

**Sewage Advisory Committee
Minutes of the Meeting
September 18, 2024**

VOTING SEWAGE ADVISORY COMMITTEE (SAC) MEMBERS PRESENT

John Brady, United States Department of Agriculture Rural Development Mission
Robert Bressler, Pennsylvania Association of Professional Soil Scientists (PAPSS)
Adam Browning, Pennsylvania Onsite Wastewater Recycling Association (POWRA)
Brian Chalfant, Governor's Policy Office, Alternate
Carl Cox, Pennsylvania State Association of Boroughs
Patrick Drohan, Pennsylvania State University
Shannon Drosnock, Pennsylvania Municipal Authorities Association
Larry Hatter, Pennsylvania Association of Realtors
Keith Heigel, Pennsylvania Society of Land Surveyors
Duane Mowery, Chair, Pennsylvania Water Environment Association (PWEA)
Laurel Mueller, Pennsylvania Builders Association
John Pepper, County Departments of Health and Health Agencies
Paul Racette, Pennsylvania Environmental Council, Alternate
Martin Siegel, Pennsylvania Bar Association
Joseph Valentine, Pennsylvania Septage Management Association (PSMA)
John Wagman, American Society of Civil Engineers
William Weaver, Pennsylvania Municipal League
Chris Wood, Vice-chair, 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
(CENTRAL OFFICE ONLY)**

Annamaria Ether De Sanctis, Environmental Engineer, Planning Section, Division of Municipal Facilities (DMF), Bureau of Clean Water (BCW)
Charles Klinger, Water Program Specialist, Planning Section, DMF, BCW
Jay Patel, Acting Bureau Director, DMF, BCW
Janice Vollero, Water Program Specialist, Planning Section, DMF, BCW
Richard Wright, Environmental Program Manager, DMF, BCW

CALL TO ORDER AND APPROVAL OF MINUTES

The meeting was called to order by Chair Duane Mowery at 10:17 A.M. The meeting was conducted both in-person and on-line. Chair Mowery reminded everyone to mute their microphone when not speaking and Janice Vollero reminded everyone to identify themselves before speaking.

Janice Vollero took attendance. A quorum was present.

Chair Mowery requested comments to the October 26, 2022, meeting minutes. Chair Mowery had a correction to the minutes to reflect that Tim Wagner, DEP, was in attendance at the meeting. Minutes will be corrected.

Motion: Chair Mowery called for a motion to approve the October 26, 2022, meeting minutes as corrected.

Larry Hatter made a motion to approve the October 26, 2022, meeting minutes as corrected. Adam Browning seconded the motion, which was unanimously approved by the Committee.

ACTION ITEMS

1. Vote for Chair/Vice Chair for remainder of 2024

Chair Mowery explained that the intention was to have a vote for officers for the remainder of 2024 at this meeting, but the bylaws indicate that the nominating committee should distribute a list of candidates to the entire committee two (2) weeks before the meeting in order for the election to be held. There was not enough time for that. Chair Mowery will appoint a nominating committee that will provide a slate of candidates two (2) weeks prior to the next meeting. Election of officers will be postponed until the next meeting.

2. SAC nomination to the SEO Certification Board (John Wagman position)

One of the two SAC representatives on the SEO Certification Board is John Wagman. His position expired April 17, 2024. John would be willing to continue serving on the SEO Board. Chair Mowery asked if anyone else was interested in serving; no one came forth.

Motion: Chair Mowery called for a motion to renominate John Wagman for another term on the SEO Certification Board.

Carl Cox made a motion to renominate John Wagman for another term on the SEO Certification Board. Vice Chair Wood seconded the motion, which was unanimously approved by the Committee.

Chair Mowery thanked John Wagman for his continued willingness to serve. Chair Mowery will send an email to the Secretary of the SEO Certification Board recommending renomination of John Wagman.

3. 2025 SAC meeting dates

Two (2) meeting dates were proposed for 2025: March 10 and September 17. Both would be on a Wednesday, starting at 10:00 a.m. in Room 105 of the Rachel Carson State Office Building (RCSOB). Chair Mowery suggested that instead of a March 2025 meeting, selection of a

meeting in April would be better due to potential changes in membership the first of April. Noone opposed an April meeting or the September 17, 2025, meeting date. Chair Mowery and Janice Vollero will decide on the April date, which will be posted in the PA Bulletin and placed on the SAC website.

DISCUSSION/INFORMATION ITEMS

Chair Mowery switched the agenda items.

1. Planning Program update on DEP Regulations, Chapters 71, 72 and 73

Jay Patel began the discussion with personnel changes: Jay is now the Acting Director in Bureau of Clean Water (BCW); Richard Wright is the Municipal Facilities Division Manager; Brian Schlauderaff, the previous Planning Section Environmental Group Manager, is now the Planning Chief in the Southcentral Regional Office; and Janice Vollero is now the Acting Environmental Group Manager in the Planning Section.

