

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 37

Session of
1991

INTRODUCED BY LLOYD, GEORGE, NOYE, MERRY, HAYES, BIRMELIN,
STABACK, GODSHALL, CLYMER, TRELLO, HERSHEY, DEMPSEY, BILLOW,
GIGLIOTTI, HECKLER, HALUSKA, BELFANTI, FARGO, SAURMAN,
D. R. WRIGHT, CARLSON, BUSH, BARLEY, HERMAN, VEON, PETRARCA,
JOHNSON, PESCI, SURRA, COLAIZZO, TIGUE, MIHALICH, WOZNIAC AND
KASUNIC, JANUARY 15, 1991

AS RE-REPORTED FROM COMMITTEE ON APPROPRIATIONS, HOUSE OF
REPRESENTATIVES, AS AMENDED, SEPTEMBER 22, 1992

AN ACT

1 Amending the act of January 24, 1966 (1965 P.L.1535, No.537),
2 entitled, as amended, "An act providing for the planning and
3 regulation of community sewage systems and individual sewage
4 systems; requiring municipalities to submit plans for systems
5 in their jurisdiction; authorizing grants; requiring permits
6 for persons installing such systems; requiring disclosure
7 statements in certain land sale contracts; authorizing the
8 Department of Environmental Resources to adopt and administer
9 rules, regulations, standards and procedures; creating an
10 advisory committee; providing remedies and prescribing
11 penalties," ADDING DEFINITIONS; further providing for the <—
12 approval or disapproval of official plans or revisions of
13 official plans; regulating sewage permits; regulating
14 moratoriums by the Department of Environmental Resources; and
15 providing for penalties.

16 The General Assembly of the Commonwealth of Pennsylvania
17 hereby enacts as follows:

18 ~~Section 1. Section 5(e) of the act of January 24, 1966 (1965~~ <—
19 ~~P.L.1535, No.537), known as the Pennsylvania Sewage Facilities~~
20 ~~Act, amended July 1, 1989 (P.L.124, No.26), is amended to read:~~

21 SECTION 1. SECTION 2 OF THE ACT OF JANUARY 24, 1966 (1965 <—
22 P.L.1535, NO.537), KNOWN AS THE PENNSYLVANIA SEWAGE FACILITIES

1 ACT, AMENDED JULY 22, 1974 (P.L.621, NO.208) AND JULY 1, 1989
2 (P.L.124, NO.26), IS AMENDED TO READ:

3 SECTION 2. DEFINITIONS.--AS USED IN THIS ACT:

4 "ADVISORY COMMITTEE" MEANS THE SPECIAL COMMITTEE CREATED BY
5 THE PROVISIONS OF THE ACT.

6 "CERTIFICATION BOARD" MEANS THE ADMINISTRATIVE BOARD WITHIN
7 THE DEPARTMENT CREATED BY SECTION 11 OF THIS ACT.

8 "COMMUNITY SEWAGE SYSTEM" MEANS ANY SYSTEM, WHETHER PUBLICLY
9 OR PRIVATELY OWNED, FOR THE COLLECTION OF SEWAGE OR INDUSTRIAL
10 WASTES OF A LIQUID NATURE FROM TWO OR MORE LOTS, AND THE
11 TREATMENT AND/OR DISPOSAL OF THE SEWAGE OR INDUSTRIAL WASTE ON
12 ONE OR MORE OF THE LOTS OR AT ANY OTHER SITE.

13 "DEPARTMENT" MEANS THE DEPARTMENT OF ENVIRONMENTAL RESOURCES
14 OF THE COMMONWEALTH OF PENNSYLVANIA.

15 "ENVIRONMENTAL HEARING BOARD" MEANS THE BOARD ESTABLISHED
16 PURSUANT TO SECTION 1921-A OF THE ADMINISTRATIVE CODE OF 1929
17 FOR THE PURPOSES SET FORTH IN THAT SECTION.

18 "ENVIRONMENTAL QUALITY BOARD" MEANS THE BOARD ESTABLISHED
19 PURSUANT TO SECTION 1920-A OF THE ADMINISTRATIVE CODE OF 1929
20 FOR THE PURPOSES SET FORTH IN THAT SECTION.

21 "INDIVIDUAL SEWAGE SYSTEM" MEANS A SYSTEM OF PIPING, TANKS OR
22 OTHER FACILITIES SERVING A SINGLE LOT AND COLLECTING AND
23 DISPOSING OF SEWAGE IN WHOLE OR IN PART INTO THE SOIL OR INTO
24 ANY WATERS OF THIS COMMONWEALTH OR BY MEANS OF CONVEYANCE TO
25 ANOTHER SITE FOR FINAL DISPOSAL; AN ALTERNATE INDIVIDUAL SEWAGE
26 SYSTEM SHALL MEAN ANY INDIVIDUAL SEWAGE SYSTEM NOT HERETOFORE
27 RECOGNIZED BY RULES, REGULATIONS AND STANDARDS OF THE
28 DEPARTMENT.

