LEGISLATIVE AND REGULATORY UPDATE

PA Section AWWA Southeast District and WWOAP Eastern Section
Fall Joint Conference – October 9, 2019
Presented by: Serena A. DiMagno
WWOAP Legislative/Regulatory Affairs Committee Chairman
LEGISLATIVE UPDATE
# House and Senate Session Schedule

## 2019 HOUSE SESSION SCHEDULE

<table>
<thead>
<tr>
<th>Month</th>
<th>Dates</th>
</tr>
</thead>
<tbody>
<tr>
<td>October</td>
<td>21, 22, 23, 28, 29 &amp; 30</td>
</tr>
<tr>
<td>November</td>
<td>12, 13, 14, 18, 19 &amp; 20</td>
</tr>
<tr>
<td>December</td>
<td>9, 10, 11, 16, 17 &amp; 18</td>
</tr>
</tbody>
</table>

## 2019 SENATE SESSION SCHEDULE

<table>
<thead>
<tr>
<th>Month</th>
<th>Dates</th>
</tr>
</thead>
<tbody>
<tr>
<td>October</td>
<td>21, 22, 23, 28, 29 &amp; 30</td>
</tr>
<tr>
<td>November</td>
<td>18, 19 &amp; 20</td>
</tr>
<tr>
<td>December</td>
<td>16, 17 &amp; 18</td>
</tr>
</tbody>
</table>
# 2020 Session Schedule

<table>
<thead>
<tr>
<th>Month</th>
<th>Dates</th>
</tr>
</thead>
<tbody>
<tr>
<td>January</td>
<td>7 (Non-Voting), 13, 14, 15, 21 &amp; 22</td>
</tr>
<tr>
<td>February</td>
<td>3, 4 &amp; 5</td>
</tr>
<tr>
<td>March</td>
<td>16, 17, 18, 23, 24 &amp; 25</td>
</tr>
<tr>
<td>April</td>
<td>6, 7, 8, 14, 15 &amp; 16</td>
</tr>
<tr>
<td>May</td>
<td>4, 5, 6, 11, 12, 13, 18, 19 &amp; 20</td>
</tr>
<tr>
<td>June</td>
<td>1, 2, 3, 8, 9, 10, 15, 16, 17, 22, 23, 24, 25, 26, 29 &amp; 30</td>
</tr>
</tbody>
</table>
Legislation – PFOA, PFOS

- **Rep. Ben Sanchez** (D-Montgomery) **House Bill 1667** amends the PA Safe Drinking Water Act providing for maximum contaminant levels for PFOA (perfluorononanoic acid) in drinking water at 13 parts per trillion (ppt).

- **Rep. Murt** (R-Montgomery) **House Bill 674** amends the PA Safe Drinking Water Act providing for maximum contaminant levels of PFOA and PFOS in drinking water in the Commonwealth to 5 ppt.

- **Sen. Maria Collett** (D-Montgomery) **House Bill 581** amends the PA Safe Drinking Water Act providing for maximum contaminant levels for PFAS, PFOA, PFOS (perfluorooctane sulfonate), PFNA (perfluoronanoic acid) and PFHxS (perfluorohexane sulfonic acid) to 10 ppt.

- **Rep. Todd Polinchock** (R-Bucks) **House Bill 1226** amends the Hazardous Sites Cleanup Act to add PFOA and PFOS to the list of hazardous substances.
Legislation – PFOA, PFOS (Continued)


- **Sen. Maria Collett** (D-Montgomery) **Senate Bill 582** amends the Hazardous Sites Cleanup Act (HSCA) to protect communities from the dangers associated with contamination from the release of per- and polyfluoroalkyl substances (PFAS), including PFOA, PFOS, PFNA and PFHxS. If the release of these substances measure at or above 10 ppt, the Governor is permitted to declare an emergency, similar to natural disasters, in any community whose surface or groundwater resources used for public drinking water have been impacted and may establish safe drinking water and cleanup standards for the affected areas. Communities receiving the special emergency declaration would be eligible for PENNVEST grants to provide treatment to impacted public water supplies, extension of water lines, interconnection with other suppliers, or to procure alternative water supply resources.
PFOA and PFOS – Hazardous Substances – Continued

• **House Bill 1364** – (Murt – R) Amends the HSCA, and is directed to communities impacted by water contamination from the release of polyfluoroalkyl substances and perfluorinated chemicals, including PFOA and PFOS.