Jay stated that we anticipate discussing the regulations at the Spring 2025 SAC meeting and SAC should think about how the committee would like to engage with the department on these regulations.

- Martin Siegel – He is worried that people will miss the opportunity to raise their thoughts on what they want to bring to the department’s attention. He suggested that having a general solicitation requesting comments first that can be filtered and whittled down to discussion groups would prove useful. Chair Mowery encouraged anyone who would want to communicate their thoughts to DEP should do so prior to DEP sending out the regulations. DEP would not object to that.
- John Wagman – If SAC were to see the proposed changes at the April meeting, would SAC go into subcommittee meetings after that? Jay Patel responded that we are open to however SAC would like to proceed. DEP expects detailed discussions over a couple of months and is committed to putting whatever time into having those discussions that is needed so SAC has the opportunity for comment and interaction on the regulations.
- Keith Heigel - Requested verification that the regulations would be presented to SAC as draft and that SAC would have a period of time for review and comment before they would be published in the PA Bulletin. Chair Mowery responded that the draft proposed regulations would be given to SAC prior to the April meeting, DEP would make a presentation of the proposed changes to the regulations at the April meeting, and SAC would have an opportunity to ask general questions during the presentation. SAC would then form subcommittees and begin review of the draft proposed regulations over the next 90 to 120 days with Department staff. Finally, the subcommittees would bring back their recommendations to the full committee. Once the full committee sanctions those recommendations, the recommendations would be sent to DEP. Then the official rulemaking process begins which eventually includes the draft regulations getting published

in the PA Bulletin. So yes, SAC gets to comment prior to the draft regulations being published in the PA Bulletin.

- Brian Chalfant - There are two (2) phases to the rulemaking process: the proposed phase and the final phase. We are in the very beginning of the proposed phase. Consultations occur with advisory bodies before public comment. After the public comment period, adjustments are made and then they come back to SAC as a draft final regulation. SAC gets a second bite at the apple. Technical guidance documents (TGDs) are similar: DEP consults with the advisory bodies, the draft goes out for public comment, DEP reviews the public comments and makes any changes, then the draft TGD is brought back to the advisory committee before publishing the TGD as final.
 - Laurel Mueller - Years ago the chapters were being changed and there was a big impasse where the Act had not been changed. We are doing the same thing this time, expecting to change the regulations without changing the Act. How do you avoid that problem where the regulations and the Act are in conflict? Martin Siegel responded that you can update the regulations without an amendment to the Act. Oftentimes if there is an amendment to the Act, it then necessitates a revision to the regulations. The regulations must be consistent with the Act, they cannot expand the Act. Jay Patel stated we have been working with our legal staff throughout this process in order to avoid problems.
 - William Weaver - Asked what the driving force for the revisions to Chapter 71 is? Jay Patel explained that the regulations have not been updated for well over 20 years so that was one reason and the other is Act 34 of 2020. There are issues with the ‘general site suitability’ language and the use of alternate or conventional systems in the subdivision of lots.
2. Discussion - Technical Guidance Document *Technical Decision Making (TDM) Guidance for On-lot Sewage System Repair Situations* changes – 2nd Pre-Draft Version

Chair Mowery reminded everyone that SAC had a chance to review this document in October 2022 and thanked the Department for bringing the document back to SAC with their changes.

Chair Mowery suggested two (2) options for review of the document: 1) the committee can make high level comments to the department and individual organizations can comment during the public comment period; 2) go through the document page by page either today or through a subcommittee, make comments and bring those comments back to the full committee at a later date, prior to sending the recommendations to the department. Chair Mowery also reminded everyone that SAC would see the document again after the public comment period. Several people commented that they would like to go the route of a subcommittee but would also like to hear about the major changes to the document today.

Janice Vollero explained that DEP has a PowerPoint presentation mainly for the newer members to see what the original changes were. SAC and PSMA comments made after the 2022 presentation can be highlighted and we can explain what we changed or did not change based on those comments. The PowerPoint is what was presented to SAC in 2022. Janice went through the presentation which highlighted the original changes to the document:

1. The title was shortened to Technical Decision Making Guidance for On-lot Sewage System Repair Situations.
2. A definition section was added including malfunctioning on-lot sewage system and best technical guidance (BTG).
3. Acronyms were added to the definitions.
4. A scope was added to the TGD.
5. The TDM step-by-step process has been clarified.
6. The need to justify the use of BTG through documented proof that there is no physical or technical way to conduct the repair without using BTG was added.
7. Emphasis was placed on BTG not being used to place absorption areas on sites prohibited in § 73.12 or to waive vertical isolation distances to limiting zones.
8. Emphasis was placed on the fact that BTG does not get you out of the appropriate DEP technology review during the permitting process.
9. Steps to encroach upon a water supply well were clarified.
10. The section on using site specific experimental technology was expanded and clarified.