29 "LOCAL AGENCY" MEANS A MUNICIPALITY, OR ANY COMBINATION
30 THEREOF ACTING COOPERATIVELY OR JOINTLY UNDER THE LAWS OF THE

1 COMMONWEALTH, COUNTY, COUNTY DEPARTMENT OF HEALTH OR JOINT
2 COUNTY DEPARTMENT OF HEALTH.

3 "LOT" MEANS A PART OF A SUBDIVISION OR A PARCEL OF LAND USED
4 AS A BUILDING SITE OR INTENDED TO BE USED FOR BUILDING PURPOSES,
5 WHETHER IMMEDIATE OR FUTURE, WHICH WOULD NOT BE FURTHER
6 SUBDIVIDED. WHENEVER A LOT IS USED FOR A MULTIPLE FAMILY
7 DWELLING OR FOR COMMERCIAL OR INDUSTRIAL PURPOSES, THE LOT SHALL
8 BE DEEMED TO HAVE BEEN SUBDIVIDED INTO AN EQUIVALENT NUMBER OF
9 SINGLE FAMILY RESIDENTIAL LOTS AS DETERMINED BY ESTIMATED SEWAGE
10 FLOWS.

11 "MUNICIPALITY" MEANS A CITY, TOWN, TOWNSHIP, OR BOROUGH.

12 "OFFICIAL PLAN" MEANS A COMPREHENSIVE PLAN FOR THE PROVISION
13 OF ADEQUATE SEWAGE SYSTEMS ADOPTED BY A MUNICIPALITY OR
14 MUNICIPALITIES POSSESSING AUTHORITY OR JURISDICTION OVER THE
15 PROVISION OF SUCH SYSTEMS AND SUBMITTED TO AND APPROVED BY THE
16 STATE DEPARTMENT OF ENVIRONMENTAL RESOURCES AS PROVIDED HEREIN.

17 "OFFICIAL PLAN REVISION" MEANS A CHANGE IN THE MUNICIPALITY'S
18 OFFICIAL PLAN TO PROVIDE FOR ADDITIONAL OR NEWLY IDENTIFIED OR
19 FUTURE SEWAGE FACILITIES NEEDS, WHICH MAY INCLUDE, BUT SHALL NOT
20 BE LIMITED TO:

21 (1) UPDATE REVISION, WHICH MEANS A COMPREHENSIVE REVISION TO
22 AN EXISTING OFFICIAL PLAN REQUIRED WHEN THE DEPARTMENT OR
23 MUNICIPALITY DETERMINES AN OFFICIAL PLAN OR ANY OF ITS PARTS IS
24 INADEQUATE FOR THE EXISTING OR FUTURE SEWAGE FACILITIES NEEDS OF
25 A MUNICIPALITY OR ITS RESIDENTS OR LANDOWNERS.

26 (2) REVISION FOR NEW LAND DEVELOPMENT, WHICH MEANS A
27 REVISION TO A MUNICIPALITY'S OFFICIAL PLAN RESULTING FROM A
28 PROPOSED SUBDIVISION.

29 (3) SPECIAL STUDY, WHICH MEANS A STUDY, SURVEY,
30 INVESTIGATION, INQUIRY, RESEARCH REPORT OR ANALYSIS WHICH IS

DIRECTLY RELATED TO AN UPDATE REVISION. SUCH STUDY SHALL PROVIDE
DOCUMENTATION OR OTHER SUPPORT NECESSARY TO SOLVE SPECIFIC
PROBLEMS IDENTIFIED IN THE UPDATE REVISION.

"PERSON" SHALL INCLUDE ANY INDIVIDUAL, ASSOCIATION, PUBLIC OR
PRIVATE CORPORATION FOR PROFIT OR NOT FOR PROFIT, PARTNERSHIP,
FIRM, TRUST, ESTATE, DEPARTMENT, BOARD, BUREAU OR AGENCY OF THE
COMMONWEALTH, POLITICAL SUBDIVISION, MUNICIPALITY, DISTRICT,
AUTHORITY, OR ANY OTHER LEGAL ENTITY WHATSOEVER WHICH IS
RECOGNIZED BY LAW AS THE SUBJECT OF RIGHTS AND DUTIES. WHENEVER
USED IN ANY CLAUSE PRESCRIBING AND IMPOSING A PENALTY OR
IMPOSING A FINE OR IMPRISONMENT, THE TERM "PERSON" SHALL INCLUDE
THE MEMBERS OF AN ASSOCIATION, PARTNERSHIP OR FIRM AND THE
OFFICERS OF ANY LOCAL AGENCY OR MUNICIPAL, PUBLIC OR PRIVATE
CORPORATION FOR PROFIT OR NOT FOR PROFIT.

"QUALIFIED SOIL SCIENTIST" MEANS A PERSON CERTIFIED AS A
SEWAGE ENFORCEMENT OFFICER AND WHO HAS DEMONSTRATED EXPERTISE IN
THE CHARACTERIZATION, CLASSIFICATION, MAPPING AND INTERPRETATION
OF SOILS AS THEY RELATE TO THE FUNCTION OF ON-LOT SEWAGE
DISPOSAL SYSTEMS THROUGH SUBMITTAL OF DOCUMENTATION TO THE
DEPARTMENT THAT THE SOILS SCIENTIST HAS TWO YEARS EXPERIENCE AND
EITHER A BACHELOR OF SCIENCE DEGREE IN SOILS SCIENCE FROM AN
ACCREDITED COLLEGE OR UNIVERSITY OR IS CERTIFIED BY THE AMERICAN
REGISTRY OF CERTIFIED PROFESSIONALS IN AGRONOMY, CROPS AND
SOILS.

