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Newsletter of the Township Engineers Association

May 2022

Latest News

DEP Accepting Applications for Growing Greener Plus and Section 319 Water Quality Improvement Grants

The state Department of Environmental Protection (DEP) has announced that \$17.9 million in [Growing Greener Plus](#) and [Section 319 Nonpoint Source Management](#) grant funds are available to organizations and governments to reduce nonpoint source pollution in their local streams, rivers, and lakes. All applications are due through the [Commonwealth eGrants system](#) by 5 p.m. **June 24, 2022**. All Growing Greener grant applicants should contact the appropriate DEP staff as soon as possible to discuss the anticipated project, but no later than Friday, June 3, 2022. Applicants should also contact their county conservation district watershed specialist by June 3.

NEW! [Safe Streets and Roads for All \(SS4A\) Grant Program](#)

The recently passed federal Infrastructure Investment and Jobs Act established a new Safe Streets and Roads for All (SS4A) discretionary program that will provide \$5 to \$6 billion in grants over the next five years. Townships can [subscribe to email updates](#) to be notified when additional information is available.

While the Notice of Funding Opportunity for this new grant program is expected to be announced soon, consulting engineers can encourage their municipal clients to take the following actions now to be ready to apply:

- Develop or update a comprehensive safety action plan.
- Conduct planning, design, and development activities in support of an action plan.
- Carry out projects and strategies identified in an action plan.

The development and establishment of a comprehensive safety action plan is a key component of this program. If you are interested in applying for funds to develop a new [Comprehensive Safety Action Plan](#):

- Start identifying who your partners will be, such as government stakeholders (e.g., in transportation, planning, health, law enforcement), private-sector entities, and community groups.
- Consider how to engage community members, specifically those historically underrepresented in transportation decision-making.

Applicants seeking funding to **update or enhance an existing comprehensive safety action plan** could:

- Evaluate key elements that might be missing from your existing plan.
- Assemble the stakeholders, including community members in underrepresented areas, to help.

Applicants seeking funding for projects and strategies identified in an **established comprehensive safety action plan** could:

- Begin considering which specific activities and projects would address their most pressing roadway safety issues.
- Consider the extent to which additional planning and design is needed for potential projects and assess the applicability of laws, such as the National Environmental Protection Act, the National Historic Preservation Act, or the Americans with Disabilities Act.

Federal Flood Mitigation Funding Available

Pennsylvania will receive \$5 million through the federal Infrastructure Investment and Jobs Act to support mitigation against future damage from natural disasters. Properties covered by a National Flood Insurance Program policy that have sustained repetitive losses due to flooding are eligible for the new Swift Current initiative. The local government where the property is located is considered the sub-applicant and will work with interested property owners to develop and submit a sub-application on their behalf. Applications must be submitted by October 3, 2022. [Click here](#) to learn more.

The following types of projects are eligible even if an insurance claim has been filed:

- property acquisition and structure demolition/relocation;
- nonstructural retrofitting of existing buildings and facilities;
- structure elevation;
- mitigation reconstruction;
- dry floodproofing of historic residential structures or non-residential structures; and
- structural retrofitting of existing buildings.

Reminder: DCED Accepting Applications for Act 13 Grants until May 31

The state Department of Community and Economic Development (DCED) is accepting applications for Act 13 grants until **May 31**. Grant programs funded with impact fees from natural gas wells under Act 13 of 2012 include:

[Abandoned Mine Drainage \(AMD\) Abatement & Treatment Program](#): Townships may apply for grants to reclaim abandoned mine wells, remediate and repair existing AMD project sites, and monitor water quality to track nonpoint source load reductions from AMD remediation projects.

[Baseline Water Quality Data Program](#): Townships may apply for grants to establish baseline water quality data on private water supplies using the Baseline Water Quality Data program.

[Flood Mitigation Program](#): Townships may apply for grants to perform flood mitigation projects.

[Greenways, Trails, and Recreation Program](#): Townships may apply for funding to plan, acquire, develop, rehabilitate, and repair greenways, recreational trails, open space, parks, and beautification projects.

[Orphan or Abandoned Well Plugging Program](#): Townships may apply for grants to clean out and

plug abandoned and orphan oil and gas wells, stray gas mitigation systems, and well venting projects.

[Sewage Facilities Program](#): Townships may apply for grants for costs associated with the planning work required under Act 537, the Pennsylvania Sewage Facilities Act.

[Watershed Restoration and Protection Program](#): Townships may apply for grants to construct, expand, repair, maintain, or rehabilitate new or existing watershed protection best management practices.

Legal Update

Constitutional Challenge to Damages Cap Before Supreme Court

Attorneys for a woman injured after being struck by a SEPTA bus filed an application with the Pennsylvania Supreme Court last week and challenged the constitutionality of the \$250,000 damages cap in the Sovereign Immunity Act. There is a \$500,000 damages cap in the Political Subdivision Tort Claims Act that was called into question in a 2013 concurring opinion in *Zauflik v. Pennsbury School District*. To read the application in *Freilich v. SEPTA*, [click here](#).

Change to Condo Ownership Not Subdivision and Does Not Defeat Prior Nonconforming Use

In *Charlestown Twp. v. CMI Hartman, LLC*, No. 678 C.D. 2021, 2022 WL 982533 (Pa.Cmwth. April 1, 2022), the court rejected a township's efforts to prevent a change to condominium use, finding instead that the township was impermissibly trying to regulate the form of ownership, not the use.

The property at issue had four structures that were constructed before 1950 and were used as residential rental units. In 2012, CMI proposed to convert the property to condominium ownership, which was not received favorably by the township. In 2016, CMI filed a declaration of condominium with the recorder of deeds. The township responded by issuing letters to the unit owners that they were in violation of the Municipalities Planning Code, the Uniform Condominium Act, and the township's subdivision and land development ordinance. After the owners failed to respond, the township sought an order nullifying the condominium deeds.

