

**Sewage Advisory Committee
Minutes of the Meeting
May 3, 2018**

VOTING SEWAGE ADVISORY COMMITTEE (SAC) MEMBERS PRESENT

Adam B. Browning, Pennsylvania Onsite Wastewater Recycling
Carl Cox, Pennsylvania State Association of Boroughs
Keith Heigel, Pennsylvania Society of Land Surveyors
Hayley Jeffords, Governor's Policy Office
Ginnie Anderson Kane, Pennsylvania State Association of Township Commissioners
Greg Marshall, Pennsylvania Onsite Wastewater Recycling Association
Mark Mills, Pennsylvania Association of Professional Soil Scientists (PAPSS)
Duane Mowery, Chairman, Pennsylvania Water Environment Association
Eileen Nelson, Pennsylvania Society of Professional Engineers (via conference call)
John Peffer, County Health Departments
Jacqueline Peleschak, American Council of Engineering Companies of Pennsylvania (via conference call)
Wayne Schutz, Pennsylvania Municipal Authorities Association
Martin Siegel, Pennsylvania Bar Association
Joseph Valentine, Pennsylvania Septage Management Association
John Wagman, American Society of Civil Engineers
James Wheeler, Pennsylvania State Association of Township Supervisors
Chris Wood, Vice-Chairman, Pennsylvania Association of Sewage Enforcement Officers
Robert T. Wood, Pennsylvania Association of Realtors

MEMBERS OF THE PUBLIC PRESENT

Tom Ashton, American Manufacturing Company, Inc.
Marie-Christine Belanger, Premier Tech
Oran Biel, Premier Tech
Lori Books, Pennsylvania State Association of Township Supervisors alternate
Kevin Callahan, BioMicrobics/Site Specific Design
Paul Cannon, Norweco
Jim Prochaska, JNM Technologies
Chris Ramsey, Senator Lisa Baker's office

DEPARTMENT OF ENVIRONMENTAL PROTECTION (DEP) STAFF PRESENT

Bill Cumings, Attorney, Bureau of Regulatory Counsel
Sean Gimbel, Executive Assistant, Office of Water Programs
Lee McDonnell, Director, Bureau of Clean Water (BCW)
Jay Patel, Environmental Program Manager, Division of Municipal Facilities (DMF), BCW
Brian Schlauderaff, Environmental Group Manager, Planning Section, DMF, BCW

Janice Vollero, Water Program Specialist, Planning Section, DMF, BCW
Annamaria Ether De Sanctis, Environmental Engineering Trainee, Planning Section, DMF,
BCW

CALL TO ORDER AND APPROVAL OF MINUTES

The meeting was called to order by Chairman Duane Mowery at 10:30 AM in Room 105 of the Rachel Carson State Office Building. A quorum was present.

It was noted that Congress designated May 3rd as the National Day of Prayer and the attendees were encouraged to participate in the activity.

- Chris Wood requested a correction to (page 6 under Discussion, paragraph 4) “even though it’s not in Act 26, and there is no mechanism for the local agency to enforce it.” Mr. Wood wanted to make it clear that this statement is pertaining to alternate systems and not systems in general, because Act 26 only concerns the alternate systems on shallow limiting zones.
- Mark Mills requested a correction to (page 5, paragraph 5, second bullet): after the word disinfection take out “fails a lot”; replace “no one conducts” with “requires”; remove “owners never fix it.” Mr. Mills also requested a correction to (page 10, last line) change the 8” to 10” because the hydric soil cutoff is 10”.
- Chairman Mowery asked for a correction to (page 8) change ingenious to disingenuous.
- Chairman Mowery asked Jay Patel to explain the difference in policy and guidance (page 13, last paragraph). Mr. Patel said the statement is incorrect and it should read “policy and guidance are not different in their hierarchy.”

Motion: Chairman Mowery called for a motion to approve the meeting minutes as amended. Carl Cox made a motion to adopt the December 5th, 2017, meeting minutes as amended. Keith Heigel seconded the motion, which was unanimously approved by the Committee.

PURPOSE OF MEETING

Chairman Mowery explained that the purpose of this meeting is to allow the SAC members to ask for clarification on the DEP’s policy documents; not to debate the issues. The public comment period for these technical guidance documents was extended to allow this SAC meeting to occur before the closing date. Comments should be submitted in writing before the period ends at midnight, Tuesday, May 8th, 2018, to be included as part of the public record. The DEP will continue to accept comments following the close of the comment period, but these will not be a part of the public record.

DISCUSSION

Jay Patel explained the following as a foundation prior to discussing the individual documents:

- The focus of the meeting will be more on the Planning Guidance rather than the TVP. (The Planning Guidance was displayed on the screen.)

