

PROPOSED RULEMAKING

ENVIRONMENTAL QUALITY BOARD

[25 PA. CODE CHS. 71—73]

Administration of Sewage Facilities, Planning Program and Standards for Sewage Disposal Facilities (Act 149)

The Environmental Quality Board (EQB) proposes to amend Chapters 71—73 (relating to administration of the sewage facilities planning program; administration of sewage facilities permitting program; and standards for onlot sewage treatment facilities). The proposed amendments are designed to implement various amendments to the Pennsylvania Sewage Facilities Act (act) (35 P.S. §§ 750.1—750.20) which were enacted in 1994 under the act of December 14, 1994 (P.L. 1250, No. 149) (Act 149). As more fully described in Section E of this Preamble, the proposed amendments represent significant revisions to the planning, administrative, permitting and technical requirements of the sewage facilities program established under the act. Among the more significant amendments being proposed are provisions relating to procedures for private requests authorized under section 5 of the act (35 P.S. § 750.5); review of official plans, update revisions, special studies and requests for exceptions to the requirement to revise an official plan, responsibilities of and administrative procedures for delegated agencies, reimbursement to and the expanded authority of local agencies under sections 6 and 8 of the act (35 P.S. §§ 750.6 and 750.8); individual spray irrigation systems authorized under section 7.3 of the act (35 P.S. § 750.7c); and fees for the review of planning modules and certain permit applications and certain responsibilities of sewage enforcement officers.

This proposal was adopted by the EQB at a meeting held on January 16, 1996.

A. Effective Date

These proposed amendments will become effective upon publication in the *Pennsylvania Bulletin* as a final rulemaking except that the provisions of the proposed amendments relating to spray irrigation systems, particularly §§ 73.161—73.167, will not go into effect until June 17, 1996, or upon publication in the *Pennsylvania Bulletin*, whichever is later.

B. Contact Persons

For further information, the contact persons are Cedric H. Karper, Chief, Division of Municipal Planning and Finance, Bureau of Water Quality Management, P. O. Box 8465, Rachel Carson State Office Building, 400 Market Street, Harrisburg, PA 17105-8465, (717) 787-3481; and William S. Cumings, Jr., Assistant Counsel, Bureau of Regulatory Counsel, P. O. Box 8464, Rachel Carson State Office Building, 400 Market Street, Harrisburg, PA 17105-8464. Information regarding submitting comments on this proposal appears in Section J of this Preamble. Persons with a disability may use the AT&T Relay Service by calling (800) 654-5984 (TDD users) or (800) 654-5988 (voice users) and request that the service relay the call. This proposal is available electronically through the Department of Environmental Protection (Department) Web site (<http://www.dep.state.pa.us>).

C. Statutory Authority

The amendments are being proposed under the authority of section 9 of the act (35 P.S. § 750.9) which authorizes the EQB to adopt rules and regulations relating to the implementation of the act. The amendments are also proposed 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

During its 1994 session, the General Assembly enacted Act 149, which significantly amended the act. The legislation was signed by then Governor Casey on December 14, 1994. With the exception of two provisions, the provisions of Act 149 became effective on December 15, 1995. The provisions of section 7 of the act (35 P.S. § 750.7), concerning a qualified exemption from the permitting and planning requirements of the act relating to the installation of onlot sewage systems for owners of lots 10 acres or larger became effective upon enactment of Act 149. As more fully explained in this Preamble, the EQB adopted proposed regulations intended to implement this qualified exemption as well as certain other provisions at a meeting held on April 18, 1995. The provisions of section 7.3 of the act relating to individual residential spray irrigation systems, will become effective on June 17, 1996.

As noted in this Preamble, the EQB adopted certain proposed regulations at a meeting held on April 18, 1995. These proposed amendments were published at 25 Pa.B. 3221 (August 5, 1995). The proposed amendments published at 25 Pa.B. 3221 concerned provisions relating to, but not limited to, the qualified exemption for owners of lots 10 acres or larger, permitting of onlot sewage systems in areas where soil mottling is present, financial assurances for onlot sewage systems installed in soils where mottling is present, employment of alternate sewage enforcement officers by local agencies, acceptance of testing data and information utilized by a prior sewage enforcement officer and a time frame for review of new land development revisions by the Department. As noted in the Preamble at 25 Pa.B. 3221, those proposed amendments were intended to make the existing regulations consistent with certain provisions of the act of July 1, 1989 (P.L. 124, No. 26) (Act 26) and certain provisions of that act which were affected by Act 149. See 25 Pa.B. 3221 for a fuller explanation of the rationale for that proposed rulemaking. To provide the appropriate context for this proposal and for ease of reading, the provisions of the proposal published at 25 Pa.B. 3221 are reprinted in bold face in this proposal and are not subject to public comment unless the comments are germane to issues related to this proposal.

The proposed amendments to Chapters 71—73 outlined in this proposed rulemaking address the provisions of Act 149 which were not addressed at 25 Pa.B. 3221. The proposed amendments outlined in this notice are based on State law and there are no comparable Federal regulations. The proposed amendments and their underlying rationale are discussed more fully in Section E of this Preamble.

The proposed amendments outlined in this notice represent a cooperative effort by the Sewage Advisory Committee (SAC) and the Department to update Chapters 71—73 to be consistent with the amendments to the act as effectuated by Act 149. SAC is an advisory committee

established under section 4 of the act (35 P. S. § 750.4). SAC consists of 33 members representing a cross-section of organizations which have a direct interest in water and sewage issues in this Commonwealth. A listing of the SAC membership is available upon request from Cedric H. Karper, whose address appears in Section B of this Preamble.

E. Summary and Purpose of the Proposed Amendments

1. § 71.1 (relating to definitions)

Section 71.1 contains several new or revised definitions relating to the administration of the sewage facilities program. Terms newly defined are: "delegated agency," "individual residential spray irrigation system," "municipality," "supplement and exception to the requirement to revise." Terms revised include: "official plan revision," "update revision," "sewage," "sewage enforcement officer," "individual sewage system," "individual onlot sewage system," "individual sewerage system," "community onlot sewage system," "community sewerage system" and "subdivision." For the most part, the newly defined or revised terms are intended to make the terms consistent with the terms as defined in the act. If applicable, these terms will be added to or revised in the same manner in Chapters 72 and 73.

2. § 71.2 (relating to scope and time periods)

The applicability provisions are proposed to be revised to make it clear that Chapter 71 is applicable to local agencies and delegated agencies as well as the Department. Act 149 greatly expanded the responsibilities of local agencies and created delegated agencies which are responsible for the administration of certain activities related to sewage facilities planning and permitting.

3. § 71.3 (relating to purposes)

This section is proposed to be amended by adding two new paragraphs. The section provides a short description of the six subchapters of Chapter 71. A new subchapter, Subchapter F (relating to fees), is proposed to be added. Section 10(12) of the act (35 P. S. § 750.10(12)) sets forth a fee schedule for the review of sewage facilities planning modules for new land development. In addition, section 7(b)(4.3)(ii) of the act authorizes delegated agencies to assess fees for the review of supplements to official plans.

4. § 71.14 (relating to private request to revise official plans)

Section 5(b) of the act sets forth a procedure whereby a property owner may file a private request with the Department. A private request is an application filed by a property owner with the Department requesting that the Department order a municipality to revise or implement its official plan. The private request procedures were substantially amended as a result of Act 149. Accordingly, the private request procedures outlined in § 71.14 would be amended to be consistent with the provisions of Act 149. Among other things, § 71.14(a) would be amended to make it clear that a person who is a legal or equitable property owner may file a private request with the Department. The addition of the words "legal or equitable" is intended to make this provision consistent with parallel language of the act.

Section 71.14(a) is also proposed to be amended by the addition of language incorporating a requirement of section 5(b) of the act that a person filing a private request with the Department notify the affected municipality in writing of the filing of the request with the Department.

The provisions of subsection (c) are proposed to be deleted. The provisions proposed to be deleted provide

that no private request will be considered by the Department unless the subdivision had received prior approval under municipal or county planning codes under Article VI of the Pennsylvania Municipalities Planning Code (53 P. S. §§ 10601—10620). Section 5(b.2) of the act provides that the Department may not refuse to grant a private request in the event there are any inconsistencies with any applicable zoning, subdivision or land development ordinances, but may instead make its order subject to certain conditions, which are more fully described in the discussion relating to subsection (e) in this Preamble. The remaining subsections will be renumbered to reflect this deletion.

Renumbered subsection (c) and the text would be revised to make it consistent with the provisions of section 5(b.1) of the act. Among other things, the subsection is proposed to be revised to provide that the Department will inform certain enumerated local and county agencies of its receipt of the private request and that written comments these agencies wish to provide shall be submitted to the Department within 45 days of the Department's receipt of the private request application. Currently, these agencies have 60 days following receipt of a request from the Department to submit comments. In addition, the last sentence of the subsection, which provides that comments submitted by local and county agencies include a discussion of the compatibility of a proposed subdivision with municipal or county planning codes, is proposed to be deleted.

Subsection (d), as proposed to be renumbered, outlines the criteria the Department is to consider in deciding on a private request application. For the most part, the existing language of the subsection would be retained. However, existing paragraph (2), which provides that the Department must consider the plan content consistency requirements of § 71.21(a)(5)(i)—(iii), is proposed to be deleted.

Subsection (e) sets forth the time-frame and procedure to be followed by the Department in rendering its decision on private request applications. Currently, in the event no public comments are received regarding a private request, the Department is required to render its decision within 120 days following the expiration of a 60-day comment period regardless of whether comments are received. Act 149 provides a 45-day comment period and requires the Department to render its decision within 120 days after receipt of comments or upon the expiration of the 45 day comment period if no comments are received. Accordingly, this subsection is proposed to be revised. In addition, language would be added to provide that the review period may be extended if agreed to in writing by the person filing the private request, as provided in section 5(b.2) of the act.

Three paragraphs which outline certain procedures required by section 5(b.2) of the act, would be added to subsection (e). In the event the Department orders a requested revision, it must specify the nature of the revisions a municipality must undertake to revise and implement its official plan and set forth time frames for plan completion. In the event the Department refuses to order a requested revision, the Department must specify the reasons for the refusal. If the Department refuses to order a requested revision, it must notify the person who filed the request of the reasons for the refusal in writing. If there is an inconsistency with an applicable zoning, subdivision or land development ordinance, the Department may order a requested revision, but the order would be subject to limitations placed on development of the

property by a municipality under its zoning, subdivision or land development ordinances or by a court order.

5. § 71.32 (relating to Department responsibility to review and act upon official plans)

Certain subsections are proposed to be revised to make the section consistent with the act. Subsection (f), which outlines the consequences to a municipality if it does not have an official plan or fails to revise or implement its official plan as required would be revised. Paragraph (1) is proposed to be amended by deleting the reference to section 7(b)(4) of the act and replacing it with references to § 72.23(a) and (b). Paragraph (1) would thus provide that one of the consequences is that limitations on permit issuance under § 72.23(a) and (b) become effective.

Another consequence of this failure would be that the Department will not issue a permit under section 5 of The Clean Streams Law (35 P. S. § 691.5) for projects in areas where a plan or revision is required. The existing language provides that the Department will not approve a project requiring this permit.

Existing provisions specifying that a revision for new land development will not be approved in those areas of a municipality in which an official plan, update revision or implementation of an official plan is required and that a subdivision plan may not be approved nor a building permit issued in those areas of a municipality where the official plan is inadequate or not being substantially implemented are being deleted. These provisions are inconsistent with the act. Thus, a supplement or a revision for new land development will not be denied nor will an exception to the requirement to revise be found inadequate solely because the municipality in which the new land development is being proposed has failed to: (i) submit an update revision or special study; or (ii) to implement its plan as required. This would not preclude the Department from denying a supplement or revision or find an exception to the requirement to revise inadequate where conditions in addition to the failure to submit or implement may warrant.

Similarly, a supplement or revision will not be denied nor would an exception to the requirement to revise be found inadequate solely because an update revision or special study is under review by the Department. This incorporates the requirements of section 7(b)(4.1)(i) of the act.

A new subsection (f)(5) is proposed to be added incorporating the requirements of section 7(b)(4.1)(ii) of the act which contains certain content requirements relating to contracts for the sale of lots within areas where permit limitations are in effect. A contract shall contain a statement in the contract which clearly indicates to the buyer that sewage facilities are not available for that lot and that the facilities will not be not available and construction of a structure on the lot may not begin until the Department has approved a major planning requirement.

A new subsection (g) is proposed to be added which incorporates by reference the limitation on permit issuance provisions of § 72.23(a) and (b). These provisions are discussed more fully in the discussion in Paragraph 21 of this Preamble.

6. §§ 71.41—71.44 (relating to planning grants)

The provisions of §§ 71.41—71.44 will remain intact except for proposed minor editorial changes which will not alter the effect of these sections.

7. § 71.51 (relating to general provisions relating to new land development plan revisions)

This section is proposed to be enlarged by adding a new subsection (b), which outlines the procedure for the processing of exemptions from the sewage facilities planning requirements for new land development proposals. In addition, existing subsection (a)(1) is proposed to be amended to provide that a municipality would not be required to revise its official plan if a proposed subdivision meets the requirements of § 71.55 (relating to exceptions to the requirement to revise an official plan for new land development) or the exemption provisions of the subsection (b) which are more fully explained as follows.

Subsection (b) outlines the criteria and procedures specified in section 7(b)(5) of the act which would be utilized by the Department and, in the case of supplements, delegated agencies in processing exemptions from sewage facilities planning for new land developments. There are five criteria: (1) the official plan must show that the areas of the municipality covered by the exemption are to be served by onlot sewage disposal facilities; (2) an area proposed for use of individual or community sewage systems is not underlain by carbonate geology nor within 1/4 mile of water supplies documented to exceed 5 ppm nitrate-nitrogen; (3) the area proposed for development is outside of a high quality or exceptional value watershed; (4) all subdivided lots and the remaining portion of the original tract after subdivision are one acre or larger; and (5) soils testing and site evaluation establish that separate sites are available for both a permitable primary onlot sewage system and a replacement onlot sewage system on each lot of the subdivision. Section 7(b)(5)(ii) of the act provides that permits may be issued if it is determined, that the ". . . geology of the area proposed for use of individual or community systems is not conducive to nitrate-nitrogen groundwater contamination." Both the Department and SAC believe this language is somewhat vague and susceptible to varying interpretations. Accordingly, to provide guidance to potential applicants, that language is proposed to be interpreted as described in the synopsis of criterion (2).

Similarly, subsection (b)(2) incorporates the provisions of section 7(b)(5.1) of the act, which outline the criteria which are to be utilized by the Department and delegated agencies in determining whether a subdivision proposing a connection to or an extension of public sewers would require a revision for new land development or a supplement. These criteria relate to compliance by existing collection, conveyance and treatment facilities with The Clean Streams Law, permittees of the receiving sewerage facilities documenting that the existing collection, conveyance and treatment system do not have an existing or a 5-year projected hydraulic or organic overload, certification from the permittees of the collection, conveyance and treatment facilities regarding the capacity to receive and treat sewage flows from the applicant's proposed development and whether an approved sewage facilities plan update revision is being implemented.

Subsection (b)(3) requires the Department to provide sufficient information to delegated agencies to enable them to make decisions regarding certain enumerated criteria specified in subsection (b)(1) and (2). In addition, when a delegated agency makes a determination under subsection (b)(1) or (2), the delegated agency would be required to submit quarterly reports to the Department, which reports are to contain information relating to the subdivisions, lots and projected sewage flows of the subdivisions exempt from the planning requirements of the act.

Subsection (b)(4) specifies that information regarding a request for an exemption from the sewage facilities planning requirements be on a form provided by the Department.

Subsection (b)(5) incorporates a provision of section 7(b)(5.2) of the act. This subsection provides that proposals for new land development which are intended to be served by sewage facilities which require or which are required to apply to the Department for a new or modified permit under The Clean Streams Law are not eligible for an exemption, under subsection (b)(1) and (2), from the planning requirements of the act.

8. § 71.53 (relating to municipal administration of new land development requirements for revisions)

For the most part, the existing language would be retained. Language is proposed to be added to subsection (b) incorporating time frames for the review of planning modules specified in section 5(a.1) of the act. In addition, language would be added to subsection (b) which outlines the procedure for the review of planning modules by sewage enforcement officers and appropriate planning or zoning agencies. If a planning module has not been received by an appropriate planning or zoning agency 60 days prior to submission to a municipality, or received by a sewage enforcement officer 20 days prior to the submission, or both, the planning module would be considered incomplete and the municipality would be required to submit a copy of the module to the appropriate agencies or the sewage enforcement officer, or both, for their review. A municipality would be required to review and act upon a planning module within 60 days of receipt of a complete application or additional time as the applicant and the municipality may agree to in writing. Failure of a municipality to act within that time period would cause the revision for new land development to be deemed approved by the municipality and the planning module must then be submitted to the Department by either the municipality or the applicant.

For the purposes of determining when a municipality has received a complete application, the term "receipt" would be construed as meaning when an application was determined to be complete by the municipality. This interpretation is consistent with a similar provision in § 71.54(d) concerning the period of review of plan revisions by the Department.

The language of subsection (d)(6)(iii), which specifies that proposals resulting in public expenditures in excess of \$100,000 are among the types of new land development proposals which shall be accompanied by documentation of publication of the proposed adoption of the plan in a newspaper to satisfy one of the criteria for completeness, is being clarified to make it clear that the public expenditure would relate only to the sewage facilities portion of the project, not the entire cost of the project.

In addition, language would be added to subsection (d)(6) which incorporates the newspaper publication provisions of section 5(i) of the act. The language would provide that the applicant, an applicant's agent, the municipality or the local agency may provide the notice required for those planning modules which are subject to public notice by publication in a newspaper of general circulation within the affected municipality. When an applicant or an agent provides the notice, the municipality or local agency shall be notified by the applicant or agent and will be relieved of the obligation to publish. In addition, the notice published shall state where the plan is available for review and indicate that comments re-

garding the proposal shall be sent to the municipality within which the new land development is proposed.

Subsection (h) is proposed to be revised to make it clear that a municipality may not adopt a proposed revision to an official plan unless it has determined that the proposal complies with sewage related provisions of municipal zoning, land use or other comprehensive plans. The existing provision uses the term "applicable" where "sewage related" would appear, thus creating an ambiguity susceptible to varying interpretations.

9. § 71.54 (relating to Department administration of new land development planning requirements for revisions)

The proposed amendments to portions of this section were published previously. Accordingly, the proposed amendments to subsections (b) and (d) are not subject to this rulemaking. Subsection (c), which concerns the effect of the failure of a municipality to have an official plan or to revise or implement a plan, is proposed to be amended by deleting a paragraph which provides that in the event there was a such failure, the municipality could not qualify for an exception to the requirement to revise an official plan for new land development under § 71.55. Subsection (c) provides that in the event a municipality does not have an official plan or fails to revise or implement a plan, the provisions of §§ 71.32(f) and 72.23(a) and (b) apply. Section 71.32(f) outlines the effect of a failure, including permit limitations under § 72.23(a) and (b) and denial of permits issued by the Department for projects in areas of the municipality for which a plan, revision thereto or implementation is required. Section 72.23(a) and (b) outlines those situations when a permit for onlot sewage systems may not be issued. For further information, refer to the discussion under Paragraph 21 of this Preamble for a fuller explanation of the permit limitation provisions of § 72.23.

10. § 71.55 (relating to exceptions to the requirement to revise the official plan for new land development)

The provisions of subsections (a) and (b) will remain largely intact. Minor editorial changes are being proposed to make the language consistent with this title.

Subsection (c) is proposed to be substantially revised. The existing language, which states that municipalities shall comply with § 71.53 when reviewing the proposals, is proposed to be deleted and replaced with language incorporating the provisions of section 5(a.1) of the act. Since the language proposed is almost identical to that proposed for § 71.53(b), refer to the discussion under the first paragraph of Paragraph 8 of this Preamble for an explanation of the procedure for the review of a request for an exception from the requirement to revise an official plan for new land development.

Subsection (d) incorporates the provisions of section 5(e)(2) of the act, which sets forth the time frame for the review by the Department of requests for an exception to the requirement to revise. The Department would have 30 days from its receipt of a complete request accompanied by proper documentation and appropriate processing fees to act on the request. Otherwise, the request would be deemed to have been approved by the Department if it does not act within the 30-day period.

11. § 71.58 (relating to delegation of new land development planning)

The EQB proposes to add § 71.58 relating to the delegation of certain new land development planning responsibilities of the Department. Section 7(b)(4.3) of the

act authorizes the Department to enter into agreements with local agencies which qualify as delegated agencies delegating the Department's authority to require the submittal of and review and approve or disapprove sewage facilities planning for new land developments as outlined in the act.

Subsection (a) sets forth the general principals relating to the delegation of authority. Among other things, planning modules approved by delegated agencies shall be supplements to an official sewage facilities plan, not a revision or an exception to the requirement to revise. A "supplement to an official plan" is defined in section 2 of the act (35 P. S. § 750.2) as a "sewage facilities planning module for a subdivision for new land development which will not be served by sewage facilities requiring a new or modified permit from the Department . . . under the . . . Clean Streams Law . . ." Thus, a delegated agency would not be authorized to review subdivision proposals utilizing a sewage facility subject to permit requirements administered by the Department under The Clean Streams Law. Delegated agencies may assess fees for the review of supplements, which fees may only be used by the delegated agency for the purpose of administering those responsibilities delegated to the agency. The Department is authorized to limit the review of supplements by delegated agencies to specific classifications of sewage facilities or new land developments. A prerequisite to becoming a delegated agency is qualification for 85% reimbursement under § 72.44, as more fully explained in paragraph 30 of this Preamble.

Subsection (a)(5) outlines the documentation necessary for granting delegation to local agencies for the review of supplements. Among the requirements are: having municipal or county-wide subdivision ordinances in effect, a current official sewage facilities plan which is being adequately implemented, municipal or county-wide ordinances in effect which require sewage facilities planning approval as a condition to final plat approval under the Municipalities Planning Code (53 P. S. §§ 10101—10620), coordination procedures with the Department to ensure continued compliance with municipal wasteload management requirements for new land developments which propose to use public sewerage facilities which do not require a permit under The Clean Streams Law, a 3-year history of compliance with the requirements of the act by the local agency and sewage enforcement officers employed by the agency, a workload analysis (including documentation that fees to be charged are adequate to administer the sewage facilities planning reviews), and the administrative procedures, rules, regulations, fee schedules, contracts and applicable municipal ordinances, rules and regulations which the delegated agency intends to utilize in the administration of the authority delegated to the agency.

Supplements to an official plan are to be prepared by the proponent of a new land development proposal and are to be reviewed and acted upon by a delegated agency. Within 10 days of the delegated agency's action, the agency shall submit the supplement to the Department.

The failure or refusal of a municipality, a local agency or another agency authorized to enter into a delegation agreement with the Department will not affect the eligibility of that agency for 85% reimbursement under Chapter 72. Section 6(c) of the act authorizes reimbursement to local agencies of up to 85% of the costs of the expenses incurred in the administration of the act, provided certain qualifications specified in the act and incorporated into Chapter 72 are met.

Subsection (b) provides that the Department will review the performance of the delegated agencies and may revoke a delegation agreement for cause, as provided in section 10(7.1) of the act.

12. § 71.59 (relating to delegated agency administration of new land development planning requirements)

Section 71.59 is proposed to be added. This section will outline the responsibilities of delegated agencies with respect to new land development planning requirements. This section is distinct from the provisions of § 71.58 in the sense that the former section sets forth the requirements, and the documentation necessary, for qualification as a delegated agency.

Once an agency has been delegated the authority to review and approve planning modules relating to subdivisions for new land development, the agency shall utilize the regulatory provisions of §§ 71.54 and 71.55 relating to the administration of new land development planning requirements for revisions and the exceptions to the requirement to revise an official plan for new land development in the same manner as the Department except that the time limits for review are as specified in subsection (c).

A delegated agency is authorized to approve a new land development proposal which is submitted as a revision or an exception to the requirement to revise as the submission of a supplement to the official plan of a municipality. This provision is intended to address those situations when a revision or an exception might qualify as a supplement, but is inadvertently submitted as an application for a revision or an exception.

A delegated agency is required to determine if a submission is complete within 10 days of its receipt and must act on the submission within 60 days of the date of a complete submission or additional time as may be agreed to in writing by the applicant and the delegated agency. The term "60 days of the receipt of a complete submission" means 60 days from the date the submission is determined to be complete, not 60 days from the date the application was submitted.

A copy of each supplement approved by a delegated agency shall be submitted to the Department within 10 days of the action of the delegated agency. Except for planning modules for new land development which propose service by sewerage facilities which require a new or modified permit from the Department under The Clean Streams Law, no additional approval by the Department is required.

13. § 71.63 (relating to retaining tanks)

Minor editorial changes intended for clarity are proposed for subsections (e)—(g). Subsection (e), which exempts certain facilities having a sewage flow of 400 gallons or less from the planning requirements of subsection (c), is being clarified to make it clear that the recreational establishments exempt are those recreational establishments which are recreational vehicle dump stations. The planning requirements of subsection (f), relating to privies and chemical toilets, would not be applicable to chemical toilets, as is presently the case. In addition, subsection (g) provides that the same planning requirements would not be applicable to a privy intended for use on an isolated lot which is 1 acre or larger and will not be served by water under pressure, piped water or piped wastewater. Piped wastewater would be an addition to the existing language.

