

## LEGISLATIVE AND REGULATORY UPDATE

**PA Section AWWA Northeast District and WWOAP Eastern Section  
Spring Joint Conference – May 5, 2022**

**Presented by: Serena A. DiMagno**

**WWOAP Legislative/Regulatory Affairs Committee Chairman**



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# LEGISLATIVE UPDATE

# House and Senate Session Schedule

## 2022 HOUSE SESSION SCHEDULE

May 23, 24, 25  
June 7, 8, 9, 13, 14, 15, 20, 21, 22, 23, 24, 27, 28, 29, 30  
September 12, 13, 14, 19, 20, 21  
October 24, 25, 26  
November 14, 15, 16

## 2022 SENATE SESSION SCHEDULE

May 23, 24, 25,  
June 6, 7, 8, 13, 14, 15, 20, 21, 22, 23, 24, 27, 28, 29, 30

## Public Hearings Prior to Acquisitions

- **House Bill 527 - Rep. Cox** (R-Berks) 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 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. And, the potential purchaser or lessee shall attend the meeting.

## Public Hearings Prior to Acquisitions - continued

- **House Bill 527 -**
- Adds a new section that provides that an acquisition of an entity subject to section 5610 (a.1) (relating to governing body) under 66 Pa.C.S. § 1329 (relating to valuation of acquired water and wastewater systems) may not be deemed in the public interest by the Pennsylvania Public Utility Commission without the unanimous consent of the governing body established under section 5610 (a.1).
- Status: On the House Calendar awaiting final passage.

# Clean Streams Law – Spill Reporting

- **House Bill 1842 - Rep. Zimmerman-(R)** amends the Clean Streams Law, in other pollutions and potential pollution, providing for notice of discharge endangering public health or environment.
- **Notice of Discharge Endangering Public Health or Environment** – a person who spills, discharges or releases a substance into the waters of this Commonwealth, or on a location from which the substance is likely to enter the waters of this Commonwealth, taking into account any control and remedial measures, shall notify the department if the spill, discharge or release if not authorized by a permit from the department and is likely to render the receiving waters harmful to public health or environment as determined by reportable quantities or other readily ascertainable standards adopted by regulation.
  - Requires the Environmental Quality Board (EQB), no later than 60 days after the effective date of the new section, to publish for public comment proposed regulations establishing reportable quantities or other readily ascertainable standards by which a person may determine whether a spill, discharge or release is likely to render receiving waters harmful to public health or environment.
  - Further requires the Board, no later than 180 days after the effective date, to publish final regulations.

## Clean Streams Law – Spill Reporting - continued

- **House Bill 1842 –**
- **NOTE:** Opposition to the bill concerns the elimination of critical safeguards in the Clean Streams Law that protect waterways from spills. The major concern is that this bill will allow polluters to decide whether their spill should be reported to PA DEP.
- PA DEP is opposed to this bill.
- **STATUS:** Re-referred to the Senate Appropriations Committee on 2/7/2022.

## Delaware River Basin Compact - Voting Power

- **House Bill 2450 – Fritz (R)** – amends the Delaware River Basin Compact, in organization and area, further providing for voting power:
- Reapportions the voting rights within the Delaware River Basin Commission (DRBC) based on the amount of the basin territory within each state.
- Pennsylvania will have six votes, New Jersey will have three votes, New York will have two votes and Delaware will have one vote. The Federal Government will have one vote.
- Some provisions are effective upon publication of the notice and the remainder of this act is effective immediately.
- **STATUS:** Reported out of the House Environmental Resources and Energy Committee, 3/28/22.



## Delaware River Basin Compact - Regulations and Enforcement

- **House Bill 2450 – Fritz (R)** – amends the Delaware River Basin Compact, in general provisions, further providing for regulations and enforcement.
- The Delaware River Basin Commission (DRBC) can make and enforce reasonable rules and regulations for the effectuation, application, and enforcement of the Compact provided that the rules and regulations do not impede or interfere with the operation or control of projects, structure, or facilities constructed or used in connection with hydraulic fracturing, or fracking.
- Section one of this act is effective upon publication of the notice required by section two of this act. The remainder of this act is effective immediately.
- **STATUS:** Reported out of the House Environmental Resources and Energy Committee, 3/28/22.

