

***Reforming the Regulation of BC's Sewerage Systems:
An Urgent Need to Protect Public Health***

A Submission to the Ministers Responsible:

The Hon. George Abbott, Minister of Health Services,

The Hon. Mary Polak, Minister of Healthy Living and Sport,

and

**The Hon. Murray Coell, Minister of Advanced Education
and Labour Market Development**

Submitted by:

Sewerage System Regulation Improvement Coalition (SSRIC)

March 2009

About the SSRIC

The Sewerage System Regulation Improvement Coalition is an *ad hoc* committee formed in 2007, and is composed of public health and environmental organizations, as well as individuals, who have a collective interest in the regulation of BC's small-scale sewerage systems and the impact of the Sewerage System Regulation. Members include the BC Shellfish Growers Association, Canadian Institute of Public Health Inspectors (BC Branch), and the Public Health Association of BC. The Coalition is independent of government and has been working with other organizations that share the Coalition's belief that the SSR is in need of substantial reform.

This report is not a replacement for the Coalition's original Briefing Note to the Minister of Health dated February 18, 2008, including its concerns and recommendations, rather this is a much more in-depth review of the issues intended to support the initial position of the Coalition.

Acknowledgement

The Sewerage System Regulation Improvement Coalition gratefully acknowledges and recognizes the Environmental Law Centre Clinic at the Faculty of Law, University of Victoria, which played a key role in preparing this Submission. We appreciate the hard work and dedication that the following people applied to the production of this Submission:

- Tim Thielmann and Marianne Hopp, Environmental Law Centre Articled Students
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The Coalition appreciates the guidance and supervision that was provided by Calvin Sandborn, Legal Director of the University of Victoria Environmental Law Clinic.



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I. Executive Summary

In 2005, the British Columbia government enacted what is likely the most radical deregulation of small-scale sewerage systems in North American history. Government introduced an industry-dominated “self-regulation” regime to govern British Columbia’s approximate 300,000 onsite sewerage systems commonly called septic systems. After less than four years, the regime has become a classic case study in regulatory failure. Homeowners, shellfish growers, health experts, environmentalists and local governments are calling for this broken regulatory system to be fixed.

In this Submission, the Sewerage System Regulation Improvement Coalition (the Coalition) undertakes a systemic analysis of the Sewerage System Regulation (the SSR) and its administration, including the legislation that governs those who have been granted service monopolies under the Regulation. As a result of this analysis, the Coalition identifies a series of specific changes it feels must be made to the SSR and related legislation before this province experiences an environmental and public health disaster similar to those that occurred in Walkerton and North Battleford only a few years ago. The suggested reform will also help avoid major future financial liabilities for homeowners, infrastructure costs for local governments, and remediation costs for governments and individuals.

Issues of concern with the SSR regime

No government inspection or approval. Private sector technicians (with as little as 15 days training) may file design plans that, in effect, authorize the installation of a sewerage system. Previously, local Health Authorities carried out the permit approval process. The removal of the former permitting and use authorization requirements make BC the only place in North America where an onsite sewage system can be installed and put to use without a government inspection and approval.

Conflict of interest. Formerly, a neutral and objective public health inspector, with access to technical expertise, evaluated the sewerage system site and approved the plans prior to installation. The new regulation creates an institutionalized conflict of interest, because it gives the same licensed technician who now “authorizes” the sewerage system the exclusive legal right to also install the sewerage system. The average price of systems has risen steeply, and there are complaints of unnecessarily complex and expensive systems being sold. There have also been complaints that technicians eager to sell systems have filed official plans for properties that were clearly inappropriate for sewerage systems.

Removal of health official powers to protect the public. Health officials have lost the authority at the planning stage to stop a technically flawed system from being built, even when they suspect it will eventually cause sewerage pollution. They have lost their ability to stop construction of a sewerage system until a system begins to leak onto the ground or into surface or ground water, including drinking water, causing a health hazard.

No public notice and no right of appeal. The new regulation eliminates the requirement for neighbours to be informed by a public notice that a new system is being planned. This failure to require public notice may prevent adjacent landowners from taking precautionary measures, such as obtaining alternative drinking water. The new regulation also eliminates the right of neighbours to appeal potentially hazardous proposed sewerage systems.

Lack of monitoring and effective discipline of those building systems. The integrity of the entire new regulatory regime relies upon the associations of private sector technicians (ASTTBC) and engineers (APEGBC) to discipline any member who acts improperly. However, the associations conduct virtually no on-site monitoring of systems installed by members—government failed to give the associations the basic legal authority to enter properties to inspect their members’ work.

ASTTBC disciplinary procedures for technicians are remarkably deficient. Government failed to give the ASTTBC the authority to discipline a member after the member leaves the association. The ASTTBC disciplinary system established under the new law involves secrecy, lax penalties, and failure to inform the public of the identity of technicians that have been disciplined.

The Standards of Practice are complex and not legally enforceable. The new law replaced the former clear and enforceable rules governing sewerage installation with unenforceable, complex and vague guidelines. For example, it now allows sewerage installations to be constructed less than 100 feet from drinking water sources, in some circumstances.

Insufficient accountability to government and the public. Government must retain the ability to monitor a regulatory body to ensure the body is accountable to the public. The power of government to appoint public representatives to the board of a governing body allows the views of the public to be considered during policy-making and key decision-making processes within that body. The associations established to “watchdog” the regulatory regime have insufficient public representatives involved. Further, the government has no capacity to step-in and take corrective action, short of amending the governing legislation, when it determines that the professional associations are failing to regulate their members in the public interest.

Liability. The new system allows practitioners to work without bonding or insurance—leaving homeowners and neighbours to bear the cost of practitioner malfeasance or incompetence. The ineffective regulatory regime imposes further costs on individuals and the public—including public health costs, environmental costs, remediation costs, and the costs of building future community sewer systems when area sewerage systems fail.

The Union of BC Municipalities, the Canadian Institute of Public Health Inspectors, the BC Public Health Association, the BC Shellfish Growers Association, and many concerned individuals have all called for reform of this regulation.

Coalition Recommendations

The Coalition urges the BC government to make significant changes to or replace the Sewerage System Regulation (SSR) to address the many issues identified in this Submission. The current system created by the SSR has set the stage for a potential public health disaster. It lacks public oversight and there is a need to make this form of self-regulation more open and accountable. All key stakeholders should be consulted in this process, including public health and environmental officials, sewage industry representatives, engineers, and, most importantly, the general public. To help the ministries improve the SSR and its administration, the Coalition believes the government faces two basic choices and offers the following recommendations.

1. Option One: Improve the self-regulatory model created by the SSR by incorporating mechanisms to promote public oversight and accountability; or, in the alternative,
2. Option Two: Restore direct government oversight of the design, installation, maintenance and report of small-scale sewerage systems, such as by on-site inspections and approvals carried out by government inspectors.

Option One: Making self-regulation work in the public interest

Public representation. To improve public representation within the self-regulatory model, legislation should be amended to ensure that the Councils of both the Applied Science Technologists and Technicians of BC (ASTTBC) and the Association of Professional Engineers and Geoscientists of BC (APEGBC) are composed of at least one third public representatives appointed by the Minister. A similar proportion of public appointees should sit on the Associations' inquiry and discipline panels.

Eliminate role confusion. To clarify the roles and responsibilities of the different organizations that are currently involved in regulation under the SSR, the Coalition recommends that legislation be amended to give the ASTTBC exclusive authority to: ascertain if a Registered Onsite Wastewater Professional (ROWP) is competent to design, construct and maintain a sewerage system; decide what type of education and training a ROWP requires; and approve the content and duration of the training programs that are offered by the British Columbia Onsite Sewage Association (BCOSSA) or other institutions.

Deficiencies in the current model. A significant deficiency is the fact that ASTTBC does not have the legal authority to pursue a complaint against a ROWP if that practitioner simply leaves the Association. Further, the regulatory bodies do not have the legislative power to enter onto private property where a potentially defective sewerage system may exist. To remedy these shortcomings, the Coalition recommends that legislation be amended so that:

- The ASTTBC is given continuous jurisdiction over a ROWP, even if that practitioner leaves the Association; and
- Both regulatory bodies are given clear and sufficient legal authority to conduct on-site inspections of sewerage systems their members design or install.

Transparency and public reports. To improve transparency to both the government and the public in the regulation of Authorized Persons under the SSR, the Coalition recommends that legislation be amended so that the ASTTBC and APEGBC must report annually to the Minister about the types of complaints they receive concerning their members and to make that information public. Disciplinary hearings involving ROWPs must be open to the public with pre-hearing notice given, and the ASTTBC should be required to disclose the details of complaints that are resolved by consent or by its disciplinary processes.

Public notice and appeals. The Coalition recommends that the SSR be amended to require the homeowner or the Authorized Person to notify the public concerning the design, installation or a major repair of a small-scale sewerage system and that the right to appeal be given to neighbours and others whose health could be thus seriously affected.

Public review of bylaws, standards, codes, etc. To ensure the standards of practice and codes of ethics that apply to sewerage systems uphold the public interest, the Coalition recommends that the governing legislation for ASTTBC and APEGBC be amended so that both regulatory bodies are required to seek public consultation on: any standards of practice for ROWPs or Professional Engineers; a single, common Code of Ethics for ROWPs and Professional Engineers; and to report the results of these consultations to government and make that report public. Government should hold a right to veto or change either the practice standards or code of ethics.

Government investigations. To ensure that the ASTTBC, APEGBC (if not also BCOSSA) will act in the public interest, the Coalition recommends that the governing legislation for ASTTBC and APEGBC or the *Health Act* be amended so that the Minister is given the authority to establish an inquiry into any aspect of the administration of the SSR in relation to the regulation of either ROWPs or Professional Engineers and to issue a directive that requires the body to take remedial or corrective action.

Mandatory inspections and monitoring: To ensure that government retains the authority to monitor the design or construction, if not also the maintenance of sewerage systems, the Coalition recommends that SSR should be amended so that (a) the proposed site and system design must be reviewed and the installed system must be inspected by a government inspector or a contract inspector authorized by government, and (b) the homeowner must pay the established fees to cover the cost of such an inspection.

Legal authority of public health authorities. The Coalition recommends that the SSR be amended to clarify that a Public Health Inspector (PHI) or Medical Health Officer (MHO) has the legal authority to issue an order under the *Health Act* to deal with an obvious or potential health problem at the planning or filing stage, as well as the power to address problems that may arise during the construction, installation, maintenance or repair of a system that could cause damage to the environment or risks to public health.

Option Two: Returning to more direct government oversight

If the BC government is not prepared to act on the above listed recommendations to improve the defective self-regulatory system that has been created by the SSR, then, in the Coalition's view, the government's only alternative course of action would be to reduce, if not eliminate, self-regulation of those involved with small-scale sewerage systems, and to return the regulation of these systems to more direct government oversight, as existed under the old regulation. The recommendations set out in Option Two are therefore proposed as an alternative to Option One, and are designed to return BC to more direct government oversight.

Remove monopoly. To remove the monopoly granted to Authorized Persons for installing small-scale sewerage systems, the Coalition recommends that homeowners be allowed to complete these installations themselves, so long as they are the registered property owner and can demonstrate

sufficient competencies to design, construct and maintain their own system, as determined by a review and inspection by a government inspector.

Other legislative changes. There are a host of other elements that apply to pursuing this second option, which can be summarized by making the following changes to the SSR, the *Health Act*, or the legislation that governs the ASTTBC, APEGBC and BCOSSA, as the case may be:

- A government official undertake mandatory inspection and approval of each site-assessment and system plan prior to installation.
- Once installed, a government official be given the option of undertaking at least one site inspection before the system is put to use.
- Comprehensive audits should be conducted on a sufficient frequency and random basis to ensure the systems are installed and operating properly.
- Ensure that health authorities are legally authorized to investigate and issue orders to remedy potential health hazards prior to and after systems are installed.
- Amend the SSR so that pre-installation filing documents for small-scale sewerage systems contain sufficient information to allow for investigations, where necessary.
- Restore the pre-installation notice requirement and restore the right of appeal of neighbours and purchasers, in relation to decisions made concerning small-scale sewerage systems.

Additional Recommendations for Either Option

Whether the government pursues Option One or Option Two, it will be necessary for the ministries to take action on other specific issues that need to be addressed under either option.

Standard Practice Manual. To prevent problems from occurring and to ensure that minimum levels of public safety are set out in regulations, the Coalition recommends that the ministries consult with all stakeholders to identify the minimum standards that should be returned from the SDR to the SSR or what new ones should be added to the SSR. The *Health Act* should also be amended so that persons may apply to the Ministry for a variance from a prescriptive provision of the SSR.

Mandatory maintenance. To ensure on-site sewerage systems continue to perform properly and are well maintained, the Coalition recommends that the SSR be amended to either (a) remove the monopoly granted to Authorized Persons to maintain sewerage systems, or (b) make the Authorized Person, rather than the homeowner, legally responsible to ensure the system is maintained in accordance with the filed maintenance plan. Under either option, the SSR be further amended to require government to establish a system to monitor system installations and maintenance, that records of performed maintenance are filed, that random audits are performed to ensure maintenance is done, and that health authorities have clear authority to inspect or take corrective action if a health hazard is identified due to improper or no maintenance.

Compensating aggrieved homeowners. The *Applied Science Technologists and Technicians Act* should be amended so that it is mandatory for all ROWPs to carry sufficient professional liability insurance (as do Professional Engineers) to cover any claim that may be filed against them by an aggrieved homeowner. Both the ASTTBC and APEGBC should require their members to disclose to homeowners, in writing and before a service is provided, whether or not the Authorized Person's insurance will cover the service or product to be provided. Where the Authorized Person cannot compensate the aggrieved homeowner, a compensation fund established for this purpose should be used.

II. Introduction

They imagine they're the wave of the future, but it's only sewage flowing downhill.

—Lois McMaster Bujold

British Columbia's regulatory system for small-scale onsite sewage treatment is broken and in need of urgent repair. The regulatory scheme established in 2005 forms a remarkable case study in regulatory failure. A senior government lawyer has described it as the worst legislation ever written in British Columbia.

This is worrisome, because effective regulation of the 5,000–8,000 sewerage systems (commonly called septic systems) installed every year in BC—and approximately 300,000 existing sewerage systems—is essential to prevent environmental and property damage, as well as sewage-related disease and death.¹

The proper treatment and disposal of sewage is essential to human health. It is widely acknowledged that development of proper sanitation (sewage disposal and water treatment) and the invention of antibiotics were the main reasons why the average human lifespan increased by thirty-five years during the twentieth century. In fact, thirty out of those thirty-five additional years have been attributed to sanitation measures alone. A recent survey by the *British Medical Journal* named sanitation as the most important single medical advance since 1840.²

Sanitation measures are essential to public health because untreated sewage carries a dangerous cargo of infectious bacteria, viruses and parasites. If these pathogens find their way into nearby wells, shellfish beds, and bodies of water, they can cause a wide variety of serious infections and diseases—including gastroenteritis, salmonella infection, shigella, *E. coli* infection, giardiasis, hepatitis, pinworms, polio, toxoplasmosis, adenovirus, tapeworms rotavirus, asthma, and Weil's disease.³

Two recent drinking water disasters are instructive. In May 2000, bacteria from cattle manure tainted drinking water in Walkerton, Ontario, causing seven deaths and over 2,300 acute illnesses.⁴ One year later, cryptosporidium from human sewage found its way into the water supply at North Battleford, Saskatchewan, causing several thousand serious illnesses. It is pertinent to note that Judicial Inquiries into both incidents found that government deregulation played a key role in causing those disasters.⁵

More recently, government deregulation initiatives have been implicated in the recent Toronto meatpacking plant listeria outbreak that killed twenty Canadians last summer.⁶

In spite of the cautionary precedents of Walkerton and North Battleford, in 2005 the Province of British Columbia embarked upon a radical exercise in deregulation and privatization of onsite sewerage system regulation. Contrary to the aims of the progressive *Drinking Water Protection Act* implemented by the same government,⁷ and with virtually no public consultation, the Province established a new and less rigorous scheme for regulating sewerage systems across the Province. Many of these systems are located near wells, lakes and other sources of drinking water, as well as adjacent to shellfish beds and other critical areas where food is grown.

Experts are now warning that the number of poorly designed systems has skyrocketed under the new regime.⁸ Failures of new sewerage systems have already been reported. More troubling is the fact that sewerage systems are used for decades and do not usually fail in the first few years of use. It is likely that among the current installation of thousands of new systems that a number of faulty systems are being constructed that will constitute permanent infrastructure for extensive public health risk in the future.⁹

The new regulatory regime embodied in the Sewerage System Regulation (SSR) is notably deficient:

- Breaking from the practice of virtually every North American jurisdiction, the new BC regulatory system eliminated the conventional requirement for government officials to inspect any proposed site, evaluate it for suitability for the proposed system, and make a decision whether to issue a permit. Government health officials no longer visit the proposed site, evaluate plans or issue permits.
- Instead, the SSR gave a monopoly to professionals and private sector technicians to assess a site's suitability, design a proposed system, and then file plans that authorize the installation of the sewerage system. In practice, technicians with a business preference have become statutory gatekeepers, who also decide what systems can be legally built.
- To compound the problem, the law also gave the same technicians an exclusive right to *install* sewerage systems. There is an obvious potential for conflict of interest when the same person who has the power to "authorize" the system is the one who then sells that system to the homeowner. Not surprisingly, there have been allegations of unnecessarily expensive systems being sold. Certainly, the average price of systems has risen steeply, and the Union of BC Municipalities has passed a resolution of concern about that trend of rising costs.¹⁰ In addition, there have also been reports that systems are being "authorized" and sold where the land is clearly inappropriate for the sewerage system.
- The new law took away the ability of health officials to stop construction of proposed systems where the design plans raise the suspicion that a potential permanent health hazard could be created.
- The new regulation eliminated the requirement that public notice of new systems be posted so that neighbours would know when a sewerage system was proposed next door.
- The new regulation eliminated the right of neighbours and landowners to appeal a decision to install a system to the Environmental Appeal Board.
- To replace government oversight, the new system relied upon "self-regulation" by the associations of private sector technicians and of professional engineers. The integrity of the current regulatory system rests entirely upon the assumption that these associations will provide suitable training and monitoring of their members, and conduct fair and effective discipline procedures. However, the self-regulatory system established for the technicians is profoundly deficient.

- The associations do not inspect the work done by technicians and there is no regular monitoring of systems after they are installed.
 - The law failed to even give the associations the legal ability to investigate problematic systems on site. The associations lack the simple jurisdiction to enter private property to investigate a complaint about a member's faulty installation.
 - The established disciplinary system allows erring technicians to totally avoid discipline by simply resigning their membership in the association.
 - Complaint investigations and disciplinary proceedings against technicians are generally conducted in secrecy. While members of the public can easily access information about errant engineers, teachers, doctors, lawyers and restaurants that break health rules, they are deprived of such information about sewerage system technicians who have installed flawed systems.
- The regulation replaced the former clear and enforceable rules governing sewerage system installation with unenforceable, complex and vague guidelines.
 - Government failed to establish a compensation fund, and declined to legislate a requirement that practitioners carry insurance or be bonded. As a result, the costs of regulatory failure are being borne by innocent homeowners and neighbours.

It is no wonder that the new regulations have led to a steady and unremitting stream of complaints from homeowners, neighbours and the public regarding the operation of the sewerage regulatory regime. The problems have led to calls for reform by the Union of BC Municipalities¹¹, the Canadian Institute of Public Health Inspectors, the BC Public Health Association, the BC Shellfish Growers Association, and hundreds of unhappy homeowners.¹²

This Submission compares the previous regulatory regime to the new regime and analyzes problems with the new regime. It concludes with a comprehensive set of recommendations for reform. The scope of this reform requires that three ministries take coordinated action: the Ministry of Health Services, the Ministry Healthy Living and Sport, and the Ministry of Advanced Education.

III. Historical Background: The Formation of the SSR Regime

1. The Former Regime: The Sewage Disposal Regulation

Overview

The Sewerage System Regulation (“SSR”) was implemented on May 31, 2005 as part of an announced government-wide initiative to reduce red tape (government regulations) by thirty-three per cent and to reduce the civil service by a similar percentage. It was also designed to make land previously deemed inappropriate for onsite sewerage systems available for development and to encourage the sewerage industry to be innovative.¹³

Until the implementation of the SSR, the installation of small-scale, non-municipal sewage systems was governed by the Sewage Disposal Regulation (“SDR”) under the *Health Act*.¹⁴ The SDR utilized two main regulatory mechanisms to accomplish these ends:

- an easy step-by-step list of prescriptive regulations stipulating the various requirements for all newly installed systems; and
- a permitting process where Public Health Inspectors and Medical Health Officers scrutinized the design, construction, and installation of systems to ensure compliance with these regulations.¹⁵

Prescriptive Regulations

The SDR’s detailed standards applied to the construction, capacity, design, installation, location, absorption, and use of “conventional” sewage disposal systems—namely, septic tanks and package treatment plants.¹⁶ However, these detailed standards provided a high degree of flexibility.

