

COMMONWEALTH OF PENNSYLVANIA
HOUSE OF REPRESENTATIVES

HOUSE ENVIRONMENTAL RESOURCES & ENERGY COMMITTEE

joint with the

SENATE ENVIRONMENTAL RESOURCES & ENERGY COMMITTEE

STATE CAPITOL
HARRISBURG, PA

IRVIS OFFICE BUILDING
ROOM 523

TUESDAY, APRIL 27, 2021
9:02 A.M.

PRESENTATION ON ALTERNATE SEWAGE SYSTEMS

HOUSE COMMITTEE MEMBERS PRESENT:

HONORABLE DARYL METCALFE, MAJORITY CHAIRMAN
HONORABLE MIKE ARMANINI
HONORABLE STEPHANIE BOROWICZ
HONORABLE DONALD COOK
HONORABLE JOSEPH HAMM
HONORABLE R. LEE JAMES
HONORABLE TIMOTHY O'NEAL
HONORABLE TOMMY SANKEY
HONORABLE PAUL SCHEMEL
HONORABLE PERRY STAMBAUGH
HONORABLE RYAN WARNER
HONORABLE GREG VITALI, DEMOCRATIC CHAIRMAN
HONORABLE ELIZABETH FIEDLER
HONORABLE MANUEL GUZMAN
HONORABLE DIANNE HERRIN
HONORABLE JOE HOHENSTEIN
HONORABLE MARY ISAACSON
HONORABLE RICK KRAJEWSKI
HONORABLE LEANNE KRUEGER
HONORABLE DANIELLE FRIEL OTTEN
HONORABLE PAM SNYDER

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SENATE COMMITTEE MEMBERS PRESENT:
HONORABLE GENE YAW, MAJORITY CHAIRMAN
HONORABLE SCOTT HUTCHINSON
HONORABLE CAROLYN T. COMITTA, DEMOCRATIC CHAIRMAN

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Pennsylvania House of Representatives
Commonwealth of Pennsylvania

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HOUSE COMMITTEE STAFF PRESENT:
 GLENDON KING,
 MAJORITY EXECUTIVE DIRECTOR
 GRIFFIN CARUSO,
 MAJORITY RESEARCH ANALYST
 ALEX SLOAD,
 MAJORITY RESEARCH ANALYST
 PAM NEUGARD,
 MAJORITY ADMINISTRATIVE ASSISTANT

 SARAH IVENSEN
 MINORITY EXECUTIVE DIRECTOR
 BILL JORDAN,
 MINORITY RESEARCH ANALYST

SENATE COMMITTEE STAFF PRESENT:
 NICK TROUTMAN,
 MAJORITY DIRECTOR

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I N D E X

TESTIFIERS

* * *

<u>NAME</u>	<u>PAGE</u>
ANECA ATKINSON DEPUTY SECRETARY, WATER PROGRAMS, PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL PROTECTION, ACCOMPANIED BY JAY PATEL WATER PROGRAMS, PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL PROTECTION.....	11
JOSEPH H. GERDES III DIRECTOR OF GOVERNMENT RELATIONS, PENNSYLVANIA STATE ASSOCIATION OF TOWNSHIP SUPERVISORS.....	47
KIMBERLY D. GEYER BUTLER COUNTY COMMISSIONER, COUNTY OF BUTLER.....	40
JOSEPH A. VALENTINE PENNSYLVANIA SEPTAGE MANAGEMENT ASSOCIATION (PSMA), VW CONSULTANTS, LLC.....	54
PAUL A. GOLRICK, P.G. PENNSYLVANIA ASSOCIATION OF SEWAGE ENFORCEMENT OFFICERS (PASEO), PENN'S TRAIL ENVIRONMENTAL, LLC.....	59
ADAM B. BROWNING MANAGER, PENN'S TRAIL ENVIRONMENTAL, LLC; PRESIDENT, PENNSYLVANIA ONSITE WASTEWATER RECYCLING ASSOCIATION.....	63
LAUREL F. MUELLER, CPSS, SEO PRESIDENT, SOIL SERVICES COMPANY, INC.; PRESIDENT, MOUNTAIN WASTEWATER MANAGEMENT; PENNSYLVANIA BUILDERS ASSOCIATION (PBA).....	74
AMY HOPKINS, PLS PRESIDENT, PENNSYLVANIA SOCIETY OF LAND SURVEYORS.....	80

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(See submitted written testimony and handouts online.)

P R O C E E D I N G S

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HOUSE MAJORITY CHAIRMAN METCALFE: Good morning. This joint committee hearing of the House Environmental Resources and Energy Committee with the Senate committee is being called to order. And before we get started, if I could ask my assistant to call the roll for the House members, please.

MS. NEUGARD: Chairman Metcalfe?

HOUSE MAJORITY CHAIRMAN METCALFE: Here.

MS. NEUGARD: Representative Armanini?

SENATOR ARMANINI: Here.

MS. NEUGARD: Representative Borowicz?

(No response.)

MS. NEUGARD: Representative Cook?

(No response.)

MS. NEUGARD: Representative Hamm?

REPRESENTATIVE HAMM: Here.

MS. NEUGARD: Representative James?

(No response.)

MS. NEUGARD: Representative Kail?

HOUSE MAJORITY CHAIRMAN METCALFE: Representative Kail has a leave.

MS. NEUGARD: Representative Mackenzie?

HOUSE MAJORITY CHAIRMAN METCALFE: He also has submitted a leave.

1 MS. NEUGARD: Representative O'Neal?

2 HOUSE MAJORITY CHAIRMAN METCALFE: Leave.

3 MS. NEUGARD: Representative Ortitay?

4 HOUSE MAJORITY CHAIRMAN METCALFE: We're
5 expecting him to show up virtually.

6 MS. NEUGARD: Representative Rapp?

7 HOUSE MAJORITY CHAIRMAN METCALFE: Leave.

8 MS. NEUGARD: Representative Sankey?

9 (No response.)

10 MS. NEUGARD: Representative Schemel?

11 REPRESENTATIVE SCHEMEL: Here.

12 MS. NEUGARD: Representative Stambaugh?

13 (No response.)

14 MS. NEUGARD: Representative Warner?

15 HOUSE MAJORITY CHAIRMAN METCALFE: We also have a
16 leave for Representative Warner.

17 MS. NEUGARD: Chairman Vitali?

18 HOUSE MINORITY CHAIRMAN VITALI: Here.

19 MS. NEUGARD: Representative Fiedler?

20 (No response.)

21 MS. NEUGARD: Representative Guzman?

22 REPRESENTATIVE GUZMAN: I'm here.

23 MS. NEUGARD: Representative Herrin?

24 REPRESENTATIVE HERRIN: Here.

25 MS. NEUGARD: Representative Hohenstein?

1 (No response.)

2 MS. NEUGARD: Representative Isaacson?

3 (No response.)

4 MS. NEUGARD: Representative Krajewski?

5 REPRESENTATIVE KRAJEWSKI: Here.

6 MS. NEUGARD: Representative Krueger?

7 REPRESENTATIVE KRUEGER: I'm here online.

8 MS. NEUGARD: Representative Otten?

9 REPRESENTATIVE OTTEN: I'm here.

10 MS. NEUGARD: Representative Snyder?

11 REPRESENTATIVE SNYDER: Here.

12 HOUSE MAJORITY CHAIRMAN METCALFE: Thank you,

13 Pam.

14 And before we start with the meeting, if I
15 could ask everybody to please rise, and Representative
16 Sankey, could you lead us in the Pledge, sir?

17 (Pledge of Allegiance recited.)

18 HOUSE MAJORITY CHAIRMAN METCALFE: Thank you,
19 Representative Sankey.

20 Now we have new rules in the House that we ask
21 for our presenters to be sworn in at the time of the morning
22 to present and give testimony. And I know we have
23 Commissioner -- County Commissioner from Butler County, Kim
24 Geyer, online.

25 Welcome, Kim.

1 (Inaudible.)

2 HOUSE MAJORITY CHAIRMAN METCALFE: Your
3 microphone looks like it's turned off still.

4 MS. GEYER: Good morning.

5 HOUSE MAJORITY CHAIRMAN METCALFE: Good morning.
6 Good morning, Kim.

7 And we have one of our presenters sitting here
8 at the table with us that is going to be presenting with the
9 second panel, Mr. Gerdes, Director of Government Relations
10 for the Pennsylvania State Association of Township
11 Supervisors.

12 Is -- do we have Ms. Atkinson, Deputy
13 Secretary, with us online?

14 DEPUTY SECRETARY ATKINSON: Yes.

15 HOUSE MAJORITY CHAIRMAN METCALFE: You online,
16 ma'am?

17 DEPUTY SECRETARY ATKINSON: I am online.

18 HOUSE MAJORITY CHAIRMAN METCALFE: Great.

19 If I could ask -- I guess we'll swear in those
20 two panels, then we'll kick it off.

21 So if I could ask those presenters from our
22 first and second panels to please raise your right hand and
23 you'll affirm the following statement.

24 Do you swear or affirm that the testimony
25 you're about to give is true to the best of your knowledge,

1 information, and belief?

2 If so, please indicate by saying "I do."

3 (Affirmative answers.)

4

5 ANECA ATKINSON, JOSEPH GERDES III, and
6 KIMBERLY GEYER, called as witnesses, being duly sworn,
7 testified as follows:

8

9 HOUSE MAJORITY CHAIRMAN METCALFE: Thank you.

10 So this hearing that we have today, the first
11 that we've had in a while with the Senate committee, is going
12 to be on alternate septic systems, Act 34 implementation.

13 We thank Senator Yaw, Chairman Yaw, for
14 joining together with us, and his staff for working with my
15 staff to facilitate this today.

16 And at this time, I'll turn it over to Senator
17 Yaw to get the program moving.

18 SENATE MAJORITY CHAIRMAN YAW: Thank you,
19 Chairman Metcalfe. I really appreciate your efforts to put this
20 together.

21 This joint hearing -- I think it's very
22 important to take a look at Act 34 of 2020 and how this is
23 being implemented by DEP and what's happened out there in the
24 general public.

25 I was the prime sponsor of this amendment to

1 Act 537, and the whole idea was to address the issue of
2 alternate septic systems under the Pennsylvania Sewage
3 Facilities Act. And the intent was to -- we take a look at
4 alternate systems, make them part of the planning process.
5 And this was not something that we just woke up one morning
6 and decided that that was something that we should take a
7 look at. We talked to a lot of people, planners, people out
8 in the field, sewage enforcement officers, as to how to go
9 about this. We also looked at what other states do and how
10 they treat this issue.

11 So with that, actually we've amended Act 537
12 now twice in the past three years, I think it is. And if we
13 have to, quite frankly, we'll amend it again until we get it
14 right to what the people in the field, the
15 boots-on-the-ground people, think that they can live with, as
16 soon as it's environmentally sound. I mean, we're not just
17 going to take a wild guess at something. But I think that
18 there are a lot of people who have a lot of expertise in
19 this, from the planning field, from the environmental field,
20 and actually how to make these things work.

21 With that, that's the purpose of this hearing
22 today. And again, I thank Chairman Metcalfe for putting this
23 together and getting the people so that we can air what the
24 issues are with this particular act.

25 With that, the first presenter is Deputy

1 Secretary Aneca Atkinson from DEP. She's the Deputy
2 Secretary for Water Programs.

3 Secretary?

4 DEPUTY SECRETARY ATKINSON: Good morning.

5 SENATE MAJORITY CHAIRMAN YAW: Good morning.

6 DEPUTY SECRETARY ATKINSON: I'll just jump in
7 here. Can everyone -- you can hear me well?

8 SENATE MAJORITY CHAIRMAN YAW: Yes.

9 DEPUTY SECRETARY ATKINSON: Again, good morning,
10 Chairman Yaw, Chair Comitta, Chairman Metcalfe, Chairman Vitali,
11 and members of the respective committees. On behalf of the
12 Department of Environmental Protection, I would like to thank
13 you for the opportunity to discuss DEP's implementation of the
14 Pennsylvania Sewage Facilities Act, Act 537 of 1965, and as most
15 recently amended by Act 34 of 2020.

