



**TESTIMONY BY
THE PENNSYLVANIA STATE ASSOCIATION OF
TOWNSHIP SUPERVISORS**

**BEFORE THE
SENATE ENVIRONMENTAL RESOURCES
AND ENERGY COMMITTEE**

ON

THE PENNSYLVANIA SEWAGE FACILITIES ACT

PRESENTED BY

**ELAM M. HERR
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HARRISBURG, PA**

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Chairman Yaw and members of the Senate Environmental Resources and Energy Committee:

Good morning. My name is Elam M. Herr, assistant executive director for the Pennsylvania State Association of Township Supervisors. We are a non-profit and non-partisan association appearing before you today on behalf of the 1,454 townships in Pennsylvania that we represent. Thank you for this opportunity to participate today on this important issue.

Townships comprise 95 percent of the commonwealth's land area and are home to more than 5.5 million Pennsylvanians — nearly 44 percent of the state's population. These townships are very diverse, ranging from rural communities with fewer than 200 residents to more populated communities approaching 60,000 residents.

The Association believes that government at all levels has a responsibility to ensure that future generations will be able to enjoy a clean, safe, and bountiful environment. As such, the Association has consistently supported policies to preserve our environment for all Pennsylvanians without imposing an undue burden and cost on residents.

The Pennsylvania Sewage Facilities Act was developed to address a critical environmental issue and, like many regulatory acts, it is administered and enforced through a partnership between a state agency and local government. In this instance, all municipalities have a mandatory responsibility to develop and update sewage management plans and to administer and enforce the act by issuing permits for new systems, investigating complaints and allegations of malfunctioning systems, and when necessary or mandated by the Department of Environmental Protection, construct, expand, operate, and upgrade sewage treatment plants and sewer systems.

Funding for planning and enforcement

The Sewage Facilities Act requires a partnership between the state and local government to protect the health of our citizens. The legislature recognized this and provided funding for mandated local government responsibilities in the act itself, including the development of sewage management plans and the administration and enforcement of the act, specifically investigating complaints and ensuring protections are in place for the health of our citizens.

While not wishing to focus on funding due to the timing of the current budget discussions, we cannot discuss the Sewage Facilities Act without the funding issue. It is how to fund this critical function, both planning and enforcement, that we have heard most clearly from our members over the last several years.

Since the Rendell administration, these line items have been cut and cut again as the state budget became increasingly tight. As such, the Sewage Facilities Planning Grants have not been funded since the 2013-2014 budget and the Sewage Facilities Enforcement Grants Program was eliminated in the 2010-2011 budget. In addition, the Department no longer provides free training for sewage enforcement officers and instead these individuals or the

municipality that they work for must now foot this bill for the mandated training to become an SEO and for the continuing education.

Our membership feels strongly that the funding for these programs must be reinstated. Development and required updating of these plans require the hiring of professionals to provide the necessary data to write the plan and that can be costly. Earlier this year our members approved a resolution calling for the state to budget sufficient funds to reimburse townships for 50 percent of the costs (*the percentage stated in the act*) incurred during the previous five years to prepare or update sewage facilities plans as required by the Sewage Facilities Act and mandated by the Department. In addition, the resolution asks that sufficient funds be budgeted to pay 50 percent of the costs incurred by townships in 2015 and subsequent years to prepare plans when mandated by the Department.

In addition, we must ask you to consider restoring funding to the Sewage Facilities Enforcement Grants Program at a level sufficient to provide at least 50 percent reimbursement for local agency sewage enforcement activities. Note that the act itself allows up to 85 percent reimbursement if requirements are met.

The elimination of funding for this program was sudden, and because reimbursements were based on prior year expenses, this left these regional agencies that were administering and enforcing the act in a very difficult financial position, with no alternative other than to look to the participating municipalities and their taxpayers to fill the funding gap. As a direct result, individual sewage permit fees were substantially increased across the state in order to balance budgets going forward, placing much of the financial burden for the system on new development. However, in a number of cases, the financial damage was so severe that the local agencies were forced to close their doors, ending some successful cooperative efforts.

If and when funding is restored for these programs, we suggest making these mandated payments for local government planning and enforcement expenses based on the previous year's reimbursement request and placing these funds in a non-lapsing, separate account that is fully funded and not subject to departmental discretion.

