

**Commonwealth of Pennsylvania  
Sewage Advisory Committee  
Minutes of the Meeting  
April 24, 2013**

Membership and function of this committee is established by 35 P.S. § 750.4. Successors to the entities listed in the statute retain the right to representation of the original organization named in the statute, but are not entitled to more than one member, if they have merged.

Seventeen (17) organizations with voting members/alternates were recorded as present. Twelve (12) organizations' members/alternates were Not Present. Four (4) member organizations have no current appointed member or alternate. The minimum quorum is one third of 30 appointed members/alternates able to cast votes. For this meeting, seventeen (17) organizations were present which exceeds the minimum ten (10) for a quorum.

Members are shown in boldface. Organizations and members and/or alternates present are indicated by mark (▶).

<b>Member</b> Alternate Member	<b>Organization</b>
▶ <b>Jacqueline Peleschak, P.E.</b> Mark Malarich, P.E.	American Council of Engineering Companies of Pennsylvania
<b>Arthur Adams, AIA</b> No alternate	American Institute of Architects--Pennsylvania
▶ <b>John Wagman</b> Bernard Telatovich	American Society of Civil Engineers
<b>Scott Russell, P.E.</b> Michael Schober, P.E.	American Water Works Association (PA Section)
<b>Commissioner Jeff Wheeland</b> ▶ Lisa Schaefer	County Commissioners Association of Pennsylvania
<b>Ralph DeFazio</b> Kyle Schmeck	County Departments of Health, Local Health Agencies
<b>Secretary Alan Walker</b> ▶ Sandra Orth	Department of Community & Economic Development
▶ <b>Patricia Allan</b> Andrew Paris	Governor's Policy Office
▶ <b>Charles Herr</b> Andy Jantzer	PA Municipal League
(No member) (No alternate)	Mortgage Bankers Association of Pennsylvania

<b>David R. Kauffman, P.E.</b> J.T. Hand	National Association of Water Companies
<b>Michael McGraw</b> (No alternate)	Pennsylvania Association of Plumbing, Heating & Cooling Contractors
<b>Bruce Willman</b> ▶ Mark Mills	Pennsylvania Association of Professional Soil Scientists
▶ <b>Robert Wood</b> William McLaughlin	Pennsylvania Association of Realtors
▶ <b>Chris Wood [Vice-Chairperson]</b> Kevin Bitz	Pennsylvania Association of Sewage Enforcement Officers
▶ <b>Andrew Bockis</b> Alexandra Chiaruttini	Pennsylvania Bar Association
<b>John Gigliotti</b> ▶ Grant Gulibon	Pennsylvania Builders Association
<b>(No member)</b> (No alternate)	Pennsylvania Environmental Council, Inc.
▶ <b>Keith Klingler</b> (no alternate)	Pennsylvania Landowners Association, Inc.
▶ <b>Anita Stabile</b> (No alternate)	Pennsylvania Municipal Authorities Association
▶ <b>Gregory Marshall</b> Brad Hengst	Pennsylvania Onsite Wastewater Recycling Association
<b>Mourice Waltz</b> Eugene Briggs, AICP	Pennsylvania Planning Association
<b>Joe Valentine</b> ▶ Jeff Rachlin	Pennsylvania Septage Management Association
<b>Brian Book, P.E.</b> John Fuehrer, II, P.E.	Pennsylvania Society of Professional Engineers
<b>Dan O'Connell</b> Ronald Grutza	Pennsylvania State Association of Boroughs
<b>Comm. Ginnie Anderson Kane</b> (No alternate)	Pennsylvania Association of Township Commissioners
<b>Andrew J. Boni</b> James Wheeler	Pennsylvania State Association of Township Supervisors
<b>Dr. Patrick Drohan</b> ▶ Dr. Henry Lin	The Pennsylvania State University

