# RULES AND REGULATIONS

## Title 25—ENVIRONMENTAL PROTECTION

### ENVIRONMENTAL QUALITY BOARD

### [25 PA. CODE CHS. 71—73]
### Sewage Facilities

The Environmental Quality Board (Board) by this order adopts amendments to Chapters 71—73 (relating to administration of sewage facilities program; administration of sewage facilities permitting program; and standards for sewage disposal facilities). The amendments establish technical and bonding criteria for the installation of onlot sewage disposal systems in areas where soil mottling is present. The amendments also include provisions relating to implementation of a statutory provision exempting certain qualified 10-acre lots from onlot sewage disposal system permitting requirements, a shortened time frame for the review of new land development revisions by the Department of Environmental Protection (Department), employment of alternate sewage enforcement officers, acceptance of prior soils testing in certain situations and extended duration of permit terms for onlot sewage systems. The amendments are based on amendments to the Pennsylvania Sewage Facilities Act (act) (35 P. S. §§ 750.1—750.20) which were enacted by the act of July 1, 1989 (P. L. 124, No. 26) (Act 26) and the act of December 14, 1994 (P. L. 1250, No. 149) (Act 149) and recommendations to the Board by the Sewage Advisory Committee (SAC).

The Board approved the final regulations at its June 18, 1996 meeting.

A. *Effective Date*

These amendments will go into effect immediately upon publication in the *Pennsylvania Bulletin* as final rulemaking.

B. *Contact Persons*

For further information regarding these amendments, contact Cedric H. Karper, Chief, Division of Municipal Planning and Finance, Bureau of Water Quality Management, 10th Floor, Rachel Carson State Office Building, 400 Market Street, P. O. Box 8465, Harrisburg, PA 17105-8465, (717) 787-3481 and William S. Cumings, Jr., Assistant Counsel, Bureau of Regulatory Counsel, 9th Floor, Rachel Carson State Office Building, 400 Market Street, P. O. Box 8464, Harrisburg, PA 17105-8464, (717) 787-7060. Persons with a disability may use the AT&T Relay Service by calling (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This proposal is available electronically through the Department Web Site (http://www.dep.state.pa.us).

C. *Statutory Authority*

The amendments are promulgated under the authority of sections 7.2 and 9 of the act (35 P. S. §§ 750.7b and 750.9), which grant the Board the authority to adopt rules and regulations relating to the implementation of the act. The amendments are also made under the authority of The Clean Streams Law (35 P. S. §§ 691.1—691.1001) and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510.20).

D. *Background and Summary*

During its 1994 session, the General Assembly enacted Act 149, which substantially amended the act. One section of Act 149 became effective immediately upon enactment. With one exception, the remainder of Act 149 became effective on December 15, 1995. The General Assembly also amended the act during its 1989 session (Act 26). Proposed regulations intended to implement the provisions of Act 26 were adopted by the Board on December 19, 1990, and were published in the *Pennsylvania Bulletin* on March 2, 1991 (21 Pa.B. 921). However, the regulations proposed to implement Act 26 were withdrawn by the Board on May 19, 1993, following the close of the public comment period. The amendments outlined in this notice implement the provisions of section 16 of Act 149 relating to the 10-acre exemption provisions of section 7 of the act which became effective immediately upon enactment of Act 149. The amendments also implement the provisions of Act 26 (including provisions of Act 26 which were amended under Act 149), particularly those related to the permitting of onlot sewage systems in areas where soil mottling is present and the financial assurance requirements of that act relating to the systems.

It should be noted that the Board has published proposed amendments relating to the provisions of Act 149 not addressed in this rulemaking. Those proposed amendments were published at 26 Pa.B. 1491 (March 30, 1996). Those proposed amendments include provisions relating to revised planning review processes outlined in Act 149, delegated agencies, permit and technical requirements relating to spray irrigation systems, fees, permitting by local agencies, reimbursements and multimunicipal local agencies.

SAC established by the act and consisting of 33 special interest groups, met on December 13, 1995, to review the draft final rulemaking. SAC reviewed the recommendations of the Regulation Subcommittee of SAC which conducted a detailed review of the final rulemaking, all comments received and the Department's response to those comments. SAC made recommendations regarding each comment received. A copy of the Comment and Response Document can to obtained by contacting the individuals listed in Section B of this Preamble.

E. *Summary of Comments and Responses on the Proposed Rulemaking*

The Board received comments from five organizations during the public comment period. The Board also received comments from the Independent Regulatory Review Commission (IRRC).

Three commentators affiliated with the Pennsylvania Association of Sewage Enforcement Officers suggested that the language of § 72.22(g) (relating to permit issuance) pertaining to verification of specific isolation distances for eligibility for a permit exemption be clarified to provide that owners of property qualifying for a permit exemption provide the documentation to the local agency. Among other things, the commentators noted that the absence of this documentation might be construed as requiring the local agency to perform the tasks associated with documenting that the specified isolation distances are in compliance with the requirements of the act. The Department agrees that this documentation is the responsibility of the landowner proposing to install a permit exempt system. Therefore, the language of § 72.22(g) has

been clarified to provide that a landowner shall provide the documentation to the local agency upon request and that the documentation be satisfactory to the local agency.

IRRC, however, believes the local agency is responsible for verifying the siting requirements of the act. IRRC believes the local agency is thus required to inspect the site and verify that the system is located in accordance with the requirements of the act. The Board and SAC disagree with IRRC. The revised language creates an affirmative obligation on the local agency to ensure that a system is installed in accordance with the siting requirements of the act.

One commentator questioned the conflict of interest provisions in § 72.41 (relating to powers and duties of sewage enforcement officers). The comments provided by this commentator are not germane to this rulemaking since they relate to conflict of interest provisions of the act which are the subject of a separate rulemaking noted in Section D.

