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Water Utility Council of the
PA-Section, American Water
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GOVERNMENT RELATIONS UPDATE

From Milliron & Goodman Government Relations, LLC.

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October 21, 2019 -- Issue 1156

EPA Proposes Updates to Lead and Copper Rule to Better Protect Children and At-Risk Communities

<https://www.epa.gov/ground-water-and-drinking-water/proposed-revisions-lead-and-copper-rule>

As part of Children's Health Month, the U.S. Environmental Protection Agency (EPA) announced on October 10, 2019 a proposed rule that significantly improves the actions that water systems must take to reduce lead in the nation's drinking water. EPA Administrator Andrew Wheeler announced the proposal at an event in Green Bay. This action represents the first major overhaul of the Lead and Copper Rule since 1991 and marks a critical step in advancing the Trump Administration's **Federal Action Plan to Reduce Childhood Lead**

Exposures <https://usenvironmentalprotectionagency.email19.com/t/d-l-xjuiyiy-jtjbydit-r/>.

"Today, the Trump Administration is delivering on its commitment to ensure all Americans have access to clean drinking water by proposing the first major overhaul of the Lead and Copper Rule in over two decades," said EPA Administrator Andrew Wheeler. "By improving protocols for identifying lead, expanding sampling, and strengthening treatment requirements, our proposal would ensure that more water systems proactively take actions to prevent lead exposure, especially in schools, child

care facilities, and the most at-risk communities. We are also working with the Department of Housing and Urban Development to encourage states and cities to make full use of the many funding and financing options provided by the federal government."

In conjunction with today's announcement, EPA and the Department of Housing and Urban Development (HUD) have launched a **new websites** <https://usenvironmentalprotectionagency.com/t/d-l-xjuiyiy-jtjbydit-y/> that summarizes available federal programs that help finance or fund lead service line (LSL) replacement. The new resource also includes case studies demonstrating how cities and states have successfully leveraged federal resources to support LSL replacement projects.

"During my time as a physician, I saw firsthand the devastating impacts lead exposure can have on children," said HUD Secretary Ben Carson. "I applaud the EPA for taking action to reduce lead exposure in drinking water, particularly in our most vulnerable communities."

The agency's proposal takes a proactive and holistic approach to improving the current rule-from testing to treatment to telling the public about the levels and risks of lead in drinking water. When finalized, this proposal will:

- Require more water systems to act sooner to reduce lead levels and protect public health.

- Improve transparency and communication.
- Better protect children and the most at-risk communities.

The proposal focuses on six key areas. Under the proposal, a community water system would be required to take new actions, including, but not limited to:

1. Identifying the most impacted areas by requiring water systems to prepare and update a publicly-available inventory of lead service lines and requiring water systems to "find-and-fix" sources of lead when a sample in a home exceeds 15 parts per billion (ppb).
2. Strengthening drinking water treatment by requiring corrosion control treatment based on tap sampling results and establishing a new trigger level of 10 ppb (e.g. trigger level outlined below).
3. Replacing lead service lines by requiring water systems to replace the water system-owned portion of an LSL when a customer chooses to replace their portion of the line. Additionally, depending on their level above the trigger level, systems would be required take LSL replacement actions, as described below.
4. Increasing drinking water sampling reliability by requiring water systems to follow new, improved sampling procedures and adjust sampling sites to better target locations with higher lead levels.
5. Improving risk communication to customers by requiring water systems to notify customers within 24 hours if a sample collected in their home is above 15 ppb. Water systems will also be required to conduct regular outreach to the homeowners with LSLs.
6. Better protecting children in schools and child care facilities by requiring water systems to take drinking water samples from

the schools and child care facilities served by the system.

EPA's proposal does not change the existing action level of 15 ppb. EPA is proposing for the first time a new lead trigger level of 10 ppb, which would compel water systems to identify actions that would reduce lead levels in drinking water. EPA's new 10 ppb trigger level will enable systems to react more quickly should they exceed the 15 ppb action level in the future. These actions could include reevaluating current treatment or conducting a corrosion control study. Systems above 10 ppb but below 15 ppb would be required to set an annual goal for conducting replacements and conduct outreach to encourage resident participation in replacement programs. Water systems above 15 ppb would be required to annually replace a minimum of three percent of the number of known or potential LSLs in the inventory at the time the action level exceedance occurs.

Additionally, small systems that exceed the trigger and action levels will have flexibility with respect to treatment and LSL replacement actions. This will allow smaller systems to protect public health by taking the action that makes sense for their community.

EPA's Lead and Copper Proposed Rule reflects input received from the agency's state, local and tribal partners, the Science Advisory Board, the National Drinking Water Advisory Council, and best available peer-reviewed science. EPA is taking public comment on this proposal for 60 days after publication in the **Federal Register** via <https://usenvironmentalprotectionagency.cmail19.com/t/d-l-xjuiyiy-jtjbydit-j/> [Docket ID No. EPA-HQ-OW-2017-0300].