16 I would like to begin with a brief history and
17 overview of the Sewage Facility Act. For more than 50 years,
18 the Pennsylvania Sewage Facility Act has been a fundamental
19 statute for the protection of public health and the
20 environment at the most local levels across the Commonwealth.

21 A post-World War II push of unregulated
22 suburban development into rural areas resulted in pollution
23 that compromised public health and safety, the environment,
24 and property values. In the decades following World War II,
25 many Pennsylvanians purchased newly created lots and built

1 their dream homes only to find that the soils on the lots
2 were unsuitable for on-lot sewage treatment and disposal
3 resulting in pollution and the devaluation of their homes.
4 As a direct result of this widespread property devaluation
5 and associated public health and environmental issues, the
6 Pennsylvania general assembly passed what became the
7 Pennsylvania Sewage Facilities Act, which was signed into law
8 by Governor Scranton in January 1966. Act 537 allows --
9 excuse me, Act 537, among other things, provides for
10 municipal sewage planning, local permitting of on-lot sewage
11 treatment, and --

12 SENATE MAJORITY CHAIRMAN YAW: Secretary?
13 Secretary?

14 DEPUTY SECRETARY ATKINSON: Yes.

15 SENATE MAJORITY CHAIRMAN YAW: Secretary, do you
16 have a camera that you could turn on?

17 DEPUTY SECRETARY ATKINSON: Oh, I'm sorry. I
18 didn't realize.

19 SENATE MAJORITY CHAIRMAN YAW: Yeah, we can
20 accommodate you. We much prefer to see you speak.

21 Thank you.

22 DEPUTY SECRETARY ATKINSON: Can you see me?

23 SENATE MAJORITY CHAIRMAN YAW: Yes, thank you.

24 DEPUTY SECRETARY ATKINSON: Perfect.

25 I'll go back to that paragraph.

1 Act 537, among other things, provides for
2 municipal sewage facility planning, local permitting of
3 on-lot sewage treatment and disposal facilities, the training
4 and certification of sewage enforcement officers, and the
5 enforcement and continued compliance with regulatory
6 standards and practices. DEP is committed to implementing
7 Act 537 in ways that achieves the goal stated in the act,
8 which include to protect the public health, safety, welfare
9 of Pennsylvanians through the development and implementation
10 of plans for the sanitary disposal of sewage waste; to
11 prevent and eliminate pollution of waters of the Commonwealth
12 by coordinating planning for the sanitary disposal of wastes,
13 sewage waste, with a comprehensive program of water quality
14 management; to provide for the issuance of permits for on-lot
15 sewage disposal systems by local government in accordance
16 with uniform standards; and to encourage the use of best
17 available technology for on-site disposal systems.

18 Act 34 of 2020, the most recent amendment to
19 Act 537, seeks to address a concern regarding sewage facility
20 planning, namely the development of land with soils that have
21 been considered unsuitable through the use of alternate
22 on-lot sewage treatment and disposal technology. The
23 planning provision of Act 537 aims to ensure that adequate
24 sewage disposal methods are available for each lot prior to
25 the development or creation of the lots and that long-term

1 sewage disposal can be provided by the proposed sewage
2 facilities. Ensuring the availability of adequate sewage
3 disposal on each lot protects public health, prevents
4 pollution, and protects property values.

5 Section 5 of Act 537 requires each
6 municipality submit to DEP an officially adopted plan for
7 sewage services with areas within the municipal
8 jurisdiction -- jurisdictions, excuse me. Section 5 of Act
9 537 also establishes a framework for review and approval of
10 these official plans by both the municipality and DEP. The
11 official plans are revised and updated as each sewage
12 planning proposal for subdivision is approved.

13 Act 34 of 2020 amended Section 5(c.1).
14 Section 5(c.1) allows for the use of conventional and
15 alternate on-lot systems on sites that need general site
16 suitability. It is DEP's understanding that some parties
17 contend that the language of Act 34 means that alternate
18 systems should have been allowed in sewage planning for new
19 land development as of the effective date of the act;
20 however, that is not the case.

21 In order to implement Act 34 in a way that
22 meets our obligations under parts of the Sewage Facilities
23 Act and the Clean Streams Law to ensure adequate long-term
24 sewage treatment and disposal, a rulemaking is needed to
25 amend the sewage facility regulations. Additionally, it is

1 our understanding that some parties interpret the phrase,
2 "any conventional sewage system" for alternate sewage system
3 that meets site conditions present at the proposed new land
4 development to mean that if an alternate system can
5 physically be sited on a proposed lot, based on the
6 requirements on DEP's listing for the alternative system,
7 then the lot meets general site suitability requirements.
8 That interpretation is not consistent with the plain language
9 of the amendment.

10 The language provides that site condition
11 requirements exist and that those conditions should be used
12 to make a determination that a site can or cannot provide
13 adequate long-term sewage treatment and disposal using an
14 alternate or conventional on-lot system.

15 While the term "general site suitability
16 requirements" is not defined in the Sewage Facilities Act, it
17 is used in the regulations implementing the act,
18 particularly 25 Pa. Code Chapter 71. The regulations require
19 sewage facility plans and plan revisions proposing on-lot
20 sewage systems evaluate site conditions including soils,
21 hydrology, topology of the proposed site to establish the
22 on-lot sewage systems and provide adequate long-term sewage
23 disposal on the lot.

24 Although the existing alternate on-lot system
25 approvals provide various requirements for each approved

1 technology, the approvals do not include sewage facility
2 planning requirements or criteria. As such, for the purposes
3 of sewage facilities planning, the only site suitability
4 criteria that currently exists are the general site
5 suitability criteria described in the regulations.

6 Some of the Department's approved alternative
7 systems are approved for use on sites with shallow soils.
8 The alternative system approvals were designed so that the
9 alternate on-lot systems can be used to provide solutions for
10 malfunctioning on-lot systems on sites where there are no
11 other options, existing lots, or lots created prior to the
12 current sewage planning requirement, or as a substitute on
13 sites that need regulatory standards for installing a
14 conventional on-lot system.

15 In situations where an alternate system is
16 used to replace an existing malfunction -- sorry, to replace
17 an existing malfunctioning on-lot system, the alternate
18 system addresses an existing pollution and public health
19 issue where there are no other options. In these situations,
20 the threat is already occurring, so using an alternative
21 on-lot system to address that threat, while not ideal, is
22 better than the current situation. The use of alternate
23 on-lot systems and these limited urgent circumstances is very
24 different from the use of alternate on-lot systems in sewage
25 facility planning for new development.

1 Sewage facility planning must ensure that
2 newly created lots utilizing on-lot sewage treatment and
3 disposal can provide significant long-term treatment and
4 disposal for sewage waste. Establishment of new lot
5 requirements are more robust -- requires a more robust set of
6 criteria and evaluation than that -- than the use of an
7 alternate system to address an existing threat to public
8 health, the environment, and property. In fact, if alternate
9 on-lot systems were approved for use in sewage facility
10 planning for new development which follow such criteria in
11 place, that would likely create more threats to the public
12 health, the environment, and property values where alternate
13 on-lot systems are installed on unsuitable lots.

14 These alternative on-lot systems could pollute
15 the same wells that the homes they are serving rely on as
16 drinking water supplies. Also, these alternate on-lot
17 systems could result in sewage wetlands created on these
18 properties. In any event, we would be placing municipalities
19 in the position of having to address these malfunctioning
20 systems and potentially be leaving owners of these homes with
21 devalued properties. Any requirements allowing the use of
22 alternate on-lot systems and sewage facilities planning for
23 new land development must provide for the prevention and
24 elimination of pollution caused by sewage generated on these
25 lots.

1 DEP understands recent amendments to the
2 Sewage Facilities Act, including Act 34 of 2020, to expand
3 the use of alternate systems in sewage facility planning to
4 allow for a development of lots that are currently
5 unavailable for new development. DEP understands that lot
6 developers and others want to be able to develop lots with
7 shallow soils where a spray field may currently be the only
8 option available for on-lot disposal.

9 As presently written, the regulations limit
10 the issuance of permits for sites that do not meet general
11 site suitability requirements provided in the current
12 regulations. To provide additional opportunities for new
13 land development in a manner that provides safe, effective
14 long-term sewage disposal while implementing the goals of the
15 recent amendments to the Sewage Facilities Act, a rulemaking
16 is needed to include general site suitability provisions for
17 the use of alternate systems on sites that do not meet
18 current site suitability requirements.

19 We are initiating a rulemaking which will
20 likely include updates to Chapters 71, 72, and 73. We plan
21 to consult with the Sewage Advisory Committee on the proposed
22 rulemaking development, with a goal of presenting a proposed
23 rulemaking to the Environmental (inaudible) Board in 2022.
24 Until a rulemaking can be developed and finalized to fully
25 implement the provisions of the Sewage Facilities Act as

1 amended by Act 34 of 2020, DEP has provided guidance which
2 allows for the consideration of alternate on-lot sewage
3 systems during the sewage facilities planning process for new
4 land development.

5 DEP also understands that stakeholders and
6 interested parties have questions on the implementation of
7 the Sewage Facilities Act as amended by Act 34 of 2020. We
8 have developed a frequently asked questions, FAQ document.
9 We plan to send this FAQ document to enforcement officers as
10 soon as possible, and we will be upgrading the FAQ document
11 as we receive more questions.

12 Our goal is to implement the Sewage Facilities
13 Act as amended by Act 34 of 2020 in a manner that provides
14 safe, effective, long-term sewage disposal by expanding the
15 use of alternate systems and sewage facilities planning for
16 new land development consistent with the plain language of
17 the statutory amendment. Achieving these goals requires
18 modest patience to regulatory standards for preparation,
19 review, and acceptance of sewage facility plans, as well as
20 standards for alternate on-lot systems, which DEP cannot
21 implement without going through the rulemaking process.

22 We look forward to continuing efforts to work
23 with local agencies, sewage enforcement officers, land
24 developers, and legislators to address the issues regarding
25 the Sewage Facilities Act and the implementation of this

1 important statute. We look forward to providing future
2 opportunity for land development in safe and effective ways.

3 That concludes my testimony.

4 SENATE MAJORITY CHAIRMAN YAW: Thank you.

5 I really don't have any questions, but I want
6 to thank you for your testimony because I think that it lays
7 out what the issues are as I understand them. And I'm sure
8 that some of the other testifiers -- this may be the first
9 time that we've heard in any detail what the exact problems
10 are because -- my perspective -- I know what we intended,
11 that alternate systems be used across the board for planning
12 purposes and development, and we had a lot of input from
13 virtually everybody, as I said at the beginning, surveyors,
14 land developers, real estate, across the board.

15 So I think that the act that we passed, we
16 thought that it did one thing, and I think that obviously,
17 the way DEP is interpreting it, even after the second
18 amendment, is not what we intended after talking to the
19 groups of people that we did.

20 So I'm sure -- I appreciate your written
21 testimony, and now we at least have a road map of where the
22 issues are.

23 So I want to thank you for that.

24 Chairman Metcalfe.

25 HOUSE MAJORITY CHAIRMAN METCALFE: Thank you,

1 Senator Yaw.

2 Thank you, Deputy Secretary.

3 Did you read in the letter that I had sent to
4 the Secretary dated March 16th on this subject?

5 DEPUTY SECRETARY ATKINSON: Yes.

6 HOUSE MAJORITY CHAIRMAN METCALFE: So I sent it
7 on March 16th, and this hearing has been sunshined according to
8 House rules to comply with the law. The Senate has also
9 provided notice, so I know that your department certainly knew
10 that this hearing was coming up.

11 This morning I was surprised to see from staff
12 of the DEP that we finally received on April 26th at
13 10:07 p.m., a response to my letter, sent almost a month and
14 a half ago. The response to my letter pretty much mirrors --
15 from my reading of it this morning, and then listening to
16 your presentation and following along -- pretty much mirrors
17 what you stated this morning. Did you draft the reply letter
18 to me for the Secretary?

19 DEPUTY SECRETARY ATKINSON: Typically, letters
20 that are submitted to the Department on behalf, or to the
21 Secretary are coordinated with the Deputy Secretary in the
22 programs that represent those areas. So I did have some part in
23 that along with others, with recommendations of how to draft the
24 letter.