There were technical difficulties, and the PowerPoint was not visibly shared with the members attending remotely. A repeat of the presentation did not occur because these members were able to hear the presentation, and the PowerPoint slides were in the meeting materials.

- Vice Chair Chris Wood - A few things need to be considered. DEP review of permit applications takes a full 45 days and a person with a malfunction who has to pump their tank constantly at \$600 per pump-out, the money adds up. DEP needs a process to speed this process up and to make sure that their review comments are valid. A lot of SEOs are unaware of the TDM policy because when the course first came out, an instructor stated that if you took the course, you were bound to the policy. Therefore, a lot of SEOs purposely did not take the course.
- Chair Mowery - The department and some folks see § 73.3(b) a lot differently: “when considering corrective measures for malfunctioning systems, which have been constructed in accordance with this chapter or applicable regulations at the time of construction, the efforts of the local agency or the department will not be restricted by this chapter.” Chair Mowery would like to discuss this difference with DEP and what SAC would like the department to allow SEOs to do.
- Jay Patel - Explained that the language does not stop there, the section also provides for consideration of systems that exist in the regulations. That is the first step. It talks about the use of BTG for malfunctions and the encroachment of the regulated isolation distance to water wells. The section also discusses experimental systems and SFTSs and how experimental systems may be used and the ability to limit those as they are intended for testing and monitoring. The section provides for additional provisions that have to be considered and ultimately for the protection of public health and safety and the waters of the commonwealth. There are standards for systems and when you make deviations from those standards, or when you apply technologies or remedies for malfunctions that don’t fit in that box, there’s got to be a justification for it. For example, if you want to deviate from the four

to one length to width ratio in the regulations, what is the rationale for the deviation? You have to be mindful of the impact of changes on the design and siting of systems. That's why it's all about justification. We don't want to make an experiment out of everything, and we recognize that it is important to address these malfunctions. These are public health and safety issues. Malfunctioning systems make it difficult to sell houses, it causes problems between neighbors, and it causes problems for local agencies. We have to find remedies because malfunctions are required to be abated. But there has to be some guide rails around that. What would be helpful is to better understand what leeway or what situations that SEOs come up against most so we can try to figure out if we can accommodate those and figure out the rationale for accommodating them.

- Chair Mowery - Chris mentioned that it took 45 days to get a response back from the department on a submission. Is it the general feeling of the committee that it takes too long for the process laid out in this document to allow those repairs to be done? Also, the cost of monitoring. If you have someone who has limited means, are we going to force them to spend hundreds or thousands of dollars per year to monitor a system just so we can get experimental data when the goal is to mitigate the malfunction? So, time and cost are two (2) big issues.
- Martin Siegel – It would be helpful if there was consistent understanding among regional planning folks about the role that guidance plays. Regulations enforce the law; guidance is the department's interpretation of how it is going to go about implementing those regulations. Guidance does not have the force of law, in fact, the department can get in trouble if it uniformly applies the guidance across the board in every situation. I have found, certainly at the regional level, that those folks do not understand the discretion that they may have to make common sense decisions across the board. In relation to the comment that an SEO is legally bound to the guidance if they go to the course, that is untrue. Guidance does not have the force of law. Guidance is intended to help both the regulated community and those in the DEP on how they are going to do that. Everybody should understand the flexibility that the department does have if the facts justify it.
- Chair Mowery - At a bit of a loss as far as how to drive the meeting forward at this point other than from a big picture standpoint to help the department help the regulated community. Chair Mowery gave the committee members an opportunity to weigh in if they wanted to discuss specific sections of the TDM. He also gave some ideas how the department could help SAC with the implementation of § 73.3(b). For example, Chair Mowery suggested that SEOs submit BTG repair designs to DEP for their information and have DEP use that information to gain an understanding of the type, number and scope of repairs being permitted that is allowed under § 73.3(b). Unless the department can show that the repair is a nuisance, the SEOs issuing these permits should be shielded from punitive action based solely on their permitting of these BTG systems.
- Bill Weaver - What number of experimental system permits does the department review on a monthly basis? Jay Patel was not sure but figured it varied and in general, probably very few.