14. § 71.64 (relating to small flow treatment facilities)

Subsection (b), which limits the use of small flow treatment facilities to use as a replacement or repair system, is proposed to be amended by providing that small flow systems could serve commercial facilities which generate domestic wastewater which does not contain industrial waste, as well as residential dwellings. Currently, these systems may only serve residential dwellings.

The Department proposes to require that official plans or update revisions relating to the use of small flow treatment facilities provide specific responsibilities for the operation and maintenance of the proposed system. Subsection (c)(6) requires that the official plan or revision contain documentation that one or a combination of operation and maintenance requirements would be utilized. The requirements may include: an operation and maintenance agreement between the property owner and an experienced person or entity; an operation and maintenance agreement between the property owner and the municipality or local agency establishing the owner's responsibility for operating and maintaining the system and municipal or local agency oversight of the system; a municipal ordinance requiring the facilities be operated and maintained through a maintenance agreement; municipal ownership of the system; inclusion of the system in a sewage management agency operated by the municipality or a properly chartered association, or both, trust or other private legal entity which is structured to manage the system.

In addition, financial security such as bonding, escrow or other security shall be established prior to planning approval. The financial security shall be for an amount up to a maximum of 50% of the equipment and installation costs of the system for the first 2 years of operation and not more than 10% of the costs each year thereafter. The security shall be forfeited to the municipality upon notice of the continuing noncompliance of the system with certain specified requirements. The forfeited security shall be used to cover the costs of the repair or future operation and maintenance of the system, or both, over its design life.

15. § 71.72 (relating to sewage management programs for Department permitted sewage facilities)

The revisions proposed for this section essentially follow the revisions of § 71.64 described in Paragraph 14 of this Preamble, except that the bonding and sewage management options described therein apply to official plans or new land development proposals which involve the construction of nonmunicipal sewage facilities requiring a permit from the Department. The municipality, prior to adoption of a plan or revision, must require one or more bonding options as well as one or more of the sewage management options.

Subsections (c) and (d) authorize reimbursement of eligible costs related to administration of sewage management programs to local agencies and municipalities whose onlot system permitting program is administered by a local agency other than the municipality, such as a multimunicipal local agency, respectively.

16. Subchapter F (relating to fees)

Proposed §§ 71.81—71.83 relate to the fees which the Department and delegated agencies may charge for the review of sewage facilities planning modules for new land developments.

Delegated agencies shall establish fees for the review of sewage facilities planning modules for new land develop-

ments. The fees must be set forth in a fee schedule formally adopted by the delegated agency and be available to the public. The fees are not specified. However, section 7(b)(4.3)(iv)(F) of the act provides that the fees should "... be sufficient to allow the delegated agency to act upon supplements within the time limits established by this act."

Fees which would be charged by the Department are specified in section 10(12) of the act. Those fees will be shown on and will be specific to each type of planning module. However, fees will not be charged for activities related to the processing of requests for exemptions from the sewage facilities requirements under § 71.51(b).

CHAPTER 72. ADMINISTRATION OF SEWAGE FACILITIES PERMITTING PROGRAM

17. § 72.1 (relating to definitions)

In addition to those terms noted in paragraph 1 of this Preamble, defined terms amended or added to this section include "alternate sewage system," "experimental sewage system," "qualified registered professional engineer," "qualified registered professional geologist," "qualified soils scientist," "person" and "soil mottling."

18. § 72.2 (relating to scope)

Subsection (c) is proposed to be amended to provide that with respect to onlot systems, the chapter governs the issuance of permits for systems which employ renovation of sewage effluent in a soil absorption area or spray field, except for large volume onlot sewage systems. Currently, the chapter pertains to those onlot systems which employ renovation of sewage effluent in a subsurface absorption area. This proposed change is necessitated, in part, because the act authorizes permits for the installation of individual residential spray irrigation systems, which are a type of onlot sewage system.

The subsection also outlines those situations when a local agency may not issue a permit for an onlot sewage system. Those provisions would be retained except that a local agency or a sewage enforcement officer may issue a permit for an individual residential spray irrigation system which is in conformity with the standards established under Chapter 73. In addition, no permit may be issued where there is a violation of Chapters 71—73, the act or The Clean Streams Law.

19. § 72.21 (relating to general)

This section sets forth the general requirements for the administration of an onlot sewage permitting program by a local agency. The existing provisions would be retained. However, a subsection is proposed to be added to incorporate the requirement of section 8(b)(1) of the act (35 P. S. § 750.8(b)(1)) that a local agency employ an adequate number of sewage enforcement officers or have a contractual arrangement with individuals, firms or corporations to adequately perform the services of sewage enforcement officers to administer applicable provisions of the act.

20. § 72.22 (relating to permit issuance)

Subsection (a) provides, in part, that no person may install or construct an onlot system without first obtaining a permit from a local agency. This portion is proposed to be amended to include the awarding of a contract for construction of that system, incorporating an amendment to section 7(a)(1) of the act.

Subsection (b), which relates to the requirement for permits for certain types of alterations to onlot sewage systems, is proposed to be amended to also provide for permits for certain connections to an existing onlot

system involving not only repair or replacement, but also a disturbance, modification or enlargement of a treatment tank, soil absorption area or spray field. The proposed amendments are intended, in part, to address permitting requirements for individual residential spray irrigation systems which are now authorized under the act.

The provisions of subsection (c) relating to one permit for multiple installations of chemical or other portable toilets is proposed to be deleted. The installation of these toilets would be subject to the requirements of Chapter 73.

A new subsection(g), is proposed to be added incorporating the provisions of section 7(a)(1) of the act which provide that a permit is not required for a sewage system in those situations when a new dwelling is proposed to replace a previously existing dwelling when the size and anticipated use of the new dwelling is the same as the previously existing dwelling and that dwelling was in use within 1 year prior to the anticipated date of the completion of construction of the new dwelling. The local agency would determine the size and anticipated use of the sewage of the new dwelling in accordance with the absorption area and sewage flow criteria of §§ 73.16 and 73.17. This permit exception will not be applicable in those cases where there is an active investigation of a malfunction by either the local agency or the Department.

21. § 72.23 (relating to limitation on permits)

The heading of the section is proposed to be changed to "Limitation on onlot system permit issuance." This change is intended to make it clear that the permit limitation provisions of this section only apply to onlot sewage systems.

Subsection (a) currently provides that a local agency may issue permits for onlot sewage systems if the proposed system is consistent with the method of sewage disposal contained in the official plan of the municipality in which the system is to be located. It also provides that permits may be issued when a municipality is implementing its plan in accordance with a schedule approved by the Department. The provisions are proposed to be revised by specifying that the proposed system shall be consistent with the approved official plan or a special study or update revision. Similarly, a municipality may issue permits if it is implementing the official plan or a special study or update revision. A local agency would also be authorized to issue permits when a municipality has received approval for a revision for new land development or been granted an exception from the requirement to revise by the Department, when a supplement has been approved by a delegated agency or it has been determined by the Department or delegated agency that no sewage facilities planning is required in accordance with § 71.51 which relates to exemptions from sewage facilities planning for new land development.

Section 7(b)(4.1) of the act provides that "[i]n the event that [a] municipality has no plan or has not received department approval of an update revision or special study to the official plan or implemented its plan as required . . . or by order of the department, no permits may be issued . . ." in those areas of the municipality where the Department finds that there is a serious risk to the health, safety and welfare of persons within or adjacent to the municipality. The permit limitations are to remain in effect until the Department has approved or the municipality has commenced implementation of its plan, update revision or special study in accordance with

a schedule approved by the Department. Subsections (b) and (c) incorporate these provisions of section 7(b)(4.1) of the act.

Section 7(b)(4.2) of the act outlines those situations when the permit limitation provisions of section 7(b)(4.1) of the act would not be applicable. Permit limitations are not applicable to: (1) areas of the municipality when there is a finding that a replacement system could be installed in the event that the original system failed; (2) those areas of the municipality outside of areas delineated in an order requiring an update revision; (3) existing subdivisions when lots or homes were sold prior to May 15, 1972; and (4) areas where the Department or local agency finds it necessary to issue permits for the abatement of pollution and/or the correction of health hazards. Subsection (d) incorporates these provisions. However, the language regarding replacement systems in subsection (d)(1) clarifies the language of the act in that it makes it clear that the replacement system relates to a replacement soil absorption area or spray field. In addition, a provision would be added noting that permit limitations would not be applicable in the case of interim repairs or the replacement of existing malfunctioning onlot sewage systems.

22. § 72.24 (relating to applications for permits)

The provisions of section 7(b)(1) of the act which require a local agency to maintain and make available for public inspection a record of all permit applications submitted to the local agency are proposed to be incorporated into a new subsection (c).

23. § 72.25 (relating to issuance of permits)

Under the existing provisions of § 72.25, a local agency is authorized to issue permits for certain types of sewage disposal systems, including experimental or alternate onlot sewage systems. The proposed amendment to this section will clarify that the local agencies are authorized to issue permits for conventional systems under this section, but not experimental systems. Procedures for the approval of alternate systems would be further clarified in a new subsection.

In addition, local agencies are authorized to issue permits for the installation of an individual residential spray irrigation system provided there is documentation that the municipality within which the system is to be located has taken action to assure compliance of the system with the standards of proposed § 73.167 (relating to operations and maintenance). In addition, assurances shall be provided by the municipality through one or more of a combination of options. The options specified in subsection (h) are substantially similar to those established for sewage management programs. Refer to Paragraph 14 for a fuller description of those options.

Section 7(b)(2.2) and (2.3) of the act outlines the procedures for the review and approval of applications for permits for alternate sewage systems. These procedures would be incorporated into a new subsection (e). There is one procedure for municipalities and local agencies which are not delegated agencies and another procedure for those which are delegated agencies. Applications submitted to municipalities or local agencies which are not delegated agencies are to be reviewed for completeness by the municipality or local agency. If the application is found to be complete, it is then submitted to the Department for its review. Permits are then to be issued or denied within 45 days of the transmittal of a complete application to the Department.

Municipalities and local agencies which are delegated agencies are authorized to approve or deny applications for alternate systems in accordance with the procedures specified in section 7(b)(2.3) of the act. Permit applications for alternate systems submitted to delegated agencies do not need to be submitted to the Department. To ensure that the delegated agencies are properly administering the alternate system permitting program the Department is authorized to exercise its authority to revoke a permit in accordance with section 7(b)(2.4) of the act. In addition, the performance of the delegated agencies in the administration of the alternate system permitting program, is subject to ongoing evaluations by the Department.

Section 7(b)(2.4) of the act provides that whenever the Department disagrees with the local agency's basis for the issuance of a permit, the Department may revoke the permit if it provides the local agency justification for its decision based on statutory or regulatory provisions. This authority would be incorporated into a new subsection (j).

24. § 72.26 (relating to denial of permits)

Section 8(c) of the act requires that a sewage enforcement officer accept prior testing data and information obtained by a previous sewage enforcement officer provided the site and prior testing meet all 10 of the criteria specified in that section of the act and the current sewage enforcement officer certifies the same to the local agency. Section 8(c) also establishes a presumption that "... unless the prior sewage enforcement officer's certification has been revoked or suspended by the department or the prior sewage enforcement officer's certification has been voluntarily surrendered, the testing data and information obtained by the prior sewage enforcement officer is valid unless the currently employed sewage enforcement officer finds that one or more of the criteria listed are not met." The 10 criteria relate to the prior soil testing not being cited in a revocation or suspension of the previous sewage enforcement officer's certification, verification of the location of the previous tests, prior testing being done in accordance with applicable regulations, proper recordation of prior tests, prior soil probes within 10 feet of the proposed absorption area, prior percolation tests performed on the site of proposed absorption area, certification of original person observing or conducting test, inaccuracies or falsifications of test data, and no changes materially affecting the siting or operation of an onlot system occurring since the original testing and indemnification relating to the actions of the new sewage enforcement officer. The preceding provisions have been incorporated into a new subsection (b).

Section 8(d) of the act establishes a procedure to be followed in the event that, after verifying that certain criteria described in the preceding paragraph have not been met, a sewage enforcement officer rejects either an application for a permit or tests certified by a prior sewage enforcement officer within the immediately preceding 6 years. If a sewage enforcement officer rejects a permit or test, the retesting and reapplication fees shall be waived to the applicant. However, the fee waiver would not apply if there have been changes in the conditions of the site which would materially affect the siting or operation of a system, when the previous soils testing was conducted by the local agency or when the previous sewage enforcement officer's certification has been revoked or voluntarily surrendered under certain circumstances or been suspended by the Department for actions related to the siting, design or installation inspection of onlot systems. These provisions would be incorporated into new subsections (c) and (d).

25. § 72.32 (relating to sales contracts)

Certain sections of the act require that contracts for the sale of a lot contain provisions relating to the installation of individual sewage systems or holding tanks in certain circumstances as well as in those cases where permit limitations are in effect.

Section 7.1(a.1) of the act provides that every contract for the sale of a lot which is served by an individual sewage system installed under the 10-acre permit exemption provisions of the act shall clearly indicate that soils and site testing were not conducted and that the person who purchases the property or properties which are served by that system may be liable for any contamination, pollution, public health hazard or nuisance which occurs as a result of a malfunction of that system. This requirement is proposed to be incorporated into subsection (a).

Section 7.1(a.2) of the act provides that contracts for the sale of a lot served by a holding tank designed to facilitate ultimate disposal of the sewage at another site shall state that the property is served by the tank and provide an annual maintenance cost history of the tank from the date of installation or from December 15, 1995, whichever is later. This requirement is proposed to be incorporated into subsection (b).

Section 8(f) of the act provides an exception from the requirements of the act relating to isolation distances between a private well and a proposed absorption area. The exception may apply if the local agency finds that the installation of a proposed individual sewage system "does not pose a threat of pollution to any well on the same lot within the distance specified by regulation." Contracts for the sale of lots in which the exception has been granted shall contain a statement clearly indicating to the buyer that isolation distances between the individual onlot system components and the well which are required by the regulations have not been met. This requirement is proposed to be incorporated into subsection (c).

Paragraph 21 of this Preamble describes those situations when a permit for a sewage system may not be issued. Section 7(b)(4.1)(ii) of the act provides that contracts for the sale of lots in areas where permit limitations are in effect shall state that sewage facilities are not available and may not be available for that lot and that construction of any structure on the lot may not begin until the Department has approved a major planning requirement. The contractual requirements are proposed to be incorporated into subsection (d).

Proposed subsection (e) would provide that the sales contracts described previously in this Preamble which do not conform to the requirements outlined in this Preamble may not be enforceable by the seller against the buyer and that any provision in a sales contract purporting to waive the rights of the buyer to the disclosure required is void. This proposal incorporates similar language relating to land sale contracts in each of the sections of the act discussed in this Preamble.

26. § 72.33 (relating to well isolation distance exemption)

As discussed in paragraph 25 of this Preamble, section 8(f) of the act provides an exemption from the requirements relating to isolation distances between private wells and absorption areas specified in Chapter 73. Proposed § 72.33 would implement the provisions of the act relating to this exemption.

If a local agency determines that the installation of a proposed individual sewage system does not pose a threat

to any well on the same lot within the isolation distances between a private well and an absorption area specified in Chapter 73, the isolation distances will not be applicable. However, if a private well is located on another lot, regardless of whether that lot is owned by the owner of the lot to which the exemption applies, the minimum horizontal isolation distances specified in § 73.13 shall be met except in the case of the repair of onlot systems in accordance with the requirements of § 73.3.

The proposals to subsections (c) and (d) set forth the application requirements for a well isolation distance exemption and the time frames for review of the application. A request for an exemption shall contain appropriate ground water studies and be accompanied by appropriate fees or costs. A local agency, other than a delegated agency, shall act upon the application within 45 days of receipt of the required information. A delegated agency shall act within 30 days of receipt of the information.

Section 8(f) of the act further provides that no liability is to be incurred by a sewage enforcement officer, municipality, local agency, delegated agency or the Department as a result of the granting of a well isolation distance exemption. The proposal to subsection (e) incorporates this provision.

27. § 72.41 (relating to powers and duties of sewage enforcement officers)

Section 8(e) of the act contains certain provisions relating to certain potential conflicts of interest with respect to municipalities, local agencies and sewage enforcement officers. Insofar as the provisions apply to sewage enforcement officers, the officer may not suggest, recommend or require the services of a particular consultant, soil scientist, professional engineer or firm providing these services when the services may be required or are subject to review under the act. That section also provides that a sewage enforcement officer may not provide consulting, design and related services regulated under the act within the municipality or local agency by which the officer is employed unless the services are set in a fee schedule, the fees for the services are paid directly to the municipality or local agency and the consulting or design work is reviewed and a permit is issued by another sewage enforcement officer employed by the entity issuing the permit. These provisions are proposed to be incorporated into § 72.41.

28. § 72.42 (relating to powers and duties of local agencies)

The act greatly expanded the powers and duties of local agencies. Prior to the enactment of Act 149, the powers and duties of local agencies were generally limited to activities relating to the administration of the permitting provisions of section 7 of the act. Act 149 expanded the authority of local agencies to include activities relating to applicable provisions of the act pertaining to civil remedies, imposition or assessment of criminal and civil penalties, or both, assessment of fees, disposition of fines, civil penalties and fees and hearings and appeals. When applicable, references to this expanded authority are proposed to be incorporated throughout § 72.42.

Section 8(b)(2.1) of the act requires each local agency to adopt a list of those individuals who are employed as sewage enforcement officers by companies providing these services to the local agency under a contract. The list shall be adopted by a resolution of the local agency. The intent of this requirement is to provide a list of persons authorized to perform the service to those persons served by a local agency. This requirement is proposed to be incorporated into subsection (a)(18).

Section 8(b)(4) of the act authorizes local agencies to charge fees for engineering or consulting services which are necessary for the local agency to complete its review of a permit application. The fees are to be reasonable and in accordance with ordinary and customary charges by the engineer or consultant for services in the community. The fees are not to exceed the rate or cost that would otherwise be charged by the engineer or consultant to the local agency if fees were not reimbursed by or otherwise imposed on applicants. Section 8(b)(4) of the act also sets forth a dispute resolution procedure which shall be utilized in the event an applicant disputes the amount of the fees or charges. These fee and dispute resolution provisions are proposed to be incorporated into subsection (a)(20).

Section 8(b)(5)(i) of the act sets forth a time frame and certain procedures for site suitability review, soil probe testing or soil percolation testing which may be necessary following the receipt of a permit application. A local agency shall complete and provide to the applicant the results of these procedures within 20 working days of its receipt of a permit application unless the procedure are deferred because the applicant requests or agrees to a later date. A one-call system serial number is to be obtained prior to soil testing by the applicant or the contractor retained by the applicant within a specified time period. Failure to obtain this serial number results in the inapplicability of the time limits for local agency review. In accordance with instructions which are to be provided at least 48 hours in advance, an applicant is obligated to have the site prepared for testing. The instructions shall include provisions for deferral of testing due to weather conditions. If a local agency fails to comply with the time limits, the applicant is entitled to a refund of fees paid by the applicant for actual soil testing which was not performed by the local agency and to submit the results of soils tests performed by another certified sewage enforcement officer provided the tests were conducted in a manner consistent with these regulations and on forms provided by the Department. If an applicant does not have the site prepared in accordance with the instructions, the applicant does not have the right to submit soils tests performed by another sewage enforcement officer and is not entitled to a refund for the testing. Finally, the section provides immunity to the municipality, local agency, the local agency's sewage enforcement officer and the Department from any cause of action arising out of the performance of tests by a sewage enforcement officer who is not employed by the local agency. These provisions are proposed to be included in subsection (a)(21).

Section 8(b)(10) of the act authorizes local agencies to make inspections and verify measurements relating to specified isolation distances prior to approval of onlot sewage disposal system usage. The local agency's authorized representative has the right to enter upon lands for these purposes. This authority would be implemented subsection (a)(22).

Section 7.3(5) of the act requires applicants proposing an individual residential spray irrigation system to submit documentation to the local agency that the proposed system will not adversely impact drinking water supplies and will not create a nuisance or a public health hazard. Proposed subsection (a)(23) authorizes the local agency to verify this documentation and to report relevant information to an affected municipality served by the local agency.

Section 7.3(6) of the act requires owners of individual residential spray irrigation systems to test discharges to

the spray irrigation system for fecal coliform, biological oxygen demand, suspended solids and chlorine residuals. Certain provisions proposed for Chapter 73 would establish standards for these particular components of the discharges. The municipality within which the system is to be located is required to assure compliance of the system with the operation and maintenance requirements of Chapter 73. Proposed subsection (a)(24) implements these requirements insofar as they relate to the named components of the discharges.

29. § 72.43 (relating to powers and duties of the Department)

As noted in paragraph 28 of this Preamble, the powers and duties of local agencies have been greatly expanded as a result of the enactment of Act 149. The Department's oversight responsibilities have been expanded accordingly and appropriate references to the Department's duty to oversee the expanded powers and duties of local agencies are proposed to be revised throughout § 72.43.

Section 10(10.1) of the act grants the Department the authority to revoke or suspend the certification of a sewage enforcement officer for cause. Grounds for this action include negligence or providing false information relating to the administration of the act and violations of the act which are not related to the issuance of a permit. A violation of the act not related to the issuance of a permit would generally be some activity undertaken by a sewage enforcement officer outside the scope of the officer's employment as a sewage enforcement officer, such as providing consultation services. These grounds are proposed to be incorporated into the suspension and revocation provisions of subsections (f) and (h) respectively.

Section 10(10) of the act was amended to provide that the Department is to consider complaints relating to the performance of sewage enforcement officers filed by local agencies or the public. This requirement would be incorporated into subsection (i).

Section 10(13) of the act, as amended, requires the Department to establish minimum training requirements for certification as a sewage enforcement officer, including an option for training under the supervision of another sewage enforcement officer selected by the Department. This training requirement would be incorporated into subsection (j).

Section 10(14) of the act, as amended, provides that the Department may require that a sewage enforcement officer, whose performance has been found deficient, undertake training under the direction of another sewage enforcement officer selected by the Department. Training may also be required as an alternative to suspension or a prerequisite for reinstatement of a suspended certification. The costs of the training are to be paid by the Department. The provisions relating to the training would be incorporated into subsection (k).

30. § 72.44 (relating to reimbursement)

Section 6(c) of the act provides that local agencies meeting the qualifications established therein will be reimbursed up to 85% of the costs of expenses incurred in the administration of the act. Local agencies not qualifying for 85% reimbursement will be reimbursed up to half of the eligible expenses.

To qualify for 85% reimbursement, local agencies shall meet the criteria specified in section 6(c)(1)–(7) of the act. Those criteria relate to acceptance, delegation or transfer of certain powers from one or more municipali-

ties, employment of an adequate number of sewage enforcement officers, an alternate sewage enforcement officer and a qualified soil scientist, sufficient administrative staff, submission of specified materials and regulations related to the administration of the act and sufficient technical staff to provide timely service. These criteria are proposed to be incorporated into subsections (c) and (d).

CHAPTER 73. STANDARDS FOR ONLOT SEWAGE TREATMENT FACILITIES

31. The title of the chapter is proposed to be retitled in order to more accurately reflect that the provisions of Chapter 73 establish standards for onlot sewage treatment facilities. Except for the provisions of proposed §§ 73.161–73.167, relating to the technical requirements for individual residential spray irrigation systems, the proposed amendments described as follows are intended to either clarify existing provisions or incorporate advances or changes, or both, in treatment technology.

32. §§ 73.1 and 73.64 (relating to definitions; and chemical toilet or other portable toilet)

Chemical toilets (commonly known as portable toilets) are proposed to be removed from the current classification as a type of retaining tank. This eliminates the need for a permit when the toilets are to be temporarily used at a construction site or certain types of public gatherings. Local agencies would still retain the authority to address any misuse of these units.

33. §§ 73.3 and 73.71 (relating to policy; and experimental sewage systems)

The repair options related to onlot systems are proposed to be expanded and the use of experimental systems is proposed to be clarified. An additional option is proposed to be included for the repair of onlot systems by considering the relocation of a well if the repair results in the absorption area or a spray field encroaching on the isolation distance to a well and using small flow systems with discharges. In addition, provisions clarifying the conditions under which experimental technologies, system components, methods and designs are to be utilized are proposed to be included in § 73.71.

34. § 73.11 (relating to general)

A provision is proposed to be incorporated into subsection (c) which allows a property owner to use a newly installed septic tank pending completion of the rest of a sewage system when weather conditions prevent completion of the sewage system prior to occupancy of the house.

35. § 73.13 (relating to minimum horizontal isolation distances)

Onlot sewage system components are proposed to be isolated from cisterns. In addition, existing isolation distances between system components and wetlands are proposed to be deleted.