IRRC suggested that the provisions in § 71.54 (relating to Department administration of new land development planning requirements for revisions) pertaining to completeness determinations be amended to require the Department to formally notify an applicant when an application for a revision for new land development is complete and the date the submission is determined to be complete. SAC agreed with this suggestion. For the reasons stated in this Preamble, the Board does not agree with the suggestion. Section 5(e)(2) of the act (35 P. S. § 750.5(e)(2)) provides that the Department is to determine if a submission is complete within 10 working days of its receipt. The act does not require the Department to notify an applicant in the manner suggested by IRRC. Except in the case when an applicant might agree to an extended period of time for a completeness determination, if the Department does not notify an applicant that the submission is either incomplete or complete within the 10-day period, the applicant can readily presume that the submission is complete and that the clock has started to run for the Department's review of the submission.

IRRC provided extensive comments regarding the financial assurance and forfeiture procedures outlined in §§ 73.77 and 73.151 (relating to general requirements for bonded disposal systems; and standards for financial assurances).

As previously noted, the Board adopted a proposal to implement the financial assurance requirements of Act 26, which was published in the *Pennsylvania Bulletin* on March 2, 1991. Section 73.151 of that proposal contained detailed provisions relating to financial assurances, including identification of specific types of financial instruments which might be acceptable and procedures for forfeiting these assurances. The Board received numerous comments which were critical of those financial assurance requirements. Many commentators, including the sponsor of Act 26, believed the provisions were too detailed. Largely in response to the negative comments, the Board allowed the proposal published in the *Pennsylvania Bulletin* in March 1991 to lapse and the regulation was never finalized.

Accordingly, the provisions of originally proposed § 73.151 were simplified and drafted with the intent of allowing local agencies as much flexibility as possible in developing financial assurance requirements and procedures. The Board intends to provide local government with as much flexibility as possible in administering State programs.

For the reasons outlined in this Preamble, the Board and SAC disagree with IRRC's comments:

(1) IRRC acknowledges that the explanation in the Preamble accompanying the proposal for not including acceptable types of financial assurances in § 73.151 has some merit. However, IRRC does not believe it is consistent with the legislative requirements of the act. As explained in the Preamble, there are numerous types of financial instruments which could provide the financial assurances contemplated by section 7.2 of the act. Among these instruments are surety bonds, collateral bonds, letters of credit, indemnity agreements and escrow agreements. The types of instruments providing financial assurances are constantly evolving. Therefore, the Board does not believe it would be appropriate to list in the regulations all types of financial assurances which would be acceptable. The Board believes it has met the requirement of section 7.2 of the act by specifying in § 73.151 that the financial assurances should ". . . establish, to the satisfaction of the local agency, its full and unconditional right to demand and receive any sum due it under section 7.2 of the act." Moreover, financial assurance instruments will be subject to review for legality and form by the solicitors of the local agencies within which a bonded system is to be installed.

(2) IRRC suggested that acceptable types of financial assurances, as described in the Preamble, be specified in the regulations itself, not the Preamble. The rationale for this suggestion is that by specifying the acceptable types in the regulation, individuals seeking to construct disposal systems will have a clear understanding of the types of financial assurance they will need to seek. IRRC also recommended that the Board amend the regulations to provide that the Department may approve an alternative type of financial assurance not listed in the rulemaking based on a specific request from an individual or local agency. The Board disagrees with IRRC's suggestions. It is not appropriate for the Department to specify types of financial assurances which are acceptable in cases when the local agency determines whether the assurances are satisfactory. If a local agency does not believe a financial assurance specified in the regulations is satisfactory, the result is the anomaly of a regulatory provision precluding a local agency from deciding what is the best financial assurance for its unique situation. As to the suggested amendment, it is doubtful whether the Department would approve an alternative type of financial assurance without undergoing a time-consuming rulemaking process. Moreover, the Board believes the language of § 73.151 provides a much more flexible and expeditious means of providing alternative types of financial assurances since a local agency is authorized to determine what assurances are satisfactory.

IRRC believes that the proposed amendments are silent on the requirement of section 7.2(b) of the act that the Board establish, *inter alia*, "the type of additional financial assurance required if the system approved . . . is replaced." Section 73.77(b)(2) (relating to general requirements for bonded disposal systems) explicitly provides that a property owner shall provide "evidence of financial assurance satisfactory to the local agency in an amount equal to the cost of replacement of the individual residential sewage system proposed and the reasonably anticipated costs of remedial measures to clean up contaminated groundwater, to replace any contaminated water supplies and to repair or replace a malfunction of the on-lot system," among other things, in order to qualify for a permit under section 7.2 of the act.

(3) IRRC provided extensive comments based on the assumption that the local agency would be the entity providing the financial assurances and would hold the financial assurance. The Board believes the comments reflect a misunderstanding of the financial assurance documents and procedures being proposed. In most cases, the local agency will be the beneficiary of a financial assurance instrument entered into between the owner of a bonded sewage disposal system and some third party which would in most cases be a bank or an indemnity company. The Board does not believe many local agencies will provide financial assurances except in extreme circumstances.

(4) With regard to the provisions of § 73.77(b)(2) relating to the terms of the financial assurances, IRRC believes there is a discrepancy between the proposed amendment and the statute in the sense that the proposed amendment does not appear to require termination at the end of 5 years. The proposal stated that the local agency may terminate the financial assurance requirements at "the end of its term consistent with the provisions of the act." As noted in the two sentences of § 73.77(b)(2) preceding the provision in question, a local agency is authorized to set the terms for financial assurances for up to 3 years, and may require a continuation for up to 2 additional years. A local agency is thus authorized to require financial assurances for a maximum of 5 years. However, a local agency is authorized to require financial assurance for a period less than the minimum of 3 years. Since the terms of the financial assurances which may be required by local agencies may vary and the maximum term with renewals is 5 years, the language of § 73.77(b)(2) is consistent with the requirement of section 7.2(a)(2)(ii) of the act.

