

LEGISLATIVE AND REGULATORY UPDATE

PA Section AWWA Southeast District and WWOAP Eastern Section
Fall Joint Conference – October 11, 2018 (Revisions in red – 10/23/18)

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LEGISLATIVE UPDATE - REVISED, OCTOBER 23, 2018

House and Senate Session Schedule

- 2018 HOUSE SESSION SCHEDULE
 - October 1, 2 (non-voting), 9, 10, 15, 16, 17
 - November 13 (Caucus leadership elections)
- 2018 SENATE SESSION SCHEDULE
 - October 1, 2, 3, 15, 16, 17
 - November 14 (Caucus leadership elections)

Federal Legislation – PFAS Contamination

- On August 24, 2018, U.S. Senators G. Peters (D-MI), D. Stabenow (D-MI) and M. Rounds (R-SD) introduced bipartisan legislation - PFAS Detection Act of 2018 (S.3382) to address contamination from PFAS. The bill provides \$45 million to the U.S. Geological Survey (USGS) to develop advanced technologies to detect PFAS and requires USGS to then conduct nationwide sampling for PFAS in the environment.
- There are more than 3,000 chemicals containing PFAS but less than 30 of these chemicals can be detected using current technology.
- A companion bipartisan bill – PFAS Accountability Act of 2018 was also introduced by Senator Peters (with bipartisan co-sponsors) that requires the Department of Defense to cooperate with states as PFAS contamination is detected in communities near Federal installations.

Governor's Executive Order – No. 2018-08 - PFAS

- On September 19, 2018, Governor Wolf established the Perfluoroalkyl and Polyfluoroalkyl (PFAS) Action Team.
- The functions of the PFAS Action Team:
 - Ensure drinking water is safe. Identify impacted locations and resources. Create and implement an action plan to assist state and local authorities and public water systems in delivering safe water.
 - Manage environmental PFAS contamination. Develop and implement environmental response protocols for all positively identified sites.
 - Develop specialized site plans, engaging the public and other relevant stakeholders, where appropriate.

Governor's Executive Order – PFAS - continued

- On September 19, 2018, Governor Wolf established the Perfluoroalkyl and Polyfluoroalkyl (PFAS) Action Team.
- The functions of the PFAS Action Team:
 - Reduce risks to drinking water and the environment from firefighting foam and other sources of PFAS. Identify PFAS uses that are most likely to pose a risk to human health and the environment, such as the use of firefighting foam, industrial releases, carpets, food packaging materials, and other uses. Develop recommendations, and actions that can be taken to limit or control these and other sources of PFAS.
 - Develop a clearinghouse of PFAS information. Establish a public information site and protocol to effectively inform and educate the public about PFAS.
 - Establish a standard process for sharing pertinent information between all members of the Task Force.

Governor's Executive Order – PFAS - continued

- Explore avenues of funding for remediation efforts.
- Engage with academic institutions and experts in the fields such as public health and environmental remediation, among others, when necessary.

The PFAS Action Team shall consist of:

1. The Secretary of the Department of Environmental Protection, who will be the Chairperson of the Action Team
2. The Secretary of the Department of Health
3. The Secretary of the Department of Military and Veteran Affairs
4. The Secretary of the Department of Community and Economic Development
5. The Secretary of the Department of Transportation (PennDot)
6. The Secretary of Agriculture
7. The State Fire Commissioner

Governor's Executive Order – PFAS - continued

The Secretary of the Department of Labor and Industry, the Executive Director of the Fish and Boat Commission, and the Chairperson of the Public Utility Commission may participate in the functions of the PFAS Action Team as requested by the Chair.

Each agency Secretary, Executive Director, and Chairperson on the PFAS Action Team may designate an appropriate member of their staff to participate on their behalf.

Effective Date: The Executive Order takes effect immediately and remains in effect until amended or rescinded by the Governor.

NOTE: It is expected that opportunities will be given to the public, interest groups, and the water industry to provide input to the PFAS Action Team.

