

LEGISLATIVE AND REGULATORY UPDATE

**PA Section AWWA Southeast District and WWOAP Eastern Section
Spring Joint Conference – March 6, 2019**

Presented by: Serena A. DiMagno

WWOAP Legislative/Regulatory Affairs Committee Chairman



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LEGISLATIVE UPDATE

House and Senate Session Schedule

- 2019-2020 HOUSE SESSION SCHEDULE

March 11, 12, 13, 18, 19, 20, 25, 26, 27

April 8, 9, 10, 15, 16, 17, 29, 30

May 1, 6, 7, 8, 13, 14, 15, 22

June 3, 4, 5, 10, 11, 12, 17, 18, 19, 20, 24, 25, 26, 27, 28

House Budget Hearings: March 4-8

- 2018 SENATE SESSION SCHEDULE

March 18, 19, 20, 25, 26, 27

April 8, 9, 10, 29, 30

May 1, 6, 7, 8

June 3, 4, 5, 10, 11, 12, 17, 18, 19, 20, 24, 25, 26, 27, 28

Senate Budget Hearings: March 4-8

Legislation – PFOA, PFOS

- **Rep. Ben Sanchez** (D-Montgomery) is circulating a co-sponsorship memo for legislation creating an MCL for perfluorononanoic acid in drinking water at 13 parts per trillion (ppt).
- **Rep. Murt** (R-Montgomery) is circulating a co-sponsorship memo to reintroduce HB 705, which sets acceptable levels of PFOA and PFOS in drinking water in the Commonwealth to 5 ppt.
- **Sen. Maria Collett** (D-Montgomery) is circulating a co-sponsorship memo to reintroduce Sen. Haywood's SB 1242, which would lower the acceptable levels of Per- and Polyfluoroalkyl Substances (PFAS) in our drinking water in the Commonwealth of PA to 10 ppt.
- **Rep. Todd Polinchock** (R-Bucks) is circulating a co-sponsorship memo for legislation to add perfluorooctanoic acid and perfluorooctane sulfate to the list of hazardous substances.

Legislation – PFOA, PFOS (Continued)

- **Rep. Murt** (R-Montgomery) is circulating a co-sponsorship memo to reintroduce HB 2643, which adds PFOA and PFOS to the Hazardous Sites Cleanup Act.
- **Sen. Maria Collett** (D-Montgomery) is circulating a co-sponsorship memo for legislation amending the Hazardous Sites Cleanup Act (HSCA) to protect communities from the dangers associated with contamination from the release of per- and polyfluoroalkyl substances (PFAS).
- **Sen. Maria Collett** also addressed what she termed the “PFAS Crisis” with the PA Secretary of Health, Dr. Levine during Senate Appropriations Committee hearings and asked about the CDC/ATSDR multi-site health study in which a limited number of locations will be selected for a study to look at the relationship between PFAS exposure and health concerns.

Legislation – Budget Requests for PFAS

- **PA DEP's Proposed Budget** – includes \$132,000 item for PFAS testing. There is also project funding to assist with cleanup of contamination caused by PFAS and other pollutants.
- **PA Department of Health (DOH)** – is requesting \$1.4 Million for PFAS monitoring and oversight of environmental contaminants including PFAS.
- During the budget hearing process, bipartisan concerns over funding shortfalls occurring in the Hazardous Sites Cleanup Fund were discussed and it was noted that the Fund will be bankrupt by 2022 given the significant new cleanup challenges such as PFAS contamination.

Public Hearings Prior to Acquisitions

- **Rep. Cox** (R-Berks) is circulating a co-sponsorship memo to reintroduce Rep. Harper's HB 477:
- 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.

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 UPDATE

EPA – Per-and Polyfluoroalkyl Substances PFAS Action Plan

- On **February 14, 2019**, EPA announced its PFAS Action Plan.
- The **Plan** identifies:
 - short-term solutions for addressing PFAS chemicals.
 - long-term strategies that will provide the tools and technologies that states, tribes and local communities need to provide clean and safe drinking water to their residents and to address PFAS at the source before it gets into drinking water sources.
- **Drinking water:** EPA is moving forward with the maximum contaminant level (MCL) process per the Safe Drinking Water Act for PFOA and PFOS (the most well-known and prevalent PFAS chemicals).
 - By the end of this year, EPA will propose a regulatory determination which is the next step in the MCL process.

EPA –PFAS Action Plan (Continued)

- **Cleanup:** EPA has already begun the regulatory process for listing PFOA and PFOS as hazardous substances and will begin issuing interim groundwater cleanup recommendations for sites contaminated with PFOA and PFOS.
 - Will provide additional tools to help states and communities address existing contamination and enhance the ability to hold responsible parties accountable.
- **Enforcement:** EPA will use available enforcement tools to address PFAS exposure in the environment and assist states in enforcement actions.
- **Monitoring:** EPA will propose to include PFAS in nationwide drinking water monitoring under the next Unregulated Contaminant Monitoring Program. PFAS chemicals will also be considered for listing in the Toxic Release Inventory to help EPA identify where these chemicals are being released.

EPA –PFAS Action Plan (Continued)

- **Research:** EPA will develop new analytical methods so that more PFAS chemicals can be detected in drinking water, in soil and in ground water. These efforts will improve the ability to monitor and assess potential risks. EPA's research efforts will include developing new technologies and treatment options to remove PFAS from drinking water at contaminated sites.
- **Risk Communications:** EPA will work across the agency and the federal government to develop a PFAS communication toolbox that includes materials that states, tribes, and local partners can use to effectively communicate with the public.
- **NOTE:** EPA's health advisory is 70 ppt for PFOA and PFOS.

