

**Sewage Advisory Committee
DRAFT
Minutes of the Meeting
May 25, 2021**

VOTING SEWAGE ADVISORY COMMITTEE (SAC) MEMBERS PRESENT

Andrew Bockis, Pennsylvania Bar Association
Adam Browning, Pennsylvania Onsite Wastewater Recycling Association (POWRA)
Terry Carcella, Pennsylvania Municipal League
Brian Chalfant, Governor's Policy Office, Alternate
Carl Cox, Pennsylvania State Association of Boroughs
Patrick Drohan, Pennsylvania State University
Keith Heigel, Pennsylvania Society of Land Surveyors
Ginnie Anderson Kane, Pennsylvania State Association of Township Commissioners
Keith Klingler, Pennsylvania Landowners' Association, Inc.
Duane Mowery, Chairman, Pennsylvania Water Environment Association (PWEA)
Laurel Mueller, Pennsylvania Builders Association
Susan Myerov, Pennsylvania Environmental Council
Eileen Nelson, Pennsylvania Society of Professional Engineers
John Peffer, County Departments of Health and Health Agencies
Shannon Rossman, County Commissioners Association of Pennsylvania
Esten Rusten, American Institute of Architects, Pennsylvania (AIA)
Michael Schober, American Water Works Association (PA Section), Alternate
Drew Shaw, Pennsylvania Planning Association
Joseph Valentine, Pennsylvania Septage Management Association (PSMA)
Keith Valentine, Pennsylvania Association of Professional Soil Scientists (PAPSS)
John Wagman, American Society of Civil Engineers
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
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 9:01 AM. The meeting was a virtual meeting. Janice Vollero reminded everyone that the meeting was being recorded and according to PA law, by participating and speaking during the meeting you are granting permission to be recorded. A slide with recommendations for the virtual meeting was shown.

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

Laurel Mueller requested a change to the February 23, 2021, meeting minutes. On page 10, Ms. Mueller's comments, the last bullet should reflect that Brian Schlauderaff responded that "they are all equal" in reference to the question "Are all alternates equal?"

Motion: Chairman Mowery called for a motion to approve the February 23, 2021, meeting minutes.

Vice-chairman Chris Wood made a motion to approve the February 23, 2021, meeting minutes as corrected. Carl Cox seconded the motion, which was unanimously approved by the Committee.

ADMINISTRATIVE ITEMS

Nominating Committee Report for SAC Chair and Vice-Chair for 2021 – 2023 term

Laurel Mueller was Chair of the Nominating Committee. The Committee emailed the membership and suggested that the existing Chair and Vice-chair, Duane Mowery and Chris Wood respectively, remain as officers. There was no opposition or other nominees suggested. A call for additional nominees from the floor produced none.

Motion: Chairman Mowery explained that the recommendation came through a committee so no motion necessary. He called for a vote for the Chairman and Vice-chairman for the 2021-2023 SAC term to be Duane Mowery and Chris Wood, respectively. This recommendation was unanimously approved by the SAC Committee.

DISCUSSION/INFORMATION ITEMS

1. Update on_PSMA request regarding unsatisfactory conditions potentially being dealt with as best technical guidance (BTG)

Brian Schlauderaff explained that DEP is still working on this issue. DEP would like to know what local agency SEOs and SAC members' thought if the definition of malfunction was expanded to include anaerobic conditions that are visible in the absorption area and how would one determine and confirm there were anaerobic conditions. If the definition is expanded to include anaerobic conditions, then anaerobic absorption areas will be malfunctions, whether found during an SEO inspection or real estate transaction inspection.

