



Citizens Advisory Council

to the Department of Environmental Protection

P.O. Box 8459 § Rachel Carson State Office Building
Harrisburg, PA 17105-8459 • 717-787-4527 • Fax 717-787-2878

Testimony: Act #537, PA Sewage Facilities Act

December 8, 2015

Good Morning Senators.

Thank you for the opportunity to bring forward our thoughts relative to Act #537.

My name is Thaddeus K. Stevens. I live in Gaines Twp. Tioga Co. Pa. I'm in the rural land business and have worked and developed land in multiple Counties in the Commonwealth. Since 1998, more or less, I have served on the Citizens Advisory Council (CAC) to the Department of Environmental Protection Department, and my message today has been aired and approved at that body. Prior to my service at CAC, I served as the Realtor Designee on the Sewage Advisory Committee (SAC) to the same department. I've served two terms as an elected Township Supervisor in Gaines Township, Tioga County. I currently serve as the Gaines Township Designee to the North Central Sewage Agency (a Multi Municipal Agency tasked with oversight and enforcement of Act 537). It might be worthy of note that I was active in Legislative Affairs when enabling legislation creating the Department of Environmental Resources was enacted; I was well acquainted with Senator Henry Hager, the Pres Pro Tem of the Senate when the Act was passed. It was well understood by the framers of the Legislation that expertise from the citizens must be an integral part of seeing the purpose of the Legislation carried to a reasonable and manageable end; hence, the Sewage Advisory Committee, with designees from the field with multiple disciplines. I won't bore you with further personal background.

Some of my remarks may well be repetitive after the testimony of my predecessors this morning, but this is prepared in advance. Please forgive redundancy if that occurs.

In the late 1980's or early 1990's, through diligent efforts of multiple Associations, an appropriation was made to the cause of developing and testing technologies alternative to traditional methods of disposal of domestic household wastewater. The appropriation was made to Delaware Valley College (College). The College set up, in controlled environments, alternative systems for treatment of that waste and methods by which it might be dispersed into its environs. Multiple technologies were tested with soil/water testing devices at appropriate locations to measure effectiveness. A list of apparent successes was made and through designation as "experimental systems" was installed in controlled field applications and tested for effectiveness and ease of permitting by licensed Sewage Enforcement Officers, and servicing by homeowners or designated contractors across the Commonwealth. Those applications were winnowed down to a list that was designated "Alternate Systems". These systems have now been permitted by licensed Sewage Enforcement Officers and installed in multiple applications on "existing lots" across the Commonwealth for in excess of a decade, and they work!

The short term issue before us today is how to incorporate these defined systems into the Act 537 Planning process. The Department finds language in the Act that disallows any system but "Conventional" to be used in a landowner's "Plan" for development. It is my belief that legislative intent of the Act was to let the Planning process be exactly that; "an intention or decision about what one is going to do". The current practice of the Department disallows the systems listed as "Alternate" from being used at the Planning stage. Once the lots are created, the systems on the "Alternate" list may be permitted and installed. Employment of several of the "Alternate" systems allow for installation on soils not qualified for installation of "Conventional" systems. Allowance for these systems in "Planning" could provide for housing to be planned on shallower soils and avoid the ever present threat of putting our housing where we should be producing our food. Current practice puts housing in competition with agriculture for use of prime farmland. A surgical correction in the legislation could alleviate some of that pressure. We might even be able, thereby, to relieve some of the fiscal pressure on our public treasure as it is currently being appropriated to "Farmland Preservation"!

I've attached a copy of a letter sent to then Secretary Abruzzo on May 21, 2014 with findings of the Council that the issue is one of interpretation. This might be useful in remedying the current fault. Further, I attach correspondence with current Secretary Quigley in the same matter and his suggestion that the matter be referred to SAC; that they would meet on Sept. 22, 2015. That meeting was subsequently cancelled without stated reason and their next meeting will not take place until Feb 2016.



December 8, 2015

Testimony: Act #537, PA Sewage Facilities Act

At the Nov. 17, 2015 meeting of the CAC, the Secretary, in his remarks said "we are moving forward with a comprehensive review of regulations at this point... We are not moving forward with the targeted rulemaking on just alternative systems." Further he went on to say they are going to be more comprehensive in the very near future. This unwillingness to consider a "surgical" remedy to a longstanding, apparent oversight puts the citizens of Pa at a point where we must ask the Legislature for that remedy.

