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GOVERNMENT RELATIONS UPDATE

From Milliron & Goodman Government Relations, LLC.

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Wolf Administration Continues Efforts to Address PFAS Contamination

On August 22, 2019, Governor Tom Wolf was joined by Representative Todd Stephens and Representative Meghan Schroeder to announce new funding to help address PFAS contamination in Horsham, Warminster, Warrington, and Warwick townships.

"Republican or Democrat, senator or representative, every elected official understands that clean drinking water is a critical issue," Gov. Wolf said. "We all want Pennsylvanians to live the happiest, healthiest lives possible and today I am proud to be here to help lessen a burden for these communities that residents did not cause."

In addition, the governor renewed his call for the United States Environmental Protection Agency to establish an enforceable, nationwide drinking water standard for PFAS under the Safe Drinking Water Act.

"The federal government played a big role in causing these issues and they should be stepping up in a much bigger way," Gov. Wolf said. "We need the White House and Congress to get serious about addressing this issue."

Flanked by state and local leadership, the governor announced a \$3.8 million grant to support

water treatment efforts in Horsham, Warminster, Warrington, and Warwick townships. This new funding will help bolster the funding awarded over the past few years to help Warminster and Warrington address contamination, and to install the carbon filters in Horsham.

"Horsham residents shouldn't have to bear the costs of removing the federal government's contamination from our drinking water," said State Representative Todd Stephens. "Working together with Governor Wolf, we've been able to provide funds to eliminate the unfair surcharges Horsham residents have been paying to ensure their water is safe to drink."

"For years, our residents in Warminster have absorbed the cost of purchasing clean water due to the federal government's inability to clean up its own mess. With this state funding, we will finally be able to alleviate the surcharge for this water from our ratepayers. As Warwick Township deals with similar contamination issues, we will work to ensure that this funding will assist them with needed infrastructure improvements," said State Representative Meghan Schroeder.

Perfluoroalkyl and polyfluoroalkyl substances - PFAS - are man-made chemicals resistant to heat, water and oil, and persist in the environment and the human body. PFAS are not found naturally in the environment. They have been used to make cookware, carpets, clothing, fabrics for furniture, paper packaging for food, and other materials that are resistant to water, grease, or stains. They are

also used in firefighting foams and in a number of industrial processes.

In September 2018, Governor Wolf announced the establishment of a multi-agency **PFAS Action Team**

<https://www.governor.pa.gov/newsroom/governor-wolf-takes-executive-action-address-pfas-concerns-protect-pennsylvanians/> and other executive actions to address growing national concerns surrounding PFAS. The PFAS Action Team places Pennsylvania at the forefront of states taking proactive action to address PFAS and other water contaminants.

"I would like to thank the local officials for the steps they've taken to address the PFAS contamination in Horsham, Warminster, Warrington, and Warwick townships," said Gov. Wolf. "We're here in Horsham today, but we know PFAS was likely used at other airports, military bases, and manufacturing facilities, and I am committed to identifying those locations and supporting any necessary cleanup so today's residents don't have to bear a costly burden of the past."

In June, the Department of Environmental Protection began a statewide sampling plan to identify PFAS-impacted drinking water. Preliminary results from the sampling will be released in the fall. Additionally, the Department of Health has hired a state toxicologist, and the Department of Environmental Protection is finalizing a contract for specialized toxicology services to move forward with setting a state limit for PFAS in drinking water to establish a cleanup plan that will result in every Pennsylvanian having water free from PFAS contamination.

Source: Governor Wolf's Press Office, 8/22/2019

Senator Maria Collett Thanks Governor Wolf for PFAS Funding, Calls on him to Classify PFAS as “Hazardous Substances” and Set MCL

Senator Maria Collett (D-Montgomery/Bucks), whose district includes the Horsham Air Guard Station and former Willow Grove Naval Air Station and Warminster Naval Warfare Center, welcomed Governor Wolf to Montgomery County today, where he announced \$3.8 million for water treatment in Horsham, Warminster, Warrington, and Warwick Townships.

This investment is a testament to the tireless work of community members, activists, local governments, and elected officials at every level.

“During my campaign, the voters made clear that addressing the PFAS crisis was their number one priority. As their voice in Harrisburg, I have made it mine,” said Senator Maria Collett. “The safety of our families and the environment that we will leave for our children and grandchildren is at stake.

“While this is positive news for the pocketbooks of residents of my district, it is a band-aid on a bullet hole. Meaningful progress will not occur in Pennsylvania until we classify these dangerous chemicals as hazardous substances under the Hazardous Sites Cleanup Act (HSCA) and set a maximum contaminant level (MCL) for them. And I will not stop speaking out and lobbying my Governor and my colleagues in the General Assembly until this is accomplished and our families’, our veterans’ and our firefighters’ health is no longer at grave risk.”