The PFAS Action Team Meeting on November 30, 2018 will be open to the public. To propose a presentation topic including known sources of PFAS chemicals, health limits and impacts and environmental impacts, contact: raepthepolicyoffice@pa.gov

The Action Team will take public comment through the DEP eComment tool – <https://www.ahs.dep.pa.gov/eComment/>

House Bill 705 – (Murt–R); Other PFOA Bills

- On August 28, 2018, HB 705 was introduced to lower the state standard for PFAS to the nearly undetectable limit of five parts per trillion. The current health advisory level in PA for PFAS in water is 70 parts per trillion.
- Representative Dean-(R) has proposed two bills over concerns for PFOA and PFAS in drinking water. One bill creates a program to reimburse PA residents for the costs of water testing and the installation of in-home water filtration systems.
- Representative Dean’s second bill would require school districts to perform annual testing for PFOA and PFOS in all school buildings before the start of the school year. If levels test above 5 parts per trillion, the school district would be required to inform parents and guardians, provide an alternate source of water and submit a remediation plan to the state.

Senate Bill 1242 – (Haywood–D)

- Amends the PA Safe Drinking Water Act requiring the EQB to adopt maximum contaminant levels for:
 - Perfluorooctance – five parts per trillion; and
 - Perfluorooctanoic acid – five parts per trillion
- Status – Senate Environmental Resources and Energy Committee on 9/6/2018.

House Bill 2695 – (Dean–R)

- Introduced on October 3, 2018 and amends the PA Safe Drinking Water Act requiring the EQB to adopt maximum contaminant level of 0.013 µg/l (13 parts per trillion) for PFNA (perfluorononanoic acid).
- The 13 parts per trillion MCL was recently passed in New Jersey.
- Status – Referred to the House Environmental Resources and Energy Committee.

Rulemaking Petition: MCL for PFOA

- In August, 2017 the Environmental Quality Board (EQB) accepted a petition from the Delaware River Keeper to set an MCL for PFOA.
- PA DEP expected to be back to EQB by June, 2018 with a recommendation on whether or not to move forward with developing an MCL.
- PA DEP has never set its own drinking water MCLs, instead adopting the federal Safe Drinking Water Program MCLs due to the millions of dollars in cost required to complete the human health and environmental studies needed to establish an MCL to be scientifically credible.
- Status - PA DEP and the Department of Health recently told the EQB that the lack of a state toxicologist has delayed evaluation of the rulemaking. Efforts to hire a state toxicologist have not been successful.

Act 39 of 2018 – Amended the School Code – Section 742 – Lead Testing

- Addresses the threat of lead in drinking water in PA schools. Signed into law on 6/22/18.
- From 2012-2015 PA had the highest occurrence of elevated levels of lead in daycare and school drinking water.
- The Legislature added language in HB 1448 (Public School Code) budget bill that requires schools to supply safe water if testing concludes the school supply is unsafe:
- Beginning in the 2018-19 school year and every school year thereafter, school facilities where children attend school may be tested for lead levels in the drinking water and any school facility whose testing shows lead levels in excess of the maximum contaminant level goal or milligrams per liter as set by the EPA's national primary drinking water regulations shall immediately implement a plan to ensure no child or adult is exposed to lead contaminated drinking water and that alternative sources of drinking water are made available.

Act 39 of 2018 – continued

- Established conflicting lead standards, maximum contaminant level goal (MCLG) is 0 mg/l.
- If a school does not test lead levels, the school entity shall, at a public meeting, discuss lead issues in the school facilities.
- If a test of lead levels is elevated the level must be reported to the Department of Education and posted on the Department's publicly accessible website.
- Included in the legislation is language that requires schools to supply safe water if testing concludes that the supply is found unsuitable.
- PA DEP is working with the PA Department of Education (PDE) on guidance for schools.

Act 39 of 2018 - continued

- If a school is a nontransient noncommunity water system, the school already must test for lead and falls under the current PA DEP rules/procedures for lead testing.
- However, if a school is not considered a water system and is simply a customer of a community water system, then confusion may result since the standards for lead contamination are different. The Act requires PA DEP and PDE to develop testing regulations when PA DEP already has the regulations in place. Remediation is also required for lead service line replacement but the overarching question is who pays for the replacement?
- EPA has new version of the guidance (Training, Testing, Taking Action) for schools: “3 T’s for Reducing Lead in Drinking Water in Schools” available on EPA’s website. <https://www.epa.gov/ground-water-and-drinking-water/3ts-reducing-lead-drinking-water-toolkit>

Act 39 of 2018 - continued

- The Pennsylvania Department of Education (PDE) has updated the Safe Schools section of the PDE website with guidance regarding lead in drinking water per the provisions of Act 39 of 2018. Questions can be sent to the PDE Office for Safe Schools at RAEDSAFESCHOOLSREP@pa.gov