A Medical Health Officer or Public Health Inspector could issue a permit even where these standards were not met—if it was impossible for the applicant to comply with the standards and if the permit provided appropriate conditions to protect public health.¹⁷ This allowed officials to issue variances to account for local conditions, allowing permits to depart from requirements related to soil depth, percolation rates, maximum slope, and trench design.¹⁸ Unlike the new regulation, it contained mandatory setback requirements from wells, surface and drinking water, etc. that were only changeable in tightly prescribed circumstances.¹⁹

Permitting

Prior to constructing an on-site sewage disposal system under the SDR, a Public Health Inspector or Medical Health Officer had to first inspect the site, examine the system design provided, and evaluate the site’s suitability for the proposed system.²⁰ If the proposed site-assessment and system design met SDR regulations, a “Permit to Construct” would be issued specifying the conditions according to which the system must be constructed.²¹

Public Notice

Within three days of receiving the required permit, the holder was required to post notice of the permit in a conspicuous place on the lot for a period of thirty days, indicating the location of the proposed system and the conditions of the permit.²²

Written Authorization for Use After Construction

After installation, section 4(1) required the system user to obtain final written authorization from a Medical Health Officer or Public Health Inspector prior to use.²³ Although this section only mandated “written authorization,” due to court cases in the construction and building inspection sectors, Public Health Inspectors usually conducted an inspection prior to issuing this written approval as well.²⁴

Right of Appeal

Section 8(4) of the *Health Act* gave aggrieved parties (e.g., landowners, neighbours) a right to appeal permitting decisions (e.g., an issuance or refusal) to the Environmental Appeal Board.²⁵

Government Ability to Prevent the Installation of a Proposed Faulty System

As mentioned, if the planned system was faulty, health officials had the power to refuse to grant a permit. Even after construction, health officials could prevent the use of a suspected faulty system by refusing to give authorization for use. The SSR has substantially removed this ability of government to proactively halt the installation of a proposed system (or a system under construction) even when there is evidence that the new system will be permanently flawed.

2. Why the SSR Replaced the SDR

The regulation of BC onsite sewage treatment has a chequered history. A report by a government task force in 1974 noted the inability to account for cumulative effects in site assessments.²⁶ A 1984 Okanagan Basin Water Board report found that existing regulations were not strict enough, and called for more stringent, province-wide standards for sewage disposal within 300 feet of water bodies.²⁷ A 1989 Ombudsman Report identified a number of problems with permitting procedures, lack of transparent and consistent policies, insufficient training of overworked health officials, and lack of bonding for installers. That Ombudsman Report called for the institution of the appeal process to the Environmental Appeal Board that was later legislated under the SDR.²⁸

In 2005, the SDR was replaced by the SSR regulatory regime as part of a government-wide deregulation project. The BC shift away from intensive government regulation of industry practices was a radical extension of a more gradual shift away from “command and control” regulation that has been taking place across the globe since the mid-1970s.²⁹ The latter regulatory model aimed to achieve its goals by governing *the behaviours or practices* of industry actors. Some criticized the command and control regulation as being administratively cumbersome, costly, and ineffective. By contrast, the newer performance-based regulatory model sets targets or outcomes for industry to meet without specifying exactly *how* industry must meet them. This model is intended to increase industry flexibility, enhance market innovation and investment, and reduce the public cost of regulation by cutting bureaucratic “red tape.”

In 2001, the Government of British Columbia committed to goals of reducing the quantity of industry regulation by thirty-three per cent and reducing the civil service proportionately.³⁰ In addition, some government officials argued that the one-size-fits-all rules of the SDR were too inflexible to effectively regulate sewage disposal in BC, given the diverse geographical conditions (soil types, slopes, rainfall) across the province.³¹ The Ministry of Health came to believe that the SDR’s prescriptive rules, such as minimum setbacks from water sources, prohibited the use of innovative treatments designed to operate safely within smaller areas—thus, effectively stifling the development of rural real estate.³² Finally,

Medical Health Officers believed that administering the government permitting process was too costly; the \$250 permit fee did not cover the cost of the audits and evaluations conducted by health authorities.³³ Ironically, one goal of reform was to remove Public Health Inspectors from onsite sewage duties, so as to free up time for drinking water systems.

All of these factors contributed to the creation of the SSR – a radical initiative in privatization and deregulation that had not been tried previously in Canada or in the United States.³⁴ The SSR was implemented without public consultation.

To date, the government has refused Coalition requests for information that would explain why the Ministry chose to design the particular “self-regulatory” model embodied in the SSR – and what alternative models were also considered, if any.

IV. The Sewerage System Regulation

Overall Structure of the New Regulation

When the SSR was implemented, it altered the previous regulatory regime in two fundamental ways—both of which clearly reflect recent trend towards industry-led and results-based regulation.

- First, the SSR removed the inspection and approval process previously carried out by local Health Authorities and transferred the responsibility for ensuring the safety of onsite sewerage systems to Authorized Persons (private sector technicians or professionals) that construct and maintain those systems.
- Second, the SSR abandoned most of the prescriptive rules and standards found in the SDR. In their place, the Ministry of Health Services published a Standard Practice Manual (SPM) containing over 300 pages of detailed guidelines for system planning, installation, and maintenance. The SSR simply requires an Authorized Person to certify that the system is consistent with “standard practice”—and states the Authorized Person “may have regard” to the Manual to determine what standard practice is.³⁵

This new regulatory regime will be examined in more detail below.

Authorized Persons – Registration and Qualifications

Under the SSR, all sewerage system planning, installation, and maintenance must be carried out by (or under the supervision of) an “Authorized Person,” which the SSR defines as either a “registered practitioner” or a “professional.” Either Registered Practitioners or Professionals can deal with septic and package treatment systems, but a Professional must be involved in the planning, installation or maintenance of a more complex Type 3 system. A Professional can supervise a homeowner who wishes to plan, construct or maintain his own system, but a Registered Practitioner does not have this ability to supervise.

Registered Onsite Wastewater Practitioners

In order to become a “Registered Practitioner,” the SSR requires that a person:

- be a high school graduate;
- have completed a training course in onsite sewage treatment administered by the British Columbia OnSite Sewage Association (BCOSSA) or otherwise demonstrates their competence to BCOSSA;³⁶ and
- be certified by the Applied Science Technologists and Technicians of British Columbia (ASTTBC).³⁷

BCOSSA offers training courses in four practice areas of wastewater treatment: planning, installation, maintenance, or inspection. These courses take little time:

- The Planner course takes 15 days of BCOSSA training;³⁸
- The Private Inspector course takes 15 days (residential) or 17 (commercial);³⁹
- The Maintenance Provider course takes 10 (residential) or 11 (commercial) days;⁴⁰
- The Installer course takes just 7 days.⁴¹

The completion of at least one of these courses is the main precondition to be certified by the ASTTBC. Applicants must also complete a professional conduct exam and pay registration fees.⁴²

ASTTBC has established additional requirements for someone who has completed the BCOSSA training program to then become certified. Minimum periods of time (one to five years, depending on the type of certification), coupled with experience with a minimum number of systems, are set out in the Association's on-site wastewater registration experiential requirements. It therefore appears that there are two bodies that are involved in setting the competency requirements for Registered Practitioners. BCOSSA sets the training program, but ASTTBC adds additional requirements for experience. Some have complained that this has led to a severe shortage of Practitioners, which in turn leads to less competition and higher prices for consumers.

Once certified, the ASTTBC labels its wastewater practitioners Registered Onsite Wastewater Professionals ("ROWPs"). ROWPs are the only persons who qualify as Registered Practitioners under the SSR. For clarity, we will use the term ROWP, rather than Registered Practitioner from this point on (these terms refer to the same group of persons).

There are four classes of ROWP certification, which correspond to the four practice areas for which BCOSSA training courses are offered – as planners, inspectors, maintenance and installers.⁴³ ROWPs can be certified in one or more practice areas.⁴⁴ The SSR authorizes a certificate holder to conduct services in any and all of the practice areas in which they have been certified. But under ASTTBC policy, a ROWP that is certified only as an Installer can only install Type 1 and 2 systems, but may not plan, maintain, or inspect them. However, a ROWP that has completed the BCOSSA Planner and Installer courses, and is certified as both a Planner and an Installer, can both *plan* (e.g. assess sites and design systems) and *install* that same system.

Neither the SSR nor ASTTBC require ROWPs to possess professional liability insurance. Nor are ROWPs obligated to be bonded or to provide warranties for their services or products.⁴⁵

Professional Engineers

Currently, to qualify as a Professional SSR s. 7(3) essentially requires a person to be registered as a member of the Association of Professional Engineers and Geoscientists of BC (APEGBC).⁴⁶

To become a registered member of the APEGBC, a person must have completed:

- a Bachelors Degree in Engineering (or four years of equivalent education);
- four years of field experience (at least one of which under the supervision of a Professional Engineer); and
- successfully completed a professional conduct examination⁴⁷

APEGBC bylaws require all registered members to acquire professional liability insurance. Further, clients must be informed at the outset whether this insurance applies to the proposed services.⁴⁸

Pre-Installation

Planning: Site Assessment and System Design

For small sewerage systems it is no longer necessary to obtain permits approving site assessments or system designs. Instead, s. 6 of the SSR requires homeowners to retain an Authorized Person (i.e., either a ROWP or Professional) to assess the lot's capacity for onsite sewage treatment and, if the Authorized Person determines that the site is acceptable for a particular treatment method, design the system.

Once the lot is assessed and the system designed, the SSR requires the Authorized Person to file these plans, specifications and other information with the Health Authority—and certify in writing that they are consistent with standard practice.⁴⁹

As noted above, consistency with “standard practice” does not necessarily entail actual adherence to the Standard Practice Manual (SPM) guidelines. The SSR defines “standard practice” as “any method... that will ensure that the sewerage system does not cause, or contribute to, a health hazard.”⁵⁰ The SSR states only that APs “may have regard to” the SPM when determining whether plans are consistent with standard practice.⁵¹

ASTTBC policy requires ROWPs to adhere to the SPM guidelines. However, even the critical setbacks table of the SPM (which defines setbacks from wells) is flagged in bold to indicate that it is only a recommendation; consequently a ROWP could literally be following the SPM by merely *taking into account* its recommendations. The APEGBC does not require Professionals to adhere to the SPM guidelines.

Inspections and Health Hazards

Under the SSR, Health Authorities have not been granted authority to investigate potential health hazards at the file submission stage. They have been instructed to simply “accept” filings as long as the basic information required by SSR s. 8 is contained on the filings—even if the information raises questions about the safety of the installation. (See the Ministry 2007 SSR Interpretation Papers, prepared in conjunction with the Ministry of Attorney General Legal Counsel). One Public Health Inspector described the legal advice the Authority had received was that Public Health Inspectors must basically “ignore everything contained in a filing other than having every box on the filing form filled in.”⁵²

Health Authorities currently struggle with having no authority to review and reject plans and filings for lacking technical merit—especially when they know that the consequences of system installation may result in a long-term health hazard. Stripped of jurisdiction, they cannot halt installation of suspect proposals as long as the filing documents contain all the required statutory information.

For example, the Vancouver Island Health Authority sent the following letter in response to a complaint that a pre-installation filing disclosed misclassified soil types, posing a risk of contamination to a nearby well:

While I sympathize with and appreciate your situation, the Vancouver Island Health Authority does not have the authority to cancel or suspend a filing on the basis of an apparent technical discrepancy.

...

Health Authorities conduct an administrative review of filings to ensure certain required information is provided. Health Authorities do not, however, have the legal authority to review the technical correctness of filings under the Sewerage System Regulation. The Provincial Government's de-regulation process has removed much responsibility and authority regarding on-site sewage disposal from the Health Authority and transferred it to private industry.⁵³

The implications of this interpretation of the Regulation are spelled out in another letter from the Vancouver Island Health Authority:

Further, in order for a sewerage system to be considered as causing or contributing to a health hazard the system must first be installed and in use. Since neither of these things have occurred, no health hazard exists at this time on the property in question.⁵⁴

The SSR removes the former ability of public health officials to take proactive action to prevent the installation of a flawed sewerage system that has the potential to become a health problem for decades to come. It effectively removes the ability of public health officials to take action until there is a problem that causes or could cause a significant health problem, or death.

Construction/Installation

Filing

After the plans and specifications are filed, an Authorized Person is free to proceed to construct and install the sewerage system.⁵⁵ Within 30 days of construction, the Authorized Person must provide the owner with a *maintenance plan* for the system (and with copies of the plans filed with the Health Authority prior to construction), and must file with the Health Authority a signed letter certifying that:

- the system was constructed in accordance with “standard practice;”
- the system was constructed “substantially in accordance” with the plans and specifications filed with the Health Authority prior to construction;
- if operated according to the maintenance plan, the system will not contribute to or cause a health hazard.

This filing must also include a plan of the system *as it was built* and a copy of the maintenance plan.⁵⁶

Public Notice

Unlike the previous legislation, neither the Authorized Person nor the homeowner is now required to post public notice of any kind, either before or after system design and installation. Neighbours are therefore no longer legally entitled to being advised that a system is being built next door.

Right to Appeal

The right of aggrieved parties to appeal decisions regarding design or installation has for the most part been nullified by the SSR’s removal of the permitting stage in system installation.⁵⁷ Thus, neighbours have generally lost the right to appeal the installation of systems—a right that the Ombudsman had successfully lobbied for in 1989.

While neighbours have lost their rights of appeal, for landowners installing systems the SSR essentially replaces the public appeal process with a market-based practice of “forum shopping.” Although a landowner can no longer appeal an unfavourable site assessment, under the SSR, an owner may reject the site assessment or system plan proposed by an Authorized Person and shop around until they obtain the opinion they are looking for (from another Authorized Person).⁵⁸ The SSR offers no ability to ensure adherence to one design or filing per lot.

Offences

The offence provisions of the SSR are quite limited—because most of the disciplinary function has been handed to the respective professional organizations overseeing ROWPS and Professionals. However, the Act does provide for a few offences related to the SSR, including:

- “knowingly” making false or inaccurate statements in filings or inspections;
- failing to comply with filing requirements or inspection orders;
- operating a holding tank without a permit, or a sewerage systems without proper certification; and
- constructing or maintaining a sewerage system that causes or contributes to a health hazard.⁵⁹

Complaint and Disciplinary Procedures

In lieu of previous government permitting and oversight requirements, reliance is now placed on Authorized Persons and Professionals to make the decisions that used to be made by government. But what accountability mechanism is there to ensure that those vital decisions are competent and ethical?

The new regime relies almost entirely on the industry “professional” associations to ensure the integrity of the whole regulatory regime—to discipline those members that file and construct improper systems. The Association of Professional Engineers and Geoscientists of BC has a relatively rigorous disciplinary process. However, grave questions arise about the capacity for the Association of the Applied Science Technologists and Technicians of BC (ASTTBC) under the current regime.

ASTTBC (ROWPs)

The ASTTBC Act gives the Council of the Association broad regulatory authority over its members, including the power to make regulations:

18. (d) governing the conduct of members of the association in their practice by prescribing a code of ethics, rules of conduct and standards of practice, and by providing for the suspension, expulsion or other penalty for misconduct, incapacity or incompetence;

The ASTTBC Council has approved amendments to its Regulation which created the Practice Review Board (PRB) and refined ASTTBC complaint review procedures. These procedures are outlined below.

Mandate

The PRB consists of a Chair and at least five ASTTBC members, appointed by the ASTTBC Council. Council is authorized to appoint a lay member and a maximum of two senior members of other professional associations to the PRB.⁶⁰ However, there are currently no lay members on the PRB (or its Discipline

Committee).⁶¹ The PRB is tasked with assisting ASTTBC to fulfil its statutory mandate, which includes the objective:

to regulate standards of training and practice of, and for, its members and to protect the interests of the public,

To this end, the PRB oversees “all matters relating to the practice of its members/registrants including competency, moral character and professional conduct and to that end establishes and enforces standards.”⁶² All members are obligated by the *ASTTBC Act* to adhere to the organization’s Code of Ethics. In addition, ASTTBC policy requires ROWPs to follow the Standard Practice Manual (“SPM”).

Complaint Procedure

The Registrar or Designate functions as the Secretary to the PRB, providing staff support to oversee the handling complaints and communicating with all the parties involved in the complaint process.⁶³

Complaints regarding a violation of the Code or SPM can be submitted to the ASTTBC.⁶⁴ Once received by ASTTBC, a copy of the complaint is then sent to the respondent/member, who is given fourteen days to comment.⁶⁵ PRB policy is to allow the complainant an opportunity to respond to these comments as well.⁶⁶

The Registrar or Designate may dismiss complaints that are in their judgment without merit. The ASTTBC is not required by regulation or policy to explain the reasons for such dismissals in writing.⁶⁷

Investigations

In order to determine whether an investigation is necessary, the Registrar or Designate may conduct interviews with the complainant or respondent. Alternatively, the Registrar or Designate may refuse to conduct an interview, even when the complainant has requested one. A preliminary investigation into any relevant matter may be initiated by either the Registrar (or Designate) or the Chair in consultation with the Registrar (or Designate).⁶⁸ The Registrar will file an investigation report with the PRB, which will contain findings or recommendations on the matter.

The PRB Powers

The Regulation states that the PRB may, in its sole discretion:

- A) dismiss the complaint;
- B) issue a letter of censure to the member or registrant;
- C) enter into a Stipulated Order with the member or registrant;
- D) cause formal charges to be issued to the member or registrant and appoint a Discipline Committee to adjudicate the charges by means of a hearing; or
- E) take any other action that it deems advisable in the circumstances.⁶⁹

Stipulated Order

The PRB may invite the member to participate in a Stipulated Order process rather than issuing formal charges or a censuring the member. Under this process, the Registrar negotiates a penalty for the member’s misconduct with the member himself. These penalties may range from requiring the member to rebuild a faulty system; to undergo further training; to have future work supervised by another

Authorized Person; or simply to write a letter stating an intent to comply with applicable standards in the future. The penalty prescribed in a Stipulated Order must be approved by the PRB.

A record of Stipulated Orders is kept on file, and the terms of the Stipulated Order are sent to the complainant. However, public disclosure of a Stipulated Order is not required by Regulation or policy.

Discipline Committee Hearings

ASTTBC Disciplinary hearings are closed to the public.⁷⁰ Even the complainant is not permitted to attend the hearing (the Registrar acts on his or her behalf). The Regulation requires that the hearing be recorded only “when it is reasonable to do so...”⁷¹ If judgment is rendered against the respondent, the Discipline Committee may issue a broad array of penalties including a reprimand, a fine, a certification of suspension or cancellation, the imposition of conditions on the member’s certification (including future monitoring or education requirements), and hearing costs.⁷²

Public Reporting

According to the ASTTBC website:

It is the policy of ASTTBC to only report on the specific details of cases (names, places and dates etc...) when the case has resulted in censure as a result of a Disciplinary Hearing or the PRB has determined it is in the public interest to have such information provided.⁷³

To date, the PRB has not reported the specific details of a single Stipulated Order or disciplinary action ordered by the PRB.⁷⁴ Moreover, only one published case has gone to the Disciplinary Committee, and it was successfully appealed by the member (the details were not therefore reported).⁷⁵

Appeal

A member may appeal a PRB or Discipline Committee judgment against them to the ASTTBC Council, who appoints an Appeal Committee.⁷⁶ The Regulation contains no provisions for either complainants or the Registrar to appeal decisions of the PRB, Discipline Committee, or Appeal Committee. Only a disciplined member may appeal.

*APEGBC (Professional Engineers)*⁷⁷

The *Engineers and Geoscientists Act* (the “*EGA Act*”) authorizes APEGBC to regulate the practice of professional engineering and professional geosciences in BC for the protection of the public. In order to meet its mandate, APEGBC establishes, monitors and enforces standards of conduct and a Code of Ethics for its members. The *EGA Act* provides the legal authority to investigate allegations that a member has violated those standards and for disciplinary action where warranted.⁷⁸ APEGBC is governed by an eighteen member Council, four of whom are non-member public representatives appointed by government.⁷⁹

Preliminary Complaint Investigation

APEGBC’s preliminary complaint investigation procedure is similar to ASTTBC’s. Complaints are reviewed by a Designated Member⁸⁰ and Associate Director of Regulatory Compliance (“Associate Director”). Complaints can be dismissed at this stage if they lack merit, though generally, this would only be the case if there were no apparent jurisdiction or violation of the *EGA Act* or Regulations. If the complaint is

not dismissed, a copy is sent to the member for comment, and the complainant is given an opportunity to respond. Further information can be collected if necessary.

At this point, the Designated Member may do one of the following:

- determine that no further investigation is required, and inform the member and complainant in writing of the reasons; or
- send a report to the Investigation Committee, recommending further investigation.

Investigation

The Investigation Committee⁸¹ can then investigate further, request information from the member, the complainant, or others. Unlike ASTTBC's process, APEGBC's legislation makes it an offence for the member to refuse to provide requested information in a timely manner. Once this investigation is complete, the Investigation Committee will decide whether the complaint should be dismissed. If the Investigation Committee determines that no further inquiry is necessary, it will inform the member and complainant in writing giving reasons why a formal inquiry will not be held.

Notice of Inquiry

If the Investigation Committee takes the view that there are reasonable and probable grounds to believe that the member has breached the Act, Bylaws, or Code of Ethics, or has demonstrated incompetence, negligence or unprofessional conduct, the Committee forwards the file to the Association's lawyer. If the lawyer agrees that there are reasonable and probable grounds for an alleged breach, the lawyer drafts a Notice of Inquiry, which sets out the allegations and the date for a hearing before a panel of the Discipline Committee.⁸²

The Disciplinary Committee is comprised of five members appointed by Council.⁸³ The Act authorizes the Disciplinary Committee to suspend a member's licence prior to holding a hearing, where delay could prejudice the public interest.⁸⁴

Stipulated Order

Prior to the hearing, the Discipline Committee offers the member an opportunity to resolve the complaint voluntarily and without a hearing by agreeing to a Stipulated Order. However, unlike the ASTTBC process, this Stipulated Order is drafted by the Discipline Committee and its terms are non-negotiable. If the member refuses it, he or she must go to a Disciplinary hearing.

