

# Sewage Law Potpourri

Martin Siegel

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# EHB and Court Developments

- *Ritsick v. DEP*, 2022 EHB 469, December 8, 2022
  - Party sought exemption from sewage planning for development that would connect to public sewer system.
  - DEP claimed system was a community sewerage system because pipes from two homes connected before connecting to public sewer line.
  - EHB was skeptical of DEP's interpretation of what constitutes a community sewerage system. Board noted that such a system must include treatment or disposal
  - Board also critical of DEP's delay for addressing development that would add only 1 EDU to public system that had capacity.

# Statutes, Regulations, Policy and Just Made Up Stuff

- **CONSTITUTION**

- Environmental Rights Amendment, Article I, Section 27
- All statutes, regulations, and agency actions must be consistent with ERA

- **STATUTES**

- Passed by General Assembly
- Provide general authority to agencies
- Have force of law

# Statutes, Regulations, Policy and Just Made Up Stuff

- **REGULATIONS**

- Promulgated by agencies pursuant to Commonwealth Documents Law
- Must follow specific processes for public and legislative review and comment
- Interpret statutes
- Have force of law

- **POLICIES**

- Interpret statutes and regulations
- Do not have the force of law
- DEP has discretion to deviate from policies
- Cannot create a “binding norm”

# Statutes, Regulations, Policy and Just Made Up Stuff

- **JUST MADE UP STUFF**

- “This is the way we have always done it.”
- May or not be consistent with statutes or regulations
- Typically overkill and not consistent with sound environmental protection
- Limited options to counter
  - Argue unique set of facts
  - Escalate up chain of command
  - “Go political”
  - Litigate
  - Acquiesce

# Corporate Transparency Act Overview

- Born out of the Patriot Act's counterterrorism efforts and enacted as part of the National Defense Authorization Act of 2021
- CTA and its Beneficial Ownership Reporting Rule (the "Rule") requires *most* U.S. existing and new registered entities to file reports with the federal government (FinCEN) beginning 1/1/24
- These reports also require attorneys and paralegals who form entities to file information for entities created on or after 1/1/24
- Will affect approximately 32 million entities and cost \$22 billion (\$687.50 per entity) (at least)

# Corporate Transparency Act Overview

- “Reporting Company” is any
  - US corporation, LLC, LP or other entity
  - That were created by a governmental filing with a US state
  - Includes Non-U.S. entities that qualified to do business in a US state
- Does *not* include: **governments, banks and bank holding companies, credit unions**, money services businesses, broker dealers, exchange and clearing agencies, insurance companies, **large operating companies, publicly traded companies, certain public accounting firms**, public utilities, **tax-exempt entities, inactive entities formed prior to 1/1/20**
  - And subsidiaries of most of these entities (includes govts., banks, CUs, public cos., T/E and LOC)



# Examples of Entities “In Play”

- Any small or family business entity that does not meet the LOC exemption
- Real estate holding entities
- Trusts created by a state filing (statutory)
- Holding companies (even if its subsidiary operating companies are exempt)
- Joint ventures or subsidiaries that are not wholly-owned or controlled by an exempt entity
- Acquisition vehicle entities (merger or acquisition subsidiary) – even if they acquire a LOC they will not have the tax history

# What Must Be Reported?

- Entity name, address, jurisdiction, TIN/EIN/LEI
- Beneficial Owner and Company Applicant's
  - Name, DOB, Residential/Business Address, ID# and image (DL or PP)
    - FinCEN identifier can be obtained in lieu of ID#
- Must report Company Applicant info (same as BO) for entities formed on or after 1/1/24

# Fees

- Must be approved by municipality
- Update regularly
- Beware of potential conflicts

# What Type of Records are Public?

- Final decision documents
- Permits
- Submissions by permit applicants
- Name, title and salary of public employees
- Emails, unless privileged or exempt

# Questions?

Barley Snyder



Martin R. Siegel, Esq.  
msiegel@barley.com  
(717) 718-7581