25 HOUSE MAJORITY CHAIRMAN METCALFE: Thank you.

1 On the House side, I think Representative
2 Vitali had a statement or a question for the Deputy Secretary
3 also.

4 HOUSE MINORITY CHAIRMAN VITALI: Thank you for
5 testifying today. And no pun intended, but septic systems are
6 kind of an in-the-weeds issue. So I just want to make sure I
7 heard you correctly.

8 I'm hearing you saying that some lots, even
9 though a developer might want to develop them, simply may not
10 be suitable for development because they can't adequately
11 dispose of septic waste because of soil conditions. And I
12 thought I heard you say that, when you have a system that
13 cannot adequately handle this waste and it fails, things can
14 happen like sewage wetlands, pollution of drinking water
15 wells -- not only of the homeowner of the septic system, but
16 neighboring systems -- the devaluing of properties. And I'm
17 also hearing you saying that it's your primary duty here,
18 essentially with regard to these systems, to protect public
19 health and the environment.

20 Is that kind of a correct summary of your view
21 on this?

22 DEPUTY SECRETARY ATKINSON: Correct.

23 HOUSE MINORITY CHAIRMAN VITALI: Okay.

24 DEPUTY SECRETARY ATKINSON: And that is the case
25 for all systems that are proposed for sewage disposal on lots --

1 alternate, conventional -- that is our primary goal.

2 HOUSE MINORITY CHAIRMAN VITALI: And if I -- just
3 in reviewing the materials and what you said -- in addition to
4 this Sewage Facility Act and the requirements there, there are
5 also some requirements relevant to septic systems relating to
6 the Clean Streams Law.

7 Can you talk a little bit about how the Clean
8 Streams Law fits into this?

9 DEPUTY SECRETARY ATKINSON: I do have here with
10 me today Jay Patel, and he is the program manager for the
11 municipal planning section, which the Act 537 program is run out
12 of his shop.

13 Jay, do you mind taking on this question?

14 I can't see if he's here.

15 MR. PATEL: Yes, I am. Sure.

16 Good morning, everyone.

17 Yeah, in terms of the Clean Streams Law -- the
18 Clean Streams Law and the Sewage Facilities Act are similar
19 in that they are -- you know, we need to ensure, you know,
20 protection of ground and surface waters and eliminating those
21 threats and providing those assurances that the activities
22 that are being proposed for sewage disposal are protected of
23 both human health and the environment.

24 HOUSE MINORITY CHAIRMAN VITALI: So it's not just
25 the Sewage Facilities Act we're dealing with? We're also

1 dealing with another law?

2 MR. PATEL: That is correct.

3 HOUSE MINORITY CHAIRMAN VITALI: Okay. Thank
4 you.

5 HOUSE MAJORITY CHAIRMAN METCALFE: Are there any
6 other members?

7 (No response.)

8 HOUSE MAJORITY CHAIRMAN METCALFE: I have a
9 couple of questions for you, Deputy Secretary.

10 Now in your testimony, you're stating in the
11 letter that was sent back to me, that alternate systems
12 weren't intended for new land development, and this goes
13 against best practices in the industry employed in many other
14 states.

15 Do you have any written documentation
16 supporting that position by the past DEP Administrations?

17 DEPUTY SECRETARY ATKINSON: Any documentation
18 supporting --

19 HOUSE MAJORITY CHAIRMAN METCALFE: Supporting
20 that alternate systems shouldn't be used for new land
21 development since it goes against best practices in the industry
22 that are employed in other states.

23 DEPUTY SECRETARY ATKINSON: I believe I laid out
24 in -- well, I don't believe -- I have laid out in the testimony
25 the areas in which alternates were utilized within our purview

1 and that was for malfunctions --

2 HOUSE MAJORITY CHAIRMAN METCALFE: Exactly.

3 DEPUTY SECRETARY ATKINSON: -- on sites where
4 they were -- that were developed prior to the planning
5 requirements that we talked about in the Sewage Facilities Act.
6 Those were the areas where alternates have been utilized in
7 Pennsylvania.

8 So you're asking for our internal guidance on
9 that?

10 HOUSE MAJORITY CHAIRMAN METCALFE: No. I'm
11 asking for written documentation supporting the position that
12 goes against best practices in industry, that doesn't allow for
13 alternate systems in new land development, based on what other
14 states are doing. Do you have documentation that would support
15 that position or is it just willy-nilly, something DEP has
16 grabbed out of the air to say, "We're not going to do this in
17 Pennsylvania"?

18 (No response.)

19 HOUSE MAJORITY CHAIRMAN METCALFE: Well, let me
20 ask you another question --

21 DEPUTY SECRETARY ATKINSON: So this is a
22 complicated issue and I would definitely like to follow up on
23 you --

24 HOUSE MAJORITY CHAIRMAN METCALFE: Thank you.

25 DEPUTY SECRETARY ATKINSON: -- so that I can

1 pinpoint the information that you're looking for.

2 HOUSE MAJORITY CHAIRMAN METCALFE: So your
3 testimony also talks about the possibility that these systems
4 pollute wells and create sewage and develop wetlands, as
5 Representative Vitali was restating. Do you have data that
6 supports that statement -- science, scientific data that
7 supports that?

8 DEPUTY SECRETARY ATKINSON: Do we have instances
9 where we have encountered sites where sewage wetlands have been
10 created or the wells have been impacted by sewage? Yes.

11 HOUSE MAJORITY CHAIRMAN METCALFE: I would like
12 to know if you have data, scientific studies, data, that
13 supports that position.

14 DEPUTY SECRETARY ATKINSON: We have a process of
15 identifying those issues and documenting them when they occur.

16 HOUSE MAJORITY CHAIRMAN METCALFE: All right.
17 Thank you.

18 Just kind of a closing statement from myself.
19 This shouldn't be that difficult to find agreement between
20 the legislature and the Administration on what most people
21 would consider an issue that shouldn't even consume a lot of
22 time. This has taken two actions in two different sessions
23 by the Pennsylvania legislature, and the last one with the
24 Governor's agreement that we would correct what has been seen
25 as a major deficiency, both in the marketplace, by people, as

1 Senator Yaw said, that have the boots on the ground out there
2 that are actually implementing these systems and helping
3 people to be able to move forward with their pursuit of the
4 American dream, by ensuring that they've got proper waste
5 disposal on their new homes that they're building or on their
6 homes that they have built where they've had malfunctioning
7 systems. So this really -- I mean, to get to this point and
8 still have the DEP acting like they've never had an
9 understanding of what the intent of the legislature was over
10 the last two sessions with trying to address this issue is
11 outrageous and unacceptable.

12 As Senator Yaw said, if we have to take
13 another run at this to, once again, try and clarify what the
14 intent of the legislature is, then I know our side is ready
15 to work with the Senator on his side of the legislature to
16 try and make that happen. But it shouldn't consume more of
17 our time; it shouldn't consume more of the opportunities that
18 people across this state are seeking to advance these systems
19 to deal with their pursuit of the American dream in building
20 their home or sustaining their home.

21 So that's my closing statement.

22 Senator Yaw, look forward to working with you
23 as we move through the hearing today.

24 Thank you.

25 SENATE MAJORITY CHAIRMAN YAW: Thank you.

1 I understand that Senator Comitta has a
2 question or a comment.

3 SENATOR COMITTA: Yes. Thanks so much, Senator
4 Yaw, and good morning, and Representative Metcalfe and
5 colleagues.

6 I do have a question. As Representative
7 Vitali said, you know, the public health and the environment
8 is certainly the priority for everything that DEP is doing.
9 And we all agree on the importance of protecting the
10 environment, but how can we also make sure that we're
11 protecting consumers in this process? And could you talk
12 about what are the consequences of getting that wrong?

13 DEPUTY SECRETARY ATKINSON: Thank you for your
14 question.

15 And I think I touched on that a little bit in
16 my testimony with, you know, having an ill-suited system on a
17 lot can potentially impact someone's drinking water supply if
18 they're on wells and have unsightly wetland formations due
19 to, I mean, to be frank, human sewage on their lots; those
20 things are of concern for us. And also, if a system is
21 failing and has to be remediated in any way and the lot is
22 unsuitable, a lot of the mechanisms to address that failing
23 system are costly.

24 I will have Jay go into a few of the processes
25 that we go through when trying to make sure a site can

1 dispose of sewage appropriately after there's a malfunction.

2 MR. PATEL: Yeah. There is a number of
3 considerations that are necessary to ensure that the technology
4 works, number one. You know, municipal oversight of the
5 long-term operation and maintenance of these alternate systems
6 is one of the keys. These technologies --

7 HOUSE MAJORITY CHAIRMAN METCALFE: Excuse me for
8 a moment.

9 I don't believe that you were sworn in before
10 we started having you present or ask questions.

11 If you could raise your right hand.

12 MR. PATEL: Sure.

13 HOUSE MAJORITY CHAIRMAN METCALFE: Do you swear
14 or affirm that the testimony you're about to give is true to the
15 best of your information, knowledge, and belief?

16 If so, please indicate by saying "I do."

17 MR. PATEL: I do.

18
19 JAY PATEL, called as a witness, being duly
20 sworn, testified as follows:

21
22 HOUSE MAJORITY CHAIRMAN METCALFE: Thank you.
23 You may continue.

24 MR. PATEL: As I was saying, municipal oversight
25 of long-term operation and maintenance is key. You know, these

1 systems require maintenance to make sure that they not only work
2 when they are installed, but they continue to work for, you
3 know, decades. I mean, folks rely on these systems to provide
4 for sewage disposal on their lots.

5 One of the other keys to ensuring that these
6 systems work is validation of system performance over the
7 long-term. You know, we have -- we receive data on the
8 systems that show that they test properly, but one of the
9 keys, again, is to make sure that there is proof that these
10 systems work for decades and years and that the siting and
11 design requirements are specific to the consideration of the
12 use of these systems to actually create lots.

13 The alternate systems initially were -- they
14 were approved for use, and they are classified for very
15 specific circumstances, and the current design requirements,
16 the siting requirements, really didn't consider them to be
17 used for new land development or to actually create those
18 lots.

19 So these additional considerations are
20 critical to ensuring the long-term success and performance of
21 these systems.

22 And the second part of your question, I
23 believe, was what happens if we get it wrong?

24 SENATOR COMMITTA: Yeah.

25 MR. PATEL: If we get it wrong, then, again, the

1 possibility for public health and safety hazards or
2 contributions to pollution of water. And one thing we really
3 need to remember is that, many times when on-lot systems are
4 used, private wells are used for sources of drinking water; so
5 we could possibly be, you know, allowing for the pollution of
6 the same wells that these homeowners are using on their lots.

7 And then the other important point is
8 municipalities, you know, they are the ones who are by law
9 required to ensure the safe, effective treatment of sewage
10 disposal in their borders. And if we have subdivisions, you
11 know, God forbid we have large subdivisions or subdivisions
12 with malfunctioning systems, but the municipalities are going
13 to be on the hook, and the homeowners are going to be left to
14 deal with very difficult situations.

15 So, you know, by incorporating these general
16 site suitability requirements for these alternates, we're
17 ensuring, you know, safe, effective sewage disposal for the
18 long-term, which is, you know, one of our obligations under
19 the act and its regulations.

20 SENATOR COMITTA: Thank you very much.

21 Thank you, Deputy Secretary and Jay.

22 MR. PATEL: Thank you.

23 SENATE MAJORITY CHAIRMAN YAW: I guess everything
24 that's been said so far raises more questions with me.

25 You talked about -- what I get from your

1 testimony is that the best solution -- because you're worried
2 about that this lot, that this particular system could,
3 potentially, maybe, affect somebody's drinking water. Do you
4 have any statistics?

5 First of all, do you have a list of approved
6 on-lot alternate systems? You must. Somewhere you have a
7 list. Which ones of those that have been in existence for --
8 I don't know, what, five, ten -- I don't know how long a
9 normal system -- whatever a normal -- the regular,
10 standardized sewage on-lot system, how long you expect it to
11 work. Unfortunately, I think that it depends on the users
12 and what they do with it. On-lot sewage systems are kind of
13 personal, it's my understanding.