  – Would designate these substances, their equivalents, and any chemical substance or compound designated by executive order that poses a public health threat, safety or the environment, as a “hazardous substance” under HSCA. By adding PFOA and PFOS to the list of “hazardous substance” under HSCA, it will allow the ability to utilize the State Superfund program and provide local officials the ability to seek legal recourse for full recovery of costs to manage these compounds found in the water supply. The responsible party should pay for all the water contamination costs incurred by the local government, that ensures removal of the chemicals from their water supplies to the lowest detectable level. (New York finalized a rule adding PFOA and PFAS to that state’s list of hazardous substances.

  – Directs DEP to, within 12 months of the establishment of a maximum contaminant level, health advisory level or provisional health advisory level for any substance, determine whether the substance should be designated by regulation as a hazardous substance.
PFOA and PFOS – Hazardous Substances – Continued

• **House Bill 1364** – Continued
  – Would permit the Governor to declare an emergency (similar to a natural disaster) where surface and groundwater resources used for public drinking water have been impacted by the release of hazardous substances including PFPA and PFOS which measures at or above 15 ppt.
    • By declaring an area as a “special drinking water resource-impacted community”, the Governor may establish alternative drinking water and cleanup standards for the included area to allow appropriate federal and state response efforts to protect health and safety of residents.
    • The standards would take effect immediately upon creation by the Governor and remain in effect for 24 months or until rescinded, amended, or the emergency condition and public health threat has been abated or a final rulemaking is published at the state level or federal level establishing a maximum contaminant level for the substance.
  – Communities receiving a special emergency declaration shall be eligible for PENNVEST grants.
  – A municipality, municipal authority or other public water supplier would be exempted as a responsible party as it relates to the presence of a polyfluoroalkyl substance or perfluorinated chemical in wastewater treatment plant sludge, water supply treatment residuals or other facility operational wastes.
  – In the House Environmental Resources and Energy Committee, 5/29/2019
Legislation – House Bill 1410 for PFAS Remediation

- **September 25, 2019** – The House passed Rep. Todd Stephens (R – Montgomery) bill to help address ongoing public water and environmental remediation costs to promote redevelopment of the former Willow Grove Naval Air Station.

- The bill passed with large bipartisan support, and support from leading Environmental Groups including Clean Water Action, Penn Environment and PennFuture.

- HB 1410 would redirect a portion of state tax revenue generated from the reuse of the Willow Grove Naval Air Station and some land surrounding the base to a newly created municipal authority to eliminate the local surcharges ratepayers have been paying for clean water; to remediate water contamination caused by the military installation; and for infrastructure to encourage redevelopment of the installation.
Legislation – House Bill 1410 for PFAS Remediation

• HB 1410 would also direct PENNVEST to develop a program to address PFAS water contamination in communities across Pennsylvania.

• If similar situations occur in other communities in Pennsylvania, residents could follow the HB 1410 blueprint to fund a potential solution.
Lead Testing in Schools

- **House Bill 930** – (Boback– R) amends the Public School Code of 1949, in grounds and buildings, repealing provisions relating to lead testing, and providing for testing and remediation of lead contamination.

- Repeals Section 742 (Lead Testing). This is the language included in the Public School Code of 1949 in 2018.
- No later than June 30, 2020, and each year thereafter, in accordance with the rules and regulations to be established by DEP no later than 60 days after the effective date, a school shall:
  - Conduct testing, within the school of all water outlets used for drinking and cooking to determine if there is lead contamination
  - Remediate any lead contamination identified
  - **“Lead Contamination”** The presence of lead equal to at least 5 parts per billion (ppb)
  - **“Remediation”** Steps taken to reduce a water outlet’s lead level to below 5 ppb, including the installation of filters certified to remove lead and the removal of lead-bearing fountains and other parts, if feasible.
  - **“School”** A public or private primary or secondary school.
Lead Testing in Schools – Continued

• Upon obtaining the results of testing, the school shall:
  – Within 24 hours of receiving the testing results, take the water outlets which are used for cooking or drinking and which have lead contamination out of service.
  – Within 10 days of receiving the testing results:
    • Provide written notice of the testing results:
      – To the parents or guardians of students of the school.
      – To the staff members of the school.
    • Display the testing results and remediation plan in a prominent location at the school.
    • Post the testing results and remediation plan on the school’s publicly accessible Internet website.
    • Submit the testing results to DEP and PA Department of Education if lead contamination exists.
Lead Testing in Schools – Continued

• DEP in consultation with the Department of Education shall establish rules and regulations for schools regarding the following:
  – The testing of water outlets used for drinking and cooking to determine if there is lead contamination.
  – The remediation of water outlets used for drinking or cooking if lead contamination is present.
  – The testing of water outlets used for drinking and cooking, using best practices for testing as established by the EPA and the testing of the first and second draw of water from an outlet after the water system has not been used for at least eight (8) hours.
  – Procedures to ensure that students have access to water free of lead contamination before and during remediation.
  – Procedures for the remediation of water outlets used for drinking or cooking if lead contamination is present.