- Joe Valentine – Am I reading the document correctly that if a site does not meet Chapter 73 to the T, or any alternate system to the T, the submission must be made to the department for review and comment? Jay Patel explained that there is a provision for length to width ratios, a typical deviation, that does not require going straight to an experimental permit. Joe said he saw the 10% deviation of length to width, which was changed from 5%. That needs some discussion because that length to width ratio came about when we thought there was going to be horizontal flow from systems. There are certain situations where you have fractured shale and vertical flow, so the length to width ratio really doesn't mean anything. An arbitrary number of 10% really doesn't solve the situation where there is a skeletal soil with vertical flow, you can't meet the length to width ratio, and a more rectangular system could fit on the property, but it doesn't meet the 10%. It is not as simple as just saying we will now give you 10%; it's a little more complicated. Another design we use routinely: if you can't fit the length of a shallow limiting zone alternate system in one segment, you have to split the landscapes. According to this document, all these type submissions would come to the department for review, which is currently the case in region one, but other regions do not look at it that way. So hopefully with this document, there will be more regional consistency. The amount of workload to the department will be significant, in region one maybe 50% of all repairs would have to come to the department.
- Jay Patel – What we didn't discuss was how we got here. The original TGD was not much of a guidance document and SEOs were referring to the training course, so we were hoping for a better TGD. We will be developing a training course on this TGD that will be on the Clean Water Academy.
- Vice Chair Wood - It might be a good idea to put this information in the regulations instead of a TGD. Secondly, zero discharge systems are oftentimes alternate but holding tanks are conventional. The SunDrive system is an alternate, but it costs a fortune. If you have enough space, it can go anywhere. So now you are telling a person they have to use a SunDrive system instead of going through the policy. So, you might want to tweak that section a little bit.
- Laurel Mueller - Discussed a "torturous experience" where a guy with a seepage pit on the bank of a lake wanted to install an aeration system ahead of the seepage pit to improve things while modifying the house. The seepage pit broke and there was an immediate danger to the lake. The lot had a limited area. The process of finding a solution took more than a year. The person had to remain out of their house for that timeframe. Now this person has to monitor for years; it's an experimental system. The neighboring SEOs and the neighboring communities have now taken it upon themselves after seeing what we went through with this lot, basically a don't ask, don't tell attitude. In other words, renegade SEOs are solving the problem because that is what their townships want them to do. I don't think you'll ever have a hold of all the SEOs throughout rural PA to adhere to the level of control that's being asked for. So just be aware, the tougher you make it, the more the SEOs are going to rebel and do their own thing.
- Joe Valentine - It seems all waivers of all horizontal isolation distances will require a DEP review. Also, what is the difference between a site specific alternate and a site specific

experimental? Jay Patel explained that there is no such thing as a site specific alternate anymore. Joe stated this adds a tag to the property since the document says that a site specific experimental must be recorded on the deed. That raises some concerns when you think about future buyers who know nothing about on-lot systems.

- Chair Mowery - Big picture: would like to see the department have a process defined where the experimental label can be shed at some point in time. Experiments usually end. The property owner should not be burdened with a property value issue going forward. The way the experiment may end would be a point in time after the municipality has done a second inspection of that particular experimental system.
- Larry Hatter –This is the first time he heard of a deed restriction placed on or deed commentary placed on an experiment. From a realtor standpoint and from the standpoint of real estate sales, that will have some impact long term on anybody that is just a novice walking out there into a property having a septic system of which they have no understanding. I'd be willing to bet that probably 90% of the realtors that are selling that system don't have an understanding of what that impact is as well. So that has a substantial bearing if that information appears in the deed or somewhere. That also has to be a disclosure from a realtor standpoint, right as the property goes on the market. That has a very major bearing on the value of the property and the concept of a potential buyer. I would like to see that that wouldn't necessarily have to be disclosed in the deed of all instruments. It is one thing to make a disclosure, but it's another thing to be in the deed because that carries with the property for an extended period of time.
- Jay - We could all agree that it is good for a homeowner to know what they are getting into. And we want to make sure the system is maintained. We are not trying to discourage someone from buying a piece of property that has an experimental system, it is just a matter of understanding that is what is there, it requires operation and maintenance, and that information gets conveyed with the property at that time. If there is another vehicle for this, I think we are open to that. Larry Hatter – it should be in the property disclosure, not necessarily the deed. Chairman Mowery - Maybe experimental is not the right term, maybe use non-conforming.

Chair Mowery stated that he and DEP will come up with the date, time and place for a subcommittee meeting and will be sure to invite everyone.

NEW BUSINESS

Chair Mowery called for any new business from the committee. There was no new business.

PUBLIC COMMENT

Chair Mowery called for public comments. There were no public comments.

NEXT MEETING

Potentially Wednesday, April 16, 2025, Room 105, Rachel Carson State Office Building, to be held virtually and in person. Notice of meeting to be in the PA Bulletin and on the SAC webpage.

ADJOURNMENT

Motion: Chair Mowery called for a motion to adjourn the meeting.

Keith Heigle made a motion to adjourn the meeting. Carl Cox seconded the motion, which was unanimously approved by the Committee. The September 18, 2024, SAC meeting was adjourned at 12:19 P.M.