14 Do you have a list of the situations where
15 failure has happened or -- because all the testimony so far
16 is, "Well, this could happen. This might happen. This
17 might. We have to do this. We have to protect that." Well,
18 the best thing then is, let's just stop all development;
19 that's it. If there's not a centralized sewage treatment
20 system available, stop it. We're done. So anything, you
21 know, out in the country, forget it.

22 Well, that's what you're testimony is --
23 because it might happen, it might leak into a well, it might
24 go into a stream. We're not talking about -- we're not
25 talking about a city of a hundred thousand and a failure

1 going into a stream. We're talking about one lot, and I
2 just -- I'm not sure that what you're projecting or what you
3 perceive is the risk is really any more risk than what we
4 face when we walk across the street every day.

5 DEPUTY SECRETARY ATKINSON: So I'm --

6 SENATE MAJORITY CHAIRMAN YAW: I mean, the world
7 cannot be perfect.

8 DEPUTY SECRETARY ATKINSON: Agreed.

9 And I think, under our rules of engagement --
10 for lack of term -- we do have to look at the potential for
11 pollution. That is one of our charters, but our goal isn't
12 to be, in environmental protection, to be reactive, but
13 proactive.

14 However, I would say that I disagree with your
15 assertion that we don't think alternate systems work. I did
16 lay out some times where they have been utilized. There is a
17 list of approved alternates.

18 What we're saying is that there is no existing
19 site suitability criteria for alternates. The listing that
20 DEP does have for these, we identify criteria in that, but
21 none of that deals with siting. So what we're asking for is
22 time to deal with the site suitability portion of that
23 through this rulemaking so that we can implement the goal of
24 the act.

25 I don't think we're saying -- we are not

1 saying "we don't want development on lots." That is not our
2 goal. We're saying that that one piece is missing for these
3 because it was never envisioned when we were utilizing
4 alternate systems back some time ago.

5 And we want to engage with the same
6 individuals that you've engaged with to get this right. I
7 have sat in multiple meetings with the industry and asked for
8 the data that validated their systems. I've been told "no"
9 because they don't want the information to be discoverable by
10 their proponents by giving it to DEP. I've been told "yes,"
11 they'll give it to us, but through follow-up conversations,
12 the data has not been made available to us.

13 I do agree, I think we can get this right.
14 What your intent and the intent to continue to allow for new
15 land development with alternate systems, but there has to be
16 some engagement, and there has to be some work that we have
17 to do, and we would love for that to be informed by the
18 individuals that you have identified.

19 SENATE MAJORITY CHAIRMAN YAW: Well, and I think
20 following up on what Chairman Metcalfe said, what statistics or
21 what information, what concrete information do you have out
22 there that talks about particular systems or systems in certain
23 situations or certain land or whatever?

24 I mean, somewhere along the line -- we've been
25 dealing with this now for years. I mean, where are the

1 answers?

2 DEPUTY SECRETARY ATKINSON: So we do have the
3 listings, and we can get that to you, the alternate systems that
4 are utilized, that are made available to us. We can give you
5 some instances where we've dealt with contamination and how we
6 have remedied those situations to perpetuity. I mean, I think
7 the answer is, this -- what we're dealing with now is what's the
8 site suitability criteria for these systems? That's where we're
9 at now, and if we can get the validation data from the industry
10 to work --

11 One thing that's unique about sewage in the
12 fact that you put it in the ground, is that people don't
13 realize there's an issue until it rises to the surface. That
14 doesn't mean it wasn't an issue before it rises to the
15 surface. Usually when you can see it at the surface, it's a
16 way bigger problem.

17 So it's a very complicated process; I won't
18 deny that. But I do think we can meet the goal of Act 34 of
19 2020. We just need some time to work out those areas that I
20 identified, and hopefully we can do that in coordination with
21 one another.

22 SENATE MAJORITY CHAIRMAN YAW: Okay. Thank you.
23 Senator Hutchinson.

24 SENATOR HUTCHINSON: Thank you.

25 Certainly I'm no expert in this process, and I

1 am going to semi-jump ahead. I've looked at a couple of the
2 other submitted testimonies and one of the questions that
3 pops out as I look at that, and I wanted to run it by you as
4 you are testifying at this moment.

5 The other part of the issue here, to me, seems
6 to be that DEP, who has an advisory committee -- I think it's
7 SAC -- that they are supposed to rely on their input when
8 changes are going to be made. My understanding based on the
9 testimony that one of the later testifiers will give is that,
10 at a meeting at the end of February of '21, DEP started
11 talking about no longer allowing the use of the alternative
12 systems. It was not fully vetted, but a week later, all the
13 SEOs in Pennsylvania got a letter saying, "These are no
14 longer approved." It seemed very arbitrary, very quickly
15 implemented.

16 And as a matter of fact, you'd think that more
17 things would be approved, not fewer, than had been allowed
18 previously. And I'd love to hear your comment on why that
19 was implemented so quickly, in the direction that seems
20 counter that what the legislature and the Governor had agreed
21 to last year. All of a sudden, you're saying that
22 alternatives are not allowed in this, this, and this
23 situation, where we believed the law allowed more flexibility
24 for the use of alternative systems, and how that would happen
25 so quickly without proper input from your advisory committee.

1 DEPUTY SECRETARY ATKINSON: I'm not sure what
2 you're referencing that we prohibited. I think I reference in
3 the testimony that we have allowed for alternates to be used in
4 planning; that was something that predates Act 34 of 2020, which
5 I believe the SAC was aware of.

6 SENATOR HUTCHINSON: You folks wrote a letter on
7 3/2, March 2nd of this year, I believe, to all the SEOs.

8 DEPUTY SECRETARY ATKINSON: And we also
9 reiterated through the regulations, the current regulations, the
10 uses that allow for alternate systems. So there was no
11 prohibition that I'm aware of.

12 I will let Jay --

13 SENATOR HUTCHINSON: Those in the field feel that
14 there was a change based on the going the wrong direction.

15 DEPUTY SECRETARY ATKINSON: I think that was a
16 misinterpretation of the letter. And we've tried to clarify
17 that with those who have made themselves available to us. And I
18 referenced in the testimony, we are developing an FAQ that will
19 help, hopefully, prevent this from happening in the future.

20 But I will let Jay speak to his involvement in
21 that meeting and the development of that letter.

22 MR. PATEL: Yeah, I think --

23 DEPUTY SECRETARY ATKINSON: You there?

24 MR. PATEL: Yes, I am.

25 Yeah, as the Deputy Secretary Atkinson has

1 said, I think there's some confusion on what that actually
2 said.

3 So one of the things that we were trying to do
4 through that information was to let people know that they,
5 you know, there was additional time for them to submit
6 planning approvals for the use of alternate systems, as they
7 had been previously.

8 So we had the passage of the revision act, Act
9 537, and then time elapsed, and then we came out with our
10 implementation essentially. So we were just telling them,
11 "Hey" -- within the context of the meeting, we talked about
12 our position with Act 34. And we said, "Hey, we understand
13 there are developers who have spent time and money and
14 citizens who spent time and money on following our previous
15 guidance. We're going to give you a little bit more time to
16 implement those proposals as they have been going forward."
17 But then, as of a date certain, we said, you know, "From here
18 on out" -- which was, I believe, June 1st -- "we're allowing
19 submission of proposals that have, again, folks have spent
20 time and money on up until June 1st, so they can implement
21 those proposals."

22 And then subsequent to that FAQ -- or that
23 letter, we had the FAQ document in development because
24 there's a lot of details here that folks have questions. We
25 recognize they have questions. And we really need to get the

1 SEOs and local agencies and land developers the information
2 on implementation so they make, you know, consultants can
3 make decisions, help their clients make decisions, local
4 agencies and SEOs to make good decisions about how to move
5 forward as well.

6 So I think this piece that we're missing right
7 now and the confusion that resulted from that letter is this
8 FAQ that I believe will be really helpful in clarifying a lot
9 of these issues.

10 SENATOR HUTCHINSON: Thank you.

11 But I'm just going to wind up by saying, it
12 seems to me, what we have here is a bunch of DEP employees
13 working from home, isolated from the general public, from
14 their users, and they were implementing something without
15 proper input. They were changing things in a direction that
16 is counter to what was intended by the general assembly and
17 it's just not a good way to do business, but I'll end there,
18 and I thank you.

19 SENATE MAJORITY CHAIRMAN YAW: Thank you.

20 Thank you, Secretary.

21 We'll move on now to the next panel. And
22 we're running a little bit behind. So we would appreciate
23 brevity in any of the points that you make.

24 The first panelist is Joseph Gerdes III,
25 Director of Government Relations for the Pennsylvania State

1 Association of Township Supervisors, and Kimberly Geyer, a
2 Butler County commissioner.

3 Whoever is going first.

4 MR. GERDES: Commissioner, go right ahead.

5 MS. GEYER: Good morning, honorable members of
6 the Pennsylvania House and Senate Environmental Committees.
7 Good morning.

8 My name is Kim Geyer. I'm a Butler County
9 commissioner. I also serve on a conservation district board
10 and farmland preservation board. My background has been
11 working in construction development for the past 35 years
12 prior to becoming a commissioner. And I only mention that
13 because through that work, I've come to have an understanding
14 of the critical need and value of water and sewer, and how
15 important it is to land development, and how that water and
16 sewer dictates growth, where growth goes.

17 So March 1st, I began hearing from
18 municipalities and various SEOs across the region in western
19 Pennsylvania about their awareness in the field that DEP was
20 restricting the use -- and this was brought to me --
21 restricting the use of alternate septic systems.

22 So various parties indicated that the
23 effective date took effect February 21st, and they were just
24 learning about this in the field. They felt taken off guard.
25 They thought it wasn't communicated right. And they are in

1 the middle of permitting and making subdivision planning,
2 standard testing, and they're learning of the regulations
3 implementation after the fact, and they're telling me that
4 they had no advanced notice or warning. And little did we
5 know, the very next day we would receive a copy of the DEP's
6 letter to all the SEOs that Senator Hutchinson had referenced
7 earlier today.

8 So because of Pennsylvania's hilly terrain and
9 slopes and steepness, these alternate septic systems, they
10 make up approximately 75 percent of new construction
11 development, all new home construction here in Pennsylvania,
12 especially in areas not serviced by public sewers. So
13 alternate systems in this case would only be permissible
14 according to DEP for repair, but not suitable for, to be used
15 for new construction.

16 So everybody was kind of scratching their
17 heads and wondering, "Well, why are they good enough for
18 repair, but they're not good enough to be suitable for
19 permanent new construction?"

20 These systems -- they're recognized by
21 regulatory officials and experts in the industry, as well as
22 some of the most reliable wastewater technologies in the
23 marketplace today, and there's various systems. And I'm sure
24 they will be testifying; they will be shared here in the
25 coming hearing here by other experts.

1 So because the northern tier -- in Butler
2 County's case, our northern tier is very rural. And we don't
3 have public -- our public doesn't have access to public
4 sewer, and the feasibility of running public sewer either by
5 private landowner or developer or even if the county were to
6 do it, it's just not feasible because the houses are far
7 apart from one another. It's just not a feasible project.
8 So those wishing to develop either a parcel of land that they
9 have or a parcel that they, of farmland, that they inherited
10 from the family farm, they are exclusively limited to
11 alternate septic systems.

12 So prohibitive use of these systems is going
13 to greatly affect new permitting construction development,
14 and this in turn affects the quality of life for rural
15 townships, preventing them from experiencing residential or
16 commercial growth and development. And this situation would
17 likely direct more growth to suburban and urban areas
18 accessible to public sewer. And likewise, it shifts
19 populations to more densely populated areas. And this
20 reduces in turn -- I'm demonstrating the implications of
21 such -- this in turn would reduce the property taxes which
22 fund our school districts in rural communities. So it's a
23 very cyclic process.

24 With stagnant growth in rural communities,
25 municipalities are already challenged in trying to sustain

1 themselves with the increasing costs associated with
2 operating and maintaining roads, bridges, and snow removal.
3 And so most counties were experiencing challenges already
4 associated with rural communities because we have an aging
5 rural population in these communities. We have less of our
6 younger population is wanting to move to these rural
7 communities because of the lack of services and programs that
8 they may want, need, or demand, or come to expect.