# Water and Wastewater Asset Management Plans

- **Senate Bill 597 – Stephano – (R)** - Amends Title 66 (Public Utilities) providing for water and wastewater asset management plans; **The bill was amended on 3<sup>rd</sup> Consideration, 4/11/22 and moved to Title 27 (Environmental Resources)**
  - **Community water and wastewater system asset management plan:**
    - **Applies to systems serving at least 501 service connections used by year round residents.**
    - No later than 12 months after the effective date, a water or wastewater system operator shall annually submit an asset management plan every 3 years to the Public Utility Commission (PUC) for review and approval.
    - The plan shall be designed to inspect, maintain, repair and renew the water or wastewater system operator's infrastructure consistent with federal and state laws.
    - Does not include systems which have applied to the PUC for a voluntary change in rates within 5 years of the effective date of this section (6 months)
  - **Schedule:**
    - Plans submitted under this section must include a schedule under which the systems operators will achieve the goals of the asset management plans.
  - **Review of Plans:**
    - **A plan required under this section shall be due and updated according to a schedule established by PA DEP and shall be submitted to and reviewed and subject to enforcement by the PA DEP.**

# Water and Wastewater Asset Management Plans – continued:

## Senate Bill – 597

### – Critical valve inspections:

- A water system operator shall inspect each critical valve in its system (in the asset management plan), no less than every three years and at any time the water system operator installs, repairs or relocates a critical valve.

### – Fire hydrants

- A water system operator shall annually inspect at least 33% of the fire hydrants in the system in a manner that each fire hydrant is exercised over the course of four years to determine each fire hydrant's working condition.
- The water system operator shall formulate and implement a plan for flushing fire hydrants and at dead ends of water mains as water quality needs dictate.
- The water system operator shall keep a record of each inspection, test and flushing for six years.
- The water system operator shall identify the geographic location of each fire hydrant using a global positioning system based on satellite or other location technology.

### – Water meters:

- A water provider must set an allowable error rate and develop a testing protocol as part of an asset management plan.
- A water meter that has a registration error of more than two percent may not be placed into service, nor may a water meter that has an error of more than 4 percent be allowed to remain in service, when water is passing through the meter at certain rates of flow.

# Water and Wastewater Asset Management Plans – continued:

## Senate Bill – 597

### – Lead service lines:

- Within one year of the effective date, a water system operator shall submit a plan to remove and replace all lead service lines within or connected to the operator's public water system.

### – Development of cybersecurity system:

- A water system and wastewater system operator shall develop a cybersecurity program that:
  - Is developed by an accredited cybersecurity professional;
  - Implements organizational accountability and responsibilities for cyber risk management activities, and
  - Establishes policies, plans, processes and procedures for identifying, reporting and mitigating cyber risk to the operators' water system and wastewater systems

### – Contingency for public funding:

- Before a water or wastewater system operator may receive a subsidized loan or other financial assistance from the Commonwealth, the system must demonstrate that the operator has developed or is in the process of developing an asset management plan.

# Water and Wastewater Asset Management Plans – continued:

## Senate Bill – 597

### – Enforcement:

- For a water or wastewater system operator required to submit an asset management plan, the PA DEP shall issue an order, enter into a consent order, assess a civil penalty or take any other action necessary to enforce compliance with this chapter (Water and Wastewater asset management plans), that the PA DEP is authorized to take for violations any of the following:
  - The Clean Streams Law
  - The Pennsylvania Sewage Facilities Act
  - The Pennsylvania Safe Drinking Water Act
  - **Chapter 31 (relating to Water Resources Planning)**

### – PA DEP Costs:

- The program costs for PA DEP implementation and enforcement of this chapter shall be included in the PA DEP's proposed budget and **shall be assessed** upon the community water system operator or owner and a community wastewater system operator or owner.
- The community water or wastewater operator or owner shall report annually to the PA DEP the gross intrastate operating revenues for the preceding calendar year.

# Water and Wastewater Asset Management Plans – continued:

## Senate Bill – 597

### – Regulations:

- The PA DEP shall promulgate regulations to implement and administer this chapter.

