

December 8, 2015

Duane E. Mowery - Chairman
PA Sewage Advisory Committee
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**Re: Act 537 Testimony to the Senate
Environmental Resources and Energy Committee**

Good morning Senators,

My name is Duane Mowery and I am a resident of Hopewell Township, Cumberland Co. I am PA DEP certified as a Water System Operator, a Wastewater System Operator and as a Sewage Enforcement Officer (SEO). I have been a member of the Sewage Advisory Committee to DEP since 2003 and am currently serving my second 2 year term as chairperson of that committee.

The Sewage Advisory Committee (SAC) is a statutory entity created by the Sewage Facilities Act (Act 537) ostensibly for the purpose of providing input to DEP. The Act states that "The Advisory Committee shall have the opportunity to review proposed rules, regulations, standards and procedures and shall review existing rules, regulations, standards and procedures of the Department pursuant to this act."

Act 537 is one of the most comprehensive statutes in the Commonwealth and touches every Pennsylvanian in one way or another. As such, and also because PA is the only state that has a formal, legislated and regulated sewage planning program, the highest levels of experience and competence available both within and from outside the Department are demanded.

Owing to the retirement of a large number of experienced Act 537 personnel in the Department within the last 10 years and considering the experience with the regulations promulgated under this Act that is represented on the Sewage Advisory Committee, I would expect the Department to actively involve the committee in nearly all aspects of the program. Unfortunately, while there obviously was a time when that was the case, it currently is not, and has not been, for some time.

Since at least 2005, discussions at SAC meetings reflect a growing concern among stakeholders relating to the level of experience by Department program staff as well as concern with the communication between the Department 537 staff and the regulated community. This concern was only exacerbated by an assertion by DEP personnel during a SAC meeting that the Department “...had a need to stop the incessant negotiation [with stakeholders]” so that regulations and guidance changes could move forward.

Input to the Department relating to Act 537 issues has steadily been restricted. Long standing workgroups bringing DEP personnel and SEO's together to promote consistency in application of regulations have been discontinued, SAC meetings have been cancelled for “lack of agenda items” and even SAC agenda items proposed by various SAC chairpersons have been rejected by DEP.

It is further disconcerting that changes are regularly made to approvals for alternate onlot technologies without notification to the SAC or the SEO community at large – it is up to us to “discover” the updated documents. So blatant is this practice that a SAC meeting was convened on November 5, 2014 with no mention by DEP of an alternate technology approval revision that was posted to DEP's website the very next day!

Not only has communication been restricted, the utilization of the SAC has been inefficient at best. Within the last 10 years, SAC has been asked to invest copious amounts of time reviewing guidance documents that have either never been finalized or have been superseded by legislation due to concerns with the DEP end product. Additionally, SAC has comprehensively reviewed draft versions of chapters 71, 72 and 73 (the regulations promulgated by Act 537) in two separate regulatory revision review campaigns during 2007 and 2009. It is telling to note that SAC workgroups met during the 2009 campaign on seven separate occasions, investing hundreds of man hours, on a volunteer basis with no tangible result.

Most recently, as the result of continued requests by SAC and the Citizens Advisory Council(CAC), the Department drafted proposed “targeted” revisions to chapters 71, 72 & 73 as their answer to a request to allow for sustainable economic growth through new land development with alternate technologies, an issue that you have or will be hearing much more about from others who are testifying. The SAC reviewed these documents and provided comment to the Department only to be told that the revisions were being set aside in favor of yet another comprehensive revision to all three chapters. I'm sure that you can imagine the giddy anticipation of the SAC membership to invest many more hours commenting after their previous investments have been so richly rewarded!

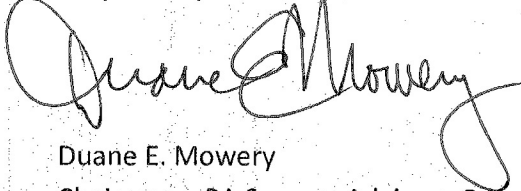
It has become abundantly clear to me that the only way to effect change in the 537 program, which has become almost exclusively a “reactionary” creature, is to engage understanding legislative forces or to be financially secure enough to bring an appeal to the Environmental Hearing Board (EHB) thereby forcing the necessary change. I am convinced that if the SAC had the resources necessary to mount an EHB appeal, the alternate technologies for new land development issue would have been resolved long ago.

While a number of administrations have come and gone over the last 10 years, the current management of the 537 program has largely remained intact. The thread of isolationism and resistance to public input that is apparent to this SAC chairman, and was identified by the sitting SAC chairperson at the time in May 2006 during testimony to the House Policy Committee, is one of the greatest challenges facing improvements to Act 537 and it's related regulations.

As an example of the omniscient attitude of DEP that has been felt directly by certain citizens of the Commonwealth, one particular non proprietary alternate onlot technology approved by DEP in 2002, the Free Access Gravity Sand Filter, has been shown to be problematic with significant numbers of failures. This technology utilized a loading rate that was called into question repeatedly and which the Department themselves admitted was too high as early as 2004 yet they allowed the systems to be utilized without further restriction until 2014. Hundreds, if not thousands of these systems were installed by unsuspecting homeowners and when asked publicly at a recent conference about the recourse for homeowners who now own these failing systems and for which the approval has been rescinded, DEP personnel responded that there was no plan to compensate them. What are these persons, or persons who experience this breach of public trust in the future to do?

Authority minus accountability is a dangerous mixture in the hands of a bureaucrat in the public sector!

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Duane E. Mowery". The signature is fluid and cursive, with a large loop at the end.

Duane E. Mowery
Chairman – PA Sewage Advisory Committee