9 And so these rural Pennsylvanians, as you
10 know, do not live in neighborhoods. There are no sidewalks
11 usually unless right in a local town. And so water and sewer
12 and broadband services are just not feasible to providers
13 that -- you know, for them to navigate into the northern or
14 rural sections of any county.

15 So in Butler County's case, if growth
16 continues to not spread into our northern townships, jobs
17 associated with engineering, construction, development, SEOs
18 are going to be centralized exclusively only to areas where
19 there is growth and development. DEP's restriction could
20 very well put SEOs out of business. There was a discussion
21 about that I had with a couple of SEOs; they're concerned
22 about that.

23 In 2020, Pennsylvania's Governor, as you know,
24 deemed construction as nonessential. And so what happened
25 was, in 2020, the construction season was completely lost

1 across Pennsylvania due to the COVID-19 pandemic. And the
2 building trades industry is very much eager to work and get
3 back to work and make up for this lost time of 2020 in wages,
4 revenue, and uncompleted projects that came to a, really, a
5 screeching halt last March.

6 So now these trades are dealing with other
7 challenges such as the triple increase in costs for materials
8 and supplies. They're challenged by finding people who want
9 to work and have the skill set to do the work that's
10 necessary involving a trade. And they're also challenged
11 right now, as you are aware, of major challenges to delays in
12 shipping and trucking to get supplies. And so there's a
13 delay in equipment and appliances and trying to outfit houses
14 that are completed with construction, but the inside of the
15 house can't be completed or occupied due to lack of
16 appliances.

17 So skilled labor is experiencing shortages in
18 trades, as you know. And they help develop families and
19 build local economies, and it all -- this is something that
20 all feeds into this. So in the first four months of 2020,
21 Butler County had over 468 building permits filed. And so
22 that gives you an idea of the amount of growth and people
23 wanting to get the permits filed; they want to do something
24 with land; they want to begin development. So many of these
25 property owners, sellers and buyers of property, would be

1 affected if there was not the option of having alternate
2 septic technology systems on their land.

3 Most of these people, believe it or not, that
4 I've spoke to are unaware. We have a municipal call that we
5 do probably every other month with our county officials, and
6 we have all the municipalities on a Zoom call, and we go over
7 various issues. And most of them, including some of our
8 rural municipalities, those most likely affected, are unaware
9 of what's going on and this entire issue.

10 So people and entities invest in property
11 daily; they make plans; they have dreams of retirement. I
12 work; I'm on the Farmland Preservation Board. They discuss
13 about selling the family farm to be able to retire. All
14 these people have a realization of wanting the American
15 dream, and it costs money, and sometimes it costs all the
16 money that they have.

17 So in the big picture, you know, not many
18 people would think that, or ever thought that something such
19 as, an issue such as alternate sewer systems -- that we are
20 here discussing today -- would have so many implications for
21 people's lives, our municipalities, they affect our school
22 districts, our counties, and our state government. And the
23 impact of DEP's restriction on the use of alternate septic
24 systems on our citizens and industry is coming at a time when
25 our Commonwealth should really be striving to invest in

1 creating a more stable workforce for jobs for here in
2 Pennsylvania coming out of the pandemic. We should be
3 working together to provide our municipalities with all the
4 tools they need to make good decisions.

5 I mean, in lieu of time, they're enhanced with
6 regulations and coming after the fact, after a law has
7 already been signed and gone through the regulatory review
8 process, signed by Governor, now coming after the fact to say
9 that, well, you know, we need to amend or add site
10 suitability requirements.

11 So perhaps Pennsylvania DEP can reach out to
12 other states where this is proven, it is used. It's
13 interesting, this secretary, the acting secretary was talking
14 about the longevity and kind of, like, giving an expiration
15 of these systems. The other night in our farmland
16 presentation meeting, one of the farmers told me that DEP is
17 now considering mandating -- I don't know if it's considering
18 or they've already done so -- but considering mandating that
19 you, everybody has to pump out their septic tanks, you know,
20 every three years or after so much time. So he was talking
21 about the cost of doing that. And how those tanks -- a lot
22 of, you know, a lot of people don't even realize that that's
23 something that they should do periodically. So it's
24 interesting how these issues all come together.

25 So I was just suggesting that perhaps DEP

1 could reach out to the other states surrounding us that allow
2 these systems to be in place, that also are protective of
3 public health and the waters of the state when they initiate
4 their rulemaking process.

5 So thank you for the opportunity to share
6 these perspectives with you today. And I'm available for any
7 questions you may have.

8 Thank you.

9 MR. GERDES: Chairman Metcalfe, Chairman Yaw,
10 members of the respective committees, my name is Joe Gerdes and
11 I'm the Director of Government Relations for the Pennsylvania
12 State Association of Township Supervisors.

13 Thank you for the opportunity to provide
14 comments on behalf of the 1454 townships of the second class
15 in the Commonwealth.

16 PSATS supported Act 34 of 2020 and Act 26 of
17 2017 and understood both acts to provide for wider, more
18 cost-effective use of alternative on-lot sewage treatment
19 systems. These acts were intended to simplify the municipal
20 sewage planning process and reduce the financial burden on
21 homeowners who are unable to use conventional on-lot systems
22 to meet their development needs. However, both acts have
23 been interpreted by the Department of Environmental
24 Protection to make use of these systems more difficult, if
25 not impossible. We take exception to those interpretations.

1 Alternate on-lot sewage systems are called
2 "alternate" if they are a different option from conventional
3 on-lot sewage systems, such as elevated sand mounds.

4 Alternate on-lot systems are technologies that provide
5 competent wastewater treatment for residences and commercial
6 establishments wanting to develop their land for which a
7 conventional sewage system would not work. These alternate
8 systems are safe and reliable and have been in use for over
9 20 years.

10 As originally drafted, Act 26 of 2017 amended
11 the Sewage Facilities Act, Act 537 of 1965, to allow the use
12 of on-lot systems to satisfy general site suitability
13 requirements when proposing a plan supplement or revision for
14 new land development. Under prior law, as well as current
15 department interpretation, only conventional sewage disposal
16 systems may be used in the planning process. As such, the
17 intent of Act 26 was to simplify the municipal sewage
18 planning process and reduce the financial burden on
19 homeowners who could not use conventional on-lot sewage
20 systems to meet their development needs while ensuring that
21 critical environmental protections remained in place.

22 During the legislative process, Act 26 was
23 amended to include a requirement that the Department develop
24 a technology verification policy to evaluate the
25 effectiveness of any alternate on-lot system for approved use

1 in Pennsylvania and pave the way for some alternative systems
2 to be reclassified as conventional systems. While this is a
3 concept that we support and was intended to simplify the
4 planning process, the technology verification process
5 developed by the Department, the Alternate On-lot
6 Pretreatment Verification Policy, unfortunately is a costly
7 process which may impede wider use of alternative on-lot
8 systems. This was an outcome contrary to the intent of Act
9 26 of 2017.

10 Act 34 of 2020 was promptly adopted last year
11 by the general assembly to correct the issue with the
12 Department's technology verification policy and restore the
13 clear intent of Act 26 to simplify the municipal sewage
14 process for alternative on-lot systems. However, once again,
15 we find these efforts to implement clear language stymied by
16 department interpretations that are making the planning
17 process for alternative on-lot systems more complex, if not
18 impossible.

19 The Department's March 2nd, 2021
20 implementation letter to sewage enforcement officers appears
21 to contradict the clear language and intent of both Act 26
22 and Act 34 and comes nine months after the adoption of the
23 legislation.

24 The Department should follow both acts plainly
25 written and clearly intended, which is to simplify, not

1 complicate, the use of alternative technologies during the
2 planning process. These technologies are not new and are
3 approved for use by the Department on its Onlot Alternate
4 Technologies Systems Listing. If the Department believes
5 there are additional statutory barriers to the simplification
6 of the planning process for alternative systems, the
7 Department should provide these specific citations to these
8 committees so that actions can be taken to evaluate them.

9 Thank you again for the opportunity to be with
10 you today. I'd be happy to answer any questions.

11 HOUSE MAJORITY CHAIRMAN METCALFE: Thank you,
12 Commissioner Geyer, and thank you, Mr. Gerdes, for your
13 presentations today to the committee. We appreciate you being
14 with us today.

15 Senator Yaw.

16 SENATE MAJORITY CHAIRMAN YAW: Yes. Thanks to
17 both of you.

18 I think that both of you hit the nail right on
19 the head of what we intended. I'm glad that somebody
20 understands what we intended. And I also think there are
21 some comments that -- you don't need to respond to them, but,
22 number one, there is nothing in any of the bills that we did
23 that took away from any of the environmental issues or the
24 environmental requirements. I mean, there's no question
25 about it. And the people that know me, I mean, clean water

1 is an issue with me in a lot of the things that we do.

2 That's number one.

3 But number two, which seems so obvious to me,
4 what are other states doing? I mean, this is not some new
5 technology just developed here in Pennsylvania. I mean, I'd
6 like to know, and I think Chairman Metcalfe raised the issue.
7 What science is out there? What information is there? And
8 there has to be a ton of information that's readily
9 available, easy to find and pick up and go from there. We
10 don't have to go back and reinvent the wheel.

11 So thanks to both of you.

12 HOUSE MAJORITY CHAIRMAN METCALFE: Representative
13 Vitali. We're kind of behind on time, so brevity is
14 appreciated.

15 HOUSE MINORITY CHAIRMAN VITALI: Thank you. And
16 thank you for your work on my other issue.

17 I'll just address these comments for reaction
18 to both of you. You know, I see the frustration, and I just
19 jotted down a couple of ideas, what your thoughts are on
20 other possible causes, solutions.

21 One, I note that the Clean Water Program which
22 generally regulates this -- and you heard the DEP and their
23 testimony ask for more time. Now they've been cut. Back in
24 2003, the Clean Water Program had 121 people; now they're
25 down to 82 people. So they've lost 39 positions. That's a

1 possible factor.

2 I also heard the Deputy Secretary say that
3 they haven't been given validation data for some of these
4 alternative systems. That possibly is a factor.

5 I'm wondering, because we're getting down to
6 lots that have been undeveloped for many years, whether the
7 frustration is that these are the least desirable, less
8 suitable lots. I know in my district, right now, everything
9 is being developed, but you're really getting down to the
10 real questionable sites. I wonder if part of the situation
11 here is the good stuff has been developed; now you're dealing
12 with the questionable stuff. And I'm sure you'll agree that
13 not every lot should be developed.

14 And a final concern I have is it seems like
15 there's pressure on the developer to develop these lots
16 because he makes his profit now. But I'm also concerned
17 about the homeowner whose system fails five, ten years from
18 now; he's faced with a very expensive solution.

19 So I'm just asking you to react to some of
20 these concerns I have: The lack of DEP staffing, the lack of
21 validation data, the fact that these lots haven't been
22 developed until now so they have these special issues. Could
23 this be part of the problem here?

24 HOUSE MAJORITY CHAIRMAN METCALFE: Thank you,
25 Representative Vitali, we're all out of time for this panel. We

1 appreciate them both being with us today, and we're going to be
2 moving on to our third panel.

3 Thank you, sir.

4 Thank you, Commissioner Geyer. Have a great
5 day.

6 Our next panel is made up of Mr. Joseph
7 Valentine, Pennsylvania Septage Management Association, VW
8 Consultants, LLC; Mr. Paul A. Golrick, P.G., Pennsylvania
9 Association of Sewage Enforcement Officers and Penn's Trail
10 Environmental, LLC; Adam B. Browning, manager, Penn's Trail
11 Environmental, LLC, president of Pennsylvania Onsite
12 Wastewater Recycling Association.

13 Do we also have in the audience, Laurel
14 Mueller?

15 MS. MUELLER: (Indicating.)

16 HOUSE MAJORITY CHAIRMAN METCALFE: Thank you,
17 ma'am. President of Soil Services Company, Incorporated, and
18 Mountain Wastewater Management. You'll be in the next panel
19 with the Pennsylvania Builders Association.