"RESIDENTIAL SUBDIVISION PLAN" MEANS A SUBDIVISION IN WHICH
AT LEAST TWO-THIRDS OF THE PROPOSED DAILY SEWAGE FLOWS WILL BE
GENERATED BY RESIDENTIAL USES.

["RURAL RESIDENCE" MEANS A STRUCTURE OCCUPIED OR INTENDED TO
BE OCCUPIED BY NOT MORE THAN TWO FAMILIES ON A TRACT OF LAND OF
TEN ACRES OR MORE.]

1 "SECRETARY" MEANS THE SECRETARY OF ENVIRONMENTAL RESOURCES OF
2 THE COMMONWEALTH OF PENNSYLVANIA.

3 "SEWAGE" MEANS ANY SUBSTANCE THAT CONTAINS ANY OF THE WASTE
4 PRODUCTS OR EXCREMENT OR OTHER DISCHARGE FROM THE BODIES OF
5 HUMAN BEINGS OR ANIMALS AND ANY NOXIOUS OR DELETERIOUS
6 SUBSTANCES BEING HARMFUL OR INIMICAL TO THE PUBLIC HEALTH, OR TO
7 ANIMAL OR AQUATIC LIFE, OR TO THE USE OF WATER FOR DOMESTIC
8 WATER SUPPLY OR FOR RECREATION, OR WHICH CONSTITUTES POLLUTION
9 UNDER THE ACT OF JUNE 22, 1937 (P.L.1987, NO.394), KNOWN AS "THE
10 CLEAN STREAMS LAW," AS AMENDED.

11 "SEWAGE ENFORCEMENT OFFICER" MEANS THE OFFICIAL OF THE LOCAL
12 AGENCY WHO ISSUES AND REVIEWS PERMIT APPLICATIONS AND CONDUCTS
13 SUCH INVESTIGATIONS AND INSPECTIONS AS ARE NECESSARY TO
14 IMPLEMENT THE ACT AND THE RULES AND REGULATIONS THEREUNDER.

15 "SOIL MOTTILING" MEANS A CHARACTERISTIC SOIL COLOR PATTERN
16 CONSISTING OF PATCHES OF DIFFERENT COLOR OR SHADES OF COLOR
17 INTERSPERSED WITH THE DOMINANT SOIL COLOR WHICH RESULTS FROM
18 PROLONGED SATURATION OF THE SOIL.

19 "SUBDIVISION" MEANS THE DIVISION OR REDIVISION OF A LOT,
20 TRACT OR OTHER PARCEL OF LAND INTO TWO OR MORE LOTS, TRACTS,
21 PARCELS OR OTHER DIVISIONS OF LAND INCLUDING CHANGES IN EXISTING
22 LOT LINES. THE ENUMERATING OF LOTS SHALL INCLUDE AS A LOT THAT
23 PORTION OF THE ORIGINAL TRACT OR TRACTS REMAINING AFTER OTHER
24 LOTS HAVE BEEN SUBDIVIDED THEREFROM.

25 SECTION 2. SECTION 5(E) OF THE ACT, AMENDED JULY 1, 1989
26 (P.L.124, NO.26), IS AMENDED AND THE SECTION IS AMENDED BY
27 ADDING A SUBSECTION TO READ:

28 Section 5. Official Plans.--* * *

29 (e) The department is hereby authorized to approve or
30 disapprove SPECIAL STUDIES AND UPDATE REVISIONS TO official

<—

1 plans for sewage systems submitted in accordance with this act
2 within [one year] six months of date of [submissions and <—
3 revisions of official plans, within ~~three months after a~~ <—
4 ~~complete submission or~~ such lesser time as the regulations shall
5 stipulate, except that the department shall approve or
6 disapprove revisions constituting residential subdivision plans
7 within ninety days of the date of a complete submission, for the
8 period of one year from the effective date of this amendatory
9 act, and within sixty days of the date of a complete submission
10 thereafter. The department shall determine if a {submissions} <—
11 ~~submission~~ is complete within ten working days of its receipt.] <—
12 SUBMISSION. <—

13 (E.1) THE DEPARTMENT IS AUTHORIZED TO APPROVE OR DISAPPROVE
14 REVISIONS OF OFFICIAL PLANS FOR NEW LAND DEVELOPMENT WITHIN
15 NINETY DAYS OF THE DATE OF A COMPLETE SUBMISSION. THE DEPARTMENT
16 SHALL ACT ON PROPOSALS FOR EXCEPTIONS TO THE REQUIREMENT TO
17 REVISE OFFICIAL PLANS WITHIN THE TIME LIMITS ESTABLISHED BY
18 REGULATION. THE DEPARTMENT SHALL DETERMINE IF A SUBMISSION IS
19 COMPLETE WITHIN TWENTY DAYS OF ITS RECEIPT.

