

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 52

Session of
1989

INTRODUCED BY GEORGE, FEE, WOZNIAK, LUCYK, HAYDEN, LEVDANSKY,
TRELLO, HALUSKA, HERMAN, CAWLEY, MORRIS, ROBINSON, VAN HORNE,
DIETTERICK, LAUGHLIN, STABACK, DALEY, BATTISTO, ANGSTADT,
COLAIZZO, CLYMER, WASS, TIGUE, BELFANTI, BURD, DISTLER,
BOWLEY, MERRY, GIGLIOTTI, CARLSON, MELIO, SERAFINI, BELARDI
AND BISHOP, JANUARY 18, 1989

AS REPORTED FROM COMMITTEE ON CONSERVATION, HOUSE OF
REPRESENTATIVES, AS AMENDED, FEBRUARY 7, 1989

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," further providing for the approval of certain
12 plans, for permits, for the powers and duties of local
13 agencies, the certification board, the Environmental Quality
14 Board and the department; and reestablishing the State Board
15 for Certification of Sewage Enforcement Officers pursuant to
16 the Sunset Act.

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

19 Section 1. Sections 5(e) and 7(b)(7) of the act of January
20 24, 1966 (1965 P.L.1535, No.537), known as the Pennsylvania
21 Sewage Facilities Act, amended July 22, 1974 (P.L.621, No.208),
22 are amended to read:

1 Section 5. Official Plans.--* * *

2 (e) The department is hereby authorized to approve or
3 disapprove official plans for sewage systems submitted in
4 accordance with this act within one year of date of submission
5 and revisions of official plans within such lesser time as the
6 regulations shall stipulate, except that the department shall
7 approve or disapprove revisions constituting residential
8 subdivision plans within ninety days of the date of submission,
9 for the period of one year from the effective date of this
10 amendatory act, and within sixty days of the date of submission
11 thereafter.

12 * * *

13 Section 7. Permits.--* * *

14 (b) * * *

15 (7) If construction or installation of an individual sewage
16 system or community sewage system and of any building or
17 structure for which such system is to be installed has not
18 commenced within [two] three years after the issuance of a
19 permit for such system, the said permit shall expire, and a new
20 permit shall be obtained prior to the commencement of said
21 construction or installation.

22 * * *

23 Section 2. Section 8(b) of the act is amended by adding a
24 paragraph and the section is amended by adding a subsection to
25 read:

26 Section 8. Powers and Duties of Local Agencies.--* * *

27 (b) Each local agency in addition to the powers and duties
28 conferred upon it by existing law shall have the power and the
29 duty:

30 * * *

1 (1.1) To have at least one alternate sewage enforcement
2 officer authorized to work in the municipality or municipalities
3 of the local agency.

4 * * *

5 (c) Sewage enforcement officers employed by local agencies
6 in accordance with this act, in performing their duties as
7 required under this act, may accept prior testing data and
8 information obtained by a previous sewage enforcement officer,
9 provided that the site and prior testing meets all of the
10 following criteria and the sewage enforcement officer certifies
11 THE same to the local agency:

<—

12 (1) The soils testing performed on the property in question
13 has not been cited in a revocation, suspension or other
14 agreement to surrender certification which indicates violations
15 of soil testing procedures by the previous sewage enforcement
16 officer.

17 (2) The exact location of the test to be used for issuance
18 of a permit must be verifiable by at least one of the following
19 methods:

20 (i) Location of the test pit and percolation hole remnants
21 on the lot by the current sewage enforcement officer.

22 (ii) The existence of recorded measurements from at least
23 two permanent landmarks on the property in question establishing
24 the original test location.

25 (iii) A scale drawing of the lot or property in question
26 indicating the location of the tests by reference to at least
27 two permanent landmarks.

28 (iv) Identification of the exact location of the tests by
29 the prior sewage enforcement officer, provided that his or her
30 certification has not been revoked, suspended or voluntarily

1 surrendered to the department.

2 (3) Verification that the percolation test and soils
3 evaluation was conducted in accordance with the applicable
4 regulations.

5 (4) Soils description and percolation test data are
6 available and recorded on the prescribed form, or its
7 equivalent, in sufficient quantity and quality to be interpreted
8 by others.

9 (5) The soil probes were conducted within ten feet of the
10 proposed absorption area.

11 (6) The percolation test on the lot was performed on the
12 site of the proposed absorption area.

13 (7) The person who originally observed or conducted the
14 testing was certified under the current certification
15 requirements of this act.

16 (8) No inaccuracies or falsifications of the test data are
17 apparent or identifiable.

18 (9) No changes to the site have occurred since the time of
19 the original testing.