- Joe Valentine - If anaerobic conditions were a malfunction, an SEO would have to take action against a property owner to correct it. PSMA was not suggesting changing the definition but rather allowing BTG in a limited form to install replacement systems for existing systems that are not performing as designed.
- Mr. Schlauderaff - Section § 73.3 of the regs limit the use of BTG to malfunctions and malfunctions are actionable items so if the definition of malfunction is expanded, that new definition would be actionable. Local agency SEOs determine if something is malfunctioning and have some leeway in making that call.
- Chairman Mowery - There is a definition of malfunction in the draft Sewage Management Technical Guidance Document. This definition was shared on the presentation screen.
- Mr. Valentine - This definition does not fully address ponded systems. PSMA is not looking to create a situation that at the point of sale something is turned into an actionable situation. PSMA is simply trying to improve situations that have systems that are not operating as intended and for the most part that means fully ponded absorption areas. A lot of systems that are in ground systems and in the 20+ year range probably are operating in an anaerobic condition due to a biomat at the stone/soil interface. They may not be fully ponded, but they are certainly anaerobic at that junction in the system. So maybe it is a reg change that is needed to address this and it's not something that could be band aided. Mr. Valentine would like to take this matter back to Barb Ward and further discuss it.
- Chairman Mowery - Would DEP be able to classify systems as alternate site specific classifications in the short-term to deal with this issue? Mr. Schlauderaff stated site specific alternates use BTG to violate horizontal isolation distances during a malfunction repair. The definition of malfunction would still have to be expanded to accommodate this issue.
- Jay Patel - An inspection is a point in time, a snapshot of what is occurring on that day and not indicative of the performance over a longer period. How do you measure this over a longer period? As someone trying to sell their property, how do you know the system is ponded all the time? How do you know the ponding you see during that inspection is a real problem? DEP is struggling with these concerns.
- Mr. Valentine - There must be a way to administer this through making a situation better. We are missing the opportunity in Pennsylvania to improve existing sewage systems and upgrade them to be close to the regs, much closer than an inground system in redox soils. Perhaps besides malfunction or no malfunction, there can be a third category; improving a situation with a system that meets the limiting zone requirements but needs some minor relief to non-critical isolation distances.
- Mr. Patel – To be clear, we racked our brains and we tried to find another way. There is an opportunity for an SEO to make a call if they see fit, beyond what we have determined

through existing policy and training. Mr. Valentine statement is encouraging but there are SEOs that take everything the DEP says verbatim in training and if they don't see a malfunction, as currently trained, they think they can't do anything, period. Some SEOs feel their certification is in jeopardy if they issue a permit for a sand mound on a site that has an inground system in redox soils just because it is 5' to a driveway instead of 10'. If that could be softened, that is heading in the right direction short of a reg change.

- Mr. Patel - We will take that back and think about it. We want to make sure we are responsive to what you asked for.
- Mr. Valentine - This is evolving as we are discussing and to restate, PSMA is not interested in making a definition so rigid that it becomes an actionable situation. That said, if the SEO would have some direction from the DEP, that since a malfunction is not currently defined in any of the chapters, an SEO could use their best judgement to interpret certain situations to be a malfunction and use BTG.
- Ms. Mueller - Liked what Mr. Valentine recently stated. The SEO is not at the real estate inspection but if they were invited to come, they might see the water backing up from the absorption area to the septic tank and then seeping out a fracture in the tank or the seam around the riser and shoulder of the tank. The SEO would not see any evidence of the sewage surfacing, but they would see the water running backwards. Allow an SEO to have a little liberty, since malfunction is undefined, when they are included to judge whether the system is malfunctioning or not.
- Chairman Mowery - DEP is amenable to try to come up with some mechanism to make it possible for improvements to be made and that we could keep going down this path to see what DEP comes up with based on our discussion today, That might be a good way to leave it for now. Mr. Valentine agreed.

2. Act 34 implementation update – FAQ Document

Chairman Mowery explained there was a joint House Environmental Resources and Energy Committee and Senate Environmental Resources and Energy Committee on April 27, 2021. Several resources testified, SAC members (Joe Valentine, Adam Browning, and Laurel Mueller all testified for their respective organizations), Paul Golrick, PSATS and the Land Surveyors Association of Pennsylvania. He thanked the SAC members for participating in that hearing. That hearing is posted on Senator Yaw's website and maybe Representative Metcalf's. Following that meeting, DEP reached out to those who testified, and several others, to engage them on the language contained in the FAQ document. Chairman Mowery made it very clear that not all of those who participated in the discussion about the FAQ document agree with what the document says, but still appreciate they were afforded the opportunity that the DEP offered. The FAQ document was sent to all SEOs in an All SEO Letter.