In the long term, the CAC believes that a thorough review of Act 537 should be undertaken. The Regulations (Chapters 71-73 in 25 Pa. Code) have not been updated in nearly 20 years. Act 537 is nearly 50 years old. The Act 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 and cumbersome for both the regulated and regulating communities and does not serve the needs of the public. My fear, however, is that, in developing a comprehensive remedy, an already burdened agency (DEP), will complicate the process to the point it is more obstructive than it is today. A re-write must address efficiency as well as efficacy.

Moreover, continued pursuit of sewage facilities planning in completely separate planning processes from other water resource planning activities may no longer be justified. Council 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.

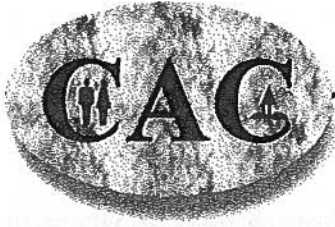
Council urges the Department to work with knowledgeable stakeholders to examine the effectiveness and direction of the entire sewage planning and permitting program in Pennsylvania. While the SAC will most likely be the prime advisory board utilized by the Department in such a review, the Citizens Advisory Council is available to assist and be part of the process to reshape the Commonwealth's Act 537 sewage planning and management program.

I know others testifying will bring more specific ideas and recommendations to the table today. I and the CAC are happy to serve the purpose of improving and streamlining the process of approval of land use while avoiding environmental degradation. Please let us know how we can help.

Thad

Thaddeus K. Stevens, Member
Citizens Advisory Council, DEP

Attachments: May 21, 2014 letter to DEP Secretary, E. Christopher Abruzzo
August 6, 2015 letter to DEP Secretary, John Quigley
August 17, 2015 letter to William C. Fink, Chairman, Citizens Advisory Council



Citizens Advisory Council

to the Department of Environmental Protection

P.O. Box 8459 • Rachel Carson State Office Building
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May 21, 2014

Allegheny County
Cynthia Carrow
John J. Walliser, Esq.

Bedford County
William C. Fink

Chester County
Donald S. Welsh

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Dauphin County
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Erle County
Pat Lupo, O.S.B.

Greene County
Terry L. Dayton, Chair

Lehigh County
Janet B. Keim

Tioga County
Thaddeus K. Stevens

The Honorable E. Christopher Abruzzo
Secretary

Department of Environmental Protection
Rachael Carson State Office Building, 16th Floor
Harrisburg, PA 17105

Dear Secretary Abruzzo:

Thank you for your recent invitation to the Citizens Advisory Council (Council) to identify the Department of Environmental Protection's (Department) priorities for 2014. Council did not take your request lightly and appreciates the opportunity your call has provided to further strengthen a productive working relationship between the Department and Council.

After thoughtful and careful consideration, Council believes an examination of the Commonwealth's Act 537 sewage planning and management program should be prioritized for Department action in 2014. Council has identified both short-term and long-term priorities associated with the Department's review of this program. In the short-term, Council calls for the Department's examination of its current policies and procedures to facilitate the use of well-tested and proven alternate technology in the onlot sewage planning phase of development. As a long-term goal, Council 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. Details associated with Council's recommendations are elaborated below.

Short-Term Goal: Approve the Use of Tested and Proven "Alternate Technology" Systems in Onlot Sewage Planning

As an immediate or short-term goal, Council requests that the Department identify and implement remedies to allow the consideration of alternative technologies in the onlot sewage planning process. Through dialogue with the Department's Sewage Advisory Committee (SAC), Council has learned of impediments that have resulted in the Department only considering the use of conventional sewage systems for onlot sewage planning. Council understands that the SAC has written to you to express its concerns regarding this matter and Council concurs with those concerns articulated by the SAC.

Act 537 provides for the use of both “conventional sewage systems” (those systems employing the use of demonstrated onlot 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). As the Department knows, 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* Chapters 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.

This brings us to the impediment concerning the current sewage facilities planning process that is of concern to both Council and the SAC. 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 onlot sewage systems. 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 onlot 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 has 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 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 after the Act 537 plan was approved, would be permitted by the Department to use an alternate system from those included on the Department’s acceptable alternate systems list.