20 Section 3. Section 9 of the act, amended December 10, 1974
21 (P.L.856, No.288), is amended to read:

22 Section 9. Powers and Duties of the Environmental Quality
23 Board.--(a) The Environmental Quality Board shall have the
24 power and its duty shall be to adopt such rules and regulations
25 of the department, applicable throughout the Commonwealth, as
26 shall be necessary for the implementation of the provisions of
27 this act. Such rules and regulations shall establish standards
28 for the construction, installation, alteration, maintenance and
29 operation of individual sewage systems and community sewage
30 systems and of sewage treatment plants in such systems, take

1 cognizance of latest technological developments in the field of
2 individual sewage systems, including adoption of standards
3 providing for use of alternate individual sewage systems,
4 standards for enforcement programs of local agencies and for the
5 certification of personnel employed by local agencies to
6 administer the provisions of this act, standards for the
7 preparation, review and acceptance of official plans, and
8 requirements for the disbursement of State and Federal funds to
9 municipalities and local agencies for planning, personnel and
10 construction of sewage disposal systems. Such rules and
11 regulations shall be adopted pursuant to the act of July 31,
12 1968 (P.L.769, No.240), known as the "Commonwealth Documents
13 Law," upon such notice and after such public hearings as the
14 board deems appropriate. The rules and regulations adopted by
15 the board under this section shall supersede any ordinance,
16 rules or regulations of local agencies which are not in
17 conformity with the rules and regulations of the board.

18 (b) Within one year of the effective date of this amendatory
19 act, the board shall promulgate proposed rules and regulations
20 that govern the ability of local agencies to issue permits for
21 the construction of individual residential sewage systems where
22 soil mottling is present. The rules and regulations shall
23 include, but not be limited to, the following:

24 (1) A requirement that a local agency perform a percolation
25 test when one is requested in writing by the owner of THE <—
26 property, at the owner's expense, where the local agency
27 determines soil mottling is present.

28 (2) Where the sole reason for a property not meeting the
29 requirements for the installation of an individual residential
30 sewage system is the presence of soil mottling and where no

other approved alternate sewage systems can be permitted on the property, the local agency may still issue a permit for an individual sewage system where the property owner meets all of the following conditions:

(i) The property owner demonstrates that at least three individual residential sewage systems in close proximity to the applicant's property have been functioning without polluttional discharges to surface or groundwater for five years or more and have soil conditions similar to the applicant's property as verified by a qualified soil scientist.

(ii) The property owner proposes an individual residential sewage system that, in the opinion of a registered professional engineer, can be expected to function in the soils on the property without polluttional discharges to surface or groundwater.

(iii) The property owner provides evidence of financial assurance to the local agency in an amount equal to the cost of replacement of the individual residential sewage system proposed and the reasonably anticipated cost of remedial measures to cleanup contaminated groundwater and to replace any contaminated water supplies. In no case shall the local agency approve financial assurance in an amount less than twenty thousand dollars (\$20,000) for each year up to three years. The township may require an additional two years financial assurance. The local agency may waive the financial assurance requirement after five years if there is no evidence of polluttional discharge to surface or groundwater.

(iv) The property owner produces evidence of a clause in the deed to the property that clearly indicates soil mottling is present on the property and that an individual residential

1 sewage system meeting the requirements of this section was
2 installed on the property.

3 (c) The Environmental Quality Board shall promulgate rules
4 and regulations that are to establish the specific types of
5 financial assurance that are acceptable under this section, the
6 procedures local agencies are to follow in forfeiting the
7 financial assurance and the type of additional financial
8 assurance required if a system approved under this section is
9 replaced. The financial assurances may include an option where
10 the local agency may offer, for a fee, financial assurance for
11 systems installed under this section up to the amount
12 established in subsection (b)(2)(iii).

13 (d) The local agency shall not be held liable for the
14 performance of an individual residential sewage system approved
15 under this section, except where financial assurance is provided
16 by the local agency under subsection (c).

17 Section 4. Sections 10 and 11 of the act, amended July 22,
18 1974 (P.L.621, No.208), are amended to read:

19 Section 10. Powers and Duties of the Department of
20 Environmental Resources.--The department shall have the power
21 and its duty shall be:

22 (1) To order municipalities to submit official plans and
23 revisions thereto within such time and under such conditions as
24 the rules and regulations promulgated under this act may
25 provide.

26 (2) To approve or disapprove official plans and revisions
27 thereto.

28 (3) To order the implementation of official plans and
29 revisions thereto.

30 (4) To administer grants and reimbursements to local

1 agencies as provided by section 6 of this act.

2 (5) To review the performance of local agencies in the
3 administration of section 7 of this act.

4 (6) To cooperate with local agencies, the advisory committee
5 and industry in studying and evaluating new methods of sewage
6 disposal. For the purpose of investigating innovative or
7 alternative on-lot sewage systems, the department may enter into
8 contracts with private entities. Such contracts shall be funded
9 from funds specifically appropriated by the General Assembly for
10 this purpose.

11 (7) To order a local agency to undertake actions deemed by
12 the department necessary to administer effectively section 7 of
13 this act in conformance with the rules and regulations of the
14 department.

15 (8) To enter upon lands and make inspections and to require
16 the submission of papers, books and records by local agencies
17 for the purposes set forth in this act.

18 (9) To train sewage enforcement officers and to require
19 sewage enforcement officers to participate in training. Such
20 training shall be funded from funds specifically appropriated by
21 the General Assembly for this purpose.