### – Annual Information to Customers:

- A water system operator shall annually inform the operator's customers of compliance with this chapter in a manner established by PA DEP.
- Effective in 60 days

Status: Senate Consumer Protection & Professional Licensure Committee, 4/22/2021 – Reported, as amended, 5/25/2021 – 1<sup>st</sup> Consideration, 5/25/2021- Laid on Table, 6/22/2021 – Removed from Table, 6/22/2021 – Laid on Table. 10/19/2021 – Removed from Table, 10/19/2021 – Laid on Table, 12/15/2021 – Removed from Table, 12/15/2021 – Laid on Table, 3/30/2022 – Removed from Table, 3/30/2022 – 2<sup>nd</sup> Consideration, 4/6/2022 – Amended on 3<sup>rd</sup> Consideration, 4/11/2022

**Note: The Water Works Operators' Association of Pennsylvania (WWOAP), The Pennsylvania Rural Water Association (PRWA), The Eastern Pennsylvania Water Pollution Control Operators' Association (EPWPCOA), the Pennsylvania Water Environmental Association (PWEA) have all submitted letters to the Legislature in Opposition to SB 597.**

# Water and Wastewater Asset Management Plans – continued:

## – ISSUES WITH SB 597-

- Asset Management Plan – requiring community water systems to publish asset management reports on publicly accessible internet websites is in direct violation of security protocols that have been in place since 9/11. Providing descriptions and locations of vulnerable water system infrastructure in a public format is inviting potential security breaches to critical water supply systems and risking public health and welfare.
- Critical Valve Inspections – Community water systems currently follow best management practices recommended by the valve manufacturers and the American Water Works Association (AWWA).
- Water Meters – meter maintenance is dictated by the manufacturers' recommendations. The additional testing mandated in SB597 would require considerable additional costs to water systems. The proposed requirements need to have a value vs. cost analysis completed to assess the benefit provided to water system customers/consumers to justify the requirements.
- Development of Cybersecurity System – Both PA DEP and the Department of Homeland Security have provided self-assessment tools for water systems to evaluate system and cybersecurity vulnerabilities. Further, the America's Water Infrastructure Act (AWIA) strengthened the requirements for systems to self-assess asset and cyber vulnerabilities. The information is specifically NOT TO BE SHARED with EPA or other regulatory entities, but is certified by the system to have been completed. All certified system operators are also required to complete security training. **MOREOVER, NO STANDARD CERTIFICATION EXISTS FOR CYBERSECURITY PROFESSIONALS** as is required under SB597.

# Water and Wastewater Asset Management Plans – continued:

- **ISSUES WITH SB 597- Continued**
- Annual Information to Customers - water systems already complete and provide to all customers a Consumer Confidence Report (CCR) annually under Chapter 109, Safe Drinking Water Regulations. Moreover, the Public Notification Rule requires one-hour notice to PA DEP and notice to the customers. EPA is revising the CCR requirements to require bi-annual reports be submitted to customers. The Revised CCR Proposed Rule is expected 3/2023 with the Final Rule due 3/2024.
- Contingency for Public Funding – All Commonwealth funding sources currently require that water systems be in compliance with the Safe Drinking Water Regulations and/or require engineering, feasibility studies and financial analysis for the majority of projects under funding consideration.
- Enforcement – PA DEP already has enforcement authorization under the Clean Streams Law, The Pennsylvania Sewage Facilities Act, and the Pennsylvania Safe Drinking Water Act. Enforcement under Chapter 31 (relating to Water Resources Planning) is regulatory over-reach and should not be included in a Water and Wastewater Asset Management Plan Bill.
- PA DEP costs – the costs for the requirements of this chapter will be assessed upon the water and wastewater systems, potentially based on the system's operating revenues for the prior year. Systems already pay fees to the PA DEP annually as well as for all permits required by the systems.

Status: - SB 597 may be under Reconsideration the week of May 25, 2022.



## Bipartisan Legislation – Legionnaires’ Disease

- **Senate Bill 1125 – Senator Fontana - (D) and Senator Pittman (R) –**
  - Would direct both public drinking water providers and certain building owners to assess their respective water systems for risk and adopt simple mitigation measures:
    - Flushing clean water through the system
    - Keeping hot and cold water at appropriate temperatures
    - Monitoring the system regularly
  - Would codify the seven-step industry standard, ASHRAE-188 (currently the standard is only voluntary and not widely adopted).