F. *Benefits and Costs*

Executive Order 1996-1 requires a cost/benefit analysis of the proposed amendments.

These changes to Chapters 71—73 are necessary to bring existing regulations into compliance with recent amendments to the act.

Some proponents of residential subdivision plans will experience a reduction in review time for Department review of sewage plan revisions for their projects. These reduced review times may result in reduction of overall costs to finance the projects.

Appointment of alternate sewage enforcement officers in each local agency should result in a reduction in response time for sewage enforcement officer services if the local agency appoints a sufficient number of alternate sewage enforcement officers.

The extension of time for the validity of an onlot sewage system permit to 3 years may benefit a limited number of property owners.

A limited number of owners of lots 10 acres or greater will qualify for an exception to the requirement to obtain a permit for an onlot sewage system. This will save the cost of the permit. However, these costs may be offset by an increased rate of malfunctions on these sites and, to some extent, by verification fees established by the local agency.

These revisions require the State Board for Certification of Sewage Enforcement Officers to administer the certification test at least four times per year. This will reduce the amount of time between an application for certification and actual certification of those qualifying by approximately 50%. This may result in an increased number of sewage enforcement officers being available for local agency employment.

The financial assurance or bonded disposal system provisions now allow property owners seeking permits for individual residential sewage systems where soil mottling is not indicative of a seasonal high water table to apply for a permit. These permits would have otherwise been denied. Qualifying for these bonded disposal systems requires financial assurance against failure of the system. Minimum financial assurances of $20,000 per year for 3 years are required for each residential sewage system or 15% of the appraised value of the lot and proposed dwelling.

With respect to compliance assistance, the Department has been, and will continue to be, engaged in extensive outreach efforts. These efforts include providing comprehensive training and education programs for sewage enforcement officers, municipal officials and other interested groups.

G. *Sunset Review*

These amendments will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the amendments effectively fulfill the goals for which they were intended.

H. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the Department submitted a copy of the notice of proposed rulemaking, published at 25 Pa.B. 3221 (August 5, 1995) on July 20, 1995, to IRRC and the Chairpersons of the Senate and House Environmental Resources and Energy Committees for review and comment. In compliance with section 5(b.1) of the Regulatory Review Act, the Department also provided IRRC and the Committees with copies of the comments received, as well as other documentation.

In preparing these final-form regulations, the Department has considered the comments received from IRRC and the public. No comments were received from the Committees.

These final-form regulations were deemed approved by the House Environmental Resources and Energy Committee on August 13, 1996, and were deemed approved by the Senate Environmental Resources and Energy Committee on August 13, 1996. IRRC met on August 22, 1996, and disapproved the amendments in accordance with section 6(a) of the Regulatory Review Act. Pursuant to section 7(b) of the Regulatory Review Act, the Department determined it was desirable to implement the final-form regulations without revisions or modifications recommended by IRRC and submitted a report to the House and Senate September 9, 1996. The Committees did not act on the Department's report within 14 days of receipt of the Department's report. These final-form regulations were accordingly deemed approved on September 23, 1996, and may thus be promulgated in accordance with section 7(d) of the Regulatory Review Act.

I. *Findings*

The Board finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and regulations promulgated thereunder in 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law, and all comments were considered.

(3) These amendments do not enlarge the purpose of the proposal published at 25 Pa.B. 3221.

(4) These amendments are necessary and appropriate for administration and enforcement of the authorizing acts identified in Section C of this Preamble.

J. *Order*

The Board, acting under the authorizing statutes, orders that:

(a) The regulations of the Department, 25 Pa. Code Chapters 71—73, are amended by amending §§ 71.1, 71.32, 71.54, 72.21, 72.22, 72.27, 72.41, 72.42, 72.52, 72.53, 72.56, 72.58, 73.1, 73.14 and 73.15 and by adding §§ 72.31, 73.77 and 73.151 to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

(b) The Chairperson shall submit this order and Annex A to IRRC and the Senate and House Environmental Resources and Energy Committees as required by the Regulatory Review Act.

(c) The Chairperson of the Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) This order shall take effect immediately upon publication in the *Pennsylvania Bulletin*.

JAMES M. SEIF,
*Chairperson*

(*Editor's Note*: A proposal affecting every section amended in this document remains outstanding at 26 Pa.B. 1491 (March 30, 1996).

*Editor Note*: For the text of the order of the Independent Regulatory Commission relating to this document, see 26 Pa.B. 4293 (August 31, 1996).)

**Fiscal Note**: Fiscal Note 7-289 remains valid for the final adoption of the subject regulations.

## Annex A

## TITLE 25. ENVIRONMENTAL PROTECTION

## PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION

## Subpart C. PROTECTION OF NATURAL RESOURCES

## ARTICLE I. LAND RESOURCES

## CHAPTER 71. ADMINISTRATION OF SEWAGE FACILITIES PLANNING PROGRAM

## Subchapter A. GENERAL PROVISIONS

## GENERAL

### § 71.1. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise.

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*Residential subdivision plan*—A subdivision in which at least two-thirds of the proposed daily sewage flows will be generated by residential uses.

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## OFFICIAL PLAN APPROVAL

### § 71.32. Department responsibility to review and act upon official plans.

(a) No official plan or official plan revision will be considered complete by the Department unless it contains the information and supporting documentation required by the Department, including those items required by § 71.31 (relating to municipal responsibility to review, adopt and implement official plans).

(b) Within 120 days after submission of a complete official plan or official plan revision, with supporting documentation, the Department will either approve or disapprove the plan or revision, except as provided in § 71.54(d) (relating to Department administration of new land development planning requirements for revisions) for a plan revision for a residential subdivision plan.