- The General Assembly amended Act 537 with Act 26 of 2017. The DEP is the executive agency under the Governor that administers Act 537. The DEP's powers and duties are limited to those set forth in the language of Act 537 as amended by Act 26.
- The purpose of this meeting is to explain the technical guidance documents; it is not a question and answer on intent or why the DEP did things the way it did. The DEP is here to solicit SAC's input on what needs clarified so the documents can be improved.
- The DEP understands there is disagreement on the interpretation of the Act; any input or concerns related to this can be submitted through ecomments.
- Some questions may not be answered today. The DEP may have to discuss some of SAC's questions with legal and policy before making decisions and providing answers.
- Agencies are constrained to implement laws enacted by the general assembly in accordance with the plain language of the enacted law. Agencies cannot use legislative intent if the language in the Amendment itself is unambiguous. Amendments to sections of statutes must be read in the context of the broader existing statutes. Statutory amendments are presumed to be a supplement to existing regulations unless they explicitly repeal regulations. If a provision is not expressly repealed, the DEP must implement statutory amendments in a way that gives meaning to all parts of the statute and implementing regulations.
- The DEP takes the comment and response process seriously. The best way to help the DEP understand the issues that SAC has with the documents is to provide very specific comments. General comments are welcome, but the specific ones allow the DEP to best understand what the commentator is referring to. Include comments on what is liked or what should not be changed with the documents.
- (Act 26(c.1) was read.) This section is on general site suitability. Act 26 does not stand alone; you must read it and implement it within the context of the entire Act and the rest of the regulations. The amendment did not repeal the existing laws or regulations, so the DEP's challenge is to figure out how to incorporate the amendment into the existing regulatory process. General site suitability is only one planning requirement and that planning requirement is found under § 71.62 which deals with alternatives evaluations, and how you select an alternative to meet the long-term sewage disposal on that site. It is very specific in the way it is written.
- (Act 26 (c.2.)(1) was read.) The DEP developed the TVP within the 180 days.
- (Act 26 (c.2.)(2) was read.) The DEP has not started this yet. Once the DEP finalizes the TVP, this will be done next, in consultation with SAC.
- (Act 26 (c.2.)(3) was read.) If the DEP determines the data for the alternates reviewed in accordance with the previous paragraph is "of sufficient scientific, technical and field-testing data" to reclassify the alternate system to a conventional system, the Department shall reclassify the alternate system as a conventional system. Conventional is specifically defined in the regulations. This takes a formal rule making and it doesn't happen quickly; it takes years. There is no time frame in Act 26 for this step. The DEP's goal is to make these conventional; it just can't happen immediately.
 - Chairman Mowery asked the DEP and its legal staff if they looked at the possibility of establishing a policy that would be the mechanism for reclassification of alternate technologies to conventional technologies or is the only mechanism through rule making? Mr. Patel responded that rule making is the only way and he read the definition of "conventional sewage system" from the

Act – “means a system employing the use of demonstrated on-lot sewage treatment and disposal technology in a manner specifically recognized by the regulations promulgated under this act. The term does not include alternate sewage systems or experimental sewage systems.” James Wheeler stated his organization would prefer it to be done by rule making and not policy.

- (Act 26 (c.2.) (4) was read.) Mr. Patel stated that this part is unclear. The DEP has the authority to classify systems as alternates in § 73.72, but this part of Act 26 uses the word “may” in “may undertake a rulemaking.” It does not say “shall.”

PLANNING GUIDANCE

Robert Wood asked if alternate systems would be allowed to be permitted on vacant, existing lots and not fall subject to this planning guidance? Mr. Patel answered yes.

Mr. Patel discussed the following:

- More time was spent on the TVP, with the SAC workgroup meetings, because that is what Act 26 was to address. It became evident during the workgroup meetings that there was a lot of confusion on how alternates would fit into the planning process. The DEP has never developed a guidance document on planning for individual and community on-lot systems. The DEP’s intention was to develop a more comprehensive on-lot planning document, rather than to limit the document to the alternate systems in planning. The DEP’s goal was not to confuse or complicate the process.
- Hayley Jeffords explained that once the comments are reviewed and changes, if necessary, are made to the documents, then the DEP determines if these changes are substantial. If they are substantial, the DEP would come back to SAC with a Draft Final for their input; if changes are not substantial, the DEP would not come back to SAC with the document.
 - Chris Wood asked if changes are not made to the document, then what happens? Ms. Jeffords answered that it would go through the DEP internal review process and then a notice would be published in the Pa. Bulletin that it is final and placed on eLibrary along with the comment and response document. Ms. Jeffords stated that it is not necessary to submit public comments all three (3) ways; one (1) way is sufficient.
- General Section, E, Paragraph 4 – There were a lot of comments on this. The DEP did not mean that alternate systems *classified* by the DEP are *not* permissible by an SEO. Alternate systems classified as such by the DEP *are* permissible by SEOs. The DEP will redraft this section for clarity.
- Section II, Step 1 – This section is straight out of the regulations.
- Section II, Step 2 – This section is straight out of the regulations. Again, this is for planning of all systems, not just alternates.
 - Mr. Mowery asked if it is the DEP’s intention to require the use of conventional systems if the soils are suitable? Mr. Patel answered that alternates can be used if the soils are suitable. Mr. Mowery asked if you must work your way through all conventional systems first before proposing an alternate? Mr. Patel answered no.
- Section II, Step 3 – This section is straight out of the regulations.