# REGULATORY UPDATE

# New or Revised Federal Drinking Water Regulations

## SCHEDULE: Dates May Change

- 4/22 - Part 142 - Final Rule: Cybersecurity in Public Water Systems
- ?/22 - Part 141 - Proposed Rule: Water System Restructuring Assessment Rule (WSRAR)
- 9/22 - Part 141 - Proposed Rule: PFAS Regulation
- 3/23 - Part 141 - Proposed Rule: CCR Revisions
- ?/23 - Part 141 - Proposed Rule: LCRI
- 9/23 - Part 141 - Final Rule: PFAS Regulation
- 3/24 - Part 141 - Final Rule: CCR Revisions
- 7/24 - Part 141 - Proposed Rule: MDBPs per 2020 Settlement with Waterkeepers Alliance
- 10/24 - Part 141 - Final Rule: LCRI
- 9/27 - Part 141 - Final Rule: MDBPs per 2020 Settlement with Waterkeepers Alliance

## PA DEP – PFOS and PFOA MCL

- On November 16, 2021, the EQB adopted the Maximum Contaminant Level for Perfluorooctanoic Acid (PFOA) (25 PA Code Chapter 109) proposed rulemaking. (This starts the lengthy regulatory review process).
- Proposed PFOA MCL of 14 ppt.
- Proposed PFOS MCL of 18 ppt
- Published in the *Pennsylvania Bulletin* on February 26, 2022 - Safe Drinking Water PFAS MCL Rule –
  - 60 day public comment period (**Comment period closed April 27, 2022**)
    - Comments can be viewed by accessing the eComment at <http://www.ahs.dep.pa.gov/eComment>

## PA DEP – PFOS and PFOA MCL - continued

It is expected that the Final Rule will be presented to the Public Water System Technical Assistance Center Board (TAC) in the Summer, 2022.

Note: EPA is also moving forward with the MCL process for PFOA and PFOS. EPA expects to publish a proposed rule by Fall, 2022 with a Final Rule expected Fall, 2023.

Note: PA DEP is renewing the contract with Drexel University to continue to review any updated health assessment information and provide additional cost and benefit information.

# Technical Guidance – Notification Requirements for Spills, Discharges and Other Incidents That Threaten To Cause Pollution of the Waters of the Commonwealth

- PA DEP published notice in the October, 2021 *PA Bulletin* requesting comments on the proposed Technical Guidance on Notification Requirements for Spills, Discharges and Other Incident That Threaten To Cause Pollution of the Waters of the Commonwealth ([DEP ID: 383-4200-003](#))
- The Draft Technical Guidance is not described as addressing the legislation introduced in the Senate and House to amend the Clean Streams Law to change the definition of pollution and put the decision on whether to notify PA DEP of a spill into the hands of the entities doing the spilling. Referenced herein – HB 1842.
- The Technical Guidance pertains to planned and unplanned water system discharges of chlorinated water such as flushing, main breaks, continuous flushing hydrants, etc.

# Technical Guidance – Notification Requirements for Spills, Discharges and Other Incidents That Threaten To Cause Pollution of the Waters of the Commonwealth

- An issue of concern that arose in the Draft Technical Guidance is the requirement for chloraminated systems to address ammonia in discharges.
- On April 21<sup>st</sup>, at the TAC Board Meeting, a TAC Subgroup Workgroup was formed to work with the PA DEP, both Clean Water and the Bureau of Safe Drinking Water to address the issues related to chloraminated discharges.
- *Stay tuned - More information will be forthcoming at the July 14, 2022 TAC Board Meeting*

# SMALL WATER SYSTEMS TECHNICAL ASSISTANCE (TAC) BOARD



# TAC Board Meetings

- TAC now represents Public Water Systems (all sizes)
- The Agenda, previous Meeting Minutes and all of the documents and information for discussion can be viewed on the TAC Board website:  
<https://www.dep.pa.gov/PublicParticipation/AdvisoryCommittees/WaterAdvisory/TAC/Pages/default.aspx>

***NEXT TAC BOARD MEETING IS JULY 14, 2022***

# QUESTIONS

## Speaker Contact Information

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**PowerPoint Presentation will be available at the following websites:**

**[www.wwoap.org](http://www.wwoap.org)**

**[www.paawwa.org](http://www.paawwa.org) – Northeast District**

**[www.ssmgroup.com](http://www.ssmgroup.com)**