In stark contrast to the ASTTBC's "normal practice", Stipulated Orders issued against APEGBC members are reported to the public. If the member accepts the order, a signed copy of the Stipulated Order is published by the Association on its website. Notice of the Stipulated Order is distributed to municipalities throughout the Province, to engineering and geoscience regulators across Canada, and is published in the Association's magazine, on its website, and in local newspapers.⁸⁵

Disciplinary Hearings

If the Stipulated Order is rejected, a disciplinary hearing is held before a panel of at least three members of the Disciplinary Committee. Unlike ASTTBC's hearings, APEGBC hearings generally follow court procedures. The hearing is open to the public and a court reporter transcribes the proceedings. If the member is found responsible for any of the allegations, the panel has broad remedial powers to reprimand or impose conditions on the member, to suspend or revoke membership, or to issue fines (up

to \$25,000) and award costs.⁸⁶ Disciplinary decisions are published and posted on the Association website and across Canada, as with Stipulated Orders.⁸⁷

Notice and Appeal

The member may appeal the decision of the disciplinary panel to BC Supreme Court. There is no statutory appeal from the decision of the Designated Member or the Investigation Committee to close a file.⁸⁸

Jurisdiction

Unlike the ASTTBC, APEGBC's enabling legislation grants it authority to discipline members who, at the time of hearing, are no longer members of the organization.⁸⁹ It has exercised this jurisdiction. For example, in an inquiry and hearing against Ross Morton in 2007, the Disciplinary Committee of APEGBC issued a \$5,000 fine and ordered Ross to pay an additional \$5,680 for the costs of the investigation and hearing, even though Ross was no longer a member of the organization.⁹⁰

A Summary Comparison of Sewerage Regulations

Former Regime: Sewage Disposal Regulation	New Regime: Sewerage System Regulation
Health Inspectors or Medical Health Officers inspected and assessed site for suitability of an installation.	No government or independent, third party site inspection or assessments required.
The proposed site had to meet clear and specific legislated requirements (e.g., 100 feet setbacks from wells and lakes).	Standards are vague, cumbersome and unenforceable. A private industry "Authorized Person" can reduce setbacks and depart from the recommended guidelines.
Health Authorities are the statutory gatekeepers, deciding what systems can be built.	Private sector practitioners and professionals are the statutory gatekeepers, creating the most industry-reliant onsite sewage disposal law in Canada.
The person who authorized the plan is not allowed to sell system.	The same person who gives the system legal status can also sell the system.
Health Authorities could stop faulty proposed systems from being constructed.	Health Authorities cannot stop faulty designs from being constructed—they must accept inadequately designed system plans without evaluation.
Homeowners could plan and construct their own system, providing they obtained a permit and followed the code. They were subject to government inspection.	Homeowners must hire a ROWP, who holds a legal monopoly to plan and construct systems. Or homeowners may plan and construct their own systems if supervised by a Professional Engineer.
Required to post notice of the installation for 30 days in a conspicuous spot on the site.	No public notice required.
Person aggrieved by issuance of system permit may appeal ruling to Environmental Appeal Board.	No appeal allowed.
Health Inspector or Medical Health Officer had to provide final written authorization before the system could be used (inspections usually conducted).	No final government authorization prior to using system, and no final government inspections. There is no third party oversight.
Health Inspectors actively involved in inspections and oversight.	No independent third party routinely inspects or monitors the work of Authorized Persons.
A minimum conventional septic tank is required.	A drywell or car body could be used as a septic tank or discharge area, so long as an Authorized Person deemed it consistent with vague criteria.
Enforcement: Proactive, rather than reactive.	Enforcement: Reactive, rather than proactive.

V. Specific Issues of Concern with SSR

The regulatory regime created through the SSR is a matter of grave concern to growing numbers of British Columbians. The Union of British Columbia Municipalities reports that it receives approximately two letters of complaint per week on this issue alone. It is believed that the Ministries of Health receive at least one complaint each week. A recent ASTTBC report confirms the seriousness of the problem:

Currently the PRB's most challenging group of practitioners, regarding the number and severity of complaints, are our Registered Onsite Wastewater Practitioners (ROWP). The number of complaint case files has more than tripled since the initial reporting period ending in August 2006.⁹¹

In fact, ROWPs are *by far* the leading source of complaints to the Association. There are currently 474 Registered Onsite Wastewater Providers certified by ASTTBC. They represent only five per cent of the ASTTBC's 9,360 total registered members. However, nine out of twenty-five (36%) complaints resolved between January 2005 and August 2006 were against ROWPs. That number rose to nineteen of twenty-seven (70.3%) the following year (August 16, 2006 to September 27, 2007).⁹² This is a shocking number.⁹³ **This means that just five per cent of ASTTBC's members were the subject of over seventy per cent of complaints** during the last recorded period.

Clearly, there is a problem with the current regulatory regime for ROWPs. The disproportionate number of complaints against ROWPs is a sign of a deeply flawed regulatory regime.

Outlined below is a discussion of some of the most pressing concerns about the SSR and the regulatory regime for onsite sewerage more generally. Examples of the problems are provided by reference to specific case studies that are summarized in more detail in Chapter VI, below.

1. The Lack of Public Oversight

An ounce of prevention is worth a pound of cure.

—Benjamin Franklin

1.1 *Removal of Public Oversight Handcuffs Health Authorities, Jeopardizes Public Health*

The deregulation of BC's sewerage system industry has put the province in a class of its own. In fact, the removal of the pre-installation permitting and post-installation authorization requirements made BC the only jurisdiction in North America where an onsite sewage system can be installed and put to use without any government inspection or approval whatsoever.⁹⁴

Not every other North American regime requires *pre-installation* inspections. In many jurisdictions government staff will first review proposed system plans, and then (if these plans pass muster), conduct an on-site inspection after the system has been installed but before it is covered up. But in all cases except for BC, a regulatory authority must visit the site to inspect the system before it is put into use.⁹⁵ This step no longer exists in BC.

Every other North American regime requires inspections by either government employees or government contractors.⁹⁶ Unlike private ROWPs hired by homeowners, these government personnel do not have a financial incentive to approve applications for new systems that they may be selling.

As noted above, the SSR has removed Health Authorities jurisdiction to review the technical merits of filed system plans as long as those filings meet the general form criteria set out in s. 8 of the SSR – as long as all the proper boxes on the form are filled in, as one Public Health Inspector put it. (See the Ministry 2007 SSR Interpretation Papers as prepared in conjunction with the Ministry of Attorney General Legal Counsel.) Often the filing documents will not contain sufficiently detailed information for the Health Inspector to judge whether an installed system actually poses a health risk.⁹⁷ But even where the information filed raises the suspicion that a potential health hazard could be created, Health Inspectors must simply accept plans—they cannot refuse to accept the plans based on their best evaluation of what has been filed.⁹⁸

In the place of the public oversight formerly provided by government permits and approvals, the SSR gave professional associations (APEGBC and ASTTBC) the responsibility to protect the public by ensuring that their members comply with ethical and practice standards. However, these accountability mechanisms are failing the public. In particular, **there is virtually no oversight or monitoring of the work conducted by their members under the SSR.** This will be discussed in more detail below. But the important point is that neither ASTTBC nor APEGBC conduct on-site audits of the site assessments, designs, or installations done by their members—nor do they require any form of ongoing monitoring of installed systems.

This lack of independent and proactive oversight undermines industry accountability. Since independent and objective government assessments have been removed, the public must now rely entirely on the professional integrity and skill of practitioners—who may not get paid if they won't "file" a plan and construct a system on the lot.

Practitioners may have as little as fifteen days of course training, plus relevant experience. In contrast, highly trained Health Officials used to bring not only their own professional expertise to evaluating systems, but also consulted with public health engineers, soil specialists, hydrogeologists, agrologists, and fisheries experts. And they did not have a personal financial incentive that might skew their judgments.

Though the SSR may have reduced the immediate expense of the public oversight that other North American jurisdictions deem necessary, the removal of oversight comes at a great cost. By holding off evaluation of systems until problems arise and complaints are filed, the present regime virtually guarantees an increase in poorly designed systems and, ultimately, system failures.

The removal of mandatory public inspection simply shifts costs. It places increased financial costs and liabilities onto system purchasers and neighbours (see discussion below). It increases environmental and public health costs. And system failure on a broad scale in rural areas can require future construction of community sewers—which involves massive public and private expenditures.⁹⁹

For case studies that illustrate these problems, see Case Studies #1 and #2 in Chapter VI, below.

1.2 Removal of public notice provisions puts neighbours at risk

Unlike the previous legislation, the SSR does not require that a public notice of the proposed sewerage system be posted on the land. This lack of notice leaves neighbours in the dark about potential health and safety risks. A faulty assessment, design, installation, or repair of an onsite sewerage system may contaminate neighbours' wells and otherwise directly impinge the personal and proprietary rights of owners of adjacent lots. They have a right to know that such activities are being planned next door.

Clearly, the failure to require public notice may prevent such individuals from taking precautionary and mitigative measures (e.g., obtaining alternative drinking water). Without proper notice, adjacent landowners may be deprived of the knowledge necessary to identify and report potential health hazards before they are realized. In addition, lack of notice may prevent the neighbour from protecting himself by purchasing additional insurance, suing or taking other action.

For a case study that illustrates this problem, see Case Study #2 in Chapter VI, below.

Many jurisdictions require notice to be posted prior to construction and use. For example, the Minnesota Model Code Framework for Performance Management of Onsite/Cluster Wastewater Systems suggests the following provision:

The Construction Permit shall be posted on the property in such a location and manner so that the permit is visible and available for inspection until construction is completed and certified by the designer or Regulatory Authority.¹⁰⁰

1.3 Removal of appeal provisions prevents neighbours from proactively protecting their health

The notice provisions in the old regulation also provided neighbours, and other potentially aggrieved parties, with an indication of their right to appeal a permitting decision within thirty days to the Environmental Appeal Board. However, the removal of the SDR permitting requirement has stripped system owners and neighbours of their right to appeal proposed systems. This leaves system purchasers and owners of adjacent lots at the mercy of Authorized Persons (e.g., ROWPs), who may have as little as seven days of training and whose plans may be subject to virtually no public oversight.¹⁰¹

For a case study that illustrates this problem, see Case Study #2 in Chapter VI, below.

1.4 Conflict of Interest created by dual functions

Certain types of properties and some types of soil are inappropriate for sewerage systems. Site assessments are needed to carefully analyze environmental factors to determine whether a property is suitable for an onsite sewerage system, and if so, which type. Formerly, a neutral and objective Public Health Inspector was required to evaluate the site and approve proposed plans prior to installation. Government officials, acting in the public interest, made the decision. But the removal of Public Health Inspectors from this role places Authorized Persons who plan and install systems (e.g., ROWPs) in an institutionalized conflict of interest situation.

Under the new legislation, Authorized Persons replace Public Health Inspectors as the statutory "gatekeepers" who decide what systems can legally be installed. No small sewerage system can be installed unless an Authorized Person has "filed" the necessary plans.¹⁰² However, Authorized Persons

that officially “file” such plans **and** also sell installation services do not necessarily have an undivided loyalty to the public interest. If they are selling installations (a common situation), they have a direct financial incentive to give clients assessments and designs that will lead to installations (which gives the Authorized Person another contract)—rather than telling clients that they cannot file a plan for the proposed site because it is inappropriate for a system. When an Authorized Person is faced with the choice of:

- making a judgment about the propriety of a system that will give them a contract; and
- making a judgment (e.g., this lot is inappropriate) that would deprive them of a contract,

public interest concerns may not be paramount. The incentive to make a decision that is more profitable may well skew decisions made by Authorized Persons.

The US-Canadian National Onsite Wastewater Recycling Association has written a “Model Code” to provide a template for onsite sewerage regulation. The Code utilizes performance-based standards, and, consequently, contains few outright prohibitions. However, on the issue of conflicts of interest, the authors of the Code drew a bright line between the roles of regulators and non-regulators. The Code prohibits persons that act as regulators—i.e. inspectors, plan reviewers, or monitors—from performing the roles of non-regulators—site evaluation, design, or construction.¹⁰³

2. Practice Standards

2.1 *The Removal of Legally Enforceable Standards*

When government switched from a government-oversight model to zero oversight, one would have thought they would have at least provided a code for industry to follow. But that has not happened. Unlike the electrical or plumbing trades that must follow a “code,” the sewerage industry itself now determines its own code of “standard practice” on a site by site basis.

The SSR removed the SDR’s prescriptive rules from the Regulations. In their stead, the SSR:

- requires Authorized Persons to certify that the system is consistent with “standard practice,” which is defined as “any method... that will ensure that the sewerage system does not cause, or contribute to, a health hazard;” and
- states that, in order to determine whether his system is consistent with “standard practice,” the Authorized Person “may have regard” to the Standard Practice Manual, which includes the prescriptive standards that used to actually be Regulations, plus many other prescriptive standards.¹⁰⁴

However, the SSR does not mandate adherence to the Standard Practice Manual per se. An Authorized Person “may have regard” to the Manual provisions without actually following them. Thus, the Manual standards are not necessarily enforceable. For this reason, the BCOSSA training programs also teaches that the SPM is a guideline.

In addition, the SSR allows “standard practice” to encompass virtually *any method* which does not result in a health hazard. Through this definition, the SSR now allows substandard systems such as the

previously illegal drywells, or using a buried car body as a septic tank, treatment method or discharge area pit. With no qualitative or quantitative criteria in the SSR to measure whether such performance is likely to be achieved, the SSR does not create real or enforceable standards, as the standard is purely “performance based.” Instead, it forces regulators to wait to see if the system “performs” or not. Unfortunately, if the system does not perform, it may well be too late. Subsurface leakage can pollute lakes and streams, and can be almost impossible to pinpoint and remediate if multiple systems are involved.

The lack of clearly enforceable regulations effectively bars proactive inspection—even where regulators have evidence that proposed systems pose serious health risks. This is because without clear regulatory standards, public inspectors may fear that their evaluation of the safety of a system will be subject to a legal challenge invoking the vague term “standard practice.”¹⁰⁵

Many Authorized Persons would actually prefer clear goalposts and standards that must be followed. However, that has not been provided.

Industry representatives are quick to point out that prescriptive standards such as minimum setbacks from wells and lakes will not, alone, ensure that installed systems are well designed or safe. But without the ability to measure and monitor performance, performance-based standards by themselves can simply amount to deregulation and loss of accountability.

2.2 *Standard Practice Manual is too Complex*

A recent article written by the ASTTBC Registrar, John Shortreid, admits that the ASTTBC has received a large number of complaints regarding the conduct of ROWPs and concerning non-compliance with the SPM, specifically:

The majority of complaint cases involve situations where the Ministry of Health's Standard Practice Manual (SPM) has not been adhered to.¹⁰⁶

Ironically, the transition from the prescriptive SDR to the new results-based regulatory system has resulted in an overly complex set of practice standards. The SPM contains a host of detailed and complex guidelines that ROWPs have found it difficult to comply with. With over 300 pages of guidelines, it has proven an unwieldy document.

The language of the Manual states that the requirements in the Manual can be varied. Authorized Persons can depart from the standards in the SPM (including setbacks in some cases) and still say they are complying.

Finally, it is also unclear what penalties flow, if any, for the violation of the various provisions of the SPM.

2.3 *Standard Practice Manual Was Developed Without Proper Public Consultation*

The Standard Practice Manual was developed by the BC OnSite Sewage Association and is owned and printed by the Ministry of Health, but it has been developed with little or no input from outside the industry. This manual has become *de facto* rulebook, at least for ROWPs who, unlike engineers, are required by ASTTBC policy to follow it. The SPM is thus one of the only remaining control mechanism in

place to safeguard public health. Yet it has been developed by industry, which does not have an exclusive public health protection mandate. One would have expected extensive consultation on the manual, and the lack of consultation calls its completeness and thoroughness into some question.

2.4 No minimum setbacks from domestic water wells

The SSR no longer prohibits sewerage systems being installed close to domestic water wells. The SDR used to prohibit the construction of sewerage systems within 100 feet of domestic wells, but that rule was removed, apparently because it prevented the development of many rural properties. For a period of time after the SSR came into force, health authorities wondered if they could apply the Sanitary Regulations as a way to ensure the sewerage systems were not installed within 100 feet of wells. But this potential option was removed as a result of a recent court decision.

In the 2008 case *Wilkinson v. Vancouver Island Health Authority*,¹⁰⁷ a Public Health Inspector issued an order under the *Health Act* against a homeowner who had hired an Authorized Person to design and install a sewerage system that was to be located less than 100 feet from a neighbour's well. The Health Inspector relied on s. 42 of the Sanitary Regulations¹⁰⁸ for an order that the proposed system not be installed. The Wilkinsons appealed that order to the courts, asking that it be set aside.

In ruling for the Wilkinsons, the court noted that the Sanitary Regulations could not be interpreted as preventing the construction of sewerage systems within 100 feet of domestic water wells. The court pointed out that the SSR did not contain such a prohibition. The court also noted (at paragraph 20):

I further observe that, under the Sewerage System Regulations, an authorized person must certify that the system has been constructed 'in accordance with the standard practice'. A standard practice manual was prepared for the Ministry of Health. It recognizes that sewerage systems may, in the circumstances outlined in the manual, be sited within 100 feet of a well without causing or contributing to a health hazard.

The old SDR contained protective measures with a minimum 100 foot setback to wells, but did allow less than that to accommodate the repair of a sewerage system that was built prior to the date of the regulation "if" the repair could not reasonably be conducted in accordance with the 100 foot setback, and would not constitute a health hazard. Under the new SSR, placing any sewerage system right next to a domestic well is something that can be done at the discretion of the Authorized Person with consideration for other setbacks. This recent court case underscores the subjectivity within the SPM granted to Authorized Persons. As a result, the Coalition is concerned that domestic wells, even community drinking water wells, are now vulnerable to the subjectivity of an Authorized Person with no oversight by a regulatory authority.

3. Problems with Self-Governance of the Onsite Sewage Industry

The essence of the new regulatory system is that regulation and discipline once done by government has been abandoned, in favour of empowering industry "Authorized Persons" (ROWPS and Professionals).

The linchpin of the new system is that the two Associations of Authorized Persons are expected to monitor and discipline Authorized Persons, in order to keep the whole industry honest and competent.

However, it has become clear that this system of accountability, particularly in relation to ROWPs, has failed to earn the public's trust. The need for reform is urgent.

In recent years, a number of concerns have been raised about self-regulating professions and occupations. Academics have noted that self-regulation often creates inefficiencies, fewer practitioners, and higher prices for consumers. Some have criticized these organizations for their inability to ensure the competence of their members, or to respond appropriately to complaints. And, in the wake of the recent global financial crisis triggered by under-regulation of Wall Street, there is a concern about whether self-regulating organizations can be reliable defenders of the public interest.

In the Manitoba Law Reform Commission's examination of self-governing bodies the Commission found that industry self-government is only justified where practitioner-organizations have particular qualities, such as:

- adequate financial and human resources;
- a democratic structure;
- a genuine and demonstrated willingness on the part of practitioners to act in the public interest.¹⁰⁹

And they are only justified where there are strong safeguards to keep self-governing organizations **accountable and transparent**—both to government and to the public. As we will discuss below, there are serious concerns about the accountability and transparency of the current self-governance regime. The issues of concern include:

- lack of inspection and monitoring procedures;
- lack of jurisdiction to inspect private property;
- lack of jurisdiction to discipline members that leave the organization;
- lack of transparent complaint and investigation procedures;
- insufficient public accountability mechanisms;
- insufficient sanctions for member misconduct; and
- insufficient resources to self-govern.

The breadth and gravity of the problems evident with this linchpin of the regulatory regime makes it urgent for government to rethink the current approach to onsite sewage regulation.

3.1 Lack of Inspection, Monitoring and Auditing

As we have observed, the SSR removed a host of accountability measures such as government approvals, notice requirements, the right to appeal, and minimum prescriptive standards. One might expect that in place of these safeguards, organizations such as ASTTBC and APEGBC would have instituted measures such as mandatory practice reviews, onsite practice audits, or ongoing system monitoring. But, at least for now, such is not the case.

*There is virtually no on-site auditing or system monitoring conducted by the two self-governing organizations responsible under the SSR.*¹¹⁰ Neither the ASTTBC nor APEGBC conducts regular on-site inspection audits of the work done by their members. Nor do they require ongoing monitoring of any form for installed systems. As examined below, the two main reasons for this appear to be that the organizations lack the legal jurisdiction and the financial resources to do so.

The lack of ongoing monitoring is especially disconcerting in light of the increasing number of advanced/aerobic treatment systems that are being installed in recent years. Such systems are often used on lots where conventional systems were unsuitable (for example, due to small lot size, slope, or soil type or depth). Innovative onsite disposal such as this may be necessary so we can build on slopes to prevent development of valley farmlands. However, high tech systems use pumps and other devices that are susceptible to failure and backup, which can lead to filth and a remaining household health hazard. The lack of monitoring in such highly sensitive contexts could result in negative consequences for human and environmental health.¹¹¹

3.2 No Jurisdiction to Inspect Systems on Private Property

Neither the ASTTBC nor APEGBC have been given jurisdiction to inspect sewerage systems installed on private property—unless the property owner gives consent. Obviously, owners of land on which systems are installed will often be motivated not to have their system inspected. A finding of an improper site assessment could, after all, jeopardize the residential use of a given lot, or reduce its market value.

This is an enormously significant legislative oversight. The Government's deregulation of sewerage systems through the SSR made ASTTBC and APEGBC the primary governing bodies for all approved practitioners (ROWPs and professional engineers). The Health Authority's pre-installation permitting and post-installation authorization procedures were replaced by practitioner's filings certifying that systems were safe and up to standard. These professional associations were tasked with protecting the public by ensuring standard practices were met and that members were disciplined when they were not. In short, the SSR created a reactive, complaint-driven self-regulatory system—a one of a kind regulatory regime in North America. Yet, somehow, government forgot to imbue these organizations with the essential regulatory authority to even conduct proper site investigations.¹¹²

3.3 Lack of Jurisdiction to Discipline Practitioners who are No Longer Members

An additional hole in the patchwork SSR disciplinary system is the apparent inability to discipline persons who decide to leave the ASTTBC after they have committed malpractice.