Senator Collett has introduced legislation to lower the acceptable level of PFAS in our drinking water to 10 parts per trillion until a maximum contaminant level is established by the EPA, DEP, or a Governor’s Executive Order (SB 581 <https://www.legis.state.pa.us/cfdocs/billinfo/billinfo.cfm?year=2019&kind=0&body=S&type=B&bn=581>). She has also introduced legislation to classify PFAS as hazardous substances under Pennsylvania’s Hazardous Sites Cleanup Act (SB 582 <https://www.legis.state.pa.us/cfdocs/billinfo/billinfo.cfm?year=2019&kind=0&body=S&type=B&bn=582>).

The Department of Environmental Protection is currently undertaking a PFAS Sampling Plan of more than 300 public water supplies with elevated

potential for contamination, based on proximity to typical sources of PFAS, such as military bases, fire training sites, landfills, and manufacturing facilities to better assess the full scope of contamination across the Commonwealth.

Source: Senator Collett Press Release, 8/22/2019

DEP – Availability of Technical Guidance

The Department of Environmental Protection's (DEP) technical guidance documents (TGD) are available on DEP's website **here** <http://www.depgreenport.state.pa.us/elibrary/>.

Questions regarding TGD can be directed to Jay Patel at jaypatel@pa.gov or (717) 787-5017.

Draft Technical Guidance: New Guidance

DEP ID: 150-4200-001. Title: *Microbiology Incubation Units.*

Description: This guidance provides clarification and direction to Department staff, accredited laboratories and their consultants regarding the nature and scope of the Environmental Laboratory Accreditation Regulations of 25 Pa. Code Chapter 252 (relating to environmental laboratory accreditation) requirements for maintenance, use and recordkeeping requirements of microbiology incubation units. This TGD provides more detail on how laboratories might achieve compliance with specific Chapter 252 requirements and also includes additional detail relating to the accreditation requirements referenced in the Chapter 252 regulation. These additional requirements include, but are not limited to, other Department program requirements, Federal requirements contained within the Code of Federal Regulations (CFR), mandated methods and other permit requirements.

Written Comments: Interested persons may submit written comments on this draft TGD through Monday, September 23, 2019. Comments submitted by facsimile will not be accepted. All comments, including comments submitted by e-mail, must include the commentator's name and address.

Commentators are encouraged to submit comments using the Department's online **eComment tool** at www.ahs.dep.pa.gov/eComment or by e-mail to ecomment@pa.gov. Written comments can be mailed to the Technical Guidance Coordinator, Department of Environmental Protection, Policy Office, Rachel Carson State Office Building, P.O. Box 2063, Harrisburg, PA 17105-2063.

Contact: Questions regarding this TGD can be directed to Aaren S. Alger at aaalger@pa.gov or (717) 346-8212.

Effective Date: Upon publication of notice as final in the Pennsylvania Bulletin.

Draft Technical Guidance: New Guidance

DEP ID: 150-4200-002. Title: *Guidelines for Sample Collection, Receipt, and Handling.*

Description: This guidance provides clarification and direction to Department staff, accredited laboratories and their consultants regarding the nature and scope of the Environmental Laboratory Accreditation Regulations of Chapter 252 requirements for sample collection, receipt, acceptance and handling. This TGD provides more detail on how laboratories might achieve compliance with specific Chapter 252 requirements and also includes additional detail relating to the accreditation requirements referenced in the Chapter 252 regulation. These additional requirements include, but are not limited to, other Department program requirements, Federal requirements contained within the CFR, mandated methods and other permit requirements.

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Effective Date: Upon publication of notice as final in the Pennsylvania Bulletin.

Withdrawal of Draft Technical Guidance

DEP ID: 362-2000-009. Title: *Manual for Land Treatment of Wastewater.*

Description: This document explains the process for Department staff and others involved in the land treatment of wastewater prior to discharge to groundwater. This document was published for public comment in March 2009. Due to unresolved technical issues, the document was never finalized. This document is being withdrawn in accordance with the Department's Policy for Development and Publication of Technical Guidance.

Contact: Questions regarding this TGD can be directed to Jay Patel at jaypatel@pa.gov or (717) 787-5017.