36. § 73.14 (relating to site investigation)

The provisions of subsection (a)(1) relating to depth of soil profile are proposed to be amended. The maximum depth required for backhoe excavation to conduct a soil profile is proposed to be reduced from 8 feet to 7 feet. In addition, the conditions under which onlot sewage systems may be placed in disturbed soils are proposed to be clarified in that fill soils shall be undisturbed for a minimum of 4 years unless a sewage enforcement officer determines the fill will not materially effect the system.

37. § 73.15 (relating to percolation tests)

A new method of calculating the results of a percolation test is proposed to be added to paragraph (7). The method would be utilized for percolation tests for holes that drain too slow or too fast. When the rate of drop is too fast, the hole shall be considered a failed hole and may not be used in calculating the arithmetic average percolation rate.

38. § 73.17 (relating to sewage flows)

This section provides for the calculation of sewage flows for different types of facilities. The list of sewage flows are proposed to be updated to include flows related to facilities such as modern mobile homes and condominiums and to clarify the flows for other facilities currently listed.

39. Treatment tanks.

The testing, construction and installation standards for treatment tanks are proposed to be modified by requiring grease traps for tanks proposed to serve a food preparation facility, requiring multiple tanks or compartments, a septic solids retainer at tank outlets and National Sanitation Foundation testing protocols for aerobic treatment tanks and recycling toilets. In addition, siphons on dosing tanks are required to be sized according to the volume of the laterals and pumps in the tanks are to be rated for sewage use and shall be appropriately placed in the tank and a malfunction warning signal would be required. The minimum capacity required for a holding tank is proposed to be changed from 1,000 to 3,000 gallons. Discharges from recycling toilets are prohibited. Sections 73.17(d), 73.21, 73.31, 73.32, 73.45, 73.46, 73.62 and 73.65 are revised accordingly.

40. Section 73.72 and related sections—alternate systems.

A number of system designs and system components currently considered to be alternate systems and which may only be used upon the concurrence of the Department would become standard technology which may be approved by a local agency. These would include leaching chambers used as a substitute for aggregate, elevated sound mounds on very slowly permeable soils and slopes of not more than 12%, adjustable distribution box weirs, increased lateral hole sizes and discharge rates and geotextile fabric used in absorption areas. Accordingly, relevant changes would be made throughout Chapter 73 to acknowledge these changes.

41. Sections 73.161—73.167 (relating to individual residential spray irrigation systems)

Section 7.3 of the act authorizes a local agency to issue permits for the construction of individual residential spray irrigation systems. A prerequisite for the permit issuance is that the site, soil conditions and proposed system design shall meet the Department's standards for these systems. Sections 73.161—73.167 outline the Department's proposed standards. These standards were developed in close consultation with the SAC and are based on relevant technical manuals such as "Guidelines for Design, Installation and Operation of, Small Flow Treatment Facilities, DER, 1992" and "EPA's on-site Design Manual" originally published in October 1980.

F. Benefits and Costs

Executive Order 1996-1 requires a cost/benefit analysis of the proposed regulations. It also requires a statement of the need for, and a description of, forms, reports or other paperwork required as a result of the proposal.

These proposed amendments to Chapters 71—73 are necessary to bring existing regulations into compliance with recent amendments to the act and to update some technical standards for onlot sewage treatment systems.

Some proponents of new residential subdivision plans will experience an elimination of sewage facilities planning for their development. In addition, developers and builders will be able to receive deemed approvals if the reviewing agencies for sewage facilities planning and onlot system permitting do not act in a timely manner. This elimination of some planning and relief from review delays will benefit builders, land developers, realtors and mortgage lenders.

The Department's authority to impose limitations on new land development because of the lack of an adequate municipal comprehensive sewage facilities plan is limited to certain circumstances. This will benefit developers, realtors and mortgage lenders who will be able to sell lots in these areas. There will be a cost to property purchasers and builders who will not have available sewage facilities and will be unable to build on these lots until the municipality complies with planning requirements due to severe public health hazards in the municipality.

Developers will be able to make their own public notifications when they propose significant developments. This will benefit developers, builders, realtors and mortgage lenders because they will not have to wait for municipalities to make this publication, the development will be processed more quickly and construction may begin more quickly.

The Department will initiate a compliance assistance plan related to the proposed regulatory amendments based on both existing and new program initiatives. Municipalities involved in developing official sewage facilities plan update revisions will be eligible for 50% reimbursement from the Department for costs incurred in developing these plans. In addition, penalties assessed for failure to develop or implement the plans will be deposited in a special fund. Municipalities assessed penalties may later apply for return of these moneys to help them correct sewage related problems. The Department will continue to work closely with PENNVEST and other sewerage project funding agencies to assure that viable sewage plans are able to be implemented.

The Department will continue to pay 50% of the costs incurred by local agencies to administer the onlot permitting program. This amount will be increased to 85% for those local agencies with quality programs. In addition, local agencies which assume delegation for the new land development and penalties assessed by local agencies will be returned to the agency for use in administering the program or abating public health hazards. The Department will continue to work with PENNVEST and the Housing Finance Agency to provide low interest loans to property owners experiencing malfunctioning onlot systems.

The Department's ongoing commitment to the research of new and alternative means of onlot systems will allow more property owners to comply with a broader range of options in our regulations. In addition, the Onlot System Hotline will provide a source of independent information on the Department's requirements and thus aid in compliance.

Local agencies which have a quality permitting program will benefit from an opportunity to apply for and receive 85% reimbursement for the cost of these activities instead of the current 50%. This will reduce the cost of

administering the program locally and provide a better local agency to serve the needs of developers, builders, realtors and mortgage bankers.

Local agencies which meet certain criteria will be delegated the authority to give final approvals on new land development sewage facilities planning. Since this authority is currently retained by the Department, developers, builders, realtors and mortgage bankers will benefit from the time saved by the elimination of the Department from the review process. In addition, the local review will allow for a one-stop review process.

The Sewage Facilities Program will benefit from review fees charged to applicants for sewage facilities planning approvals from the Department.

These fees will be deposited in a special fund to be used for sewage enforcement officer training, onlot system research and municipal outreach. Developers will experience an increased cost to pay for the review of their sewage facilities plans.

Individuals who propose to build a new dwelling to replace an existing dwelling will benefit from provisions which allow the activity without the requirement to obtain a permit for sewage facilities. The Commonwealth will experience a cost due to the continued pollution of waste from some of these old, substandard systems.

Some owners of properties which are too small to support both a well and an onlot sewage system will benefit from an exemption from isolation distance standards which will allow them to build a home on their property anyway. These same property owners may experience a cost to treat their water supplies if the expert they hire to determine if the isolation distance can be waived is wrong.

Property owners, developers, builders, realtors and mortgage bankers will benefit from a streamlined review process for alternate onlot system proposals. In addition, the transfer of several alternate systems to the category of standard technology and the new individual residential spray irrigation onlot sewage system will make more land previously unusable, available for development.

The mandatory filing system for permit applications will be a cost to local agencies but will provide for more organized and more readily available information for developers, builders and realtors.

The expanded powers and duties of local agencies will cost the local agencies more to administer, but the power to charge a fee for some of these expanded duties will offset these costs; developers and builders will have to pay these new fees, but will be the recipients of the benefit of improved services from the local agency.

The clarified conflict of interest provisions related to sewage enforcement officer employment will cost local agencies the loss of its sewage enforcement officer when conflicting employment is occurring. Some sewage enforcement officers will not be able to continue their activities related to consulting and still act as the sewage enforcement officer.

Applicants for a permit on a lot which was tested by a previous sewage enforcement officer will benefit from a fairer assessment process for these lots. Local agencies will bear the cost of additional soils testing and administrative fees.

Local agencies applying for reimbursement from the Department for expenses incurred in the administration

of the onlot system permitting program will benefit from the extension of the application deadline.

Sewage enforcement officers and onlot system installers will benefit from the training courses required in the regulations. There will be a cost to the Commonwealth to develop and administer these courses.

Property purchasers will benefit from required sales contract warnings where exemptions under the regulations have been granted which may make their lot unbuildable or otherwise less valuable.

The Department will benefit from provisions which allow actions against sewage enforcement officers who are acting in violation of the law in the capacity of consultant. Developers will benefit from provisions which require the Department to provide technical information regarding sewage treatment systems and the authority of the Department to waive its review of sewage facilities planning.

G. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the Department submitted a copy of these proposed amendments on March 12, 1996, to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House and Senate Environmental Resources and Energy Committees. In addition to submitting the proposed amendments, the Department has provided IRRC and the Committees with a copy of a detailed regulatory analysis form prepared by the Department in compliance with Executive Order 1982-2, "Improving Government Regulations." A copy of this material is available to the public upon request.

If IRRC has objections to any portion of the proposed amendments, it will notify the Department within 30 days after the close of the public comment period. The notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the regulation, by the Department, the General Assembly and the Governor of objections raised.

H. *Sunset Date*

These proposed 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.

I. *Public Hearings*

The EQB intends to hold six public hearings for the purpose of accepting comments on this proposal. The hearings will be held at 7 p.m. at the following locations and dates:

April 29, 1996	Crawford County Courthouse Assembly Room 903 Diamond Square Meadville, PA
April 30, 1996	Allegheny County Courthouse The Gold Room, 4th Floor 436 Grant Street Pittsburgh, PA
May 6, 1996	Department of Environmental Protection Northcentral Regional Office Suite 101 208 West Third Street Williamsport, PA

May 7, 1996 Department of Environmental Protection
Northeast Regional Office
Two Public Square
Wilkes-Barre, PA

May 13, 1996 Department of Environmental Protection
Southeast Regional Office
Suite 6010, Lee Park
555 North Lane
Conshohocken, PA

May 14, 1996 Swatara Township Municipal Building
599 Eisenhower Boulevard
(SW Corner of I-83 and I-283)
Harrisburg, PA

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION

PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION

Subpart C. PROTECTION OF NATURAL RESOURCES

CHAPTER 71. ADMINISTRATION OF SEWAGE FACILITIES PLANNING PROGRAM

Subchapter A. GENERAL

§ 71.1. Definitions.

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

* * * * *

Clean Water Act—The Clean Water Act (33 U.S.C.A. §§ 1251—[1376] 1387).

Delegated agency—A municipality, local agency, multimunicipal local agency or county or joint county Department of Health to which the Department has delegated the authority to review and approve subdivisions for new land developments as supplements to the official plan of a municipality in which the subdivision is located.

* * * * *

Individual residential spray irrigation system—An individual onlot sewage system which serves a single family dwelling and which treats and disposes of sewage using a system of piping, treatment tanks and soil renovation through spray irrigation.

* * * * *

Municipality—A city, town, township, borough or home rule municipality other than a county.

* * * * *

Official plan revision—A change in the municipality's official plan to provide for additional [or], newly identified future, or existing sewage facilities needs, which may include, but not be limited to, one or more of the following:

(i) *Update revision*—A comprehensive revision to an existing official plan required when the Department or municipality determines the official plan or any its parts is inadequate for the existing or future sewage facilities needs of a municipality or its residents or landowners.

* * * * *

(iii) *Special study*—A study, survey, investigation, inquiry, research [,] report or analysis which is directly related to an update revision. The studies provide documentation or other support necessary to solve specific problems identified in the update revision.

(iv) *Supplement*—A sewage facilities planning module for a subdivision for new land development which will not be served by sewage facilities requiring a new or modified permit from the Department under the Clean Streams Law, and which is reviewed and approved by a delegated agency.

(v) *Exception to the requirement to revise*—A process established in § 71.55 (relating to exceptions to the requirement to revise the official plan for new

Persons wishing to present testimony at a hearing are requested to contact Sharon Freeman at the EQB, P. O. Box 8477, Harrisburg, PA 17105-8477, (717) 787-4526, at least 1 week in advance of the hearing to reserve a time to present testimony. Oral testimony is limited to 10 minutes for each witness. Witnesses are required to submit three written copies of their oral testimony to the hearing chairperson at the hearing. Organizations are limited to designating one witness to present testimony on their behalf at the hearings.

Persons with a disability who wish to attend the hearing and require an auxiliary aid, service or other accommodation in order to participate should contact Sharon Freeman at (717) 787-4526, or through the Pennsylvania AT&T Relay Service by calling (800)654-5984 (TDD users) or (800)654-5988 (voice users) and request that the call be relayed to discuss how the Department may accommodate their needs.

J. Public Comments

Written comments—Interested persons are invited to submit written comments, suggestions or objections regarding the proposal to the EQB, P. O. Box 8477, Harrisburg, Pa. 17105-8477 (express mail: 15th Floor, Rachel Carson State Office Building, 400 Market Street, Harrisburg, PA 17101-2301). Comments received by facsimile will not be accepted. Comments, suggestions or objections must be received by May 29, 1996. Interested persons may also submit a summary of their comments to the EQB. The summary will be provided to each member of the EQB in the agenda packet distributed prior to the meeting at which final regulations will be considered. The summary may not exceed one page in length and must also be received by May 29, 1996.

Electronic comments—Comments may be submitted electronically to the Board at RegComments@a1.dep.state.pa.us. A subject heading of the proposal and a return name and address must be included in each transmission. Comments submitted electronically must be received by the EQB by May 29, 1996.

JAMES A. SEIF,
Chairperson

(Editor's Note: For a proposed rulemaking relating to this proposal see 25 Pa.B. 3219 (August 5, 1995).)

Fiscal Note: 7-294. (1) General Fund; (2) Implementing year 1996-97 is \$209,000; (3) 1st succeeding year 1997-98 is \$600,000; 2nd succeeding year 1998-99 is \$636,000; 3rd succeeding year 1999-00 is \$672,000; 4th succeeding year 2000-01 is \$708,000; 5th succeeding year 2001-02 is \$744,000; (4) FY 1993-94 \$2,522,000; FY 1992-93 \$3,415,000; FY 1991-92 \$1,800,000; (7) Sewage Facilities Enforcement Grants; (8) recommends adoption.

land development) which describes the criteria under which a revision for new land development is not required.

* * * * *

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

Retaining tank—A watertight receptacle which receives and retains sewage and is designed and constructed to facilitate ultimate disposal of the sewage at another site. The term includes, but is not limited to, the following:

[(i) Chemical toilet—A permanent or portable nonflushing toilet using chemical treatment in the retaining tank for odor control.]

- [(ii) (i) *****
- [(iii) (ii) *****
- [(iv) (iii) *****
- [(v) (iv) *****
- [(vi) (v) *****

Sewage—A substance that contains the waste products or excrement or other discharge from the bodies of human beings or animals and noxious or deleterious substances being harmful or inimical to the public health, or to animal or aquatic life, or to the use of water for domestic water supply or for recreation[, or]. **The term includes any substance** which constitutes pollution under **[The] the** Clean Streams Law.

Sewage enforcement officer—An official of the local agency who **reviews permit applications and sewage facilities planning modules**, issues permits[, **reviews permit applications and sewage facilities planning modules**] **as authorized by the act** and conducts investigations and inspections **that are** necessary to implement the act and the regulations thereunder.

Sewage facilities—A system of sewage collection, conveyance, treatment and disposal which will prevent the discharge of untreated or inadequately treated sewage or other waste into waters of this Commonwealth or otherwise provide for the safe and sanitary treatment and disposal of sewage or other waste.

(i) **Individual sewage system**—A sewage facility, whether publicly or privately owned, located on a single lot and serving one equivalent dwelling unit and collecting, treating and disposing of sewage in whole or in part into the soil or into waters of this Commonwealth or by means of conveyance of retaining tank wastes to another site for final disposal. **Individual sewage systems include:**

(A) **Individual onlot sewage system**—An individual sewage system which uses a system of piping, tanks or other facilities for collecting, treating and disposing of sewage into a **[subsurface] soil** absorption area, **spray field** or a retaining tank.

(B) **Individual sewerage system**—An individual sewage system which uses a method of sewage collection, conveyance, treatment and disposal other than renovation in a **[subsurface] soil** absorption area, or retention in a retaining tank.

(ii) **Community sewage system**—A sewage facility, whether publicly or privately owned, for the collection of sewage from two or more lots, or two or more equivalent

dwelling units and the treatment or disposal, or both, of the sewage on one or more of the lots or at another site.

(A) **Community onlot sewage system**—A **[community sewage system which uses a]** system of piping, tanks or other facilities **[for] serving two or more lots and** collecting, treating and disposing of sewage into a **[subsurface] soil** absorption area or retaining tank **located on one or more of the lots or at another site.**

(B) **Community sewerage system**—A community sewage system which uses a method of sewage collection, conveyance, treatment and disposal other than renovation in a **[subsurface] soil** absorption area, or retention in a retaining tank.

* * * * *

Subdivision—The division or redivision of a lot, tract or other parcel of land into two or more lots, tracts, parcels or other divisions of land, including changes in existing lot lines. The enumerating of lots shall include as a lot that portion of the original tract **or tracts** remaining after other lots have been subdivided therefrom.

* * * * *

(Editor's Note: The definition of "residential subdivision plan" was proposed to be added in the August 5, 1995, proposal.)

§ 71.2. Scope and time periods.

(a) This chapter is adopted in accordance with the duties imposed upon the Department under the act and the Clean Streams Law and applies to municipalities, **local agencies and delegated agencies** administering the planning provisions of the act and to persons subdividing land or planning, designing or installing sewage facilities.

* * * * *

§ 71.3. Purposes.

This chapter is separated into **[five] six** subchapters:

(1) Subchapter A (relating to general) provides general background information.

- [(1) (2) *****
- [(2) (3) *****
- [(3) (4) *****
- [(4) (5) *****

(6) Subchapter F (relating to fees) provides for fees for the review of new land development sewage facilities planning modules.

**Subchapter B. OFFICIAL PLAN REQUIREMENTS
GENERAL**

§ 71.11. General requirement.

Municipalities are required to develop and implement comprehensive official plans which provide for the resolution of existing sewage disposal problems, provide for the future sewage disposal needs of new land development and provide for the future sewage disposal needs of the municipality. Official plans shall be developed, submitted to the Department for approval and implemented by municipalities under the act and **[sections] §§ 71.12—71.14, 71.21, 71.22, 71.31, 71.41—71.44** and Subchapters C—**[E] F.**

§ 71.14. Private request to revise official plans.

(a) A person who is a resident or legal or equitable property owner in a municipality may file a private request with the Department [to] requesting that the Department order the municipality to revise its official plan if the resident or property owner can show that the official plan is not being implemented or is inadequate to meet the resident's or property owner's sewage disposal needs. This request may be made only after a prior written demand upon and written refusal by the municipality to so implement or revise its official plan [and] or failure of the municipality to reply in either the affirmative or negative within 60 days or, failure of the municipality to implement its official plan within the time limits established in the plan's implementation schedule or failure to revise its official plan within the time limits established in this chapter. The request to the Department shall contain a description of the area of the municipality in question and a list of reasons that the plan is believed to be inadequate. The person shall notify the municipality in writing of the filing of the request with the Department.

* * * * *

[(c) No private request to revise an official plan because of the subdivision of land will be considered by the Department unless the subdivision has received prior approval under municipal or county planning codes being implemented through Article VI of the Pennsylvania Municipalities Planning Code (53 P. S. §§ 10601—10619).

(d) [(c) Upon receipt of a private request for revision, the Department will notify the municipality and appropriate official planning agencies within the municipality, including a planning agency with areawide jurisdiction if one exists, under the Pennsylvania Municipalities Planning Code (53 P. S. §§ 10101—11202) and the existing county or joint county department of health of receipt of the private request and will [request] inform them that written comments [to] shall be submitted to the Department within [60] 45 days after the Department's receipt of the private request for revision. [The comments shall include a discussion of the compatibility of the proposed subdivision with municipal or county planning codes being implemented through the Pennsylvania Municipalities Planning Code.

(e) [(d) In arriving at its decision, the Department will consider [, at a minimum,] the following:

(1) The reasons advanced by the requesting [individual in comparison with comments and the] person.

(2) The reasons for denial advanced by the municipality.

[(2) Whether the proposed land use is consistent with § 71.21(a)(5)(i)—(iii) (relating to content of official plans).]

(3) Comments submitted [as required by subsection (d)] under this section.

(4) Whether the proposed sewage facilities and documentation supporting the proposed sewage facilities are consistent with this part.

[(4)] (5) ***

[(f)] (e) The Department will render its decision, and inform the person requesting the revision and the appropriate municipality, in writing, within 120 days [aften] after either receipt of the comments [required] permitted by [subsection (d)] this section or the expiration of [th 60] the 45-day comment period when no comments have been received or within an extended period if agreed to in writing by the person making the request.

(1) The Department's decision will specify the nature of the revision to the municipality's official plan that the municipality will be required to implement or the reasons for refusal. If the Department orders a requested revision, the order will specify time limits for plan completion, including interim deadlines and compliance schedules the Department deems necessary.

(2) If the Department refuses to order a revision requested under subsection (a), it will notify [th] the person who filed the request, in writing, of the reasons for the refusal.

(3) The Department may not refuse to order a requested revision because of inconsistencies with applicable zoning, subdivision or land development ordinances, but will make its order subject to limitations properly placed on the development of the property by the municipality under its zoning, subdivision or land development ordinances or by court orders.

OFFICIAL PLAN PREPARATION

§ 71.21. Content of official plans.

(a) A municipality shall either meet with the Department prior to completion of a Task/Activity Report or, submit a Task/Activity Report or other appropriate form prior to preparation of an official plan to determine which of the planning elements listed in this section are necessary to meet the specific needs of that municipality. A determination does not constitute a final Department action until the completed plan is submitted by the municipality and acted upon by the Department. If applicable to the specific planning needs of the municipality, as determined by the Department, the completed plan submitted to the Department shall:

* * * * *

(2) Evaluate existing sewage facilities in the planning area through the following:

(i) An identification, mapping and description of municipal and nonmunicipal, individual and community sewerage systems in the planning area including:

* * * * *

(B) A description of problems with the existing facilities, including existing or projected overload under Chapter 94 (relating to municipal wasteload management) or violations of a national pollutant discharge elimination system permit, [the] a Clean Streams Law permit or other permit, rule or regulation of the Department.

* * * * *

(ii) An identification, mapping and description of areas that use individual and community onlot sewage systems in the planning area, including:

* * * * *

(C) A comparison of the types of onlot sewage systems installed in an area with the types of systems which are appropriate for the area according to soil, geologic conditions and Chapter 73 (relating to standards for onlot sewage [disposal] treatment facilities).

* * * * *

§ 71.22. Coordination of official plans with Federally funded sewage facilities planning.

Planning for Federally funded sewage facilities under Subchapter II of the Clean Water Act (33 U.S.C.A. §§ 1281—1299) or State Revolving Funding under Title VI of the Water Quality Act of 1987 (33 U.S.C.A. §§ [1251—1376] 1382—1387) shall meet the requirements of § 71.31 (relating to municipal responsibility to review, adopt and implement official plans) and be approved by the Department as a revision to the municipal official plan.

OFFICIAL PLAN APPROVAL

§ 71.32. Department responsibility to review and act upon 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) (related to Department administration of new land development planning requirements for revisions) for a plan revision for a residential subdivision plan.**

* * * * *

(f) In a municipality that does not have an official plan, or fails to revise or implement its official plan as required by an 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))] § 72.23(a) and (b) (relating to limitation on onlot system permit issuance)** are in effect.

(2) The Department will not **[approve a project requiring]** issue a permit under section 5 of the Clean Streams Law (35 P. S. § 691.5) **for projects** 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.]

(3) A supplement or a revision for new land development will not be denied nor will an exception to the requirement to revise be found inadequate solely because the municipality in which the new land development is being proposed has failed to do one of the following:

(i) Submit an update revision or special study.

(ii) Implement its plan as required by an order of the Department or this part.

(4) A supplement or revision for new land development will not be denied, nor will an exception to the requirement to revise be found inadequate, solely because an update revision or special study is under review by the Department.

(5) Every contract for the sale of a lot which is located within an area in which permit limitations are in effect and which is subject to permit limitations under this chapter shall contain a statement in the sales contract that clearly indicates to the buyer that sewage facilities are not available for that lot and that sewage facilities will not be available. This statement shall also clearly state that construction of a structure on the lot may not begin until the Department has approved a major planning requirement, including, but not limited to, a plan update revision or a special study.

(g) The limitations on permit issuance contained in § 72.23(a) and (b) do not apply when the provisions of § 72.23(d) have been met.

(Editor's Note: Proposed changes to § 71.32(b) appeared in the August 5, 1995, proposal.)

PLANNING GRANTS

§ 71.41. Grants for the preparation of official plans.

Under section 6 of the act (35 P. S. § 750.6) and §§ 71.42 and 71.43 (relating to application for grants; and approval of grants), the Department will administer grants to municipalities, counties and authorities for preparing update revisions and special studies to the extent of the appropriations made by the General Assembly for that purpose. Municipalities, counties and authorities intending to apply for the grants shall submit to the Department an outline of the proposed plan content, time schedule for plan completion and estimated cost by planning task on **[the Department's Task/Activity Report]** a form provided by the Department or other **[acceptable]** form acceptable to the Department prior to beginning the plan. Costs for completion of planning activities outside the scope of the proposed plan content are not eligible for a grant unless proposals for inclusion of additional activities and increased costs associated with these activities have been submitted to and approved by the Department and are within the scope of the act.

§ 71.43. Approval of grants.

