

**DEPARTMENT OF ENVIRONMENTAL PROTECTION**  
**Bureau of Water Supply and Wastewater Management**

- DOCUMENT ID:** 362-2208-002
- TITLE:** Municipal Guidance – Reconstructive Planning
- EFFECTIVE DATE:** December 30, 1997  
Minor changes were made throughout (September 11, 2002).
- AUTHORITY:** 35 P.S. §750.5(a); 25 Pa. Code § 71.13(a)
- POLICY:** Each municipality shall, from time to time, submit revisions to their officially adopted sewage facilities plan to the Department of Environmental Protection (DEP) within such reasonable period as DEP may prescribe.
- PURPOSE:** Where needed, to facilitate completion of sewage facilities planning requirements for “unplanned” lots proposed to be served by onlot sewage disposal systems and, in the future, to ensure that sewage facilities planning is accomplished before the issuance of sewage facilities permits in all municipalities. Minimum planning requirements shall be completed for each lot for which there is an applicant for sewage facilities permit. Planning for a subdivision that has not obtained sewage facilities planning approvals may be deferred, upon discovery of the circumstances described, to allow issuance of permits, timely completion of planning, and timely institution and enforcement of municipal ordinances to prevent recurrence of these circumstances in the future.
- APPLICABILITY:** This document applies to situations discovered by Sewage Enforcement Officers and delegated agencies where an application for onlot sewage disposal system permit is received for existing lots having no sewage facilities planning approval.
- DISCLAIMER:** The policies and procedures outlined in this guidance are intended to supplement existing requirements. Nothing in the policies or procedures shall affect regulatory requirements.
- The policies and procedures herein are not an adjudication or a regulation. There is no intent on the part of DEP to give the rules in these policies that weight or deference. This document establishes the framework within which DEP will exercise its administrative discretion in the future. DEP reserves the discretion to deviate from this policy statement if circumstances warrant.
- PAGE LENGTH:** 7 pages
- LOCATION:** Volume 33, Tab 28

## I. INTRODUCTION

Section 7(b)(4) of the Pennsylvania Sewage Facilities Act states that “The local agency shall not issue permits for individual sewage systems or community sewage systems unless the system proposed is consistent with the official plan of the municipality in which said system is to be located and the municipality is adequately implementing the official plan...” DEP’s regulations provide the mechanism to meet this statutory requirement. Routinely, municipalities submit a Sewage Facilities Planning Module to DEP for approval whenever a subdivision is proposed. The Act provides exceptions to this planning requirement in some specific circumstances.

The majority of municipalities in Pennsylvania have complied with this law and submit planning modules for all subdivisions. Some municipalities may not have complied with this requirement. These municipalities do not have ordinances which require sewage facilities planning approval prior to preliminary plat approval under the Municipalities Planning Code. Such approval is not required, by statute, prior to the recording of a lot or subdivision at the county courthouse.

Due to this, individual lots in a subdivision have been recorded and sold without an approved method of sewage disposal. This causes problems when purchasers of lots in these subdivisions attempt to obtain a permit for an onlot sewage system. Sewage Enforcement Officers (SEOs) are not permitted by law and regulation to issue a permit for a system unless the planning module for the subdivision has been approved by the municipality and DEP.

When these approvals have not been obtained by the subdivider, the property owner is unable to obtain a permit for an onlot sewage system and cannot develop the lot until the planning requirements are met. The lot owner must then either complete the planning for the entire subdivision, or depend upon the municipality to complete the planning module. The costs and fees with the development of these planning documents are then placed upon the municipality and lot owners rather than the developer. In some cases, lot owners cannot build their home on the lot because of soil or other adverse conditions which would normally be discovered during planning module preparation.

This guidance is intended to provide a procedure to help resolve existing situations of this type and to prevent their recurrence. It does not relieve the municipality of the responsibility to plan for adequate sewage disposal facilities for new land developments. It does, however, allow the municipality to defer this planning, for a limited time, where errors have occurred in the past. Continued use of this procedure is dependent upon municipal actions to correctly implement the planning program now and in the future. For that reason, the methods available to municipalities to prevent a continuation of these problems, discussed in Section III of this guidance, should be implemented by the municipality as soon as possible.

Use of this procedure to defer sewage facilities planning is specifically denied to delegated agencies described in The Pennsylvania Sewage Facilities Act (35 P.S. 750.1 *et seq.*). These have been delegated authority (35 P.S. §750.7.(b)(4.3)) to review and approve subdivisions for new land developments within their jurisdictional areas.

A delegated agency may not defer sewage facilities planning; the authority to do so is not within the scope of those powers of review and approval which DEP delegates. A delegated agency is restricted, within this guidance, to all actions designated to be taken by the Sewage Enforcement Officer (SEO).