(c) Upon the Department's failure to act on a complete official plan or revision within 120 days of its submission, the official plan or official plan revision will be considered approved, unless the Department informs the municipality prior to the end of 120 days that additional time is necessary to complete its review. The additional time may not exceed 60 days.

(d) In approving or disapproving an official plan or official plan revision, the Department will consider:

(1) Whether the plan or revision meets the requirements of the act, The Clean Streams Law and this part.

(2) Whether the municipality has adequately considered questions raised in comments, if any, of the appropriate areawide planning agency, the county or joint county department of health, and the general public.

(3) Whether the plan or revision furthers the policies established under section 3 of the act (35 P. S. § 750.3) and sections 4 and 5 of The Clean Streams Law (35 P. S. §§ 691.4 and 691.5).

(4) Whether the official plan or official plan revision is able to be implemented.

(5) Whether the official plan or official plan revision adequately provides for continued operation and maintenance of the proposed sewage facilities.

(6) Whether the official plan or official plan revision contains documentation that inconsistencies identified in § 71.21(a)(5)(i)—(iii) (relating to content of official plans) have been resolved under § 71.31(e).

(7) If the official plan or official plan revision includes proposed sewage facilities connected to or otherwise affecting sewage facilities of other municipalities, whether the other municipalities have submitted necessary revisions to their plans for approval by the Department.

(e) If the official plan or official plan revision is disapproved by the Department, written notice will be given to each municipality included in the plan, together with a statement of reasons for the disapproval.

(f) In a municipality that does not have an official plan, or fails to revise or implement its official plan as required by order of the Department or this part the following apply:

(1) The limitations on the issuance of permits under section 7(b)(4) of the act (35 P. S. § 750.7(b)(4)) are in effect.

(2) The Department will not approve a project requiring a permit under section 5 of The Clean Streams Law in those areas of the municipality for which an official plan, official plan revision or implementation of an official plan is required.

(3) The Department will not approve a revision for new land development in those areas of the municipality for

which an official plan, update revision or implementation of an official plan is required.

(4) The municipality or local planning agency may not approve a subdivision plan nor issue a building permit in those areas of the municipality where the official plan is inadequate or not being substantially implemented.

### Subchapter C. NEW LAND DEVELOPMENT PLAN REVISIONS

#### § 71.54. Department administration of new land development planning requirements for revisions.

(a) No proposed plan revision for new land development will be approved by the Department unless it contains the information and supporting documentation required by the act, The Clean Streams Law and regulations promulgated thereunder.

(b) A proposed plan revision for new land development will not be considered for approval unless accompanied by the information required in § 71.53(d) (relating to municipal administration of new land development planning requirements for revisions). For the purpose of this section, the Department will determine whether a submission for a residential subdivision plan is complete under § 71.53(d) within 10 working days of its receipt by the Department.

(c) When a municipality does not have an approved official plan, or fails to revise or implement an official plan when required:

(1) Section 71.32(f) (relating to Department responsibility to review and act upon official plans) applies.

(2) The exceptions to the requirements to revise the official plan for new land development in § 71.55 (relating to exceptions to the requirement to revise the official plan for new land development) do not apply.

(d) Within 120 days after the Department has determined that a proposed plan revision and documentation is complete, the Department will approve or disapprove the proposed plan revision, except that the Department will approve or disapprove revisions for residential subdivision plans within 60 days from the date the Department determines a submission is complete.

(e) Upon the Department's failure to act upon a proposed plan revision within 120 days of its submission, the proposed plan revision shall be deemed to have been approved, unless the Department informs the municipality prior to the end of the 120-day period that an extension of time is necessary to complete review. The additional time will not exceed 60 days.

(f) In approving or disapproving an official plan or revision, the Department will consider the requirements of § 71.32(d).

(g) When an official plan revision for new land development is disapproved by the Department, written notice will be given to each municipality included in the plan revision, with a statement of reasons for the disapproval.

## CHAPTER 72. ADMINISTRATION OF SEWAGE FACILITIES PERMITTING PROGRAM

### Subchapter B. PERMIT REQUIREMENTS

#### § 72.21. General.

(a) A local agency shall employ at least one sewage enforcement officer and one alternate sewage enforcement officer who have been certified by the Certification Board under Subchapter D (relating to certification of sewage enforcement officers). References to sewage enforcement officer in this part also apply to alternate sewage enforcement officers.

(b) No local agency may issue a permit for the installation of an individual or community onlot sewage system except by and through a certified sewage enforcement officer employed by it.

(c) The local agency by action of its sewage enforcement officer shall issue a permit for an individual or community onlot sewage system when the proposed system is in compliance with the act, and this part.

(d) The actions of local agencies include actions of their designated sewage enforcement officers.

(e) The property owner shall bear the cost of activities associated with conducting, observing or confirming percolation tests.

#### § 72.22. Permit issuance.

(a) No person may install or construct an individual or community onlot sewage system, or install, construct, occupy or use a building to be served by that system without first obtaining a permit from the local agency, except as provided in subsections (d) and (e).

(b) A permit is required by the local agency for alterations to an existing individual or community onlot sewage system when the alteration requires the repair, replacement or enlargement of a treatment tank, subsurface absorption area or retention tank.

(c) Multiple installations of chemical toilets or other portable toilets proposed for temporary use at a construction site, a recreation activity or a temporary facility shall be covered by one permit.

(d) A permit is not required for the installation of a recycling toilet, incinerating toilet, composting toilet or other type of water conservation device where the existing onlot system will not be altered.

(e) Except when a local agency or municipality requires a permit by ordinance, no permit or official plan revision is required for the installation of an individual onlot sewage system for a residential structure occupied or intended to be occupied by the property owner or a member of the property owner's family on a contiguous tract of land 10 acres or more if the owner of the property was the owner of record as of January 10, 1987. For the purposes of this subsection, the term "immediate family" means a brother, sister, son, daughter, stepson, stepdaughter, grandson, granddaughter, father or mother of the property owner.

