

**Sewage Advisory Committee  
Draft  
Minutes of the Meeting  
February 23, 2021**

**VOTING SEWAGE ADVISORY COMMITTEE (SAC) MEMBERS PRESENT**

Adam Browning, Pennsylvania Onsite Wastewater Recycling Association (POWRA)  
Terry Carcella, Pennsylvania Municipal League  
Brian Chalfant, Governor's Policy Office  
Carl Cox, Pennsylvania State Association of Boroughs  
Patrick Drohan, Pennsylvania State University  
Keith Heigel, Pennsylvania Society of Land Surveyors  
Keith Klingler, Pennsylvania Landowners' Association, Inc.  
Michael McGraw, Pennsylvania Association of Plumbing, Heating and Cooling Contractors  
Bette McTamney, Pennsylvania Association of Realtors, Alternate  
Mark Mills, Pennsylvania Association of Professional Soil Scientists (PAPSS)  
Duane Mowery, Chairman, Pennsylvania Water Environment Association (PWEA)  
Eileen Nelson, Pennsylvania Society of Professional Engineers  
Brian Oram, Pennsylvania Builders Association  
John Peffer, County Departments of Health and Health Agencies  
Shannon Rossman, County Commissioners Association of Pennsylvania  
Scott Russell, American Water Works Association (PA Section)  
Esten Rusten, American Institute of Architects, Pennsylvania (AIA)  
Drew Shaw, Pennsylvania Planning Association  
Martin Siegel, Pennsylvania Bar Association, Alternate  
Joseph Valentine, Pennsylvania Septage Management Association (PSMA)  
James Wheeler, Pennsylvania State Association of Township Supervisors (PSATS)  
Chris Wood, Vice-chairman, Pennsylvania Association of Sewage Enforcement Officers (PASEO)

**MEMBERS OF THE PUBLIC PRESENT**

Members of the public were present but not identified.

**DEPARTMENT OF ENVIRONMENTAL PROTECTION (DEP) STAFF PRESENT**

Annamaria Ether De Sanctis, Environmental Engineering Specialist, Planning Section, Division of Municipal Facilities (DMF), Bureau of Clean Water (BCW)  
Charles Klinger, Water Program Specialist, Planning Section, DMF, BCW  
Jay Patel, Environmental Program Manager, DMF, BCW  
Robert Reiley, Attorney, Bureau of Regulatory Counsel  
Brian Schlauderaff, Environmental Group Manager, Planning Section, DMF, BCW  
Janice Vollero, Water Program Specialist, Planning Section, DMF, BCW  
Members from the Regional Offices were present but not identified.

## **CALL TO ORDER AND APPROVAL OF MINUTES**

The meeting was called to order by Chairman Duane Mowery at 10:06 AM. The meeting was a virtual meeting and it was recorded. A slide with recommendations for the virtual meeting was shown and Chairman Mowery went over some ground rules for virtual meetings.

Janice Vollero took a roll call by SAC member organization. Voting members identified themselves when their organization was called. A quorum was present.

Ms. Vollero asked that anyone on the call who has been nominated for the 2021 -2023 SAC term refrain from voting today as their term will not begin until April 1, 2021.

Vice-chairman Chris Wood stated that he was late to the June 17, 2020, SAC meeting and therefore was not on the list of members present in the minutes. He asked if the minutes could be changed to reflect his presence. The June 17, 2020, SAC meeting minutes will be changed to add Vice-Chairman Wood to the list of members present.

**Motion:** Chairman Mowery called for a motion to approve the June 17, 2020, meeting minutes.

Joseph Valentine made a motion to approve the June 17, 2020, meeting minutes. Eileen Nelson seconded the motion, which was unanimously approved by the Committee.

## **ADMINISTRATIVE ITEMS**

### 1. 2021 SAC meeting dates

SAC meetings have historically been held in March and September, but Jay Patel suggested that since today is February 23<sup>rd</sup>, a better month for the March meeting would be May. Mr. Patel requested that the meetings begin at 9:00 AM instead of 10:00 AM since no one needs to travel to the meetings. Chairman Mowery proposed the 2021 meetings to be May 25 and September 15 at 9:00 AM and asked if anyone opposed those dates and times. No one opposed.