* * * * *

(d) The Department may pay planning grants for joint municipal plans submitted under § 71.12(b) (relating to municipal responsibility to revise plans) without official adoption of the plan from participating municipalities when:

* * * * *

(3) The Department has notified the municipality not adopting the joint-municipal plan that **[their]** its official plan is in a disapproved status; or has determined that the municipality's official plan adequately addresses the existing and future sewage disposal needs of the municipality.

* * * * *

§ 71.44. Duplicate planning.

The Department will not pay grants under the act for information which has been completed previously or collaterally under local, State or Federal funding programs. The plan shall incorporate this information by reference.

Subchapter C. NEW LAND DEVELOPMENT

PLAN REVISIONS

§ 71.51. General.

(a) A municipality shall revise its official plan when:

(1) A new subdivision is proposed, except as provided by § 71.55 (relating to exceptions to the requirement to revise the official plan for new land development) or subsection (b).

* * * * *

(b) Except for new land developments proposing the use of retaining tanks, exemptions from sewage facilities planning for new land development will be processed as follows:

(1) Revisions for new land development, exceptions to the requirement to revise and supplements are not required, and permits for onlot systems using a soil absorption area or a spray field may be issued without this planning, when the Department or, in the case of supplements, a delegated agency determines that the following have been met:

(i) The official plan shows that those areas of the municipality are to be served by onlot sewage disposal facilities using a soil absorption area or a spray field as confirmed by signature of the municipal officials.

(ii) The area proposed for the use of individual or community sewage systems is not underlain by carbonate geology nor is this area within 1/4 mile of water supplies documented not to exceed 5ppm nitrate-nitrogen as confirmed by the Department from a USGS geology map or sampling data.

(iii) The area proposed for development is outside of high quality or exceptional value watersheds established under the regulations and policies promulgated under the Clean Streams Law as confirmed by the Department from the location of the new land development on a USGS topographic quadrangle map.

(iv) Subdivided lots and the remaining portion of the original tract after subdivision are 1 acre or larger as confirmed by signature of the applicant.

(v) Complete soils testing and site evaluation establish that separate sites are available for both a permissible primary soil absorption area or spray field and a replacement soil absorption area or spray field on each lot of the subdivision as confirmed by a signed report of the sewage enforcement officer serving the municipality in which the new land development is proposed.

(2) Revisions for new land development and supplements are not required for subdivisions proposing a connection to or an extension of public sewers when the following occur:

(i) The Department or delegated agency determines that existing collection, conveyance and

treatment facilities are in compliance with the Clean Streams Law and the rules and regulations promulgated thereunder.

(ii) The Department or delegated agency determines that the permittees of the receiving sewerage facilities have submitted information under Chapter 94 (relating to municipal wasteload management) which documents that the existing collection, conveyance and treatment system does not have an existing hydraulic or organic overload or 5-year projected overload.

(iii) The applicant has provided written certification from the permittees of the collection, conveyance and treatment facilities to the municipality or delegated agency in which the subdivision is located that there is capacity to receive and treat the sewage flows from the applicant's proposed new land development and that the additional wasteload from the proposed new land development will not create a hydraulic or organic overload or 5-year projected overload.

(iv) The municipality has a current approved sewage facilities plan update revision which is being implemented. For the purposes of exempting a subdivision from completing sewage facilities planning under this section, the phrase "a current approved sewage facilities plan update revision which is being implemented" shall include official plans of municipalities which are not under an order from the Department to submit an update revision or special study for the area in which the subdivision is proposed.

(3) The Department will provide delegated agencies sufficient information to make the required determinations under paragraph (1)(iii), (2)(i), (2)(ii) and (2)(iv). When the determination under paragraph (1) or (2) is made by a delegated agency, that agency shall submit to the Department quarterly reports which include the names of the subdivisions, location of the subdivisions, number of lots and projected sewage flows for each subdivision exempted from the planning provisions under this subsection.

(4) Information in support of a request for a sewage facilities planning exemption under this section shall be submitted on a form provided by the Department.

(5) This subsection does not apply to new land development proposals intended to be served by sewage facilities which require or which must apply for a new or modified permit from the Department under the Clean Streams Law.

§ 71.53. Municipal administration of new land development planning requirements for revisions.

* * * * *

(b) The municipality shall review [and act upon a complete] sewage facilities planning [module within 60 days of] modules upon receipt and, if appropriate comments have not been received under subsection (d)(2) and (5), shall forward a copy of the sewage facilities planning modules to the sewage enforcement officer and appropriate planning or zoning agencies within 10 days of receipt. The municipality shall determine if the submittal of the sewage facilities planning module is complete within 10 days of the receipt of comments from the

sewage enforcement officer and appropriate planning or zoning agencies. The municipality shall review and act upon a complete sewage facilities planning module proposing a revision for new land development within 60 days of receipt or additional time as the applicant and municipality may agree to in writing. Failure of the municipality to act within the 60-day period or an agreed-to extension will cause the revision for new land development to be deemed approved by the municipality and the complete sewage facilities planning module shall be submitted to the Department by the municipality or applicant. Documentation of the period of time the revision was in possession of the municipality shall be in the form of a completeness checklist signed by an official of the municipality confirming that the requirements of subsection (d) have been met.

* * * * *

(d) For the purposes of this section, no plan revision for new land development will be considered complete unless it includes the following:

* * * * *

(6) Evidence documenting newspaper publication [—which meets]. The newspaper publication may be provided by the applicant or the applicant's agent, the municipality or the local agency by publication in a newspaper of general circulation within the municipality affected. When an applicant or an applicant's agent provides the required notice for publication, the applicant or applicant's agent shall notify the municipality or local agency and the municipality and local agency will be relieved of the obligation to publish. The newspaper notice shall notify the public where the plan is available for review and indicate that all comments regarding the proposal shall be sent to the municipality within which the new land development is proposed. The newspaper publication shall meet the requirement of § 71.31(c)[—] and provide notice of the proposed plan adoption action when the proposal involves one of the following:

* * * * *

(iii) Will result in a public expenditure in excess of \$100,000 for the sewage facilities portion of a project.

* * * * *

(f) A municipality may refuse to adopt a proposed revision to [their] its official plan for new land development for the following reasons, including, but not limited to:

* * * * *

(h) A municipality may not adopt a proposed revision to the official plan, conditionally or otherwise, until it determines that the proposal complies with [applicable] sewage related municipal zoning, land use or other municipal comprehensive plans. If changes to the proposed revision or the applicable plan, regulation or ordinance are necessary, the changes shall be completed prior to adoption of the revision by the municipality.

* * * * *

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

(a) [No] A proposed plan revision for new land development will not 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) [No] 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) and processing fees for the Department's review of the sewage facilities planning module. For the purpose of this section, the Department will determine whether a submission for a residential subdivision plan is complete in accordance with § 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) and 72.23(a) and (b) (relating to Department responsibility to review and act upon official plans; and limitation on onlot system permit issuance) [applies] apply.

[(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 [receipt of a complete] 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.

* * * * *

(Editor's Note: Section 71.54(b) and (d) were proposed to be amended in the August 5, 1995, proposal.)

§ 71.55. Exceptions to the requirement to revise the official plan for new land development.

(a) A municipality does not have to revise its official plan when the Department determines that the proposal is for the use of individual onlot sewage systems serving detached single family dwelling units in a subdivision of ten lots or less and the following apply:

* * * * *

(4) The proposal is consistent with the requirements of § 71.21(a)(5)[(i)—] (iii) (relating to content of official plans).

* * * * *

(c) [Municipalities shall comply with § 71.53(a) and (b) (relating to municipal administration of new land development planning requirements for revisions) when reviewing the proposals.] The municipality shall review sewage facilities planning modules upon receipt. If appropriate documenta-

tion and comments required by subsection (b) were not included in the planning module, the municipality shall forward a copy of the sewage facilities planning module to the sewage enforcement officer and appropriate planning or zoning agency within 10 days of receipt. The municipality shall review and act upon an application for an exception to the requirement to revise an official plan within 60 days of receipt of a complete sewage facilities planning module or additional time that the applicant and municipality may agree to in writing. Failure of the municipality to act within the 60-day period or an agreed-to time extension shall cause the application for the exception to the requirement to revise to be deemed approved by the municipality and the complete application shall then be submitted to the Department by the municipality or the applicant. Documentation of the period of time the exception to the requirement to revise was in possession of the municipality shall be in the form of a completeness checklist signed by a municipal official confirming that the requirements of subsections (a) and (b) have been met.

(d) [Proposals qualifying under this section shall be considered adequate if the Department does not respond within 60] The Department may act on requests for exceptions to the requirement to revise official plans within 30 days of the Department's receipt of the properly completed and submitted components of the Department's sewage facilities planning module [along with], proper written documentation and [the sewage facility planning module meets the requirements of this chapter] processing fees for the Department's review of the sewage facilities planning module. If the Department fails to act within the 30-day period, the exception to the requirement to revise the official plan shall be deemed to be applicable.

§ 71.58. Delegation of new land development planning.

(a) The Department may, by agreement, delegate to a local agency, multimunicipal local agency or county or joint county department of health the power and duty to require the submittal of and review, and to approve or disapprove sewage facilities planning modules for new land development which are submitted on planning module forms and other documents provided by the Department. Additionally, the following applies:

(1) Sewage facilities planning modules approved by a delegated agency under this section do not constitute a revision or exception to the requirement to revise under this chapter but shall be a supplement to the official sewage facilities plan.

(2) Delegated agencies may assess fees for the review of supplements under this section. Fees received under this section shall be used solely for the purpose of administering the delegated powers and duties related to the new land development planning provisions of this section.

(3) The Department may limit the review of supplements in the delegation agreements to specific classifications of sewage facilities or new land developments.

(4) When delegation is requested, § 72.44(c) and (d) (relating to reimbursement) shall be met as a prerequisite to the delegation.

(5) Delegation of the review and approval of supplements for new land development may be granted by the Department if the local agency or county or joint county department of health has adequately documented the following to the Department:

(i) The municipalities or counties to be included in the delegation agreement have municipal or countywide subdivision and land development ordinances in effect under the Pennsylvania Municipalities Planning Code (53 P.S. §§ 10101—11202).

(ii) The municipalities to be included in the delegation agreement have a current official sewage facilities plan which is being implemented in accordance with the content of the plan's implementation schedule and the provisions of the act, the Clean Streams Law and this part. For the purposes of determining qualifications for delegation under this section, the phrase "current official sewage facilities plan which is being implemented" shall include official plans of municipalities which are not under an order from the Department to submit an update revision or special study for the area in which the subdivision is proposed.

(iii) The municipalities or counties to be included in the delegation agreement have municipal or countywide subdivision and land development ordinances in effect which require:

(A) Sewage facilities planning approval as a condition attached to final plat approval under the Pennsylvania Municipalities Planning Code.

(B) Documentation that sewage facilities planning is not required under this part.

(iv) When delegation is requested for the review of new land developments proposing the use of public sewerage facilities which do not require a new or modified permit under the Clean Streams Law, the delegation agreement includes coordination procedures to be used with the Department to assure continued compliance with the municipal wasteload management provisions of the Clean Streams Law.

(v) The local agency and any sewage enforcement officer employed by the local agency serving the municipalities to be included in the delegation agreement have not been issued a notice of violation or order by the Department for a violation of the act or the rules and regulations promulgated thereunder for the prior 3 years as determined by the Department.

(vi) A workload analysis is completed by the entity requesting delegation which analyzes the volume of work anticipated and the staffing and support resources needed to administer the program and documents that the fees proposed to be charged by the delegated agency to administer the sewage facilities planning reviews are sufficient to allow the delegated agency to act upon supplements within the time limits established by this chapter.

(vii) The administrative procedures, rules, regulations, fee schedules and contracts for services and applicable municipal ordinances, rules and regulations proposed for use by the delegated agency in the administration of the delegated provisions of this chapter are listed. Delegated agencies shall use forms provided by the Department for the submittal and review of all supplements.

(6) Supplements to an official plan shall be prepared by the person proposing the new land development and shall be reviewed and acted upon by the delegated agency. Within 10 days of the approval or disapproval of the supplement, a copy of the completed planning modules and the approval or disapproval letter of the delegated agency shall be submitted to the Department by the delegated agency.

(7) The failure of or refusal of a municipality, local agency, multimunicipal local agency or county or joint county department of health to enter into a delegation agreement may not influence the eligibility of the local agency serving that municipality or the local agency itself to receive 85% reimbursement under Chapter 72 (relating to administration of sewage facilities permitting program).

(b) The Department will review the delegated agencies' performance of the duties established by delegation agreements under this section and may revoke the agreements for cause.

§ 71.59. Delegated agency administration of new land development planning requirements.

(a) When the Department has delegated the authority to review and approve subdivisions for new land developments to a delegated agency, the regulatory provisions of the Department in §§ 71.54 and 71.55 (relating to Department administration of new land development planning requirements for revisions; and exceptions to the requirement to revise the official plan for new land development) shall be administered by the delegated agency except that the time limits for review shall be in accordance with subsection (c).

(b) A new land development proposal submitted as a revision or an exception to the requirement to revise may be approved by the delegated agency as the submission of a supplement to the official plan of the municipality.

(c) The delegated agency shall determine if a submission is complete within 10 days of its receipt. Delegated agencies shall approve or disapprove supplements within 60 days of the date of a complete submission or additional time that the applicant and delegated agency may agree to in writing.

(d) A copy of each supplement approved by a delegated agency shall be forwarded to the Department in accordance with § 71.58(a)(6) (relating to delegation of new land development planning). No additional approval by the Department is required.

(e) Where planning modules for new land development propose service by sewerage facilities requiring a new or modified permit from the Department under the Clean Streams Law, the new land

development planning module shall be forwarded to the Department for final action.

Subchapter D. OFFICIAL PLAN REQUIREMENTS FOR ALTERNATIVE EVALUATIONS

§ 71.62. Individual and community onlot sewage systems.

* * * * *

(b) When an official plan or revision proposes the renovation of sewage effluent by means of a subsurface absorption area or a spray irrigation system, the following shall be provided:

(1) Anticipated raw waste characteristics of the sewage. Where industrial wastes as defined in the Clean Streams Law are expected to be present in the raw sewage, § 72.25 [(f)](g)(2) (relating to issuance of permits) applies.

(2) Documentation that the soils and geology of the proposed site are generally suitable for the installation of the systems including:

* * * * *

(iii) Soil profiles as described in Chapter 73 (relating to standards for onlot sewage [disposal] treatment facilities) shall be performed to insure that an adequate area with suitable soils is available in the area of the proposed system. These profiles shall be approximately equally distributed among the various soils mapped in the area. For the purpose of this section, each change of slope or change in erosion characteristic specified as part of the soil classification system of the United States Soil Conservation Service will be equivalent to a change in soil type.

* * * * *

(c) This chapter does not preclude the use of individual and community onlot sewage systems using subsurface soil absorption areas on lots less than 1 acre in size or the use of large volume onlot sewage systems. Because of the potential for the creation of a public health hazard or pollution of the waters of this Commonwealth from high density use, improper system siting or inadequate maintenance of individual and community onlot systems, particular attention shall be given in official plans and revisions to the technical and institutional feasibility of using the systems.

(1) Additional permeability testing is required when an official plan or revision proposes the use of a large volume onlot sewage system or a community onlot system with a sewage flow in excess of 10,000 gallons per day [or less], and may be required for other onlot system proposals where the total absorption area is greater than 5,000 square feet or where soil profiles or geology reveal slowly permeable conditions below the depth at which the percolation test was performed. Sufficient testing shall be conducted to:

* * * * *

(2) A preliminary hydrogeologic evaluation is required when the use of subsurface soil absorption areas is proposed and one of the following exists:

* * * * *

(ii) A subdivision of more than 50 equivalent dwelling units with a density of more than one [lot including] equivalent dwelling [units] unit per acre is proposed.

* * * * *

§ 71.63. Retaining tanks.

* * * * *

(b) General requirements for retaining tank use are as follows:

* * * * *

(3) A municipality, sewer authority or sewage management agency may delegate or contract for the collection and disposal of the contents of the retaining [tanks' contents] tanks except that the ultimate responsibility for the proper collection and disposal of the contents shall remain with the municipality, authority or agency.

* * * * *

(e) The restrictions in subsections (c)(1) and (2) do not apply to holding tanks when the use is for [an institutional] institutions, recreational vehicle dump stations or commercial [establishment] establishments with a sewage flow of 400 gallons per day or less.

(f) A privy [or chemical toilet] is designed to receive sewage where there is no water under pressure and no piped wastewater. Privies shall be used in lieu of other methods of sewage disposal only when the following conditions are met:

(1) The applicable official plan or the revision thereto indicates the use of privies for that lot and documents that soil and site suitability testing of that lot under §§ 73.11—73.16 has been conducted, and the site meets the requirements for the ultimate sewage disposal by one of the systems described under §§ 73.51—73.55 (relating to construction of absorption areas) to assure that adequate sewage facilities will be available if water under pressure [or], piped water or piped wastewater becomes available to that lot in the future.

(2) The municipality, sewer authority or other Department approved entity with jurisdiction or responsibility over the site has by suitable ordinance, regulation or restriction assumed responsibility for the removal of a privy and the installation of an approved onlot sewage disposal system when water under pressure [or], piped water or piped wastewater is provided to the lot.

(g) The restrictions in subsection (f) do not apply[:

(1) To] to a privy [or chemical toilet] when proposed for use on an isolated lot which is 1 acre or larger and is not served [now] currently and will not be served in the future by water under pressure [or], piped water or piped wastewater.

[(2) To temporary use of portable retention tanks or portable chemical toilets when their use is proposed at construction sites or at the site of public gathering and entertainments.]

§ 71.64. Small flow treatment facilities.

* * * * *

(b) Small flow treatment facilities are restricted to use as a replacement or repair system which the Department determines is necessary to abate an existing nuisance or public health hazard or as a system to serve residential dwellings or commercial facilities which generate domestic wastewater not containing industrial waste.

(c) When an official plan or update revision proposes the use of small flow treatment facilities, the official plan

or revision shall, as a minimum, contain the following, in addition to the requirements of Subchapters B and C (relating to official plan requirements; and new land development plan revisions):

* * * * *

(6) An evaluation that establishes specific responsibilities for operation and maintenance of the proposed system which [may] shall include [the requirements of Subchapter E (relating to sewage management programs). When small flow treatment facilities are proposed as an alternative to serve an established needs area, the requirements of Subchapter E shall be met.] Documentation that one or a combination of the following operation and maintenance requirements have been established or approved in writing by the municipality:

(i) A maintenance agreement between the property owner and an individual, firm or corporation experienced in the operation and maintenance of sewage treatment systems.

(ii) A maintenance agreement between the property owner and municipality or its designated local agency which establishes the property owner's responsibility for operating and maintaining the system and the responsibility of the municipality or local agency for oversight of the system.

(iii) A municipal ordinance which requires that the small flow treatment facilities be operated and maintained through a maintenance agreement between the property owner and an individual, firm or corporation experienced in the operation and maintenance of sewage treatment systems.

(iv) Municipal ownership of the system.

(v) Inclusion of the system under a sewage management agency developed in accordance with § 71.73 (relating to sewage management programs for sewage facilities permitted by local agencies) operated by the municipality.

(vi) A properly chartered association, trust or other private entity which is structured to manage the system.

(7) Establishment of bonding, escrow or other security prior to planning approval. The bonding, escrow or other security shall be forfeited to the municipality upon notice of continuing noncompliance of the system with the operation, maintenance and monitoring standards contained in the Department's "Design Guidelines for Small Flow Sewage Treatment Facilities" or noncompliance with the municipal assurances for management of the operation and maintenance requirements established through this section. The municipality shall use the forfeited security to cover the costs of repair or future operation and maintenance of the system over its design life. The bonding, escrow or other security shall be for an amount up to a maximum of 50% for each of the first 2 years of operation and no more than 10% each year thereafter of the equipment and installation cost of the system.

[(7)] (8) ***

[(8)] (9) ***

* * * * *

Subchapter E. SEWAGE MANAGEMENT PROGRAMS

§ 71.72. Sewage management programs for Department permitted sewage facilities.

(a) When an official plan or revision to an official plan for existing needs areas or new land development proposes the construction of Department permitted nonmunicipal sewage facilities, **(except for small flow treatment facilities which shall comply with the management provisions of § 71.64(c)(6)) (relating to small flow treatment facilities)** the official plan or revision shall evaluate the options available to assure the long-term proper operation and maintenance of the proposed sewage facilities. The municipality, prior to adoption of that official plan or revision, shall require one or more of the [following] **bonding options and one or more of the sewage management options described in both subsections (b) and (c).**

(b) Bonding options.

* * * * *

(2) A bond or escrow account sufficient to cover the costs of future operation and maintenance of the sewage facilities under local ordinances. **Bonding, escrow or other security shall be forfeited to the municipality upon notice by the Department of continuing non-compliance of the system with the operation and maintenance standards established through a condition in the permit issued by the Department. The municipality shall use the forfeited security to cover the costs of repair or future operation and maintenance of the system over its design life or until the system is in compliance and being properly operated and maintained. The bonding, escrow or other security shall be for an amount up to a maximum of 50% for each of the first 2 years of operation and no more than 10% each year thereafter of the equipment and installation cost of the system.**

(c) Sewage management options.

(1) A maintenance agreement between the property owner and an individual, firm or corporation experienced in the operation and maintenance of sewage treatment systems.

(2) A maintenance agreement between the property owner and municipality or its designated local agency which establishes the property owner's responsibility for operating and maintaining the system and the responsibility of the municipality or local agency for oversight of the system.

(3) A municipal ordinance which requires the system to be operated and maintained through a maintenance agreement between the property owner and an individual, firm or corporation experienced in the operation and maintenance of sewage treatment systems.

[(3)] (4) ***

[(4)] (5) ***

[(5)] (6) ***

[(6)] (7) ***

[(7) One] **(8) Bonding as described in subsection (b) and one or a combination of the requirements in paragraphs (1)—[(6)](7) or other actions permitted by and consistent with the act and the Clean Streams Law**

found necessary by the Department to insure proper installation, maintenance and operation of the proposed sewage facilities.

§ 71.73. Sewage management programs for sewage facilities permitted by local agencies.

* * * * *

(b) When an official plan or official plan revision shows, or the Department determines, that existing sewage facilities permitted by the local agency need periodic inspection, operation or maintenance to provide long-term proper operation, or are not properly functioning because of inadequate operation and maintenance, the municipality shall revise its official plan to establish a sewage management program for these types of facilities. The update revision shall include the following as a minimum:

* * * * *

(2) Standards consistent with section 8(b)(9) of the act (35 P. S. § 750.8(b)(9)) for operation, maintenance, repair or replacement of sewage facilities which include:

(i) Removal of septage or other solids from treatment tanks once every 3 years or whenever an inspection program reveals **that** the treatment tanks are filled with solids in excess of 1/3 of the liquid depth of the tank or with scum in excess of 1/3 of the liquid depth of the tank.

* * * * *

(iv) Requirements for the operation and maintenance of electrical, mechanical and chemical components of the sewage facilities; collection **and** conveyance piping, pressure lines and manholes; alarm and flow recorded devices; pumps; disinfection equipment and related safety items.

* * * * *

(c) When the official plan update identifies a local agency as the entity responsible for administering a municipal sewage management program and when the local agency identified in the official plan update agrees to administer the program, the local agency is eligible for reimbursement of eligible costs for administrative and personnel expenditures to implement sewage management programs under § 72.44 (relating to reimbursement).

(d) When the official plan identifies the municipality as the entity responsible for administering a municipal sewage management program and when that municipality's onlot system permitting program is administered by a multimunicipal local agency or a county or joint county department of health, the municipality is eligible for reimbursement of eligible costs for the administration and personnel expenditures to implement a sewage management program where these costs are billed to the local agency under § 72.44.

§ 71.75. Private request to require a sewage management program.

A person who is a resident or a legal or equitable property owner in a municipality may [request] file a private request with the Department requesting that the Department [to] order [that] the municipality to revise its official sewage plan under § 71.14 (relating to private request to revise official plans) when the resident or property owner can show one of the following:

* * * * *

Subchapter F. FEES

§ 71.81. General requirements.

Delegated agencies and the Department may charge fees for the review of sewage facilities planning modules for new land development.

§ 71.82. Delegated agency fees.

Delegated agencies shall establish fees for the review of sewage facilities planning modules for new land development in fee schedules formally adopted by the delegated agency and available to the public. Fees may be charged for each review of a planning module.

§ 71.83. Department fees.

(a) Fees charged by the Department for the review of sewage facilities planning modules for new land development shall be in accordance with section 10(12) of the act (35 P. S. § 750.10(12)) and will be shown on and be specific to each type of planning module component.

(b) A subsequent submission following a planning module denial shall be considered a new submission for the purpose of fee assessment. Denial of a planning module does not include the planning module completeness review procedure.

(c) Fees may not be charged for activities relating to determinations by the Department under § 71.51(b) (relating to general).

CHAPTER 72. ADMINISTRATION OF SEWAGE FACILITIES PERMITTING PROGRAM

§ 72.1. Definitions.

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

* * * * *

Alternate sewage system—A [system employing the use] method of demonstrated [technology in a manner] onlot sewage treatment and disposal not [specifically recognized by this title] described in this part.