Mr. Patel shared the document on the presentation screen. The document is a living document and it is meant to convey the information as simply as possible. It was suggested that the document should be simplified. DEP agreed to look into simplifying the document. A general introduction and an introduction in each section followed by a question and answer section was

added. Mr. Patel went through the main sections of the document and asked for questions/comments.

- Chairman Mowery – if proposing the use of an absorption area for new land development, as opposed to a spray field, you need to propose the development on sites that have 20” or more to a limiting zone (LZ) and a slope of no more than 12%. Is that correct?

Mr. Schlauderaff – Assume you are talking about a sand mound; the only system you can use between 20” and 48” and up to 12%. Other conventional systems can go up to 25% but you need a lot more soil.

Chairman Mowery – The use of absorption areas on sites between 20” and 48” is going to be restricted to a maximum slope of 12%. The 12% to 15% option for absorption areas in that 20” to 48” range has been removed based on this document.

Mr. Schlauderaff – That is not entirely correct. If you can site a spray field, that is generally suitable, you can substitute an alternate in its place, like a drip irrigation system or at-grade absorption area. Drip can go up to 25%. You would have to meet all the other requirements of that alternate system.

- Mr. Valentine – Please discuss the existing lots of record. When can we use alternate systems and break it down into 3 groups: lots created pre ’72, lots created post ’72 and pre ’89, and lots created post ’89.

Mr. Schlauderaff – Lots created after ’89 must follow the current regs; you have to meet general site suitability (GSS) for either a spray field or an absorption area.

Mr. Valentine – If a lot was created for a sand mound with 1 test pit and a new SEO does a second test pit but it is not suitable, does that lot need to go back through planning to show GSS for a spray field?

Mr. Schlauderaff – You would not have to go back through planning. If you show GSS for a spray field at permitting, you can substitute an alternate at permitting.

Mr. Valentine – If the same lot could not show GSS for spray because the lot is only 1 acre, is that lot unbuildable?

Mr. Schlauderaff – Yes. To continue, the pre ’72 and the pre ’89 lots are grouped together. Alternates can be substituted on sites showing GSS. If you had a lot with an area suitable for a sand mound but you would rather use an at-grade or an Eljen, you would have to put that alternate on the area that was found generally suitable for the sand mound. Additional testing would have to be done for the Eljen, not the at-grade. If the lot is not suitable for an absorption area or spray field, but you can site a shallow limiting zone (SLZ) system, you can use the SLZ system. You must rule out that you have no suitable soils for an absorption area or spray field first.

Mr. Valentine – Difference is prior to ’89, if you can’t site a Chapter 73 system but you can site a SLZ system or any alternate system, you can use that alternate. Correct?

Mr. Schlauderaff – Yes but you must rule out GSS first. GSS for a spray field is for single family residential use only.

Mr. Valentine – If a lot was created for non-residential use prior to '89, can you use a SLZ system?

Mr. Schlauderaff – Yes if pre '89. It doesn't matter what it was proposed for, if you are unable to site an absorption area or spray field that does not meet Chapter 73, a permittee may propose any classified alternate system.

Mr. Patel - For new land development, there is no mechanism by which you can develop a lot with shallow soils for multi-residential or commercial. IRSIS is for individual residential. Options would be land application or direct discharge to a stream.

- Ms. Mueller – If a lot is already created with 18” of soil and the owner wants to put a 200 gpd real estate office on it, according to your Q & A, it is unbuildable. If one wanted to create a new lot, same issue, they can't because the soils are <20”. If one holds a recorded planning module letter approving a lot, DEP may get sued for renegeing on the approval. For example, I had a module approved in 9/2020 creating eight (8) lots. Three (3) of the lots are too small for an IRSIS. This statement says these three (3) lots are unbuildable even though I hold a planning approval letter.

Mr. Schlauderaff – Incorrect; the FAQ says if approved under Act 26, you can follow through with that planning approval in perpetuity.

Ms. Mueller – Planning approval letters sometimes get lost. In those cases, lots that are pre '89, you can use the reconstructive planning technical guidance document, write a letter to the township, copy it to DEP and proceed and issue the permit. Is the permit limited to conventional systems?

