilities plans as well as standards for alternate on-lot systems, which DEP cannot implement without going through the rulemaking process. We look forward to continuing efforts to work with local agencies, sewage enforcement officers, land developers, and legislators to address issues regarding the Sewage Facilities Act and the implementation of this important statute. We look forward to providing future opportunities for new land development in safe and effective ways.