Bonded disposal system—An individual onlot sewage system located on a single lot serving a single family residence, where soil mottling is within 20 inches of the mineral soil surface except for spray irrigation system installations.

* * * * *

Clean Streams Law—The Clean Streams Law (35 P. S. §§ 691.1—691.1001).

Conventional sewage system—A system employing the use of demonstrated onlot sewage treatment and disposal technology in a manner specifically recognized by this part. The term does not include alternate sewage systems or experimental sewage systems.

* * * * *

Delegated agency—A municipality, local agency, multimunicipal local agency or county or joint county department of health to which the Department has delegated the authority to review and approve subdivisions for new land developments as supplements to the official plan of a municipality in which the subdivision is located.

[*Department*—The Department of Environmental Resources of the Commonwealth.

Environmental Hearing Board—The board established under section 1921-A of The Administrative Code of 1929 (71 P. S. § 510-21) for the purposes set forth in that section.]

Experimental sewage system—A method of onlot sewage treatment and disposal not described in this title which is proposed for the purpose of testing and observation.

Individual residential spray irrigation system—An individual onlot sewage system which serves a single family dwelling and which treats and disposes of sewage using a system of piping, treatment tanks and soil renovation through spray irrigation.

* * * * *

Municipality—A city, town, township, [or] borough or home rule municipality other than a county.

* * * * *

Official plan revision—A change in the municipality's official plan to provide for additional, newly identified future or existing sewage facilities needs, which may include one or more of the following:

(i) *Update revision*—A comprehensive revision to an existing official plan required when the Department or municipality determines an official plan or one or more of its parts is inadequate for the existing or future sewage facilities needs of a municipality or its residents or landowners.

(ii) *Revision for new land development*—A revision to a municipality's official plan resulting from a proposed subdivision as defined in the act.

(iii) *Special study*—A study, survey, investigation, inquiry, research report or analysis which is directly related to an update revision. The studies provide documentation or other support necessary to solve specific problems identified in the update revision.

(iv) *Supplement*—A sewage facilities planning module for a subdivision for new land development which will not be served by sewage facilities requiring a new or modified permit from the Department under the Clean Streams Law, and which is reviewed and approved by a delegated agency.

(v) *Exception to the requirement to revise*—A process established in § 71.55 (relating to exceptions to the requirement to revise the official plan for new land development) which describes the criteria under which a revision for new land development is not required.

Person—An individual, association, public or private corporation for-profit or not-for-profit, partnership, firm, trust, estate, department, board, bureau or agency of the United States or the Commonwealth, political subdivision, municipality, district, authority or other legal entity which is recognized by [statute] law as the subject of rights and duties. [When used in a clause prescribing and imposing a penalty or imposing a fine or imprisonment, the] The term includes the members of an association, partnership or firm and the officers of a local agency or municipal, public or private corporation for profit or not-for-profit.

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.

* * * * *

Retaining tank—A watertight receptacle which receives and retains sewage and is designed and constructed to facilitate ultimate disposal of the sewage at another site. The term includes, but is not limited to, the following:

[(i) **Chemical toilet**—A permanent or portable nonflushing toilet using chemical treatment in the retaining tank for odor control.

(ii)] (i) ***

[(iii)] (ii) ***

[(iv)] (iii) ***

[(v)] (iv) ***

[(vi)] (v) ***

Sewage—A substance that contains waste products or excrement or other discharge from the bodies of human beings or animals and noxious or deleterious substances harmful or inimical to the public health, or to animal or aquatic life, or to the use of water for domestic water supply or for recreation. The term includes substances which constitute pollution under [The] the Clean Streams Law [(35 P. S. §§ 691.1—691.1001).]

Sewage Enforcement Officer—[The] An official of the local agency who reviews permit applications and sewage facilities planning modules, issues permits as authorized by the act and conducts investigations and inspections that are necessary to implement the act and the regulations thereunder.

Sewage facilities—A [method] system of sewage collection, conveyance, treatment and disposal which will prevent the discharge of untreated or inadequately treated sewage or other waste into waters of this Commonwealth or otherwise provide for the safe and sanitary treatment and disposal of sewage or other waste.

(i) **Individual sewage system**—A sewage facility, whether publicly or privately owned, located on a single lot and serving one equivalent dwelling unit and collecting, treating and disposing of sewage in whole or in part into the soil or into waters of this Commonwealth or by means of conveyance of re-

taining tank wastes to another site for final disposal. Individual sewage systems include:

(A) **Individual onlot sewage system**—[A] An individual sewage system which uses a system of piping, tanks or other facilities [serving a single lot and] for collecting, treating and disposing of [domestic] sewage into a [subsurface] soil absorption area, spray field or retention in a retaining tank [located on that lot].

(B) **Individual sewerage system**—An individual sewage system which uses a method of sewage collection, conveyance, treatment and disposal other than renovation in a [subsurface] soil absorption area, or retention in a retaining tank.

(ii) **Community sewage system**—A sewage facility, whether publicly or privately owned, for the collection of sewage from two or more lots, or two or more equivalent dwelling units and the treatment or disposal, or both, of the sewage on one or more of the lots or at another site.

(A) **Community onlot sewage system**—A system of piping, tanks or other facilities serving two or more lots and collecting, treating and disposing of domestic sewage into a [subsurface] soil absorption area or retaining tank located on one or more of the lots or at another site.

(B) **Community sewerage system**—A community sewage system which uses a method of sewage collection, conveyance, treatment and disposal other than renovation in a soil absorption area, or retention in a retaining tank.

Sewage management program—A program conforming to Chapter 71, Subchapter E (relating to sewage management programs), authorized by the official action of a municipality for the administration, management and regulation of the disposal of sewage.

Soil horizon—A layer of soil approximately parallel to the soil surface, the chemical and physical characteristics of which are distinguishable by observation or other method of analysis, from the chemical and physical characteristics in adjacent layers of soil.

Soil profile—The collection of soil horizons, including the natural organic layers on the surface.

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

Subdivision—The division or redivision of a lot, tract or other parcel of land into two or more lots, tracts, parcels or other divisions of land[. The term includes] including changes in existing lot lines. The enumerating of lots shall include as a lot that portion of the original tract or tracts remaining after other lots have been subdivided therefrom.

* * * * *

(Editor's Note: The definition of "bonded disposal system" was proposed to be added in the August 5, 1995, proposal.)

§ 72.2. Scope.

(a) This chapter is adopted in accordance with the duties imposed upon the Department under the act and [The] the Clean Streams Law [(35 P. S. §§ 691.1—

691.1001] and applies to local agencies and Sewage Enforcement Officers administering the act and to persons installing individual or community onlot sewage systems.

* * * * *

(c) This chapter governs the issuance of permits for retaining tanks, or for individual and community onlot sewage systems which employ renovation of sewage effluent in a [**subsurface**] **soil** absorption area or **spray field**, except for large volume onlot sewage systems. The use of large volume onlot sewage systems creates a danger of pollution of the waters of this Commonwealth, regulation of large volume onlot sewage systems by the Department is necessary to avoid the pollution, and large volume onlot sewage systems require permits issued by the Department under sections 201, 202, 207 and 402 of [**The**] **the** Clean Streams Law (35 P. S. §§ 691.1, 691.201, 691.202, 691.207 and 691.402). No local agency or Sewage Enforcement Officer may issue a permit for an individual or community onlot sewage system which does one of the following:

(1) Discharges directly to the surface of the ground or to the surface waters of this Commonwealth **except when the proposed sewage system is an individual residential spray irrigation system which conforms with the standards established under Chapter 73 (relating to standards for onlot sewage treatment facilities).**

* * * * *

(3) Is proposing or designed for the disposal of substances defined as industrial wastes under [**The**] **the** Clean Streams Law [(35 P. S. §§ 691.1—691.1001)].

(4) **Violates this chapter, Chapters 71, 73, the act or the Clean Streams Law.**

Subchapter B. PERMIT REQUIREMENTS

§ 72.21. General.

(a) A local agency shall employ or contract with at least one [**Sewage Enforcement Officer**] **sewage enforcement officer and one alternate sewage enforcement officer** who [**has**] **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) A local agency shall employ an adequate number of sewage enforcement officers or contract with individuals, firms or corporations to adequately perform the services of sewage enforcement officers to administer the applicable provisions of this chapter within the time periods set forth in this chapter and in accordance with this chapter and Chapter 73 (relating to standards for onlot sewage treatment facilities).

[(b)] (c) 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 or contracted by [**them**] **the local agency.**

[(c)] (d) ***

[(d)] (e) ***

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

(Editor's Note: Subsection (f) was originally proposed as subsection (e) in the August 5, 1995, proposal.)

§ 72.22. Permit issuance.

(a) No person may install, **award a contract for construction** or construct an individual or community on-lot 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 (c) [(d) and (e)]—(e).

(b) A permit [**is**] **shall be** required by the local agency for alterations or connections to an existing individual or community on-lot sewage system when the alteration or connection requires the repair, replacement, **disturbance, modification** or enlargement of a treatment tank, [**subsurface**] **soil** absorption area or **spray field, soil within or under the soil absorption area, spray field** 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)] ***

[(e) **Unless a local agency requires a permit by ordinance, no permit is required for the installation of an individual onlot sewage system under this section if:**

(1) **The onlot sewage system is for a residential structure occupied or intended to be occupied by no more than two families one of whom is the property owner on a contiguous tract of land of 10 acres or more.**

(2) **The owner of the property is the owner of record as of January 10, 1987.**

(3) **The property owner completes the construction of the structure and the individual onlot sewage system serving the structure by January 10, 1989.]**

(d) **Except when a local agency or municipality requires a permit by ordinance, no permit or official plan revision will be 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 owner's immediate 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.**

(e) **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 where 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 lots or parcels subdivided from either lot, tract or parcel in the future will not be eligible for a 10-acre permit exemption and shall meet the planning, permitting, siting and construction standards of the Department 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.

(f) Owners of property qualifying for a permit exemption under subsections (d) and (e) 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 flood plain 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 (d) and (e) for a permit-exempt system installs such a system, the person shall notify the local agency of the installation. The local agency may charge a fee, not to exceed \$25, to verify that the system is located in accordance with the siting requirements of this subsection.

(g) A permit is not required when a new dwelling is proposed to replace a previously existing dwelling when the local agency determines that the size and anticipated use of the new dwelling, as determined under §§ 73.16 and 73.17 (relating to requirements for absorption areas requirements; and sewage flows), are the same size and use or lesser size and use as the previously existing dwelling and the previously existing dwelling was in use within 1 year of the anticipated date of completion of construction of the new dwelling. This exception does not apply when an active investigation of a malfunction is under way by the local agency or the Department.

(Editor's Note: Subsections (d)—(f) were originally proposed as subsections (e)—(g) in the August 5, 1995, proposal).

§ 72.23. Limitation on [permits] onlot system permit issuance.

(a) The local agency may not issue permits for individual or community onlot sewage systems unless the following exist:

(1) The proposed system is consistent with the method of sewage disposal contained in the **approved** official plan, **special study or update revision** of the municipality in which the system is to be located.

(2) The municipality is implementing its official plan, **special study or update revision** in accordance with a schedule approved by the Department.

(3) The municipality has received approval of a revision for new land development or exception to the requirement to revise from the Department, a supplement for new land development has been approved by the delegated agency serving the municipality or the Department or delegated agency

has determined that no planning is required under § 71.51(b) (relating to general).

(b) [The limitations on permit issuance contained in subsection (a) do not apply when one or more of the conditions of section 7(b)(5) of the act (35 P. S. § 750.7(b)(5)) are met.]

Permits may not be issued when the municipality has one or more of the following:

(1) No approved official plan.

(2) Not received Department approval of an update revision or special study to the official plan.

(3) Not implemented its plan as required by this part or by an order of the Department.

(c) Permit limitations shall be restricted to those areas of the municipality identified in writing to the municipality by the Department as posing a serious risk to the health, safety and welfare of persons within or adjacent to the municipality because of the municipality's failure to revise or implement its plan. The limitations shall remain in effect until the municipality has submitted the official plan, update revision or special study to the official plan to, and received the approval of the Department, or has commenced implementation of its plan, update revision or special study in accordance with a schedule approved by the Department.

(d) The limitation on permit issuance contained in this section do not apply:

(1) To those areas of the municipality when the Department or the local agency finds that a replacement soil absorption area or spray field could be installed on the lot if the original system failed. This determination shall be based on the results of a minimum of two complete soils and site evaluations confirmed by the local agency's sewage enforcement officer.

(2) To those areas of the municipality outside of the areas delineated in an order of the Department as requiring an update revision.

(3) To existing subdivisions or sections thereof when the Department or delegated agency finds that either lots or homes in the subdivision or sections thereof have been sold in good faith to a purchaser for value prior to May 15, 1972, and not for the purpose of avoiding the permit limitation provisions of this section. This paragraph does not relieve the municipality of its planning responsibilities as specified in the act.

(4) When the Department or the local agency finds it necessary to issue permits for the abatement of pollution or the correction of health hazards, or both.

(5) To interim repairs to or the replacement of existing malfunctioning onlot sewage systems.

§ 72.24. Applications for permits.

* * * * *

(c) The local agency shall maintain and make available for public inspection a permanent record of all permit applications submitted, indicating the date received, type of submission and date of disposition.

§ 72.25. Issuance of permits.

* * * * *

(b) The local agency shall issue or deny a permit for a conventional system in writing within 7 days after receiving a complete initial application.

(c) If the local agency determines that an initial application is incomplete or that it is unable to verify the information contained in an application, the local agency shall notify the applicant in writing within 7 days of receipt of the application. The notice shall include the reasons why the application is not acceptable. When the required information is received, the local agency shall act upon the application within 15 days.

(d) A person desiring to install an experimental [or alternate] on-lot sewage system shall submit complete preliminary design plans and specifications to the Sewage Enforcement Officer and the Department for review and comment at least 60 days prior to submitting an application for a permit. The Department [shall] will determine if classification as an experimental [or alternate] system is appropriate for the submission and provide review comments within 60 days to the sewage enforcement officer.

(e) Applications for alternate system permits submitted to municipalities or local agencies which are not delegated agencies, shall be reviewed for completeness, and, if found to be incomplete, the nature of the deficiency shall be communicated by the municipality or local agency to the applicant in writing within 15 days.

(1) Applications for alternate system permits found to be complete shall be submitted to the Department within 5 days of the determination of completeness by the local agency or authorized representative for the Department's determination whether the classification as alternate is appropriate for the submission and the Department's review of comments.

(2) Permits for alternate systems shall be issued or denied by the local agency within 45 days of transmittal of a complete application to the Department. The local agency shall consider the written comments submitted by the Department regarding the application.

(3) In municipalities or local agencies which are delegated agencies or which employ or contract with sewage enforcement officers authorized to review alternate sewage systems under § 72.43(1) (relating to powers and duties of the Department), permit applications for alternate systems shall be reviewed for completeness, and, if found to be incomplete, the nature of the deficiency shall be communicated to the applicant in writing within 15 days of receipt of the application. Permits for alternate systems shall be issued or denied by the local agency within 30 days of receipt of a complete application.

[(e)] (f) ***

[(f)] (g) A local agency may not issue individual or community on-lot sewage system permits for the following systems; permits for these systems are issued by the Department:

* * * * *

(2) Subsurface disposal or other method of disposal of a substance defined as industrial waste under the Clean Streams Law [(35 P. S. §§ 691.1—691.1001)].

(3) A method of sewage disposal other than renovation of sewage in a subsurface absorption area, an individual residential spray irrigation system or temporary storage in a retaining tank.

(h) Prior to the issuance of a permit for an individual residential spray irrigation system, the local agency shall require documentation that the municipality in which the system is to be located, has taken action to assure compliance of the system with § 73.167 (relating to operation and maintenance) for the life of the system. The assurance shall be established through one or a combination of the following options which have been established or approved in writing, by the municipality:

(1) A maintenance agreement between the property owner and an individual, firm or corporation experienced in the operation and maintenance of sewage treatment systems.

(2) A maintenance agreement between the property owner and municipality or its designated local agency which establishes the property owner's responsibility for operating and maintaining the system and the responsibility of the municipality or local agency for oversight of the system.

(3) A municipal ordinance which requires individual residential spray irrigation systems to be operated and maintained through a maintenance agreement between the property owner and an individual, firm or corporation experienced in the operation and maintenance of sewage treatment systems.

(4) Municipal ownership of the system.

(5) Inclusion of the system under a sewage management agency developed in accordance with § 71.73 (relating to sewage management programs for sewage facilities permitted by local agencies) operated by the municipality.

(6) A properly chartered association, trust or other private legal entity which is structured to manage the system.

(i) Bonding, escrow or other security shall be established prior to the issuance of a permit for an individual residential spray irrigation system and must be forfeited to the municipality upon notice of continuing noncompliance of the system with the operation and maintenance standards in § 73.167 (relating to operation and maintenance), monitoring standards in § 72.42(a)(24) (relating to powers and duties of local agencies) and municipal assurances for management of the operation and maintenance requirements established through the provisions of subsection (h). The municipality shall use the forfeited security to cover the costs of repair or future operation and maintenance of the system over its design life. The bonding, escrow or other security shall be for an amount up to a maximum of 50% for each of the first 2 years of operation and no more than 10% each year thereafter of the equipment and installation cost of the system.

(j) When a local agency has issued a permit under this section and the Department disagrees with the basis for the issuance of the permit, the Department will not require the revocation of that permit

unless the Department has provided to the local agency justification for its decision based on the specific provisions of statute or regulation.

§ 72.26. Denial of permits.

* * * * *

(b) The sewage enforcement officer shall accept prior testing data and information obtained by a previous sewage enforcement officer, provided that the site and prior testing is certified by the previous Sewage Enforcement Officer and meets all of the criteria contained in paragraphs (1)—(10) and the current Sewage Enforcement Officer certifies the same to the local agency using a "verification of prior testing" form provided by the Department. There shall be a presumption that, unless the prior Sewage Enforcement Officer's certification has been revoked or suspended by the Department or the prior Sewage Enforcement Officer's certification has been voluntarily surrendered to the Department or Certification Board, the testing data and information obtained by the prior Sewage Enforcement Officer is valid unless the currently employed Sewage Enforcement Officer finds that one or more of the criteria in the following paragraphs are not met:

(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 shall 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 certification has not been revoked, suspended or voluntarily surrendered to the Department or Certification Board.

(3) Verification that the percolation test and soils evaluation were 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 10 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 the 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 which will materially affect the siting or operation of an individual or community onlot sewage disposal system.

(10) Receipt of a notarized statement from the property owner which indemnifies and holds harmless the new Sewage Enforcement Officer, municipality and local agency for the actions of the new Sewage Enforcement Officer in verifying the prior testing data and information obtained by a previous Sewage Enforcement Officer.

(c) If, after conducting a verification of prior testing under subsection (b), a Sewage Enforcement Officer denies an application for a permit or rejects the previous tests performed within the immediately preceding 6 years, retesting and reapplication fees shall be waived to the applicant and the local agency shall pay for any equipment and operators required for a retest and for any necessary redesign of the system if:

(1) The tests were certified by signature of a Sewage Enforcement Officer.

(2) Local agency records document that the Sewage Enforcement Officer who certified the tests was employed or under contract with the local agency at the time the testing was conducted and certified.

(3) The testing documents soils and site suitability for onlot sewage disposal.

(d) The provisions of subsection (c) do not apply if the local agency documents that one of the following exists:

(1) Changes have occurred in the physical condition of lands which will materially affect the siting or operation of an individual or community onlot sewage disposal system covered by a permit as verified by the Sewage Enforcement Officer conducting the testing in accordance with the criteria outlined in subsection (b).

(2) The original soils testing was performed by a Sewage Enforcement Officer whose certification was one of the following:

(i) Revoked by the Department and any subsequent appeal denied.

(ii) Voluntarily surrendered to avoid prosecution or a hearing.

(iii) Suspended by the Department for violations related to the siting, design or installation inspection of onlot systems.

(3) The soils testing and redesign required by the new Sewage Enforcement Officer has been conducted by the local agency using its staff and equipment or contracted services.

(4) The testing under review was conducted more than 6 years prior to the date of the submittal of a permit application for the lot in question.

[(b)] (e) ***

§ 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 [2] 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 as provided by § 72.26(b) (relating to denial of permits).

* * * * *

§ 72.28. Revocation of permits.

(a) A permit shall be revoked by the local agency at any time for one or more of the following reasons:

* * * * *

(3) When information [material] relevant to the issuance of the permit has been falsified.

* * * * *

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

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 § 72.32(a) (relating to sales contracts) 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 the provisions of 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.

(Editor's Note: The provisions of subsection (b) as originally proposed in the August 5, 1995, proposal has been incorporated in § 72.32(a) and (b). The language of subsection (b) has been retained, except that the reference to § 72.22(e) and (f) has been changed to § 72.22(d)–(f).)

§ 72.32. Sales contracts.

(a) Every contract for the sale of a lot which is served by an individual sewage system which was installed under the 10-acre permit exemption provisions of § 72.22(d)–(f) (relating to permit issuance) shall contain a statement in the contract that clearly indicates to the buyer that soils and site testing were not conducted and that the owner of the property or properties 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 § 72.22(d)–(f).

(b) Every contract for the sale of a lot served by a holding tank, whether permanent or temporary, to which sewage is conveyed by a water carrying system and which is designed and constructed to

facilitate ultimate disposal of the sewage at another site, shall contain a statement in the contract that clearly indicates that the property is served by such a tank and shall provide a history of the annual cost of maintaining the tank from the date of its installation or December 15, 1995, whichever is later.

(c) Every contract for sale of a lot which is served by an individual sewage system which was installed under § 72.33 (relating to well isolation distance exemption) with an isolation distance less than the distance specified by § 73.13 (relating to minimum horizontal isolation distances) shall contain a statement in the contract that clearly indicates to the buyer that the isolation distances required by regulation between the individual onlot system components and the well on the property being sold were not met.

(d) Every contract for the sale of a lot which is within an area in which permit limitations are in effect shall contain a statement in the contract that clearly indicates to the buyer that sewage facilities are not available for that lot and construction of a structure to be served by sewage facilities may not begin until the municipality completes a major planning requirement.

(e) A contract for the sale of a lot which does not conform to the requirements of this section is not enforceable by the seller against the buyer. Any term of such a contract purporting to waive the rights of the buyer to the disclosures required in this section shall be void.

§ 72.33. Well isolation distance exemption.

(a) Any minimum distance requirement between a private well and a proposed absorption area specified in Chapter 73 (relating to standards for onlot sewage treatment facilities) is not applicable if the local agency finds that the installation of a proposed individual sewage system does not pose a threat of pollution to any well on the same lot within the distance specified by regulation. The minimum distance between a proposed individual sewage system on the applicant's lot and any wells on any other lot, regardless of the ownership of that lot, shall meet the minimum horizontal isolation distances in § 73.13 (relating to minimum horizontal isolation distances) except as provided in § 73.3(b) (relating to policy).

(b) If a repair to a malfunctioning onlot system is being considered under § 73.3(b) the requirements of this section may be waived at the sole discretion of the local agency.

(c) The applicant shall submit a formal written request for a well isolation distance exemption to the local agency. The request shall include:

- (1) Appropriate groundwater studies.
- (2) Payment of fees or costs incurred by the local agency to review the groundwater study.

(d) Upon receipt of the items required in subsection (c), a local agency, other than a delegated agency, shall act upon an application for an exception under this section within 45 days after receipt of a request for an exception. A delegated agency shall act on an application for an exception under this section within 30 days after receipt of a request for exception.

(e) The local agency, municipality, Sewage Enforcement Officer and Department will incur no liability as a result of the local agency granting an exception under this section.

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 [(e)—(h)] (f)—(k), the local agency shall employ a certified Sewage Enforcement Officer not having a conflict of interest regarding the system or lot. [**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:**]

(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:**

* * * * *

[(c)] (d) A Sewage Enforcement Officer shall [**only**] accept payment **only** from the local agency for services performed in conjunction with administration of the act.

(Editor's Note: Subsections (b) and (c) were proposed to be amended in the August 5, 1995, proposal.)

[(d)] (e) ***

* * * * *

(2) The fee is rendered in accordance with the local agency's adopted receipt system as required by § 72.42 [(a)] (7) (relating to powers and duties of local agencies).

* * * * *

[(e)] (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 [(f)] (g) **except as provided by subsection (i).**

[(f)] (g) ***

(h) A Sewage Enforcement Officer may not, orally or in writing, suggest, recommend or require the use of any particular consultant, soil scientist or professional engineer, or an individual or firm providing these services where these services may be required or are subject to review under this article.

(i) A Sewage Enforcement Officer may not perform consulting or design work or related services required or regulated under the act within the municipality or local agency by which he is employed or with which he has a contractual relationship unless the services are set in the fee schedule of the local agency, the fees are paid directly to the local agency and the records and products relating to consultation or design work are reviewed by and any subsequent permit is issued by another Sewage

Enforcement Officer employed by or under contract with the same local agency.

[(g)] (j) 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.

(Editor's Note: The provisions of this subsection were renumbered in the August 5, 1995 Pennsylvania Bulletin changing subsection (g) to (h). In this proposed rulemaking (g) is changed to (j).)