22 (10) To revoke or suspend the certification of sewage
23 enforcement officers for cause, or to reinstate same, in
24 accordance with the rules and regulations of the department:
25 Provided, however, That such actions of the department shall
26 become effective only after notice and an opportunity for
27 hearing before the certification board has been given.

28 (11) To consider for renewal biennially certificates issued
29 under this section and collect a fee of five dollars (\$5.00), or
30 any different amount, which shall be established by regulation,

1 from each certificate holder applying for renewal.

2 (12) To compile and keep current a register showing the
3 names and addresses of certified sewage enforcement officers.
4 Copies of this register shall be furnished on request to
5 municipalities and to others upon payment of such reasonable fee
6 as the department shall establish by regulation.

7 (13) To develop a list of firms or agencies that provide
8 testing services for evaluating gradation specifications of sand
9 for use in elevated sand mound on lot disposal systems. A
10 permittee that is the sand supplier for an elevated sand mound
11 shall certify in writing that sand used in these systems meets
12 the requirements established by the department.

13 Section 11. Certification Board.--(a) There is hereby
14 created within the department a State Board for Certification of
15 Sewage Enforcement Officers. The board shall consist of five
16 members to be appointed by the secretary. One member shall be a
17 representative of local government; one member shall be a sewage
18 enforcement officer certified under the provisions of this act;
19 one member shall be a representative of the engineering
20 profession; and two additional members shall be chosen from a
21 list of nominees submitted to the secretary by the advisory
22 committee. The advisory committee shall designate a minimum of
23 three nominees for the latter two positions. The original
24 appointed members of the board in the order listed above shall
25 hold office for one, two, three, three and four years,
26 respectively. Thereafter, each appointment shall be for a period
27 of four years' duration. The secretary may reappoint board
28 members for successive terms. Members of the board shall remain
29 in office until a successor is appointed and qualified. If
30 vacancies occur prior to completion of a term, the secretary

1 shall appoint another member in accordance with this section to
2 fill the unexpired term.

3 The secretary, or his representative, shall call the first
4 meeting of the board at which time a chairman of the board shall
5 be elected. Thereafter, the chairman shall be elected annually.
6 Three members of the board shall constitute a quorum. Meetings
7 may be called by the chairman as needed to conduct the business
8 of the board.

9 The members of the board shall receive no compensation for
10 their services but shall be reimbursed for actual and necessary
11 expenses incurred in the performance of their duties.

12 (b) The board shall have the power and its duty shall be, in
13 accordance with the rules and regulations of the department, to:

14 (1) Review and pass upon applications for certification of
15 sewage enforcement officers within thirty days of the receipt of
16 the test results from the testing contractor. If the board does
17 not meet within this time period, the applicants who have
18 achieved the necessary passing score on the certification
19 examination and who are not in violation or restrained by any
20 department regulation from certification shall be deemed to be
21 certified.

22 (2) Administer such examinations as prepared by the
23 department, as may be deemed necessary to determine the fitness
24 of candidates for certification. Such examinations shall be held
25 [at frequent intervals and at least annually to afford all
26 applicants an equal opportunity for taking such examinations] no
27 less than four times in each calendar year. The board shall
28 determine and shall announce, in sufficient time, the location
29 and time for such examinations, except that the board shall
30 allow the department to schedule special "walk-in" examinations

1 when a local agency demonstrates an immediate need to obtain a
2 sewage enforcement officer. During the first year of this act,
3 no fees will be charged for said examinations. During the second
4 and subsequent years, the board is hereby authorized to collect
5 a fee of ten dollars (\$10) from each applicant.

6 (3) Hold hearings and issue adjudications under the
7 provisions of the act of June 4, 1945 (P.L.1388, No.442), known
8 as the "Administrative Agency Law," on any revocation,
9 suspension or reinstatement of certification by the department:
10 Provided, That the filing of an appeal with the board shall not
11 operate as an automatic supersedeas of the action of the board.
12 The provisions of section 1921-A of The Administrative Code
13 notwithstanding, such actions of the department shall not BE <—
14 appealable to the Environmental Hearing Board.

15 (4) Consider for renewal biennially certificates issued
16 under this section, and collect a fee of five dollars (\$5) from
17 each certificate holder for such renewal.

18 (5) Compile and keep current a register showing the names
19 and addresses of certified sewage enforcement officers. Copies
20 of this register shall be furnished on request for
21 municipalities and upon payment of such reasonable fee for all
22 others, as the department shall establish.

23 Section 5. The act is amended by adding a section to read:

24 Section 20.1. Sunset Provisions.--(a) The State Board for
25 Certification of Sewage Enforcement Officers, scheduled for
26 termination under section 6 of the act of December 22, 1981
27 (P.L.508, No.142), known as the "Sunset Act," is hereby
28 reestablished.

29 (b) The board is subject to evaluation, review and
30 termination within the time and in the manner provided in the

1 "Sunset Act."

2 (c) This section, with respect to the board, constitutes the
3 legislation required to reestablish that board under the "Sunset
4 Act."

5 Section 6. This act shall take effect immediately.