20 * * *

21 Section 2 3. Section 7(a) of the act, amended July 1, 1989 <—
22 (P.L.124, No.26), is amended and subsection (b) is amended by
23 adding clauses to read:

24 Section 7. Permits.--(a) No person shall install,
25 construct, or request bid proposals for construction, or alter
26 an individual sewage system or community sewage system or
27 construct, or request bid proposals for construction, or install
28 or occupy any building or structure for which an individual
29 sewage system or community sewage system is to be installed
30 without first obtaining a permit indicating that the site and

1 the plans and specifications of such system are in compliance
2 with the provisions of this act and the standards adopted
3 pursuant to this act. No permit may be issued by the local
4 agency in those cases where a permit from the department is
5 required pursuant to the act of June 22, 1937 (P.L.1987,
6 No.394), known as "The Clean Streams Law," as amended, or where
7 the department pursuant to its rules and regulations, determines
8 that such permit is not necessary [either for a rural residence <—
9 or] for the protection of the public health. Except where a <—
10 local agency requires a permit OR PLAN REVISION by ordinance, no <—
11 permit shall be required for the installation of an individual
12 on-lot sewage system for a residential structure occupied or
13 intended to be occupied by [not more than two families†, one of <—
14 whom is] the property ~~owner,~~ OWNER[,] OR A MEMBER OF THE <—
15 PROPERTY OWNER'S IMMEDIATE FAMILY on a contiguous tract of land
16 ten acres or more if the owner of the property was the owner of
17 record as of January 10, 1987[.], and the installation of such
18 system and the erection of such structure shall not require the <—
19 submission of a planning module or be deemed a subdivision
20 pursuant to this act or any other provision of law or require
21 approval of the department pursuant to its rules and regulations
22 unless such approval is expressly required by statute. SHALL NOT <—
23 BE REQUIRED TO BE APPROVED BY OR MEET THE STANDARDS OF THE
24 DEPARTMENT OR LOCAL AGENCY PURSUANT TO THEIR RULES AND
25 REGULATIONS FOR THE SITING, DESIGN OR INSTALLATION OF ON-LOT
26 SEWAGE SYSTEMS UNLESS SUCH APPROVAL OR STANDARD IS EXPRESSLY
27 REQUIRED BY SUBSECTIONS (B) AND (C) OF THIS SECTION, A PERMIT IS
28 REQUIRED BY A LOCAL AGENCY OR MUNICIPAL ORDINANCE, OR THE PERSON
29 QUALIFYING FOR THE PERMIT EXEMPTION CHOOSES TO NOT USE THE
30 PERMIT EXEMPTION. PERSONS OTHERWISE QUALIFIED FOR A PERMIT

1 EXEMPTION WHO DO NOT CHOOSE TO USE THE PERMIT EXEMPTION REMAIN
2 EXEMPT FROM THE PLANNING REQUIREMENTS OF THIS ACT. FOR THE
3 PURPOSE OF THIS SECTION, THE TERM "IMMEDIATE FAMILY" SHALL MEAN
4 BROTHER, SISTER, SON, DAUGHTER, STEPSON, STEPDAUGHTER, FATHER OR
5 MOTHER OF THE PROPERTY OWNER. THE SUBDIVISION OF ONE PERMIT-
6 EXEMPT, TEN-ACRE PARCEL OR LOT FROM THE PARENT TRACT AFTER
7 JANUARY 10, 1987, SHALL DISQUALIFY THE REMAINDER OF THE TRACT OR
8 ANY ADDITIONAL SUBDIVIDED PARCELS OR LOTS FROM THE PERMIT AND
9 PLANNING EXEMPTION PROVISIONS OF THIS SECTION.

10 (A.1) OWNERS OF PROPERTY QUALIFYING FOR A PERMIT EXEMPTION
11 UNDER SUBSECTION (A) OF THIS SECTION SHALL INSTALL PERMIT-EXEMPT
12 SYSTEMS IN ACCORDANCE WITH THE FOLLOWING STANDARDS: THERE SHALL
13 BE AT A MINIMUM, TWO SEPTIC TANKS IN SERIES EQUIPPED WITH SEPTIC
14 SOLIDS RETAINERS AND A COMBINED CAPACITY OF NOT LESS THAN ONE
15 THOUSAND FIVE HUNDRED GALLONS; AN ABSORPTION AREA CONSTRUCTED IN
16 ACCORDANCE WITH THE RULES AND REGULATIONS OF THE DEPARTMENT
17 REGARDING THE DESIGN AND CONSTRUCTION OF ELEVATED SAND MOUNDS
18 AND SIZED AT A MINIMUM OF SEVEN HUNDRED TWENTY-NINE SQUARE FEET;
19 AND THE PERIMETER OF THE SEPTIC TANKS AND ABSORPTION AREA SHALL
20 BE LOCATED AT LEAST TWO HUNDRED FEET FROM THE PERIMETER OF ANY
21 PROPERTY LINE, NONUTILITY RIGHT-OF-WAY, ONE HUNDRED YEAR FLOOD
22 PLAIN OR ANY RIVER, STREAM, CREEK, IMPOUNDMENT, WELL,
23 WATERCOURSE, STORM SEWER, LAKE, DAMMED WATER, POND, SPRING,
24 WATER SUPPLY OR ANY BODY OF SURFACE WATER AND TEN FEET FROM ANY
25 UTILITY RIGHT-OF-WAY.