20 And do we have Amy Hopkins, president,
21 Pennsylvania Society of Land Surveyors?

22 MS. HOPKINS: (Indicating.)

23 HOUSE MAJORITY CHAIRMAN METCALFE: If I could --
24 we're going to swear in both of our next two panels together, if
25 you-all don't mind.

1 If you could please raise your right hand.

2 Do you swear or affirm -- I guess I should ask
3 you to stand, also, sorry. I'm so used to doing some of this
4 on virtual. It's hard to tell if somebody is standing
5 virtually.

6 Do you swear or affirm that the testimony
7 you're about to give is true to the best of your information,
8 knowledge, and belief?

9 If so, please indicate by saying "I do."

10 (Affirmative answers.)

11

12 JOSEPH A. VALENTINE, PAUL A. GOLRICK, P.G.,
13 ADAM B. BROWNING, LAUREL F. MUELLER, CPSS, SEO, AMY HOPKINS,
14 PLS, called as witnesses, being duly sworn, testified as
15 follows:

16

17 HOUSE MAJORITY CHAIRMAN METCALFE: Thank you,
18 all. You may be seated.

19 And you may begin your presentations with
20 whoever would like to go first, and then we'll go down the
21 line from there, but thank you all for being with us.

22 MR. VALENTINE: According to the agenda, I'm
23 going first. And I'm going to curtail my presentation based on
24 time. I did submit written testimony --

25 HOUSE MAJORITY CHAIRMAN METCALFE: If you could

1 just pull the microphone down a little bit more so we can catch
2 you, because we have a lot of online members and public.

3 Thank you.

4 MR. VALENTINE: I understand.

5 So my written testimony goes into much more
6 detail than I'll do this morning. This morning I intend to
7 summarize my executive summary that is in that written
8 testimony. I'm even going to curtail that some more.

9 So thank you for inviting us to, on behalf of
10 the Pennsylvania Septage Management Association, to provide
11 testimony with regard to this matter. The Pennsylvania
12 Septage Management Association, PSMA, is a nonprofit trade
13 organization where companies dealing with the permitting,
14 inspection, installation, and management of on-lot treatment
15 systems in Pennsylvania. There are over 250 companies that
16 are members of our association that have an average of 10
17 employees a piece.

18 I would like to maybe take a little different
19 tact than I was going to present this morning, listening to
20 this testimony, and talk a little bit about history and how
21 we got to where we are today.

22 I've been an SEO since 1975. I came on to the
23 scene working for a local health department when the elevated
24 sand mound was quote, unquote, new technology. I've seen the
25 number of administrations, and the administrations I'm

1 talking about is Central Office Administration staff, through
2 the years.

3 With regard to alternate technologies, I think
4 it's important to look at that definition of what an
5 alternate technology is in the regulation. And that
6 definition simply states that it is proven technology. So
7 you don't get on the list by being experimental, not
8 supplying data. This list was developed by DEP. In order to
9 get on that list, the vendor or the manufacturer had to
10 supply information. I heard some testimony today that kind
11 of concerned me that DEP wasn't getting data. I don't know
12 how DEP put that particular technology on the list.

13 Now, we also have experimental systems. And
14 there's been some talk back and forth about, "Well, we only
15 use them for repairs." Well, that's not exactly true.
16 Alternate systems are proven technology that went through a
17 process of submitting data to the Department, installing
18 systems that had been monitored in the field, and then
19 elevated from the experimental status to the alternate
20 status.

21 Now, experimental systems are still used in
22 Pennsylvania, but they can't be permitted for new
23 construction because you have to have a site that meets the
24 regulations. That's why we don't see any experimental
25 innovative systems coming in, being tested in Pennsylvania

1 unless they go through that process with the Department.

2 There was some discussion about the TVP
3 process, which is very restrictive in the amount of testing
4 that they're requiring and did not receive SAC's endorsement.

5 That said, let's talk specifically about the
6 alternate systems that I believe is the issue, and that's the
7 shallow limiting zone alternate systems. These systems are
8 on sites that are not suitable for an elevated sand mound,
9 their living zones are less than 20 inches, and currently,
10 within the regulations, spray irrigation is the only by
11 rights system that could be utilized. These technologies
12 have been around since 1996 when the first one called an AB
13 system, which was actually developed by the Department in the
14 northwest region of this state, became the first alternate
15 shallow limiting zone system. And for a period of time, that
16 system was used for new land planning, from approximately
17 2005 to 2007.

18 Then the Department issued what we eventually
19 called a Flag Day e-mail from Mr. (inaudible) of Central
20 Office, which simply said that alternate systems cannot be
21 used for new land planning for the reasons said by the other
22 secretary, that general site suitability was necessary;
23 therefore, you needed a system that met the regulations first
24 before you could consider an alternate system, perhaps as the
25 replacement (inaudible). And that's the arena we worked in

1 up until Act 26.

2 Act 26 had pretty simple language, but
3 additional language was added that created the documents
4 developed by DEP over the past three years.

5 Act 34 was the supposed solution to that
6 problem by removing that extra language and just stating that
7 if it's an alternate technology, which has been proven
8 technology -- therefore, it's on the list of DEP -- it can be
9 used for new land planning.

10 So currently what's happening, since the SAC
11 meeting at the end of February, is that there is a lot of
12 confusion. At that meeting, the Department put up a
13 PowerPoint that basically said, "Alternative systems can only
14 be used for repairs." They backed off on that with that all
15 SEO letter that only addresses it for new land planning.
16 However, we're waiting for that other shoe to fall at some
17 point, where it may affect existing lots of record. In fact,
18 at least in the southeast region, we're getting
19 correspondence from DEP that says, "That is coming." And in
20 fact, as of yesterday, two of the health departments in the
21 southeast region of Pennsylvania have told me that they are
22 not processing applications for shallow limiting zone
23 alternate systems on existing lots of record because they've
24 been informed that that approval is going to be removed.

25 So in summary, the issue here before us is

1 alternate systems are proven technologies. If that data was
2 inappropriate, I don't know how it got approved by DEP. If
3 there's a problem with these systems, that information should
4 be brought forward to the SAC so we can jointly look that
5 information over and make a recommendation.

6 And with that, I'll take any questions. Thank
7 you.

8 HOUSE MAJORITY CHAIRMAN METCALFE: Our next
9 presenter.

10 MR. GOLRICK: Sorry about that. My name is Paul
11 Golrick. I'm representing the Pennsylvania Association of
12 Sewage Enforcement Officers. As Senator Yaw so well put, we're
13 the boots on the ground. We're the folks out enforcing the
14 regulations, we're the folks doing the site testing, reviewing
15 designs, issuing permits, making sure that the systems are
16 constructed properly, making sure that the regulations that had
17 been enacted are enforced.

18 The association -- our association includes
19 about half of all of the sewage enforcement officers across
20 the Commonwealth. There are six regions of DEP. We have six
21 regions in our association. I happen to be the president in
22 the southeast corner where about a third -- well, slightly
23 more than a third of the association members are.

24 Regardless, I guess I should have given my
25 presentation info to Mr. Valentine ahead of time. He did a

1 very good job of presenting the information that I was going
2 to present. My information packet hopefully has been given
3 to you ahead of time, as well.

4 My emphasis initially was on the history, and
5 actually, the Deputy Secretary did a fine job of presenting
6 the early history of the Department, how the program started.
7 And since then, Joe has done a very good job of filling in a
8 lot of the detail in between.

9 I did want to emphasize that, again, the
10 alternate system listing is -- was developed by our friends
11 at DEP, or then DER; if you happen to have been around since
12 1993, you remember DEP as DER back in the day. But the
13 alternate system listing goes back that far.

14 Some of the newer alternate-type systems are
15 newer, going back to the new days of 2005. Keeping in mind
16 that's 15 years ago-plus now, those systems have been
17 installed, have been inspected by sewage enforcement officers
18 across the Commonwealth, and the question that was asked of
19 the Deputy Secretary about what evidence do you have of
20 malfunctioning septic systems, I would be curious to know.

21 Our particular firm works in four of the six
22 DEP regions. I talked to literally close to a hundred sewage
23 enforcement officers and have yet to encounter more than a
24 half a dozen out of several thousand permits that have been
25 issued that have malfunctioned on alternate systems. And of

1 the ones of which I'm aware, half of those half dozen were
2 initial construction issues where grading wasn't done
3 properly, water wasn't caught coming down the hill, was
4 ponded behind, mounded-type systems. And that sort of thing
5 could happen even with a sand mound as Mr. Valentine pointed
6 out.

7 The issue that PASEO is concerned about is
8 communication. The organization was organized and
9 established to communicate amongst sewage enforcement
10 officers and between sewage enforcement officers and DEP.
11 And the communication issue with DEP has gotten worse in
12 recent years. With the information that I have submitted,
13 there's a list of all SEO letters, and this most recent one
14 that was submitted in March was disturbing, that there's no
15 information associated with it, in terms of no data to say
16 why the alternate system listing should be changed. It just
17 isn't information as to why changes are taking place. The
18 Act 34 and Act 26 before it, in our opinion, was clearly
19 established to process -- move the process along faster, to
20 expedite things.

21 And so what PASEO would like to see is that
22 Act 34 be interpreted just as plainly written, keep it
23 simple. DEP should follow the original legislative intent
24 behind the act, which is to use all currently listed
25 alternate systems as conventional systems; if they are

1 functioning properly and they have evidence of them
2 functioning properly, you leave them on the list. If they're
3 not functioning properly, take them off the alternate list.

4 And this is DEP's alternate list. This isn't
5 a list that SEOs developed or developers developed or real
6 estate agents developed or somebody else developed; it's
7 DEP's list. And as Mr. Valentine noted, they got put on the
8 list because they were tested and approved, presumably, by
9 folks at DEP.

10 The current information got on the list
11 through scientific technology, and if you're going to remove
12 technologies from that list, there ought to be some evidence,
13 some technological scientific information, that says "these
14 systems aren't working properly."

15 And then finally, communication -- we'd like
16 all rules and policies to be published publicly and not an
17 "Oh, by the way," all SEO letter, "you can't approve any more
18 systems as of this date." It doesn't seem to us to be
19 appropriate.

20 As SEOs, we are trying to enforce the
21 regulations as established, and without knowing what's going
22 on, we can't enforce those rules accurately. We're certified
23 professionals. We're required to take continuing education
24 courses. We need to be informed in order to be able to
25 effectively do our jobs and effectively administer the

1 regulations.

2 Thank you.

3 HOUSE MAJORITY CHAIRMAN METCALFE: Mr. Browning.

4 MR. BROWNING: Yes. I'd like to thank Chairman
5 Metcalfe, Chairman Yaw, for the opportunity to speak today.

6 I'm here to represent POWRA. We're the
7 Pennsylvania Onsite Wastewater Recycling Association. We're
8 the state affiliate of our national organization, NOWRA.

9 I'm personally employed by Penn's Trail
10 Environmental in Montgomery County and reside in Bucks
11 County. My position at Penn's Trail includes sewage system
12 design -- onsite sewage system design, maintenance, and I'm
13 our planning specialist.

14 I'm not going to reiterate too much on what's
15 been said previously, just (inaudible) time. What I do want
16 to say is that these systems that are in question, most
17 specifically the shallow limiting zone systems, were
18 developed, as Joe mentioned, using science. Science that has
19 been accepted not only in our state, but across the country
20 on honestly more restrictive limiting zones than what we
21 outlined within the siting requirements within each of these
22 alternate systems listed.

23 As I mentioned, I've personally maintained
24 hundreds of these systems across the southeast region, and I
25 have not yet to encounter one of them in my 18 years of

1 business with Penn's Trail that is malfunctioning or meets
2 the loosely defined term "malfunctioning" within the
3 regulation.

4 There's been a lot of talk about general site
5 suitability and what that means with planning. There's
6 several different avenues to go about creating a new lot and
7 several different components, as they're called, for land
8 planning. Only some of them -- I shouldn't say that.
9 There's a few of them that do not mention "general site
10 suitability," that mention "permissible (sic) systems,"
11 period, whereby these shallow limiting zone systems are
12 permissible (sic) even though, at this point, they're just
13 permissible (sic) for repair situations. They do have
14 science that back them and allow them to be used for those
15 repair situations.