Effective Date: August 24, 2019

Source: Pennsylvania Bulletin, 8/24/2019
<https://www.pabulletin.com/secure/data/vol49/49-34/1280.html>

PUC - Fixed Utility Distribution Rates

The Pennsylvania Public Utility Commission, on July 11, 2019, adopted a policy statement that is intended to identify factors the commission will consider in determining just and reasonable distribution rates that promote the efficient use of electricity, natural gas or water; the use of distributed energy resources; and reduce disincentives for efficient use and resources to ensure adequate revenue to maintain the safe and reliable operation of fixed utility distribution systems.

Source: Pennsylvania Bulletin, 8/24/2019
<https://www.pabulletin.com/secure/data/vol49/49-34/1275.html>

DEP Terminates Some Permit Review and Inspection Authority Delegated to Beaver County Conservation District

The Pennsylvania Department of Environmental Protection (DEP) announced that it is terminating the delegated permitting and inspection authority of the Beaver County Conservation District (BCCD) for the erosion and sediment control (E&S) program. This decision follows an evaluation of the BCCD program conducted by DEP.

Delegation is an optional process that allows DEP to authorize conservation districts to perform certain permit review and inspection duties. The delegation agreement had authorized BCCD to review permit applications, take action on those applications and conduct field inspections for permits under **25 PA Code Chapter 102** <http://www.ahs.dep.pa.gov/NewsRoomPublic/Redirector.aspx?varURL=https://www.pacode.com/secure/data/025/chapter102/chap102toc.html>. As a result of the termination, the DEP's Field Operations team will assume those duties in Beaver County, including the appropriate distribution of the anticipated workload.

"Protecting water resources in Pennsylvania is paramount to the work that DEP is responsible for, and to work that we delegate to partners like Conservation Districts," said DEP Secretary Patrick McDonnell. "We need to ensure that our delegated authority is being administered in a responsible way that meets our legal obligations and the responsibilities we have to the people of Pennsylvania.

"DEP staff identified significant and consistent problems with BCCD's recordkeeping, permit review, and inspections," said McDonnell.

The decision to terminate the delegation is based in part on program evaluation, observations of BCCD implementation practices, and program administration.

An evaluation conducted by DEP staff identified multiple deficiencies in BCCD's reviews of permit applications and inspections of permitted projects, such as the issuance of permits without evidence of full technical review. In addition, the evaluation found that staff had insufficient training, and that BCCD staff was not conducting inspections of permitted projects as they are required to.

DEP will soon be conducting a review of BCCD's delegated Waterways and Wetlands program (25 PA Code Chapter 105 <http://www.ahs.dep.pa.gov/NewsRoomPublic/Redirector.aspx?varURL=https://www.pacode.com/secure/data/025/chapter105/chap105toc.html>) as well.

In a separate letter to BCCD, DEP will outline the steps necessary for DEP to consider entering into a new delegation agreement with BCCD. DEP is designing an updated evaluation program for all delegated Conservation District programs and will work with the State Conservation Commission to improve the evaluation process. More information on this process will be made available before the end of the year.

Read the **DEP Audit Report** http://files.dep.state.pa.us/RegionalResources/SWRO/SWROPortalFiles/BCCD/Chapter102ProgramEvaluationReport_BeaverCCD.pdf.

Read the **letter to BCCD** <http://files.dep.state.pa.us/RegionalResources/SWRO/SWROPortalFiles/BCCD/BCCDTerminationofDistrict's102Program.pdf>.

Source: DEP Press Release, 8/20/2019

Agricultural Advisory Board and Nutrient Management Advisory Board Joint Meeting and Time Change

The Department of Environmental Protection's Agricultural Advisory Board meeting scheduled for Thursday, August 29, 2019, will be held in Room 309, Department of Agriculture, Harrisburg. This is a joint meeting of the board and the Nutrient Management Advisory Board and will begin at 9 a.m.

Questions concerning the August meeting should be directed to Jay Braund at jbraund@pa.gov or (717) 772-5636.

Source: Pennsylvania Bulletin, 8/24/2019 <https://www.pabulletin.com/secure/data/vol49/49-34/1279.html>

Final PA Chesapeake Bay Implementation Plan Still Falls Short Of Required Water Pollution Reductions

On August 23, DEP submitted Pennsylvania's final Chesapeake Bay Watershed Implementation Plan to the U.S. Environmental Protection Agency for its review of whether it meets the Commonwealth's obligations to reduce water pollution going to the Bay enough to meet the 2025 goals.

The final Plan did not change from the draft final Plan reviewed on August 16 by the Chesapeake Bay Watershed Planning Steering Committee.

On its face, the final Plan achieves about 73 percent of the 34.13 million pounds of nitrogen reductions and over 120 percent of the 756,000 pounds of phosphorus reductions Pennsylvania needs to meet the 2025 goal.

