

Click [here](#) to view this email in your browser.



Newsletter of the Township Engineers Association

August 2021

Latest News

REMINDER: Grant Opportunities Are Still Available

- **Federal Broadband Grants** — The U.S. Department of Commerce has \$288 million available in grant funding for the deployment of broadband infrastructure. Grants will be awarded to partnerships between a state or local government and a provider of fixed broadband services. Projects should be designed to provide broadband service to rural areas and to the greatest number of households in an eligible service area, be the most cost-effective in providing broadband services, and provide a download speed of 100 Mbps and an upload speed of 20 Mbps. As rural townships have often remarked, there is a continuing need for better internet connectivity during emergencies; this might be an opportunity to help your clients fill that gap. Interested engineers should [click here](#) to learn more about this funding program. Applications are due **August 17, 2021**.
- **PA Broadband Grants for Unserved and Underserved Communities** — The Commonwealth Financing Authority has \$5 million available for projects that expand high-speed broadband service infrastructure in unserved and underserved areas through the [Unserved High-Speed Broadband Funding Program](#). This grant program is only open to non-governmental entities that have the technical, managerial, and financial expertise to design, build, and operate a high-speed broadband service infrastructure in unserved areas. Applications are due **September 24, 2021**.
- **DEP Accepting Applications for Recycling Grants** — The state Department of Environmental Protection is accepting applications for Municipal Recycling Program Development and Implementation Grants (Section 902) until **September 24, 2021**. Eligible recycling program development and implementation costs are eligible for 90% funding. Municipalities who did not receive a section 902 grant award in 2020 will receive additional consideration during this solicitation period. All municipalities compliant with

Act 101 may apply. [Click here](#) for more information.

Legislative Report

[Act 65 of 2021](#) amends the Pa. Sunshine Act to require ALL agencies to post a meeting agenda containing all items that will be voted on at least 24 hours before the meeting on their website, if they have one, or at the meeting location. There is a provision that allows agencies to add unadvertised items to the agenda if agreed to by a majority of the governing board. If that happens, the agency has 24 hours after the meeting to post the revised agenda.

[Act 50 of 2021](#) provides for the regulation of small wireless facilities in municipal rights of way and allows municipalities to charge an annual fee for the use of their rights of way as well as maintains zoning authority.

[Act 43 of 2021](#) amends the Municipality Authorities Act to allow owners of multiple rental properties served by a single meter to request the authority to adjust the amount billed.

[Act 37 of 2021](#) gives municipalities the option to create a microenterprise loan program and allow for tax abatement for blighted properties.

New Pennsylvania OT Exemption Minimum Salary Requirements Repealed

As part of the deal reached on the 2021-22 Pennsylvania budget, Gov. Wolf agreed to repeal regulations published in October 2020 that would have significantly increased the minimum salary requirements for those eligible for white-collar overtime exemptions under the Pennsylvania Minimum Wage Act (PMWA), which is Pennsylvania's equivalent to the federal Fair Labor Standards Act (FLSA). The regulations increased the minimum salary requirement under the PMWA to \$684 per week to match the FLSA standard but also were set to raise the Pennsylvania thresholds to \$780 per week on October 3, 2021, and \$875 per week on October 3, 2022. With this deal, the PMWA and FLSA minimum salary thresholds will remain the same, at least for now.

Legal Update

Municipality Unable to Rely on Exculpatory Release Signed by Charity Event Participant

In *Degliomini v. ESM Productions*, ___ A.3d ___, 2021 WL 2546382 (Pa. June 22, 2021), the Pennsylvania Supreme Court ruled that an exculpatory release signed by a participant in a charity bike ride violated public policy and did not immunize the City of Philadelphia from liability for breaching its duty to repair and maintain public streets.

Supreme Court Tosses Challenge to Sufficiency of ZHB Decision

On June 22, 2021, the Pennsylvania Supreme Court issued an order that it had improvidently granted an appeal by the citizens' group Protect PT from a Commonwealth Court decision that upheld the Penn Township zoning hearing board's decision to permit unconventional natural gas wells in the township. Protect PT had challenged the sufficiency of the ZHB's decision, claiming that the ZHB paid lip service to Protect PT's expert witnesses and left it unable to meaningfully challenge the ZHB's decision.

Municipal Authority Given 'Public Use' Designation, Loses Benefits of Nonconforming Use

In *Chester Water Authority v. Kennett Twp. Zoning Hearing Bd.*, No. 377 C.D. 2020,

2021 WL 2627501 (Pa.Cmwth. June 25, 2021), the Commonwealth Court ruled that a municipal authority waived its argument that it was not an authority under the township's zoning ordinance and held that the proposed use was a public use subject to conditional use requirements, thereby eliminating any existing nonconforming use benefits.

EHB Decision to Lead to More Weight Given to Municipal Comments?

In a unanimous 32-page opinion in *Clearfield Co. v. Commonwealth, Dept. of Environmental Protection*, EHB Docket No. 2020-016-L, the Pennsylvania Environmental Hearing Board (EHB) overturned DEP's issuance of a permit for a 5,000-ton-per-day landfill that was proposed to be built in Boggs Township, Clearfield County. In granting a motion for summary judgment filed by Clearfield County, the EHB was critical of the lack of required information in the permit application and even more critical of DEP's acceptance of the multitude of deficiencies and the omission of information necessary for DEP to make a proper decision.

From a municipal standpoint, the decision may have significance with respect to the weight that municipal comments and concerns must be afforded by DEP. The EHB recognized that statutory and regulatory language required DEP to provide heightened respect and review of the host county's concerns about and objections to the landfill, particularly where the proposed landfill was not accounted for in the county's solid waste management plan under Act 101. DEP improperly treated the county "as just another commenter," whereas the law requires DEP to specifically respond to any objections raised by the host county.

