Testimony for Act 34 Hearing

April 27, 2021

My name is Laurel Mueller. I am a consulting Certified Professional Soil Scientist and Sewage Enforcement Officer, representing the Pennsylvania Builders Association. I am also the national chair of the Soils Certification Board and Board member of Pennsylvania Septage Management Association (PSMA). As owner of Soil Services Company, Inc. and Mountain Wastewater Management, I serve landowners and their builders and septic system installers when they are proposing additional bedrooms, subdivisions for a family member, or the addition of a second or third residence to a farm tract they own. We also represent larger land development projects, large-flow commercial and institutional proposals to build or expand parks, camps, inns, churches, schools, mini-marts, and stores

Nearly all of our clients require alternate technology sewage systems. Why? Because Pennsylvania's shallow seasonal high water table soils, and steep landscapes are extensive, and they are not suitable for conventional septic systems such as sand mounds. Fortunately, there are technology adaptations for difficult site conditions. There is no question that these system types, which are approved and listed by DEP as "Onlot Alternate Technology Systems" can be permitted for existing lots and for repairs.

With Senator Yaw, and the support of PBA, I initiated SB 1030, which became law as Act 34. I was motivated to do this because my company had been experiencing losses of about $30,000 due to planning module resubmissions and repeat soil testing. Soil investigations and planning modules for land development have been my firm's specialized focus since the mid 1980's throughout 4 DEP regions. Due to arbitrary, unwritten rules and standards, our submissions were being rejected by DEP Central Office reviews. We were experiencing inconsistent rules for soil testing in each DEP Region. Without written reference, we were being asked to provide expensive and unnecessary perc testing for proposed drip systems, even though the test rates could not be used to qualify or size the absorption areas. There were regulations and policy changes implemented by DEP internal emails which were not available in writing to the public or to consultants.

The idea to re-word Act 26 of 2017 originated from my conversation with Brian Schlauderaff at DEP. I asked him why, when seeking approvals for minor 2-lot subdivisions, we were being required to use cumbersome Component 2 Planning Modules, which were intended for commercial land developments and major subdivisions. His answer was that Act 26 had omitted the words "exception" and "exemption." These are significant words in our onlot sewage planning regulations. An "exemption" from planning can be granted for any size project when there are two

qualified absorption areas for each proposed use, plus low density, and lack of specially protected waters. An "exception" means the project does not need to change the municipal Act 537 plan (AKA the municipal "sewage facilities plan"). Such a project may use the simpler Component 1 Planning Module. A "revision" requires updates to the municipal Act 537 plan and must use the cumbersome Component 2. In our experience, a Component 2 requires about $2,000 more in consulting fees, and about 6 months more time to complete, when compared to a Component 1. Attached is a summary chart of the differences between Component 1 and Component 2 requirements.

My firm works mainly in about 40 counties of rural northeast and northcentral PA. Nearly all of our township officials could not tell you what, or where, their Act 537 plan is. To these municipalities, their "Sewage Facilities Plan" is fiction. There is no map on a wall, or a big plan book. To visit a rural township supervisors meeting for a 2-lot subdivision, and to ask for a raised-seal signature and to pass a resolution to revise their 537 plan, leaves them cross-eyed and suspicious. Sometimes we must implement a "sewage management program" for our project, which might cause community protests. Our biggest problem is that we have not been able to point to any written document to support the Component 2 requirement for a minor subdivision. No form, no instruction book, no regulation states that alternate systems change the rules.

The intent of Act 34 was to eliminate an unnecessary bureaucratic process, and a second tier of DEP review at the Central Office, for simple projects, where our regulations provide for "exemptions" and "exceptions." Our regional DEP offices have typically witnessed our soil investigations with the Sewage Enforcement Officers. The regional staff helps us to sort out the project direction and required contents. We have found Central Office reviews conducted by staff who have not been part of the soil investigation to be absurd and inappropriate. For example, DEP asked us to return to the field to assure that test pits had maximum 100 feet of separation because the surveyor represented 105 feet on a plan. Unsuitable test pits hundreds of feet away suddenly required "bracketing" which meant a return to the field for additional soil testing to satisfy reviewers who were not present for the original soil testing where the landscape conditions were professionally assessed. Though there are no written standards or regulations to support this, DEP Central staff started asking for designs of preliminary and replacement absorption areas. This is a wasted effort when the lot subdivider cannot predict the house placement or septic system technology selection of the future lot buyer. DEP started asking for special reports to address tree trunks which will be cut flush to the ground within the absorption area – the same way they have been for 4 decades under elevated sand mound bed sites!

