Mr. Brian Schlauderaff  
Technical Guidance Coordinator  
Department of Environmental Protection  
Policy Office  
Rachel Carson State Office Building  
P.O. Box 2063  
Harrisburg, PA 17105-2063

Dear Mr. Schlauderaff:

We are writing to comment on the department’s recently-released “Draft Act 537 Program Guidance; Site Suitability and Alternatives Analysis Guidelines for New Land Development Proposing Onlot Sewage Disposal,” Document Number: 385-2207-001, and the technical guidance document “Draft Onlot Wastewater Technology Verification Protocol,” Document Number 385-2208-003. After reviewing these “proposed guidelines,” we have concerns that the department has dramatically overstepped the General Assembly’s intent of Act 26 of 2017.

First, the General Assembly clearly intended that the department go through the regulatory process instead of bypassing it by publishing a guidance document. Although the public has been given the opportunity to comment on these documents, the proposals will not be reviewed by the Independent Regulatory Review Commission, nor do they have to be submitted to the appropriate legislative committees for their review and comment. Secondly, the act clearly states that the department must work with the Sewage Advisory Committee. However, the department’s issuance of these documents and the (initial) deadline for receipt of public comments was timed before the advisory committee was to hold its next regularly-scheduled meeting. Only after a considerable outcry over this inauspicious timing did the department extend the deadline for public comment until May 8th so that the department could meet with the Sewage Advisory Committee on May 3rd to get required input. It will be brought to the advisory committee’s attention the fact that the act clearly calls for the development of regulations, and not “guidance documents.”

Both documents state on page 1, under the disclaimer section, that “the policies and procedures herein are not an adjudication or a regulation.” The documents further state that the department has no intent to give these policies that “weight or deference,” but that they establish the framework of how the department will exercise its administrative discretion, unless it feels the circumstances warrant deviation from the department’s own procedures.
Under current regulations, Title 25, Chapter 71.71, municipalities are required to only “evaluate and implement the operation and maintenance needs of existing and proposed sewage facilities” within their borders. They are not required to implement sewage management plans or programs. The proposed guidance would unilaterally and arbitrarily change regulations by policy, an action this association has long opposed. It would also require municipalities to implement and enforce a sewage management programs regardless of whether or not a documented need for sewage maintenance exists merely because they choose to allow alternate onlot sewage systems for new land development as is lawfully contemplated under Act 26.

The act clearly limits itself to allowing the consideration of either conventional or alternate onlot sewage systems during the sewage planning process when a plan supplement or plan revision for new land development is proposed. It requires the department to evaluate, in consultation with the advisory committee, the latest scientific, technical and field-testing information concerning alternate systems and to evaluate the existing alternate systems based on that information. The purpose of Act 26 was not to impose additional requirements in siting and maintaining onlot systems, whether a conventional or alternate system. This act did not add the requirement of a sewage management plan for the entire municipality if an alternate onlot sewage system was authorized. However, the proposed guidance does just that.

These guidance documents subvert the General Assembly’s good intentions by stipulating that, if any parcel of land in any part of the municipality requires the use of a legally-allowed alternate onlot system, then a sewage management plan for the entire municipality shall be implemented.

Finally, the department even identifies in the proposed guidelines that “implementing the sewage management program provisions of this guidance will represent a significant logistical challenge to municipalities, local agencies, and DEP.” PSATS must oppose the sewage management program requirement as it would be cost-prohibitive for many townships, and represent another unfunded mandate targeted at rural and small municipalities.

Should you like to discuss our issues, please contact me.

Sincerely,

Elam M. Herr
Asst. Executive Director

cc: Senator Gene Yaw
    Senator John Yudichak
    Representative John Maher
    Representative Michael Carroll