26 (A.2) THE OWNER OF A PARCEL WHICH MAY QUALIFY FOR A PERMIT
27 EXEMPTION UNDER SUBSECTION (A) OF THIS SECTION SHALL SUBMIT A
28 TEN-ACRE PERMIT WAIVER FORM PROVIDED BY THE DEPARTMENT TO THE
29 LOCAL AGENCY. THE LOCAL AGENCY SHALL CONFIRM, BY SIGNATURE OF
30 THE SEWAGE ENFORCEMENT OFFICER, THAT THE PROPERTY QUALIFIES FOR

1 A PERMIT EXEMPTION UNDER SUBSECTION (A) OF THIS SECTION AND THAT
2 THE SYSTEM INSTALLED MEETS THE REQUIREMENTS FOR SITING AND
3 DESIGN UNDER SUBSECTION (B) OF THIS SECTION AND LOCAL AGENCY
4 ORDINANCES. THE LOCAL AGENCY SHALL CHARGE A FEE OF NO MORE THAN
5 FIFTY DOLLARS (\$50), OR OTHER SUCH AMOUNT AS MAY BE AUTHORIZED
6 BY THE DEPARTMENT BY REGULATION, FOR PROCESSING THE TEN-ACRE
7 PERMIT WAIVER FORM. THE APPLICANT SHALL CONFIRM, AS PART OF THE
8 WAIVER, THAT THE SOIL TESTING PROCEDURES NORMALLY REQUIRED FOR
9 ON-LOT SEWAGE DISPOSAL SYSTEMS WERE NOT CONDUCTED ON THE PARCEL
10 AND THAT THERE IS NO ASSURANCE THAT THE SYSTEM PROVIDED BY THIS
11 SECTION WILL FUNCTION TO PREVENT POLLUTION OR THE CREATION OF
12 PUBLIC HEALTH HAZARDS. THE PROPERTY OWNER SHALL PROVIDE
13 ADDITIONAL NOTICE TO A PURCHASER OF THE PARCEL UNDER THE
14 PROVISIONS OF SECTION 7.1 OF THIS ACT THAT SOILS AND SITE
15 TESTING WERE NOT CONDUCTED AND THAT THE PROPERTY OWNER WHO
16 INSTALLS OR INSTALLED THE SEWAGE SYSTEM UNDER THIS EXEMPTION
17 SHALL BE LIABLE FOR ANY CONTAMINATION, POLLUTION OR PUBLIC
18 HEALTH HAZARD WHICH OCCURS AS THE RESULT OF THE MALFUNCTION OF A
19 SEWAGE SYSTEM INSTALLED IN ACCORDANCE WITH THE PERMIT EXEMPTION
20 PROVISIONS OF THIS SUBSECTION.

21 (A.3) THE PROPERTY OWNER WHO INSTALLS A SYSTEM UNDER THE
22 PERMIT EXEMPTION PROVISIONS OF THIS SECTION SHALL BE DEEMED TO
23 RELEASE AND HOLD HARMLESS THE DEPARTMENT, THE LOCAL PERMITTING
24 AGENT AND LOCAL PERMITTING AGENCY FROM ANY RESPONSIBILITY OR
25 LIABILITY FOR THE FUNCTIONING OF THE ON-LOT SEWAGE SYSTEM
26 INSTALLED UNDER THE PERMIT EXEMPTION PROVISIONS OF THIS SECTION.
27 IT IS THE SOLE RESPONSIBILITY OF THE PROPERTY OWNER WHO
28 INSTALLED OR CONTRACTED THE INSTALLATION OF A SEWAGE SYSTEM
29 UNDER THE PERMIT EXEMPTION PROVISIONS OF THIS SECTION OR THE
30 PROPERTY OWNER WHO ACCEPTED RESPONSIBILITY FOR THE SYSTEM UPON

PURCHASE OF THE PROPERTY UNDER THE DISCLOSURE PROVISIONS OF
SECTION 7.1 OF THIS ACT TO CORRECT OR HAVE CORRECTED ANY SYSTEM
MALFUNCTION WHICH IS DOCUMENTED AS CONTAMINATING GROUND OR
SURFACE WATER OR DISCHARGING TO THE SURFACE OF THE GROUND.
MALFUNCTIONS OF SYSTEMS INSTALLED UNDER THE PROVISIONS OF THIS
SECTION SHALL CONSTITUTE A NUISANCE AND SHALL BE ABATABLE IN A
MANNER PROVIDED BY LAW.

(A.4) THE JOINT AIR AND WATER POLLUTION CONTROL AND
CONSERVATION COMMITTEE SHALL REPORT ANNUALLY TO THE GENERAL
ASSEMBLY ITS FINDINGS CONCERNING THE NUMBER AND PERFORMANCE OF
UNPERMITTED SYSTEMS INSTALLED UNDER THE PROVISIONS OF THIS
SECTION.