- Section II, Step 4 – This is where the alternates start to fit into the planning process. In the Component 2 planning module there are existing marginal conditions and this section adds alternate systems on shallow soils to the list of marginal conditions. The DEP will redraft this section for clarity.
- Section II, Step 4, page 8, a. and page 9, b. – These two (2) sections include the requirements for addressing long-term sewage disposal for sites with suitable soils using conventional systems and sites without suitable soils for conventional systems. Based on the comments we received, the DEP will redraft this section for clarity.
 - Mark Mills commented that this document was reviewed by PAPSS and they had a concern because IRSIS is a conventional system and IRSIS requires 10” to mottling and 16” to rock; these soils that are <20” are suitable for a conventional system – IRSIS. This is confusing in the document. Mr. Patel responded that the DEP will clarify this.
 - Joe Valentine asked if Section 4, page 9, b.1., relating to implementing a sewage management program, is meant to be a requirement as in § 72.25 (h) which lists several options for management, or is it talking about area-wide management. Mr. Patel answered area-wide management is what is meant, and this is an intentional way to look at operation and maintenance as required under Chapter 71. Mr. Valentine said this would be a higher level of management. Mr. Patel invited Mr. Valentine or his organization, PSMA, to suggest clarifying language.
 - Joe Valentine referred to Section 4, page 9, b.6., relating to hydrogeologic studies, and asked if there is a baseline for hydro studies with the use of alternates? Mr. Patel answered that the DEP will have to develop criteria for the use of hydro studies in the specific alternate absorption area approval listings.
- Section II, Step 4, page 9, last bullet starting with “In all cases...” – The DEP received several comments on this statement. The DEP needs to clarify that it is the absorption area technology that is being talked about. The DEP is talking about soils and site suitability; not about the pretreatment technologies. You are not limited to a specific technology based upon what your planning says.
 - Chairman Mowery stated that Mr. Patel’s example is of a pretreatment unit before an absorption area. Chairman Mowery asked about absorption areas that include pretreatment - could there be an interchange of technologies in this case? Mr. Patel answered that you could look at more than one (1) option; it comes down to is there sufficient space to fit a primary and a replacement unit on that site.
- Section II, Step 5 – This section is based on the regulatory requirements and the Component 2 planning module instructions. The previous steps in the process provide the information that goes into the alternatives analysis for the actual selection of the method to provide for the long-term sewage disposal needs. This is the step referred to in paragraph c.1 of the amendment to the Act and where general site suitability comes into play.
 - Mark Mills stated that the words “the most suitable” in bullet one (1) is subjective and maybe the word “acceptable” is better. Mr. Patel stated there were other comments on this and the language will be fixed.
- Section II, Step 6 and Section III – self-explanatory.
- Section IV – The implementation of sewage management programs (SMP) is proposed as a phased-in approach based on a risk assessment-like process that recognizes a more

pressing need for sewage management in areas with a greater density of on-lot systems. The DEP has existing authority in Chapter 71 that it is using as the basis of implementation. The DEP is starting with the municipalities that have marginal conditions.