## II. PROCEDURE FOR COMPLYING WITH THE PLANNING REQUIREMENTS

- A. Upon the discovery by the SEO that a permit application has been received from a property owner of a lot in a subdivision which does not have an approved planning module, the SEO must determine if the subdivision was recorded at the county courthouse prior to June 10, 1989, the effective date of the 25 Pa. Code, Chapter 71 amendments implementing Act 26 of 1989 changes to Act 537. This information can be required of the applicant or obtained through the courthouse.
- B. If the lot is part of a subdivision recorded prior to June 10, 1989, the SEO may issue a permit for that lot after providing notice to the municipality of his intention to issue a permit using the attached form letter. A copy of the form letter must be forwarded to the local and county planning agencies. The form letter provides the municipality an opportunity to require planning prior to permit issuance. The municipality must be given at least 7 days to response to the letter. The permit application is not considered complete until the expiration of the 7 days. Lack of a response from the municipality within 7 days will be considered concurrence with the proposed issuance of a permit for the unplanned lot. The SEO will assure that all of the siting, design and technical standards for the permitting of an on-lot system on the lot are met. Applications for permits for lots in subdivisions determined by the municipality to need planning or determined by the SEO as not meeting the siting, design and technical standards must be denied. If the permit can be issued, the SEO will mark the block on the "Application for Sewage Disposal Systems" under "Subdivision Planning" which states "Area Not Planned" and write "Prior to June 10, 1989" in that block. A copy of the form letter will be attached to DEP's copy of the permit application and forwarded to the appropriate office of DEP. Once the application with attached form letter is forwarded to DEP, the permit may be issued.
- C. If the lot is part of a subdivision which was recorded on June 10, 1989, or later, some level of sewage facilities planning must be completed prior to permit issuance. To determine the level of planning required, the municipality's SEO must conduct a site visit to each of the improved lots in the subdivision to collect the following information:
1. Location of the septic tank and absorption area.
  2. Location of the water supply(ies).
  3. The observed or reported type of sewage system installed compared to that required based on information from Soil Conservation Service and/or USGS mapping.
  4. Visible evidence (surface pooling of sewage, discharges from piping or tanks, discharges to streams, etc.) of a malfunction of any existing system within the subdivision.
- D. Using the information obtained in C. above, the SEO must provide a report to the municipality regarding the existing systems on the improved lots. Based on the SEO's report, the municipality must decide if additional action or planning regarding the improved lots is required as follows:
1. If the municipality determines from the SEO's report that the existing systems are functioning properly, no additional planning is necessary for the improved lots. Upon notification by the municipality to proceed, the SEO completes the site testing and the municipality completes the planning module for all of the remaining lots in the subdivision, including the permit applicant's lot. The municipality then submits the completed planning module to DEP with the SEO's report. Upon approval of the planning module by DEP, permits for the remaining lots may be issued.
  2. If the SEO's report indicates that substandard or malfunctioning sewage systems may exist on the improved lots, the municipal officials must evaluate the approved Official

Sewage Facilities Plan for the municipality to determine if this problem area has been identified previously and follow the procedure below:

- a. If the current Official Plan, Update Revision or Sewage Management Plan implementation schedule proposes a solution to resolve existing malfunctions or substandard systems in this area, no additional planning is necessary for the improved lots. Upon notification by the municipality to proceed, the SEO completes the site testing and the municipality completes the planning module for all of the remaining lots in the subdivision, including the applicant's lot. The municipality then submits the planning module to DEP with a summary of the recommendations in the Official Plan, Update Revision or Sewage Management Plan related to the needs area. Upon approval of the planning module by DEP, permits may be issued for the applicant's lot.
- b. If the current Official Plan does not address the newly discovered sewage problem area, the SEO completes the site testing and the municipality must complete the planning module for all of the remaining lots in the subdivision, including the applicant's lot. The municipality then submits the planning module to DEP with a description of the actions the municipality will take to resolve any planning inadequacies and/or existing malfunctions. The municipality should consider individual repairs where possible or the inclusion of the problem area in a future update revision of their official sewage plan. DEP will then determine if additional planning will be required based upon the review of the planning module and the municipality's proposed actions. Upon approval of the planning module by DEP, permits may be issued for the applicant's lot.

E. Additional Information

1. Where a property owner is unable to obtain the necessary planning approvals through the process described above, a private request for revisions may be initiated under Title 25, Pennsylvania Code Chapter 71, Administration of the Sewage Facilities Planning Program, Section 71.14.
2. Where the municipality determines that the subdivider of the original tract is still the owner of a lot or lots in the subdivisions, every effort should be made to obtain the necessary planning module components from that subdivider.
3. The requirement that long-term disposal needs be met on newly proposed marginal lots should only be applied if any of the criteria defining marginal conditions are met. Replacement area testing is not required on existing improved lots unless such testing is identified as the alternative of choice in an update revision to the official sewage facilities plan for the area.
4. The municipality must determine from the total number of lots created after May 15, 1972 which planning module component to use. If the total is 10 lots or less (including both improved and remaining lots) and all other criteria required by Title 25, Pa. Code 71.55(a) are met, a Component 1 may be used. Otherwise, a Component 2 is required.