### 2. Nominating committee for SAC Chair and Vice-Chair for 2021 – 2023 term

Chairman Mowery stated that John Wagman was on the nominating committees before and has graciously agreed to be on it again. Chairman Mowery will be reaching out for other members to be on that committee.

## **DISCUSSION/INFORMATION ITEMS**

### 1. Update on Technical Guidance Document *SEO Certification and Training Program Guidance*

Brian Schlauderaff announced that the updated guidance became final on December 12, 2020. The big changes are three (3) roll over credits into the next cycle instead of seven (7)

and a requirement of a soils course for new SEOs and for existing SEOs that never took the Advanced Soils course before. Existing SEOs have five (5) years to acquire the course. Currently only Soil Hub is offering this DEP-approved soils course.

- Vice-chairman Wood asked if the soils course offered in the 1990s counted towards this requirement. Mr. Schlauderaff stated the Advanced Soils course, #109 counted. If an SEO didn't get an email stating they needed the soils course, then they have already met that requirement.
- Adam Browning stated there are only a handful of courses and asked if there are more in the pipeline. Mr. Schlauderaff explained DEP developed the old Enforcement 1 and 2 courses as on-line courses. Enforcement 1 went live a while ago and Enforcement 2 will be going live shortly. Other courses are offered by third party trainers. DEP is trying to work with these trainers to do zoom-type courses but going from a classroom course to a zoom course has some difficulties. DEP's training section asked for five (5) courses they could transfer over to a web-base over the next two (2) years. As they become available, the DEP will let SEOs know through an email. These courses will be housed on the Clean Water Academy.

2. Discussion – PSMA on “An unsatisfactory PSMA inspection which may not be a regulatory malfunction as utilized in SEO training be included when using BTG to repair or replace an existing sewage system.”

Joe Valentine explained that the SEO community, through prior training dating back to the 1990s and through reinforcement by regional offices, requires a regulatory malfunction to consider using best technical guidance (BTG). A regulatory malfunction is not defined in the Sewage Facilities Act (Act) or the regulations. The training defines BTG to solely be related to non-critical isolation distances. It doesn't involve critical isolation distances nor does it involve any stand-off variances to limiting zones or absorption area sizing requirements. PSMA unsatisfactory conclusions following their standards, has not been considered by SEOs to merit the use of BTG. PSMA has engaged with the DEP Secretary on two (2) occasions regarding this matter and was led to believe that perhaps this was something that the DEP could consider; that an unsatisfactory conclusion based upon the PSMA standards could utilize BTG in resolving the matter for a new system to service an existing facility. It is important to note that at the time of a real estate sale, there is an opportunity to upgrade (not due to additional flows) a sewage system through the inspection process and its unfortunate that in some instances we can't upgrade the systems when simply a non-critical isolation distance needs to be addressed through BTG. PSMA is open to discuss a resolution to this but also suggests this issue can be resolved by simply sending out an All SEO Letter instructing the SEOs that BTG could be considered when replacing an existing sewage system, if not due to increased flows.

- Chairman Mowery recapped: PSMA is not proposing a wholesale free for all with the BTG usage but rather proposing sticking with the DEP's current policy about using BTG for non-critical isolation distances and limiting it to those type of situations.

- Mr. Schlauderaff agreed that there is no definition of a malfunction and that DEP is trying to create that definition which would hopefully solve the issue with the PSMA unsatisfactory inspections. It is best to be proactive and prevent a malfunction. DEP will need to update the Technical Decision Making (TDM) technical guidance document. It is clear in the regulations that you need a malfunction to use BTG; that is why the DEP needs to define what a malfunction is. Updating technical guidance documents takes time and so the DEP will look into the option of sending an All SEO Letter after the definition of a malfunction is established.
- Brian Oram (chat box): “PSMA inspection results could be used as a trigger that could be used by the SEO to trigger a further investigation that could lead to BTG. Would this work?” (No one responded.)
- Chairman Mowery asked if the DEP could give a date when the notification will go out to the SEOs? Mr. Schlauderaff said he wasn’t sure this could be accomplished through an All SEO Letter; it may require an update to the guidance document. Mr. Patel said DEP needed to discuss whether it is appropriate to clarify this through an All SEO Letter and therefore cannot commit to a date certain for that letter. Another option may be a program clarification memo which are used in these situations; to clarify something in existing regulations.
- Mr. Valentine commented that since the definition of malfunction is not in the regulations, its simply a matter of training and DEP policy. He further explained that some old sewage systems are located in soils with redox features, in a seasonal high-water table, and that is an impact to the waters of the commonwealth.
- Mr. Browning commented that POWRA is in support of PSMA’s request to expediate the interpretation of a malfunction within the regulations. Chairman Mowery stated that the committee is desirous of having better tools at everyone’s disposal to enhance the performance of systems.