[(h)] (k) For purposes of subsection [(g)] (j), 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 [**property**] **proprietary** interest in [**any**] **one or more** of the following:

(Editor's Note: The provisions of this subsection were renumbered in the August 5, 1995 Pennsylvania Bulletin changing subsection (h) to (i). In this proposed rulemaking (h) has been changed to (k).)

* * * * *

[(i)] (l) Prior to issuing a permit, the Sewage Enforcement Officer shall conduct personally, observe or otherwise confirm in a manner approved by the Department all 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 provided the site, data and prior testing meet all the criteria specified in [Section 8(c) of the act (35 P. S. § 750.8(c))] § 72.26(b)—(d). When a Sewage Enforcement Officer accepts testing by a prior officer, a copy of the Form ER-BWQ-290, Appendix B or such other form as may be specified by the Department, shall be attached to each copy of the permit application.**

(Editor's Note: The reference to section 8(c) of the act in the August 5, 1995, Pennsylvania Bulletin has been replaced by referring to § 72.26(b)—(d).

[(j)] (m) ***

[(k)] (n) ***

[(1)] (o) ***

[(m)] (p) ***

[(n)] (q) ***

§ 72.42. Powers and duties of local agencies.

(a) The local agency [**shall have**] **has** the power and duty to:

(1) Employ **or contract with** Sewage Enforcement Officers to administer section 7 of the act (35 P. S. § 750.7) and this part.

(2) Employ **or contract with** 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 employees necessary for the administration of the act by the local agency.

* * * * *

(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] sections 7, 8, 12, 13, 13.1, 14, 15 and 16 of the act [(35 P. S. § 750.7)]. For this purpose, the authorized representatives of the local agency have the right to enter upon lands.

(13) Proceed under sections 7, 8, 12, 13, 13.1, 13.2(b) 14, [and] 15 and 16 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) County or joint county Departments of Health shall administer sections 7, 8, 12, 13, 13.1, 14, 15, and 16 of the act in the area subject to their jurisdiction. A county Health Department and joint county Departments of Health may also administer the continuing maintenance provisions of § 71.73 (relating to sewage management programs for sewage facilities permitted by local agencies) when the municipality relinquishes and the county Health Department or joint county Department of Health accepts such authority and conforms with the requirements of § 71.73.

[(14)] (15) ***

[(15)] (16) ***

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

(Editor's Note: This paragraph was proposed in the August 5, 1995, Pennsylvania Bulletin as paragraph (16). The language is otherwise identical.)

(18) Adopt by resolution a list of individuals who are Sewage Enforcement Officers employed by companies or corporations under contract with the local agency to perform the services of Sewage Enforcement Officers.

(19) Set and collect fees necessary to support the administrative and personnel costs of a maintenance inspection and enforcement program.

(20) Charge for engineering or consulting services required by the local agency to complete its review or a permit application. The application or review fees charged for these services shall be reasonable and in accordance with the ordinary and customary charges by the engineer or consultant for similar service in the community, and the fees may not exceed the rate or cost charged by the engineer or consultant to the local agency when fees are not reimbursed by or otherwise imposed on applicants.

(i) If the applicant disputes the amount of any fees or charges, the applicant shall, within 10 working days of the date of billing, notify the local

agency that the fees or expenses are disputed as unreasonable or unnecessary, in which case the local agency may not delay or disapprove an application for any approval or permit due to the applicant's dispute over fees or charges.

(ii) If, within 20 days from the date of billing, the local agency and the applicant cannot agree on the amount of fees or charges which are reasonable and necessary, the applicant and local agency shall comply with the procedure established in section 8(b)(4) of the act (35 P. S. § 750.8(b)(4)) to resolve the fee or charge dispute.

(21) Complete and provide to the applicant the results of any site suitability review, soil probe testing and soil percolation testing within 20 working days of the local agency's receipt of a permit application.

(i) The testing and results of the testing may be deferred to a later date that the applicant may request in writing or by a later date agreed to by the sewage enforcement officer and the applicant, which is confirmed in writing by the Sewage Enforcement Officer.

(ii) A one-call system serial number shall be obtained prior to soil testing by the permit applicant or the contractor retained by the applicant to perform the test excavation. This notification shall take place no less than 3 and no more than 10 working days prior to the excavation. The deadline for permit review by the local agency in this subsection does not apply to an applicant who fails to comply with the one-call system notification requirement.

(iii) It shall be the obligation of the applicant to have the site prepared in the manner required by written instructions provided to the applicant after receipt of at least 48 hours' notice from the local agency or Sewage Enforcement Officer of the anticipated time the soils tests will be performed. Written instructions shall include provisions for deferral of testing due to weather.

(iv) Failure of the local agency to comply with these time limits shall entitle the applicant, upon request, to a refund of fees paid by the applicant for soil testing that was not performed by the local agency, and the applicant shall be entitled to submit results of soils tests, on forms provided by the Department, conducted in a manner consistent with this article by a certified Sewage Enforcement Officer, who need not be employed by or under contract with the local agency. These test results shall be accepted by the local agency and its Sewage Enforcement Officer, who shall rely upon the results of these tests in acting on an application.

(v) If an applicant, after receiving the notice of testing, fails to have the site prepared for soil testing in a manner required by this section, the applicant does not have the right to submit the results of soils testing performed by a certified Sewage Enforcement Officer not employed by or under contract with the local agency, nor is the applicant entitled to a refund of fees paid for soil testing as provided in this section.

(vi) Neither the municipality, local agency, local agency's Sewage Enforcement Officer nor the Department will be held liable on a cause of action arising out of soil tests performed under this sec-

tion by a certified Sewage Enforcement Officer not employed by or under contract with the local agency.

(22) Make inspections of and verify measurements made by applicants on public or private properties which are determined by the local agency's authorized representative to have natural or manmade features from which specific isolation distances are required prior to the approval of onlot sewage disposal system usage in subdivisions or individual lots. The local agency's authorized representative shall have the right to enter upon lands for these purposes.

(23) Determine if a proposed individual residential spray irrigation system will create a nuisance or adversely impact existing and proposed drinking water supplies and report this information to any affected municipality served by the local agency.

(24) Assure that an individual residential spray irrigation system discharge is sampled at least once per year by the property owner through a certified testing laboratory for fecal coliforms, biological oxygen demand, suspended solids and disinfectant residual or effectiveness. Individual effluent samples may not exceed a BOD₅ of 60 mg/l and suspended solids concentration of 100 mg/l. Chlorine residual shall be maintained at a range of 1.0-2.0 ppm unless a higher level is required to control disease producing organisms. This disinfection shall produce an effluent which will contain a concentration not greater than 200/100 milliliters of fecal coliform organisms in a single sample. The local agency shall review the results of these samples and the most recent system inspection conducted under § 73.167 (relating to operation and maintenance) and take necessary action to resolve operational or maintenance problems identified through the sample results. Additional sampling may be required by the local agency if the annual sample documents a problem.

(b) The local agency may offer a program to provide financial assurance, for a fee, for systems installed under § 73.77 (relating to bonded disposal systems). Financial assurance provided by the local agency shall comply with the requirements of § 73.151 (relating to standards for financial assurances).

(c) The local agency may not orally or in writing, suggest, recommend or require the use of a particular consultant, soil scientist or professional engineer, or an individual or firm providing these services where the services may be required or are subject to review under this part.

(Editor's Note: Subsection (b) was proposed to be added in the August 5, 1995, proposal.)

§ 72.43. Powers and duties of the Department.

(a) The Department is empowered to review the performance of local agencies and their Sewage Enforcement Officers in the administration of [section] sections 7, 8, 12, 13, 13.1, 13.2(b), 14, 15 and 16 of the act [(35 P. S. § 750.7)].

* * * * *

(c) If the Department finds that a local agency has failed to effectively administer [section] sections 7, 8, 12, 13, 13.1, 13.2(b), 14, 15 or 16 of the act [(35 P. S.

§ 750.7)] or this part, the Department, in addition to other remedies it may seek at law or in equity, may order the local agency to take actions the Department deems necessary to obtain effective administration. These actions may include, but are not limited to:

* * * * *

(f) The Department will suspend a Sewage Enforcement Officer's certification if the Department determines that the Sewage Enforcement Officer has done one of the following:

* * * * *

(3) Demonstrated negligence or provided false information related to the administration of the act or this part and for knowingly committing violations of this part which are not related to the issuance of a permit.

(g) The Department may reinstate the certification of a person within 2 years from the date of suspension. Prior to reinstatement, the Department will require, as a minimum, that the person take and pass the appropriate certification examination administered by the certification board. The Department may require satisfactory completion of a special training program designed to strengthen a specific weakness in the administration of the act or this part. The program may entail the use of testing procedures including, but not limited to:

* * * * *

(h) The Department will revoke the certification of a Sewage Enforcement Officer whenever the Department determines that the Sewage Enforcement Officer has done one of the following:

* * * * *

(3) Failed to comply with the applicable terms of a Departmental order for effective administration of [section] sections 7, 8, 12, 13, 13.1, 13.2(B), 14, 15 and 16 of the act [(35 P. S. § 750.7)].

* * * * *

(13) Demonstrated negligence or knowingly provided false information related to the administration of the act or this part and for violations of the act or this part which are not related to the issuance of a permit.

(i) The Department will consider complaints filed by local agencies or the public relating to the performance of local Sewage Enforcement Officers as part of the Department's evaluation of the local agency and Sewage Enforcement Officer.

(j) The Department may establish minimum training requirements using a Department curriculum of training as a prerequisite for applicants for certification as Sewage Enforcement Officers. The curriculum may include a period of training under another certified Sewage Enforcement Officer selected by the Department as a prerequisite to certification for candidates who pass the certification test.

(k) The Department may require a certified Sewage Enforcement Officer whose performance has been evaluated and found deficient to complete a training course which may include a curriculum of training or a period of training under the direction of another certified Sewage Enforcement Officer

selected by the Department a time period established by the Department.

(1) The Department may require this training as an alternative to suspension or as a requirement for reinstatement of a suspended certification.

(2) The local agency employing the training Sewage Enforcement Officer shall authorize that officer to provide the training services within the jurisdiction of that local agency.

(3) The costs of Department-required training incurred by the training Sewage Enforcement Officer and the local agency employing the training Sewage Enforcement Officer shall be paid by the Department from funds made available under section 13.2 of the act (35 P. S. § 750.13b).

(l) The Department may delegate the review of certain alternate sewage systems as designated by the Department to Sewage Enforcement Officers, within the area of their jurisdiction, qualified by the Department to review the systems.

(m) The Department has the duty to require local agencies to take necessary action to provide timely service, including, but not limited to, utilizing the services of an alternate Sewage Enforcement Officer, employing temporary Sewage Enforcement Officers and entering into contracts for service.

§ 72.44. Reimbursement.

(a) Reimbursement may not exceed the total program cost minus total program income.

(b) [Reimbursement may not exceed the total program cost minus total program income—net program cost] Except as provided in subsection (c) [The] the Department will reimburse local agencies to the extent of the appropriations made by the General Assembly for that purpose. Reimbursement shall be made annually in an amount equal to 1/2 of eligible expenses of administering and enforcing [section] sections 7, 8, 12, 13, 13.1, 14, 15 and 16 of the act [(35 P. S. § 750.7)], as defined by subsections [(f)] (h) and [(g)] (i).

(c) A local agency complying with the act in a manner deemed satisfactory by the Department shall be reimbursed in an amount equal to 85% of the cost of the expenses incurred in the administration and enforcement of the act from funds specifically appropriated by the General Assembly for this purpose if the local agency submits documentation which supports that it qualifies for the increased reimbursement as provided in subsection (d). Eligible expenses are defined in subsections (h) and (i).

(d) To qualify for 85% reimbursement, a local agency shall:

(1) Document the acceptance, delegation or transfer of the administration of sections 7, 8, 12, 13, 13.1, 14, 15 and 16 of the act from one or more municipalities.

(2) Employ or contract with at least one Sewage Enforcement Officer actively engaged in activities related to the administration of the act in that local agency at least 1,200 hours per year, including leave and holidays.

(3) Employ or contract with adequate administrative support staff.

(4) Employ or contract with one alternate Sewage Enforcement Officer.

(5) Employ or contract with a qualified soil scientist. For the purposes of this section, a qualified soil scientist is a person who has documented experience in the characterization, classification, mapping and interpretation of soils as they relate to the function of an onlot sewage system and who has a bachelor of science degree in soils science from an accredited college or university, and certification by the American Registry of Certified Professionals in Agronomy, Crops and Soils or membership in the Pennsylvania Association of Professional Soil Scientists.

(6) Submit to the Department for review and comment administrative procedures, permit procedures, ordinances of the member municipalities related to the administration of the act, rules, regulations, permit-related fee schedules and contracted services proposed for use in the local agency.

(7) Employ or have a contractual arrangement with sufficient technical staff to provide for local agency response to signed written requests for service within the time frames established by the administrative procedures and regulations of the local agency.

[(c)] (e) Applications for reimbursement shall be in quadruplicate, on the appropriate form supplied by the Department, and received by the Department of Environmental [Resources] Protection, Post Office Box 8466, Harrisburg, Pennsylvania 17105-8466, no later than March 1 each year for expenses incurred during the prior calendar year. [With prior approval and for good cause, the Department may extend the March 1 deadline to March 15.] Upon cause shown, the Secretary of the Department may extend the March 1 deadline for the filing of applications for reimbursement for not more than 60 days.

[(d)] (f) Applications for reimbursement shall include the following:

* * * * *

(4) Municipal ordinances, acts, regulations or procedures used in enforcing the act for local agencies applying for reimbursement for the first time or when major changes are made.

* * * * *

(6) Proof of payment of expenses claimed, as specified in subsection [(h)] (j).

* * * * *

[(e)] (g) ***

[(f)] (h) Costs associated with the following are eligible for reimbursement, when related to enforcement and administration of the sewage facilities permitting program or the administration of a sewage management program under §§ 71.64 and 71.72 (relating to small flow treatment facilities Chapter 71 Subchapter E).

* * * * *

[(g)] (i) Ineligible costs include, but are not limited, to the following:

* * * * *

(9) Cost to the local agency to maintain insurance coverage in the following areas:

(i) Errors and omissions except as provided in subsection [(f)] (h)(6)(iv).

* * * * *

(11) Expenses for employe attendance at local agency meetings which do not pertain to administration of sections 7, [and] 8, 12, 13, 13.1, 14, 15 or 16 of the act [(35 P. S. §§ 750.7 and 750.8)].

(12) Fixed or indirect costs other than those in subsection [(f)(5)] (h)(5).

[(h)] (j) Proof of payment of expenses claimed shall, at a minimum, include the following:

* * * * *

(3) Proof of attendance at [Department] training courses required by the Department. Reimbursable expenses for attendance at the courses shall be identified separately under "other expenses" in the reimbursement application.

* * * * *

(5) Minutes of local agency meetings for which employe attendance is claimed as a reimbursable expense which reflect discussions involving the administration of sections 7 [and], 8, 12, 13, 13.1, 14, 15 or 16 of the act [(35 P. S. §§ 750.7 and 750.8)].

[(i)] (k) ***

Subchapter D. CERTIFICATION OF SEWAGE ENFORCEMENT OFFICERS

§ 72.52. Conditions of certification.

* * * * *

(b) Certification shall be for a period of up to 2 years. Upon the payment of a fee of [\$5.00] \$50 by the certificate holder, the Certification Board shall 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. Fees collected in excess of the actual administrative cost to the board to process certification renewals shall be dedicated to training Sewage Enforcement Officers.

(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) shall 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 local agencies) will not be deemed certified.

(Editor's Note: This section was proposed to be amended in the August 5, 1995, proposal.)

§ 72.53. Certification examination.

* * * * *

(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] 25 days prior to each examination announce the location, time, scope and passing grade for the examination. **Annually, the Board will publish in the Pennsylvania Bulletin the dates, sites, scope and passing grade for all examinations scheduled in that calendar year.**

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

* * * * *

(Editor's Note: Subsection (c) was proposed to be amended in the August 5, 1995, proposal.)

§ 72.54. Applications for certification.

(a) Correctly completed applications, **documentation of the successful completion of required pre-certification training courses** and an application fee of [\$10] \$25 shall be received by the Board at least 40 days prior to scheduled examinations.

* * * * *

§ 72.55. Certification renewal.

(a) Application for renewal will be sent to certified **Sewage Enforcement Officers** at least 2 months prior to renewal date. In addition to the application, a [**schedule of future training courses**] **curriculum of mandatory training** will be sent to any Sewage Enforcement Officer who has not completed the required training.

* * * * *

§ 72.56. Change of address.

(a) **The Certification Board shall 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.**

(b) The Sewage Enforcement Officer shall promptly notify the Certification Board of a change of address.

(Editor's Note: This section was proposed to be amended in the August 5, 1995, proposal.)

§ 72.58. Certification Board hearings and procedures.

(a) Actions by the Department to revoke or suspend Sewage Enforcement Officer certifications become [**effective**] **final** only after notice and opportunity for a hearing before the Certification Board. **The filing of an appeal with the 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 shall [**be effective**] **become final.** Requests for a hearing shall set forth with specificity the grounds for the appeal, including [**all**] 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 231 Pa. Code (relating to rules of civil procedure).

* * * * *

(Editor's Note: Subsection (a) was proposed to be amended in the August 5, 1995, proposal.)

CHAPTER 73. STANDARDS FOR ONLOT SEWAGE [DISPOSAL] TREATMENT 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:

* * * * *

Aggregate—Coarse material manufactured from stone, gravel or slag, having Type A or C characteristics as described in the Department of Transportation specifications, Form 408, section 703.3[(a) and (b)], Table B and uniform size and grading equivalent to [PA No. 3A or 2B] American Association of State Highway and Transportation Officials No. 3, 5 or 57, as described in Form 408, section 703.3[(c)], 2 Table C.

Agricultural areas—Areas used primarily for the production of crops and where the soil is without vegetative cover during certain periods of the year.

Alternate sewage system—A [system employing the use] method of demonstrated onlot sewage treatment and disposal [technology in a manner] not [specifically recognized by this title] described in these regulations.

* * * * *

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 except for individual residential spray irrigation systems.

Buried sand filter—A system of piping, sand media, aggregate and collection piping in a buried liner used for the intermittent filtration and biochemical treatment of sewage.

Clean Streams Law—The Clean Streams Law (35 P. S. §§ 691.1—691.1001).

[**Community sewage system**—A system, whether publicly or privately owned, for the collection of sewage or industrial wastes of a liquid nature from two or more lots, and for the treatment or disposal of the sewage or industrial waste on one or more of the lots or at any other site.]

Conventional sewage system—A system employing the use of demonstrated onlot sewage treatment and disposal technology in a manner specifically recognized by this chapter. The term does not include alternate or experimental sewage systems.

[**Department**—The Department of Environmental Resources of the Commonwealth.]

* * * * *

Filter tank—The tank housing the piping and sand of the free access sand filter.

Forested areas—Areas where the predominant vegetative cover is comprised of trees with a closed canopy.

Free access sand filter—A system of tanks, dose piping, sand media, aggregate and collection piping

used for the intermittent filtration and biochemical treatment of sewage and accessible for maintenance.

Grassed area—Areas where the predominant vegetative cover is comprised of grasses, bushes or trees not forming a closed canopy.

[**Individual sewage system**—A system of piping, tanks or other facilities serving a single lot and collecting and disposing of sewage in whole or in part into the soil or into waters of this Commonwealth or by means of conveyance to another site for final disposal.]

Individual residential spray irrigation system—An individual onlot sewage system which serves a single family dwelling and which treats and disposes of sewage using a system of piping, treatment tanks and soil renovation through spray irrigation.

* * * * *

Lift pump—A submersible pump used to convey effluent to the sand filter and from the sand filter to the chlorine/retention tank.

* * * * *

Municipality—A city, incorporated town, township [or] borough or home rule municipality other than a county.

* * * * *

Person—The term includes an individual; association; public or private corporation for-profit or not-for-profit; partnership; firm; trust; estate; department; board; bureau or agency of the United States or the Commonwealth; political subdivision; municipality; district; authority; or other legal entity which is recognized by law as the subject of rights and duties. Whenever used in a clause prescribing and imposing a penalty or imposing a fine or imprisonment, the term includes the members of an association, partnership or firm and the officers of a local agency or municipal, public or private corporation for-profit or not-for-profit.

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.

Retaining tank—A watertight receptacle which receives and retains sewage and is designed and constructed to facilitate ultimate disposal of the sewage at another site. The term includes, but is not limited to, the following:

[(i) *Chemical toilet.* A permanent or portable nonflushing toilet using chemical treatment in the retaining tank for odor control.]

- [(ii)] (i) ***
- [(iii)] (ii) ***
- [(iv)] (iii) ***
- [(v)] (iv) ***
- [(vi)] (v) ***

[*Rural residence*—A structure occupied or intended to be occupied by not more than two families on a tract of land of 10 acres or more.]

* * * * *

Sewage enforcement officer—[The] An official of the local agency who [issues and] reviews permit applications and sewage facilities planning modules and issues permits as authorized by the act and conducts the investigations and inspections [as] that are necessary to implement the act[, Chapter 71 and this chapter] and regulations thereunder.

Sewage facilities—A system of sewage collection, conveyance, treatment and disposal which will prevent the discharge of untreated or inadequately treated sewage or other waste into waters of this Commonwealth or otherwise provide for the safe and sanitary treatment and disposal of sewage or other waste.

(i) *Individual sewage system.* A sewage facility, whether publicly or privately owned, located on a single lot and serving one equivalent dwelling unit and collecting, treating and disposing of sewage in whole or in part into the soil or into waters of this Commonwealth or by means of conveyance of retaining tank wastes to another site for final disposal.

(A) *Individual onlot sewage system.* An individual sewage system which uses a system of piping, tanks or other facilities for collecting, treating or disposing of sewage into a subsurface soil absorption area or a retaining tank.

(B) *Individual sewerage system.* An individual sewage system which uses a method of sewage collection, conveyance, treatment and disposal other than renovation in a subsurface soil absorption area, or retention in a retaining tank.

(ii) *Community sewage system.* A sewage facility, whether publicly or privately owned, for the collection of sewage from two or more lots, or two or more equivalent dwelling units and the treatment or disposal, or both, of the sewage on one or more of the lots or at another site.

(A) *Community onlot sewage system.* A community sewage system which uses a system of piping, tanks or other facilities for collecting, treating and disposing of sewage into a soil absorption area or retaining tank.

(B) *Community onlot sewerage system.* A community sewage system which uses a method of sewage collection, conveyance, treatment and disposal other than renovation in a soil absorption area, or retention in a retaining tank.

[*Sewer authority*—A municipal authority providing sewage facilities.]

Small flow treatment facility—An individual or community sewerage system designed to adequately treat sewage flows not greater than 2,000 gallons per day for final disposal using a stream discharge or discharge to the surface of the ground.

* * * * *

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.

* * * * *

Solids retainer—A deflection device at the outlet tee or baffle of a septic tank designed to deflect buoyed solids from escaping the tank.

Spray field—Piping, spray heads and ground surface to the outside edges of the wetted perimeter, used for the application and treatment of the sewage effluent in an individual residential spray irrigation system.

* * * * *

Undisturbed soil—Soil or soil profile, unaltered by [addition-filling,] removal or other man-induced changes that would adversely affect the siting or operation of onlot systems, other than agricultural activities [for a minimum of 4 years prior to testing].

* * * * *

(*Editor's Note:* Several definitions were proposed to be amended or added in the March 5, 1995, proposal.)

§ 73.2. Scope.

This chapter applies to sewage enforcement officers administering the act, as well as to persons installing individual onlot sewage systems or community onlot sewage systems as defined in [the act] this chapter.

§ 73.3. Policy.

* * * * *

(b) When considering corrective measures for malfunctioning sewage disposal systems which have been constructed in accordance with this chapter or applicable regulations at the time of construction, the efforts of the sewage enforcement officer or the Department's staff [shall] will not be restricted by this chapter. It will be the policy of the Department and sewage enforcement officers administering this chapter to first consider all individual onlot and community onlot sewage systems described in this chapter in the correction of existing malfunctions and, when the systems are not physically possible, to provide the best technical guidance possible in attempting to resolve existing pollution or environmental health problems. When application of best technical guidance results in the absorption area or spray field encroaching on the regulated isolation distance to a well, the proper well abandonment procedure or the relocation of the well should be considered. This policy will not limit or preclude the use of experimental systems as provided in §§ 73.71 and 73.72 (relating to experimental sewage systems; and alternate sewage systems) or small flow treatment systems permitted under the Clean Streams Law.

(c) The Department recognizes the existence of technologies related to onlot sewage disposal which are not specifically addressed in this chapter as well as technologies from other disciplines which may be applied to the design or construction of an onlot sewage disposal system. Experimental sewage system permits provide a method for the testing and evaluation of new concepts and technologies applicable to onlot disposal in this Commonwealth. Experimental permits may be limited in number on a Statewide basis. **The Department will determine the number of experimental permits that may be issued for a specific experimental technology or design. An experimental onlot sewage disposal system permit shall be required for all technologies, methods, system components, systems and designs the Department deems experimental.** Alternate sewage systems provide a classification for innovative and alternative technology which has been developed through the experimental program, by application of existing technologies from other disciplines[,] or through technological advances from other areas of the United States. The alternate sewage system permit will provide a method for utilizing proven technologies within this Commonwealth without constant changes to this chapter. Systems shall be permitted only where it is demonstrated that the proposed system will protect the public health and prevent pollution of the waters of this Commonwealth.