Council recommends that the Department reexamine the regulations and how they are applied and interpreted by Department staff. A reading of *25 Pa. Code* §71.62(a) shows that sewage facility plans proposing use of onlot sewage systems must evaluate the “general site suitability” to establish their use as a feasible alternative; however, that section does not say that all such systems must be “conventional systems”. Further, while *25 Pa. Code* §71.62(b) calls for certain information, it does not mandate that every system under consideration meet the same “general site suitability” criteria. Council believes that the Department can and should reasonably interpret *25 Pa. Code* §71.62 to allow municipalities to accurately plan and the Department to ultimately approve, plans that consider any conventional or alternate system after giving reasoned consideration as to whether the information presented shows that the site meets “general site suitability” for the particular type of system under consideration. Council firmly believes that sewage planning should be based on the current science and currently accepted technologies. The use of onlot systems – be it conventional or alternate – is feasible as part of protective Act 537 planning.

Council recommends that if such a reasonable interpretation by the Department of its regulations is not feasible without formal amendment of *25 Pa. Code* Chapters 71-73, that it immediately pursues plans to make such a regulatory change amongst a broader proposal to strengthen the overall Act 537 program in Pennsylvania.

Long-Term Goal: A Comprehensive Review of the Act 537 Program and Planning Process in Pennsylvania

The sewage disposal program and its associated regulations have not been updated in nearly 20 years and need to be brought up-to-date. Council 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 in *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 may no longer be justified. Council 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.

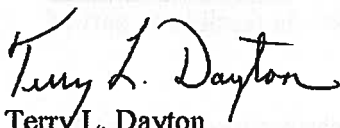
Council urges the Department to work with knowledgeable stakeholders to examine the effectiveness and direction of the entire sewage planning and permitting program in

May 21, 2014

Pennsylvania. While the SAC will most likely be the prime advisory board utilized by the Department in such a review, Council is available to assist and be part of the process to reshape the Commonwealth's Act 537 sewage planning and management program.

I appreciate the collaboration you are fostering between Council and the Department as demonstrated by your invitation for Council to help define the Department's priorities for 2014. Council looks forward to the Department's progress on the important issues highlighted in this letter and suggests that the Department's monthly written report be one of the venues to provide Council with updates on the progress associated with any initiatives to improve the Act 537 sewage management and planning program in Pennsylvania.

Sincerely,



Terry L. Dayton
Chair

Citizens Advisory Council

cc: Duane Mowery, Chairman, Sewage Advisory Committee
Sewage Advisory Committee Members and Alternates



Citizens Advisory Council

to the Department of Environmental Protection

P.O. Box 8459 § Rachel Carson State Office Building
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August 6, 2015

Allegheny County
Cynthia Carrow
John J. Walliser, Esq.

Bedford County
William C. Fink, Chair

Chester County
Donald S. Welsh, Vice-Chair

Crawford County
Burt A. Waite

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Lebanon County
John Hines

Philadelphia County
Joi C. Spraggins

Tioga County
Thaddeus K. Stevens

Washington County
Mark Caskey

The Honorable John Quigley
Secretary
PA Department of Environmental Protection
Rachel Carson State Office Building
Harrisburg, PA 17105-2063

Dear Secretary Quigley:

At the July 21, 2015, meeting of the Citizens Advisory Council (CAC), CAC members inquired about the status of the Department's proposal to amend 25 Pa Code Chapters 71-73 in order to allow the consideration of alternative sewage treatment technologies in the onlot planning phase of development. In response, you asked the CAC to elaborate on its concerns associated with this issue, including offering to meet with CAC members to ensure our concerns are fully discussed. The CAC appreciates your response and welcomes the opportunity to meet with you in the near future to discuss our concerns in more detail.

Over the last several years, the CAC has been forthcoming and clear with DEP on specific impediments it believes exist with the Commonwealth's Act 537 program regulations. Correspondence attesting to the communication the CAC has had with DEP on this issue is enclosed for your information. Simply put, the CAC believes the state's current sewage management regulations are designed to only accommodate conventional systems in the planning phase of development and do not identify or allow for the consideration of alternative treatment technologies in site planning. DEP does and has permitted the use of well-established alternate systems in areas that do not support conventional systems; however, in doing so, the agency has created a dichotomy where communities are not authorized to plan for the use of alternate systems during the sewage facilities planning process but are permitted to use these systems after planning is completed. This regulatory framework creates unnecessary confusion and thwarts the Commonwealth's ability to keep pace with other states that recognize and encourage the development and use of alternative onlot technologies as an opportunity to guide careful site planning and encourage responsible growth.