House Bill 1346 (Pyle-R) – Drone Use

- Amends Title 18 (Crimes and Offenses) and 53 (Municipalities Generally), defining the offense of unlawful use of unmanned aircraft; and prohibiting local regulation of unmanned aircraft.
- Bans the use of unmanned aerial vehicles (drones) over critical infrastructure in Pennsylvania.
- Status – Passed the House 190-0, 7/7/2017; Passed the Senate, 49-0, 9/25/18
- The bill is in the Governor's office for consideration. **Note: Governor Wolf signed HB 1346 on October 12, 2018 into law, now Act 78 of 2018.**

House Bill 104 (Godshall-R) – Public Hearings Prior to Acquisitions

- Amends Title 53 (Municipalities Generally), in municipal authorities, further providing for money of an authority and for transfer of existing facilities to an authority and providing for sale or transfer of an authority.
- Requires authorities to file an annual report of its fiscal affairs covering the preceding fiscal year within 180 days following the fiscal year. The report shall be posted on the authority's website.
- Prevents authorities from acquiring through consolidation, merger, purchase or lease a facility, constituting a project, unless the authority has discussed the acquisition at a public meeting and the written minutes of the meeting contain details relating to the anticipated or projected public benefit that will be realized by the acquisition.

House Bill 104 (Godshall-R) – Public Hearings Prior to Acquisitions - continued

- Prevents an authority from selling or transferring title to all or a portion of the water or sewer infrastructure of the authority, unless the authority has discussed the sales or transfer at a public meeting and the written minutes of the meeting contain details relating to the anticipated or projected public benefit that will be realized by the sale or transfer.
- “Public benefit” may include a rate reduction, improved service quality, rate stabilization, improved service reliability, action resulting from an agreement with a Federal or State regulatory agency or other clearly defined benefit to a ratepayer of the authority.
- The legislation includes language allowing the Auditor General to perform an audit of a municipal authority located in a county of the Third Class with a population of more than 355,000 but less than 400,000, incorporated as a public corporation of the Commonwealth on April 15, 1942 (i.e. Municipal Authority of Westmoreland County).
- Status – Passed the House 191-0, 3/22/2017; Amended on 2nd consideration, Re-referred to Appropriations 9/24/2018 – Re-reported, 9/25/2018.
- **Note: The Audit language was removed from the bill and the bill was sent back to the Senate, at which time no action could be taken and the bill died.**

Senate Bill 652 (Regan-R) – Critical Infrastructure Protection

- Amends Title 18 (Crimes and Offenses), further providing for the offense of criminal trespass by establishing an offense for critical infrastructure facility trespass.
- Status – Amendment A09368 was adopted 9/28/18 which removes all offenses except the offense of entering property or conspiring to enter property containing a critical infrastructure facility with the intent to willfully damage, destroy, vandalize, deface, tamper with equipment or impede or inhibit operations of the facility. The amendment amends the definition of “critical infrastructure” and creates the new offense of critical infrastructure vandalism.
- Efforts are currently being made to get organized labor to support the bill.

Senate Bill 1019 (Vulakovich-R) – PA WARN

- 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.
- 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.

Senate Bill 1019 (Vulakovich-R) - continued

- Amendment A07527 which was adopted by the Senate Veterans Affairs and Emergency Preparedness Committee, revised the definition of “person” to include an “association” so PaWARN itself will have liability protection when loaning equipment or personnel.
- Status – Re-Referred to the Senate Appropriations Committee, 6/20/2018. The Senate did not consider this bill and the House has said there will not be enough time to consider the bill even if the Senate referred the bill to the House.
- Next Session?????

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. The bill directs PA DEP to rewrite the regulations so that the legal limit for manganese will no longer need to be met at least 99% of the time everywhere in the Commonwealth's streams.
- 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 – cont'd.

- 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.

Water Industry Concerns - Manganese Limits – cont'd.

- 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.

Water Industry Concerns - Manganese Limits – cont'd.

- PA DEP is seeking input from public water suppliers regarding the impacts that suppliers will incur from the manganese rule change. Water suppliers need to put a dollar figure to the impacts and also apprise legislators of the costs associated with the budget bill change.
- 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.