(b) * * *

~~(5.1) The department shall not refuse to approve sewage~~ <—
~~modules or to approve and issue permits for on site individual,~~
~~alternate or community sewage systems on the grounds of failure~~
~~of the municipality to submit a revision to its official plan or~~
~~of failure of a submission to meet department standards, unless:~~

(5.1) THE DEPARTMENT SHALL NOT REFUSE TO APPROVE SEWAGE <—
MODULES AND SHALL NOT IMPOSE LIMITATIONS ON THE ISSUANCE OF
PERMITS FOR INDIVIDUAL AND COMMUNITY ON-LOT OR ALTERNATE ON-LOT
SEWAGE DISPOSAL SYSTEMS ON THE GROUNDS OF FAILURE OF THE
MUNICIPALITY TO SUBMIT AN UPDATE REVISION TO ITS OFFICIAL PLAN
OR OF FAILURE OF A SUBMISSION OF THE UPDATE REVISION TO MEET
DEPARTMENT STANDARDS, UNLESS:

(i) after a hearing before a member of the Environmental
Hearing Board designated by the chairman of that board held upon
the application of the department, municipality or other
interested party, including citizens affected by the
noncompliance of the municipality, the member of the board

1 conducting the hearing finds that there is a serious risk to the
2 health, safety and welfare of persons within or adjacent to the
3 municipality and OR finds that refusal to approve permits is <—
4 necessary to ensure compliance by the municipality with
5 regulations; or

6 (ii) without hearing, the department finds that there is an
7 immediate and serious risk to the health, safety and welfare of
8 persons within or adjacent to the municipality, in which case
9 the department may refuse to approve permits for a period not to
10 exceed three months, which may be extended after a hearing as
11 provided for in subclause (i). The adjudication of the member of <—

12 (III) THE ADJUDICATION OF THE MEMBER OF the board may <—
13 provide that permits may be approved and issued or may not be
14 approved and issued for sewage systems in specifically
15 designated portions of the municipality.

16 * * *

17 ~~(9) If a property owner requests in writing a percolation~~ <—
18 ~~test, a percolation test shall be performed. If the results of~~
19 ~~the percolation test are satisfactory, a permit shall be issued~~
20 ~~if all other requirements of this act are met.~~

21 SECTION 4. THE ACT IS AMENDED BY ADDING A SECTION TO READ: <—

22 SECTION 7.2. MOTTILING.--(A) WHERE THE SOLE REASON FOR A
23 PROPERTY NOT MEETING THE REQUIREMENTS FOR THE INSTALLATION OF AN
24 INDIVIDUAL RESIDENTIAL SEWAGE SYSTEM IS THE PRESENCE OF SOIL
25 MOTTILING, THE LOCAL AGENCY SHALL ISSUE A PERMIT FOR AN
26 INDIVIDUAL SEWAGE SYSTEM IF THE APPLICANT MEETS ALL OF THE
27 FOLLOWING CONDITIONS:

28 (1) THE APPLICANT PROVIDES TO THE LOCAL AGENCY, AS PART OF
29 THE ON-LOT SEWAGE DISPOSAL PERMIT APPLICATION, A LETTER SIGNED
30 BY A QUALIFIED SOIL SCIENTIST UNDER THE PROVISIONS OF 18 PA.C.S.

1 § 4904 WHICH STATES THAT THE QUALIFIED SOIL SCIENTIST HAS
2 PERSONALLY OBSERVED TEST PITS WITHIN TEN FEET OF THE PERIMETER
3 OF THE PROPOSED ABSORPTION AREA; THAT THE SOIL MOTTILING OBSERVED
4 IN THE TEST PITS IS NOT AN INDICATION OF EITHER A REGIONAL OR
5 PERCHED SEASONAL HIGH WATER TABLE; THAT THE PRESENCE OF SOIL
6 MOTTILING WILL NOT HAVE AN ADVERSE IMPACT ON THE LONG-TERM PROPER
7 FUNCTIONING OF THE SYSTEM PROPOSED; AND THAT THE SOIL SCIENTIST
8 IS NOT EMPLOYED BY THE LOCAL AGENCY HAVING JURISDICTION OVER THE
9 APPLICANT'S LOT.

10 (2) THE SITE IS OTHERWISE SUITABLE FOR AN ON-LOT SEWAGE
11 DISPOSAL SYSTEM IN ACCORDANCE WITH DEPARTMENT RULES AND
12 REGULATIONS AS DOCUMENTED BY A PERCOLATION TEST AND OTHER SITE
13 CONDITIONS RECORDED ON AN APPLICATION FOR AN ON-LOT DISPOSAL
14 SYSTEM.

15 (3) THE LOCAL AGENCY'S SEWAGE ENFORCEMENT OFFICER AGREES
16 WITH THE FINDINGS OF THE QUALIFIED SOILS SCIENTIST AND CONFIRMS
17 THAT THE SITE IS OTHERWISE SUITABLE FOR AN ON-LOT SEWAGE
18 DISPOSAL SYSTEM BY SIGNING AND APPROVING THE ON-LOT SEWAGE
19 DISPOSAL PERMIT APPLICATION IN ACCORDANCE WITH THE RULES AND
20 REGULATIONS OF THE DEPARTMENT.

21 (B) WHERE THE SEWAGE ENFORCEMENT OFFICER OR REPRESENTATIVE
22 OF THE LOCAL AGENCY DISAGREES WITH THE APPLICANT'S QUALIFIED
23 SOIL SCIENTIST REGARDING THE REASON FOR THE PRESENCE OF
24 MOTTILING, THE LOCAL AGENCY SHALL REQUEST THE DEPARTMENT TO
25 PERFORM AN INDEPENDENT SITE EVALUATION AND THE RESULTS OF THIS
26 EVALUATION SHALL BE CONSIDERED BY THE LOCAL AGENCY PRIOR TO
27 EITHER ACCEPTANCE OF THE PERMIT APPLICATION AS COMPLETE OR
28 ACTION ON THE PERMIT IN QUESTION. APPEALS OF PERMIT ACTIONS
29 UNDER THIS SECTION SHALL BE TO THE LOCAL AGENCY.