In 2014, then-DEP Secretary Christopher Abruzzo requested the CAC identify issues of priority for the Department. In recognition of the many challenges DEP faces on a number of critical environmental and public health issues, the CAC responded that attention to the Commonwealth's Act 537 program is warranted, with priority on addressing the regulatory impediments that do not support consideration of alternative technologies in site planning. Compounding the issues associated with alternative onlot technologies, the Commonwealth's sewage management regulations have not been amended in nearly twenty years, despite efforts by DEP nearly 10 years ago to develop a comprehensive regulatory proposal with the Sewage Advisory Committee. The CAC recognizes the opportunities to amend Act 537 and the bipartisan support that would



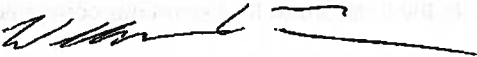
August 6, 2015

undeniably champion those statutory changes. Nevertheless, in the absence of a legislative proposal, the CAC also requested that DEP, in the long-term, commit to examining the Act 537 program in its entirety and advancing a regulatory proposal to improve the program.

As means to further enhance public transparency and confidence in DEP, the CAC would like to see meaningful progress by DEP in working with the Sewage Advisory Committee on the proposal to amend 25 Pa Code Chapters 71-73 to allow consideration of alternative onlot technologies in site planning. The Sewage Advisory Committee is very engaged on this regulatory proposal and submitted to you in April 2015 its comments and concerns on the draft regulations. This committee is highly interested in working with DEP to ensure meaningful changes are made to the state's sewage management regulations, including providing their support that additional and more frequent meetings be scheduled in the coming months so the committee may devote the time needed to finalize the regulatory proposal.

The CAC welcomes the opportunity to work with you and your executive staff in ensuring the Commonwealth's Act 537 Program is scrutinized so that opportunities for improvement can be implemented. In response to your offer to meet with the CAC, I will ask Michele Tate to contact your office to schedule a meeting with you. I understand that the Sewage Advisory Committee will be meeting on September 22, 2015, to discuss its comments on the regulatory proposal with DEP staff. If the CAC's assistance would be appreciated by DEP in preparation of the committee's meeting, I will ask that our meeting be scheduled as soon as practicable.

Sincerely,



William C. Fink
Chairman

cc: Duane Mowery, Chairman, Sewage Advisory Committee

Enclosure



pennsylvania

DEPARTMENT OF ENVIRONMENTAL PROTECTION

SECRETARY

August 17, 2015

Mr. William C. Fink, Chairman
Citizens Advisory Council
P. O. Box 8459
Rachel Carson State Office Building
Harrisburg, PA 17105-8459

Dear Mr. Fink:

Thank you for your recent letter following up on the conversation we had in July related to Chapters 71, 72 and 73 of our rules and regulations. I truly appreciate the Council's interest in the matter, and the level of detail provided in your letter.

As you may be aware, this particular concern, sewage facilities, falls under the statutory authority of the Pennsylvania Sewage Facilities Act. Section 4 of that Act creates an advisory committee and establishes its purpose as specifically providing advisement to the Department of Environmental Protection (DEP) on matters related to sewage facilities, and the regulations promulgated to implement the Act. Given that there is an advisory committee that already exists, with the sole purpose of advising DEP on the issues you raise in your letter, I believe that committee is the more appropriate vehicle for advancing those concerns.

Further, you indicate in your letter that the Sewage Advisory Committee (SAC) is set to meet on September 22, 2015, to discuss DEP's most recent regulatory proposal. I ask that the Citizens Advisory Council allow the issue to work through the most appropriate advisory group, the SAC, as already scheduled. When the SAC has fully vetted the proposed regulatory revisions, my staff will be happy to provide the CAC with a full report.

Sincerely,

John Quigley
Secretary

cc: Duane Mowery, Chairman, Sewage Advisory Committee