For example, in CASE #06-31 (#06-62), the Practices Review Board of the ASTTBC issued a Stipulated Order to discipline a ROWP whose system installation contained twelve violations of the SPM. In response, the ROWP failed to meet the terms of the order or pay his membership dues. Instead of issuing further disciplinary action, ASTTBC simply cancelled his membership and terminated all disciplinary action against him. In a surprising turn of events, the PRB stated it lacked jurisdiction to discipline the individual:

As the individual in question was no longer a member of the ASTTBC Special Certification Registered Onsite Wastewater Practitioner group, the Practice Review Board had no further jurisdiction to apply enforcement or censure in either complaint case.¹¹³

This lack of ability to discipline departing members completely undermines ASTTBC's ability to self-regulate. It dramatically reduces the deterrent effect of the association's penalties for unprofessional conduct. If a noncompliant member does not want to face the penalty for his or her misconduct, he or she can simply turn his back on the association itself and escape without discipline. It is remarkable that government abdicated its role in regulating ROWPs to an Association—and yet failed to give the association the power to discipline everybody that malpractices.¹¹⁴

For a case study that illustrates this problem, see Case Study #1 in Chapter VI, below.

The potential civil liability of professionals or ROWPs in the courts cannot fill this gap in governance—due to substantial financial, evidentiary, and practical burdens the courts place on potential litigants. Many people cannot afford to sue for the \$10-30,000 involved in many sewerage system cases. And even if they go ahead and sue, success in court does not necessarily mean that the person can collect for their financial losses.

See “The Story of An Interior Family” Case Study #1 in Chapter VI, below.

3.4 Lack of Transparency of ASTTBC complaint and disciplinary process

United States Supreme Court Justice Louis Brandeis once said, “Sunlight is the best disinfectant.” Lord Acton noted that “Everything secret degenerates, even the administration of justice; nothing is safe that does not show it can bear discussion and publicity.”

There is a growing trend in the field of professional governance to encourage self-governing bodies to be open and transparent with the public about their decisions and the reasons for those decisions.¹¹⁵

The Manitoba Law Reform Commission reports that:

Perhaps no complaint about self-governing bodies is more often heard than the allegation that practitioner-administrators fail to take seriously complaints about practitioners and act to “protect their own” in disciplinary hearings. To some extent, this criticism is fostered by the fact that many disciplinary hearings are closed to the public.¹¹⁶

Discipline Hearings Closed to the Public

As outlined in a previous section, ASTTBC disciplinary hearings are confidential—closed to the public and even to complainants themselves, with no required transcription or official record of the hearing. This cloaks such proceedings in secrecy and gives complainants cause for suspecting a bias towards the protection of practitioners.

For case studies that illustrate this problem, see Case Studies #1, #2 and #3 in Chapter VI, below.

Names of Disciplined Members Kept Secret

The ASTTBC’s protection of the personal information of members that are censured for misconduct is even more troubling. Its policy is to release such information when a member is censured at a Discipline Committee hearing, or when the PRB decides its release is otherwise “in the public interest.”

There have been fifty-three recorded resolutions to complaints against members, dating back to January 2005.¹¹⁷ Only a single complaint reached the Disciplinary Committee, and the member successfully appealed it. Eleven complaints have been resolved through Stipulated Order. Another twelve have been resolved by a PRB order or recommendation (without referral to the Disciplinary Committee). Of these twenty-three cases where ASTTBC has taken some form of disciplinary action (Stipulated Order or PRB

action), the PRB has **not once** found it in the public interest to disclose this information to the public. In fact, it appears the ASTTBC has **never** released the name of a single disciplined member.¹¹⁸

In fact, the ASTTBC has been known to issue a Stipulated Order of discipline against a member and then tell the successful complainant to keep the Order confidential!

Surely the public has the right to know if a practitioner has been disciplined for a failure of competence or a failure to follow the rules. The public is informed about local restaurants that violate health rules, why not about authorized sewerage system personnel who violate health rules?

Other self-governing groups such as the College of Teachers, College of Physicians and Surgeons, APEGBC and the Law Society all post their disciplinary decisions, including consent orders, on their websites.¹¹⁹ Since the public has the right to know about the discipline meted out to local engineers, teachers, lawyers and doctors, why not apply this to provincially authorized sewerage designers and installers?

Don't landowners and consumers have the right to know which sewerage installers and designers have created faulty systems and been disciplined for it? How can it possibly be in the public interest to keep this information secret?¹²⁰

Perhaps this practice of secrecy is related to the lack of sufficient public (non-industry) representation in the ASTTBC. That issue is addressed below.

For case studies that illustrate the problem above, see Case Studies #1, #2 and #3 in Chapter VI, below.

3.5 *Insufficient Accountability to Government and the Public*

It is usually not sufficient for a government to simply set-up a regulatory body and then not monitor that body to ensure that it is following its mandate. Government must retain the ability to monitor a regulatory body to ensure the body is accountable to the public. This is particularly important because members of the profession are likely to find that they have to balance personal or professional self-interest against the public interest.

Public representation is crucial to ensuring accountability to government and the public. The power of the government to appoint public representatives to the board of a governing body provides an opportunity for the views of the public to be considered during the policy-making and key decision-making processes within that body. A ministerial appointee has the right to report to the Minister if that appointee believes that the regulatory body was not acting in compliance with the Act or was not otherwise acting in the public interest.

The Manitoba Law Reform Commission has recommended that public representatives compose **at least one third** of the governing councils and disciplinary committees of self-governing bodies.¹²¹

In contrast, under current law, the ASTTBC is not required to have government appoint any public representatives on its governing Council, Practice Review Board, or Disciplinary Committee.¹²² Instead, the ASTTBC Regulations requires only that two of its Council be public representatives *picked by*

*practitioners elected to Council.*¹²³ By contrast, other professional associations have as many as one-third of their representatives appointed by government.¹²⁴

Furthermore, neither ASTTBC nor APEGBC have public members on their disciplinary bodies. APEGBC's legislation actually *prohibits* non-members from sitting on the Disciplinary Committee.¹²⁵

3.6 *Insufficient Sanctions for Incompetent or Unethical Conduct*

No program for preventing noncompliance will be successful without deterrence mechanisms of some sort.¹²⁶ In some instances, the sanctions for incompetent or unethical behaviour by ASTTBC members appear quite inadequate. For example, in CASE 06-54, a ROWP installed a system without any consultation with the local Health Authority or provision of the required and appropriate filing documents. The PRB stated that this constituted "a serious matter" and a breach of its Code of Ethics. Yet to "discipline" the member, the PRB issued a Stipulated Order (not disclosed to the public) that required the member simply to write a letter promising to comply with the filing procedures in the future.¹²⁷

In addition to such "soft" sanctioning, the PRB's reliance on Stipulated Orders and other secretive remedial action is of concern. It is symptomatic of a statutory regime structured to give primacy to the privacy and other interests of industry members—rather than to the public's interest in being protected from the health and financial risks that can be created by incompetent or unethical "Authorized Persons."

3.7 *Insufficient Human and Financial Resources to Self Govern*

As noted at the beginning of this section, sufficient financial and human resources are essential qualities of functioning self-governing bodies.¹²⁸ Unfortunately, ASTTBC appears to lack both.

There are serious concerns whether ASTTBC is an appropriate regulatory organization for onsite wastewater practitioners. ASTTBC has a broad mandate, certifying technologists and technicians from sixteen disciplines, as well as nine categories of technical specialists (such as ROWPs). The regulation of on-site sewerage services requires technical expertise. But, this field of practice is also profoundly connected to public health and environmental safety, since poorly functioning systems can lead to the spread of disease. With no public health or environmental officials on its Council, Practice Review Board, or Discipline Committee, it is not clear that ASTTBC has the requisite expertise to monitor and enforce compliance with the standard practices as defined in the SSR and SPM.

Furthermore, there are indications that neither ASTTBC nor APEGBC have financial resources to carry out essential auditing and monitoring procedures. A single site audit can cost approximately \$2,000. Officials at ASTTBC and APEGBC indicate that their Associations do not have the resources to undertake these regular performance reviews.¹²⁹ They also indicate that recent requests to the Ministry of Health to fund such programs have been denied.

For a case study that illustrates this problem, see Case Study #3 in Chapter VI, below.

4. Market Factors

4.1 Regional Shortages of Practitioners

Anyone can build their own house; they can frame, do electrical wiring, plumbing, etc., providing they take out the appropriate permits and follow the “code.” Other jurisdictions, like Alberta and New Brunswick, allow homeowners to plan and construct sewerage systems on their own property, providing they adhere to legal requirements. Similarly, in BC under the old SDR, homeowners could install their own sewerage systems, as long as they obtained permits and satisfied health officials. On acreages such installations can be quite straightforward.

However, the SSR has deprived homeowners of the ability to independently plan or construct their own sewerage systems. The SSR has created a closed market, where Authorized Practitioners must be hired to plan, install and maintain septic systems.

Not surprisingly, the price of sewerage system installation has risen sharply since deregulation of the industry in 2005. The *Times Colonist* reports, “a system that cost \$7,000 in 2004, now costs about \$15,000.” One Health Inspector reports hearing of a \$60,000 estimate for a system on large acreage of low site-specific concern. This has led the Union of BC Municipalities to protest the steep rise in sewerage system costs.¹³⁰ However, BCOSSA has attempted to assure the public that the market will keep prices fair:

Market competition and homeowner diligence will keep costs appropriate. The standard market system is what is in place to ensure appropriate costs are charged. Similar to purchasing a car, a homeowner should consult with several (e.g.: three) authorized persons (registered designers) to find what system design is appropriate for their situation as well as the materials needed and construction costs from registered installers. Time is needed for the market to adjust.¹³¹

However, there is growing concern that the current market conditions are failing BC’s consumers. We are aware of many reports of regional shortages of practitioners, and that monopolistic market conditions may exist in many areas of the province. There is an indication that such conditions, together with inadequate oversight and disciplinary mechanisms, have led in some instances to apparent price gouging and to decreased quality of service provided to clients (who are left with few options other than to follow the recommended work of the practitioner they are able to retain).

According to Tim Roark, of the BC Branch of the Canadian Institute of Public Health Inspectors, some practitioners have raised prices and begun recommending expensive systems now that homeowners are not allowed to install sewerage systems themselves. According to Roark, “It’s created a closed market—only those who are registered can install systems.”¹³²

As observed by the Manitoba Law Reform Commission, when self-regulation regimes increase costs of the services:

Some consumers will not be able to obtain the service and will either go without the service, obtain it from unqualified practitioners or perform it themselves. In this case, the overall level of service received by the public may actually fall.¹³³

We are aware of one resident who, prior to the new regulations, had successfully installed a number of sewerage systems on his own previous properties. These systems operated soundly for more than twenty years. But, under the SSR, he was required to obtain the services of inexperienced ROWPs who, subsequently, botched the installation and flooded this person's home with sewage. It has cost this person tens of thousands of dollars in actual damage and legal fees, as well as unquantifiable emotional turmoil.

For a case study that illustrates this problem, see Case Study #3 in Chapter VI, below.

5. Liability

5.1 Lack of Mandatory Insurance or Bonding for Practitioners

The financial cost to practitioners, homeowners, and neighbours from failed systems can be crippling.

The financial costs of remediating sewerage system failures can be quite high. According to a complaint received by the Office of the Ombudsman, the costs of repairing one system installed on bedrock was \$35,000.¹³⁴ The *Prince George Citizen* reported in April of last year that a local area man paid about \$25,000 (a substantial chunk of his pension) to replace his sewage system which failed within a year of its installation.¹³⁵

System failures have the potential to cause disease outbreaks of gastroenteritis, salmonella infection, shigella, *E. coli* infection, giardiasis, hepatitis, pinworms, polio, toxoplasmosis, adenovirus, tapeworms, rotavirus, asthma, Weil's disease and other diseases, which can have devastating financial impacts.

Given this, it is quite surprising that ASTTBC practitioners (unlike APEGBC professionals) are not required to carry professional liability insurance.¹³⁶ Although ASTTBC does *offer* an insurance plan to its members, ROWPs are currently "undersubscribed" to the plan.¹³⁷

As early as 1989, the BC Ombudsman identified the problem of holding homeowners liable for system malfunction, given the relative lack of expertise homeowners typically have in relation to contractors that design or install the systems. The Ombudsman recommended that contractors be certified and required to post a bond as insurance against system malfunction.¹³⁸

For case studies that illustrate this problem, see Case Studies #1 and #3 in Chapter VI, below.

5.2 Reliance on Civil Actions to Compensate for Damage from System Failures

In addition to the other regulatory gaps in the present system (noted elsewhere), the new regime did not establish a fair and accessible dispute resolution process to compensate owners or neighbours that suffer loss because of the faulty site assessments, designs, or installations. When a system fails and creates a health hazard, enforcement is then against the homeowner—who may well be an innocent victim of substandard Authorized Person work.

Today, when a homeowner or neighbour suffers loss because of a failed system that is the result of bad professional practice, that person often has no option but to seek compensation through civil litigation. But the courts are ill-suited for the resolution of such disputes. Litigation presents enormous obstacles

to wronged parties. It is a slow, stressful, antagonistic, and costly process. In many cases, these costs are ultimately prohibitive, since legal fees in many cases will exceed the compensation sought. Additionally, because the law failed to establish insurance or bonding requirements for ROWPs, homeowners that attempt to recoup losses through a civil action may be thwarted if the practitioner declares bankruptcy. This has, in fact, happened in at least one known case.¹³⁹

For a case study that illustrates this problem, see Case Study #1 in Chapter VI, below.

While government may have reduced its costs for public health oversight, many costs have been displaced onto homeowners and others. The BC Government has reduced *its* costs by not requiring government permits, but foisted the cost of more expensive systems and the expense of repairing failed systems onto the shoulders of citizens.

Bonding is used in some jurisdictions to ensure that there is sufficient funding to address exigencies resulting from system failures. For example, Minnesota requires a performance bond be held by any business or individual who designs or installs systems. This applies to engineers as well even if they have their own E&O insurance.¹⁴⁰ However, ASTTBC does not require ROWPs be bonded as a condition to certification. This places both ROWPs and their clients in a precarious financial position.

Neither ASTTBC nor APEGBC have a compensation or emergency repair fund to guarantee that there are adequate financial resources to fix the system and prevent further damage when system failures occur (and before responsibility for the failure can be determined, a process which may be lengthy). At bare minimum, complainants should be compensated for out-of-pocket expenses incurred as a result of member misconduct.¹⁴¹

The Province should consider establishing a compensation fund for clients of errant ASTTBC members. The Law Society, for example, manages a highly successful *special compensation fund* to compensate clients whose funds have been mismanaged by a member of the Law Society.¹⁴²

6. Entry Requirements and Exit Costs

6.1 Low Entry Standards Jeopardize Public Health and Safety

The Manitoba Law Reform Commission found that self-regulation would only be successful where “entry and practice standards reflect the qualities, skills and abilities required to provide the occupational service in a competent and ethical manner.”¹⁴³ The present regulatory regime places responsibility for protection of public health and the environment—not to mention the financial well-being of landowners and neighbours—upon the shoulders of Authorized Practitioners that may, in some cases, have as little as seven days of actual training (along with relevant work experience).

Some have raised questions about whether training should be greater for the registered practitioners who now, in effect, approve their own systems—a power that used to be a discretionary government decision in BC, and continues to be a government decision in most jurisdictions across the country.¹⁴⁴ Yet it is not that difficult for people to enter the quasi-government monopoly that now makes sewerage system approval decisions.

6.2 *Low Exit Costs Undermine Effective Self-Governance*

Practitioners that only invest modestly in a practice are more likely to abandon that practice if they can avoid disciplinary measures by doing so—as is currently possible. Experts in self-regulation theory tell us that high exit costs are generally necessary for functional self-regulation.¹⁴⁵ High exit costs provide an incentive for members to comply with applicable rules and standards. For example, lawyers, doctors, engineers and teachers forfeit many years of education if they exit their professions. Thus they have an enormous incentive to not breach the rules. Conversely, it can be difficult for self-regulating organizations to discipline members where exit costs are low, as members have less to lose by foregoing membership. Unlike members of other professional associations, the exit costs for ASTTBC members are extremely low. Combined with the fact that ASTTBC has not been given jurisdiction to discipline members that relinquish their membership, the low exit costs present a major barrier to effective self-regulation.¹⁴⁶

Yet the very integrity of the entire SSR regime absolutely requires effective self-regulation.

7. A final issue: Environmental advice regarding subdivisions.

In 1967, the first Sewage Disposal Regulation was enacted in BC to replace a patchwork of municipal bylaws regulating the installation of such systems. Because of the legislated role of the Medical Health Officers and Public Health Inspectors within the Sewage Disposal Regulation, municipal Approving Officers started referring proposed subdivision applications to the health agencies for comment prior to the lots being created. With few exceptions that is still the case.

However, with the Medical Health Officer and Public Health Inspector no longer involved in the approval of on-site sewage disposal system (just the removal of health hazards when they are brought to the attention of the Health Authority) there may be a real question as to the standing of the Medical Health Officer and Public Health Inspector to continue to provide this critical advice. The development of lots designed to contain on-site sewage systems without that input is an issue of concern. The development of smaller lots utilizing the installation of high-tech systems based on very small sewage system footprints is of even greater concern. Who in future will ensure appropriate soil conditions and separation distances from bodies of water, etc. for on-site sewage systems? Who will require appropriate "reserve areas" in case the original system fails and needs to be expanded or replaced?

VI. Case Studies

Throughout this Submission, the Coalition has been referring to various case studies. During the course of its research, individuals approached the Coalition or the University of Victoria Environmental Law Centre to tell their stories in the hope that their experiences would help to change the regulatory system created by the SSR. In this Chapter, a summary of these stories is provided. These case studies have been “de-identified” as they may involve on-going legal proceedings.

Case Study #1: The Story of an Interior Family

When the “B” family needed to install a sewerage system for their new home they went to the ASTTBC website to find a Registered Onsite Wastewater Practitioner (ROWP). They chose a local ROWP off the list.

Unfortunately for the Bs, the website did not reveal that this ROWP had previously been ticketed for sewerage violations and was currently under investigation for work done on another system.

In any event, the ROWP visited B’s family property, drew a plan for a proposed sewerage system and filed the plan with the local Health Authority. The Bs paid the ROWP a \$10,000 deposit on a \$15,000 estimated total bill for the installation.

The ROWP’s plan filing went to the local Public Health Inspector at the Health Authority to be signed. Concerned about irregularities in the current plans and the ROWP’s history, the Public Health Inspector was reluctant to sign them. However, he was forcefully informed of the provincial policy that Public Health Inspectors had no choice—if the forms included the information statutorily required, he could not refuse the plans because of public health concerns. His supervisor told him:

As we do not have the authority to refuse a type two filing from an unrestricted AP, you will proceed with processing the filing.

The Inspector was brought into a closed meeting and warned that he would lose his job if he did not sign and stamp the plans as filed. His revealing response to his supervisor is found in documents obtained through a Freedom of Information request. He emailed the supervisor:

In the past you’ve told us that you have legal counsel to confirm your requirement that we ignore everything contained in a filing other than having every box on the filing form filled in...

If retention of my job requires that I sign/stamp this I will do so. Please understand, this does present a moral dilemma in that as a member of a Health Protection department that is supposed to focus on prevention, and by belonging to a professional organization with a code of conduct requiring I guard the public’s interest, I shouldn’t knowingly assist in the creation of a substandard sewerage system that will likely be a health hazard.

Under pressure, the Health Inspector finally signed off on the documents, thus providing final legal authorization to build the system. However, the Inspector forwarded the plans to the ASTTBC for investigation.

Eventually the ASTTBC acted and withdrew the ROWP's status as a Registered Onsite Wastewater Practitioner. As a result, B was informed that the ROWP was no longer authorized to install the planned sewerage system. However, when B approached other ROWPs in the area to construct the system, they refused to construct the system as originally designed. Thus, the plans were flawed and could not be followed—rendering them entirely useless.

Now B was faced with the challenge of getting the \$10,000 back. B complained to the ASTTBC. However, because the ROWP was now no longer a “registered practitioner,” the ASTTBC no longer had jurisdiction to discipline him and order compensation. The only remaining avenue available to the Bs was a civil suit to retrieve the \$10,000 deposit from the ROWP.

Many people would not have gone to court because of the trouble and expense. However, B initiated a civil suit, and after much effort and expense the court ruled the ROWP should repay the \$10,000. However, since then the ROWP has filed for bankruptcy, leaving the Bs with much of the money owing unpaid.

This case demonstrates:

- *ROWP disciplinary records should be made publicly available*

The ROWP in this case already had a spotty record when the Bs got his name from the ASTTBC website. But the Bs were not told about this record.

Under the current law, homeowners are not given enough information to make good decisions when they select a ROWP. The ASTTBC generally does not make orders and other discipline levied against its members publicly available. They treat the bulk of disciplinary decisions as confidential.

This is a disservice to people like the Bs, who rely upon the published list of registered ROWPs. The law should require ASTTBC to publish or post the complete disciplinary history of the ROWPS.

- *Health Authorities have been reduced to a “rubber stamp” role.*

The supervisor's directions to the Health Inspector simply reflected provincial law and policy—that Health Inspectors must simply accept any filings that have all the information filled in, regardless of whether the information is valid or accurate. Under the legislation, Health Officials become little more than clerks, insuring that all the boxes on the form have been filled in.

Not only are the Health Officials prevented from reviewing submissions by the ROWPs, they also lack any powers to prevent the installation of a system they believe to be faulty. They simply no longer have the power to stop the installation of a sewerage system that may be a recurrent health problem for decades into the future.

- *The legislation creates a powerful institutional incentive to install sub-par systems*

The Freedom of Information documents reveal that, in another case, the ASTTBC was investigating the same ROWP for installing the basic type of sewerage system he was licenced to sell—instead of the more sophisticated system that the site required. He was not licenced to sell the more sophisticated system—a Professional (engineer) would have been required.

There have been numerous complaints that the new law gives ROWPs a powerful incentive to file plans for the type of systems that *they* are licenced to design—instead of handing on the business to engineers (who are required for the sophisticated systems).

Conversely, there have also been complaints that the current regulatory system is also encouraging people to “overbuild” excessive systems, because of the monopoly that Authorized Persons have.