30 SECTION 5. SECTION 9 OF THE ACT, AMENDED JULY 1, 1989

1 (P.L.124, NO.26), IS AMENDED TO READ:

2 SECTION 9. POWERS AND DUTIES OF THE ENVIRONMENTAL QUALITY
3 BOARD.--[(A)] THE ENVIRONMENTAL QUALITY BOARD SHALL HAVE THE
4 POWER AND ITS DUTY SHALL BE TO ADOPT SUCH RULES AND REGULATIONS
5 OF THE DEPARTMENT, APPLICABLE THROUGHOUT THE COMMONWEALTH, AS
6 SHALL BE NECESSARY FOR THE IMPLEMENTATION OF THE PROVISIONS OF
7 THIS ACT. SUCH RULES AND REGULATIONS SHALL ESTABLISH STANDARDS
8 FOR THE CONSTRUCTION, INSTALLATION, ALTERATION, MAINTENANCE AND
9 OPERATION OF INDIVIDUAL SEWAGE SYSTEMS AND COMMUNITY SEWAGE
10 SYSTEMS AND OF SEWAGE TREATMENT PLANTS IN SUCH SYSTEMS, TAKE
11 COGNIZANCE OF LATEST TECHNOLOGICAL DEVELOPMENTS IN THE FIELD OF
12 INDIVIDUAL SEWAGE SYSTEMS, INCLUDING ADOPTION OF STANDARDS
13 PROVIDING FOR USE OF ALTERNATE INDIVIDUAL SEWAGE SYSTEMS,
14 STANDARDS FOR ENFORCEMENT PROGRAMS OF LOCAL AGENCIES AND FOR THE
15 CERTIFICATION OF PERSONNEL EMPLOYED BY LOCAL AGENCIES TO
16 ADMINISTER THE PROVISIONS OF THIS ACT, STANDARDS FOR THE
17 PREPARATION, REVIEW AND ACCEPTANCE OF OFFICIAL PLANS, AND
18 REQUIREMENTS FOR THE DISBURSEMENT OF STATE AND FEDERAL FUNDS TO
19 MUNICIPALITIES AND LOCAL AGENCIES FOR PLANNING, PERSONNEL AND
20 CONSTRUCTION OF SEWAGE DISPOSAL SYSTEMS. SUCH RULES AND
21 REGULATIONS SHALL BE ADOPTED PURSUANT TO THE ACT OF JULY 31,
22 1968 (P.L.769, NO.240), KNOWN AS THE "COMMONWEALTH DOCUMENTS
23 LAW," UPON SUCH NOTICE AND AFTER SUCH PUBLIC HEARINGS AS THE
24 BOARD DEEMS APPROPRIATE. THE RULES AND REGULATIONS ADOPTED BY
25 THE BOARD UNDER THIS SECTION SHALL SUPERSEDE ANY ORDINANCE,
26 RULES OR REGULATIONS OF LOCAL AGENCIES WHICH ARE NOT IN
27 CONFORMITY WITH THE RULES AND REGULATIONS OF THE BOARD.

28 [(B) WITHIN ONE YEAR OF THE EFFECTIVE DATE OF THIS
29 AMENDATORY ACT, THE BOARD SHALL PROMULGATE PROPOSED RULES AND
30 REGULATIONS THAT GOVERN THE ABILITY OF LOCAL AGENCIES TO ISSUE

1 PERMITS FOR THE CONSTRUCTION OF INDIVIDUAL RESIDENTIAL SEWAGE
2 SYSTEMS WHERE SOIL MOTTILING IS PRESENT. THE RULES AND
3 REGULATIONS SHALL INCLUDE, BUT NOT BE LIMITED TO, THE FOLLOWING:

4 (1) A REQUIREMENT THAT A LOCAL AGENCY PERFORM A PERCOLATION
5 TEST WHEN ONE IS REQUESTED IN WRITING BY THE OWNER OF THE
6 PROPERTY, AT THE OWNER'S EXPENSE, WHERE THE LOCAL AGENCY
7 DETERMINES SOIL MOTTILING IS PRESENT.

8 (2) WHERE THE SOLE REASON FOR A PROPERTY NOT MEETING THE
9 REQUIREMENTS FOR THE INSTALLATION OF AN INDIVIDUAL RESIDENTIAL
10 SEWAGE SYSTEM IS THE PRESENCE OF SOIL MOTTILING AND WHERE NO
11 OTHER APPROVED ALTERNATE SEWAGE SYSTEMS CAN BE PERMITTED ON THE
12 PROPERTY, THE LOCAL AGENCY SHALL ISSUE A PERMIT FOR AN
13 INDIVIDUAL SEWAGE SYSTEM WHERE THE PROPERTY OWNER MEETS ALL OF
14 THE FOLLOWING CONDITIONS:

15 (I) THE PROPERTY OWNER DEMONSTRATES THAT AT LEAST THREE
16 INDIVIDUAL RESIDENTIAL SEWAGE SYSTEMS IN CLOSE PROXIMITY TO THE
17 APPLICANT'S PROPERTY HAVE BEEN FUNCTIONING WITHOUT POLLUTIONAL
18 DISCHARGES TO SURFACE OR GROUNDWATER FOR FIVE YEARS OR MORE AND
19 HAVE SOIL CONDITIONS SIMILAR TO THE APPLICANT'S PROPERTY AS
20 VERIFIED BY A QUALIFIED SOIL SCIENTIST.