(f) The installation of a permit-exempt system is not required to be approved by or meet the standards of the Department or local agency under their rules and regulations for the siting, design or installation of onlot sewage systems, except for the siting requirements of subsection (g), unless a permit is required by a regulation or ordinance of a local agency or municipality, or the person qualifying for the permit exemption chooses to not use the permit exemption. A permit exemption may also be granted if a 10-acre parcel or lot is subdivided from a parent tract after January 10, 1987. When one permit exemption has been granted for a lot, tract or parcel under this section, any lot, tract or parcel remaining after subdivision of the lot or parcel which received the permit exemption or any lots or parcels subdivided from either lot, tract or parcel in the future is not eligible for a 10-acre permit exemption and shall meet the planning, permitting, siting and construction standards of the De-

partment relating to onlot sewage systems. Owners of a lot, tract or parcel which otherwise qualified for the permit exemption, who do not choose to use the permit exemption remain exempt from the planning requirements of the act with respect to that lot, tract or parcel.

(g) Owners of property qualifying for a permit exemption under subsections (e) and (f) shall install permit-exempt systems in accordance with the following siting requirements:

(1) The perimeter of the septic tanks and absorption area shall be located at least 200 feet from the perimeter of any property line, nonutility right-of-way, 100-year floodplain or any river, stream, creek, impoundment, well, watercourse, storm sewer, lake, dammed water pond, spring, ditch, wetland, water supply or any other body of surface water and 10 feet from any utility right-of-way.

(2) Before a person who meets the requirements of subsections (e) and (f) for a permit-exempt system installs a system, the person shall notify the local agency of the installation and shall provide documentation relating to the siting requirement of this subsection which is satisfactory to the local agency. The local agency may charge a fee, not to exceed $25, to verify that the system is located in accordance with the siting requirements.

**§ 72.27. Expiration and transfer of permits.**

(a) A permit shall expire if construction or installation of an individual or community onlot sewage system and the structure for which the system is to be installed has not begun within 3 years after permit issuance. A new permit shall be obtained prior to beginning the construction or installation. When issuing a new permit, the local agency may require information necessary to confirm the validity of the original application.

(b) A permit may be transferred from the permit holder to a new property owner with the transfer of the property. Transfers are not valid until approved in writing by the local agency, and until new property owners receive a copy of the application under which the permit was issued.

**§ 72.31. Conditions related to the installation of permit exempt systems.**

(a) A person installing a permit-exempt system shall indemnify and hold harmless the Commonwealth, the local agency, the sewage enforcement officer serving the municipality in which the system is located and the municipality where the system is located from and against damages to property or injuries to any persons and other losses, damages, expenses, claims, demands, suits and actions by any party against the Commonwealth, the local agency, sewage enforcement officer and the municipality in connection with the malfunctioning of the onlot sewage system installed under the permit exemption provisions of this section. It is the sole responsibility of the property owner who installed or contracted for the installation of a sewage system under the permit exemption provisions of this section or the property owner who accepted responsibility for the system upon purchase of the property under the disclosure provisions of subsection (b) to correct or have corrected any system malfunction which contaminates surface or groundwater or discharges to the surface of the ground. Malfunctions of systems installed under this section which contaminate ground or surface water or discharge to the surface of the ground shall constitute a nuisance and shall be abatable in a manner provided by law.

(b) Every contract for the sale of a lot, as defined in § 72.1 (relating to definitions) which is served by an individual sewage system which was installed under the 10-acre permit exemption provisions of § 72.22(e) and (f) (relating to permit issuance) shall contain a statement in the sales contract that clearly indicates to the buyer that soils and site testing were not conducted and that the owner of the property served by the system at the time of a malfunction may be held liable for any contamination, pollution, public health hazard or nuisance which occurs as the result of the malfunction of a sewage system installed in accordance with the 10-acre permit exemption provisions of this section. A contract which does not conform to these requirements is not enforceable by the seller against the buyer. Any term of the contract purporting to waive the rights of the buyer to the disclosures required in this subsection is void.

## Subchapter C. ADMINISTRATION OF PERMITTING REQUIREMENTS

**§ 72.41. Powers and duties of sewage enforcement officers.**

* * * * *

(b) A sewage enforcement officer shall issue permits only within the jurisdiction of the local agency in which the sewage enforcement officer is employed. When a sewage enforcement officer encounters a conflict of interest as specified in subsections (f)—(i), the local agency shall employ a certified sewage enforcement officer not having a conflict of interest regarding the system or lot.

(c) The local agency shall notify the sewage enforcement officer and the Department in writing of the specific conditions of employment, including, but not limited to, the following:

(1) The geographic boundaries.

(2) The specific permit applications to be processed.

(3) The rate of compensation to the sewage enforcement officer.

(4) The duration of employment.

(d) A sewage enforcement officer shall only accept payment from the local agency for services performed in conjunction with administration of the act.

(e) A sewage enforcement officer shall only accept application or other processing fees for the local agency under the following conditions:

(1) The fee is in the amount prescribed by the local agency's adopted fee schedule.

(2) The fee is rendered in accordance with the local agency's adopted receipt system as required by § 72.42(g) (relating to powers and duties of local agencies).

(3) The sewage enforcement officer has received written direction from the local agency to accept these fees on behalf of the local agency.

(f) A sewage enforcement officer may advise an applicant regarding available options for the planning, design and construction of an individual or community onlot disposal system, but may not select the final system design, as specified in subsection (g).

(g) A sewage enforcement officer may not plan, design, construct, sell or install an individual or community onlot sewage system within the geographic boundaries of the sewage enforcement officer's authority, as specified by the local agency.

(h) A sewage enforcement officer may not conduct a test, issue a permit, participate in the official processing of an application or official review of a planning module

for an individual or community onlot sewage system in which the sewage enforcement officer, a relative of the sewage enforcement officer, a business associate of the sewage enforcement officer or an employer of the sewage enforcement officer, other than the local agency, has a financial interest.