Mr. Schlauderaff – That statement skipped the reconstructive planning process. The township makes the decision to go through planning or not. If the township is fine without planning and the lot is pre '89, and you can't site any Chapter 73 system, including spray, then you are able to use any alternate system, including a SLZ system if it meets all the requirements in the listing. If the township wants planning done, then you must follow all of the planning requirements now; you must show GSS for a spray field or absorption area and then substitute the alternate.

- Ms. Mueller – Shared her screen to explain examples of Act 34 planning scenarios in diagram form and asked the committee if these diagrams would be helpful to the FAQ document. Chairman Mowery answered that pictures are always helpful. Mr. Patel thanked Ms. Mueller and stated DEP would have to review the examples but believes they will be helpful in the document.
- Mr. Valentine – There is a general comment in the document from DEP that states alternates were never intended for new construction, only repairs of malfunctions. Mr. Valentine believes this statement is incorrect and requested to see that documentation, if it exists. The FAQ mentions that alternate systems “have to meet a higher standard” (Mr. Valentine's

words) for protecting the public health and the environment than GSS systems do. That places alternate systems in a different category. If the DEP has information on how the GSS systems are interacting within the environment, that would be important information to share with this committee. Chairman Mowery said many on the committee would be anxious to see that information also, so it is a comment worthy of DEP to consider.

3. Discussion – Technical Guidance Document *Technical Decision Making (TDM) Guidance for On-lot Sewage System Repair Situations* – Pre-draft version

Ms. Vollero reminded everyone that the current TDM Technical Guidance Document from 2004 was included in the meeting materials. She explained the major changes being proposed to the document. They included:

- Shorter title.
 - Changed and added definitions.
 - Added a list of acronyms and a scope.
 - Clarified the TDM step-by-step process for system repairs.
 - Added the need to justify the decision to use BTG.
 - BTG will not be used on sites prohibited by regs or outside of a DEP permit review, if appropriate.
 - Clarified the water supply encroachment using BTG.
 - Clarified and expanded on the use of site-specific experimental technology.
- Chairman Mowery - Is there a driving force to revise this document? Mr. Schlauderaff stated that the original document is very general, and DEP has wanted to update and expand this document for some time.
 - Chairman Mowery - Suggested that the committee set up subcommittee meetings along with DEP to be there for back and forth discussions on this document and the next document.

4. Discussion – Technical Guidance Document *Sewage Management Program and Annual Reporting* – Pre-draft version

Mr. Schlauderaff explained that this document is a brand-new document. (This document was included in the meeting materials.) There was an old draft sewage management program (SMP) technical guidance document (TGD) that was never finalized. He shared the document on the presentation screen and highlighted the major changes being proposed:

- Added definitions and acronyms.
- Added that DEP believes that sewage management is appropriate in every situation and DEP has the authority to require it.
- Added a scope.
- Broke out in chronological order – preplanning phase, planning and development phase, and implementation phase with minimum requirements.
- Added annual reporting as a requirement.
- Added a timeline for development. DEP believes 5 years is enough with a few exceptions for an extension.
- Combined separate sample ordinances into one (1).

The document was developed from a combination of DEP training, fact sheets, other documents, and ordinances. Other SMP ordinances that we liked from municipalities were used to update the SMP ordinance in the document. The 10-acre exemption ordinance remained separate. The malfunction definition is fluid and may change.

If anyone sees something that is missing as you read through the document, please let DEP know. Either email Mr. Schlauderaff or provide recommendations through a subcommittee.

- Vice-chairman Wood – Is DEP going to allow flexibility based on a municipal basis in which pumping may be different than three (3) years? Many municipalities are requiring larger tanks so it will take longer to reach that 1/3 scum or solids level. Are you looking for any studies that indicate three (3) years is the proper amount? Your charts were developed from a Penn State study in the 1960s and there has been a lot of changes since then. Many things are different such as plastic beads and clay in bath products and dishwasher soap, different ways of cooking, etc. Mr. Schlauderaff stated DEP has not looked at any studies and if Vice-chairman Wood was aware of any studies to please supply them to DEP. DEP also needs to improve education on this matter.