### 3. Act 34 implementation plan

Jay Patel gave a presentation on the implementation plan for Act 34. The main points were:

- Act 34 amended Sections 5(c.1) and 5(c.2) of the SFA. These sections were added to the SFA by Act 26 of 2017.
- Three (3) items were changed in the wordage:
  - a. Section 5(c.1) – the words “a plan supplement or plan revision for” was removed.
  - b. Section 5(c.1) – the phrase “permittable by a SEO” was replaced with “that meets site conditions present at the proposed new land development.”
  - c. Section 5(c.2) – completely removed.
- The Governor’s signing statement had three (3) goals; they were presented.
- Act 34 seeks to provide for the use of alternate systems in planning. Site suitability is defined in the regulations but only for conventional systems. A rulemaking is needed to add site suitability criteria for alternate systems.

- Exemptions and exceptions must meet current general site suitability (GSS).
  - The draft on-lot sewage planning guidance (developed in response to Act 26) is being withdrawn; hope to resurrect it and rewrite it at a later time.
  - Developing a user friendly frequently asked questions (FAQ) document as soon as possible. It will be sent in an All SEO Letter and posted to the website.
  - Existing on-lot alternate technology systems (OATS) that have been classified, will stay classified.
  - Shallow limiting zone OATS can only be used for repairs.
  - The *Technical Verification Protocol (TVP)* technical guidance document will be used to review and classify newly proposed alternates; small changes may be made to it.
  - Alternates can be used in planning if GSS is met.
  - Act 34 was enacted on June 5, 2020, and its implementation date was August 5, 2020.
  - It took awhile to come up with an implementation plan, there was a transition phase between August 5, 2020, and today. The implementation date is today – February 23, 2021.
  - Municipalities that received a planning module under the Act 26 draft planning guidance prior to today can process it as such. On or after tomorrow, February 24, all planning must show GSS.
  - DEP is beginning the regulation changes by updating and adding site suitability criteria to allow for the creation of lots that currently can't be developed, mainly on shallow limiting zone sites.
- Chairman Mowery quoted Section 5(c.1) of Act 34 and said it appears, by definition, that the language allows the GSS requirements to be met so long as you are proposing a conventional or alternate sewage system that has a listing that has been approved by DEP and that doesn't appear to be what was said today. He asked Mr. Patel to elaborate on this. Mr. Patel explained that when reading "any conventional sewage system or alternate sewage system, that meets site conditions present at the proposed new land development" implies that site conditions, criteria or requirements exist and those criteria can be used to make a determination that the site does or does not provide adequate sewage disposal. Both Act 26 and Act 34 refer to GSS, which is not a term defined in the SFA, only in Section 71.62 of the regulations. Planning evaluates many aspects of the proposed site to establish that on-lot systems can provide adequate disposal and treatment on the site. Mr. Patel said DEP doesn't agree with Chairman Mowery's interpretation of that language for the reasons stated.
  - Mr. Browning stated the following:
    - He agreed with Chairman Mowery's interpretation. OAT approval letters outline their specific soil requirements which would by definition make them approvable and meeting the site conditions present at the proposed new land development.
    - It seemed a lot of DEP's comments on Act 34 were weighted towards the Governor's signing statement and it is his understanding that those signing statements are not part of the legislative process and do not hold the same weight as the Act does.
    - Exemptions according to the code do not outline the need for GSS but rather that the systems are permissible. Prior to these changes, it had been commonplace to approve exemptions that had both alternate primary and reserve areas.