- *The law should give ASTTBC—the linchpin of the regulatory system—the power to discipline former members*

Ironically, the ASTTBC could not discipline this ROWP after he had been ejected from the membership of the Association. Under the new law, the ASTTBC loses the power to provide remedies to people like the Bs once the ROWP loses his registration as a practitioner.

The fact that the disciplinary body that is the linchpin of the entire regulatory system cannot discipline former members makes no sense at all. It reduces the deterrent necessary to maintain discipline in the industry. And from the point of view of consumers like B, it means they have no remedy short of going to court.

- *There is a need for a mandatory insurance scheme, compensation fund or bonding system*

The Bs have been left high and dry financially because their system failed. Many people will not even explore litigation, because it can be prohibitively expensive and time consuming. Others, like the Bs, will go to all the trouble of winning in court, only to end up out of luck when a small businessman goes bankrupt. Government should carefully consider establishing mandatory insurance, a compensation fund or bonding requirements.

Case Study #2: The Story of “M Farms,” a Vancouver Island Grower

“M Farms” operate a small Vancouver Island farm. The farm surrounds a small lot which sold for only \$6,500 in 2004. At that time, the lot was deemed unsuitable to build on—it did not satisfy permit requirements under the Sewage Disposal Regulation. However under the new law in 2007 the same tiny lot sold for over \$100,000 and a sewerage system filing was soon made by a ROWP.

As a result of changes in the regulation, there was no public posting or publication of notice about the proposed new sewerage system. M Farms only learned of the proposed new sewerage system when they saw people preparing to build on the lot and obtained a copy of the sewerage filing from the Health Authority.

M Farms was concerned about the sewerage system being installed too close to their well and another well on the tiny lot. In addition, they were also concerned that the lot was generally inappropriate for a system, because of the clay soils, lack of drainage, etc. They worried that the system might contaminate the wells and surrounding aquifer, and cause their land to become the *de facto* sewerage dispersal area.

The ROWP's filed plan—which gave legal authority to install a system—was faulty. It described the lot as more than four times bigger than it actually was. It also incorrectly described the soil as “sandy loam,” which is one of the ideal soil types for sewerage systems. Worse, the ROWP's filed plan failed to acknowledge the existence of both of M Farms' wells near the dispersal area.

It was only after M Farms showed the ROWP's employee exactly where the wells were and complained that necessary setbacks had not been provided, that the ROWP acknowledged there was a problem. The ROWP then withdrew the filing—which was replaced by a plan for an engineered system, filed by an engineer.

Still concerned, M Farms complained to the Vancouver Island Health Authority. The Health Authority conducted an on-site assessment and concluded there was a concern about potential health hazards. The Health Authority official concluded that the filings submitted by both the ROWP and engineer had incorrectly described the soil type as “sandy loam”—when it is actually silt loam over silty clay loam, which is a poor soil for sewerage systems.

The Vancouver Island Health Authority official noted, “neither of these layers are remotely close to sandy loam.” He went on to state:

There is clear evidence of saturation (mottling) occurring at depths less than 20 cm from the surface. There is also clear evidence of poor drainage on the south side of the house site. These two soil types always saturate in the winter wet season and require a lot of drainage. None of these factors seem to have been taken into account in the site assessment or system design. VIHA's concern is that these conditions may result in sewage effluent breaking out of the disposal area and presenting a potential health hazard.

While the Health Authority expressed sympathy for M Farms's situation, the Authority declined to halt installation of the system—pointing out that under the new law health authorities no longer have the power to cancel a proposed sewerage system because the filing is not correct:

Health Authorities conduct an administrative review of filings to ensure certain required information is provided. Health Authorities do not, however, have the legal authority to review the technical correctness of filings under the Sewerage System Regulation. The Provincial Government's de-regulation process has removed much responsibility and authority regarding on-site sewage disposal from the Health Authority and transferred it to private industry.

In effect, the Health Authority expressed deep concern, but said its hands were tied. It referred M Farms to the Association of Professional Engineers and Geoscientists of BC (APEGBC) and the Applied Science Technologists and Technicians of BC (ASTTBC).

Installation of the sewerage system proceeded, and M Farms claims that effluent has subsequently run onto its property. M Farms has proceeded with detailed complaints to both Associations. The APEGBC is now proceeding with a disciplinary hearing for the professional engineer; however, the ASTTBC dismissed the complaint and closed their file. ASTTBC has refused a request for further information on reasoning for the decision.

It was only after filing a Freedom of Information request that M Farms discovered that the ASTTBC had already disciplined the same ROWP in 2006 for putting another sewerage system too close to a well. In that case, the Practice Review Board found the ROWP in breach of the ASSTBC *Code of Ethics* and cited him for failing to follow the *Standard Practice Manual*. But it simply ordered him to pay for remedial work and write a 500-word essay.

Currently M Farms is pursuing civil action against the neighbour for the damage to their property.

This case demonstrates:

- *Health Authorities are no longer the decision makers.*

The new law replaces government inspections with a system where government officials are obliged to simply accept as fact the statements filed by authorized private consultants—even if there is evidence that the filings may not be correct. Health Authorities become little more than clerks, receiving filings submitted by ROWPS and engineers. The law does not allow them to look behind such filed documents to see if the statements are actually accurate.

- *Health Authorities have their hands tied.*

They can no longer order a halt to installation of a potentially faulty system—as long as filed paperwork has the statutorily required information. In effect, Health Authorities state they cannot issue orders until sewage flows—they cannot proactively prevent installation of a potentially faulty system that could be an ongoing problem for decades.

- *Neighbours have lost the right to appeal.*

Because of changes in the new legislation, M Farms and other members of the public no longer have the statutory right to appeal the installation to the Environmental Appeal Board and prevent installation.

- *Lack of public notice.*

Under the new law, the public no longer has the right to a public posting of proposed small sewerage system installations. M Farms only were alerted by the sale of the lot as a building lot with sewerage approval.

- *The lack of transparency of ASTTBC discipline decisions.*

M Farms had to go through a relatively complex, time-consuming Freedom of Information request before discovering that the ROWP had already been disciplined for putting sewerage system too close to another well. Disciplinary decisions should be posted on the ASTTBC website, as is done on the websites of the APEGBC and other self-policing professions. Members of the public who want to hire a ROWP should be able to easily discover the ROWP's disciplinary history.

- *The amount of money at stake in making sewerage system decisions.*

Obviously, a great deal of money can ride on the question of whether a sewerage system can be safely installed, which makes a lot buildable. With such sums involved, is it good public policy to leave the decision about authorizing sewerage systems solely in the hands of the private sector?

Case Study #3: The Story of a Pensioner Who Bought a Cadillac System

"S" is a retired pensioner whose sewerage system failure not only deprived him of a good portion of his life savings, but also left him with a prolonged disgusting experience with sewage. But the thing that disturbed him the most is what he learned about the new regulatory system.

In 2006, S hired a ROWP to design a new sewerage system on his property. S requested the commonly used lagoon system for the site, which costs about \$13-15,000. However, the ROWP stated that he could not in good conscience design a lagoon system for the property, leaving the impression that the soil was not suitable. S was convinced to pay \$25,000 to the ROWP and another registered practitioner to design and install the more expensive pressure sand mound dispersal system.

The installed system failed within seven months. It was a significant failure, causing raw liquid sewage to flow across S's driveway and property. Every time he entered or left his house he had to walk through sewage-contaminated soil. This continued for eighteen months.

S complained to the ASTTBC, and the Association eventually concluded the failure was caused by both the designer ROWP and the installer ROWP. Eventually the two practitioners replaced the system.

It is important to note that they have replaced it with the lagoon system that S originally requested. It turns out that this cheaper system is actually quite appropriate for his property.

In the end, S has paid \$25,000 for a lagoon system. Along the way he has had to endure months of stress, time and effort seeking redress, and disgusting living conditions.

S now has to pursue a civil action against both ROWPs to recover the excess money he paid for the cheaper system, plus damage to his property.

Months after complaining to ASTTBC, S inquired about what the Association had done. The Association finally replied that the ROWPS had been disciplined for breaking the rules, and sent him excerpts of the

discipline order. However, in sending this information to him, they stated:

Please respect the privacy of the members and treat this email as strictly confidential and for your information only. The conclusion of this matter is between you, ASTTBC and our members.

This case demonstrates:

- *Excessively expensive systems tend to be prescribed, because the law creates a quasi-monopoly of “Authorized Persons”.*

The law creates a closed market, where only ROWPS and Professionals can file the legal documents necessary for systems. As S points out:

Three years ago, I could have had a system designed and used inspectors to do checks at each stage, and then I could have built it myself and saved myself most of the money I spent.

Now, S is forced to deal with either a ROWP or Professional, and the Public Health Inspectors are effectively sidelined.

Note that S asked for the cheaper lagoon system, but the ROWP convinced him that he needed a system that cost far more. However, it is now clear that a lagoon system was adequate for the site.

The new law creates this problem. It gives ROWPS too many roles:

- Designer/installer/businessman; **and**
- Statutory gatekeeper to what can and cannot be legally installed on a property.

If a businessman will profit from selling a more expensive system, there's a natural incentive to say that the law requires that kind of system. That's why the National Onsite Wastewater Recycling Association “Model Code” prohibits persons that act as regulators from designing and installing sewerage systems. (See above.) Yet the new law does not keep the regulatory role distinct from the commercial role.

As a result, across the province complex sewerage systems with lift stations, pumps, pressure, etc. are now being required in situations where the traditional proven technology of a gravity system would work just as well—at less cost to the consumer, but with less profit for the authorizing person.

It should be noted that the Union of BC Municipalities and others have complained about the skyrocketing cost of sewerage systems for homeowners under the new law.

- *Secrecy around the Disciplinary Process*

After S's extensive personal and financial travails, the ASTTBC finally emailed him that the ROWPS had been disciplined. Yet, at the same time as it informed him of the discipline, the Association stated the email was confidential and stated, "the conclusion of this matter is between you, ASTTBC and our members."

In fact, the conclusion of the discipline proceeding *should not be* just "between you, ASTTBC and our members." The crucial element left out of that formulation is the public. Isn't the discipline of ROWPs also a matter of vital public concern?

Does the public not have the right to know which ROWPS have been disciplined? The public has the right to know when engineers, teachers, doctors, and lawyers are disciplined. Why not with ROWPS, who are dealing with vital public health matters? Don't consumers of sewerage system services have the right to know that the ROWP they are thinking about hiring has been disciplined?

The ASTTBC statement that the victim should tell no one about the ASTTBC discipline decision is striking—and emblematic of what is wrong with the current regulatory system. The new law has created a closed and non-responsive regulatory system that fails to adequately consider the public interest.

- *Case for insurance or compensation?*

This pensioner has lost thousands of dollars because the government's regulatory regime has failed. Litigation will be expensive and time-consuming.

Government should carefully consider establishing mandatory insurance, a compensation fund or bonding requirements to help people like S. They should look at the examples of compensation funds and mandatory insurance/bonding requirements discussed in this submission.

- *Need for Post-Installation Inspections/Audits*

Since he had experienced such serious problems with the first system installed, S wanted to ensure that the replacement system was actually safe and lawful. He asked ASTTBC and BCOSSA if they would inspect his system—but was told they could not assure him that there would be any inspections done to ensure the new system was safe.

In fact, there is no provision in the law to generally inspect or audit systems after they are installed—a huge regulatory gap. See the discussion about the lack of post-installation inspection, monitoring and auditing in this submission.

VII. Recommendations

Studies in legal and social policy journals suggest that governments often create self-regulation systems without a critical examination of the public interest that is to be protected by such regulatory change. As a result, poorly planned transitions from traditional “command and control” regulation to professional or industry self-regulation can create serious weaknesses in essential public safety functions.¹⁴⁷ The first question, therefore, should not focus on the form that self-regulation should take, but rather, *whether self-regulation is in the public interest at all.*¹⁴⁸ This question had been the primary consideration of the Coalition during its year-long examination of the SSR and its administration.

In January 2008, the Coalition sent an official request to the Ministry of Health Services,¹⁴⁹ (asking that the Ministry provide the Coalition with copies of the background research papers or policy analysis documents that had informed the Ministry’s decision to move forward with the SSR industry self-regulatory model. To date, the Ministry has refused to provide that information, so the Coalition has not been able to study the considerations that led the government to adopt the current model—and why officials thought it would be in the public interest to pursue the policies now embodied in the SSR.¹⁵⁰ Therefore, the Coalition has had to undertake its own legal and policy analysis of the issues, the results of which are reflected in this Submission.

As discussed above, the Coalition urges the ministries to address many deficiencies within or resulting from the SSR. We are aware that the ministries have received many complaints from members of the public and local governments who are dissatisfied with how the SSR has impacted them. The Coalition hopes this Submission will be a catalyst for change and constructive reform.

Further, unlike the closed process that led to the development of the SSR, the Coalition believes that all stakeholders should be consulted before final changes to the Regulation and other legislation are made. Those who should be consulted include public health and environmental officials, sewage industry representatives, practitioners, professional engineers, local government officials, and—most importantly—the general public.

To help the ministries improve the SSR and its administration, the Coalition offers the following recommendations as a potential foundation for reform of BC’s sewerage system regulatory regime. But in the Coalition’s view, government must take one of two different paths.

Two Different Options

When a government enacts laws to grant a service monopoly to a profession that regulates itself, as has been granted to Authorized Persons under the SSR, it is critical that government set up mechanisms to ensure that the legislative monopoly will not be abused. Mechanisms must ensure that the self-regulatory processes will work in the public interest. One of the most common mechanisms for striking this balance is public oversight.

The current system created by the SSR lacks public oversight. Given the broad powers that are granted to Authorized Persons under the SSR and the inherent conflict of interest they face as both the “approvers” of sewerage systems and the exclusive builders and maintainers of those systems, there is a desperate need to adjust the balance to make this form of self-regulation more open and accountable to

the public. To address these problems, the Coalition believes that government faces two distinct choices:

- To incorporate new mechanisms that will promote public oversight and accountability within the self-regulatory model created by the SSR to thus improve this regulatory system; or, in the alternative;
- To restore direct government supervision of the design, installation and maintenance of sewerage systems, such as by on-site inspections and approvals carried out by government inspectors.

The Coalition appreciates that these are divergent paths, but it is useful to flesh-out the details of these two different roads to reform. With that foundation, government can then consult with the public as to which path should be taken.

Option One: Making self-regulation work in the public interest

The mechanisms that governments employ (or fail to employ) to ensure that the public interest is protected can have a profound impact on the viability of any self-regulatory mechanism. Experts agree that several specific elements are essential to establishing and maintaining a viable self-regulatory model. Unfortunately, many of these critical components are missing from the SSR.

It is usually not sufficient for a government to simply set-up a self-regulatory model and then not *monitor* the resulting regulatory system to ensure that it is meeting its mandate. In addition to monitoring the self-regulatory body, a viable regime must also ensure that the body is accountable to the public (through the government).

This is particularly important because members of a self-regulated profession are usually granted some form of legal monopoly over a service or title, so they will then often find that they have to balance personal self-interest against (what may be a new concept of) public interest. Government must therefore have the capacity to put into place systems to ensure that conflicts of interest are avoided, as well as mechanisms to monitor how the regulatory body is performing, and to take corrective action when necessary.

A variety of specific mechanisms can be employed to thus ensure government oversight, such as:

Public representation

The power of the government to appoint public representatives to sit on the board of a regulatory body provides an opportunity for the views of the public to be considered during the policy-making and key decision-making processes that take place within that body. A ministerial appointee has the right to report to the appointing minister if he or she believes that the regulatory body is not acting in compliance with the governing legislation or the body is not otherwise carrying out its functions in the public interest.

Recommendation: *To improve public representation within the self-regulatory model created by the SSR, the Coalition recommends that:*

- 1) *Section 7 of the Applied Science Technologists and Technicians Act be amended so that the Council of the Applied Science Technologists and Technicians of BC (or at least the branch that regulates ROWPs) is composed of at least 1/3 public representatives who are appointed by the Minister. The Act should be further amended to ensure a similar proportion of public appointees sit on the Association's inquiry and discipline panels for ROWPs.*
- 2) *Section 9 of the Engineers and Geoscientists Act be amended so that Council of the Association of Professional Engineers and Geoscientists of BC is composed of at least 1/3 public representatives who are appointed by the Minister. The Act should be further amended to ensure a similar proportion of public appointees sit on the inquiry and discipline panels for Professional Engineers who are providing services under the SSR.*

Having this proportion of public representatives sit on the board and key committees of a regulatory body is common practice with many other self-regulating professions, such as the two dozen or so colleges that have been established under the *Health Professions Act*.

Eliminate role confusion

Another common problem with the creation of a self-regulatory model is role confusion between the governing body for the profession (which must act in the public interest) and one or more professional associations (that act in the profession's interest).¹⁵¹ The literature and numerous reports on professional regulation emphasize that there needs to be a bright and clear line separating the mandate and functions of these different organizations. When this line is blurred—as with the SSR—problems are predictable.

The SSR grants certain powers and authorities to the BC OnSite Sewage Association (BCOSSA), the Applied Science Technologists and Technicians of BC (ASTTBC) and Association of Professional Engineers and Geoscientists of BC (APEGBC) in relation to the training and the regulation of ROWPs and Professional Engineers. However, it appears the drafters of the SSR failed to understand the role of a regulatory body, like ASTTBC or APEGBC—and the need to ensure there was a separation of regulatory functions from the services that are commonly provide by professional association like BCOSSA. This separation is vital, to avoid compromising the self-regulatory system. Indeed, it appears the Regulation gives both ASTTBC and BCOSSA similar regulatory authorities over the same profession. This has resulted in role confusion that needs to be resolved.

Recommendation: *To clarify the roles and responsibilities of the different organizations currently involved in the regulation of those who design, install and maintain sewerage systems under the SSR, the Coalition recommends that:*

- 3) *The Applied Science Technologists and Technicians Act and section 7(2) of the SSR be amended so that the ASTTBC is given the exclusive authority to ascertain if a ROWP is competent to design, construct and maintain a sewerage system that uses a treatment method classified as Type 1 or Type 2. Further, that the SRR be amended at section 7(2)(a) to remove the authority of the BC OnSite Sewage Association to determine ROWP competency or the suggestion that it also acts as a regulatory body.*

Section 7(1)(b) of the SSR requires that someone who wants to be a registered practitioner must hold a registration certificate, which is defined to mean: “a registration certificate issued by the Applied Science Technologists and Technicians of British Columbia that certifies that the holder is competent to construct and maintain a sewerage system that uses a treatment method classified as Type 1 or Type

2.”¹⁵² Thus, any person other than a SSR professional,¹⁵³ who is mandated under the SSR as an Authorized Person, must be a ROWP registered with ASTTBC. Despite this, the SSR confuses the ROWP certification process by involving another party (e.g., BCOSSA) in actually assessing the competency of a person wishing to obtain an ASTTBC registration certificate.

- 4) *The Applied Science Technologists and Technicians Act (if not also the SSR) be amended so that the ASTTBC is given the exclusive authority to decide what type of education and training a ROWP should complete before being registered, and to also amend sections 7(1)(a)(i) of SSR to remove the presumed monopoly granted to BCOSSA giving it effective control over the training of ROWPs in British Columbia.*
- 5) *The Applied Science Technologists and Technicians Act (if not also the SSR) be amended so that the ASTTBC is given the power to approve the content and duration of the training programs that are offered by BCOSSA or any other institutions or training programs, so as to ensure that graduates from those programs are competent to design, construct and maintain a sewerage system, and to understand the ethical challenges they may face, and that the SSR be amended to remove the authority of BCOSSA in section 7(2)(a) to determine the competencies of ROWPs.*

Giving ASTTBC the primary, legislative mandate to define the competencies of ROWPs would ensure the organization that is currently responsible for investigating and disciplining ROWPs is also the one that will determine what skills and abilities ROWPs require so as to avoid generating complaints and facing disciplinary hearings. These functions should not be separated in two different bodies. The Coalition expects that, if the ASTTBC is given this clear mandate, it should be better positioned to deal with the disproportionately large number of complaints against ROWPs that it is currently dealing with.

These recommendations may also go some distance to ensuring that BC’s regulation of ROWPs would be in keeping with the requirements of the recently amended Chapter 7 of the *Agreement on Internal Trade*, as well as the mobility provisions of the *Trade, Investment and Labour Mobility Agreement* established between BC and Alberta.

There are other essential legislative changes that must be taken to eliminate role confusion:

- 6) *The Applied Science Technologists and Technicians Act be amended so that it is made clear that no director, official or employee of BCOSSA may hold office or sit on the Council of the ASTTBC, or be a member of its inquiry or discipline committees.*
- 7) *The Applied Science Technologists and Technicians Act (if not also the SSR) be amended so that the ASTTBC is given the exclusive and clear legal authority to establish a Code of Ethics to help ROWPs understand their roles and responsibilities, in particular given the conflict of interest that can arise given the service monopoly that has been granted to Authorized Persons under the SSR.*
- 8) *The Applied Science Technologists and Technicians Act (if not also the SSR) be amended so that the ASTTBC is given the exclusive and clear legal authority to establish the standards of practice that ROWPs are required to follow when designing, installing, maintaining, etc. sewerage systems, and to also ensure that those standards stay current and promote best practice.*

The Coalition will have more to say below about the content of the Standard Practice Manual that the ASTTBC now requires ROWPs to follow.

Deficiencies in the current model

As noted above, the SSR makes membership in the ASTTBC mandatory for all non-engineering Authorized Persons. Earlier chapters in this Submission identified some significant and core deficiencies in the self-regulatory model created by the SSR, namely the fact that ASTTBC does not have the legal authority to pursue a complaint against a ROWP if that practitioner simply resigns his or her membership to avoid a complaint investigation or disciplinary proceeding. APEGBC, the regulatory body for Professional Engineers, does not have a similar problem with its legislation.