• In the House Education Committee, 4/2/2019
Reducing Lead in Drinking Water in Schools and Child Care Facilities – Memo of Understanding

• EPA and its numerous water industry partners including AWWA, NRWA, States and Others:
  – Agree to encourage schools and child care facilities to take such steps to reduce lead in drinking water:
  – Training on lead,
  – Testing drinking water for lead,
  – Disseminating results to parents, students, staff, and other interested stakeholders,
  – Facilitating appropriate corrective actions.

• Signatories also agree to encourage the drinking water community to assist schools and child care facilities in their efforts to understand and reduce lead exposure from drinking water.
Legislation – House Bill 406 - Public Hearings Prior to Acquisitions

• **Rep. Cox** (R-Berks) - **House Bill 406** amends Title 53 (Municipalities Generally) providing for public notice and public meeting requirements.

• Prior to entering into an agreement to sell or lease a water or sewer system owned or operated by a municipal corporation or to sell or lease a water or sewer system currently operated by a municipal authority that would require dissolution by the municipal authority:
  
  – The municipal corporation shall hold at least one advertised public meeting, not more than 60 days nor fewer than seven days prior to entering into the agreement with the potential purchaser or lessee, and

  – Shall provide **public notice** of the meeting in all municipalities served by the water or sewer system. The potential purchaser or lessee shall attend the meeting. “Public Notice” shall be published once each week for two successive weeks in newspaper of general circulation.
Legislation – Intergovernmental Cooperation

  the bill package gives municipalities the option of using resolutions
  instead of ordinances when entering into intergovernmental cooperation
  agreements with other local governments, municipal authorities and
  school districts. The three bills were voted out of the Senate
  Appropriations Committee on September 23, 2019 and are currently on
  Third Consideration in the Senate.
Legislation – Public Meeting Web Posting

• **Rep. Bernstine - House Bill 1069** amends the Sunshine Act to require a public agency to post public meeting agendas on its website no later than 24 hours prior to a meeting as well as prohibit an agency from taking official action on items not included on the meeting agenda. Changes may be made to the agenda during a meeting upon majority vote of the individuals present and voting. On September 19th, the bill was amended on the House floor requiring that an updated agenda must be posted on a publicly accessible website, if one is available, and at the agency’s principal office location no later than the first business day following the meeting.

• The bill received Second Consideration and was re-referred to the House Appropriations Committee.
Legislation – Permitting

- **Rep. Puskaric - House Bill 1106** amends the Administrative Code to establish processes and timelines relating to applications for general and individual permits as well as general plan approvals required by an environmental law. It provides for a 30-day timeframe for approval. If timelines are not adhered to, the application is deemed approved. The bill was voted out of the House Appropriations Committee on September 24, 2019 and is currently on Third Consideration in the House.

- **Rep. O’Neal – House Bill 1107** amends Title 27 (Environmental Resources) to transfer PA DEP duties relating to the issuance, modification, renewal and transfer of individual permits and authorization to proceed under a general permit or plan approval to a newly created PA Permitting Commission. The bill received Second Consideration in the House on September 24, 2019 and was re-referred to the House Appropriations Committee.
Safety and Marking of Low Head Dams

- **House Bill 1003 – (Gillespie – R)** Amends Title 30 (Fish) to allow the Pennsylvania Fish and Boat Commission (PFBC) to directly issue citations to owners who fail to mark their dams. It also amends the definition of run-of-the-river dam.

- Under current law, failure to mark new and existing run-of-the-river dams is a civil penalty of not less than $500 nor more than $5,000. The penalty is recovered by civil suit or process in the name of the Commonwealth.

- Forty-nine individuals have been killed in dam-related boating accidents since 1989; most near low-head dams that span the entire width of a waterway. Currently there are 300 of these dams across the state.

- PFBC is charged with ensuring low head dams are properly marked both upstream and downstream with signage and buoys. PFBC has found the civil process prolonged, costly and ineffective in enforcing proper marking.
Safety and Marking of Low Head Dams - Continued

• HB 1300 requires/enforces the marking of new and existing “run-of-the-river” dams above and below the dam and on the banks immediately adjacent to the dam with signs and buoys. The signs and buoys are required to be of a design and content determined by PFBC to warn the swimming, fishing and boating public of the hazards posed by the dam.