- It appears that projects with shallow limiting zone types of soils that already were approved and have lots created but not built on, may now be useless given the statement that shallow limiting zone systems can only be used for repairs, unless they place fill and are tested in four (4) years.
- It seems odd that all of this stuff can be made effective immediately but going back to Joe Valentine's request to have a definition more clearly defined requires a change in guidance. It seems odd that this can be stamped approved without any influence from SAC whereas something can't be defined that is undefined within the regulations.

Mr. Patel explained the following:

- The implementation date for Act 34 was 60 days after it was passed; in August of 2020 and for all intent and purposes, if DEP would have been in a position to come with this earlier, it would have been effective earlier, so everyone got an extension.
  - DEP will have to internally discuss how to handle lots that have already been created. There are a number of scenarios in which lots have been created and GSS may not be met. These answers, and DEP's policy, will be part of the FAQ. Lots created between the time Act 26 was enacted and today, those lots can move forward.
  - Exemptions require that complete soils testing, and site evaluation establish that separate sites are available for both a permissible primary soils absorption area or spray field and a replacement soil absorption area or spray field on each lot. Complete soils testing and evaluation refers to Chapter 73 as it relates to soils testing for soil absorption areas and spray fields. Testing for shallow limiting zone systems is not complete because it is not per Chapter 73.14 and 15. Brian Schlauderaff added that even prior to Act 26, you had to meet GSS for exemptions, except for a time after a 2004 memo where DEP allowed you to site for your replacement area a shallow limiting zone system. That is no longer allowed.
- Vice-chairman Wood stated the following:
    - He agreed with Chairman Mowery and Mr. Browning that GSS is acceptable for these alternate systems and therefore, alternates are acceptable for planning. The language states it in such a manner as to allow for the use of alternates without having to meet the requirements for conventional systems.
    - Governors' signing statements mean absolutely nothing; they are a feel-good thing. If you want to look at signing statements, you should look at legislative intent. This is the second or third time this came through with the intent to allow alternate systems to be placed on soils in which the alternate system is supposed to be able to function. These systems have been tested and approved. For over ten (10) years he said he watched this debate and it seems that DEP wants a quid pro quo; you give us something, and we'll give you something and if you don't, we are going to find a way to prevent you from doing it.

Mr. Patel explained that the OAT listings were not written with the thought of them being used for new land development but for the purpose of repairing malfunctions on sites that did not meet GSS. The listings do not include any planning requirements or GSS requirements for the use of those systems. Vice-chairman Wood asked if it really mattered if the intent is to put these systems on an existing lot or a newly created lot –

they are either going to function or not function. Mr. Browning (chat box) stated “the creation of the OAT listing(s) to abate malfunctions would imply that they will not create malfunctions and therefore suitable to protect the environment.”

- Mr. Valentine had the following comments and questions:
  - With regard to Act 26 and subsequent documents, and in regards to the use of shallow limiting zone systems only, it was directed to everyone that these systems could be used for new land planning and certainly for lots of record. Did Act 34 change the DEP’s position on this matter? If Act 34 had never been proposed and approved, would we be having this discussion today? Mr. Patel said that Act 34 did change the DEP’s position and if Act 34 was never passed, there would not be this discussion.
  - Under Act 26, the DEP allowed consideration of shallow limiting zone alternates for new land planning if the project met the criteria of the draft Act 26 planning document. That document was reviewed, received comments on but never implemented. It was used as guidance by the DEP. In regards to Mr. Browning’s question about in fill lots, or lots of record, whether the lots preceded planning or not, alternate systems were being used routinely for new construction. Are you saying that shallow limiting zone alternates cannot be used for existing lots of record, regardless of their date of creation? Mr. Patel said he was not prepared to answer that question right now and the answer will be addressed in the FAQ document.
  - In the case of a repair, do you need a documented regulatory malfunction to use a shallow limiting zone alternate system? Mr. Patel replied that you would need to show a malfunction to have a repair otherwise what would be the reason for the installation of a system on a shallow soil? What other scenarios are we talking about? Mr. Valentine brought up that the DEP trained everyone that the three (3) criteria for a regulatory malfunction was sewage backing up into the house, a surface overflow or a known discharge to a surface water. He explained that you sometimes have seasonal issues that aren’t present at the time of an inspection but there is evidence that maybe there was backup in a tank at a previous time. He mentioned other situations and that DEP will not be able to capture it all in a FAQ document. Mr. Patel stated that the issue is in how you define a malfunction and that DEP will be working on that.
  - He needs to advise the PSMA membership as to where we are headed. The direction of use for shallow limiting zone alternates has changed dramatically. We are not using them for new land planning but only for repairs where there is a documented regulatory malfunction. A decision will be made on existing lots of record. Is that direction correct? Mr. Patel confirmed it was.
  