Vice-chair Wood - The main cause of failures in his area is the age of the systems, not the biomat. Pumping is becoming more prominent. Mr. Schlauderaff stated that pumping isn't everything; extensive inspections should be completed.

- Chairman Mowery - Most of the committee are supporters of maintenance for all systems and § 71.71 gives DEP the ability to enforce maintenance. Is there going to be any change in enforcement of sewage management after this document is final or is it going to be the same? Mr. Patel stated when it comes to enforcement, DEP has discretion and it is based on specific factors with each municipality. There is no penalty matrix in this program like there is in the NPDES program. There are a lot of factors that go into the decision of what type of action to take based on what occurred. DEP doesn't usually put an enforcement strategy within a TGD.
- Mr. Patel – There is a new milestone in the Chesapeake Bay WIP to develop an online database. Municipalities would report to that system and DEP would look at that data. Hopefully, DEP will receive funding to move this database management tool forward. Hydraulically there is a connection between the Bay and on-lot systems.
- Chairman Mowery – Are there any objections to scheduling a subcommittee meeting? There were no objections. The meeting will be open to everyone, including the public and a Chair will be appointed at the first meeting. The public cannot sit on the subcommittee but will have an opportunity to provide input. Chairman Mowery asked DEP if the documents must be ready for the September meeting? Mr. Schlauderaff replied no.

NEW BUSINESS

- Mr. Valentine asked what the time frame for revising the regs for SAC was? Changes were made by SAC since 2005. Mr. Schlauderaff replied that DEP is working from that “a” package. Chapters 71 and 72 were started before Act 26. The reg revision must be put on the regulatory agenda and it must be approved before the program moves forward. Brian

Chalfant explained the first phase of the process – on regulatory agenda, drafting of regs, to SAC for consultation, public comment, and then final phase. It will take a few years.

Mr. Valentine asked when SAC can meet as a subcommittee to work on the regs? Mr. Patel stated there must be a draft document for SAC to work off of but if anyone has specific items of concern prior to that, email him or Mr. Schlauderaff.

- Ms. Mueller asked if there was a COVID pardon, or a remedy, for the 60-day review for residential planning modules as she is not receiving them within 60 days? Mr. Patel replied there is no COVID extension for anything. Bring specific issues to our attention outside the meeting.
- Keith Heigle asked if we could develop a continuing education course on Act 34 for SEOs? Mr. Schlauderaff said developing training takes a long time, but maybe it can be added to our existing planning course. Ms. Mueller offered her diagrams for the training.
- Keith Klingler had a concern with the minutes from the previous meeting concerning different slopes on different sheets (page 2). Mr. Klingler stated the minutes did not clearly reflect what he said, and they may have misquoted Mr. Schlauderaff. Mr. Schlauderaff agreed and said he thought Mr. Klingler’s concern was only occurring in the NWRO and he will talk to staff there. He wants to understand their position. Mr. Schlauderaff requested Mr. Klingler email him specifics when this is occurring.

PUBLIC COMMENT

- Mike Callahan (chat box) asked if on an existing lot that can support a Chapter 73 system based on soils, not IRSIS, and there is room for a SLZ system (assuming you meet Chapter 73 soils across the entire SLZ system area), could you substitute the SLZ system for the Chapter 73 system even though you could construct the Chapter 73 system? Could you place a SLZ system on 20+” soils? Mr. Schlauderaff stated that is two (2) separate questions. If you can site a Chapter 73 system on an existing lot, you must use that area with those soils and then you can substitute any alternate that can be sited on that site. If you want to site a SLZ at grade bed, the listing is very clear that it can only be used on <20”. It is designed using the HLLR and on over 20” designed on perc. So, the answer to your second question depends on whether the listing allows it or not.

NEXT MEETING

The next SAC meeting is Tuesday, September 14, 2021 at 9:00 AM.

ADJOURNMENT

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

Keith Klingler made a motion to adjourn the meeting. Laurel Mueller seconded the motion, which was unanimously approved by the Committee. The May 25, 2021, SAC meeting was adjourned at 11:55 AM.