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TESTIMONY

Before: Pennsylvania Senate Environmental Resources & Energy Committee
From: Pennsylvania Association of Sewage Enforcement Officers (PASEO)
Date: December 8, 2016

Thank you for allowing us to address the committee today. My name is Chris Wood, I am the current President of the PASEO. This is Roger Lehmann, our Past-President, and this gentleman is Jim Sanders, a former President and longtime officer and Board member.

PASEO is the Pennsylvania Association of Sewage Enforcement Officers a professional association representing the over 400 Sewage Enforcement Officers that work to protect the public's health and the quality of the Commonwealth's waters.

The Sewage Enforcement Officers of the state can be broken into two distinct groups. Those who work for local agencies issuing permits, inspecting construction, and taking enforcement actions. The other group is privately employed and provides advice and services to assist the property owner through the permit process. Of course, some SEOs do both, working the public side in some local agencies and performing private services in others.

Our position in the program is unique. Like the Department, we are greatly involved in the operation of the sewage program. However, daily contact with the regulated community, our citizens and voters, keeps us grounded in the practical needs of the public.

The Pennsylvania Association of Sewage Enforcement Officers (PASEO) generally agrees with the current Sewage Facilities Act, however, the Act could be improved and updated. The real problems lie in the regulations and policies promulgated to administer the Act of which vast changes are necessary. As the regulations and policies are not the subject of these proceedings, this report has been limited mainly to the provisions of the current Act.



Before I begin, I wish to note two things:

1. In this discussion the word “municipality” will be used to represent all forms of local agencies including single municipality local agencies, multi-municipal local agencies, and designated agencies.
2. The Concerns are listed in the order enumerated in the Sewage Facilities Act. They have not been prioritized.

Section 2 Definitions:

Qualified Registered Professional Engineer and

Qualified Registered Professional Geologist

Neither of these professions are generally involved in the “characterization, classification, mapping and interpretation of soils as they relate to the function of on-lot sewage systems.” Therefore, any such party would have to obtain their training outside the normal parameters of their profession. As such, their “experience” would be open to interpretation. Delete these definitions or provide definitive qualifications as per the Qualified Soil Scientist definition. (If these definition are deleted, revise other sections to delete references to QRPE and QRPG.)

Qualified Soil Scientist

This definition should be updated. The Pennsylvania Association of Professional Soil Scientists can provide appropriate language.

Soil Mottling

Delete this definition and replace with a definition for Redoximorphic Features. Amend other sections to reflect change.

Other

The division of sewage disposal systems into Conventional, Alternate, and Experimental should be reconsidered as the current system hampers the introduction of new and innovative technology.





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Section 4 Advisory Committee:

Amend the Act to give the Pennsylvania Association of Sewage Enforcement Officers a permanent seat on the Committee.

Delete organizations from the Committee that have not participated on the Committee in the past 10 years or are no longer relevant to the on-lot sewage program.

The Sewage Advisory Committee is not being used to its fullest. There should be a minimum of two meetings a year. SAC member organizations should be able to propose agenda items for equal consideration with Department agenda items.

Section 5 Official Plans:

The Department should be permitted to require municipalities to establish Operations and Maintenance programs (O&M) to ensure the long-term operation of sewage disposal systems within the municipality. However, the Department should be prohibited from requiring a municipality from imposing such a program on any sewage disposal system constructed prior to program enactment with the exception that such an O&M program could be imposed on any sewage disposal system that experiences an absorption area failure after the date of enactment. This provision is necessary for several reasons:

1. Many pre-regulatory systems were not designed to be opened for O&M. In such cases pumping the system to “extend its life” may actually damage or destroy the system it was intended to protect.
2. Many property owners, particularly Seniors on fixed incomes, do not need to pump their treatment tank as often as required in the DEP approved O&M plans. This could create a financial burden. New homeowners, on the other hand, would be able to budget in the costs as they would other expenses related to owning a home.
3. Municipalities would be burdened with hiring staff and the other associated costs of administering the program. By phasing-in the program as new systems are permitted, municipalities will be able to build their program over time. Otherwise it would be just another un-funded mandate imposed upon them by the state.



