

June 14, 2021

VIA EMAIL

Robert,scully@ct.gov

Robert Scully
Connecticut Department of Public Health
410 Capital Avenue, MS #12SEW
Hartford, CT 06134

RE: Connecticut Public Health Code

Dear Bob:

We are writing to express concern about one of the proposed changes to the Connecticut Public Health Code ("Public Health Code") as detailed in the document published and circulated by the Department of Public Health ("DPH"). Several of the changes were discussed at the May 2020 Code Advisory Committee. Particularly, we are writing about the proposed change that states:

Leaching System Product Approvals, ELA, Center to Center (C to C) Spacing: Stipulate the Department may approve multi-product single-trench leaching systems that are exempt from the C to C spacing requirements and note internal interfaces shall not be credited unless they are a minimum of 4 inches apart and there is at least 4 inches of sand between the product bottoms for partly treated septic tank effluent movement.

Unfortunately, this proposal was not discussed at the Code Advisory meeting in May due to time issues. However, in reviewing this matter, it appears that DPH raised this as a potential change in 2020. The justification presented at that time was "this change appears to have technical merit." There was no action on the proposal at that time due to the pandemic. Based on our research, there does not appear to be a record of DPH receiving new scientific evidence that would support this change. Nor does there appear to be any new technical information that would support this change.

As you are aware, Geomatrix Systems, LLC ("Geomatrix") sought to be allowed to install multiple laterals in the single trench over fifteen years ago and was denied. [Insert correspondence if found] Additionally, over the past fifteen years, Geomatrix and others have raised the issue with DPH, and, each time, DPH has denied the request. Products were designed, and significant time and expense were incurred based on DPH's firm position that multiple laterals could not be placed in the same trench. We are concerned that DPH has seemingly changed its position on his issue.

The fact that DPH has cited no new scientific or technical basis for this change of position by DPH is especially troublesome. It raises concerns regarding potential undue influence by market participants on DPH. Before this proposal moves forward, we request that DPH make public and provide to Geomatrix all correspondence it has related to this issue, all research, including its confirmation of its prior position against this, all research and analysis performed by DPH personnel over the past three years on this issue, all evidence obtained by DPH over the past three years that constitutes new scientific or technical evidence that has been relied on by DPH in changing its long-held position related

to this issue, or evidence of any change that would now render multiple laterals in the same trench protective of the environment and public health when it was not previously.

In addition to the appearance of impropriety, regardless of whether there is any impropriety, this change of DPH's long-held position raises concerns of equal protection and the legality of the proposed rule change. As you are aware, Section 19-36 of the Connecticut General Statutes provides authority for the Commissioner of the Department of Public Health to create and maintain the Public Health Code. That section provides the authority and purpose of the Public Health Code. It reads:

- (a) The Commissioner of Public Health shall establish a Public Health Code and, from time to time, amend the same. The Public Health Code may provide for the preservation and improvement of the public health.

The purpose of the Public Health Code is to "provide for the preservation and improvement of the public health." Accordingly, to be enforceable, the code requirements must be based on preserving or improving public health. To date, DPH has provided no public health basis for this proposed change to the Public Health Code. Without such grounds, the change should not be made and is subject to challenge if made.

This raises the question as to what DPH relies on in making changes to the Public Health Code. As you are aware, Geomatrix and others requested a review and modification of the Effective Leaching Area credited to stone systems. DPH was provided significant scientific data to support this proposed change. This data unquestionably showed the proposed change would serve to preserve and improve public health. However, despite the scientific and technical evidence, DPH chose not to move forward with the proposal. To now move forward with a proposal without any scientific or technical support on which to base DPH's change of position while refusing to move forward with a proposal with significant supporting scientific and technical evidence is, at least, unfair and, likely, illegal as a violation of the Constitutional rights of Geomatrix and others that are similarly situated in addition to the citizens of the State of Connecticut.

We are happy to discuss this matter with your further at your convenience.

Sincerely,
Geomatrix Systems, LLC



David Potts