- Mark Mills made the following comments:
  - The shallow limiting zone at grade absorption area listing includes the Tyler Table to site the length and width of the absorption area. Things that were done based on the Tyler Table. I would caution you to be wary that you specifically refer to shallow limiting zone systems.
  - The drip micromound is sized differently; you might use four (4) probes instead of six (6) probes. If all probes are 10” to mottling or 16” to rock, you could also use a spray irrigation system which is a conventional system according to the regulations. It is hard to understand why there is a separate set of rules for these 10”/16” alternate

systems when spray is already approved with 10"/16". This is a giant step backwards. I sense Mr. Valentine's frustration.

- Mr. Oram (chat box): "Question is PADEP position that this statement is incorrect 'in accordance with Title 25 Chapter 73, Section 73.72, DEP classifies Orenco AdvanTex® treatment system for use as an alternate onlot sewage treatment system' and then the same question to this 'In accordance with Title 25, Chapter 73, Section 73.72, DEP has classified the American PERC-RITE secondary effluent (PERC-RITE secondary effluent) drip irrigation system for use as an alternate onlot sewage treatment system in the Commonwealth of Pennsylvania'. Are these statements still TRUE under the new act?" Mr. Patel confirmed they were, stating these alternates have been generally classified and have an OAT listing. When looking strictly in the regulations, the regulations say that every time an alternate is proposed, DEP is supposed to classify it. Rather than doing that every time an alternate is proposed, with all of the time that would take, DEP generally classified the alternates with the expectation that the listings would be followed as provided. And yes, the existing alternates are remaining alternates as they are currently listed.
- Chairman Mowery recapped that the draft site suitability document that had been in effect in draft form, will no longer be used after today's date. The document will be withdrawn by a public notice. A discussion ensued how to inform the SEO community and consultants and whether using today's date as the date of implementation is problematic. Mr. Patel stated that DEP will reconsider the effective date and is leaving this open for some potential adjustment. The FAQ document will come out shortly.
- Mr. Oram (chat box): "So Act 34 is not taking back the statements made in the alternative listing – the PADEP is eliminating the use of these systems on only pre-existing lots of record?" Mr. Schlauderaff stated there is confusion based upon the listings when the listing says "new". The listings never meant "new" to be considered as new land development. The issue of existing lots will be discussed internally, and the listings will be clarified. This only applies to shallow limiting zone alternate systems, not for those systems that can be sited on generally suitable soils.
- Chairman Mowery asked if the DEP was planning on any other undertakings? Mr. Patel stated that the sewage planning section's highest priority is the regulation changes. DEP will not be starting from scratch; we will be looking at all of SAC's comments from the past. Brian Chalfant added that the regulation change is the main way to meet legislative attempt in the long-term. The regulation update process will include consulting with SAC and other advisory committees. There will be a robust opportunity for engagement and broader public engagement during that process. Chairman Mowery thanked the DEP.

## **NEW BUSINESS**

- Keith Klingler asked about the following:
  - Does DEP know of any county planning departments taking on the role of reviewing planning modules since they are now allowed to do this? That would create a one-stop

shop and make it easier. Mr. Schlauderaff replied that counties were always allowed to do that. They have to follow the detailed process in the regulations and enter into a delegation agreement with DEP. There are only a few health departments and delegated joint local agencies that have delegation agreements.

- Regions are rejecting planning module components because of differences in slope between the SEOs and the consultants. The SEO puts the slope on the perc test results paperwork and the surveyor puts the slope on the map. Not sure how you get them to match exactly when the SEO and the surveyor are never at the site at the same time. The slopes must match no matter what. Mr. Schlauderaff responded that it is hard to respond to that without the details and he would rather not talk about regional differences at a SAC meeting. He asked Mr. Klingler to email him or the region directly and mentioned that this concern can be brought up at the monthly planning chiefs meeting. He did add that Central Office was involved with all the shallow limiting zone Act 26 projects and explained that when Central Office sees red flags, they have a right to ask for more information and so do the regions. Examples of red flags are limiting zones right at 10” across the board or slopes 14.9%, 15% or 24% across the absorption area; results that are right on the edge.