This line of reasoning is significant because the EHB's analysis of the attention that should be paid to host county comments can be extrapolated to other municipal entities. Essentially, when a statute or a regulation specifically states that a municipality shall have the right to object or comment on an action that DEP is considering, those comments are to be afforded more weight and a higher level of scrutiny, response, and explanation as DEP goes through its deliberative process. It may even require specific responses and reasons for overriding the municipal objections.

The EHB also addressed an argument pressed by DEP that, regardless of any deficiencies in the application, summary judgment was not appropriate because any alleged deficiencies or omissions could be addressed at trial under the concept of the EHB's de novo review power. The EHB acknowledged that its de novo review powers are fairly broad but imposed a limitation on that power, stating that not everything can be remedied by it. In many cases, certain crucial, required analysis must be performed by DEP in the first instance, and many deficiencies must also be addressed by DEP, not the EHB, since de novo review is not a license to ignore statutory and regulatory requirements during the permitting process.

Note: The above case summary was drafted by Paul J. Bruder, Esq., of Mette, Evans & Woodside, who represented Clearfield County in the matter.

Training Opportunities

Calling All Subject Matter Experts

As indicated below, PSATS continues to host numerous in-person and virtual educational events targeted at both township engineers and municipal officials. If you are interested in sharing your expertise to make an in-person or virtual presentation on any topic of interest to our audience, please contact Education Director Scott Coburn at scoburn@psats.org.

Upcoming PSATS Stormwater Conference (PDH eligible)

Register now for the 2021 PSATS Stormwater Conference. The agenda, shown below, addresses a number of activities for which municipal American Rescue Plan (ARP) funds may be used. Make sure you attend to be in a better position to help your municipal clients evaluate how best to

invest their ARP dollars in an eligible category.

9 a.m.	Welcome/Opening Remarks/Charge for the Day	
	Policy Track	Technical Track
9:15 a.m.	BMP GIS Project Management Software	Growing Smart Stormwater Planning Techniques
10:15 a.m.	Intergovernmental PRPs: How Are They Working?	Parks as Resilient Infrastructure
11:15 a.m.	The Keys to Successful Multi-Municipal Stormwater Programs	Integrating Pay-for-Performance BMPs
12:15 p.m.	Lunch & Networking	
1 p.m.	DEP's New Post-Construction Stormwater Management Manual	Drones for Municipal Uses
2 p.m.	Using PennDOT's New IFB BMP Credit Process	How One Municipality Developed Its Own BMP GIS Map
3 p.m.	Report Outs/Closing Remarks/Adjournment	

Following are the dates and locations for the Stormwater Conference. To register, click on the session of your choice.

- [Sep. 14 \(West\) — Policy and Technical Tracks at the Doubletree Convention Center in Monroeville, Allegheny County](#)
- [Sep. 21 \(Central\) — Policy Track at the PSATS Education Center in Enola, Cumberland County](#)
- [Sep. 22 \(Central\) — Technical Track at the PSATS Education Center in Enola, Cumberland County](#)
- [Sep. 29 \(East\) — Policy and Technical Tracks at the Blue Bell Country Club in Blue Bell, Montgomery County](#)

If your company would like widespread exposure as a sponsor of these events, click [HERE](#) to request sponsorship information.

Fall 2021 Engineers Seminars (PDH eligible)

Save the date for the Fall 2021 Engineers Seminars, which will be live, in-person sessions. To register, click on the session of your choice.

- [September 28 \(East\) — Mohegan Sun Pocono, Wilkes-Barre, Luzerne Co.](#)
- [October 14 \(Central\) — PSATS Education Center, Enola, Cumberland Co.](#)
- [October 21 \(Southeast\) — Valley Forge Casino Resort, King of Prussia, Montgomery Co.](#)

Upcoming PSATS Educational Opportunities (PDH eligible)

[Webinar - Stream Maintenance - 8/4/21](#)

With seemingly more frequent, severe storm events occurring, public works departments are busy with culvert and bridge repairs and replacements and stream maintenance activities. These activities may be regulated by the state or federal government. This webinar, presented by Beth

Uhler, Project Manager at CEDARVILLE Engineering Group, will review what types of maintenance activities are allowable in streams, when to seek engineering assistance, and when a permit may be required.

[Webinar - 21st Century Solutions To Failing Septic System Infrastructure - 8/25/21](#)

This presentation will explore the basics of septic systems, why they fail, the different types of septic systems, and the benefits of updating aging or over-stressed infrastructure. As we approach these concepts, we will also present a case study on an innovative approach used at Potters Mills, Pa., which faced a 72% failure rate and no direct connection to a municipal sewer system.

[Webinar - Know Before You Dig - Geophysics 101 For Municipalities - 9/22/21](#)

Municipalities often need to know what is underground or underwater before building a new road, repairing or mapping utility lines, constructing a new building, or determining the extent of a sinkhole, to name a few examples. Geophysics, the earth-science equivalent of medical radiology, can help save municipalities time and money — as well as maximize safety and minimize liability — by detecting what's beneath the surface before construction or repairs begin. This process uses safe, cost-effective methods and emerging technologies to identify subsurface features and infrastructure (*utilities, unknown targets, etc.*) to help municipalities use their resources most wisely. This presentation will provide you with a better understanding of beneficial applications for municipalities through real-life project examples and allow you to learn the benefits of using geophysics before a shovel ever hits the ground.



Comments and suggestions about this monthly newsletter for members of the Pennsylvania State Association of Township Engineers can be emailed to James Wheeler at jwheeler@psats.org.



Pennsylvania State Association of Township Supervisors

David M. Sanko, Executive Director

4855 Woodland Drive
Enola, PA 17025