The state's draft WIP achieved 64 percent of the nitrogen and 76 percent of the phosphorus needed to meet Pennsylvania's 2025 goals.

In spite of the nitrogen shortfall, DEP said "Pennsylvania commits to have the practices and controls in place by 2025 necessary to achieve the final Phase 3 WIP phosphorus and nitrogen targets."

DEP expects to achieve the extra needed reductions by: “taking credit for programs that have not been documented prior to 2018, but that have begun to track progress for credit in the Chesapeake Bay Watershed Model; statewide sector initiatives for all counties without a completed county Clean Water Action Plan; new sector initiatives that were added since the draft WIP; and continued quantification of undocumented practices including non-cost share BMPs.”

DEP added, “Through adaptive management, Pennsylvania also intends to gain accreditation of new practices that improve water quality and reduce nutrient and sediment pollution.”

Significant Funding Gap

DEP estimates the annual gap in funding to implement the final Plan is \$324 million in each of the next 6 years to meet the 2025 goals -- \$1.94 billion.

If state funding levels remain the same as they are now, Pennsylvania could not achieve the pollution reduction goals it is obligated to meet much before 2044 -- 19 to 20 years late.

[Note: Harrisburg politicians have consistently and repeatedly failed in their obligation to invest in local clean water and environmental restoration over the last decade diverting well over \$2.7 billion in environmental funding into the black hole of the General Fund or to non-environmental programs that could not get funding on their own.]

[The FY 2019-20 final state budget is just the latest example. It included only \$6 million in additional funding for farm conservation practices and cut \$16 million in funding from the Environmental Stewardship (Growing Greener) Fund that could have helped fund local watershed restoration projects, like 32,000 acres of stream buffers.]

[The obligation for providing funding is squarely on the Harrisburg politicians. Click here for more <http://www.paenvironmentdigest.com/newsletter/default.asp?NewsletterArticleID=46944&SubjectID=195>]

Failing to Meet Goals

DEP said in the final Plan: “Failing to restore Pennsylvania’s impaired waters will mean that our drinking water resources, outdoor recreation, wildlife, and public health and safety will remain impacted. Local communities will continue to suffer from pollution-related problems such as stormwater and flood damage, contamination of drinking water sources, fouled waterways, and lost recreation opportunities.”

The Plan said if EPA determines that Pennsylvania cannot meet its goals on its own, EPA has stated it may increase federal enforcement and compliance efforts. For example, EPA has outlined possible consequences including:

- New nitrogen and phosphorus numeric water quality standards for streams and rivers in Pennsylvania;
- More animal feeding operations, industrial and municipal stormwater sources, and urban areas to obtain Clean Water Act permits;
- Stricter nutrient or sediment reductions for those that already have permits;
- Redirection of EPA grant funding away from the state’s priorities to its own priorities.

EPA already has Pennsylvania at so-called backstop levels for agricultural and urban/suburban stormwater sectors. This means they have substantial concerns with Pennsylvania’s strategy to implement measures to achieve the goals and it may take federal action to get the state back on track.

In June of 2018, EPA outlined in writing to Pennsylvania and other states what its expectations were for the Watershed Implementation Plans and the consequences if they failed to achieve the goals.

State, County, Federal Actions

The final Plan lists the state, county and federal actions needed to implement the Plan and achieve the 2025 reduction goals.

State Actions

Agriculture:

- **Agricultural Compliance:** Ensure farmers are continuing to implement their state required Agricultural Erosion and Sediment Control (Ag E&S) or conservation plan, Manure Management/Nutrient Management Plan, and are implementing required barnyard runoff controls, where needed.
- **Soil Health:** Use crop and soil management practices that improve long-term soil health and stability.
- **Expanded Nutrient Management:** Both manured and non-manured farmlands use nutrient management plans and precision nutrient management practices.
- **Manure Storage Facilities:** Install and use animal waste management systems, meeting state regulatory requirements, to adequately store manure for effective nutrient use.
- **Dairy Precision Feeding:** Use precision feed management to reduce nitrogen and phosphorus in manure.
- **Integrated Systems for Elimination of Excess Manure:** Create integrated (county/regional) programs for transport and/or beneficial use of excess manure.
- **Forest and Grass Riparian Buffers:** Plant perennial herbaceous or forest buffers along streams.

Forestry:

- **Forest Riparian Buffers:** Plant trees and shrubs along streams
- **Tree Canopy:** Plant trees in developed areas.
- **Woods and Pollinator Habitat:** Convert lawn and turf areas to woods and meadows.