- Chairman Mowery asked if this SMP requirement is to apply only to alternate technologies. Mr. Patel answered no; it starts with marginal conditions but eventually will cover everything in Section IV.B.(1)(a) – (c) and apply to all systems. Chairman Mowery asked if it would be limited to new land development? Mr. Patel answered no.
- Chris Wood asked what the statutory authority is that gives the DEP the right to do this (area-wide SMPs). Mr. Patel answered § 71.73 of which Mr. Wood stated that is not statutory. Mr. Patel stated that is a good comment to be submitted. Mr. Wood further stated that existing systems may not be able to withstand the maintenance and in the process of trying to maintain the system, you destroy it (i.e., opening cesspools can cause them to collapse). Mr. Wood suggested it may be better to begin area-wide SMPs for all new systems being installed after a certain date.
- James Wheeler stated that there would not be much buy in for municipal wide SMPs and it might be better to begin with requiring SMPs for alternate systems only.
- The Department has a Component 2m planning module, a model ordinance and several guidance documents to help municipalities develop and implement SMPs.
 - Chairman Mowery asked what is the DEP's thoughts on the municipalities who refuse to participate in SMPs; would the DEP prevent them from issuing some or all their on-lot permits. Mr. Patel answered that we can't really speak on our enforcement discretion until we have that situation in front of us; there are many factors to consider.
 - Joe Valentine stated that Section IV implies that a municipality must implement some form of sewage management if they have a new land development proposal in front of them, and if they don't, then the DEP will not approve the planning. Mr. Valentine asked if that was a correct interpretation. Mr. Patel answered yes. Mr. Patel also explained that the DEP will correct the inconsistency between the SMP density trigger of 20 or less housing units per square mile, which does not require an SMP, and the new marginal condition of shallow limiting soils which always will require an SMP. Mr. Valentine asked if he was correct in that the DEP is looking at area-wide management as opposed to individual project management? Mr. Patel answered yes.
 - Mark Mills stated that in Section III, exemptions refer to siting "permissible" systems (§ 71.51) and "permissible" does not distinguish between alternate and conventional systems. Mr. Patel referred to the language in Act 26 that speaks about planning supplements and revisions, and stated they are not exemptions or exceptions. Chairman Mowery stated that everyone should consider submitting comments if you believe that DEP's interpretation of that language in Act 26 is not correct.
 - Joe Valentine clarified that under this new guidance, if someone proposes alternate systems for new land development, they need to use a Component 2. He

then asked if someone proposes a conventional system as primary and an alternate system as the replacement, is using a Component 1 an option or because there is an alternate, does that automatically kick you into a Component 2. Mr. Patel answered that it kicks you into a Component 2; this was allowed in the past but in the context of the Act, the Act does not allow that.

- Flow Chart – This needs to be easier to read and the DEP’s document processing could help with this.

Joe Valentine recommended that SAC form a workgroup to decide how Act 537, the foundation, should be revised prior to revising the regulations. Mr. Patel encouraged him to submit that comment.

Joe Valentine asked if alternates can be permitted on lots of record, either pre-1972 or on lots that already have received planning approval since 1972. Mr. Patel answered yes. Mr. Valentine then asked if there will still be the requirement at the permitting stage for system specific site management, such as a contract with a private service provider? Mr. Patel answered that the DEP would need to talk about this internally.

Joe Valentine expressed that the guidance seems to point to system specific planning and that if planning is approved for spray, but at permitting a micromound is selected, do you have to go back through the planning process. Mr. Patel suggested that you should look at all the different type of systems that you could possibly use on the site during the planning process, so that during permitting your choices are not limited. Discussion ensued on this matter, including the potential for new technologies choices available at the permitting stage that were not available during the planning process; would choosing that new technology at permitting be a trigger to go back through planning? Greg Marshall did not believe this situation should have to go back through planning. Mr. Patel stated the DEP needed to clarify what situations kick you back into the planning process.

Mark Mills cautioned the DEP to not refer to 10” to mottles and 16” to rock as unsuitable or marginal soils; these numbers are in the law as being suitable for spray.

Chairman Mowery requested that the SAC see the final draft document again before it is made final.

PUBLIC COMMENT ON THE PLANNING DOCUMENT

Adam Browning (alternate for POWRA) asked if using primary conventional systems and secondary alternate systems, other than within a Component 2, is off the table. Mr. Patel answered yes. Mr. Browning stated that Mr. Patel said just the opposite to that same question not that long ago. Mr. Patel stated that upon further evaluation, the DEP made this decision and he was incorrect before. Mr. Browning further brought up that earlier that week, the Southeast Regional Office decided that it is acceptable (to use an alternate as a replacement outside of a Component 2). Mr. Patel explained that this guidance is not final yet and this is a challenging situation for everyone. Mr. Browning asked when retesting a lot because 6 years went by, if they are pigeon holed at the permitting stage in using the type of system that was proposed in the

planning stage. Mr. Patel said the lot was already created and they do not have to go back through planning. Mr. Browning stated that Mr. Schlauderaff mentioned that by using an alternate, you need a replacement site; in the case of permitting, for clarity, he asked if a replacement site is required. Mr. Patel responded that a replacement site for alternates is not required during the permitting stage, only during the planning stage. Mr. Patel further explained that this is not a permitting document, it is a planning document. Mr. Patel said he is hearing that we need to further clarify what triggers planning.