Act 34 was to bring consistency between DEP regions, and to enable the same approved sewage systems technologies which can be permitted on existing lots to be

allowed for proposed lots. The wording was carefully and simply crafted with the Pennsylvania Builders Association, and under the oversight of Michael Krancer, who had served as Judge of the PA Environmental Hearing Board Judge before serving as Secretary of the DEP. I do not understand how Act 34's simple but explicit words can be misinterpreted by DEP. Act 34, in plain English, states that DEP **shall accept** approved alternate technology sewage systems to meet general site suitability requirements when proposing new and development.

On Feb 23, 2021, at the Sewage Advisory Committee meeting DEP announced that land development proposals using shallow limiting zone alternate systems, would no longer be accepted. At the same meeting, DEP said that no listed systems were ranked as inferior, in that all listed technologies were considered "equal." Why, then, are shallow limiting zone systems being singled out? Where is the evidence that shallow limiting zone systems are placing groundwater at risk? There is no logic in the fact that shallow limiting zone IRSIS spray fields can be qualified and accepted by DEP to create a new lot. IRSIS spray fields require significantly fewer soil test pits, without a soil scientist present, with no consideration of landscape length or elevation contours. Because they are "conventional" (published in Chapter 73), they are accepted.

We have had schools, parks, stores, inns, entertainment centers, and many residential subdivisions, which proposed alternate technology systems, ultimately receive DEP approvals from DEP after the effective dates for Act 26 in 2017 and Act 34 in August 2020. With the current February 2021 DEP directive, the same projects would be prohibited. I cannot understand how the difference in wording between Act 26 and Act 34 would cause the same project to move from approvable to prohibited. I cannot understand how DEP can choose to be blind to the intent of this law, or to its plain language meaning.

Pennsylvanians deserve to have all regulation changes be approved through appropriate processes. All approved regulations should be in writing and available to the public.

DEP Sewage Facilities Planning Module
Component 1 vs. Component 2

	Comp. 1	Comp. 2
Sewage Facilities Plan, PLS sealed (survey locations)	x	x
Primary and replacement site testing & stakeouts	x	x
Soil morphological reports for each alternate system	x	x
PNDI (species) submission and clearance	x	x
SEO signatures on all soil testing	x	x
Checklist		x
PHMC(cultural resources) submission and clearance		x
Alternatives Analysis		x
Narrative		x
4A Municipal planning submission and signatures		x
4B County planning submission and signatures		x
Public notice screening (notice if applicable)		x
Sewage Management Program – municipal negotiation		x
Municipal Resolution signatures		x
Municipal Transmittal signatures		x
Preliminary Designs for both primary and replacement sites		x

Component 1 has traditionally been for "minor" subdivisions which qualify for for "exceptions" to the requirement to revise the 537 plan. Component 1 is for up to 10 lots created from the parent tract since May, 1972.

Component 2 has been for "major" subdivisions with >10 ten lots, or for community systems with >800 GPD, or for proposals with holding tanks.

All proposals for community systems require Component 2.

Since the passage of Act 26 in 2017, DEP has required Component 2 submissions for any proposed lot that is limited to a DEP approved and listed "Onlot Alternate Technology" system (as opposed to "Conventional").

Act 34 went into effect August 8 2020 to make conventional and alternate systems be equivalent for land development planning. The expectation was that the Component 1 and Component 2 separation stated above would be restored. However, as of February 2020, DEP is disallowing any land development (minor subdivision, major subdivision, commerical, etc) that proposes DEP approved and listed "Onlot Alternate Technology" shallow limiting zone systems.

At the February 23, 2021 SAC meeting DEP stated that all "Onlot Alternate Technology" listings were "equal," and none were inferior.

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