

LEGISLATIVE AND REGULATORY UPDATE

WWOAP 92nd ANNUAL CONFERENCE – 2019

Wyndham Garden at Mountain View Country Club

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WWOAP Legislative/Regulatory Affairs Committee Chairman



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LEGISLATIVE UPDATE

House and Senate Session Schedule

2019 HOUSE SESSION SCHEDULE

September	17, 18, 19, 23, 24 & 25
October	21, 22, 23, 28, 29 & 30
November	12, 13, 14, 18, 19 & 20
December	9, 10, 11, 16, 17 & 18

2019 SENATE SESSION SCHEDULE

September	23, 24 & 25
October	21, 22, 23, 28, 29 & 30
November	18, 19 & 20
December	16, 17 & 18

House and Senate Session Schedule - Continued

2020

SESSION SCHEDULE

January	7 (Non-Voting), 13, 14, 15, 21 & 22
February	3, 4 & 5
March	16, 17, 18, 23, 24 & 25
April	6, 7, 8, 14, 15 & 16
May	4, 5, 6, 11, 12, 13, 18, 19 & 20
June	1, 2, 3, 8, 9, 10, 15, 16, 1, 7, 22, 23, 24, 25, 26, 29 & 30

House Bill 406 – Public Hearing Prior to Acquisition

- House Bill 406 (Cox – R) amends Title 53 (Municipalities Generally), in public improvements, utilities and services, 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 owned by a municipal authority that would require dissolution by the municipal corporation:
 - The municipal corporation shall hold at least 1 advertised public meeting, not more than 60 days nor fewer than 7 days prior to entering into the agreement; and

House Bill 406 – Continued

- Shall provide public notice of the meeting in all municipalities served by the water or sewer system, and that the potential purchaser or lessee shall be in attendance.
 - “Public Notice” - published once each week for two consecutive weeks in a newspaper of general circulation.
- In the House Local Government Committee, 4/2/2019

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.

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

PFOA and PFOS MCL - Pennsylvania Legislation

- **House Bill 674** – (Murt – R) amends the Pennsylvania Safe Drinking Water Act providing for maximum contaminant levels. It sets acceptable levels of Perfluorooctane sulfonic acid (PFOS) and Perfluorooctanoic acid (PFOA) in drinking water in PA to **5 parts per trillion (ppt)**. In the House Environmental Resources and Energy Committee, 3/1/2019
- **Senate Bill 581** – (Collett – D) amends the Pennsylvania Safe Drinking Water Act, providing for maximum contaminant levels. Lowers the acceptable levels of Per- and Polyfluoroalkyl Substances (PFAS), including perfluorooctanoic acid (PFOA), perfluorooctane sulfonate (PFOS), perfluorononanoic acid (PFNA) and perfluorohexane sulfonic acid (PFHxS) in PA drinking water to **10 parts per trillion (ppt)**. In the Senate Environmental Resources and Energy Committee, 4/22/2019.

PFOA and PFOS Pennsylvania Legislation - Continued

- **House Bill 1667** – (Sanchez – D) amends the Pennsylvania Safe Drinking Water Act providing for maximum contaminant levels for perfluorononanoic acid to **13 parts per trillion (ppt)**. In the House Environmental Resources and Energy Committee, 6/24/2019

PFOA and PFOS – Hazardous Substances – PA Legislation

- **House Bill 675** – (Murt – R) amends the Hazardous Sites Cleanup Act, in preliminary provisions, adding that “hazardous substance” includes a substance at the health advisory levels for perfluorononanoic acid (PFOA) and perfluorooctanesulfonic acid (PFOS) published by the Environmental Protection Agency. Effective in 60 days. In the House Environmental Resources and Energy Committee, 3/1/2019
- **Senate Bill 582** – (Collett – D) amends the Hazardous Sites Cleanup Act (HSCA), in preliminary provisions, further providing for definitions and providing for disaster emergency declaration & for testing requirement, duty to report & public access; for powers and duties of the department.
 - Amends 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.

PFOA and PFOS – Hazardous Substances – Continued

- **Senate Bill 582** – Continued:
 - Would designate these substances, their equivalents, and any chemical substance or compound designated by executive order that poses a threat to public health and safety or the environment, as a “hazardous substance” under HSCA, triggering municipalities’ ability to seek legal recourse to fully recoup remediation costs from the responsible party or parties.
 - Permits the Governor to declare an emergency, similar to a natural disaster like a flood, in any community whose surface and groundwater resources used for public drinking water have been impacted by the release of per- and polyfluoroalkyl substances which measure **at or above 10 parts per trillion**. By declaring such an emergency, the Governor may establish safe drinking water and cleanup standards for the affected area to allow appropriate federal and state response efforts to protect the health and safety of residents.
 - Communities receiving a special emergency declaration would be eligible to receive PENNVEST grants, which may be used to provide treatment to impacted public water supplies, extension of water lines, interconnection of private water users to public water systems, as well as procure alternative water supply. In the Senate Environmental Resources and Energy Committee, 4/22/2019.