On the other hand, it appears that both regulatory bodies lack the legislative power to enter onto private property where a potentially defective sewerage system may exist, for the purposes of ascertaining during the investigation of a public complaint if their member designed or built that system properly. While in some cases after a system has failed to meet “standard practice,” it might be theoretically possible for the regulatory bodies to use by delegation the enforcement provisions of the *Health Act* for such authority, it would clearly be better if full proactive investigative powers rested within the regulatory bodies that are responsible for ensuring that the systems their members design meet professional standards.

Recommendation: *To address these two obvious shortcomings of the current self-regulatory model, the Coalition recommends that:*

- 9) *The Applied Science Technologists and Technicians Act (if not also the SSR) be amended so that the ASTTBC is given continuous jurisdiction over a ROWP, even if that practitioner leaves the Association.*
- 10) *The governing legislation for both ASTTBC and APEGBC (if not also the SSR) be amended to give both regulatory bodies clear and sufficient legal authority to conduct on-site inspections of installed sewerage systems, be these random quality assurance inspections or ones that flow from a complaint against their member.*

If either association lacks the resources to set up mandatory practice reviews or random audits of the systems that their members have planned or constructed, then they should adjust the fees they charge their members to ensure that such programs can be put into place. Anything less would be an abdication of their mandate to protect the public.

Transparency and public reports

Many self-regulatory mechanisms require the regulatory body to submit an annual report to the government that outlines the operations of that body and other matters that may be specified by regulation. Such reports must also be made public, usually to be posted at the regulatory body’s website. The required details often include statistics on complaint investigations, resolutions and discipline (and for the latter, usually the details of the results of disciplinary hearings or consent resolutions), as well as information on continuing education programs and other systems that are intended to improve the quality of the profession’s services. The Ombudsman has noted the importance of regulatory bodies publishing annual reports, in order to improve accountability and fairness.¹⁵⁴

The lack of transparency in the current self-regulatory system is of particular concern in relation to the regulation of ROWPs by the ASTTBC. The Coalition does not have as great a concern about this issue in relation to APEGBC concerning its regulation of Professional Engineers.

Recommendation: *To improve transparency to both government and the public in relation to the regulation of Authorized Persons under the SSR, the Coalition recommends that:*

- 11) *The legislation that governs ASTTBC and APEGBC be amended so that both associations must report to the Minister on an annual basis about the types of complaints they receive concerning their members in relation to the design or installation of sewerage systems under the SSR, and to post that information at their respective websites so that it is readily available to the public.*
- 12) *To amend the Applied Science Technologists and Technicians Act to require that*
 - (a) *Except in rare circumstances, all disciplinary hearings involving ROWPs must be open to the public,*
 - (b) *The public be given advanced notice that a disciplinary hearing is to be held, including the name of the practitioner and a summary of the allegations set out in the citation, and*
 - (c) *The hearing be recorded and documents or other evidence submitted during the hearing be maintained for at least two years.*
- 13) *To amend the Applied Science Technologists and Technicians Act to require the ASTTBC to disclose the details of*
 - (a) *Complaints that are resolved by consent, including the name of the ROWP and any agreed settlement of the complaint, and*
 - (b) *Completed disciplinary proceedings involving ROWPs, including the name of the practitioner and details of the disciplinary panel's findings, orders, etc.¹⁵⁵*

Hopefully, the remedial programs that ASTTBC and APEGBC employ will include various forms of practice reviews (e.g., random field inspections, office file audits, and supervision), in particular for inexperienced members. When members have agreed that they violated ethical or practice standards, or where a disciplinary panel has made such a finding, practice reviews should be the common response from both associations. Although it is not necessary for the Coalition to set out the details of such measures here, the Coalition would be pleased to provide further information on this.

Public notice and appeals

It is not sufficient to give the public a voice at the regulatory table, and open up the disclosure of regulatory information after problems have occurred. With sewerage systems there is a substantial risk that innocent third parties can be harmed as the result of poorly designed or incorrectly constructed sewerage systems. Those who could be adversely affected by negative outcomes should have the right to know what is going on early in the process—so that they can take protective or corrective actions and also be involved in the decision making process. These are not risks that should be left to the Authorized Person or the homeowner to decide for others.

Recommendation: *To ensure that those who may be adversely affected by a planned sewerage system may learn of such plans and are given the ability to take protective or corrective actions and participate in decisions concerning the design, installation or substantial repair of those systems, the Coalition recommends that:*

- 14) *The SSR be amended to require the homeowner or the Authorized Person to post a public notice concerning the design, construction, installation or a significant repair of a sewerage system, and that such a notice be communicated to neighbours and others who could be affected by such a system so that they are made aware of the pending installation or repair.*
- 15) *The SSR (or the legislation that governs ASTTBC and APEGBC) be amended to give neighbours and others who could be affected by the system the right to appeal the proposed installation or repair of a sewerage system to either the Ministry or one of the governing bodies, or to another body such as the Environmental Appeal Board, on the basis that the proposed system or major repair of an existing system might constitute a risk of harm to the public, food sources or the environment.*

The Coalition notes that its proposed threshold for an appeal is set at such a level that a neighbour would not have the right to appeal a proposed installation simply because the neighbour might not like the aesthetic impact a proposed system might have. Instead, the right to appeal is triggered only if the result of the installation or major repair might reasonably create a risk of harm to the public, etc.

Public review of bylaws, standards, codes, etc.

Many self-regulatory processes require the regulatory body to send proposed bylaws to the government for review and approval. This is often coupled with a right for the public to be informed of proposed changes and to offer comment on those changes, either to government or the body itself. In some cases, the government exercises a veto power under the governing legislation, which authorizes the government to disallow bylaws or to change bylaws if the government determines that they are not in the public interest or fail to protect the public. These are all measures designed to ensure that the regulatory body's decisions and mechanisms are focused on protecting the public.

There is no requirement under the SSR or the governing legislation for ASTTBC or APEGBC that gives the public the right to comment on any of the policies and procedures that are produced by the different organizations listed in the Regulation. In contrast, many other regulated professions have developed ethical standards that their members must follow, and often those codes are subject to external review and comment.

Recommendation: *To ensure the standards of practice and codes of ethics that apply to the design, installation and repair of sewerage systems uphold the public interest, the Coalition recommends that:*

- 16) *The governing legislation for ASTTBC and APEGBC (or the SSR) be amended so that both regulatory bodies are required to:*
 - (a) *Prepare a set of standards of practice that both ROWPs and Professional Engineers will be required to follow when designing, installing, maintaining, repairing, etc. sewerage systems under the SSR,*
 - (b) *Develop a single, common Code of Ethics to help both ROWPs and Professional Engineers understand their roles and responsibilities in relation to sewerage systems, given the service monopoly that has been granted to both professions under the SSR,*
 - (c) *Seek meaningful public consultation during the development of the Common Standards and Code of Ethics, and*
 - (d) *Report to government on the results of these consultations and make that report available to the public.*

- 17) *The governing legislation for ASTTBC and APEGBC (or the SSR) be amended so that the Minister of Health Services (or the Minister of Healthy Living and Sport) holds a right to veto or change either the practice standards or code of ethics concerning sewerage systems if the Minister determines that either is not in the public interest or fails to protect the public.*

Mandatory inspections and monitoring

The lack of mandatory inspections by government officials at critical steps is one of the most glaring deficiencies of the defective self-regulatory model that has been created by the SSR. Even if steps are taken to improve that system, as recommended under Option One, there will still be a need to ensure there is meaningful government oversight.

Recommendation: *To ensure that government retains the authority to monitor the design or construction, if not also the maintenance of sewerage systems, the Coalition recommends that:*

- 18) *The SSR should be amended so that*
- (a) The proposed site and system design must be reviewed and the installed system must be inspected by a government inspector or a contract inspector authorized by government, and*
 - (b) The homeowner must pay the established fees to cover the cost of such an inspection.*

Government oversight

Another feature of a viable self-regulatory model is the capacity of government to inquire into any aspect of the administration or operation of the regulatory body and – on the completion of such an inquiry – to issue a directive that requires the body to take remedial or corrective action in order to meet its public interest mandate. In some cases, this authority includes the power of government to replace the entire board with a trustee or appoint a new board. This type of authority gives government the capacity to deal with specific and serious problems that may arise, such as a failure of a regulatory body to meet its legislative duties. None of these types of oversight or remedial powers currently apply to the organizations involved in the regulation of sewerage systems in BC.

Recommendation: *To ensure that ASTTBC, APEGBC, BCOSSA or any other organization involved in the governance of sewerage systems will act in the public interest, the Coalition recommends that:*

- 19) *The governing legislation for ASTTBC and APEGBC, if not also the Health Act (or the SSR), be amended so that the Minister of Health Services (or the Minister of Healthy Living and Sport) is given the authority to establish an inquiry into any aspect of the administration of the SSR or the related operation of the ASTTBC, APEGBC or BCOSSA. The amendments should empower the Minister to issue a directive that requires the body to take remedial or corrective action as may be identified by such an inquiry.*

While the Ministry of Health did not totally abandon the role that public health officials played under the old regulation in relation to the design, installation, maintenance or repair of sewerage systems, the changes made to the regulatory structure as set out in the SSR have been interpreted by many Health Authorities as creating a significant restraint on their powers under the *Health Act* to issue stop-work or similar corrective orders. In particular, the Authorities have been told that they have no power to direct an Authorized Person filing a system plan to revise that plan or take other steps to address what the

Authority believes constitutes a public health risk if the plan were implemented. The Authorities assert that they can only act if there is an obvious leakage of sewerage or a clear risk of harm to the public *after* the system has been installed. The lack of a clear understanding of the scope of the powers of Health Authorities under the new SSR underscores the need to amend this Regulation to bring legal certainty back into the picture.

If it was the Ministry of Health Services' intention within the new SSR to remove the ability of Health Authorities to intervene early in the planning stages of sewerage systems, the Coalition suggests that this undermines their legal responsibilities under the *Health Act*, and could be subject to a court challenge. If, however, the commonly held view amongst Health Authorities is incorrect, then it is critical for the Ministry to take steps to advise the authorities that they do have sufficient legal authority under the *Health Act* to intervene in the planning of a sewerage system and to do so before problems occur.

Recommendation: *To ensure that the public health authorities have a clear understanding of their powers to issue orders under the Health Act in relation to sewerage systems, the Coalition recommends that:*

- 20) The SSR be amended to create a new section that would clarify that a Medical Health Officer or Public Health Inspector has the legal authority to issue an order under the Health Act to deal with obvious or a potential health problem in a proposed sewerage system and to do so at the planning or filing stage, as well as the power to address problems that may arise during the construction, installation, maintenance or repair of a system that could cause damage to the environment or risks to public health.*

A new regulatory body for ROWPs?

Throughout the above series of recommendations, the Coalition has been referring to the ASTTBC, identifying it as the self-regulatory body for ROWPs. This reference should not be construed as the Coalition's endorsement of the ASTTBC as the regulatory body for these practitioners. Indeed, the Coalition would support a new body being created to specifically regulate ROWPs, but only so long as such a new body would have the same legislative features and authority as has been recommended in this Submission for the ASTTBC.

Option Two: Returning to direct government oversight

If the BC Government is not prepared to implement the above recommendations to rationalize the SSR self-regulatory system, the government's only alternative is to reduce (if not eliminate) the self-regulation of those involved with sewerage systems and return the regulation of these systems to more direct government control and oversight. This would be a return to a regime much like the previous regulation, and more like the regimes currently still in place across North America. The recommendations set out in this second option are, therefore, proposed as an alternative to option one, and are designed to return BC to more direct government oversight.

The first step would be to remove the current monopolies granted to Authorized Persons under the SSR. At the moment, section 6 of the SSR prohibits a homeowner from constructing or maintaining their own sewerage system. Only Authorized Persons can perform these activities. This prohibition stands in contrast to the rules governing construction of houses or installation of electrical systems and plumbing systems in homes. Under the *BC Building Code*, any homeowner can perform these functions

themselves, so long as local government building inspectors approve the resulting systems. It seems strange that a similar requirement does not apply to the construction and up-keep of sewerage systems. If the ministries believe that it is now time to move away from a monopoly-based, self-regulatory model as currently set out in the SSR, the section 6 prohibition should be removed from that Regulation or at least substantially revised.

Recommendation: *To remove the monopoly granted to Authorized Persons on installing sewerage systems and to allow homeowners to do these installations themselves, the Coalition recommends that:*

- 21) *The SSR be amended to allow a homeowner to construct or maintain their own sewerage system, so long as*
 - (a) *The homeowner is the registered owner of the property in question, and*
 - (b) *The homeowner can demonstrate to the satisfaction of the local health authority that*
 - i. *he or she has sufficient competencies to design, construct and maintain their own system, or that the homeowner will do so under the supervision of a professional engineer, or*
 - ii. *the design, construct and maintain of the system meets prescribed standards.*

For example, the homeowner could be required to pass a standard examination that tests the applicant owner's knowledge and abilities in relation to the design, construction and maintenance of a sewerage system. Alternatively, a manual of best practices in the design, construct and maintain of small-scale sewerage systems could be approved by government as the standard against which the homeowner's system would be judged.

There are a host of other elements that apply to pursuing this second option, which can be summarized as follows.

Recommendation: *To return to an approach to regulating sewerage systems that more directly involves government, the Coalition also recommends that:*

- 22) *The following changes be made to the SSR, the Health Act, or the legislation that governs ASTTBC, APEGBC and BCOSSA, as the case may be:*
 - *Before a new sewerage system is designed and any plans are filed, a government official should undertake at least one mandatory site inspection, review test results, etc.*
 - *Once the system design and plans are filed, a government official should review and approve the plans and specifications to ensure they comply with the SSR and standard practice.*
 - *Before a new system is used, a government official should undertake at least one site inspection of the system to ensure it was constructed as per the filed plans.*
 - *After the initial inspection and approvals of sewerage systems, comprehensive audits should be conducted on a sufficient frequency and random basis to ensure the systems are operating properly and without the reasonable prospect of creating a public health hazard.*
 - *Ensure that government officials (e.g. health authorities) are legally authorized to investigate and issue orders to remedy potential health hazards prior to and after systems are installed, in particular to clarify inspection and order powers under the Health Act or the SSR.*

- Amend the SSR so that pre-installation filing documents for sewerage system contain sufficient information to allow for investigations, where necessary.
- Restore pre-installation public notice requirement for all sewerage systems.
- Restore the right of appeal of neighbours and purchasers, in relation to decisions made concerning the design, installation, etc. of sewerage systems.

Those persons that homeowners might hire to design or install systems could still be subject to a licensing requirement, but they would not be granted any sort of legal monopoly over the any aspect of small-scale sewerage systems.

Additional Recommendations for Either Option

Whether the government pursues Option One or Option Two as set out above, it will still be necessary for the ministries to take action on a number of specific issues that would arise under either scenario.

Standard Practice Manual

As noted earlier in this Submission, the self-regulatory model embodied in the SSR has resulted in many of the more prescriptive or risk-specific provisions of the old SDR being removed from the SSR or transferred to what is now known as the Standard Practice Manual (SPM). The lengthy and detailed requirements of SPM stands in contrast to the more outcome-based, industry-focused premise of the SSR.

The SPM arose because the SSR requires that Authorized Persons file plans for sewerage systems that comply with “standard practice.” Therefore, it follows that someone had to define what would constitute standard practice. For Professional Engineers, their regulatory body, APEGBC, has not set out those requirements in such a document, although the Coalition understands that option may yet be pursued. On the other hand, ASTTBC has adopted the SPM as the standard that it then applies to assess the plans, installation, etc. of sewerage systems that are prepared or constructed by ROWPs. In the Coalition’s view, there is a need for the ministries to reconsider how the standards of practice for sewerage systems have evolved in BC.

Recommendation: *To ensure that minimum levels of public safety are set out in regulations that are not subject to a less precise definition of standard practice, the Coalition recommends that:*

- 23) *The ministries consult with all stakeholders, including public health officials, Authorized Persons, their regulatory bodies, BCOSSA, and the general public, to identify the minimum standards that should be returned from the SDR to the SSR or what new ones should be added to the SSR, to thus ensure there is a set of widely-accepted, basic requirements for the design, construction, maintenance and repair of sewerage systems, and – further – where its is agreed there are areas where the standards can be varied or other non-regulatory information needed to be provided, those conditions and information be set out in a revised Manual or Guideline.*
- 24) *That the two regulatory bodies, ASTTBC and APEGBC, be given the clear mandate to ensure that the SPM remains current; they, not the Ministry of Health Services, should be viewed as the “owners” of the revised Manual.*

The Ministry need not “own” the SPM, if sound critical standards (such as setbacks and as-constructed vertical separation) are inserted into regulation that all Authorized Persons must follow.

Even if the SSR was to embody a set of minimum or more prescriptive standards, the Coalition recognizes that there can be circumstances when it may be necessary to allow those regulatory requirements to be varied so as to address issues that may be unique to a particular location or installation and could cause undue hardship if they were followed or applied strictly.

25) The Health Act be amended so that a person may apply to the Ministry of Health Services (or the Minister of Healthy Living and Sport) for a variance from a prescriptive provision of the SSR, which could be granted so long as the Ministry is satisfied that the variance would protect the environment or public health in a manner that would be equal to or greater than the protection established by the provision being varied, and has substantially the same purpose and effect as the provision being varied.

Exactly who would be allowed to apply for the variance would depend on who held the legal responsibility for meeting the specific regulation that is to be varied, i.e., the homeowner or Authorized Person.

The Coalition recognizes that, in providing a mechanism to allow variances to be granted to the SSR, it will be necessary to consider a number of secondary issues, such as:

- Setting terms and conditions on a variance, so that it applies to a specific piece of land or type of system;
- Allowing for the setting of further terms that would attach to the variance as the Ministry may deem necessary in the circumstances;
- Setting up an administrative structure to accept applications for variances, and the holding of an inquiry on an application if necessary in the circumstances;
- Providing the public with a notice that a variance has been requested for a particular location or type of system and allowing the public to participate in the subsequent consideration of the application for a variance.
- The need for the Ministry to give full and complete reasons for any decision to accept, reject or set terms and conditions on a variance.
- The right of parties to appeal the Ministry's variance decision to some third party tribunal, such as the Environmental Appeal Board.

The Coalition also understands that a form of variance is currently provided by Professional Engineers. Before doing so, the engineer must be trained and knowledgeable in on-site wastewater systems, and must make the variance based on science, standards of practice, etc. However, to the best of the Coalition's knowledge, this practice is not expressly authorized under the *Health Act* or the SSR. It needs to be enshrined in legislation.

Mandatory maintenance

Depending on the type, ensuring that a sewerage system is properly maintained after it is installed may be as important as ensuring that the system is properly designed before it is installed. Inadequate maintenance of a sewerage system is akin to never changing the oil in a car engine; premature wear will occur, and potentially result in premature failure, pollution and environmental or health degradation. The SSR contains a number of legislative deficiencies that undermine the objective of ensuring that on-going maintenance is done.

Section 6(1) of the SSR provides that only an Authorized Person may “maintain a sewerage system that uses a treatment method classified as Type 1 or Type 2.” (Section 6(3)(a) requires a Professional to maintain a Type 3 system.) Section 12(b) makes it an offence if a person “maintains a sewerage system without proper qualifications, as set out in section 6.” It therefore appears that Authorized Personnel have been granted another monopoly—the maintenance of septic tanks and smaller scale sewerage systems.

Section 10(1) of the SSR goes on to state: "An owner must ensure that a sewerage system on the owner's land is maintained in accordance with the maintenance plan provided in respect of the sewerage system."

There are two major problems with these sets of requirements. First, if Authorized Persons have been granted a monopoly over the maintenance of Type 1 and 2 systems, it makes little sense to impose a duty on owners to ensure that their systems are then maintained in accordance with the filed plan.¹⁵⁶ The only person who could maintain these systems is an Authorized Person. This is another example of role confusion within the SSR.

The maintenance requirements of the SSR are simply window-dressing unless there is some mechanism in place to ensure that the required maintenance is done, regardless as to who should be responsible. The SSR does not provide any legal authority for local governments or the health authorities to issue tickets if a system is not maintained according to the filed plan, unless—of course—an actual health hazard results. But that is an after-the-fact response to a situation and one that will likely come to the attention of the Health Authority precisely because the system failed due to a lack of proper maintenance. By then, it would be too late. There is a need to make on-going monitoring of sewerage systems and their maintenance a higher priority under the SSR.

Recommendation: *To ensure an on-site sewerage system continues to perform properly and is well maintained, the Coalition recommends that:*

- 26) *The SSR be amended at section 6(1) to remove the monopoly granted to Authorized Persons to maintain sewerage systems and section 12(b) also be amended to eliminate the corresponding offence. In the alternative, and only if the proper self-regulatory checks and balances are put into place, section 10(1) could be amended to state that an Authorized Person hired by the owner has the legal duty to ensure that a sewerage system on the owner's land is maintained in accordance with the filed maintenance plan for that system.*
- 27) *Regardless as to who is assigned the ultimate authority to maintain sewerage systems, the SSR be amended as follows:*
 - (a) *Local governments or regional health authorities must set-up a system to ensure that installed systems are being maintained according to the filed plans;*
 - (b) *The person doing the maintenance must keep complete and accurate records of all maintenance performed, and file a maintenance report with the local government or regional health authority, indicating what specific steps were taken to follow the prescribed maintenance plan and at the frequency specified in the plan;*
 - (c) *The health authority must undertake a random audit to ensure that all systems within its jurisdiction are being maintained according to the filed plan, and that the filed maintenance reports are truthful and accurate;*
 - (d) *The health authority has the clear legal authority to*

- i. *enter onto property and conduct an inspection of a system to ensure that it has been maintained,*
- ii. *require the homeowner to supply the authority the original maintenance records, and*
- iii. *issue a corrective order or a ticket if the system has not been maintained according to the filed plan, even if an actual or potential health hazard has not been identified.*

Another route could be employed to ensure that installed systems are properly maintained. It is now common for purchasers to require the selling homeowner to provide disclosure statements to the purchasers. If a purchaser buys property where a sewerage system has been installed, the purchaser should ask the seller to disclose if not warrantee that the system has been maintained in accordance to the filed maintenance plan. Further, the purchaser could require the seller to agree that a breach of that term of the sales agreement would automatically entitle the purchaser to damages of a specific monetary amount if the system fails within a prescribed period of time after the sale completes because of lack of or insufficient maintenance. This type of secondary enforcement may be the most cost-effective way to ensure systems are properly maintained. Alternatively, government could consider legislating a requirement that property vendors disclose information about system maintenance.