(i) For purposes of subsection (h), a financial interest includes full or partial ownership, agreement or option to purchase, leasehold, mortgage or another financial or proprietary interest in; or serving as an officer, director, employe, contractor, consultant or another legal or fiduciary representative of a corporation, partnership, joint venture or other legal entity which has a proprietary interest in one or more of the following:

(1) One or more lots to be served by the system.

(2) The development or sale of the lots to be served by the system.

(3) A contract, either written or oral, to perform a service in the development of one or more of the lots to be served by the system. The service may be before or after the fact of development and may include professional as well as other services.

(4) A contract, either written or oral, to sell, plan, design, construct, install or provide materials or component parts for the system.

(j) Prior to issuing a permit, the sewage enforcement officer shall conduct personally, observe or otherwise confirm in a manner approved by the Department tests used to determine the suitability of a site for an individual or community onlot sewage system. A sewage enforcement officer shall accept testing conducted by a prior sewage enforcement officer for the local agency if the site, data and prior testing meet the criteria specified in section 8(c) of the act (35 P. S. § 750.8(c)). When a sewage enforcement officer accepts testing by a prior officer, a copy of the Form ER-BWQ-290, Appendix B or another form as may be specified by the Department, shall be attached to each copy of the permit application.

(k) Prior to issuing a permit, the sewage enforcement officer shall confirm that the application is complete and that the proposed system design is in compliance with the requirements of the act and this part.

(l) The sewage enforcement officer shall give timely written notice to applicants or permittees of approval, denial or revocation of a permit under this chapter.

(m) The sewage enforcement officer shall advise the local agency of a violation of the act or this part, known to the sewage enforcement officer, which occurs within the local agency's jurisdiction.

(n) The sewage enforcement officer shall advise the local agency of its responsibility to restrain a violation of the act or this part and shall independently take action within the scope of his authority necessary to restrain or correct the violation.

(o) The sewage enforcement officer shall submit the Department's copy of the completed Application For Sewage Disposal System, with necessary attachments, within 7 days of acting upon the application.

**§ 72.42. Powers and duties of local agencies.**

(a) The local agency has the power and duty to:

(1) Employ sewage enforcement officers to administer section 7 of the act (35 P. S. § 750.7) and this part.

(2) Employ other technical and administrative personnel necessary to support the activities of the sewage enforcement officer.

(3) Set rates of compensation for the sewage enforcement officer and other employes.

(4) Maintain offices and purchase equipment and supplies necessary for the administration of the act.

(5) Establish a schedule of fees for the processing of applications and other services provided by the local agency. This fee schedule may establish different charges for various activities and types of systems consistent with the administrative costs of reviewing applications, conducting necessary tests and investigations and supervising the installation of the system.

(6) Collect the appropriate fees as designated in the established fee schedule. The local agency shall maintain records of income, expenses and transactions of the local agency in a manner consistent with accepted accounting practices.

(7) Establish a system of receipts for monetary transactions. The receipt system shall provide to the local agency and to the applicant a record of the amount tendered to the local agency and the specific purpose of the transaction.

(8) Adopt and maintain standards and procedures for applications and permits for individual and community onlot sewage systems identical to those of the Department, as contained in this part.

(9) Adopt and maintain other regulations the local agency deems necessary for the administration and enforcement of section 7 of the act (35 P. S. § 750.7) as long as they are consistent with the act and this part.

(10) Submit reports and data to the Department as required by this part or an order of the Department.

(11) Submit to the Department annually the name and address of its certified sewage enforcement officer and alternate sewage enforcement officer.

(12) Make or cause to be made inspections and tests necessary to carry out section 7 of the act. For this purpose, the authorized representatives of the local agency have the right to enter upon lands.

(13) Proceed under sections 12, 14 and 15 of the act (35 P. S. §§ 750.12, 750.14 and 750.15) to restrain violations of the act and this part, and to abate nuisances in accordance with existing statutes, or as defined in the act.

(14) Notify the Department in writing within 15 days of a change in the sewage enforcement officer or his address.

(15) Cease issuing permits in designated areas when ordered to do so by the Department under section 10(7) of the act (35 P. S. § 750.10(7)), after notice and opportunity for a Departmental hearing. The local agency may issue permits in these areas for the abatement of existing health hazards and public nuisances.

(16) When applicable, establish a program for requiring, verifying, forfeiting, administering and enforcing the provision of financial assurances under § 73.151 (relating to standards for financial assurances). Costs for administering this program shall be included in the fee schedule of the local agency.

(b) The local agency may offer a program to provide financial assurance, for a fee, for systems installed under § 73.77 (relating to general requirements for bonded

disposal systems). Financial assurance provided by the local agency shall comply with § 73.151.

## Subchapter D. CERTIFICATION OF SEWAGE ENFORCEMENT OFFICERS

### § 72.52. Conditions of certification.

(a) The Certification Board will issue a Sewage Enforcement Officer Certificate to a person who meets the following:

(1) Is a natural person or individual. Associations, partnerships or corporate entities are not qualified for certification.

(2) Has passed an applicable examination prepared by the Department.

(3) Has not had his certification revoked previously. After 2 years from a previous revocation, the Certification Board may reexamine and recertify a person. In determining fitness for recertification, the Certification Board will consider the nature and gravity of the misconduct which resulted in the previous revocation and the recommendation of the Department.

(b) Certification is for up to 2 years. Upon the payment of a fee of $5 by the certificate holder the Certification Board will renew a valid certificate of a qualified applicant, except that applicants for renewal who are employed by the Department in administering the act are not subject to the fee requirements of this subsection.