## **PUBLIC COMMENT**

- Laurel Mueller made the following comments:
  - In the presentation it was stated that shallow limiting zones are to be used only for repairs but would like to bring it to DEP’s attention that the actual listings for all shallow limiting zone options, such as Eljen, drip micromound and the shallow limiting zone at grade bed, all say for new and repair. It’s not opening the door for new land development, but it does mean a new house on a lot. Our 290A form allows us to check a box that says new and we routinely submit alternate systems, including shallow limiting zone systems, for a new house on an existing lot. I want to be clear that we are not starting a new rule today that says no shallow limiting zone systems can be used for anything except a repair. It should be allowed for a new house on an existing lot. Is that correct? Mr. Schlauderaff confirmed that the listings state for new construction or a repair and reiterated that the existing lot issue needs to be discussed further and will be addressed in the FAQ document.
  - There is a need for the DEP and all parties involved to know how long the pipeline is for projects. When we submit a Component 1 and it is returned and we have to submit a Component 2, we have projects that we did the test pits in the Spring, which then go on a journey to resolve PNDI and PHMC issues, archaeological project investigative issues, surveying and a surveyor’s seal. There are many steps, often taking six (6) to nine (9) months to get to the municipal meeting, all in good faith. It is totally unfair to start a new rule tomorrow and have the rug pulled out from all the work that has been done getting to the finish line (the municipal meeting). I ask for the leeway to be at least six (6) months long and to be in writing so everyone can prepare for it.
  - Based on our understanding of how we were functioning under Act 26 and later Act 34, I believed that we were eligible to submit a project on a Component 1 but we got a letter from DEP requiring a Component 2, referencing Section 71.62(b)(iv). That section says you have to have a sufficient number of perc tests to meet the GSS. That same Section

71.62 allows for IRSIS which is not perc tested. There are shallow limiting zone systems that do not use a perc test. I believe that our proposal to use a Component 1 was correct. We had a sufficient number of perc tests for the system that was proposed, which was a shallow limiting zone system which doesn't get a perc test. The sufficient number of perc tests is 0 and we met it. What does going from a Component 1 to a Component 2 do to solve the issue of insufficient perc tests? If it had been a spray field with no perc tests, I would have adequate perc tests. Mr. Schlauderaff stated that Central Office was involved in that decision and the region provided a letter stating why the project didn't qualify for a Component 1, though Ms. Mueller may disagree with it. He further explained that IRSIS is a conventional system approved under law. It is different from a soil absorption area in that the sewage is pretreated up front and sprayed. Spray fields have their own GSS.

- Of the 25 listings, nine (9) of them are absorption area types. DEP appears to have created a shorter, secret subset of the listings - when the listing can be used for shallow limiting zones, even though the listing says for new or repair. Is it true that DEP considers that there is an inferior list of OATS considered differently because they are shallow; they are not all equal? Are they not all suitable listings? Are the shallow limiting zone systems suitable with the "wish" that we could take the listing back? Jay Patel responded that they are all classified alternates; there is no degree of difference between one alternate or another.
- Michael Lane (Soil Scientist/SEO) commented that this issue of using alternates in planning has been going on since 2005 and it is very frustrating to hear the last comment about all alternate systems being the same, but not. It is just as frustrating to read the language from Act 34 and not read the words "satisfying GSS requirements". Either the systems work, or they don't, and if they don't, then please remove them.
- Joe Valentine asked if the recording of the SAC meeting can be made available to the SAC members? Mr. Patel explained we record it for the purpose of taking minutes only, but he will find out the answer to that question and get back to everyone.

### **NEXT MEETING**

The next meeting of SAC is planned for Tuesday, May 25, 2021 at 9:00 AM.

### **ADJOURNMENT**

**Motion:** Chairman Mowery thanked everyone for their attendance and called for a motion to adjourn the meeting.

Keith Heigel made a motion to adjourn the meeting. Adam Browning seconded the motion, which was unanimously approved by the Committee. The February 23, 2021, SAC meeting was adjourned at 12:36 PM.