4. Requiring all sewage disposal systems to be subject to regular pumping would overload the state's septage processing infrastructure. A phase-in would allow the infrastructure to grow over time.

There are many municipalities that have not amended their Official Plans in decades. In many cases no changes are necessary. In others a new plan may be very necessary. Municipalities should be required to review their plans on a regular basis (e.g. every ten years) and report to the Department whether the plan is still satisfactory to meet the municipality's needs.

Section 6 Grants and Reimbursements Authorized:

Retain the provision that provides reimbursement to municipalities for preparation of Official Sewage Plans and related studies. Prohibit the Department from denying reimbursement when a municipality's approved plan is regulatorily complete but comes to conclusions that differ from that of the Department.

Many municipalities and Sewage Enforcement Officers would like to see reimbursement for administration of the sewage program retained. However, if reimbursement will not be included in the future then the Sewage Facilities Act should be amended to establish reimbursement grants that may be provided to a municipality that experiences a temporary financial hardship due to the administration of the Act. Such hardships could result from an expensive lawsuit in defense of the Act or its administration, the need to temporarily hire additional Sewage Enforcement Officers due to an emergency, etc.

Section 7 Permits:

Section 7 (a) (1)

This section should be amended to make it unlawful for a property owner to utilize or allow a sewage disposal system to be utilized that violates the provisions described in this section. Currently the section does not apply to the owner of a property when the unlawful repairs have been performed by others.

This section should be amended to provide that the one year permit exemption to replace an existing dwelling with a new dwelling be increased to two years. This is necessary as it is often

difficult to get clearance from the fire marshal and the insurance company and to secure the necessary building permit to replace a fire razed house within the one year period.

The permit exemption to replace an existing dwelling with a new dwelling should be amended to be applicable to non-residential structures.

Delete the provision that exempts a property owner from the need to obtain a sewage permit when the property acreage is 10 acres or greater and the lot was created prior to January 10, 1987. Water contamination can occur regardless of property size. Furthermore, properties utilizing permit exemptions often have trouble during refinancing and later, potential buyers often cannot get financing.

Section 7 (a.1) (2)

As additional acreage does not guarantee proper sewage treatment, the 10 acre permit exemption should be eliminated. Furthermore, lending institutions often refuse to finance or refinance structures in which the exemption has been utilized. If the 10 acre exemption must be retained, the cap on the municipal verification fee must be raised to more adequately compensate for the work that must be performed by the Sewage Enforcement Officer. (Currently the Act places a cap of \$ 25.00. Consensus holds that \$ 200.00 might be more appropriate.)

Section 7 (b) (2.1)

As sewage disposal systems become more complex, a longer review period may be necessary. The 7-day review period should be extended to 15 days. Note: Generally, most of the more complex systems are currently classified as “alternate systems”. However, the Department has plans to amend the regulations to make such systems “conventional systems” thus placing them under the 7 day review period.

Section 7 (b) (3)

“Body that issued the original permit” and “body issuing the permit” should be changed to “Sewage Enforcement Officer of the body that issued the permit” and “Sewage Enforcement Officer of the body that issued the permit” to avoid any confusion that permission to cover the system may be granted by any other member of the local government.

Section 7.2 Soil Mottling

Delete this entire section. With the currently available sewage disposal system options for properties with only 10 inches to “soil mottling”, virtually no property could qualify to use the section. Furthermore, the section does no favors to a property owner by allowing him to spend thousands of dollars to build a house and sewage disposal system only to be forced to utilize a holding tank when his system fails.