The court found that the township was improperly attempting to regulate ownership because the use of the four structures as single-family residences was a lawful nonconforming use, and the owner had a vested property right that was not impacted by a change in the manner of ownership. It also rejected the township's argument that the condominiums represented a subdivision of the property because nothing changed on the property other than new tax parcel numbers.

Legislative Report

The following is an updated summary of legislation affecting townships that is under consideration by the General Assembly. Please note that the status of these bills may have changed.

Decommissioning of alternative energy facilities

[HB 2041/PN 3044](#) would require that a third-party professional engineer be involved in determining the decommissioning plan of alternative energy facilities.

Status: Reported out of the House Environmental Resources and Energy Committee.

Presumption of an administratively complete application

[HB 604/PN 2906](#) provides, among other things, that an affidavit executed under penalty of perjury

by a professional engineer, landscape architect, geologist, or land surveyor licensed by the commonwealth affirming that the application is administratively complete to the best of the individual's knowledge, information, and belief shall be presumed to be administratively complete, unless the department rebuts the presumption by clear and convincing evidence in a proceeding under section 1907-C of the Administrative Code of 1929.

Status: Passed the House and is now before the Senate Environmental Resources and Energy Committee.

Municipal continuous maintenance permits

[HB 2404/PN 2958](#) would require the state Department of Environmental Protection to develop a municipal continuous maintenance permit to allow a municipality to maintain, inspect, and monitor watercourses, water obstructions, appurtenant works, and encroachments within the municipality as specified within the permit and conducted in a manner consistent with previously prepared applicable plans, specifications, reports, and designs for the operation of any category of watercourses, water obstructions, appurtenant works, or encroachments prepared, signed, and certified by a registered professional engineer and affixed with the seal of a registered professional engineer.

Status: Before the House Environmental Resources and Energy Committee.

Licensing professional engineers

[HB 1801/PN 2651](#) would provide additional general powers of the State Registration Board for Professional Engineers, Land Surveyors and Geologists; change the definition of the "practice of engineering" and the definition of an "engineer in training" to an "engineer intern"; and set continuing professional competency requirements.

Status: Passed the House and is now before the Senate Appropriations Committee.

Upcoming Educational Opportunities *(many PDH eligible)*

Calling All Subject Matter Experts!

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

Virtual Classes

SAVE THE DATE! Fall 2022 Virtual Engineers Seminar – October 27, 2022

Save this date on your calendar for our fall educational event! If you are interested in making a virtual presentation at this event, please send an email with the proposed title and description of your presentation to engineers@psats.org by August 31, 2022. Also, save the date of April 24-25, 2023, for the Spring 2023 Engineers Seminar at the Hershey Lodge. We already have a very compelling presentation scheduled that will be of interest to any consulting engineer who has clients with MS4 permits.

In-Person Classes

[PSATS SEO Precertification Academy - August 22-26, 2022](#)

The PSATS SEO Precertification Academy is designed to teach the basic skills a future sewage enforcement officer (SEO) needs to know to work for a local agency. Whether you work for a municipality in need of a good SEO or are considering the SEO field as a career, you should check out the benefits of sending someone or attending the academy yourself. Not only is the academy a prerequisite to taking the commonwealth's certification examination for SEOs but it will also leave you better prepared to enter the multi-faceted world of a local agency SEO.

PowerPass-Eligible Webinars

[Webinar - Managing Roadside Trees - 5/11/22](#)

This webinar will cover a wide variety of roadside tree-related issues faced by townships. The topics will include pruning roadside trees (and who bears that responsibility), evaluating roadside trees for their potential to fail and hit roads or structures, utility pruning, selecting and planting new trees, finding qualified contractors, and creating tree committees under the Township Code. The Penn State Cooperative Extension's Urban Forestry Team will also answer questions that your township may have.

[Webinar - Townships, HOAs, And Stormwater BMPs - 5/12/22](#)

This webinar is designed to give participants strategies for ensuring that homeowner associations (HOAs) maintain post-construction stormwater management practices, including tips for educating HOAs on the importance of stormwater management facility operation and maintenance; considerations for municipal acceptance of facilities; facility tracking and inspection; and identifying owners and responsibility.

[Webinar - Utilizing Industrial Development Authorities For Municipal Infrastructure Projects - 5/18/22](#)

Many infrastructure projects are undertaken through municipal authorities that have been organized for just that purpose: to help local governments and community development. These projects include sewer, sewer systems, and sewage treatment works and water supply and distribution systems. Although industrial development authorities (IDAs) have historically been used to finance only manufacturing and 501(c)(3) nonprofit projects, IDAs are not limited by law to only those projects. IDAs can be used to finance these water and sewer projects and, for example, energy-producing facilities (wind farms), waste disposal facilities, roads and transportation facilities, and broadband and other infrastructure projects.

[Webinar - Creating Advantages In Today's Difficult Bidding Environment - 6/29/22](#)

Supply chain issues and staffing shortages have created challenging conditions when bidding and awarding municipal projects. This thought-provoking session will provide strategies to help your township realize time and cost efficiencies during the bidding process, while putting in place practices that reduce headaches.



This monthly newsletter for members of the Pennsylvania State Association of Township Engineers focuses on news and matters of interest to municipal engineers and provides details on upcoming training opportunities. To access previous editions, log onto psats.org and look under the "Newsroom" tab. Email comments and suggestions to James Wheeler at jwheeler@psats.org.



Pennsylvania State Association of Township Supervisors

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