- **Forest and Natural Area Conservation:** Provide credits for land conservation and revise zoning and ordinances to conserve existing natural areas.

- **Stream and Wetland Restoration:** Support efforts to restore local streams and wetlands.

Stormwater:

- **Implement pollutant reduction plans for Municipal Separate Storm Sewer Systems (MS4) Communities:** As one component of the 2018 permit, MS4 permittees must implement management practices to achieve the reductions identified in their respective Pollutant Reduction Plans (PRPs) by 2023.
- **New riparian forest buffers:** Plant trees and shrubs along streams.
- **Control measures for illicit discharges:** DEP to facilitate municipal ordinance amendments to control illicit discharges to storm sewer systems.
- **Industrial stormwater:** DEP to develop technical guidance, intended to supplement existing requirements, to inform industrial stormwater discharge permittees engaged in these activities. This guidance will list appropriate BMP utilization, design standards and implementation to reduce pollution which are acceptable to manage industrial stormwater.
- **Fertilizer legislation:** This proposed legislation could result in nutrient reductions in urbanized areas. When passed, it is estimated that this legislation could reduce nitrogen runoff by 105,000 pounds per year and phosphorus runoff by 4,000 pounds.
- **Erosion and Sediment Control (E&S Control) and Post-construction Stormwater Management (PCSM):** Continue permitting, inspecting, and ensuring compliance with Pennsylvania's erosion and sediment control and post-construction stormwater permit requirements, found in 25 Pa. Code Chapter 102, including DEP programs that implement these provisions not previously reported to the

Chesapeake Bay Program for progress. Initial estimates of the projected reductions from the implementation of these programs between now and 2025 are 433,000 pounds of nitrogen and 32,000 pounds of phosphorus.

- **Dirt and Gravel Roads:** Continue to implement the Dirt and Gravel Roads Program through the Center for Dirt and Gravel Roads.

Wastewater:

- **Continue Current Treatment:** Existing significant wastewater treatment systems will continue the successful treatment levels already achieved with biological nutrient removal.
- **Plant Optimization Program:** Expand DEP's current assistance program to maximize operations at wastewater systems to achieve additional reductions where appropriate.
- **Municipalities Implement Onsite Septic System Inspection and Pumping Programs:** As a requirement under the Act 537 Sewage Facilities Planning Act, municipalities are required to implement onsite septic system inspection and pumping programs. However, the implementation of these programs is not currently tracked or documented. Municipalities will work with DEP to ensure proper tracking and achieve further reductions.

County Actions

Each of the 43 counties in the Chesapeake Bay Watershed in Pennsylvania will receive a county-specific pollution reduction goal, planning tools and a customized technical toolbox to create a local Clean Water Plan for their county with local stakeholders through a collaborative process.

It is important to note the goals do not establish any new requirement or regulatory obligation on counties. They are a way to engage with local partners on shared issues and focus resources.

Federal Actions

DEP has assigned major federal facilities in the 43 counties of the Bay Watershed a nutrient

reduction goal and will require them to submit a plan on how they will achieve these reductions.

Somewhat obviously, DEP pointed out Pennsylvania will continue to need funding from EPA for pollution reduction projects.

Other areas for coordination with the feds include:

- Tracking and reporting efforts by the Natural Resources Conservation Service (NRCS) to install many of the pollution prevention practices described in this document.
- Closing gaps in how the partners measure, verify, and report on BMPs and wetland restoration projects.
- Revisions to EPA's Clean Water Act Section 319 grants to make those funds available for projects that meet the goals of the Phase 3 WIP.

Other sections of the final Plan outline the steps Pennsylvania will take on: Documenting, Tracking & Verifying Reductions; Milestones and Progress Reporting; Accounting for Growth; Climate Change, a Communication and Engagement Strategy.

Pennsylvania is Lynchpin

Pennsylvania is the linchpin to meeting all the water pollution reduction objectives in the Chesapeake Bay Watershed. If Pennsylvania fails to meet its goals, so will the entire effort.

That's why there have been recent rumblings in Maryland and Virginia about a fresh lawsuit against Pennsylvania for not meeting its clean water obligations.

Visit the **PA Phase 3 Watershed Implementation Plan webpage** <https://www.dep.pa.gov/Business/Water/Pennsylvania%20Chesapeake%20Bay%20Program%20Office/WIP3/Pages/PAs-Plan.aspx> for a copy of the final Plan.

Source: PA Environmental Digest, 8/26/2019

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This newsletter provides general information, not legal advice as to any specific matter. It should not be used as a substitute for appropriate legal advice.