PFOA and PFOS – Hazardous Substances – Continued

- **House Bill 1226** – (Polinchock – R) Amends the HSCA, in preliminary provisions.....
 - Adds PFOA and PFOS, their equivalents, and any substance designated by an executive order to pose a threat to public health and safety or the environment, as 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.
 - In the House Local Government Committee, 4/29/2019

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

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.
- Re-referred to House Rules Committee, 6/10/2019.

REGULATORY UPDATE

Regulatory Change in Manganese Limits

- Coal companies requested and received a water quality rule change that was placed in the omnibus state budget bill. 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 allows coal companies (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. Others include chemical companies, metals manufacturers, coal-fired power plants and wastewater treatment plants to name a few.
- PA DEP has issued more than 900 NPDES permits with manganese limits for non-coal mining related dischargers.
- Water systems will be required to remove manganese in their treatment processes to meet the 0.05 mg/l drinking water standard and will incur the capital costs to install additional treatment systems and the increased annual operating costs for chemicals and monitoring associated with manganese removal.

Regulatory Change in Manganese Limits – Continued

- The manganese water quality limit change is a significant deviation from the way in which regulators have established water quality standards. Clean Water Action and other environmental organizations are examining the legality of the manganese provision being inserted in the budget bill. The precedent is very concerning and could lead to additional changes in water quality standards occurring in a similar fashion.
- DEP published an **Advance Notice of Proposed Rulemaking** in the January 27, 2018 *Pennsylvania Bulletin*, with the Comment Period ended February 26, 2018.

Regulatory Change in Manganese Limits – Continued

- 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. DEP asked public water systems with surface water sources:
 - How will changes to the Mn criterion economically affect your facility?
 - How thresholds may (or may not) require additional treatment technologies?
 - Can you identify what levels of Mn would be generally acceptable in the raw water being delivered to the intake so as not to require more than conventional treatment to meet the SMCL of 0.05 mg/l?

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

- WRAC approved DEP's approval with the following motion:
 - To acknowledge the legislative requirement in Act 40 of 2017 to propose a regulation moving the point of compliance for manganese to the point of all existing or planned surface potable water supply withdrawals, **AND**
 - To support proposing a regulation, either through the Annex or by discussion in the Preamble (whichever is the most legally appropriate) that adds manganese to Table 5 in Section 93.8(c) as a toxic substance for human health at the level of 0.3 mg/l. The compliance point for this standard will be met in all surface water, as described in Section 96.3(c), **AND**
 - To recommend the Environmental Quality Board request public comment on this combined approach for consideration in developing a final regulation.

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).

Chapter 91 & 92a Fee Amendments – Proposed Rule

- “The purpose of the proposed rulemaking is to raise approximately \$8 million in increased fees annually, as determined by the Department of Environmental Protection’s (DEP) workload analyses, to increase program resources for the Bureau of Clean Water and statewide Clean Water Program, and increase program resources to support additional positions, so that the DEP can accomplish its mission and legal obligations to the public, regulated community, and federal authorities.”
- 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

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.

Chapter 91 & 92a – Proposed Rule – Continued

- IRRC expressed concerns about the proposed rulemaking and put EQB on notice that objections raised in Legislative Comments “could be the basis for a disapproval by” IRRC. Some highlights from the IRRC Comments:
 - IRRC asked EQB to work with all parties to create a regulatory environment that is consistent with the intent of the General Assembly, fair to the regulated community, and protective of the Commonwealth’s natural resources.
 - IRRC asked EQB to present any funding changes for the Program to the General Assembly.
 - IRRC asked EQB to demonstrate and document the need and rationale for the proposed fee increases.
 - IRRC asked EQB to work with small businesses and farmers to find a less costly or less intrusive method of achieving the goal of the regulation.

Chapter 91 & 92a – Proposed Rule – Continued

- IRRC recommended that the EQB amend its language to increase the fees to the lesser of the index or the actual costs to administer the Program.
- The next step in the regulatory process is for DEP to prepare the final rulemaking documents, including the Comment and Response Document and submit the final rulemaking to the EQB for approval.

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.

Chapter 109 General Update - Implementation Dates

- Beginning August 20, 2019 monitoring and reporting requirements for filtration and disinfection change according to **Chapter 109.301 (1) Performance and monitoring for Filtration and Disinfection.**
 - See: the Draft Guidance Manual: *Filter Rules Reporting Instructions for Public Water Systems Using Filtered Surface Water or Groundwater Under the Direct Influence of Surface Water (GUDI)*
- Alarm and shut-down capability requirements will be required **one year after the effective date** (by August 19, 2019) **unless** an alternate compliance schedule is approved in writing by DEP.
- Amended monitoring requirements for reserve sources and entry points are required **one year after the effective date** (by August 19, 2019).
- New comprehensive monitoring plan requirements are required **one year after the effective date** (August 19, 2019).

QUESTIONS

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