(c) If the Certification Board does not meet within 30 days of receiving the examination results from the certification testing contractor, an applicant for certification who meets the requirements of subsection (a) will be deemed certified, except that an applicant who is in violation of the regulations under the act or who is restrained from certification by § 72.43 (relating to powers and duties of the Department) will not be deemed certified.

### § 72.53. Certification examination.

(a) The Department will prepare an examination to be used by the Certification Board in determining the fitness of candidates for certification and will establish the passing grade for the examination and for each part of the examination in the areas of sewage facilities planning, program administration, technical criteria and enforcement.

(b) The Department will submit the examination to the Certification Board, which shall by letter to applicants and by publication in the *Pennsylvania Bulletin* at least 30 days prior to each examination announce the location, time, scope and passing grade for the examination.

(c) The Certification Board shall schedule a date for the examination at least four times in each calendar year.

(d) An individual who takes, but does not successfully pass the examination on three occasions, is not permitted to retake the examination administered by the Certification Board for 1 year, and until the applicant has completed a training course approved by the Department. Thereafter, a candidate may take the examination only once in a calendar year until the examination is passed.

### § 72.56. Change of address.

(a) The Certification Board will compile and keep current a register showing the names and addresses of certified sewage enforcement officers. Copies of this register will be furnished on request.

(b) The sewage enforcement officer shall promptly notify the Certification Board of a change of address.

### § 72.58. Certification Board hearings and procedures.

(a) Actions by the Department to revoke or suspend sewage enforcement officer certifications become final only after notice and opportunity for a hearing before the Certification Board. The filing of an appeal with the Certification Board does not operate as an automatic supersedeas of the action of the Department. If no request for a hearing is filed with the Secretary of the Certification Board within 30 days of receipt of notice of the action by the certificate holder, the action becomes final. Requests for a hearing shall set forth with specificity the grounds for the appeal, including objections to the Department's action. Failure to specifically delineate the grounds for the appeal, or to state a legally sufficient basis for relief, constitutes grounds for summary judgment or judgment on the pleadings as provided in the Pa.R.C.P. (relating to rules of civil procedure).

(b) In hearings before the Certification Board, 1 Pa. Code Part II (relating to general rules of administrative practice and procedure) applies, unless it is inconsistent with this chapter. Discovery in hearings before the Certification Board shall be permitted as provided in the Pa.R.C.P.

(c) In proceedings before the Certification Board, the burden of proceeding and the burden of proof is the same as at common law, in that the burden normally rests with the party asserting the affirmative of an issue. The affirmative of the issue shall be established by a preponderance of the evidence. The Certification Board may require the other party to assume the burden of proceeding with the evidence in whole or in part, if that party is in possession of facts or should have knowledge of facts relevant to the issue.

(d) Actions and adjudications of the Certification Board shall be by a vote of a majority of members present at a meeting called for consideration of the action or adjudication. Three members of the Certification Board constitute a quorum.

(e) The Certification Board may hear matters brought before it as a whole or may appoint hearing examiners. Hearings held by hearing examiners not members of the Certification Board shall be decided by the Board based upon its review of the record and the examiner's proposed adjudication.

(f) An applicant is not entitled to a hearing when a certificate was denied because the applicant failed to pass the certification examination or failed to successfully complete a training program required by the Department.

# CHAPTER 73. STANDARDS FOR SEWAGE DISPOSAL FACILITIES

## GENERAL

### § 73.1. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

* * * * *

*Bonded disposal system*—An individual sewage system located on a single lot serving a single family residence, where soil mottling is within 20 inches of the mineral soil surface, the installation, operation and replacement of which is guaranteed by the property owner.

* * * * *

*Qualified registered professional engineer*—A person registered to practice engineering in this Commonwealth who has experience in the characterization, classification, mapping and interpretation of soils as they relate to the function of onlot sewage disposal systems.

*Qualified registered professional geologist*—A person registered to practice geology in this Commonwealth who has experience in the characterization, classification, mapping and interpretation of soils as they relate to the function of onlot sewage disposal systems.

*Qualified soil scientist*—A person certified as a sewage enforcement officer and who has documented 2 years' experience in the characterization, classification, mapping and interpretation of soils as they relate to the function of onlot sewage disposal systems and either a Bachelor of Science Degree in soils science from an accredited college or university or certification by the American Registry of Certified Professionals in agronomy, crops and soils.

* * * * *

*Soil mottling*—A soil color pattern consisting of patches of different colors or shades of color interspersed with the dominant soil color and which results from prolonged saturation of the soil.

* * * * *

## GENERAL SITE LOCATION AND ABSORPTION AREA REQUIREMENTS

### § 73.14. Site investigation.

(a) Soil tests to determine the presence of a limiting zone and the capacity of the soil to permit the passage of water shall be conducted prior to permit issuance.

(1) On all locations where the installation of an absorption area is proposed, at least one excavation for examination of the soil profile shall be provided.

(2) The depth of the excavation shall be to the top of the limiting zone, or a maximum of 8 feet.

(3) The soil profile excavations shall be conducted within 10 feet of the proposed absorption area. A description of the soil profile shall be recorded on Form ER-BWQ-290, Appendix A.

(4) Where soil has been removed by grading or excavation, the surface of the undisturbed soil shall be considered to be the point from which the depth to limiting zone is measured.

(b) When the examination of the soil profile reveals a limiting zone within 20 inches of the mineral soil surface, percolation tests may not be conducted and a permit will be denied except as provided in § 73.77 (relating to general requirements for bonded disposal systems).

(c) Where examination of the soil profile reveals the absence of a limiting zone within 20 inches of the mineral soil surface, percolation tests shall be performed within the proposed absorption area. The average percolation rate shall be within the range indicated in § 73.16 (relating to absorption area requirements).

(d) The location and depth to the limiting zone of all soil profile excavations and the location of all percolation tests conducted on a lot shall be indicated on the plot plan of the Application for Sewage Disposal System, Form ER-BWQ-290, or attached diagram.

