

No. 1989-26

AN ACT

HB 52

Amending the act of January 24, 1966 (1965 P.L.1535, No.537), entitled, as amended, "An act providing for the planning and regulation of community sewage systems and individual sewage systems; requiring municipalities to submit plans for systems in their jurisdiction; authorizing grants; requiring permits for persons installing such systems; requiring disclosure statements in certain land sale contracts; authorizing the Department of Environmental Resources to adopt and administer rules, regulations, standards and procedures; creating an advisory committee; providing remedies and prescribing penalties," further providing for the Advisory Committee; further providing for the approval of certain plans, for permits, and for the powers and duties of local agencies, the certification board, the Environmental Quality Board and the department; and reestablishing the State Board for Certification of Sewage Enforcement Officers pursuant to the Sunset Act.

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

Section 1. Section 2 of the act of January 24, 1966 (1965 P.L.1535, No.537), known as the Pennsylvania Sewage Facilities Act, amended July 22, 1974 (P.L.621, No.208), is amended by adding a definition to read:

Section 2. Definitions.—As used in this act:

* * *

“Residential subdivision plan” means a subdivision in which at least two-thirds of the proposed daily sewage flows will be generated by residential uses.

* * *

Section 2. Sections 4, 5(e) and 7(a) and (b)(7) of the act, amended July 22, 1974 (P.L.621, No.208), are amended to read:

Section 4. Advisory Committee.—(a) An advisory committee shall be appointed within three months of the passage of this act and biennially thereafter, membership of which shall be composed of one representative from the following organizations, the name of said representative to be submitted to the secretary within ten days of receipt of request for same: Pennsylvania State Association of Township Supervisors, Pennsylvania State Association of Boroughs, Pennsylvania League of Cities, Pennsylvania State Association of Township Commissioners, Pennsylvania State Association of County Commissioners, Pennsylvania Association of Plumbing, Heating, Cooling, Contractors, Inc., Pennsylvania Society of Professional Engineers, Mortgage Bankers' Association, Pennsylvania Builders Association, ***Pennsylvania Association of Realtors, Pennsylvania Landowners Association***, Pennsylvania Society of Architects, County Health Departments, Pennsylvania State University, Pennsylvania Municipal Authorities Association, Pennsylv-

vania Section of the American Water Works Association, Water Pollution Association of Pennsylvania, American Society of Civil Engineers, Pennsylvania Environmental Health Association, Farmers Home Administration, Consulting Engineers Council of Pennsylvania, National Association of Water Companies, Pennsylvania Vacation Land Developers Association, United States Department of Housing and Urban Development, Pennsylvania Department of Commerce, Pennsylvania Department of Community Affairs, Office of State Planning and Development, Pennsylvania Bar Association, and such other organizations having a direct interest in the area of water and sewage as the secretary deems necessary.

(b) The advisory committee shall have the opportunity to review proposed rules, regulations, standards and procedures and shall review existing rules, regulations, standards and procedures of the department pursuant to this act.

(c) The recommendations of the advisory committee shall be submitted to the secretary who shall give due consideration to the same.

Section 5. Official Plans.—* * *

(e) The department is hereby authorized to approve or disapprove official plans for sewage systems submitted in accordance with this act within one year of date of submission and revisions of official plans within such lesser time as the regulations shall stipulate, *except that the department shall approve or disapprove revisions constituting residential subdivision plans within ninety days of the date of a complete submission, for the period of one year from the effective date of this amendatory act, and within sixty days of the date of a complete submission thereafter. The department shall determine if a submission is complete within ten working days of its receipt.*

* * *

Section 7. Permits.—(a) No person shall install, construct, or request bid proposals for construction, or alter an individual sewage system or community sewage system or construct, or request bid proposals for construction, or install or occupy any building or structure for which an individual sewage system or community sewage system is to be installed without first obtaining a permit indicating that the site and the plans and specifications of such system are in compliance with the provisions of this act and the standards adopted pursuant to this act. No permit may be issued by the local agency in those cases where a permit from the department is required pursuant to the act of June 22, 1937 (P.L.1987, No.394), known as "The Clean Streams Law," as amended, or where the department pursuant to its rules and regulations, determines that such permit is not necessary either for a rural residence or for the protection of the public health. *Except where a local agency requires a permit by ordinance, no permit shall be required for the installation of an individual on-lot sewage system for a residential structure occupied or intended to be occupied by not more than two families, one of whom is the property owner, on a contiguous tract of land ten acres or more if the owner of the property was the owner of record as of January 10, 1987.*

(b) * * *

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

* * *

Section 3. Section 8(b) of the act is amended by adding a paragraph and the section is amended by adding a subsection to read:

Section 8. Powers and Duties of Local Agencies.—* * *

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

* * *

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

* * *

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

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

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

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

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

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

(iv) Identification of the exact location of the tests by the prior sewage enforcement officer, provided that his or her certification has not been revoked, suspended or voluntarily surrendered to the department.