If the section must be retained, it should be amended to:

1. Require that the site be monitored for a year to determine if the “soil mottling” is not indicative of water table. (Even mottled soil can pass a perk test in a drought.)
2. 7.2 (a) (i) should be amended to limit the determination of whether the soil mottling is, or is not indicative of seasonal high water table to Qualified Soil Scientists only. Engineers, geologists, and especially Sewage Enforcement Officers are not trained to make such determinations.
3. 7.2 (a) (i) should be amended to require the Qualified Soil Scientist to submit a written report justifying their conclusions and to file an affidavit attesting to the report’s accuracy.

Section 8 Powers and Duties of Local Agencies

8 (b) (5) should be amended to reflect that many municipalities do not perform the soils testing and that such testing is instead performed by the applicant’s consultant. In such cases, the consultant typically schedules an appointment with the Sewage Enforcement Officer. The consultant prepares the test pit and at the appointed time, the Sewage Enforcement Officer “reads” the soils. Then an appointment is made for the consultant to prepare and conduct the percolation test of which the Sewage Enforcement Officer observes. While the current section works for municipalities that perform the testing, the requirements are awkward for those that do not.

8 (b) (10) The right of entry should be extended to include verification of required isolation



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distance during construction, to investigate violations, and to administer Operation and Maintenance activities.

Section 13 Penalties

This section should be amended to incorporate the provisions of HB 632 of 2011 (SEO Due Process Bill). In summary, the bill would require that any action to punish an Sewage Enforcement Officer must be initiated through the State Board for Certification of Sewage Enforcement Officers and that the Department would have the burden of proof in any such action. This protection is necessary as, at least in certain regions, the Department has used civil penalties to punish SEOs for minor violations which were often more clerical in nature.

Section 14 Nuisances:

This section should be amended to include as a nuisance the backing up of sewage into a structure due to the failure of the sewage disposal system or a sewage disposal system component. While typically a homeowner will immediately take action to resolve such a situation, state-wide there have been problems with landlords who allow such situations to go on unabated. Such an amendment would close this loophole.

Other

The Act should be amended to prohibit the Department from enacting regulations unless they are grounded in proven science.

The Department should be required to fast-track technology that has been proven effective in states with similar soils and climate as Pennsylvania.

The Act should be amended to authorize Sewage Enforcement Officers to utilize “Best Technical Guidance” (BTG) when attempting to correct a malfunctioning sewage disposal system without being burdened by excessive regulation by the Department. The Department’s current Technical Decision Making policy (TDM) is not working and furthermore greatly delays to and adds unnecessary costs to the implementation of the necessary repair.





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Finally

Although this is not a problem that can be address solely through the Act, it should be kept in mind when revising the Act. The SEO program is nearing a potential crisis. The average Sewage Enforcement Officer is over 50 years old and less new people are entering the profession. There are many reasons, among them, too many municipalities consider the position a part-time job setting pay based on the number of permits issued or amount of work performed. While this may be acceptable to individuals retired from their previous jobs, or SEOs who have accumulated enough municipalities to make a living, it deters younger people who are looking for the steady pay check and benefits necessary to raise a family.

The poor economy has driven many SEOs to other fields, both of their own volition and through involuntary staff reductions. Current SEOs are filling the void by working multiple municipalities. This is a problem in that the larger the coverage area, the harder it is for the SEO to provide the highest level of service. With a single Sewage Enforcement Officer often serving twenty or more municipalities, it becomes much easier to install illegal systems or perform illegal repairs.

Eventually the economy will rebound, maybe even boom. Many Sewage Enforcement Officers will need to consolidate their service area leaving a void to be filled. But who will fill this void? There is no surplus of certified individuals to take these positions.

Even if the Department could rapidly certify a large number of SEOs, they would be legally qualified to fill these positions, but they will be years away from having the actual qualifications and knowledge necessary to perform the job properly.

Again, I reiterate that the Act in itself cannot resolve this problem. But the problem should be considered in that amendments to the Act may help alleviate, or could worsen the problem.

Conclusion

In conclusion I would like to thank you for inviting PASEO to address the Committee. PASEO stands ready to provide any input or assistance that the Committee may require in matters related to the Act or any other aspect of the Sewage Facilities program.

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