► <b>Duane E. Mowery [Chairperson]</b> Alison J. Shuler	Pennsylvania Water Environment Association
<b>Samuel M. D'Alessandro, P.E., P.P., P.L.S.</b>	Pennsylvania Vacation Land Developers Association
<b>John Williams</b> Susanne Gantz	USDA Rural Development Mission Area
Organization internal policy no longer allows participation	US Department of Housing and Urban Development
Organization currently no longer functioning	Pennsylvania Environmental Health Association
<b>Other attendees:</b>	
Tom Ashton	American Manufacturing Company
Katie Blansett	PHRC, Penn State
Lori Books	Lebanon County Planning Department
Larry Earney	Atlantic Solutions
Brad Hengst	POWRA
Elizabeth Hensil	PA Realtors
Gale Mellinger	-----
Joshua Shoemaker	Widener Law
Pam Winter	Centre County SEO
<b>DEP Representatives:</b>	
Kim Childe	Attorney, Regulatory Counsel
John Diehl	Chief, Act 537 Management Section, Division of Planning and Permits, Bureau of Point and Non-Point Source Management (BPNPSM)
Karen Fenchak	WPS, Act 537 Management Section, BPNPSM
Sean Gimbel	Executive Policy Specialist, DEP Office of Policy and Communication
Nick Hong	EES, Act 537 Management Section, BPNPSM
Lee McDonnell	Director, BPNPSM
Kristen Schlauderaff	Water Plant Biologist, BPNPSM
Mark Sigouin	DEP Southcentral Regional Office

Thomas Starosta	Environmental Engineer Consultant, BPNPSM
Janice Vollero	WPS, Act 537 Management Section, BPNPSM
Tim Wagner	DEP Southcentral Regional Office

***Call to Order***

The meeting was called to order by Vice-Chairperson Anita Stabile at 10:40 am in Room 105 of the Rachel Carson State Office Building. Meeting sign-in sheets were circulated and a quorum was present.

**Old Business**

***Approval of the minutes of the Meeting of March 6, 2013***

The Committee approved the minutes of the Meeting of March 6, 2013 without changes.

**New Business**

***Officer Nominations for the April 2013 to March 2015 term***

The nominating committee for the Chairperson and Vice-Chairperson for the April 2013 to March 2015 term consisted of John Wagman, Ralph DeFazio, and Jeff Rachlin. The nominating committee announced that Duane Mowery was selected as Chairperson and Chris Wood was selected as Vice-Chairperson.

***Nominations for 2013- 2015***

In accordance with Section 4 of the Pennsylvania Sewage Facilities Act, members of the Sewage Advisory Committee must be appointed by the Secretary of the Department of Environmental Protection every two (2) years. Typically, each organization has a total of two representatives comprised of one member and one alternate.

As of April 24, 2013, the following organizations have not submitted nominations for the April 1, 2013 to March 31, 2015 term:

- PA Environmental Council

The PA Environmental Council has informed the Department that they are considering an individual(s). However, they have not yet submitted the nomination to the Department.

**Discussion of Draft Technical Guidance: “Sewage Facilities Planning Module Review for Onlot Sewage Systems Proposed in High Quality and Exceptional Value Watersheds”. Herein referred to as the “guidance document.”**

The guidance document addresses siting onlot systems in special protection watersheds. The objective of the guidance document is to assure compliance with Chapter 93 antidegradation regulations which require that water quality in special protection watersheds be protected and maintained. The guidance document recommends cost-effective and reasonable best management practices (BMPs) to maintain and protect water quality when reviewing sewage facilities planning modules for proposed individual or community onlot sewage systems in high quality (HQ) and exceptional value (EV) watersheds.

The Department stated that the proposed guidance document was published in the PA Bulletin on March 2, 2013. Upon public request, the comment period for the guidance document has been extended an additional 30-days ending on June 3, 2013. At that time, the Department will review the comments and incorporate the comments into the guidance document as necessary. The Department will then evaluate the merits on continuing forward with the guidance document or withdraw the guidance document from consideration. The Department anticipates that the responses to the public comment will be made available to the public within 60 to 120 days.

**Comments from the Committee on the Guidance Document**

Chairperson Duane Mowery indicated that the primary impetus for this Special Meeting was to both share the comments compiled by the Sewage Advisory Committee (SAC) subcommittee and to receive the support from the full Committee on the formal package of comments to be submitted to the Department. Mowery thanked those members/alternates who participated in the SAC subcommittee and he also thanked the Department for providing representatives to answer questions at the subcommittee meetings. Mowery also thanked the Department for hosting webinars on the guidance document on April 15 and April 23, 2013. The Department intends on hosting an additional webinar on April 29, 2013.