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 is expected to go to the Environmental Quality Board (EQB) at the October 16, 2018 meeting.
- The proposed rule will be available at:
<https://www.dep.pa.gov/PublicParticipation/EnvironmentalQuality/2018%20Meetings/Pages/default.aspx> Click on October 16, 2018

Chapter 109 General Update/Fees - Status

- The Safe Drinking Water General Update and Fees Final Rule was published in the PA Bulletin on August 18, 2018 and became effective as of that date.
- The final rulemaking is available on the PA Bulletin website at:
<https://www.pabulletin.com/secure/data/vol48/48-33/index.html>
- The final rule incorporates the general Chapter 109 update provisions that were separated from the proposed Revised Total Coliform Rule (RTCR) by the EQB on April 21, 2015.

Chapter 109 General Update/Fees - Provisions

- Amends existing permit fees and adds new annual fees to supplement DEP's costs and fill the funding gap of \$7.5 million:

Annual Fee Ranges for:

- Community Water Systems (CWSs) - \$250.00 to \$40,000.00
(Example: a system serving 5,001 to 10,000 population – Annual Fee is \$10,000) 100,000 population or more – Annual Fee is \$40,000)
- Non-Community Water Systems (NCWSs) - \$50.00 to \$1,000.00
- Bottled, Vended, Retail and Bulk Water Haulers (BVRB) - \$1,000.00 to \$2,500.00

NOTE: Fees are based on PWSID Number and Population.

Permit Fees

- | | |
|--------------------------|------------------|
| – Permit/Major Amendment | \$300 - \$10,000 |
| – Minor Amendment | \$100 - \$ 5,000 |

Chapter 109 General Update/Fees - Provisions - Cont'd.

- Provides for new requirements for the following:
 - Treatment plant alarm and shut-down capabilities
 - Auxiliary power requirements (See the Uninterrupted System Service Plan (USSP) Draft Form:
http://files.dep.state.pa.us/PublicParticipation/Advisory%20Committees/AdvCommPortalFiles/TAC/Form%203_USSP%26CertForm_DR_AFT.pdf
- Revises treatment technique requirements for pathogens by adding specific turbidity performance requirements for membrane filtration.
- Deletes the provision that allowed a PWS to avoid corrective action after an *E. coli-positive triggered source water sample* by collecting five additional source water samples.

Chapter 109 General Update/Fees - Provisions - Cont'd.

- Revises and clarifies the monitoring, calibration, recording and reporting requirements for the measurement of turbidity.
- Amends the disinfection profiling and benchmarking requirements to clarify that all PWSs using filtered surface water or groundwater under the direct influence of surface water (GUDI) must consult with PA DEP prior to making significant changes to disinfection practices to ensure adequate Giardia inactivation is maintained.
- Clarifies permitting requirements for new sources by requiring:
 - Source water assessment
 - Pre-drilling plan
 - Evaluation of water quantity and quality
 - Hydrogeologic report

Chapter 109 General Update/Fees - Provisions - Cont'd.

- Clarifies the source water assessment, source water protection area, and source water protection program elements and requirements.
- Clarifies system management responsibilities relating to source water assessments and sanitary surveys.
- Addresses concerns DEP had related to gaps in the monitoring, reporting, and tracking of back-up sources of supply. Requires that all entry points and permitted sources are monitored at least annually, or when in use.
- Adds new amendments to establish the regulatory basis for issuing general permits.

Chapter 109 General Update/Fees - Implementation Dates

- The new annual fees will be required beginning **January 1, 2019** to allow systems to include the new fees in their 2019 budgets.
- Alarm and shut-down capability requirements will be required **one year after the effective date** (by August 18, 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 18, 2019).
- New comprehensive monitoring plan requirements are required **one year after the effective date** (August 18, 2019).

Disinfection Requirements Rule (DRR) - Status

- The Disinfection Requirements Final-Form Rulemaking was published in the PA Bulletin on **April 28, 2018**. The Regulations became effective upon the publication date.
- **PROVISIONS EFFECTIVE NOW:**
- **Distribution System Residual Data** – All water systems reporting distribution system disinfectant residual data must begin reporting individual residual measurements instead of the average result value and number of measurements. Beginning May 2018, all **individual** disinfectant residual measurements (reported by June 10, 2018) should be reported using the SDWA-1 format. The following are specific reporting instructions:

Disinfection Requirements Rule (DRR) – Provisions cont'd.