16 There is also components or avenues by where
17 we can do the subdivisions that do not meet general site
18 suitability that are considered marginal conditions, in that
19 they exhibit soils less than 20 inches of suitable soil.
20 That is the same method by which we were continuing to use
21 these shallow limiting zone alternates under Act 26 that had
22 been stifled through Act 34, given the misguided
23 interpretation of what that act intended.

24 That component, too -- planning modules is
25 what deals with marginal conditions. It does, despite what

1 the Department has stated, it does deal with long-term needs
2 of sewage disposal in that alternate systems -- excuse me,
3 reserve area systems need to be proposed along with the
4 primary system. Long-term maintenance needs need to be
5 attended to through the township and the property owner.

6 Our biggest issue at POWRA -- we're
7 represented by most all of the stakeholders in the wastewater
8 industry, different disciplines of each. All of our
9 businesses are going to be affected greatly by this, by the
10 interpretation and implementation of Act 34. In addition to
11 that, many of us, being business owners and landowners, in
12 addition to the remaining landowners across this state, will
13 be -- as you probably know, 30 percent of the state is -- the
14 population is served by on-site septic systems --
15 approximately 80 percent of the state land is served by
16 on-site septic systems. Much of that land is limited to
17 shallow limiting zone systems. By removing those, we're
18 affecting a large deal of the Commonwealth.

19 I'm not going to continue to expand on that.
20 Most of what I was going to say has been said -- been said
21 very well. POWRA -- our position is that DEP needs to
22 implement the act the way it was written in concurrence of
23 what the other organizations of Pennsylvania stated.

24 I appreciate your time.

25 HOUSE MAJORITY CHAIRMAN METCALFE: Thank you,

1 gentlemen.

2 Senator Yaw.

3 SENATE MAJORITY CHAIRMAN YAW: Thank you to this
4 panel.

5 I just want to say, I really appreciate the
6 straightforward way that you've explained things. And it
7 makes me think, "Well, I wasn't nuts" -- but if I could do
8 this right both times, that we are listening to what you're
9 finding and what the problems were or weren't. I really have
10 no questions, but I just appreciate the confirmation of what
11 we thought we were doing and why.

12 So thanks, thanks to this panel.

13 HOUSE MAJORITY CHAIRMAN METCALFE: Representative
14 Vitali.

15 HOUSE MINORITY CHAIRMAN VITALI: Thank you.

16 You know, I just had a couple of thoughts as I
17 was reading this. And, you know, the first thought was, I
18 know that two of you mentioned that few systems, alternate
19 systems, have failed. And I'm wondering, you know -- you
20 don't have to answer this right now -- but is that maybe a
21 mark of the success of the DEP by failing to permit marginal
22 programs?

23 My second thought is, there's talk of
24 alternative programs and certain validities they have, but as
25 I read, you know, the legislation, as I read -- I keep seeing

1 the words "that meet soil conditions." So isn't the real
2 test, not so much the system itself, but is the alternate
3 system appropriate for the soil conditions, which vary from
4 site to site?

5 And then I think my third thought -- I know
6 that one of the speakers mentioned communication problems.
7 Then I guess we come back to this DEP staffing issue. The
8 fact that we're down, like, 39 positions from 121 positions
9 back in 2003, whether that could be an issue.

10 They are just three thoughts; if you have any
11 comments on, feel free to make them.

12 HOUSE MAJORITY CHAIRMAN METCALFE: Gentlemen,
13 anybody like to say anything in regards to Representative
14 Vitali's thoughts?

15 MR. GOLRICK: Well, I would say that we can
16 eliminate the failures altogether by stopping permitting
17 altogether. It's kind of a wise guy answer to the question, but
18 the fact that there are literally thousands of these systems and
19 they're not malfunctioning suggests that maybe the science that
20 DEP had in establishing these systems should be utilized. I
21 mean, they did a good job of establishing these systems. And
22 they have been established for going on two decades now, and in
23 the case of the AB systems that Mr. Valentine pointed out, more
24 than 30 years.

25 The technology is demonstrated to work. If

1 you take your water -- and it doesn't even have to be sewage,
2 sewage water, dirty water -- if you take water and spread it
3 out over the geographic distance and time distance, if you
4 microdose and spread your water out, even slowly, poorly
5 drained soils will be allowed to absorb water, and plants
6 will uptake that and be able to dry out your soils. So that
7 scientific kind of background, that is the sort of thing that
8 the folks at DEP have taken a look at through the years. And
9 I think that as they go through and take a look at their
10 numbers, as they get them back from suppliers or whomever,
11 they should get that.

12 The folks at DEP get copies of all the permits
13 that are issued statewide from sewage enforcement officers,
14 so they should be able to keep track of which systems were
15 permitted as alternate systems and which systems are failing
16 that were permitted as alternate systems. I think you'll
17 find that those alternate system failure permit numbers are
18 remarkably small, especially in comparison.

19 And a lot of the malfunctioning systems
20 statewide are malfunctions of old in-ground standard
21 non-pressurized systems in soils that just aren't suitable
22 for those type of systems. They're moderately well-drained
23 soils or somewhat poorly drained soils that are getting water
24 at a rate at which they can't take them.

25 So if you were to take that water and spread

1 it out, again, over a bigger geographic distance and time
2 dose it, spread it out over the course of a day using
3 pressurized systems, your sewage disposal would be much
4 greater potential for success.

5 HOUSE MAJORITY CHAIRMAN METCALFE: Thank you.

6 Representative Hohenstein, I think our final
7 question for time allowances here.

8 REPRESENTATIVE HOHENSTEIN: Thank you.

9 Just a little bit of a follow-up to what you
10 were just talking about. It's my understanding, DEP doesn't
11 say that alternative systems can never be used, but just we
12 need to use them on sites in which that is the primary site
13 suitability.

14 And do SEOs have a way of determining if an
15 alternative system is malfunctioning? And you know, if
16 you're doing that, is there a way, especially when you're
17 talking about the shallow soils that you were just talking
18 about, how do we know that it's working in the shallow soil
19 systems in particular?

20 MR. GOLRICK: You tell if they're malfunctioning
21 to the surface, which in the southeast corner and actually,
22 probably the eastern third of the Commonwealth, rather than
23 draining into the soil, the sewage water isn't going to drain
24 in, it's going to back up to the surface.

25 REPRESENTATIVE HOHENSTEIN: Are the

1 municipalities, and the authorizing agencies that would be
2 having review over these, doing regular inspections and are
3 those inspections reported on and available for right-to-know or
4 sunshine-type requests?

5 MR. GOLRICK: It's becoming more common in the
6 southeast corner of the state to have regular required operation
7 and maintenance programs where septic systems are inspected on a
8 three-year or five-year basis.

9 REPRESENTATIVE HOHENSTEIN: Is that something
10 that's being done statewide? You're saying the southeast
11 corner.

12 MR. GOLRICK: Southeast corner and I believe --

13 REPRESENTATIVE HOHENSTEIN: And how about
14 central --

15 MR. GOLRICK: -- in the Pittsburgh area, as well,
16 it's starting to become more common, as well.

17 And we're not opposed to that. PASEO thinks
18 that's a good idea, and one of the other presenters was
19 concerned about that.

20 As sewage enforcement officers, we would like
21 to see folks maintaining their systems. It disturbs us when
22 folks don't realize they have a septic system --

23 REPRESENTATIVE HOHENSTEIN: Yeah.

24 MR. GOLRICK: -- and they think they're on public
25 sewers.

1 REPRESENTATIVE HOHENSTEIN: Yeah, yeah.

2 MR. GOLRICK: And they haven't pumped their
3 septic system ever.

4 "How long have you lived here?"

5 "Thirty years."

6 "When was the last time you had your septic
7 tank pumped out?"

8 "I don't have a septic tank."

9 "Yeah, you do."

10 REPRESENTATIVE HOHENSTEIN: Yes, you do. Right.

11 One last quick question, because I always like
12 to focus on how the economics hit these types of issues, and
13 one of the points that's being made is the extra economic
14 pressure that's being put on the front end. How about on the
15 back end with consumers, and in particular, insurance costs?
16 Are there differences in insurance costs for conventional
17 systems, alternate systems, or, you know, systems that
18 haven't been fully vetted and tested?

19 MR. GOLRICK: I don't know if there are insurance
20 costs on properties.

21 Typically with alternate systems, however,
22 there is what's referred to as a primary and a replacement
23 area. Generally, new lot construction has two areas tested.
24 The one is initially put in, and then if there is a
25 malfunctioning problem, the secondary area could be replaced.

1 Obviously, the cost of replacing that would be an added cost.
2 But it's not a case of, we took the only available area to
3 put a septic system in, and now they don't have another
4 option to go to. There's another place to go to on the lot.

5 In terms of cost of system, conventional lots
6 and alternate lots typically don't have septic insurance.

7 I don't know if the other colleagues can tell
8 me if there's such a thing as septic insurance. I don't
9 know.

10 MR. BROWNING: I'm not aware of --

11 MR. VALENTINE: I'm not aware of any septic
12 insurance issues dealing with the difference between a standard
13 and an alternate system.

14 REPRESENTATIVE HOHENSTEIN: And who's bearing the
15 final cost if there's a failed system?

16 HOUSE MAJORITY CHAIRMAN METCALFE: We really have
17 to move on. That's like the fourth final question there.

18 Thank you, gentlemen.

19 I think just to -- we need to get this law
20 right first. We need to have the Administration enforce the
21 law, abide by the law, which isn't happening. So the
22 Administration doesn't get to rewrite the law through
23 regulations, even though they like to.

24 But the law is pretty clear; our intent has
25 been made pretty clear through two sessions now. It's time

1 for the Administration to abide by the law that their
2 Governor signed, that we passed, that we thought was in good
3 faith negotiations between the Senate, the House, and the
4 Administration. And they need to abide by the law that we,
5 the policymakers, make.

6 And after that, my constituents, I know, still
7 aren't going to submit to somebody coming on their property
8 to regularly check their sewer system or their well. So
9 living out in one of those areas that has a lot of rural
10 property owners, they will protect their property, and they
11 will not be welcoming people after their home is built, and
12 their sewer system, their septic tank, or whatever is put in,
13 to coming back to regularly check that because some
14 government entity wants them to, and it's going to create
15 some job opportunities. We value our property rights in
16 Butler County in western Pennsylvania as the whole state
17 should.

18 Thank you, gentlemen. I appreciate you being
19 here today.

20 Our next panel, we would welcome to the tables
21 in front of us when our testifiers currently have cleared
22 out.

23 Ms. Mueller and Ms. Hopkins and once you get
24 seated, you can begin when you're ready. Either -- I guess
25 Ms. Mueller would start us off.

1 Thank you for being here ladies.

2 Little green light comes on when it's on.

3 MS. MUELLER: Is this on?

4 HOUSE MAJORITY CHAIRMAN METCALFE: You're on.

5 MS. MUELLER: Thank you.

6 Yes, my name is Laurel Mueller. I'm a
7 certified professional soil scientist and I'm the owner of
8 Soil Services Company, a soil scientist, consulting firm, as
9 well as Mountain Wastewater Management. And we sell and
10 service alternate systems, alternate sewage system products.
11 And today I am representing the Pennsylvania Builders
12 Association, even though I am a member of most of the other
13 organizations that have been represented here.

14 Before I start my prepared testimony, I wanted
15 to put in a pitch for the soil scientist role. Every shallow
16 limiting zone absorption area that is qualified for land
17 development or for repair must be witnessed not only by the
18 sewage enforcement officer, but also a qualified or certified
19 professional soil scientist. And that soil scientist must,
20 in Pennsylvania, maintain a sewage enforcement officer
21 license to function in this industry.

22 I am the national chair of the Soil Certifying
23 Board for the Soil Science Society of America. We are
24 coordinating with Pennsylvania to get all soil scientists to
25 have the identical qualification certification.