Mowery cited the findings of the Environmental Hearing Board (EHB) in Pinecreek Valley Watershed Association, Inc. vs. Commonwealth of PA et.al. (Pine Creek adjudication) (EHB Docket No. 2009-168-L) as follows:

*The Board finds that the Department’s approval of a plan revision was not lawful and reasonable in light of the facts. The third-party appellant showed that there is a significant and credible risk that effluent containing nitrate will degrade an Exceptional Value stream on the property, and the Department and project proponents failed to show that the risk will not be realized. The record does not support the Department’s theory that a wetland surrounding the stream will denitrify the effluent before it reaches the stream (Pine Creek adjudication 1).*

In short, the EHB concluded that the Department’s analysis of the plume migration from the proposed onlot sewage systems inadequately demonstrated that water quality in Pine Creek (an exceptional value stream) would be protected and maintained. As a consequence of the ruling, the Department has reviewed the type of analysis needed to meet the Chapter 93 requirements to

protect and maintain water quality in EV/HQ watersheds. The Department has chosen to utilize the nonpoint source BMP approach consistent with the Chapter 93 requirement to implement reasonable and cost-effective BMPs for non-point sources of pollutants. The subject guidance document illustrates the BMP approach.

A Committee member suggested that a properly constructed onlot sewage treatment could protect the watershed and indicated that no evidence has been presented to contradict this suggestion. The Committee member believed that the guidance document could have a profound adverse impact on development in some areas of the State. While the Committee member understood that the EHB decisions and amendments to the Act were outside of the Department's control, the committee member believed that the Department does have the ability to revise or develop new regulations.

A Committee member indicated that both the letter distributed from Samuel D'Alessandro of the PA Vacation Land Developers Association and the opening statement on the subcommittee comments form the basis for the Committee to find that the guidance document is not the appropriate mechanism to address the Chapter 93 requirements (i.e. to protect and maintain water quality in EV/HQ watersheds.) Rather, the Committee member recommended that an amendment by the Department to the regulations or an amendment by the legislatures to Act 537 be the appropriate approach to implementing the Chapter 93 requirements.

Mr. D'Alessandro's letter has not been included in the minutes.

The opening statement of the subcommittee comments reads:

*The Sewage Advisory Committee understands the Department's desire to expedite the Planning process in Special Protection watersheds while complying with antidegradation requirements. However, we remain unconvinced that the issuance of this guidance document is the appropriate mechanism to achieve the ultimate goal. A significant programmatic shift such as this is worthy of a more substantial regulatory or legislative revision to most appropriately address antidegradation as it relates to onlot systems. Furthermore, we believe that existing onlot system regulations are adequate to protect the Special Protection watersheds (in the absence of data that proves otherwise) and legislative and/or regulatory revisions should reflect that perspective.*

A Committee member indicated that promulgation of this guidance document could set a precedent for development of other guidance documents. Hypothetically, an environmental group unsatisfied with a given situation could challenge in the EHB. The end result may be that the EHB overturns current guidance documents leading to new guidance documents.

A Committee member emphasized that the status quo is unacceptable because inconsistencies exist in planning approval among the Department's regional offices. The Committee member indicated that the guidance document affects some parts of the State (areas with EV/HQ streams) but not others. Thus, some parts of the State are indifferent to the guidance document becoming final.

A Committee member observed that without the availability of scientific data to support the effectiveness of utilization of BMPs to protect EV/HQ watershed, simply incorporating the BMPs in the guidance document does not suggest that the guidance document's approach is scientifically defensible. The Committee member stressed that the EHB ruled that the Department relied on unproven modeling in lieu of site specific field data.

A Committee member indicated that an area without an EV/HQ watershed designation currently could be impacted by the guidance document in future years. Groups interested in protecting the environment may request the addition of more EV/HQ watershed designations as time progresses.

A Committee member stated that for parts of the State with mostly EV/HQ watersheds, the impact of the guidance document could be devastating. The guidance document does not consider the socio-economic impact that the BMPs will have on development. The Committee member stated that a number of applications have already been submitted for proposed subdivisions with acre lot sizes. The municipalities have advised the landowners that the possibility of obtaining approval for the proposed planning module with the guidance document would be diminished. In addition, the guidance document may also prohibit landowners from subdividing property for commercial growth which would require a planning module. The Committee member saw no merit for the guidance document when no field data was presented to show a problem with elevated background nitrogen in the groundwater. The Committee member indicated that the guidance document could be supportable for documented cases of elevated nitrate in groundwater if additional BMPs could be utilized. With the restrictions in the guidance document, the Committee member found little benefit to the environment for enacting the guidance document.