Compensating aggrieved homeowners

Homeowners face considerable financial hardship if the sewerage system that an Authorized Person installs does not function as originally designed or—worse—fails. The Coalition understands that, while Professional Engineers are required to have liability insurance to provide a source of compensation for aggrieved homeowners, the same rule does not apply to ROWPs.

Recommendation: *Therefore, the Coalition recommends that:*

- 28) *The Applied Science Technologists and Technicians Act be amended so that it is mandatory for all ROWPs to carry sufficient professional liability insurance to cover any claim that may be filed against them by an aggrieved homeowner.*
- 29) *That both ASTTBC and APEGBC make it a requirement for their members to disclose to homeowners, in writing and before a service is provided, whether or not the Authorized Person’s insurance will cover the service or product to be provided.*

The Coalition has heard of a number of instances where homeowners have had to pay thousands of dollars above the original cost of an installation to deal with defective systems, only to face the prospect of having to then sue an Authorized Person in court to pay for those damages resulting from the Authorized Person’s incompetence.

In a situation where the self-regulatory regime of the SRR grants an effective monopoly over the design, construct, maintain and repair of sewerage systems, and where two separate regulatory bodies have the mandate to investigate and resolve complaints filed against their members, it should be an integral part of such a regime for the regulatory body to be able to provide financial compensation directly to aggrieved homeowners—without forcing them to pursue a slow and difficult civil action that would repeat many of the same steps that took place in a professional conduct review.

Recommendation: *To ensure that homeowners who have suffered financial losses at the hands of*

Authorized Persons in circumstances where either ASTTBC or APEGBC have found that their member was responsible for that loss (or the member so admits), the Coalition recommends that:

- 30) The governing legislation for ASTTBC and APEGBC be amended to set up a special compensation fund to be financed by a levy paid for by all Authorized Persons, and that either association may direct a payment be made from this fund to compensate a homeowner where the Authorized Person does not have the financial resources or insurance coverage to so compensate the aggrieved homeowner.*

Currently the law requires homeowners to not install their own systems, but to rely on the expertise of Authorized Persons. Yet if the systems fail, these homeowners can be subject to a repair order or a fine, even a ticket issued every day. If Authorized Persons are granted a monopoly over the design and construction of sewerage systems, they—and not homeowners—should also be legally responsible for problems resulting from their incompetence or negligence.

The Coalition had also considered that requiring that Authorized Persons post a performance bond may be a useful alternative to either professional liability insurance or a special compensation fund. However—given the length of time that it may take for problems to become apparent with a sewerage system—the use of time-limited bonds may not be suitable. The ministries should look closely at what alternatives should be employed to minimize the impact on homeowners who may face financial ruin at the hands of incompetent or unethical Authorized Persons.

New types of treatment systems

The Coalition understands that BCOSSA is seeking authority to approve new types of treatment systems that are being developed as a result of innovations and new technologies. While there may be some merit in having an independent body with appropriate expertise play a role in evaluating and approving novel systems, the Coalition is not convinced that BCOSSA has either the capacity or is suitable to take on this role. The Coalition would prefer to see a body independent of both education providers and the regulatory bodies be given this mandate, if government determines that this option should be pursued. At the least, the government should engage in active consultation with all stakeholders before granting this authority to a new or an existing organization.

VIII. Appendices

Appendix A

Onsite Sewage Disposal Administration, Requirements & Oversight Across Canada

Province	Department Responsible	Additional Info
British Columbia	Ministry of Health	No permits required. System to be installed and designed by a Qualified Person. No final inspection or approval needed. PHIs handle complaints. EHOs at Health Canada handle sewage on Indian Land.
Alberta	Municipal Affairs	Permits issued by Municipality or Alberta Permit Pro. Contractor should be Certified. Systems are inspected and receive final approval. Mostly on acreages. EHO's handle complaints
Saskatchewan	Ministry of Health, Health Protection	EHOs issue permits, carry out inspections and approve all systems and deal with complaints.
Manitoba	Environment Officers within Provincial Conservation Department	Program was delivered by EHO's however with the transfer of Health protection programs out of Conservation the Land Use program stayed behind. Legislation: Onsite Wastewater Management System, Environment Act. Env. Officers issue permits and do inspections of systems and issue final approvals.
Ontario	Legislation through the Ontario Building Code - administered by the Ministry of Municipal Affairs and Housing	Enforced by some health units, conservation authorities and local municipal building inspectors for systems < 10,000 litres per day. Sewage complaints may be handled by the public health inspector of local health unit & order written if health hazard identified. If remediation or upgrade of system is needed the agency who enforces the Building Code related to sewage system, would get the referral. MOE handles systems that are > 10,000 litres per day.
Quebec	Municipalities, the Environment Dept in rural areas, Local Environment Officers for the Cree and Inuit territories and Health Canada	In municipalities, housing inspectors issue the permits and do the inspections. Throughout the rest of Quebec Local Environment Officers do the inspections, etc. except for Oka and Maniwaki Indian lands where Health Canada EHOs handle sewage disposal.

Nova Scotia	Nova Scotia Department of Environment	Permit applications processed by DoE staff (PHIs or Technicians). Qualified contractor must be used for installation. Final inspection may be done based on situation. Auditing of installations occurs. Complaints handled by EHO's
PEI	Department of Environment plus Communities, Cultural Affairs & Labour	Two options are available. (1) Permit, plus final inspection or audit of systems being installed and Certificate of Compliance. Inspections by DoE. (2) Certified Site Assessors (Contractors) install system and notify for final inspection. Inspections or audits may be done.
New Brunswick	Department of Health EHO's approve/inspect Licensed installers carry out system installation	PHI assesses property and provides written approval to install. Final inspection carried out prior to cover. Currently 100% of systems inspected, however with new regulations coming into force EHO's are hoping to move to audits/spot checks of installations. Licensed installers do the work, however owners can do their own installations (this is discouraged) Applicants submit a 4 page application with technical specifications.
Newfoundland/ Labrador	EHO's within Department of Government Services	<ol style="list-style-type: none"> 1. Approve on-site sewage disposal designs 2. Inspect installation of systems 3. Approve backfilling 4. Investigate malfunctions
Nunavit	Territorial Government - EHOs involved if problems with sewage disposal	No private sewerage systems installed. All systems are community collection systems or pump and hall systems.
Northwest Territories	Territorial Government - EHOs involved if problems with sewage disposal	Virtually no private sewerage systems installed. All systems are community collection systems or pump and hall systems.
Yukon	Dept. of Health and Social Services, Environmental Health Services	EHOs carry out inspections, approve sites, issue permits, authorize approval to backfill and issue final authorizations.

(SOURCE: BC Branch, Canadian Institute of Public Health Inspectors)

Appendix B

Resolution of the Union of BC Municipalities

2008 SR1 Sewerage System Regulation

(endorsed by the UBCM membership, 2008 UBCM Convention)

WHEREAS the implementation of the Sewerage System Regulation (SSR) which regulates onsite sewage disposal systems has caused implementation challenges for local governments since the SSR came into effect on May 31, 2005;

AND WHEREAS these challenges include increased costs to homeowners, a lack of flexibility in system installations, an inadequate number of practitioners and professionals, a lack of communication and liability concerns;

AND WHEREAS the UBCM membership endorsed a seventeen (17) point action plan in the 2007 UBCM Environment Action Plan which identified a series of policy and regulatory actions that would address local government concerns with the SSR;

AND WHEREAS several key policy and regulatory deliverables contained in the action plan have yet to be completed:

THEREFORE BE IT RESOLVED that the UBCM call upon the Province to make the policy and regulatory changes identified in the SSR action plan in order to address outstanding local government concerns with the Regulation.

Convention Decision: Endorsed

IX. ENDNOTES

¹ John Rowse, Executive Director at British Columbia OnSite Sewage Association, estimates there are approximately 300,000 septic systems in BC, with about 5000-8000 installed each year. There are probably about 2500-4000 repairs and alterations to systems each year as well.

² For example, ABC news recently reported that experts and readers of the *British Medical Journal* have picked sanitation as the most important medical advance since 1840, closely edging out antibiotics. In the twentieth century average life spans in developed countries increased by 35 years – and 30 of those bonus years are attributable to sanitation. See

http://www.sewerhistory.org/articles/wh_era/brit_med_journal_contest/Sanitation.pdf

³ See http://www.drgreene.com/21_1088.html for a discussion of some of these diseases. Gastroenteritis can be caused by cryptosporidium, which was the cause of the major public health crisis in North Battleford, Saskatchewan in 2001, or by *E. coli*, which killed seven people in Walkerton, Ontario in 2000. The North Battleford outbreak was caused by human sewage, while the *E. coli* at Walkerton came from cow manure entering their drinking water via wells. Weil's disease is a flu-like illness with persistent and severe headache in which damage to liver, kidneys and blood may occur <http://www.hse.gov.uk/pubns/indg198.htm>. In addition, if excess nitrogen from sewage taints drinking water, the nitrogen/nitrates in the water can trigger methemoglobinemia, which is potentially fatal to young infants. US data indicates that 1.8 million to 3.5 million illnesses are caused by swimming in water contaminated by sewage, and an additional 500,000 from drinking contaminated water. US Medical costs associated with eating sewage-contaminated shellfish range from \$2.5 million to \$22 million each year (Natural Resources Defence Council Report, <http://www.nrdc.org/water/pollution/sewage.asp>). See the Shellfish Water Quality Protection Program website, for Canadian information on septic contamination of shellfish beds <http://www.pyr.ec.gc.ca/EN/Shellfish/index.shtml>. For a reference to 27 serious BC Outbreaks of disease from tainted water supplies since 1980 see <http://www.watertalk.org/reports/roweoh20.html>).

⁴ The financial cost of this incident of *E. coli* contamination of Walkerton's water has been estimated at \$155 million.

⁵ See Report of the Walkerton Inquiry, Part One: A Summary, The Honourable Dennis R. O'Connor, pp. 29 and 31 and following. For example, Justice O'Connor noted the role of the privatization of drinking water tests, with the failure to pass regulations to require the private labs to notify authorities as one of the causes of the outbreak.

Note the following excerpt from *Alternatives Journal* about Justice O'Connor's report:

Justice Dennis O'Connor handed down his recommendations from the public inquiry held into the Walkerton tragedy in two reports released in January and May 2002. A similar public inquiry was held in Saskatchewan where Justice Robert D. Laing presided, presenting his recommendations to the province in March 2002. Although the two public inquiries looked at quite different sets of circumstances, many of their conclusions are strikingly similar. Each investigation dissected the existing approaches to water safety, exposing flaws in systems with fragmented responsibility, unenforceable guidelines, downloaded infrastructure costs, and deregulated and/or privatized monitoring programs. In detailed recommendations, both urged a comprehensive "multi-barrier" approach to ensure the safety of drinking water.

Justice O'Connor's investigation made it clear that responsibility for the tragedy rested heavily with the Province of Ontario through a three-decade tenure of governments from all political stripes. The tragedy could have been averted entirely (or substantially reduced in scope) if the Ministry of Environment had adequately fulfilled its regulatory and overseeing role. In addition to the shortcomings of the Ministry's preference for voluntary rather than mandatory pollution abatement, the inquiry found deficiencies with Ministry approvals and inspections programs and with the water operator certification and training program.

The same list of deficiencies in monitoring, inspections, operator training and certification were found within the Saskatchewan Environment Ministry. Justice Laing considered the ministry to be "an inadequate and ineffective regulator of drinking water". But Laing's inquiry noted further that lack of accountability and allocation of resources to administer and enforce environmental laws and programs came from the top. Particularly in recent years, in both provinces, overall government policy was to cut costs for economic reasons alone without assessing environmental or public health consequences. Both inquiries discovered that the provincial governments persisted with cuts despite explicit warnings from public health officials about the potential consequences for drinking water safety. http://goliath.ecnext.com/coms2/summary_0199-2965767_ITM.

⁶ See "Why Our Food-Inspection System is Failing", by Bob Kingston, *Victoria Times Colonist*, February 16, 2009.

⁷ This new sewerage regulation lacks appreciation for maintaining our historic high level of sanitation and clean lakes and rivers. Ironically its approach conflicts with the fundamentals of the new May 2003 BC *Drinking Water Protection Act* (DWPA) and regulation. The DWPA is seen as some of the most progressive post-Walkerton drinking water legislation in Canada, yet the new sewerage regulation is contrary to the new Provincial source-to-tap initiatives.

⁸ See "Hixon Man Still Waiting for New Septic System", *Prince George Citizen*, July 28, 2008 and "Faulty Septic Systems Pose Public Health Risks, Experts Warn", *Victoria Times Colonist*, June 30, 2008. The latter article also states: "What I have seen in the last few years scares me," said Bob Sovereign, a Nanoose Bay system designer. "Systems are being designed and installed with no consideration for the public health." The article states that a system that cost \$7000 in 2004 now costs \$15,000.

⁹ Ironically, this new 2005 regulatory approach to onsite sewage disposal was implemented almost two years to the day after the enactment of the new BC *Drinking Water Protection Act* (DWPA) and Regulation. The DWPA is seen as some of the most progressive post-Walkerton drinking water legislation in Canada, yet the new septic regulation that followed is totally to the contrary. Its lack of protection conflicts with the Provincial source-to-tap initiatives and the prevention of fecal/oral disease agent transmission. See Ministry website <http://health.gov.bc.ca/source.html> and DWPA <http://www.health.gov.bc.ca/protect/dwact.html>

¹⁰ See "Faulty Septic Systems Pose Public Health Risks, Experts Warn", *Victoria Times Colonist*, June 30, 2008. The article states that a system that cost \$7000 in 2004 now costs \$15,000. See Appendix B for the UBCM resolution.

¹¹ See Appendix B.

¹² A recent FOI request indicates that since the new Regulation was implemented at least 26 letters/emails of complaint have been received by the Minister of Healthy Living and Sport alone, excluding the Minister of Health Services, who has been more directly involved in this issue.

¹³ See below for further discussion of how the desire to facilitate rural development and to cut the number of civil servants and government regulations contributed to creation of the SSR.

¹⁴ *Health Act*, [RSBC 1996] c.179

¹⁵ SDR, s. 3(1): "No person shall construct, install, alter or repair a sewage disposal system or cause it to be constructed, installed, altered or repaired unless he holds a permit issued under this section or section 3.01."

¹⁶ See SDR, s. 6 (and attendant schedules).

¹⁷ See SDR, s. 7.

¹⁸ Although all other provisions of the SDR schedules applied -- including minimum drain pipe lengths and setback distances.

¹⁹ The setbacks were only variable for repairs of systems initially built prior to 1985, or for non-septic tank or non-package treatment plant systems, such as a pit privy. The old regulation was designed to hold the bar on recognized setbacks of a proven record, yet enabled flexibility to accommodate previously established layouts "if" such would not constitute a health hazard.

²⁰ Consumers Guide to Filling out the BC Ministry of Health's Sewage Disposal System Permit.

²¹ or installed, altered, or repaired. The conditions governing the issuance of permits were set out in SDR, sections 3 and 6, and in the Schedules of the SDR (Greg Baytalan, Public Health Inspector, CIPHI BC Branch Sewerage Representative, "Fundamentals of the Old Sewage Disposal Regulation":

Permit issuance in the old regulation was provided through Section 3, with Section 6 addressing the requirement for adherence to "conventional" criteria. Conventional criteria were outlined in Schedules 2

and 3 for “conventional septic tank systems” and “conventional package treatment plant systems” respectively.”)

²² SDR, s. 3(2)-(4).

²³ SDR, s. 4.

²⁴ This is ironic, because amendments to the SDR in 1985 actually did away with the requirement for inspections at this stage -- See the 1989 Ombudsman’s Report on the Permitting Process for Onsite Sewage Systems. http://www.ombud.gov.bc.ca/resources/reports/Public_Reports/Public%20Report%20No%20-%2018.pdf; see Greg Baytalan, “Fundamentals of the Old Sewage Disposal Regulation”, *supra* note 19.

²⁵ Within 30 days of the permitting decision. See ‘Consumers Guide to Filling out the BC Ministry of Health’s Sewage Disposal System Permit.

²⁶ Ombudsman’s Report on the Permitting Process for Onsite Sewage Systems, 1989:

http://www.ombud.gov.bc.ca/resources/reports/Public_Reports/Public%20Report%20No%20-%2018.pdf, 21.

²⁷ Note that in 1991 Environmental Control Area maps were brought into force to control phosphorus introduction into Okanagan basin lakes.

²⁸ Ombudsman’s Report on the Permitting Process for Onsite Sewage Systems, 1989:

http://www.ombud.gov.bc.ca/resources/reports/Public_Reports/Public%20Report%20No%20-%2018.pdf, pp. 38-50.

²⁹ See the discussion in Christopher Sheil’s historical case study analysis of the deregulation of water and sewerage in Australia, wherein he cautions “the reforms amount to the imposition of an incomplete hypothesis that works against the public interest, harbouring social, economic and environmental risks.” Christopher Sheil, ‘An incomplete hypothesis’: deregulation of water and sewerage in Australia, 12 *Utilities Policy* (2004) 153.

³⁰ The reduction of regulations has since surpassed the target number, reducing regulations by 42.6% as of March 31, 2008. See Ministry of Small Business and Revenue and Ministry Responsible for Regulatory Reform, 2008. “British Columbia’s Regulatory Reform Initiative.” Government of BC.

³¹ Meeting with Ministry of Health.

³² The Ministry of Health believed that SDR prescription restricted innovation and creativity and they therefore wanted an outcome-based, industry-focused regulation to grant innovative abilities and shift responsibility to industry.

³³ For a history of sewerage regulation reform to 1989, see the Ombudsman’s Report on the Permitting Process for Onsite Sewage Systems, 1989:

http://www.ombud.gov.bc.ca/resources/reports/Public_Reports/Public%20Report%20No%20-%2018.pdf

³⁴ The Coalition has been unable to find a single North American jurisdiction that has moved so completely to a privatized and deregulated regime, as is discussed below.

³⁵ The SSR does not mandate adherence to the SPM per se; the SSR simply requires that technicians certify in writing that the systems they plan, install, or maintain conform to “standard practice”, which is defined as “any method... that will ensure that the sewerage system does not cause, or contribute to, a health hazard.” To determine whether a system conforms to “standard practice” the regulation states that the technician “may have regard” to the Manual. Section 8(3) of the Regulations states: “To determine whether the plans and specifications filed under subsection (2) (b) are consistent with standard practice, an authorized person *may have regard* to the Ministry of Health Services’ publication “Sewerage System Standard Practice Manual”. Thus, the manual standards are not necessarily enforceable.

³⁶ Or, have satisfied BCOSSA that the person has competency in the area; alternatively, an RP can complete an equivalent course offered elsewhere in Canada. See s. 7(1) and (2) [CHECK] See the BCOSSA website for list of courses for each certification. <http://bcossa.com/rowpre requirements.html>

³⁷ See SSR, s. 1.

³⁸ and costs \$4,600.

³⁹ and costs \$4,200.

⁴⁰ and costs \$2,700.

⁴¹ and costs \$2,000. See ROWP section of BCOSSA website for the duration of training courses.

<http://www.wowtc.org/rowpre requirements.html> There are no fee listings on the BCOSSA or Westcoast Onsite

Wastewater Training Center (WOWTC) website. These figures were obtained from WOWTC by telephone conversation: 1-866-391-8442.

⁴² Application Fee = \$125; Stamp Fee = \$75; Registration/Annual Renewal Fee = \$270. ASTTBC, Onsite Wastewater Registration Program website: <http://owrp.asttbc.org/registration.htm>

⁴³ There are four classes of ROWP certification as defined by ASTTBC and BCOSSA, but only one by the SSR. The SSR speaks to only one RP, one that can construct or maintain a Type 1 or Type 2 sewerage system; construct by definition includes to plan. The BCOSSA and ASTTBC inspector category is independent of the SSR as only a Medical Health Officer or Public Health Inspector is an SSR “inspector”.

⁴⁴ <http://www.bchealthguide.org/healthfiles/hfile21.stm>

⁴⁵ ASTTBC does *offer* group rate insurance for its members, but does not require that such insurance be purchased either as a prerequisite to certification or otherwise. See the ASTTBC website: <http://www.asttbc.org/practice/regulation/liability.php>

⁴⁶ To qualify as a SSR professional s. 7(3) requires the person to have “training in soil analysis and sewerage system construction and maintenance” and to be a registered member of a professional association which regulates matters such as the supervision of sewerage system construction and maintenance” and is “statutorily recognized in BC”. Thus far the only professionals recognized to function as SSR professionals are those registered with APEGBC.

⁴⁷ APEGBC, Bylaws, s. 11. If the applicant did not spend one of the four years of field experience under supervision of a Professional Engineer, he or she can become a “provisional member”. Provisional members are subject to additional supervision and other restrictions on their practice.

⁴⁸ APEGBC Bylaws,

17 (a) Before entering into an agreement to provide professional engineering or professional geoscience services to the public, a member, licensee or certificate holder must notify the client, in writing, whether or not professional liability insurance is held and whether that insurance is applicable to the services in question. The note shall include a provision for an acknowledgement of the advice to be signed by the client.

(b) There is established a category of professional liability insurance, separate from the professional liability insurance mentioned in subsection (a), referred to as secondary professional liability insurance, that all categories of members, licensees, engineers-in-training, geoscientists-in-training and provisional members must carry and maintain.

⁴⁹ SSR, s. 8(2)(b) and (c). This filing must also contain the type of structure the system will serve and the type, depth and porosity of the soil at the site. See s. 8(2)(a) for information required.