• Any person who fails to mark new or existing run-of-the-river dams commits a summary offense of the first degree ($250 fine or up to 90 days in jail) for the first offense and a misdemeanor of the third degree ($250 to $5,000 or up to 90 days in jail) for a subsequent offense. Similar penalties are in place with respect to the maintenance of signs and buoys.

• The definition of “Run-of-the-river dam” is revised and would still apply to a dam regulated by DEP, but amended to a dam built across a “watercourse and certain flows pass” over the entire dam structure, excluding abutments, to a natural channel downstream. DEP also determines the dam to have hydraulic characteristics such that at certain flows persons may be caught in the hydraulic roller (boil) immediately below the dam.

• Laid on the Table, 9/17/2019.
PA WARN – Title 35 (Health and Safety) Re-Write

• **Rep. Barrar** (R-Delaware) is circulating a co-sponsorship memo to reintroduce HB 1218.

• **Sen. Browne** (R-Lehigh) is circulating a co-sponsorship memo to reintroduce Sen. Vulakovich’s SB 1019.

  – PaWARN wants to codify liability protection for PaWARN members temporarily deployed (individuals or equipment) by PEMA in Title 35 (Health and Safety).

  – Amends Title 35 (Health and Safety) rewriting the emergency management sections. Further provides for the powers and duties of the PA Emergency Management Agency (PEMA) and the powers and duties of political subdivisions.
PA WARN – Re-Write (Continued)

- Proposes to codify liability protection for PA’s Water/Wastewater Agency Response Network (PaWARN) members temporarily deployed (individuals or equipment) by PEMA.

- Liability protections would be afforded to public utilities temporarily deployed by PEMA when assisting non-PaWARN members.
Regulatory Change in Manganese Limits

• A provision in the Administrative Code bill (HB 118 or Act 40 of 2017) directed the Environmental Quality Board to adopt a proposed manganese standard within 90 days (before January 29, 2018) that includes the 1 milligram/liter manganese standard established under 25 PA Code Chapter 93.7 and ensure the standard is met at the point of intake for water suppliers (25 PA Code Chapter 96.3).

• The change was requested by the coal industry and would allow the coal industry (and non-profits) to save millions of dollars in treatment of acid mine drainage.

• Coal interests claimed PA’s standards were more stringent than neighboring states and required costly and unnecessary treatment to remove manganese from mine water before discharging it.
Regulatory Change in Manganese Limits – Continued

• Coal companies argued that dilution will protect drinking water sources and that the new standard of 1 milligram per liter (mg/l) will have no impact on drinking water systems.

• The 1 mg/l limit is 20 times the amount permitted in drinking water – 0.05 mg/l. It should be noted that EPA regulates manganese as a secondary water contaminant for aesthetic considerations. In PA, secondary contaminants, including manganese are regulated as enforceable limits.

• EPA is currently re-evaluating manganese limits due to concerns that elevated manganese levels may cause neurological harm to infants and children.
Regulatory Change in Manganese Limits – Continued

- Coal companies are not the sole significant dischargers of manganese. PA DEP has issued more than 900 NPDES permits with manganese limits for non-coal mining related dischargers, including chemical companies, metals manufacturers, coal-fired power plants and wastewater treatment plants.


- DEP provided an update and sought input from the PA Agriculture Advisory Board on October 25, 2018; to the Water Resources Advisory Committee (WRAC) on November 29, 2018 and the Small Water Systems Technical Assistance Center (TAC) on January 31, 2019.
Regulatory Change in Manganese Limits – Continued

- On March 29, 2019, Senate President Pro Tempore Joe Scarnati (R) and Senator Gene Yaw (R), Majority Chair of the Senate Environmental Resources and Energy Committee filed a petition asking Commonwealth Court for mandamus relief to compel DEP and the Environmental Quality Board (EQB) to set a water quality standard for manganese as required by an October 2017 rider to an Administrative Code budget bill.

- On July 25, 2019, the Water Resources Advisory Committee voted to have DEP move forward with a proposal to set a new toxic substances health standard water discharge limit for manganese of 0.3 mg/l, rather than the 1 mg/l. DEP reviewed the existing literature which determined the 1 mg/l standard is not protective of human health due to the neurotoxic impacts of manganese. The new proposed 0.3 mg/l standard would apply to all discharges going into surface waters.
Regulatory Change in Manganese Limits – Continued

- On August 8, 2019, DEP presented the same proposal to the Small Systems Technical Advisory Committee (TAC) and the TAC Board unanimously approved a motion to support the proposed manganese standard of 0.3 mg/l.

- DEP expects to bring the proposal to the Environmental Quality Board in the 4th Quarter of 2019.