### III. PREVENTION

The above guidance is being provided to municipal officials solely as an effort by DEP to provide relief to the property owners of unplanned lots in municipalities which have failed to meet their legal planning obligations under the Pennsylvania Sewage Facilities Act. This guidance is in no way an endorsement of

this failure of a municipality to comply with the provisions of the Pennsylvania Sewage Facilities Act. DEP will continue to make every effort to assure that municipalities comply with the new land development planning requirements of Act 537 including initiating legal action against municipalities where necessary.

- A. Where DEP determines that there is a continuing problem regarding the issuance of permits in unplanned subdivisions recorded on June 10, 1989, or later; or, where existing unplanned subdivisions, recorded either prior to or after June 10, 1989; are creating public health or environmental problems, DEP may order the municipality to update its official sewage facilities plan to address all of the unplanned subdivisions within its borders. When a municipality is ordered to update its official plan, the provisions of this guidance document related to the issuance of permits in unplanned subdivisions no longer apply and limitations on issuing permits apply in the identified needs areas until the plan update is approved.

For this reason, DEP recommends that if a municipality is aware of the existence of unplanned subdivisions, the municipality should initiate a update revision to their official sewage plan to include these unplanned subdivisions. If this is done prior to issuance of an order by DEP, imposition of permit limitations on remaining lots in these subdivisions will be avoided and this guidance may be used while the plan is being developed.

- B. DEP may also issue an order for effective administration which requires a municipality to take actions necessary to assure that sewage facilities planning for new land development occurs prior to permit issuance. To avoid any penalties associated with such an order, municipalities are strongly encouraged to pass ordinances to prevent the problems created by unplanned subdivisions from recurring. Ordinances should specify the following:
1. Final subdivision approval under Act 247 may not be given until a Sewage Facilities Planning Module approval is received from DEP.
  2. Sewage permits may not be issued until a Sewage Facilities Planning Module approval is received from DEP.
  3. Building permits are required and may not be issued until sewage permits have been issued.
- C. In addition to the above, the municipality should request that the County Commissioners require proof that the planning requirements of both Act 247 and Act 537 have been fulfilled before lots or subdivisions are recorded or sold. If proper planning has not been completed, this process should be designed to send developers back to the municipality for the required planning.

When a municipality takes the necessary actions to make sure that proper planning is completed prior to the sale of a lot, the municipal officials assure that the developer of the lot rather than the municipality will bear the costs of preparing the required planning documents, that the future lot owner will have an available method of sewage disposal, and that the health of the citizens of the municipality is protected.

**Letter for Notification of Municipal Officials  
Under Section II.B. of the Department of Environmental  
Protection Municipal Guidance  
Regarding Reconstructive Planning**

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name of Municipality

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
Post Office, State, Zip

As your sewage enforcement officer, I am required by the Department of Environmental Protection (DEP) to notify municipal officials that I have received an application for a permit for an onlot sewage disposal system to serve a lot which is part of the \_\_\_\_\_ subdivision involving \_\_\_\_\_ lots. This subdivision was created without the required sewage facilities planning module approvals by your municipality and DEP. I am normally prevented from issuing sewage permits for lots in subdivisions which have not been approved through the planning module process. However, DEP has issued the enclosed guidance which allows me to issue permits for new lots in unplanned subdivisions upon notice to you, the appropriate planning agencies and DEP that the subdivision was recorded prior to June 10, 1989. This subdivision was recorded on \_\_\_\_\_. If I do not receive instructions from you to the contrary, I intend to issue a permit for this lot on \_\_\_\_\_.

Municipal officials must understand that sewage planning for this subdivision is still required by DEP. The enclosed guidance only allows the deferral of the planning for this subdivision until your Official Sewage Facilities Plan is updated. The municipality has the option of completing the required planning prior to permit issuance. Information I have obtained from a site survey indicates the following:

- Number of lots already developed using onlot systems –
- Number of existing malfunctions identified –
- Number of undeveloped lots –

This information should be used by the municipality and will be used by DEP in determining the need for an update revision to the Official Sewage Facilities Plan. The more unplanned subdivisions which occur in your municipality, the more likely it will be that DEP will require an update revision.

Finally, it is imperative that any new subdivision or expansion of an existing subdivision **not** be approved by your local planning agency or county planning commission without evidence of DEP sewage facilities planning module approval. You must be sure your local land use subdivision regulations are properly coordinated with your sewage facilities planning module process (see Section III of the enclosed guidance). I cannot issue onlot sewage systems permits for any new subdivisions created after June 10, 1989 which do not have sewage planning approval, until a planning module is completed and approved by DEP. This will be very difficult and time-consuming if you allow subdividers to record and sell new lots without completing the planning module document. The municipality may be required to incur the expense of completing these planning documents and

individual property owners may experience lengthy delays in obtaining permits for their lots. This a very important issue with which municipal officials and your planning commission representatives must become familiar.

\_\_\_\_\_  
Sewage Enforcement Officer

\_\_\_\_\_  
Certification Number

Enclosure