1 So I wanted to just say that the most
2 important sewage component is not a product name; it is the
3 soil. When you do a septic system repair on an individual
4 lot or a new permit and the sewage enforcement officer is
5 involved, it is because it is a conventional system. So when
6 it is a shallow limiting zone or it is a steep area that is
7 destined to become a drip dispersal system, there is a soil
8 scientist qualifying that soil. And when it is land
9 development, there's a third party there; the regional DEP
10 soil scientist is invited to be present for every soil test
11 pit. So it goes way, way beyond the SEO and the land owner.
12 It's the SEO, the soil scientist, and the regional DEP soil
13 scientist are qualifying these sites with many test pits,
14 typically six test pits per absorption area. And not only
15 that, there are two absorption areas in every lot to serve as
16 primary and replacement to qualify that area for general site
17 suitability.

18 So soil is the most important component
19 because it does the renovation. The long skinny landscape
20 that is mentioned by Paul Golrick is the key. We disperse
21 the water by time dosing. We provide filtration that sand
22 mounds don't have, an effluent filter. And time dosing is
23 not present in a sand mound, so know that there is so much
24 more effort and science and skill that goes into qualifying
25 an alternate sewage system.

1 So I'm going to do the basic education for,
2 really, those that don't get the issue. When you propose any
3 structure, to build any structure with plumbing in
4 Pennsylvania, you need a septic system permit. And when you
5 need a septic system repair, you need the same permit. For a
6 permit on an existing lot, you may choose from two menus:
7 conventional systems and alternate systems.

8 Conventional systems are specified in the
9 regulations that were published. They include in-ground
10 beds, elevated sand mounds, and IRSIS spray fields, which use
11 shallow limiting zone soils and steep landscapes. And by the
12 way, they only need to be qualified by the SEO without the
13 soil scientist present and they require fewer test pits and
14 they're considered conventional, shallow soils and steep
15 landscapes.

16 Alternate technology options on the menu are
17 approved by DEP as listed on their website. Some alternate
18 systems provide adaptations for shallow water table soils or
19 steep landscapes. This hearing is not about septic system
20 permits for existing lots. It is about land development.

21 If you want to add an in-law suite for a
22 grandparent or build a cabin on a farmstead or you wish to
23 subdivide off a single lot for a family member, you are in
24 land development. When you're a business creating lots for
25 sale where you're developing lots or high-flow commercial

1 facilities, you are also in land development. So all land
2 developments, small and large, require planning modules. A
3 planning module results in a DEP approval letter verifying
4 that your project has been adequately soil tested and deemed
5 to be suitable for long-term success.

6 Planning modules most commonly fall into three
7 categories -- and I have to go through the education on these
8 words because they're critical to the rewording of Act 26 to
9 become Act 34.

10 The three categories are exemption, exception,
11 and revision. An exemption, the easiest, is offered for
12 low-density projects where double-site testing has been
13 accomplished and where there are no specially protected
14 waters. An exception is for a minor subdivision enabling the
15 applicant to use the simpler component 1 form. A revision is
16 intended for subdividing 10 or more lots or for community
17 systems. And the word "revision" means that the municipality
18 Act 537 plan is being revised as part of the component 2
19 process. Compared to component 1s, we find that component 2
20 cost about \$2,000 more in consulting fees and take five, four
21 to five months longer to meet all of DEP requirements.

22 Looking back, for about 12 years, beginning in
23 2002, my soil scientist consulting firm coordinated with
24 surveyors and engineers to accomplish land developments,
25 large and small. We used exceptions, exemptions, and

1 revisions for projects proposing alternate systems.

2 These included drip systems and shallow
3 limiting zone systems. We received many DEP approval
4 letters. Then one day, hey, the wind changed. I don't know
5 what happened. It might be that magical letter that Joe
6 Valentine referenced.

7 The rules for soil testing and submission of
8 planning modules morphed by unwritten internal policy and
9 secret e-mails. The rules emerged inconsistently between DEP
10 regions. Qualifying for land development when alternate
11 systems were involved meant hitting a moving target. That
12 craziness is what initiated Act 26 of 2017. The goal was for
13 land development to have the same options as for existing
14 lots and to have the rules be consistent.

15 Implementation of Act 26 was awkward. DEP
16 began requiring component 2s for small projects, when these
17 projects should have been eligible for the simpler exceptions
18 and exemptions. This was costly to us, costly to our
19 clients, and the delays were intolerable. In nearly all of
20 the rural townships -- and I should say, I work the most
21 rural area of Pennsylvania also, the north central and
22 northeast region. Where we consult, the idea that there's an
23 Act 537 Sewage Facilities Plan is pure fiction in rural
24 townships. There is no map of sewerred areas on the wall, or
25 there's no 537 plan on a shelf. Somewhere in the '60s,

1 somebody concocted the idea there should be and there may
2 have been, but nobody knows where these are.

3 For a component 2, we have to go to a township
4 and ask for a raised seal and signature from the supervisors
5 indicating that they have adopted a resolution to revise
6 their 537 plan, and they go, "Huh? What?" They don't know
7 what a 537 plan is.

8 When the project is merely a two-lot
9 subdivision or the addition of a cabin or an apartment, the
10 officials get overwhelmed and suspicious. There is no DEP
11 document which we as consultants can share to explain this.
12 PSATS training, module instructions, and regulations all say
13 the opposite of what is currently being demanded by the DEP.

14 I asked DEP why component 2s were being
15 required for minor subdivisions under Act 26, and Brian
16 Schlauderaff of the central office DEP staff responded that
17 had the act omitted -- which this is Act 26 -- omitted the
18 words "exception" and "exemption."

19 So I went to Senator Yaw in 2019, and with the
20 support of the Pennsylvania Builders Associations, I asked if
21 we could fix the problem. Could we rerun the bill and get it
22 right? Together we wrote Senate Bill 1030 by referring to
23 all land development. The wording was carefully crafted with
24 oversight by experts. We eliminated Section C-2 to C-4 to
25 return to the original Act 26 intent and Senate Bill 1030

1 passed and became Act 34.

2 The March all SEO letter indicates DEP relying
3 on draft technical guidance document, not law, to ignore Act
4 34. The letter indicates DEP would prohibit the same
5 projects for which we had received approvals under Act 26.
6 The wording differences between Act 26 and Act 34 should not
7 have caused a shift from allowing alternate systems to
8 prohibiting them.

9 Pennsylvania Builders Association and I
10 request that all policies and regulations for land
11 development be clear and written based on law and transparent
12 to the public, consultants, municipalities, and sewage
13 enforcement officers.

14 I'm happy to take any questions.

15 HOUSE MAJORITY CHAIRMAN METCALFE: Thank you,
16 ma'am.

17 Ms. Hopkins.

18 MS. HOPKINS: Good morning, and thank you for
19 this opportunity to present to you.

20 I know you should all have my written comments
21 in the back of your packet. I think it was like second to
22 last page. So I hope you had a chance to read it.

23 My name is Amy Hopkins. I'm a professional
24 land surveyor licensed in the Commonwealth of Pennsylvania
25 and also the state of New York, and I'm currently the

1 president of Pennsylvania Society of Land Surveyors.

2 PSLS was established in 1969 as a nonprofit
3 statewide organization to support the land surveying
4 profession. I joined PSLS in 2003 after returning to
5 Pennsylvania after my service in the United States Marine
6 Corps. I started my own company in 2017, coming up on four
7 years. And I'm a certified woman veteran-owned business.

8 This issue affects my small business and the
9 land surveying profession directly because only a licensed
10 land surveyor can do a subdivision plan. So if you-all
11 have 20 acres and you want to cut out two acres so your
12 daughter can build a home, you have to hire a land surveyor.
13 We have to survey your 20 acres, we have to cut, you know, do
14 the geometry to cut out your two acres, and then we have to
15 get that approved through the township or the county or the
16 reviewing agency for that area. But we also, if there's not
17 public sewer, we have to get this sewage planning module,
18 that everybody's been talking about, approved.

19 We work with the soil scientists and the SEOs
20 to get the perc tests done, find the suitable site. And we
21 have to do a plot plan. The package that gets submitted to
22 DEP is a good inch thick and many of the districts still
23 require paper, hard copies, three sets, this thick
24 (indicating) of trees. But one of the components is this
25 plot plan which is our survey showing where the home is going

1 to be built and where the proposed systems are.

2 So we go out in the field and we locate where
3 the soil scientist dug and where the perc tests were done,
4 and we have to show it on this plot plan that gets submitted
5 to DEP for review.

6 And one of the things that Deputy Secretary
7 Atkinson had commented about -- the water supplies being
8 contaminated -- with new development, we have to locate that
9 water supply and make sure that that septic system, the
10 primary septic system, is a certain distance away from that
11 water supply. So that's, you know, determined in advance
12 with new development.

13 And when I say "development," we are not
14 talking developers out to make money; we're talking about
15 private landowners who, you know, maybe come on hard times
16 and want to sell a couple of acres for some extra money. But
17 most of the time, it is, as Laurel said, they want to give a
18 couple of acres to their children to build on. The cost for
19 my survey, depending on the acreage, is going to be
20 substantial. If it has to go to the township -- and I am
21 from the Pittsburgh area, and some of the townships in
22 Allegheny County, which is Pittsburgh's county, and
23 surrounding -- their review fees, application fees, and
24 escrow fees can be more than my survey fee. And there is no
25 guarantee that this is even going to be approved.

1 So that money aside, DEP has a very nominal
2 review fee for the sewage component module, but that's always
3 the wild card. So this landowner can pay, you know,
4 thousands of dollars with no guarantee of approval and then
5 you sit and wait for DEP's final approval. I can get my
6 subdivision plan approved, the townships approve it, and then
7 it sits there and it waits on this sewage planning module,
8 which as we've been discussing, is just going to get even
9 harder. And it's going to deny landowners, private
10 landowners, of enjoying their land and being able to
11 subdivide it.

12 I thank you very much for this opportunity and
13 I will certainly answer any questions.

14 HOUSE MAJORITY CHAIRMAN METCALFE: Thank you
15 both.

16 Senator Yaw for a final comment.

17 SENATE MAJORITY CHAIRMAN YAW: Thanks to both of
18 you.

19 And I want to thank all of the other panelists
20 who testified here today. I think it was very informative
21 from my perspective, from a legislator's perspective anyway.
22 And we'll take a look at what everybody told us today, take a
23 look at it again, and see what we can do. And I -- first of
24 all, I will have a lot of conversations with Chairman
25 Metcalfe as to what we can do to satisfy, I think, what the

1 people like you, the boots-on-the-ground people, have said,
2 have told us today, and what's really happening and what's
3 out there.

4 I don't think any of us are looking at
5 creating an environmental disaster or anything. It's just
6 the opposite. There are ways we can do it.

7 And I also think we need to recognize the
8 rural nature of where these systems are really applied to a
9 large extent.

10 So with that, thank you. And again, thanks to
11 everybody who participated today.

12 HOUSE MAJORITY CHAIRMAN METCALFE: Thank you,
13 Senator Yaw.

14 And thank you, ladies. We appreciate you
15 being with us. We're kind of out of time for our hearing.
16 Senator Yaw has another hearing to run off to.

17 We appreciate everybody sharing their
18 expertise today. And we'll look forward to working with --

19 HOUSE MINORITY CHAIRMAN VITALI: Excuse me, Mr.
20 Chair? Are you going to give the minority chairs the
21 opportunity to make closing remarks?

22 HOUSE MAJORITY CHAIRMAN METCALFE: Excuse me,
23 Representative Vitali, we're closing out because we're --

24 HOUSE MINORITY CHAIRMAN VITALI: Yeah, no, that
25 was my question before you closed. Are you going to give the

1 Democratic chairman the courtesy --

2 HOUSE MAJORITY CHAIRMAN METCALFE: No.

3 HOUSE MINORITY CHAIRMAN VITALI: -- of making
4 closing remarks?

5 HOUSE MAJORITY CHAIRMAN METCALFE: Motion to
6 adjourn by Representative Stambaugh, seconded by Chairman Yaw?

7 SENATE MAJORITY CHAIRMAN YAW: (Indicating.)

8 HOUSE MAJORITY CHAIRMAN METCALFE: Meeting is
9 adjourned. Everyone have a great day.

10 (The hearing concluded at 10:57 a.m.)

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C E R T I F I C A T I O N

I hereby certify that the proceedings are contained fully and accurately in the notes taken by me on the within proceedings, and that this copy is a correct transcript of the same.

Summer A Miller

Summer A. Miller, Court Reporter
Notary Public