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.
- PA DEP will be moving forward with a Request for Proposals to hire a consulting toxicologist to evaluate existing health studies with the ultimate goal of establishing a protective MCL for the state.
- Although PA DEP will take into account the PFAS science that has been developed by New Jersey and other state and federal bodies, under the regulatory process requirements, PA DEP must make recommendations based on its own research.

PA DEP - PFOS and PFOA MCL (Continued)

- As with any other regulation, an MCL will have to be approved by the Independent Regulatory Review Commission (IRRC) that evaluates the MCL impact on the economy, public health, and small businesses, and conducts a cost-benefit analysis of the proposed rule.
- The PA DEP regulatory process was initiated because the Department believes it can set a state MCL quicker than the EPA can move forward with any federal standard. PA DEP also has concerns that EPA may decide not to set an MCL.
- When PA DEP was asked why the Wolf administration had decided to launch its own MCL process, it was stated that in the EPA's announcement, there was enough uncertainty about the federal outcome to justify Pennsylvania setting an independent standard.

PA DEP - PFOS and PFOA MCL (Continued)

- The Environmental Quality Board (the board that adopts regulations for PA DEP) accepted a rulemaking petition to set an MCL for PFOA chemicals from the Delaware RiverKeeper in August, 2017.
- The petition requested the amendment of 25 Pa. Code Chapter 109 (Safe Drinking Water) to establish an MCL for PFOA, not to exceed six parts per trillion. PA DEP was charged with preparing a report evaluating the petition. PA DEP's evaluation process has been delayed due to the state's inability to hire a toxicologist.
- Since PFAS are unregulated, currently there are no detection limits. The detection limits for PFOS and PFOA for UCMR 3 were in the 20-40 ppt range; most labs today can obtain limits down to approximately 5 ppt. There is a difference between Method Detection Limit (MDL) and the actual reporting limit. An MDL is calculated by the lab, as a theoretical value – that is, what can be obtained in a lab setting under ideal conditions. MDLs are typically not achieved.

Governor's PFAS Action Team

- The February 12, 2019 meeting was cancelled due to weather and is expected to be rescheduled.
- The PFAS Action Team last met on [November 30, 2018](#). The PFAS Action Team public comments can be obtained through the DEP eComment tool - <https://www.ahs.dep.pa.gov/eComment/>.
- Information on the PFAS Action Team interagency efforts to address PFAS contamination can be obtained on the following PA DEP webpage: https://dep.pa.gov/Citizens/My-Water/drinking_water/Perfluorinated%20Chemicals%20%E2%80%93PFOA%20PFOS%20%E2%80%93%20in%20Pennsylvania/Pages/default.aspx.

Regulatory Change in Manganese Limits

- A provision included 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 insure the standard is met at the point of intake for water suppliers ([25 Pa Code Chapter 96.3](#)).
- The 1 milligram/liter standard is 20 times the level of manganese that water suppliers are allowed to have in their water supplies (.05 mg/L), according to PA DEP's and EPA's secondary maximum contaminant levels. **Note: In PA, secondary maximum contaminant levels are enforceable standards.**

Regulatory Change in Manganese Limits (Continued)

- PA DEP published an **Advance Notice of Proposed Rulemaking** in the January 27, 2018 *Pennsylvania Bulletin*. Comment period ended February 26, 2018.
- Public comments may be viewed on DEP's [eComment](#) system.
- The Governor's Regulatory Agenda has 2nd Quarter of 2019 listed for consideration by EQB.
- DEP provided an [update](#) and sought input from the PA Agriculture Advisory Board on October 25, 2018:
 - Any information relating to effects of manganese on livestock and irrigation water supplies

Regulatory Change in Manganese Limits (Continued)

- If higher levels of manganese in water will have an impact on agricultural uses, or agriculture-related businesses or operations
- Estimates of the direct and indirect costs to these uses, businesses or operations
- PA DEP provided an [update](#) to the Water Resources Advisory Committee (WRAC) on November, 29, 2018.
- PA DEP provided an [update](#) to the Small Water Systems Technical Assistance Center (TAC) on January 31, 2019:
 - PA DEP is asking PWSs with surface water sources:
 - How will changes to the Manganese criterion economically affect your facility?
 - What thresholds may (or may not) require additional treatment technologies?

Regulatory Change in Manganese Limits (Continued)

- Can you identify (in support of the WQ standard potable use) what levels of Manganese 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 .05 mg/L?
- Please submit any information directly to Tom Barron at tbarron@pa.gov.
- A PDF of the Presentation of the Proposed Changes to Manganese Water Quality Standard from the January 31, 2019 TAC Board Meeting is on the following webpage:
<https://www.dep.pa.gov/PublicParticipation/AdvisoryCommittees/WaterAdvisory/TAC/Pages/default.aspx>

Note: 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

- 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.

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.

REMINDER: Chapter 109 General Update/Fees - Implementation Dates

- 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) – Implementation Date

- 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) – Implementation Date – Continued

- 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.

SMALL WATER SYSTEMS TECHNICAL ASSISTANCE (TAC) BOARD

January 31, 2019 TAC Board Update

- All of the documents and information referenced can be viewed on the TAC Board website:
<https://www.dep.pa.gov/PublicParticipation/AdvisoryCommittees/WaterAdvisory/TAC/Pages/default.aspx>
- Updated Technical Guidance: ***Loss of Positive Pressure Policy***
- Draft Form: ***Uninterrupted System Service Plan & Certification Form***
- Draft Form: ***Nitrification Control Plan Form & Instructions***
- Pre-Draft Technical Guidance: ***Filter Bed Evaluation Program***

PLEASE REVIEW AND PROVIDE FEEDBACK.

QUESTIONS

Speaker Contact Information

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