### § 73.15. Percolation tests.

Percolation tests shall be conducted in accordance with the following procedure:

(1) *Number and location*. Six or more tests shall be made in separate test holes spaced uniformly over the proposed absorption area site.

(2) *Results*. Percolation holes located within the proposed absorption area shall be used in the calculation of the arithmetic average percolation rate.

(3) *Type of hole*. Holes having a uniform diameter of 6 to 10 inches shall be bored or dug as follows:

(i) To the depth of the proposed absorption area, where the limiting zone is 60 inches or more from the mineral soil surface.

(ii) To a depth of 20 inches if the limiting zone is identified as seasonal high water table, whether perched or regional; rock formation; other stratum; or other soil condition which is so slowly permeable that it effectively limits downward passage of effluent, occurring at less than 60 inches from the mineral soil surface.

(iii) To a depth 8 inches above the limiting zone or 20 inches, whichever is less, if the limiting zone is identified as rock with open joints or with fractures or solution channels, or as masses of loose rock fragments including gravel with insufficient fine soil to fill the voids between the fragments, occurring at less than 60 inches from the mineral soil surface.

(4) *Preparation*. The bottom and sides of the hole shall be scarified with a knife blade or sharp-pointed instrument in order to completely remove any smeared soil surfaces and to provide a natural soil interface into which water may percolate. Loose material shall be removed from the hole. Two inches of coarse sand or fine gravel shall be placed in the bottom of the hole to protect the soil from scouring and clogging of the pores.

(5) *Procedure for presoaking*. Holes shall be presoaked, according to the following procedure, to approximate normal wet weather or in-use conditions in the soil:

(i) *Initial presoak*. Holes shall be filled with water to a minimum depth of 12 inches over the gravel and allowed to stand undisturbed for 8 to 24 hours prior to the percolation test.

(ii) *Final presoak*. Immediately before the percolation test, water shall be placed in the hole to a minimum depth of 6 inches over the gravel and readjusted every 30 minutes for 1 hour.

(6) *Determination of measurement interval*. The drop in the water level during the last 30 minutes of the final presoaking period shall be applied to the following standard to determine the time interval between readings for each percolation hole:

(i) Where water remains in the hole, the interval for readings during the percolation test shall be 30 minutes.

(ii) Where no water remains in the hole, the interval for readings during the percolation test may be reduced to 10 minutes.

(7) *Measurement*. After the final presoaking period, water in the hole shall again be adjusted to approximately 6 inches over the gravel and readjusted when necessary after each reading.

(i) Measurement to the water level in the individual percolation holes shall be made from a fixed reference point and shall continue at the interval determined from

paragraph (6) for each individual percolation hole until a minimum of eight readings are completed or until a stabilized rate of drop is obtained. A stabilized rate of drop shall mean a difference of 1/4 inch or less of drop between the highest and lowest readings of four consecutive readings.

(ii) The drop that occurs in the final period in percolation test holes, expressed as minutes per inch, shall be used to calculate the arithmetic average percolation rate.

(iii) Where no measurable rate is obtained in a percolation hole, the rate of 240 minutes per inch shall be assigned to that hole for use in calculating the arithmetic average percolation rate.

(iv) Where no measurable rate is obtained in 1/3 or more of the percolation holes, the proposed absorption area tested is unsuitable, and a permit shall be denied for that area.

## BONDED DISPOSAL SYSTEM

### § 73.77. General requirements for bonded disposal systems.

(a) The local agency shall authorize the performance of a percolation test, at the owner's expense, when one is requested in writing by the owner of the property if the local agency determines soil mottling is present.

(b) If the sole reason for a property not meeting the requirements for the installation of an individual residential onlot sewage system is the presence of soil mottling, the local agency shall issue a permit for an individual residential onlot sewage system designed to meet the Department's standards when the property owner meets the following conditions:

(1) A qualified soil scientist, qualified registered professional geologist, certified sewage enforcement officer or qualified registered professional engineer, not employed by the local agency with jurisdiction over the property in question, confirms in writing that the soil mottling observed in the test pits is not an indication of either a regional or perched seasonal high water table.

(2) The property owner provides evidence of financial assurance satisfactory 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 to replace any contaminated water supplies and to repair or replace a malfunction of the onlot system. The local agency may not approve financial assurance in an amount less than $20,000 or 15% of the appraised value of the lot and proposed residential dwelling. The terms of the financial assurances shall be for up to 3 years. The local agency may require a continuation of up to 2 additional years of financial assurance. The local agency may terminate the financial assurance requirement at the end of its term consistent with the act.

(3) The property owner provides notification to the local agency 7 working days prior to conducting soil evaluations under this section and a representative of the local agency may observe the soil evaluations and may review resulting reports and correspondence.

(4) 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 onlot sewage system meeting the requirements of this section was installed on the property.

### § 73.151. Standards for financial assurances.

(a) Financial assurance shall be sufficient to meet the requirements of section 7.2 of the act (35 P. S. § 750.7b).

(b) The local agency may establish an amount of financial assurance above the minimum established by § 73.77(b)(2) (relating to general requirements for bonded disposal systems).

(c) A local agency may accept forms of financial assurance that establish, to the satisfaction of the local agency, its full and unconditional right to demand and receive any sum due it under section 7.2 of the act. A local agency may authorize a property owner to use the financial assurance for the sole purpose of repair or replacement of the onlot system, for remedial measures to clean up contaminated groundwater and to replace contaminated water supplies.

(d) The local agency will forfeit the financial assurance when it determines that one or more of the following apply:

(1) The property owner has violated or continues to violate one or more of the terms or conditions pertaining to the financial assurance.

(2) The system has malfunctioned.

(3) The permittee has violated a condition of the permit or submitted false information.

(4) The property owner or permittee has failed to properly perform the remedial action required.

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