GENERAL SITE LOCATION AND ABSORPTION AREA REQUIREMENTS

§ 73.11. General.

* * * * *

(c) [No] A structure may **not** be occupied before the sewage system is finally inspected, approved and covered. **Except when the sewage enforcement officer requires a change to the installation schedule because of weather and soil conditions, the permit may be modified to allow use of a septic tank as a temporary holding tank. In these instances, §§ 73.62 and 71.63(b)(4) and (c)(3) (relating to standards for holding tanks; and standards for privies) apply.** Absorption areas shall be covered by the permittee within 5-calendar days after final inspection and approval to prevent damage.

(d) Liquid wastes, including kitchen and laundry wastes and water softener backwash, shall be discharged to a treatment tank. [No] A sewage system may **not** discharge untreated or partially treated sewage to the surface of the ground or into the waters of this Commonwealth except as specifically approved by the Department under sections 202 and 207 of [The] the Clean Streams Law (35 P. S. §§ 691.202 and 691.207) **and individual residential spray irrigation systems permitted by local agencies under section 7.3 of the act (35 P. S. § 750.7c).**

* * * * *

(f) Discharge from roof gutters, foundation drainage and surface runoff may not be discharged to a treatment tank; nor may the discharges be permitted to flow over [the] an absorption area or spray fields.

(g) **The discharge of inadequately disinfected effluent or the discharge of effluent in a manner inconsistent with the system design specifications**

from an individual residential spray irrigation system shall constitute a nuisance.

§ 73.12. Site location.

(a) A proposed absorption area or spray field having the following characteristics shall be considered unsuitable for the installation of an onlot system or an individual residential spray irrigation system and a permit shall be denied where:

(1) The slope of the proposed absorption area or spray field is greater than 25%.

* * * * *

(3) Completed flood mapping is not available, but the soil has been mapped or identified as floodplain soil or a floodprone area **except for spray fields serving individual residential spray irrigation systems described in § 73.163 (relating to spray fields).**

* * * * *

(5) In areas underlain by limestone, depressions left by earlier sinkholes exist either in whole or in part within the proposed absorption area or spray field.

(b) Absorption areas or spray fields may not be placed in or on fill unless the fill has remained in place for a minimum of 4 years to allow restoration of natural permeability. The fill shall be composed of clean mineral soil and meet the provisions of § 73.14 (relating to site investigation).

(c) **Absorption areas or spray fields shall be sited only in or on undisturbed soils.**

§ 73.13. Minimum horizontal isolation distances.

(a) Minimum horizontal isolation distances shown in subsections (b) [and (c)]—(e) shall be maintained between the sewage disposal system and the features itemized **except as provided by § 72.32 (relating to sales contracts).** [Where] If conditions warrant, greater isolation distances may be required.

(b) The minimum horizontal isolation distances between the features named and treatment tanks, dosing tanks, lift pump tanks, filter tanks and chlorine contact/storage tanks shall comply with the following:

* * * * *

(6) A cistern used as a water supply—25 feet.

(c) **Building sewers shall meet the isolation distances in subsection (b)(3)—(6).**

[(c)] (d) The following minimum horizontal isolation distances shall be maintained between the features named and the perimeter of the **aggregate in the absorption area [apply]:**

* * * * *

(5) Streams, **water courses, lakes, ponds** or other surface water—50 feet **(for the purposes of this chapter, wetlands are not surface waters).**

* * * * *

(11) A cistern used as a water supply—25 feet.

(e) **The following minimum horizontal isolation distances shall be maintained between the features named and the wetted perimeter of the spray field:**

(1) **The property lines, easements or right of ways—25 feet.**

(2) **The occupied buildings—100 feet.**

(3) An individual water supply or water supply suction line—100 feet.

(4) A cistern used as a water supply—25 feet.

(5) A water supply line under pressure—10 feet.

(6) The streams, watercourses, lakes, ponds or other surface waters—50 feet. For the purposes of this chapter, wetlands are not surface waters.

(7) The mine subsidence, boreholes, sinkholes—100 feet.

(8) The roads or driveways—25 feet.

(9) The unoccupied buildings—25 feet.

(10) The rock outcrop—25 feet.

(f) The area within the wetted perimeter of the spray field may not be sited over an unsuitable soil profile.

§ 73.14. Site investigation.

(a) Absorption area.

[(a)] (1) ***

[(1)] (i) ***

[(2)] (ii) The depth of the excavation shall be to the top of the limiting zone, or a maximum of [8] 7 feet.

[(3)] (iii) ***

[(4)] (iv) 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. An onlot system may not be installed in fill soil until it has remained undisturbed for a minimum of 4 years or a qualified soil scientist has determined that natural soil conditions have been reestablished nor in soils disturbed by removal of soil or excavation of soil unless a qualified soil scientist has determined that the disturbance will not materially affect the siting or operation of an onlot system. Excavating soil to system installation depth for the purpose of installing the system may not be considered disturbing the soil.

[(b)] (v) 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 [shall] will be denied except as provided in § 73.77 (relating to general requirements for bonded disposal systems).

(Editor's Note: This subparagraph was originally proposed as subsection (b) in the August 5, 1995, proposal.)

[(c)] (vi) ***

[(d)] (vii) ***

(b) Spray field.

(1) Soil tests to determine the presence of a limiting zone shall be conducted prior to permit issuance.

(2) A minimum of four soil profile evaluations shall be evenly spaced within 10 feet and outside of the perimeter of the proposed spray field when the spray field is less than or equal to 20,000 square feet.

(3) Spray fields in excess of 20,000 square feet shall be evaluated by evenly spacing the soil profiles within 10 feet and outside of the perimeter of the proposed spray field at least every 100 feet.

(4) Soil profiles shall be evaluated to the depth of bedrock, or rock formation or 40 inches whichever is more shallow.

(5) When the examination of the soil profile reveals a limiting zone of a seasonal high water table within 10 inches of the mineral soil surface or a limiting zone as indicated by bedrock or excessive coarse fragments within 16 inches of the mineral soil surface, a permit for an individual residential spray irrigation system will be denied.

§ 73.15. Percolation tests.

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

* * * * *

(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 **whichever occurs first**. A stabilized rate of drop [shall mean] means a difference of 1/4 inch or less of drop between the highest and lowest readings of four consecutive readings.

* * * * *

(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.] When the rate of drop in a percolation test is too slow to obtain a measurable rate, the rate of 240 minutes per inch shall be assigned to that hole for use in calculating the arithmetic average percolation rate. When the rate of drop in a percolation test hole using 10 minute intervals is too fast to obtain a measurable rate, that hole shall be considered a failed hole and may not be used in the calculation of the arithmetic average percolation rate.

* * * * *

[(8) Acceptance of prior testing results. The sewage enforcement officer may accept the results of percolation tests performed before the effective date of these sections, provided that the tests were observed, conducted or otherwise verified to have been conducted in conformance with the regulations in effect at that time.]

(Editor's Note: Paragraph (8) was proposed to be deleted in the August 5, 1995, proposal.)

§ 73.16. Absorption and spray field area requirements.

(a) [Only the bottom area of the bed or trench shall be used in calculating absorption area requirements.

(b)] **General.** Absorption areas and spray fields for single family dwellings not served by a community sewage system shall be designed based on a minimum flow of 400 gpd for all dwellings having three bedrooms or less. The minimum flow of 400 gpd shall be increased by 100 gpd for each bedroom over three.

(b) Absorption areas.

(1) Only the bottom of the aggregate area of the bed or trench shall be used in calculating absorption area requirements.

[(c)] (2) Absorption area requirements for single family dwellings served by a community sewage system and for apartments or nonresidential establishments served by an individual **onlot** or community **onlot** sewage system shall be designed based on flows listed in § 73.17 (relating to sewage flows) for the type of facility to be served.

[(d)] (3) For nonresidential establishments, a volume of 200 gpd shall be the minimum volume used in calculating the size of the absorption area.

[(e) The following] (c) **Table A.** Table A shall be used in calculating the square footage of absorption area required based on flows determined in subsections [(b)—(d)] (a) and (b). The table includes allowances for garbage grinders, automatic washing machines or dishwashers and water softeners.

(d) Substitute. When a substitute for aggregate, such as a leaching chamber, large diameter pipe or other material or device, is used in the absorption area, the provisions of subsection (b)(1) apply.

(Editor's Note: The Board is proposing to delete the table which appears at 25 Pa. Code page 73-15, serial page (156623) and replace it with the following Table A.)

TABLE A

Minimum Aggregate Absorption Area Requirements for Treatment Tank Effluent:

Square Feet of Aggregate Area Per Gallon per Day

<i>Average Percolation Rate</i>	<i>All Systems Except Elevated Sand Mounds</i>	<i>Elevated Sand Mounds</i>
<i>Expressed as Minute Per Inch</i>		
Less than 3.0	Unsuitable	Unsuitable
3—5	Unsuitable	1.50 ^{AB}
6—15	1.19 ^B	1.50 ^{AB}
16—30	(Ave Perc Rate -30) × (0.040) + 1.19 ^B	1.50 ^{AB}
31—45	(Ave Perc Rate -30) × (0.030) + 1.79 ^B	(Ave Perc Rate -30) × (0.026) + 1.50 ^{AB}
46—60	(Ave Perc Rate -45) × (0.028) + 2.24 ^B	(Ave Perc Rate -45) × (0.022) + 1.89 ^A
61—90	(Ave Perc Rate -60) × (0.023) + 2.66 ^A	(Ave Perc Rate -60) × (0.020) + 2.22 ^A
91—120 ^C	Unsuitable	(Ave Perc Rate -90) × (0.017) + 2.82 ^A
121—150 ^C	Unsuitable	[(Ave perc rate-120) × (0.015) + 3.33] (1.05) ^A
151—180 ^C	Unsuitable	[(Ave perc rate-150) × (0.014) + 3.78] (1.10) ^A
181—240 ^C	Unsuitable	Unsuitable
Greater than 240	Unsuitable	Unsuitable

^A Pressure dosing required.

^B One third reduction may be permitted for use of an aerobic tank.

^C May be considered for experimental or alternate proposals.

(e) Spray fields. Table B shall be used in calculating the square footage of spray fields based on flows determined in subsection (a). The table includes allowances for garbage grinders, automatic washing machines, dishwashers and water softeners. The square footage of spray fields for proposals in excess of 4 bedrooms shall be calculated using the incremental difference between the square feet required for 3 bedrooms and 4 bedrooms established in Table B.

(Editor's Note: The following Table B is new. It has been printed in regular type to enhance readability.)

Table B

<i>Soil Characteristics</i>	<i>Slope</i>	<i>3 brm. (square feet)</i>	<i>4 brm. (square feet)</i>
Soil depth > 20"	≤12%	10,000	12,500
Water table > 20"	>12%	20,000	25,000
Soil depth 16-20"	≤12%	15,000	18,750
Water table > 40"	>12%	30,000	37,500
Soil depth > 20"	≤12%	20,000	25,000
Water table 10-20"	>12%	40,000	50,000
Soil depth 16-20"	≤12%	40,000	50,000
Water table 10-40"	>12%	80,000	100,000

§ 73.17. Sewage flows.

(a) The sewage flow from [residences] single family dwellings served by a community sewage system or from apartments, rooming houses, hotels and motels served by an individual or community sewage system shall be determined from the following table:

<i>Type of Establishment</i>	<i>Gallons/UNIT [person]/day[*]</i> <i>[Lbs. 5-day BOD/person/day*]</i> <i>[unless otherwise noted]</i>	
	<i>Gal. Unit</i>	<i>BOD/Unit</i>
<i>Residential</i>		
[Hotels and motels without private baths	40	.15]
Hotels and motels [with private baths]	[50] 100	.15
[Luxury residences and estates	125	.17]
Multiple family dwellings and apartments including townhouses, duplexes and condominiums	[60] 400	.17
Rooming houses	[50] 200	.15
Single family residences	[75] 400*	.17

* [1970 census indicates that there are 3.5 people/residence. This figure is used for both single and multiple family dwellings] For units of 3 bedrooms or less; for each bedroom over 3, add 100 gallons.

(b) The sewage flow, which must exclude any industrial waste, for nonresidential establishments served by an individual or community sewage system shall be determined from the following table:

<i>Type of Establishment</i>	<i>[Gallons/person/day*]</i> <i>[Lbs. 5-day BOD/person/day*]</i> <i>[(unless otherwise noted)]</i>	
	<i>Gal[.]lons/Day</i>	<i>BOD/Day</i>
<i>Commercial</i>		
Airline catering (per meal served)	3	.03
* * * * *		
One licensed operator Beauty shops [(per operator chair)]	200	—
Bus service areas not including food (per patron and employe)	5	.02
Country clubs not including food (per patron and employe)	30	.02
Drive-in theaters (not including food—per space [per day])	10	.06
Factories and plants [(]exclusive of industrial wastes (per employe)	35	.08
Laundries, self-service (gallons/washer)	400	2.00
Mobile home parks, independent (per space)	[250] 400	.06
* * * * *		
Warehouses (per employe)	35	—
Work or construction camps (semipermanent) with flush toilets (per employe)	50	.17
Work or construction camps (semipermanent) without flush toilets (per employe)	35	.02
<i>Institutional</i>		
* * * * *		
Churches (additional kitchen waste per meal served)	3	—
Churches (additional with paper service per meal served)	1.5	—
* * * * *		
Schools, boarding (per resident)	100	.17
Schools, day (without cafeterias, gyms[,] or showers per student and employe)	15	.04
Schools, day (with cafeterias, but no gym or showers per student and employe)	20	.08
Schools, day (with cafeterias, gym[,] and showers per student and employe)	25	.10

<i>Type of Establishment</i>	[Gallons/person/day*]	[Lbs. 5-day BOD/person/day*]
<i>Recreational and Seasonal</i>	[(unless otherwise noted)]	
* * * * *		
Camps, hunting and summer residential (night and day) with limited plumbing including water-carrier toilet wastes (per person)	50	.12
* * * * *		
Fairgrounds and parks, picnic—with bathhouses, showers [,] and flush toilets (per person)	15	.06
Fairgrounds and parks, picnic (toilet wastes only, per person)	5	.06
Swimming pools and bathhouses (per person)	10	.06

(c) Actual **water meter or sewer meter** flow data [**for any establishment**] indicating peak daily flows **different than those shown in this section** over a 1-year period **for a similar nonresidential establishment** may be accepted for use in sizing the onlot disposal system.

(d) **Establishments with food preparation facilities are required to install adequately designed pretreatment units and traps to reduce greases and BOD prior to discharge to an individual or community sewage system.**

BUILDING SEWERS

§ 73.21. Specifications.

* * * * *

(e) Cleanouts shall be provided at intervals of not more than [**50 feet on lines of 4-inch diameter or less and of not more than**] 100 feet [**in larger pipes**].

* * * * *

(h) [**All building**] **Building** sewers shall be constructed with watertight joints [**and**], shall be of sufficient strength to withstand imposed loads **and installed on material suitable for preventing damage from settling.**

* * * * *

(j) **Building sewers shall be connected to treatment tanks by means of watertight seals. Use of Portland cement grouting is not permitted.**

TREATMENT TANKS

§ 73.31. Standards for septic tanks.

(a) *Capacity.*

(1) The minimum liquid **septic tank** capacity [**of a septic tank**] for any installation shall be 900 gallons.

(2) For single-family dwelling units, not served by a community **onlot** system, a minimum daily flow of 400 gpd shall be used to determine required septic tank capacity. This figure shall be increased by 100 gallons for each additional bedroom over three. The daily flow indicated provides for use of garbage grinders, automatic washing machines [**or**], dishwashers, and water softeners.

(3) The minimum **septic tank** capacity [**of any septic tank**] shall be calculated from the following table using estimated sewage flows from paragraph (2), or § 73.17(a) [**or (b)**]—(c) (relating to sewage flows):

* * * * *

(b) *Construction.*

(1) Tanks shall be watertight and constructed of sound and durable material not subject to excessive corrosion or decay.

* * * * *

(iv) Tanks having a capacity in excess of 5,000 gallons may be constructed onsite to meet the standards of the National Concrete Masonry Association for reinforcement and waterproofing as listed in the **most recent edition of its** publication "Concrete Masonry Foundation Walls," copyright 1957 NCMA.

* * * * *

(4) [**If the tank has more than one compartment, the**] **All septic tank installations shall consist of tanks with multiple compartments or multiple tanks. The first compartment shall have at least the same capacity as the second but [shall] may not exceed twice the capacity of the second. Tanks or compartments shall be connected in series and [shall] may not exceed four in number in any one installation.**

(c) *Inlet and outlet connections.*

(1) The **bottom of the inlet [invert]** shall be a minimum of 3 inches above the **bottom of the outlet [invert]**.

* * * * *

(3) The outlet baffles or vented tees **of each tank or compartment** shall extend below the liquid surface to a distance equal to 40% of the liquid depth. Penetration of outlet baffles or tees in horizontal cylindrical tanks shall be equal to 35% of the liquid depth.

(4) The inlet and outlet baffles or vented tees shall extend above liquid depth to approximately 1 inch from the top of the tank. Venting shall be provided between compartments **and each tank.**

(5) **The outlet baffles or vented tees of the last compartment or tank shall be equipped with a solids retainer.**

(d) *Treatment tank access.*

(1) Access to each tank or compartment of the tank shall be provided by a manhole of at least 20 inches

square or in diameter, with a removable cover. The top of the tank containing the manhole or the top of a manhole extension shall [not] be [more than 12 inches below grade level. If access is] extended to grade [,] and the access cover shall be airtight. Grade level access covers shall be secured by bolts or locking [mechanism] mechanisms, or have sufficient weight to prevent access by children.

* * * * *

[(e) Inspection port. A maximum 4-inch diameter inspection port with sealed cover shall be installed to grade level above the inlet tee.]

§ 73.32. Standards for aerobic treatment tanks.

(a) Capacity shall comply with the following:

* * * * *

(4) For all other installations, the rated treatment capacity shall meet or exceed the estimated daily sewage flow as determined from § 73.17(a) [or], (b) or (c) (relating to sewage flows).

(b) Testing and approval shall comply with the following:

(1) Aerobic treatment tanks serving single family dwellings, or establishments, with flows of 1,500 gpd or less shall [either:

(i) Bear] bear the seal of the National Sanitation Foundation indicating testing and approval by that agency under Standard No. 40.

[(ii) Be tested and approved by an agency other than NSF using procedures equivalent to those of NSF Standard No. 40.]

* * * * *

(3) Aerobic treatment tanks serving establishments with flows exceeding 1,500 gpd shall either:

* * * * *

[(iii) Have performance data certified by a testing agency other than NSF using test procedures equivalent to that of NSF Criteria C-9 or Standard Performance Evaluation Method.

(c) The testing agency and the testing procedures specified in subsection (b)(1)(ii) and (3)(iii) shall have approval by the Department prior to commencement of the test.

(d) Manufacturers, retailers or other persons seeking approval of tanks under subsection (b)(1)(ii), (3)(ii) or (iii) shall submit to the Department for its approval two copies of the complete test procedures and results conducted by the testing agency certifying that such units proposed for installation meet or exceed Class II Effluent Standards as established by NSF Standard No. 40.]

[(e)] (c) ***

[(f)] (d) ***

[(g)] (e)***

DOSING AND DISTRIBUTION REQUIREMENTS

§ 73.41. General.

(a) Effluent from the treatment tank shall be discharged to the dosing tank, to the distribution box, or

directly to the absorption area through a watertight line a minimum of 3 inches in diameter unless otherwise specified by local plumbing or building codes. All lines shall be placed on a minimum grade of at least 1/4 inch per foot, sloping away from the treatment tank. Where a distribution box is used, the lines from that box to the laterals shall meet the same standard. If a free access sand filter or buried sand filter is used, the lines from the treatment tank to the pump station and the filter tank to a lift station or chlorine contact tank or storage tank shall meet the standards of this section. Connections of lines to tanks and distribution boxes shall be made using water tight seals. Use of Portland cement grouting material is not permitted.

(b) When the total absorption area of any system exceeds [5000] 5,000 square feet, the absorption area shall be divided into equal areas not to exceed 5,000 square feet and dosing provided either alternately or simultaneously to each area.

§ 73.42. Gravity distribution.

* * * * *

(e) Distribution boxes shall comply with the following:

* * * * *

(2) Construction shall comply with the following:

* * * * *

(iii) The [inverts] bottom of all outlets shall be at the same elevation, and the bottom of the inlet [invert] shall be at least 1 inch above the bottom of the outlet [inverts]. The bottom of the outlet [inverts] shall be at least 4 inches above the bottom of the distribution box.

* * * * *

(3) Distribution boxes shall be installed on an adequate base of undisturbed or properly compacted earth or aggregate outside of the absorption area. Lightweight nonconcrete distribution boxes shall be anchored or otherwise secured to prevent shifting after installation. Adjustable distribution box weirs may be used on the outlet of the box.

(f) Laterals shall be a minimum of 3 inches in diameter unless [otherwise] a larger diameter is specified by local plumbing or building codes. [All bends] Bends used in the disposal field shall be made with standard fittings.

* * * * *

§ 73.43. Pressurized distribution.

Pressurized distribution shall be required in the following instances:

* * * * *

(4) Individual residential spray irrigation system spray fields and buried sand filters.

§ 73.44. Pressurized distribution design.

(a) General requirements are as follows:

* * * * *

(2) Systems using pressure distribution shall meet the general requirements of §§ 73.52, 73.53 [and], 73.55 and 73.166 [(relating to standard trenches; seepage beds; elevated sand mounds)].

(3) Delivery pipes from dosing pumps shall be installed to facilitate drainage of the distribution piping back to the dosing tank between doses.

(b) Seepage beds of 2,500 square feet or less shall meet the following design standards unless the system has been individually designed under subsection (c).

(1) Conveyance of effluent from the dosing tank to the absorption area shall be through a delivery pipe sized to minimize friction loss. Check valves shall be prohibited on delivery pipes [of 25 feet or less. Check valves may be installed on delivery pipes over 25 feet in length provided the delivery pipe is installed below the frost line].

(2) When equally sized absorption areas are dosed simultaneously, a header pipe shall be used to connect the delivery pipe from the tank to the manifolds. The header pipe shall be sized to minimize friction loss. Effluent application rates per square foot of absorption areas served by a common header shall have a maximum design variation of 10%. If the distance from the treatment tank to the absorption area would cause excessive backflow into the dosing tank, a transfer tank may be used between the treatment tank or storage tank and dosing tank.

* * * * *

(5) Laterals shall consist of 1 1/2 inch diameter pipe, with [3/16] 1/4, 5/16 or 3/8 inch holes placed along the bottom of the pipe; an end cap shall be cemented on the terminal end of the lateral.

* * * * *

(11) All systems shall be designed to maintain a minimum of 3 feet of head at the terminal end of each lateral.

(12) The minimum pump capacity (gpm) shall be calculated by multiplying the total number of discharge holes contained in the laterals of a proposed distribution layout by [a factor of 0.75 gpm] using the following table:

Hole Size	allons/Minute
1/4"	1.3
5/16"	2.0
3/8"	2.8

* * * * *

(15) When siphons are used in a pressure distribution system each discharge hole shall be at least 5/16 inch in diameter. The discharge from all of the holes in the distribution system may not vary from the average discharge rate of the siphon by more than 20%.

(c) Seepage beds of greater than 2,500 square feet, or individually designed systems, shall meet the following design standards:

(1) The pressurized distribution system shall be designed by a registered professional engineer or by a currently certified Sewage Enforcement Officer with expertise in the area of sanitary sewage system design.

(2) The diameter of individual laterals, size and spacing of discharge holes, and minimum diameter of the distribution manifold may not be restricted by subsection (b) except that no discharge hole may be less than

3/16 inch for systems using pumps or 5/16 inch for systems using siphons.

* * * * *

(6) The design head at the terminal end of the last lateral may not be less than 3 feet [or more than 5 feet].

* * * * *

(d) Design of pressure distribution in trenches shall comply with the following:

* * * * *

(8) The design head at the terminal end of each lateral may be no less than 3 feet.

§ 73.45. Dosing tanks.

Dosing tanks shall be constructed to the following specifications:

* * * * *

(2) [The] For all systems other than individual residential spray irrigation systems, the dosing tank shall be designed so that the estimated daily flow shall be discharged to the absorption area in one or more doses. Minimum dose volume shall be five times the internal liquid capacity of the delivery pipe, manifold[,] and laterals, or 100 gallons, whichever is greater. When a siphon is used in a pressure distribution system, the minimum dose volume shall be equal to the internal liquid capacity of the delivery line plus five times the internal liquid capacity of the manifold and laterals.

(3) The dosing tank shall have a minimum liquid capacity equal to or greater than two times the designed dose volume.

* * * * *

§ 73.46. Dosing pumps, siphons and lift station pumps.