A Committee member stated that the subject guidance document is the result of a single unfavorable EHB adjudication against the Department. The Committee member asserted that promulgation of the pending guidance document was unnecessary given the Department's acknowledgement that its defense at the hearing was inadequate. Further, the Committee member questioned the Department's failure to appeal the EHB adjudication.

A Committee member reiterated that with the inconsistencies in the approaches used by the Department regional offices for approving planning modules the status quo is unacceptable. Due to the EHB decision, the situation needs to be rectified immediately with an alternative approach. The Committee member indicated that the guidance document would be unpopular based upon socio-economic impacts. The Committee member believed that the Department did not sufficiently argue before the EHB that the treatment efficiencies of the onlot sewage system are sufficient to protect special protection watersheds. Stakeholders believe the guidance document is overly conservative and protective. The Committee member indicated that a potential concern with the guidance document is its application to discharges from existing lots to protect the EV/HQ watersheds.

A Committee member observed that the Department's Southeast Regional Office and Southcentral Regional Office are utilizing the point source plume analysis approach for approving planning modules while the Northeast Regional Office is utilizing the reference watershed approach.

The Department informed the Committee, as a point of clarification, that the EHB adjudicated unfavorably against the Department in two (2) separate EHB appeals in the Pine Creek case. In the first EHB appeal, the EHB ruled that the Department had a duty to perform an independent antidegradation review before approving a planning module proposing to use a properly designed and constructed onlot treatment system to ensure the system would be effective in protecting the watershed (Lipton v. DEP, Docket No 2007-026-MG). The EHB approved the Department's rescission of its planning approval in order to conduct an antidegradation analysis.

In the second appeal, the EHB found that the Department's antidegradation analysis was based on unproven modeling and did not adequately demonstrate that the significant and credible risk of nitrate pollution of the stream from the proposed onlot sewage systems would not come to pass.

Chairperson Mowery invited the full committee to endorse the comments compiled by the subcommittee. The Committee had the following additions to the subcommittee comments on the guidance document:

Item # 2 states that "The Department should describe how this guidance applies to existing properties that don't need planning." A Committee member noted that it may be difficult to locate the sewage planning approval for small existing lots as the information may not have been recorded by the County and questioned whether these lots would be subject to future additional regulatory requirements.

A Committee member questioned whether the guidance manual would require additional sewage management for onlot sewage treatment system. The Department responded that the guidance document does not impose any additional sewage management requirements, but noted that the existing regulations already have sewage management requirements. The Department noted that guidance documents allow the Department to test the merits of new practices to determine whether they should become regulations.

A Committee member observed that municipalities with sewage management programs have fewer problems with onlot systems in his experience and recommended that the Department enforce the requirements for municipalities to have sewage management programs.

A Committee member again suggested that an alternative to the guidance document may be to amend the regulations to exempt onlot sewage treatment systems from being required to comply with Chapter 93 requirements of protecting and maintaining special protection watersheds, but acknowledged that federal EPA approval may be required.



**Comments from the Public**

A member of the public stated contamination of her drinking water well was not from onlot sewage treatment systems but from sludge, including sludge pumped from septic tanks, spread on farms and from CAFOs.

**General Comments from the Department**

The Department advised that efforts to amend Chapter 71-73 of the regulations to include the BMP approach recommended in the guidance document will not occur until the Department has had time to evaluate the effectiveness of this approach through use of the guidance document. Historically, the Department has had success in releasing guidance documents for implementation with subsequent movement of the guidance document to regulation when the elements of the guidance document have been proven.

The Department indicated that at this time the Department does not have a methodology for approving planning modules in special protection watersheds that has been upheld by the EHB. Planning modules that utilize either the point source approach, the BMPs approach, or any other approach may be acceptable to the Department provided that the planning module demonstrates that it will protect and maintain water quality in the watershed.

***Meeting Adjournment***

The meeting was adjourned at approximately 11:40 am.