Lori Books (alternate for PSATS) asked if delegated agencies will be able to approve planning modules proposing alternates? Mr. Patel answered that we haven't thought about that.

TVP DOCUMENT

There were no questions or comments on the document.

NEW BUSINESS

Brian Schlauderaff gave a brief discussion of the following:

- The Planning Section is making changes to the training requirements for SEOs and the corresponding Technical Guidance Document *Sewage Enforcement Officer Certification and Training Program Guidance*. These changes to the document could possibly be ready for the next SAC meeting.
- The Bureau of Clean Water purchased a learning management system (LMS). The name of it is the Pennsylvania Clean Water Academy. SEOs will be able to manage their own training through it on-line.
- The LMS will allow for rolling certification cycles. The fixed certification cycle was a means to make the administration of the program easier for the DEP. In the future, an SEO's certification cycle will be two (2) years from the date he/she is certified.
- The LMS will allow for the creation of courses. The DEP will develop/house several courses worth one (1) to three (3) credits. There will not be the need for rollover credits at this point. The DEP anticipates phasing away the rollover credits from what is allowed now, seven (7), to three (3), to zero (0) over the upcoming cycles. The DEP Water and Wastewater Certification Program does not have rollover credits.
- Training providers will be able to use the LMS to advertise and to directly manage their courses, class attendance and awarding of credits to the SEOs.
- The LMS will hopefully be live by the end of the summer. The DEP will train the training providers and the SEOs.
- The Pennsylvania Clean Water Academy home page was displayed on the screen for SAC to see.

James Wheeler asked if there will be any change to how we approve training courses with the LMS. Janice Vollero answered no but that the DEP now has a training section that will be helping the planning section with reviewing the courses from a training standpoint, not a technical standpoint.

Greg Marshall asked if the DEP is looking into a mandatory soils course? Brian Schlauderaff answered that DEP is working with a contractor to develop a course similar to our Soils 109 and potentially subsidizing it for 100 students. He further explained the course will have an on-line portion and then two (2) days of field work and it will be mandatory for those SEOs who never took the advanced soils course.

Carl Cox stated he was a certified wastewater operator and thought when the Water and Wastewater Certification Program started using EarthWise, their on-line LMS, it was a great thing. Mr. Cox said there was a learning curve, but everything is right there for the operators to access.

Chris Wood asked if conferences will still be allowed to grant credits. Mr. Schlauderaff answered yes. Mr. Wood asked if the DEP will do something about the quality of the courses; some courses have nothing to do with SEO duties. Mr. Schlauderaff answered yes and explained that the vision is for different types of courses to carry more weight and more credits; the training program is lacking and it is something the DEP needs to correct.

Keith Heigel commented that the upcoming training cycle will be more of a transition cycle and asked when will the SEOs will find out about these changes. Mr. Schlauderaff answered the DEP will send emails out to the SEOs on how to log in and create their account after the DEP beta tests the program.

Mark Mills mentioned we should keep in mind that there used to be free training and now SEOs are unhappy because they must pay; they choose the cheapest courses with the most credits and those courses are not always the ones with the best quality.

Wayne Schutz stated that Pennsylvania Rural Water puts on some good quality courses at reasonable prices and the DEP might want to talk to them about training opportunities.

James Wheeler suggested that an Act revision could contain a requirement for some type of sustained funding for SEO training.

OLD BUSINESS

Greg Marshall stated that the Southeast Regional Office requires an Application Mailer on all proposals so that they can determine if the proposal requires planning or not. It can take up to two (2) months to get a decision since there is no regulatory time frame for Application Mailers. This is not being required in any other region. Mr. Marshall asked if there is any relief with this situation. Mr. Patel answered that the DEP will look into it.

Chris Wood suggested we reopen the marginal condition policy and modernize it. Mr. Patel answered the DEP will look into it with legal counsel.

Wayne Schutz recommended we keep O&M on the forefront for alternate systems since they are more complicated and more of these systems will be coming in.

Chairman Mowery reminded everyone that the public comment closing date for the two (2) documents is Tuesday and encouraged everyone to comment on them.

NEXT MEETING

The next meeting of the Sewage Advisory Committee is planned for Wednesday, September 12, 2018, at 10:30 AM in Room 105 of the Rachel Carson State Office Building.

ADJOURN

Motion: Chairman Mowery called for a motion to adjourn the meeting. Carl Cox made a motion to adjourn the meeting. Wayne Schutz seconded the motion which was unanimously approved by the Committee. The May 3, 2018, SAC meeting was adjourned at 12:50 PM.