(a) Dosing pumps for all onlot sewage disposal systems except individual residential spray irrigation systems shall meet the following specifications:

(1) The pump shall be sized to deliver a flow in gpm equal to or greater than the combined flows from all discharge holes in the laterals when operating at designed level of head and shall be rated by the manufacturer for handling of sewage effluent.

(2) The intake of the dosing pump shall be at least 6 inches from the bottom of the tank. The intake of any dosing pump shall be at a lower elevation than the lowest lateral.

* * * * *

(5) An effective warning device, as described in § 73.62(c) (relating to standards for holding tanks), shall be installed in the dosing tank to indicate failure of the pump or siphon. Electrically operated warning systems shall be on a circuit and breaker separate from the pump.

* * * * *

(7) A copy of the performance curve of the pump or discharge specifications for the siphon to be used shall be attached to the [permit application, Form ER-BWQ-290] system design prepared by the professional engineer or certified sewage enforcement officer. A copy of the manufacturer's specification showing

that the pump is designed to handle sewage or sewage effluent shall also be attached to the system design prepared by the professional engineer or the certified sewage enforcement officer.

(8) [Where] When an aeration tank [or other batch-type treatment process] is used which results in a periodic pump discharge from the treatment tank, the discharge mechanism may be substituted for a dosing tank and pump if the periodic discharge rate meets the criteria set forth in [paragraph] subsections (a)(1), (b)(3) and § 73.45(2) (relating to dosing tanks).

* * * * *

(12) Siphon discharge lines shall be equipped with an observation port and ball valve. The access to the observation port and ball valve shall be extended to grade, capped and secured to prevent entry by children.

(b) Lift pumps shall meet the following specifications:

(1) Meet the standards in subsection (a)(2)—(5), (7) and (8).

(2) Be designed to deliver a minimum dose of 100 gallons when used to lift effluent to the sand filter.

(3) Be designed to discharge at a rate of 20—30 gallons per minute when used to lift effluent to the sand filter.

(c) Dosing pumps used to pressurize a spray field distribution system shall be designed in accordance with the specifications in subsection (a)(2)—(5) and (7).

CONSTRUCTION OF ABSORPTION AREAS

§ 73.51. General.

(a) In all systems, where an absorption area is proposed, the top of the limiting zone shall be at least 4 feet below the bottom of the aggregate.

* * * * *

(3) [No system] An absorption area may not be installed where less than 20 inches of suitable undisturbed mineral soil exists.

(4) When infiltration chambers or other devices which require no aggregate are used, adequate provisions to protect the infiltrative surfaces from damage by operation of pressure distribution systems shall be made.

[(b) Sand suppliers shall provide certification in writing to the Sewage Enforcement Officer and permittee, with the first delivery to the job site, that all sand to be supplied meets the following gradation and quality specifications:

(1) The following table indicates gradation specifications of sand consisting of natural or manufactured fine aggregate:

<i>Sieve size</i>	<i>Maximum percentage passing sieve</i>
3/8"	100%
No. 4	90—100%
No. 30	20—60%
No. 200	0.0—15%

(2) The fine aggregate may not contain more than 15% by weight deleterious material as determined by Pennsylvania Test Method # 510, AASHTO T-104 or ASTM C-88.

(c) Determination of the gradation and quality specifications of subsection (b) shall be by a sieve test conducted within 30 days prior to delivery and a soundness test for deleterious materials conducted within a 1-year period prior to delivery. The sewage enforcement officer or permittee shall have the option to require quarterly or semiannual soundness testing when deemed necessary.]

[(d)] (b) ***

[(e)] (c) ***

§ 73.52. Standard trenches.

* * * * *

(b) *Construction.* Trenches in an absorption area shall be constructed in accordance with the following:

* * * * *

(7) Minimum width of undisturbed earth between trenches shall be 5 feet. When elevated sand mound trenches are used, this distance shall be measured from the toe of the sand.

* * * * *

(13) The top of the aggregate material shall be covered with geotextile fabric, untreated building paper or a 2-inch layer of hay, straw [,] or similar material to prevent backfill material from settling into the aggregate.

* * * * *

§ 73.53. Seepage beds.

Whenever seepage beds are employed, they shall meet the requirements of § 73.52(b)(5), (6), (8) and (10)—(15) (relating to standard trenches) in addition to the following specifications:

* * * * *

(2) The required absorption area may be provided by one or more seepage beds:

* * * * *

(iii) When elevated sand mound beds are used, this distance shall be measured from the toe of the sand.

(3) The bed shall contain a minimum of two laterals or two opposing sets of laterals when pressure distribution is used.

* * * * *

§ 73.54. Subsurface sand filters.

(a) *General.* Subsurface sand filters without underdrains shall meet the following criteria:

* * * * *

(3) The average percolation rate at a depth between 36 and 72 inches shall be within the range of [3] 6—90 minutes per inch.

* * * * *

(b) *Construction.* Sand filters shall be constructed as follows:

* * * * *

(2) Sand meeting the specifications of § [73.51] 73.55(c) and (d) (relating to [general] elevated sand mounds) shall be placed in the entire bed to a minimum depth of 12 inches.

§ 73.55. Elevated sand mounds.

(a) Design.

* * * * *

(2) The maximum slope of the undisturbed soil, to the extremities of the berm, of a proposed absorption area where an elevated sand mound bed may be permitted is [8.0%] 12%.

* * * * *

(6) Elevated sand mound trenches shall meet the requirements of § 73.52(b) (relating to standard trenches) and this section.

(7) Elevated sand mound beds on slopes up to 8% shall meet the requirements of § 73.53 (relating to seepage beds) and subsection (b). Other sand mound beds shall comply with the requirements in subsection (e).

(b) Construction.

* * * * *

(2) The proposed absorption area not obstructed by stumps or other obstacles shall be roughed or plowed parallel with the contour to a maximum depth of 6 inches, using a multiple share chisel plow or similar implement attached to light-weight equipment. Rotary tilling shall be prohibited.

* * * * *

(10) [Where] When a mound system with trenches is used, the area between the individual trenches shall be filled with mineral soil. A minimum distance of 5 feet shall separate sand of individual trenches. This measurement shall be from the toe of the sand.

* * * * *

(c) Sand suppliers shall provide certification in writing to the sewage enforcement officer and permittee, with the first delivery to the job site, that all sand supplied meets the following gradation and quality specifications:

(1) The following table indicates gradation specifications of sand consisting of natural or manufactured fine aggregate:

Sieve size	Maximum percentage passing sieve
3/8"	100%
No. 4	90—100%
No. 30	20—60%
No. 200	0.0—15%

(2) The fine aggregate may not contain more than 15% by weight deleterious material as determined by Pennsylvania Test Method # 510, AASHTO T-104 or ASTM C-88.

(d) Determination of the gradation and quality specifications of subsection (c) shall be by a sieve test conducted within 30 days prior to delivery and a soundness test for deleterious materials conducted within a 1-year period prior to delivery. A soundness test shall be conducted for all manufactured sand within 6 months prior to delivery. A

Department of Transportation wet sieve analysis shall be conducted for manufactured sand. The sewage enforcement officer or permittee shall have the option to require quarterly or semiannual soundness testing when deemed necessary.

(e) Elevated sand mound beds on slopes greater than 8% shall meet the requirements of § 73.53 (relating to seepage beds) and subsection (b). In addition:

(1) The absorption area shall have a minimum length to width ratio of 4 to 1.

(2) The long axis of the absorption area shall be perpendicular to the slope. The bed construction shall follow the contours.

(3) Upon completion, the outside slope of the berm may be no greater than 33.3%.

(4) Stacking of absorption areas vertically on a slope is prohibited.

(5) An absorption area may not receive more than 500 gallons per day sewage loading.

RETAINING TANKS

§ 73.62. Standards for holding tanks.

* * * * *

(b) The minimum capacity of a holding tank shall be [1,000] 3,000 gallons or a volume equal to the quantity of waste generated in 3 days, whichever is larger.

* * * * *

§ 73.64. Chemical toilet or other portable toilet.

(a) When proposed for use at temporary construction sites, facilities providing temporary recreational or sporting activities (such as a special event) or temporary seasonal facilities other than those intended for human habitation, [Chemical] chemical toilets or other portable toilets are exempt from the onlot permitting requirements of Chapter 72 (relating to administration of sewage facilities permitting program) but improper installation or maintenance of these toilets shall constitute a nuisance under section 14 of the act (35 P. S. § 750.14) and be enforceable by the local agency. [shall meet the installation specifications of the manufacturer and be maintained in a manner that will preclude any potential pollution or health hazards.

(b) Where multiple chemical toilets or other portable toilets are proposed for temporary use at construction sites, recreational activities or seasonal facilities, all units proposed for installation shall be included under one permit.] When permanent use is proposed, chemical toilets or other portable toilets shall be considered retaining tanks.

§ 73.65. Recycling toilet, incinerating toilet or composting toilet.

(a) Recycling, incinerating and composting toilets shall bear the seal of the National Sanitation Foundation indicating testing and approval by that agency under Standard No. 41.

[(a)] (b) ***

[(b)] (c) Where the installation of a recycling toilet, incinerating toilet or composting toilet is proposed for a new residence or establishment, an onlot sewage system or other approved method of sewage disposal shall be

provided for treatment of washwater or excess liquid from the unit, except as provided in subsection [(d)] (e). Both sewage disposal facilities shall be included under one permit.

[(c)] (d) ***

[(d)] (e) [Where] When a composting toilet or incinerating toilet is proposed for installation on a lot meeting the requirements of § 71.63 (relating to retaining tanks), it shall be deemed equivalent to and permitted as a privy; the device shall be operated and maintained in accordance with the manufacturer's specifications. Discharges of liquids from these units, except to onlot sewage systems meeting the requirements of this part or other method of sewage disposal approved under this chapter or approved by the Department is prohibited.

EXPERIMENTAL AND ALTERNATE SYSTEMS

§ 73.71. Experimental sewage systems.

* * * * *

(b) [Any] A person desiring to install an experimental sewage system or alter a component of an existing system using a method, technology or design determined to be experimental by the Department shall submit complete preliminary design plans and specifications to the sewage enforcement officer and the Department for review and comment prior to submitting an application for a permit. The Department will determine if classification as an experimental system method, technology or design is appropriate for the submission and provide review comments to the sewage enforcement officer.

* * * * *

§ 73.72. Alternate sewage systems.

(a) Alternate systems shall be considered for individual onlot or community onlot systems in any of the following cases:

* * * * *

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 where the local agency determines soil mottling is present.

(b) When 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 contaminated water supplies and to repair or replace a malfunction of the onlot system. The local agency will 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 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.

(Editor's Note: Section 73.77 was proposed to be added in the August 5, 1995, proposal.)

§ 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 section 7.2(a)(2)(ii) of the act.

(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 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.

INDIVIDUAL RESIDENTIAL SPRAY IRRIGATION SYSTEM STANDARDS

§ 73.161. General.

(a) Individual residential spray irrigation systems shall be designed by a registered professional

engineer with expertise in sanitary sewage system design or by a currently certified sewage enforcement officer who has successfully completed a Department-sponsored course on design of this system. Copies of the plans and specifications along with the designer's report shall be attached to the applicant's copy, local agency's copy and the Department's copy of the application for sewage permit.

(b) Standards for individual residential spray irrigation systems described in the following sections shall also be met: §§ 73.1, 73.12—73.17, 73.21, 73.31, 73.32 and 73.41—73.46.

§ 73.162. Intermittent sand filters.

(a) There are two types of intermittent sand filters available for use with individual residential spray irrigation systems. The standards for free access sand filters and buried sand filters are included in this section.

(b) Free access sand filters shall meet the following standards:

(1) *Filter.* The filter shall be constructed in a tank meeting the following specifications:

(i) The surface area of a filter tank shall be a minimum of 40 square feet for systems using an aerobic treatment tank and serving a single family residence of three bedrooms or less. The filter area shall be increased by 10 square feet for each additional bedroom over three.

(ii) Systems proposing the use of a septic tank to serve a single family dwelling of three bedrooms or less shall be designed using two filter tanks or a single tank with two chambers. Each tank or chamber shall have a surface area of 40 square feet. The filter area of each filter shall be increased by 10 square feet for each additional bedroom over three.

(iii) Tanks shall be watertight and made of a sound, durable material which is not subject to excessive corrosion or decay.

(iv) Concrete tanks shall have a minimum wall thickness of 2 1/2 inches and be adequately reinforced.

(v) Precast slabs used as tank tops which support the access covers and risers shall have a thickness of at least 3 inches and be adequately reinforced.

(vi) Tanks shall have a uniform depth throughout the tank and may not be less than 5 feet in depth, nor greater than 7 feet.

(vii) Tanks shall be designed and constructed so that the depth from the cover to the top of the sand layer is a minimum of 24 inches.

(viii) Access to grade shall be provided by a minimum of two access openings. These access openings shall be a minimum of 36 square inches and provide access to the entire surface of the filter.

(ix) The tank wall shall be extended a minimum of 6 inches above final grade.

(x) Access covers shall be insulated against severe weather, secured by bolts or locking mechanisms, prevent water infiltration and the entrance of debris, and be lightweight to facilitate routine maintenance.

(2) *Media.* Sand suppliers shall provide certification, in writing, to the sewage enforcement officer and permittee, with the first delivery to the job site, that the sand to be supplied meets Department of Transportation specifications for Type A sand in Section 703.1(c), Table A, Fine Aggregate listed in the *Department of Transportation Specifications Handbook*. Limestone sand may not be used.

(3) *Construction.* The sand filter shall be constructed according to the following standards:

(i) A 4-inch diameter perforated underdrain pipe with a minimum 2,500 pound crash test specification shall be placed on the bottom of the tank.

(ii) Two rows of perforations between 1/2 to 3/4 inch in diameter shall be drilled in the underdrain pipe at 6 inch intervals and the pipe shall be placed so the perforations face downward and the rows are approximately 45° from each other.

(iii) Aggregate shall be placed around the underdrain to a total depth of 5 inches from the bottom of the tank.

(iv) A minimum depth of 4 inches of pea gravel (1/4 to 1/8 inch in diameter) shall be placed over the aggregate underdrain material.

(v) Sand shall be placed over the pea gravel to a depth of at least 24 inches.

(vi) The sand in the filter shall be no greater than 36 inches deep.

(vii) The central distribution system shall be designed and installed to convey a minimum 100 gallon flood dose of effluent to the surface of the sand filter. A high water alarm shall be installed in the filter tank which produces an audible and visual alarm when effluent backs up on the filter surface to 12 inches above the surface of the sand.

(viii) When two filters or chambers are required to treat septic tank effluent, the duplicate units shall be flooded alternately.

(ix) The central distribution piping shall be 2 inches in diameter.

(x) The height of the central distribution system's effluent outlet above the sand surface shall allow for the installation of a splash plate and the maximum flooding depth of the sand filter.

(xi) A concrete splash plate shall be located under each effluent outlet to prevent scouring of the sand surface. Movement of the splash plate during the flooding operation shall be prevented.

(c) Buried sand filters shall meet the following standards:

(1) *Location.*

(i) Buried sand filters may not be installed in areas where bedrock is encountered above the proposed depth of the sand filter, or where the seasonal high groundwater table rises above the proposed depth of the sand filter unless a concrete bottom and sides are used.

(ii) A buried sand filter may not be constructed in unstabilized fill.

(2) *Size.*

(i) The size of the sand filter shall be determined on the basis of the appropriate application rate and

the estimated daily sewage flow in accordance with § 73.16(a) (relating to absorption area requirements) but the sand filter area may not be less than 300 square feet for use with either an aerobic treatment tank or septic tank with solids retainers units.

(ii) For a single family residence, the minimum sand filter area shall be based on a maximum hydraulic loading of 0.67 gallons per day per square foot.

(3) *Media.*

(i) At least 2 inches of clean aggregate shall surround underdrains and distribution pipes. A layer of porous geotextile material (such as polypropylene, polyester, nylon) shall be placed on top of both layers of aggregate to prevent migration of soil or sand into the aggregate.

(ii) At least 24 inches of clean sand shall be placed over the underdrain aggregate. The sand shall meet the specifications in subsection (b)(2).

(iii) The minimum depth of earth cover over the coarse aggregate in all installations shall be 12 inches. When the top of the aggregate is less than 12 inches from the undisturbed soil surface, the soil cover shall extend beyond the filter area by at least 3 feet on all sides. The soil over the sand filter shall be so graded that surface water will run off, consist of soil suitable for the growth of vegetation and be seeded to control erosion.

(4) *Underdrain piping.*

(i) Underdrain piping shall be laid on a grade of 3 to 6 inches per 100 feet sloped to the outfall pipe.

(ii) Underdrain piping shall be positioned between the distribution laterals to maximize effluent travel through the filter sand.

(iii) Underdrain piping holes shall be equal or greater in number and size to the distribution piping holes.

(iv) Underdrain piping shall have two rows of holes placed at approximately a 45° angle from each other along the bottom half of the pipe.

(v) The outfall pipe from the underdrain header shall have an antiseep collar and bentonite clay plug, or a leak proof boot sealed as per manufacturer's instructions to the subsurface sand filter liner.

(5) *Filter base and liner.* The base of the filter shall be sloped to the underdrain pipe a maximum of 1%. An impervious liner of hyplon, polyvinyl chloride or polyethylene sheeting of 20 millimeter thickness or equal shall be installed on a tamped earth base to prevent seepage to the groundwater unless a concrete bottom and sides are used. A 2-inch layer of sand or a layer of 10 ounce porous geotextile material shall be provided on each side of the liner to prevent punctures and tears. Seams shall be made according to manufacturer's specifications.

(6) Distribution of effluent to the buried sand filter shall meet the requirements of §§ 73.44—73.46 (relating to pressurized distribution design; dosing tanks; and closing pumps).

§ 73.163. Spray fields.

(a) The maximum slope of the undisturbed soil where a spray field may be permitted is 25%.

(b) Individual residential spray irrigation system spray fields are not permitted on:

(1) Soils with evidence of a seasonal high water table at less than 10 inches from the surface.

(2) Soils with rock formations at less than 16 inches from the surface.

(3) Floodplain soils or floodprone areas unless any required encroachment permits have been obtained from the Department and compliance with local ordinances pertaining to flood areas.

(4) Agricultural areas in active production of food for human consumption.

(c) Slopes shall be as follows:

(1) Open, grassed areas—limited to 12%

(2) Forested areas—limited to 25%

(3) Nonfood producing agricultural areas—limited to 4%

(d) Spray field sizing based upon soils characteristics shall be in accordance with Table B in § 73.16(c) (relating to absorption area requirements).

(e) Construction shall be as follows:

(1) The area upslope of the spray field shall be graded or bermed to divert upland drainage from the spray field site.

(2) The downslope portion of the permitted spray field shall be graded or bermed to retain effluent on the permitted spray site.

(3) The permitted spray field shall be covered with vegetation.

(4) Construction activity within the spray field site should be conducted in a manner which will minimize earth disturbance and compaction.

§ 73.164. Chlorine contact/storage tanks.

(a) The minimum liquid capacity of an individual residential spray irrigation system storage tank serving a three bedroom dwelling, shall be 2,000 gallons. The tank size shall be increased an additional 500 gallons for each additional bedroom over three. Additional increases in size may be required where more than 5 days storage may be needed due to climatic conditions or when spray fields are located in floodplain or floodprone areas.

(b) Storage tanks used in individual residential spray irrigation systems shall meet the construction standards in § 73.45(1) and (4)—(6) (relating to dose tank). When more than one tank is used, the tanks shall be connected together at the bottom to equalize the liquid level in the tanks.

§ 73.165. Disinfection.

(a) Disinfection of effluent is required prior to spraying. The disinfection shall be by chlorination and shall produce an effluent which will contain a concentration not greater than 200/100 milliliter of fecal coliform organisms in a single sample. Disinfection units shall be installed in accordance with the manufacturer's specifications. Disinfection units shall be reliable, able to disinfect sewage effluent and be easily maintained by the property owner.

(b) A chlorinator shall be designed to maintain a chlorine residual of 1 ppm to 2 ppm and provide for a 30 minute contact time.

(1) When an erosion chlorinator is proposed, the base of the unit may be placed no deeper than 36 inches below finished grade or to a shallower depth which allows access for maintenance.

(2) When a lift pump is used to keep the unit no deeper than 36 inches below finished grade, the pump shall have a discharge rate that does not exceed the manufacturer's specifications for the erosion chlorinator and shall meet the appropriate specification of § 73.46 (relating to dosing pumps, siphons and life station pumps).

(3) Chlorine contact time may be obtained using a separate chlorine contact tank or in-line chlorination followed by the storage tank.

(4) Chlorinators shall be housed separately from chlorine contact tanks or storage tanks unless the tanks are specifically designed to house chlorinators.

§ 73.166. Design of pressure distribution for individual residential spray irrigation systems.

(a) Design of pressure distribution in an individual residential spray irrigation system shall comply with the following:

(1) Conveyance of effluent from the storage tank to the spray field shall be through a delivery pipe sized to minimize friction loss.

(2) Check valves shall be prohibited on delivery lines. Air relief valves may be placed at high points in the delivery line to prevent air locks.

(3) The delivery line and lateral shall be designed so that the effluent will drain back to the storage tank.

(4) Individual laterals shall be sized to minimize friction loss. The hydraulic loss (friction and elevation changes) within a lateral shall be less than 20% of the operating head of the sprinklers.

(5) Design of laterals should include consideration of measures to prevent freezing of lines.

(6) Spacing of laterals and sprinklers shall provide for uniform distribution of the effluent over the spray field in accordance with the manufacturer's specifications for spray nozzles proposed for use.

(7) Design of the spray field shall be based on the manufacturer's sprinkler specifications listing operating head, wetted diameter, nozzle size and discharge rate which shall be attached to the system design.

(8) Sprinklers shall be installed on risers 18 inches to 5 feet above grade level.

(9) Sprinklers shall be kept clear of obstructing vegetation for a radius of 5 feet.

(10) The design head of the sprinkler may not exceed the manufacturer's specifications for each system component.

(11) The minimum pump capacity shall equal the total discharge from all sprinklers when operating at design head.

(12) Total pump head shall be calculated by addition of all losses incurred due to elevation changes, pipe and fitting friction losses and the design head of the sprinkler.

(13) The effluent shall be discharged to the spray field once per day. A manual override shall be installed in the system to allow interruption of this spray cycle when weather conditions are not conducive to spraying.

(14) The permittee shall conduct a test pressurization of the completed spray field in the presence of the sewage enforcement officer prior to covering the piping system from view. During the test, the sewage enforcement officer shall confirm that all joints are water tight, the design head is achieved and the manual override is functional.

§ 73.167. Operation and maintenance.

Individual residential spray irrigation systems require periodic maintenance by the property owner and entity established under § 72.25(h) (related to permit requirements for operation and maintenance of individual residential spray irrigation systems). Without proper maintenance, system components will fail and pollution or a public health hazard will occur. This may result in costly repairs and civil penalties. The system designer shall provide an operation and maintenance manual to the permittee which shall include, as a minimum, the following standards for operation and maintenance which shall be met by the permittee:

(1) Septic tanks, dosing tanks, lift tanks and chlorine contact/storage tanks shall be inspected for structural integrity of the tank, inlet and outlet baffles, solids retainer, pumps, siphons and electrical connections.

(2) Aerobic tanks shall be inspected for structural integrity of the tank, inlets and outlet baffles, buoyed solids retainer, pumps, siphons and electrical connections. The inspection and concurrent pumping of excess solids shall be conducted in accordance with manufacturer's and National Sanitation Foundation requirements.

(3) Free access sand filters, buried sand filters chlorinators, the pressurized spray irrigation plumbing and spray nozzles and the spray fields shall be inspected periodically by the property owner and every 6 months by the maintenance entity established under § 72.25(h). Each component shall be inspected for compliance with the following standards:

(i) Chlorine residual sampled after the contact/retention tank shall be maintained at a concentration of at least 1.0 ppm.

(ii) The chlorinator shall be functioning within the specifications of the manufacturer. Bridging of chlorine tablets may not be occurring.

(iii) Solids may not be accumulated on the surface of the sand in the free access sand filter nor may 12 inches of effluent be ponded over the sand. The high water alarm shall be functional.

(iv) The surface of the free access sand shall be raked and porous and any sand removed shall be replaced with sufficient clean sand to maintain the depth at a minimum of 24 inches.

(v) The plumbing in the free access sand filter tank shall be functional and free of leaks and splash plates shall be in place.

(vi) The free access sand filter tank and cover shall be structurally sound and unauthorized access equipment shall be in place. Insulation shall be in place.

(vii) The areas of the buried sand filter shall be free of ponded effluent and downgradient seepage.

(viii) The plumbing to the spray field shall be functional and free of leaks.

(ix) The spray nozzles shall be functioning within the design specifications and the extent of the designed wetted perimeter of each nozzle.

(4) A laboratory shall test the discharge to the system for fecal coliforms, biological oxygen demand (BOD), suspended solids and chlorine residual to determine compliance with Chapter 72 (relating to administration of sewage facilities permitting program). At least annually, a copy of the tests results along with the most recent inspection of the system by the maintenance entity established under § 72.25(f) shall be sent to the local agency.

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