- Minimum Entry Point Disinfectant Residual: Water systems using filtered surface water or GUDI (Groundwater Under Direct Influence) sources must maintain a minimum disinfectant residual at the entry point (EP) of at least 0.20 mg/l. (Previously the minimum residual was 0.2 mg/l). The minimum residual for water systems with 4-log disinfection of GW sources remains the same.
- Calculating and Reporting Log Inactivation: Water systems using filtered surface water or GUDI sources must calculate the *Giardia* log (%) inactivation at least once/day during the hour of expected peak flow. If the *Giardia* log inactivation is less than 1.0 log (90%), the *Giardia* log inactivation calculation should be continued to be calculated every 4 hours until the *Giardia* log inactivation is at least 1.0.
 - The *Giardia* log inactivation calculation components are not reported to DEP with the log inactivation value (except for the EP chlorine residuals) but the information needs to be made available to DEP upon request. Accurate records must be maintained for chlorine residual, pH, flow (gpm), tank volume (gal), and baffling factor, and temperature (°C).
 - If a disinfectant other than free chlorine is used to achieve some portion of the minimum *Giardia* log inactivation, the log inactivation value for viruses must also be calculated at the same time using the same data.

Disinfection Requirements Rule (DRR) – Provisions cont'd.

- Log inactivation must also be calculated whenever the EP disinfectant residual falls below 0.20 mg/l and continue to be calculated every 4 hours until the residual is ≥ 0.20 mg/l.
- The log inactivation values must be reported monthly, beginning with the May, 2018 compliance period. May, 2018 CT values needed to be reported by June 10, 2018.
- Failure to maintain the log inactivation for more than 4 hours is a breakdown in treatment requiring **Tier 1 Public Notification (Boil Water Advisory)**. Failure to maintain the EP residual of 0.20 mg/l for more than 4 hours is a treatment technique violation requiring **Tier 2 Public Notification**.

Disinfection Requirements Rule (DRR) – Provisions cont'd.

- Instructions and tools for calculating and reporting log inactivation values are available here:
 - Giardia Inactivation Calculation Instructions
<http://files.dep.state.pa.us/Water/BSDW/DrinkingWaterManagement/Regulations/Giardia%20Inactivation%20Calculation%20instructions.docx>
 - Giardia & Virus Log Inactivation Calculation Tool May 2018 (Excel)
http://files.dep.state.pa.us/Water/BSDW/DrinkingWaterManagement/Regulations/Giardia%20and%20Virus%20Log%20Inactivation%20Calculations%20Tool_May%202018.xls
 - DRR Log Inactivation Reporting Instructions (PDF)
<http://files.dep.state.pa.us/Water/BSDW/DrinkingWaterManagement/Regulations/DRR%20Log%20Inactivation%20Reporting%20Instructions.pdf>

Disinfection Requirements Rule (DRR) - Provisions cont'd.

DRR PROVISIONS WITH DELAYED IMPLEMENTATION:

- Sample Siting Plan: **By October 29, 2018**, all Community Water Systems (CWSs), any Non-Transient Non-Community (NTNC) system with filtration of surface water or GUDI sources or 4-log disinfection of GW sources must develop and submit a DRR sampling plan. The plan must include representative locations:
 - Dead ends
 - Storage facilities
 - Interconnections
 - Areas of high water age
 - Areas with previous RTCR detects
 - Mixing zones
 - Sample collection schedule
- The plan may be combined with the RTCR sampling plan if all content elements are included.

Disinfection Requirements Rule (DRR) - Provisions cont'd.

- Distribution System Minimum Residual: **Beginning April 29, 2019**, all CWSs, any NTNC system with chemical disinfection and any TNC (Transient Non-Community) water system with filtration of surface water or GUDI sources or 4-log disinfection of GW sources must maintain a minimum disinfectant residual concentration in the distribution system of at least 0.2 mg/l.
 - Disinfectant residual measurements must continue to be collected at representative locations at the same time and location(s) as coliform samples.
 - Disinfectant residual measurements must also be conducted at least once/week. Water systems that do not collect at least 1 coliform sample each week will need to conduct additional disinfectant residual measurements each week that a coliform sample is not collected.
 - Any location that has a disinfectant residual less than 0.2 mg/l in a month must also be sampled the following month. The HPC alternative compliance criteria is **eliminated**.

Disinfection Requirements Rule (DRR) - Provisions cont'd.

- Nitrification Control Plan: **By April 29, 2019**, any CWS or NTNC system using chloramines or purchasing water treated with chloramines must develop and implement a nitrification control plan. The plan must conform to industry standards (such as AWWA's M56 Manual on Nitrification) and contain a system-specific monitoring plan and a response plan with expected water quality ranges and action levels. The plan must be updated as necessary, retained on-site and made available to DEP upon request.

QUESTIONS

Speaker Contact Information

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