Sewer systems

Given the commonwealth's large rural population, central collection systems are both economically and technically impractical for many municipalities because there is insufficient population density to provide such systems at a reasonable cost to the residents. Funding for sewage system construction is limited and more is needed to meet the mandates to install or provide sewer service imposed by DEP.

10-acre exemption

While the 10-acre exemption provision is often debated on its merits, our members primary concern is the \$25 fee in Section 7 (a.1) (2) of the act. The issue is that this limited fee does not cover the costs for the municipality to verify the siting requirements. Instead, we support legislation, such as SB 780 and HB 914, that would eliminate reference to a \$25 maximum fee and allow the local agency to establish the fee based on actual costs.

Holding tanks

Our members also support change to Section 5 of the act to authorize the use of holding tanks for new construction on properties with less than one acre that were created before May 15, 1972, when there is no other means of sewage disposal available. Our members have found that the owners of these small lots, that were created prior to this date, are not able to be developed, causing a financial and potential loss of the property to the property owners.

Alternative and experimental systems

In many areas of the state, the Department has determined that the soils are unsuitable for traditional onlot sewage disposal systems. This halts growth and can close the door on economic development for those municipalities and limits property owners' ability to provide adequate sewage disposal. We have constantly argued that alternative systems have to be part of the permitted systems that a municipality can approve and property owners can install. As a matter of knowledge, several alternative systems have been proven to work, but the Department will not approve them. As such, the Department should be mandated to authorize these multifaceted economically feasible alternatives in order to meet local environmental needs. These systems reduce the potential for groundwater contamination and allow rural areas to have growth and economic development.

The department should come up with an easier process to approve alternate systems. An example could be some sort of reciprocity with other states approval process. Presently other states approve alternative systems but when they are introduced to Pennsylvania they may never get past regulatory review. Under the present system residents that cannot site an approved system can be subjected to monopolistic pricing since only one system may be approved.

While we support the introduction of new technology for onlot sewage systems, these alternatives should also be allowed to be used to repair existing malfunctioning systems, especially when there are no other options. Along with these alternative and experimental systems may be additional maintenance requirements that property owners will need to comply with, including pumping of tanks, in order to ensure continued successful operation. As such, it may be appropriate to consider authorizing a permit for the operation of such systems, not just for the installation. In this manner, the municipality could exercise sewage management by ensuring that the owner of the system is in compliance with required maintenance in order to avoid malfunctioning systems.

Coordination of zoning & sewage

On a related issue, we believe that alternative systems should be approved for inclusion in the municipality's Act 537 plan. In essence, the availability of alternative sewage systems for new development should not take precedence over a township's land use regulations. Just because development may be possible because of newly available technology does not mean that the development should take place. This must remain a local decision.

In addition, the Sewage Facilities Act should be written to comply with the municipal zoning ordinance. Sewage approval should not be given by the department if it would violate the zoning for the municipality. Such a change to the act would eliminate potential problems.

Our members also believe that the Department should be prohibited from approving permits for public sewer extensions into areas of a municipality not planned for public sewer, provided that the municipality's Act 537 plan has been updated within the last 10 years or the municipality is in the process of updating its Act 537 plan. This approval will lead to development pressure and may contradict the municipality's zoning ordinance.

Department policy

The Department and its regional offices must follow uniform, consistent criteria for the approval of township sewage facilities plans. If a township meets the criteria, the plan should be approved. The Department should not be allowed to require additional time-consuming criteria in the middle of the plan approval process or refuse to approve sewage planning modules while new regulations or policies are being developed.

To ensure consistency and better understanding of its policies, the Department must provide uniformity in the interpretation and administration of its regulations among the department's regional offices.

The Department should be prohibited from requiring municipalities to implement and enforce a sewage management program in any area of the municipality without existing documented sewage needs. The Department should not refuse to approve sewage planning modules while new regulations or policies are being developed. This has been a particular concern in areas with high quality or exceptional value watersheds that have seen development temporarily shut down due to such Department actions.

In closing, given the length of time since the last comprehensive update of the act and the slowness with the progress of regulatory updates, it may be time to consider a comprehensive update of the law, possibly incorporating needed changes that have languished in the regulatory process or that may contradict Department policy. We are happy to work with the committee on possible amendments to the act, including a possible comprehensive update.

Thank you for the opportunity to testify today. I will now attempt to answer any questions that you may have.