- For more detailed information and to view the DEP presentation on the proposed 0.3 mg/l manganese standard, go to: PA DEP website, Public Participation, Advisory Committees, and click on the Agendas and Meetings for the Water Resources Advisory Committee (July 25, 2019) and for the Small Systems Technical Advisory Committee (August 8, 2019).
PA DEP – PFOS and PFOA MCL

- On February 15, 2019, PA DEP announced that the Department will begin the process to set an MCL for PFOS and PFOA. On April 12, 2019, PA DEP announced a statewide sampling plan to identify impacted drinking water supplies.

- PA DEP as part of the Phase 1 Sampling Plan will collect samples from 360 targeted water supplies and from 40 baseline water supplies. Sampling began in June, 2019. Results from the first sampling is expected to be released in October, 2019. Check the website listed below for further information.

- PA DEP is currently reviewing Proposals in order to hire a consulting toxicologist to evaluate existing health studies with the ultimate goal of establishing a protective MCL for the state.

- [https://dep.pa.gov/Citizens/My-Water/drinking_water/Perfluorinated%20Chemicals%20%E2%80%93PFOA%20PFOS%20in%20Pennsylvania/Pages/default.aspx](https://dep.pa.gov/Citizens/My-Water/drinking_water/Perfluorinated%20Chemicals%20%E2%80%93PFOA%20PFOS%20in%20Pennsylvania/Pages/default.aspx).
Chapter 91 & 92a Fee Amendments – Proposed Rule

• Chapter 91 (Water Quality Management (WQM) Permits - Existing Fees from $250.00 – $7,500 are proposed to increase to $500.00 – $15,000.

• Chapter 92a NPDES Permits – Existing Fees from $50 - $500 are proposed to increase to $50.00 - $1500.00

• The proposed fee package was adopted on December 18, 2018 by the Environmental Quality Board, with a 45 day comment period and one public hearing scheduled.

• The purpose of the rule is to raise approximately $8 million in increased fees annually for the PA DEP Bureau of Clean Water and statewide Clean Water Programs.
Chapter 91 & 92a – Proposed Rule – Continued

• On December 18, 2018 the EQB adopted the proposed rulemakings: *Water Quality Management (WQM) and National Pollutant Discharge Elimination System (NPDES) Permit Application Fees and Annual Fees (25 PA Code Chapters 91 and 92a).*

• It was published in the *Pennsylvania Bulletin* on March 30, 2019 with a 45-day comment period ending May 14, 2019.

• The Independent Regulatory Review Commission (IRRC) submitted comments to the EQB on June 13, 2019.

• Next step: PA DEP needs to prepare the final rulemaking package (including the Comment and Response Document) and submit to the EQB.
Updated DEP Draft Technical Guidance Documents

- Public Water Supply Manual, Part II – Community Design Standards
- Filter Rules Reporting Instructions for Public Water Systems Using Filtered Surface Water or Groundwater Under the Direct Influence of Surface Water (GUDI) Sources
- Laboratory Reporting Instructions for Total Coliform and E. coli in Public Water Systems
- Laboratory Reporting Instructions for Chemical Contaminants in Drinking Water
- Laboratory Reporting Instructions for Disinfection Byproducts and Precursors
Updated DEP Draft Technical Guidance Documents

• The updated Draft DEP Technical Guidance Documents can be found at the following website:
  https://www.dep.pa.gov/PublicParticipation/AdvisoryCommittees/WaterAdvisory/TAC/Pages/default.aspx#

• See the August 8, 2019 TAC Board Agenda and Handouts
Updated DEP Draft Technical Guidance Documents

The Public Water Supply Manual, Part II – Community System Design Standards has been completely revised and rewritten from the 2006 version and contains significant changes. Some changes are related to the revisions to Chapter 109, Safe Drinking Water Regulations.

DEP is seeking comments and has agreed to review the comments at the TAC Board Meeting on **November 14, 2019**. There will be a Public Comment Period (possibly sometime between October, 2019 and January, 2020) after publication in the Pennsylvania Bulletin.

**PLEASE PROVIDE COMMENTS TO THE TAC BOARD AND PROVIDE THE SAME COMMENTS DURING THE PUBLIC COMMENT PERIOD.**
Speaker Contact Information

SERENA A. DiMAGNO
SENIOR ENVIRONMENTAL CONSULTANT

SPOTTS | STEVENS | McCOY (SSM GROUP, INC.)
701 Creekside Lane
Lititz, PA 19610-0307
CELL PHONE: 717-379-0084
PHONE: 717-568-2678
PHONE: 610-621-2000
SERENA.DIMAGNO@SSMGROUP.COM
SADIMAGNO@AOL.COM

www.ssmgroup.com