21 (II) THE PROPERTY OWNER PROPOSES AN INDIVIDUAL RESIDENTIAL
22 SEWAGE SYSTEM THAT, IN THE OPINION OF A REGISTERED PROFESSIONAL
23 ENGINEER, CAN BE EXPECTED TO FUNCTION IN THE SOILS ON THE
24 PROPERTY WITHOUT POLLUTIONAL DISCHARGES TO SURFACE OR
25 GROUNDWATER.

26 (III) THE PROPERTY OWNER PROVIDES EVIDENCE OF FINANCIAL
27 ASSURANCE TO THE LOCAL AGENCY IN AN AMOUNT EQUAL TO THE COST OF
28 REPLACEMENT OF THE INDIVIDUAL RESIDENTIAL SEWAGE SYSTEM PROPOSED
29 AND THE REASONABLY ANTICIPATED COST OF REMEDIAL MEASURES TO
30 CLEAN UP CONTAMINATED GROUNDWATER AND TO REPLACE ANY

1 CONTAMINATED WATER SUPPLIES. IN NO CASE SHALL THE LOCAL AGENCY
2 APPROVE FINANCIAL ASSURANCE IN AN AMOUNT LESS THAN TWENTY
3 THOUSAND DOLLARS (\$20,000) FOR EACH YEAR UP TO THREE YEARS. THE
4 TOWNSHIP MAY REQUIRE AN ADDITIONAL TWO YEARS FINANCIAL
5 ASSURANCE. THE LOCAL AGENCY MAY WAIVE THE FINANCIAL ASSURANCE
6 REQUIREMENT AFTER FIVE YEARS IF THERE IS NO EVIDENCE OF
7 POLLUTIONAL DISCHARGE TO SURFACE OR GROUNDWATER.

8 (IV) THE PROPERTY OWNER PRODUCES EVIDENCE OF A CLAUSE IN THE
9 DEED TO THE PROPERTY THAT CLEARLY INDICATES SOIL MOTTILING IS
10 PRESENT ON THE PROPERTY AND THAT AN INDIVIDUAL RESIDENTIAL
11 SEWAGE SYSTEM MEETING THE REQUIREMENTS OF THIS SECTION WAS
12 INSTALLED ON THE PROPERTY.

13 (C) THE ENVIRONMENTAL QUALITY BOARD SHALL PROMULGATE RULES
14 AND REGULATIONS THAT ARE TO ESTABLISH THE SPECIFIC TYPES OF
15 FINANCIAL ASSURANCE THAT ARE ACCEPTABLE UNDER THIS SECTION, THE
16 PROCEDURES LOCAL AGENCIES ARE TO FOLLOW IN FORFEITING THE
17 FINANCIAL ASSURANCE AND THE TYPE OF ADDITIONAL FINANCIAL
18 ASSURANCE REQUIRED IF A SYSTEM APPROVED UNDER THIS SECTION IS
19 REPLACED. THE FINANCIAL ASSURANCES MAY INCLUDE AN OPTION WHERE
20 THE LOCAL AGENCY MAY OFFER, FOR A FEE, FINANCIAL ASSURANCE FOR
21 SYSTEMS INSTALLED UNDER THIS SECTION UP TO THE AMOUNT
22 ESTABLISHED IN SUBSECTION (B)(2)(III).

23 (D) THE LOCAL AGENCY SHALL NOT BE HELD LIABLE FOR THE
24 PERFORMANCE OF AN INDIVIDUAL RESIDENTIAL SEWAGE SYSTEM APPROVED
25 UNDER THIS SECTION, EXCEPT WHERE FINANCIAL ASSURANCE IS PROVIDED
26 BY THE LOCAL AGENCY UNDER SUBSECTION (C).]

27 Section 3 6. Section 13 of the act, amended November 26, <—
28 1978 (P.L.1244, No.296) and repealed in part October 5, 1980
29 (P.L.693, No.142), is amended to read:

30 Section 13. Penalties.--(a) Any person who shall violate

1 any provision of section 7 of this act or the rules, regulations
2 or standards promulgated thereunder or who resists or interferes
3 with any officer, agent or employe of a local agency or the
4 department, in accordance with the provisions of this act, in
5 the performance of his duties, shall be guilty of a summary
6 offense. Upon conviction thereof, such person shall be sentenced
7 to pay a fine of not less than one hundred dollars (\$100) and
8 costs, and not more than three hundred dollars (\$300) and costs,
9 or in default thereof, shall be confined in the county jail for
10 a period of not more than thirty days.

11 (b) A municipality which fails to submit to the department
12 an officially adopted plan for sewage services for areas within
13 its jurisdiction within such reasonable period as the department
14 may prescribe, or fails from time to time to submit UPDATE <—
15 revisions of such plan as may be required by rules and
16 regulations adopted under this act or by order of the department
17 shall be subject to a civil penalty, payable to the department,
18 of one hundred dollars (\$100) for each day commencing sixty days
19 after the required submission date, until such time as the plan
20 or revision is submitted.

21 Section 4 7. This act shall take effect in 60 days. <—