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

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

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

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

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

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

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

Section 4. Section 9 of the act, amended December 10, 1974 (P.L.856, No.288), is amended to read:

Section 9. Powers and Duties of the Environmental Quality Board.—
(a) The Environmental Quality Board shall have the power and its duty shall be to adopt such rules and regulations of the department, applicable throughout the Commonwealth, as shall be necessary for the implementation of the provisions of this act. Such rules and regulations shall establish standards for the construction, installation, alteration, maintenance and operation of individual sewage systems and community sewage systems and of sewage treatment plants in such systems, take cognizance of latest technological developments in the field of individual sewage systems, including adoption of standards providing for use of alternate individual sewage systems, standards for enforcement programs of local agencies and for the certification of personnel employed by local agencies to administer the provisions of this act, standards for the preparation, review and acceptance of official plans, and requirements for the disbursement of State and Federal funds to municipalities and local agencies for planning, personnel and construction of sewage disposal systems. Such rules and regulations shall be adopted pursuant to the act of July 31, 1968 (P.L.769, No.240), known as the "Commonwealth Documents Law," upon such notice and after such public hearings as the board deems appropriate. The rules and regulations adopted by the board under this section shall supersede any ordinance, rules or regulations of local agencies which are not in conformity with the rules and regulations of the board.

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

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

(2) Where the sole reason for a property not meeting the requirements for the installation of an individual residential 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 shall 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 surfaces 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 clean up 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 sewage system meeting the requirements of this section was installed on the property.*

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

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

Section 5. Sections 10 and 11 of the act, amended July 22, 1974 (P.L.621, No.208), are amended to read:

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

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

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

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

(4) To administer grants and reimbursements to local agencies as provided by section 6 of this act.

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

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

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

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

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

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

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

Section 11. Certification Board.—(a) There is hereby created within the department a State Board for Certification of Sewage Enforcement Officers. The board shall consist of five members to be appointed by the secretary. One member shall be a representative of local government; one member shall be a sewage enforcement officer certified under the provisions of this act; one member shall be a representative of the engineering profession; and two additional members shall be chosen from a list of nominees submitted to the secretary by the advisory committee. The advisory committee shall designate a minimum of three nominees for the latter two positions. The original appointed members of the board in the order listed above shall hold office for one, two, three, three and four years, respectively. Thereafter, each appointment shall be for a period of four years' duration. The secretary may reappoint board members for successive terms. Members of the board shall remain in office until a successor is appointed and qualified. If vacancies occur prior to completion of a term, the secretary shall appoint another member in accordance with this section to fill the unexpired term.

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

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

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

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

(2) Administer such examinations as prepared by the department, as may be deemed necessary to determine the fitness of candidates for certification. Such examinations shall be held **[at frequent intervals and at least annually to afford all applicants an equal opportunity for taking such examinations] no less than four times in each calendar year.** The board shall determine and shall announce, in sufficient time, the location and time for such examinations, *except that the board shall allow the department to schedule special "walk-in" examinations when a local agency demonstrates an immediate need to obtain a sewage enforcement officer.* During the first year of this act, no fees will be charged for said examinations. During the second and subsequent years, the board is hereby authorized to collect a fee of ten dollars (\$10) from each applicant.

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

(4) Consider for renewal biennially certificates issued under this section, and collect a fee of five dollars (\$5) *or such reasonable fee as the department shall establish by regulation* from each certificate holder for such renewal.

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

Section 6. The act is amended by adding a section to read:

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

(b) The board is subject to evaluation, review and termination within the time and in the manner provided in the "Sunset Act."

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

Section 7. The provisions of section 2 (section 7(a)) of this act shall not affect any right to a rural residence exemption from permit requirements imposed by a municipality which was legally established prior to the effective date of this act.

Section 8. This act shall take effect as follows:

- (1) The amendment to section 5(e) of the act shall take effect in 90 days.
- (2) The remainder of this act shall take effect immediately.

APPROVED—The 1st day of July, A. D. 1989.

ROBERT P. CASEY