⁵⁰ SSR, s. 1.

⁵¹ s. 8(3).

⁵² See the FOI October 16, 2006 email from Public Health Inspector Dan Armstrong to his superior, stating, “In the past, you’ve told us you have legal counsel to confirm your requirement “that we ignore everything contained in a filing other than having every box on the filing form filled in.”

⁵³ Vancouver Island Health Authority, 2008 letter.

⁵⁴ Vancouver Island Health Authority, 2008 letter.

⁵⁵ Note that under the SSR the definition of “construct” includes to plan a system. Note that the Authorized Person that constructs and installs the system need not necessarily be the same person that assessed the site or designed the system plan, but the system installed must follow the filed plans and specifications.

⁵⁶ SSR, s. 9(1).

⁵⁷ With the exception of the installation of relatively uncommon holding tanks, which still require a permit under the SSR.

⁵⁸ See SSR, s. 12. Note that unlike the process under the SDR, there is no limit to the number of filings that can be submitted on one lot. This has caused great concern to local governments that may have issued a building permit on the strength of an initial filing.

⁵⁹ Note that section 104 of the *Health Act* states that the penalty for contravening the Act or its regulations includes a fine of up to \$200,000, imprisonment for up to 12 months, or both.

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- ⁶⁰ PRB Policy and Procedures, 3.
- ⁶¹ John Shortreid, ASTTBC Registrar. Personal Communication, January 18, 2009.
- ⁶² PRB Policy and Procedures Manual, 3. Available at: http://www.asttbc.org/practice/docs/2006_PRB_Policies.pdf
- ⁶³ SPM Manual, 9.
- ⁶⁴ Complaints submitted by ASTTBC members (against fellow members) can be sent to BCOSSA (instead of directly to the ASTTBC Registrar). In this case, BCOSSA may act as the complainant before the PRB, which preserves the anonymity of the original complainant. Complaints in general must include all relevant contact information, including contract information; applicable dates, times, or locations; a written record of the actual complaint; witness statements or a list of witnesses; and copies of any relevant documents. PRB Manual, 6.
- ⁶⁵ PRB Manual, 6.
- ⁶⁶ PRB Manual, 10.
- ⁶⁷ However, the common law requires that where there is a right to appeal, there is an obligation on administrative decision makers to provide written reasons to the party where a decision has negatively affected a party's legal rights.
- ⁶⁸ PRB Manual, 10
- ⁶⁹ Section 4.7(d)(iv).
- ⁷⁰ Regulation 4.7(4)(g)(ii) states: "The hearing will be in-camera and open only to the Discipline Committee and its counsel, the member or registrant and his or her counsel, Association staff and witnesses;"
- ⁷¹ s. 4.7(4)(g)(iii).
- ⁷² s. 4.7(h).
- ⁷³ ASTTBC website: <http://www.asttbc.org/practice/complaints/findings.php>
- ⁷⁴ John Shortreid, ASTTBC Registrar. Personal Correspondence, January 19, 2009.
- ⁷⁵ See the PRB case histories log, available at http://www.asttbc.org/practice/docs/PRB_Case_06_07.pdf
- ⁷⁶ The Appeal Committee may hold a hearing and has powers commensurate with the former two ASTTBC bodies. The Appeal Committee is authorized to: "quash, verify or confirm the order of the Practice Review Board or Discipline Committee or substitute or make a finding or order of its own" s. 4.7(j)(vii)(E).
- ⁷⁷ Information in this section is taken from APEGBC Complaints Investigation Procedure, available at: http://www.apeg.bc.ca/enforcement/documents/complaint_procedure1.pdf
- ⁷⁸ See APEGBC website: <http://www.apeg.bc.ca/enforcement/index.html>
- ⁷⁹ See s. 9 of the *Engineers and Geoscientists Act R.S.B.C. 1996 c. 116*. The number of Members of Council can vary somewhat depending on whether a member of a Faculty of Applied Science, Engineering or Geoscience is elected and whether Council amends the bylaws which designate how many members can be appointed to Council.
- ⁸⁰ Who is appointed by the Registrar of the Association.
- ⁸¹ The Investigation Committee is comprised of 5 persons appointed by Council (one of which *may* be a non-member). Section 30(1), *Engineers and Geoscientists Act R.S.B.C. 1996 c. 116*.
- ⁸² This Notice of Inquiry must also be signed by the Investigation Committee and Discipline Committee.
- ⁸³ There are no non-members on the Disciplinary Committee or sub-committees. Section 31(1) and (3).
- ⁸⁴ Section 31(7) reads: "If the discipline committee considers that a delay in holding an inquiry under section 32 concerning a member, licensee or certificate holder would be prejudicial to the public interest, the discipline committee, without giving the member, licensee or certificate holder an opportunity to be heard, may suspend the membership, licence or certificate of authorization, or restrict the scope of practice, of the member, licensee or certificate holder, until an inquiry and decision under section 32."
- ⁸⁵ For example, see the following posted Stipulated Order against Jerry Lay, P.Eng which outlines the penalties prescribed for numerous violations of the Standard Practices Manual and the SSR. APEGBC, at: <http://www.apeg.bc.ca/enforcement/documents/practice-restrictions/LayEdited.pdf>
- ⁸⁶ If the member is found liable, the panel can require him or her to pay the costs of the investigation; if not, the panel can require the Association to pay these costs.
- ⁸⁷ <http://www.apeg.bc.ca/enforcement/discipline.html>
- ⁸⁸ These decisions may be subject to judicial review.
- ⁸⁹ Section 32(5).

⁹⁰ See *In the Matter of the Engineers and Geoscientists Act R.S.B.C. 1996 c. 116 (as amended) and Ross L. Morton* (2007), available on the APEGBC website at:

<http://www.apeg.bc.ca/enforcement/documents/Ross%20Morton%20Revocation.PDF>

⁹¹ John Shortreid, "ASTTBC Complaints Process". ASTTBC Newsletter

⁹² This statistic is compiled from the PRB case histories log, available at

http://www.asttbc.org/practice/docs/PRB_Case_06_07.pdf Note that the figures above do not include Title Protection complaints, most of which are not against *members* of the ASTTBC.

⁹³ See the ASTTBC Technical Specialists Register, available at:

http://www.asttbc.org/registration/technical_specialists/ts_demographics.php

⁹⁴ Mark Hooks, Government Relations Committee Chair, National Onsite Wastewater Recycling Association (NOWRA). Personal Correspondence, February 2, 2009; Richard Otis, Vice President, National Onsite Wastewater Recycling Association. Personal Correspondence, February 3, 2009; see also the recent summary of Canadian onsite sewage disposal administration, requirements, & oversight produced by the BC Branch, Canadian Institute of Public Health Inspectors: Appendix A.

Government inspection of installation sites is an essential accountability measure in jurisdictions outside North America as well. Onsite sewerage systems in Australia require government inspection and approvals prior to use. Tony Pearson, Team Leader Environmental Health and Ranger Services, Government of Australia. Personal Correspondence, February 4, 2009. See the following links for information on these regimes:

<http://www.dh.sa.gov.au/pehs/environ-health-index.htm>;

<http://www.dh.sa.gov.au/pehs/branches/wastewater/wastewater-legis.htm>;

<http://www.dh.sa.gov.au/pehs/branches/wastewater/onsite-systems.htm>;

⁹⁵ Richard Otis, Vice President, National Onsite Wastewater Recycling Association. Personal Correspondence, February 3, 2009.

⁹⁶ Mark Hooks, Government Relations Committee Chair, National Onsite Wastewater Recycling Association (NOWRA). Personal Correspondence, February 2, 2009. See also the recent summary of Canadian onsite sewage disposal administration, requirements, & oversight produced by the BC Branch, Canadian Institute of Public Health Inspectors: Appendix A.

⁹⁷ John Shortreid, ASTTBC Registrar. Personal Correspondence, January 29, 2009.

⁹⁸ There is a great deal of confusion about the Health Authority's responsibility with respect to filings under the SSR. According to some reports, some health inspectors will examine filings for internal coherence and scan them for blatant errors. Others refuse to consider the technical content of filings altogether, since Health Authority legal staff have determined that they have no jurisdiction to approve or reject filed plans on their merits (or to investigate health hazards on the basis of pre-installation filings). Geoff Thiele, APEGBC Director, Investigation and Discipline. Personal Correspondence. February 3, 2009. John Shortreid, ASTTBC Registrar. Personal Correspondence, January 29, 2009.

⁹⁹ For example, see <http://www.dailycommercialnews.com/article/id30604>

<http://www.vancouversun.com/Canada+sewage+water+systems+rusting+wreck/1080830/story.html>

¹⁰⁰ Avres Associates, University of Minnesota-Duluth, and Saint Louis County, December 2004 "Model Code Framework for Performance Management of Onsite/Cluster Wastewater Systems." p. 39.

¹⁰¹ In addition to the neighbours' lost right to appeal, the person retaining the system planning services of an AUTHORIZED PERSON can no longer appeal such plans and conditions imposed therein to the EAB. That person would be required instead to hire another AUTHORIZED PERSON to get a second opinion. However, this expense will be borne by the purchaser, and at substantial cost. Plus, there may be factors which make this impractical. For example, in most cases, the owner will have less knowledge about the health and safety requirements than the AP, and is not likely familiar with the complex guidelines in the SPM. Second, there are shortages of APs in many areas throughout the province.

¹⁰² With the relatively infrequent exception of holding tanks, which still require a government permit.

¹⁰³ National Onsite Wastewater Recycling Association, March 2007, "Model Code Framework for the Decentralized Wastewater Infrastructure." Vol 2: Code Design Philosophy and Guidance, available at: <http://www.modelcode.org/publications.html>, 13. See Table 2.1 on page 13.

Because the Model Code did not foresee that governments would actually fully disgorge its regulatory role to practitioner-based organizations (as has happened in BC), the Code frames its discussion regarding conflict of interest in terms of the conflict that arises when *state* regulators simultaneously perform for-profit services. However, it is clear that the same considerations apply when private practitioners are performing the dual roles of regulator and service provider, as is the case in BC, where a practitioner can now ‘authorize’ his own site assessment and installation.

¹⁰⁴ The SSR does not mandate adherence to the SPM per se; the SSR simply requires that technicians certify in writing that the systems they plan, install, or maintain conform to “standard practice”, which is defined as “any method... that will ensure that the sewerage system does not cause, or contribute to, a health hazard.” To determine whether a system conforms to “standard practice” the regulation states that the technician “may have regard” to the Manual. Section 8(3) of the Regulations states: “To determine whether the plans and specifications filed under subsection (2) (b) are consistent with standard practice, an authorized person *may have regard* to the Ministry of Health Services' publication "Sewerage System Standard Practice Manual". Thus, the manual standards are not necessarily enforceable.

¹⁰⁵ As was the case in a recent intervention by a health inspector, which was overturned by the BC Supreme Court in November 2008.

¹⁰⁶ John Shortreid, “ASTTBC Complaints Process”. ASTTBC Newsletter

¹⁰⁷ *Wilkinson v. Vancouver Island Health Authority*, 2008 BCSC 1521 (BCSC)

¹⁰⁸ BC Reg. 142/59.

¹⁰⁹ MLRC, 53.

¹¹⁰ APEGBC has a “practice review” program which examines the paperwork filed by about 200 of its 20,000 members each year (about 1%) in select practice areas. These reviews have not looked at the work of professionals for onsite sewerage systems. ASTTBC has no formal practice review program for its members (though some supervision may be triggered by complaints or disciplinary action against a member). Additionally, BCOSSA recently initiated a “paper audit” which looked at the filings submitted by a number of ROWPs and professional engineers under the SSR. But, there are serious concerns about the methodology used to conduct these audits. Participation in this paper audit was voluntary. More troubling, however, was that BCOSSA has reportedly excluded from the audit filings (as many as 25%) which did not contain 2 or more items of information required by the SSR. Obviously, by excluding a large number of non-compliant filings, the audit will report higher levels of compliance amongst the filings it examined than that which exists in practice. Greg Baytalan, Public Health Inspector, CIPHI BC Branch Sewerage Representative, Personal Communication, February 5, 2006.

¹¹¹ Although the regulatory system under which professional engineers operate is far better than the ASTTBC system, even sealed submissions by professional engineers have involved clearly bad practices, including things such as:

- submitting percolation and water table data on properties in Aug and Sept when the results are always the best and not as the local requirements indicated "throughout the year" thus skewing the data. Septic systems must work year round and not just in August and September so test results must represent site conditions throughout this year.
- changing the percolation test procedure significantly from the one required right in the regulations to improve the test results
- adding substantial fill in the septic field area (up to 20' in a ravine) and then claiming it was undisturbed native soil.

Clearly post-construction monitoring, even of engineers, is needed to detect problems that may arise post construction.

¹¹² This inability is illustrated clearly in CASE #07-14. The complainant, a health authority, alleged that a filed system contained several violations of the SPM (it did not list setbacks and may have identified incorrectly identified the soil type). During the investigation, the landowner sent a letter to the PRB which accused the health authority of bias. The letter included a report from a professional engineer stating that the system was installed correctly and did not threaten neighbouring properties. The PRB case summary recognized that to resolve the dispute, “an onsite audit... might be required”. But instead of examining the site itself to see whether the setbacks and soil type were, in fact, correct and safe, the PRB simply relied on the engineer’s report supplied by the

landowner and “assumed” that the member’s filings complied with the SPM. Although this was not stated in the case summary, the PRB’s decision not to examine the site itself was likely due to the fact that it has no legal jurisdiction to do so (where the property owner refuses permission). See Case Summaries on the ASTTBC website, available at: http://www.asttbc.org/practice/docs/PRB_Case_06_07.pdf .

¹¹³ See CASE #06-31 (#06-62) on the PRB case histories log, available at http://www.asttbc.org/practice/docs/PRB_Case_06_07.pdf For a similar problem, see CASE Misc.5.4.2 in which a Registered Fire Protection Technician (RFPT) complained that another technician had conducted an inspection of fire safety equipment 4 months prior to the required date (thus ‘scooping’ the complainant’s client and providing unnecessary services to the client). But, since the person complained about only became a member after these events, the PRB determined it had no jurisdiction to discipline that person (even though he was, at the time of the complaint, a member).

¹¹⁴ Other self-governing organizations such as the Law Society and APEGBC have legislation that clearly gives it jurisdiction in such situations. But here, the government delegated its responsibility for monitoring, enforcement, and sanctioning to an organization that, apparently, does not have the legal basis to discipline its members that choose to walk away from the Association.

¹¹⁵ Self-governance scholar, Margot Priest’s research confirms the need for self-governing bodies to be highly transparent:

Where industries are performing functions delegated to them by government, by statute or by contract, there should be a continuing effort to maintain the transparency of the decision making process. Indeed, one might argue that greater transparency is required to maintain the integrity of the process and protect the public interest since political responsibility has been diminished or attenuated in the case of self-regulatory bodies. (Margot Priest, “The Privatization of Regulation: Five Models of Self-Regulation” (1997-1998) 29 *Ottawa L. Rev.*, 288 [Priest].

¹¹⁶ Manitoba Law Reform Commission (MLRC), 58.

¹¹⁷ None of the statistics compiled included Title Protection complaints, most of which are not against *members* of the ASTTBC.

¹¹⁸ Case summaries on the ASTTBC website only date back to January 2005. ASTTBC Registrar, John Shortreid indicated in personal communication that the PRB has never to his knowledge released this information. There are no policies or official criteria that guide the PRB in deciding whether the release of such information was in the public interest. However, ASTTBC Registrar, John Shortreid, noted that the disclosure of this information would have to serve some purpose other than “embarrassing the practitioner” and would likely only be made public if there was a “dire need” to do so. John Shortreid, ASTTBC Registrar. Personal Correspondence, January 19, 2009.

¹¹⁹ See the websites of these organizations for the publicly posted disciplinary decisions and stipulated (consent/admission) orders.

¹²⁰ The current secrecy about the ASTTBC procedures stands in stark contrast to the procedures of most self-regulating organizations, such as the Association of Professional Engineers of British Columbia (APEGBC), and other professional associations such as the BC Law Society or BC College of Physicians.

¹²¹ Cited in *Priest, supra* note 110 at 286.

¹²² See ASTTBC Act, s. 7 for the requirements for Council.

¹²³ ASTTBC Regulation, 9.1.

¹²⁴ APEGBC has 4 of 18 Members of Council appointed by Government. 6 of 31 Law Society Benchers are public representatives appointed by Government. Under the Health Professions Act, all of the two-dozen or so health profession colleges must have at least 1/3 public representatives appointed to their boards.

¹²⁵ ASTTBC’s PRB is permitted to have one lay member (and up to two senior members of other professional organizations), but currently has neither.

There are a number of other measures which can improve accountability of self-governing organizations, including: access to annual reports; access to bylaws, rules, register of members; government investigations; and ombudsman oversight. For a copy of the Ombudsman’s Fairness Checklist, see www.ombud.gov.bc.ca/about/fairness-checklist.htm.

¹²⁶ As the Manitoba Law Reform Commission states, the incidence of unethical or incompetent practice can be reduced by measures which are “designed to deter a specific practitioner from repeating the action or to deter

practitioners as a whole from engaging in a certain course of conduct. Fines, reprimands and awards of costs can serve this end.” MLRC, 69.

¹²⁷ See CASE #06-54, on the PRB case histories log, available at http://www.asttbc.org/practice/docs/PRB_Case_06_07.pdf. The member was also ordered to provide documentation that he had already completed the required training modules for ASTTBC certification; information which, for some reason, the ASTTBC did not possess.

¹²⁸ Priest, *supra* note 110 at 235; MLRC, 51.

¹²⁹ Geoff Thiele, APEGBC Director, Investigation and Discipline. Personal Correspondence. February 3, 2009. John Shortreid, Registrar, ASTTBC. Personal Communication. January 29, 2009. Shortreid indicates that ASTTBC is currently undergoing a pilot project of conducting “paper audits” for a number of ROWPs that have volunteered to be part of the project.

¹³⁰ See Appendix B.

¹³¹ BCOSSA website, Frequently Asked Questions: <http://www.wowtc.org/faqs.html>

¹³² Tom McMillan, “Faulty septic systems pose public health risks, experts warn”, *Times Colonist*, June 30, 2008.

¹³³ MLRC, 9.

¹³⁴ Ombudsman’s Report, 9.

¹³⁵ Scott Stanfield, “Homeowner outraged by sewer regulations.” April 9, 2008. *Prince George Citizen*. Available at: <http://www.princegeorgecitizen.com/20080409126367/local/news/homeowner-outraged-by-sewer-regulations.html>.

¹³⁶ The BCOSSA website indicates that it has had difficulty securing an underwriter to provide errors and omission insurance for ROWPs: “Currently, BCOSSA is investigating the possibility of insuring the registered practitioners as they and ASTTBC have found it difficult to find an underwriter that understands the nature of this business and will provide errors and omissions coverage at a reasonable cost. ASTTBC currently has insurance that may cover registered practitioners for the time being.” BCOSSA website: <http://www.wowtc.org/faqs.html>

¹³⁷ Shortreid, Registrar, ASTTBC. Personal Correspondence. January 29, 2009. In some jurisdictions, practitioners offer warranties for their systems or services. This may be an option worth examining.

¹³⁸ Ombudsman’s Report on the Permitting Process for Onsite Sewage Systems, 1989: http://www.ombud.gov.bc.ca/resources/reports/Public_Reports/Public%20Report%20No%20-%2018.pdf, 48-49.

¹³⁹ The removal of the permitting process under the former regulations also reduced the number of potential sources of compensation to harmed parties (i.e. previously, if a permit which authorized the construction of a system was issued negligently, the aggrieved party could seek compensation from the Health Authority).

¹⁴⁰ Richard Otis, Vice President, National Onsite Wastewater Recycling Association. Personal Correspondence, February 3, 2009.

¹⁴¹ The Manitoba Law Reform Commission states: “An order of restitution for out of pocket expenses or for the refund of excessive fees will be rationally and functionally connected to the disciplinary process and will complement rather than distract from the goal of public protection.” MLRC, 74.

¹⁴² Section 31, *Legal Professions Act*, SBC 1998, c. 9.

¹⁴³ MLRC, 33.

¹⁴⁴ See Table of Canadian Sewerage Regulatory Regimes, Appendix A.

¹⁴⁵ Margot Priest, “The Privatization of Regulation: Five Models of Self-Regulation” (1997-1998) 29 *Ottawa L. Rev.* 235.

¹⁴⁶ It has been reported that some contractors who have left ASTTBC continue to work in the business but now on weekends.

¹⁴⁷ See Priest. See also, Manitoba Law Reform Commission.

¹⁴⁸ Priest, 286

¹⁴⁹ The Ministry then responsible for over-seeing the regulation of sewerage systems under the SSR. Note that in these recommendations, the Coalition will refer to “sewerage systems”, which should be understood to mean a small scale sewerage system or wastewater system with a flow capacity of 22,800 L/day or less, and includes septic tanks through to more advanced aerobic treatment systems.

¹⁵⁰ The Ministry’s denial of the Coalition’s request for information under the *Freedom of Information and Protection of Privacy Act* has been appealed to the Privacy Commissioner and will be vigorously pursued.

¹⁵¹ Or other organizations such as education programs.

¹⁵² See the section 1 definition.

¹⁵³ Such as a Professional Engineer, but not limited to.

¹⁵⁴ For a copy of the Ombudsman's Fairness Checklist, see www.ombud.gov.bc.ca/about/fairness-checklist.htm.

¹⁵⁵ All disciplinary hearings and appeals must be recorded and those records should also be retained for a period of seven years in case further questions or problems arise in relation to that member.

¹⁵⁶ Further, although Section 9 requires that the owner be provided with a maintenance plan, the Authorized Person is only required to provide the owner with a copy of the initial section 8 plans, which are plans that could be totally different from that of the as-built filed to the health authority under section 9(1)(c)(i). The owner may have no idea as to what is actually in the ground, or whether for that matter the system is in the front or back yard until the try and install a swimming pool.