Background

Under Administrator Wheeler's leadership, in December 2018 EPA with its federal partners announced the **Federal Action Plan to Reduce Childhood Lead Exposures and Associated Health Impacts** <https://usenvironmentalprotectionagency.cmail19.com/t/d-l-xjuiyiy-jtjbydit-t/> . As part of the Plan, EPA is working to address lead in water systems across the country, including undertaking

the first major overhaul of the Lead and Copper Rule since 1991. In addition, EPA is working with states to ensure that the existing Lead and Copper Rule is being properly implemented.

Read the **rule** and **fact sheets** at: <https://usenvironmentalprotectionagencyemail19.com/t/d-l-xjuiyiy-jtjbydit-i/> .

View the **EPA-HUD lead service line financing opportunities website** at: <https://usenvironmentalprotectionagency.email19.com/t/d-l-xjuiyiy-jtjbydit-d/> .

View **EPA-HUD Letter to Governors** at: <https://usenvironmentalprotectionagency.email19.com/t/d-l-xjuiyiy-jtjbydit-h/> .

Source: EPA Press Release, 10/10/2019

DRBC Welcomes Kristen Bowman Kavanagh, P.E. as its Deputy Executive Director

The Delaware River Basin Commission is pleased to announce that Kristen Bowman Kavanagh, P.E. has joined the DRBC as its new Deputy Executive Director

"Kristen brings over 25 years of experience in water resource modeling and engineering to the commission," said DRBC Executive Director Steve Tambini. "Her experience and expertise have made her a leader in the water/wastewater industry, and we are excited to have her join our team of scientists, engineers, and planners."

Prior to assuming the duties of Deputy Executive Director, Ms. Bowman Kavanagh served as the President and Principal Engineer at Flow Science Incorporated, where she was responsible for company-wide operations management, business development, risk management, and strategic planning. She also assumed significant roles in hydrodynamic and water quality modeling studies to evaluate the fate of discharges into lakes and reservoirs, rivers, and coastal ocean areas. The

results of these efforts have been used to inform adaptive management plans, spill response plans, and long-term planning and operations.

"The DRBC is unique in that it brings together four states and the federal government to manage, protect, and improve the waters of the Delaware River Basin without regard to political boundaries," said Bowman Kavanagh. "I look forward to joining an agency whose focus is providing a sustainable supply of clean water for the over 13 million people who rely on the basin's water resources."

As DRBC's Deputy Executive Director, Ms. Bowman Kavanagh is responsible for the technical and managerial programs to develop and effectuate plans, policies, and projects relating to the basin's water resources. She holds a B.S. degree in Civil Engineering: Environmental and Water Resources and an M.S. degree in Civil Engineering: Environmental Fluid Mechanics and Hydrology, both from Stanford University in Palo Alto, CA. She is a registered professional engineer in Pennsylvania, New Jersey, and ten other states. A resident of Philadelphia for over 20 years, Ms. Bowman Kavanagh is the immediate Past-Chair of the Southeast District Pennsylvania American Water Works Association, a former President of the Philadelphia Chapter of the American Society of Civil Engineers, and a member of the North American Lake Management Society.

The DRBC is a federal/interstate government agency created in 1961 by concurrent compact legislation, marking the first time that the federal government and a group of states joined together as equal partners in a river basin planning, development, and regulatory agency. The five commission members are the governors of the basin states (Delaware, New Jersey, New York, and Pennsylvania) and the commander of the U.S. Army Corps of Engineers' North Atlantic Division, who represents the federal government.

To learn more about the commission, please visit www.drbc.gov or follow DRBC on Twitter at @DRBC1961 <https://twitter.com/DRBC1961> .

Source: DRBC Press Release, 10/7/2019

Governor Wolf Announces \$98 Million Investment in Water Infrastructure Projects in 11 Counties

On October 16, 2019, Governor Tom Wolf announced the investment of \$98 million for 16 drinking water, wastewater, storm water, and non-point source projects across 11 counties through the Pennsylvania Infrastructure Investment Authority (PENNVEST).

"The projects approved today continue to demonstrate the commonwealth's commitment to partnering with communities to ensure clean, safe water facilities for Pennsylvania's citizens," said Governor Wolf. "This funding plays a vital role in rebuilding our aging infrastructure and restoring a strong foundation for communities to continue to grow."

The funding for these projects originates from a combination of state funds approved by voters, Growing Greener, Marcellus Legacy funds, federal grants to PENNVEST from the Environmental Protection Agency, and recycled loan repayments from previous PENNVEST funding awards. Funds for these projects are disbursed after expenses for work are paid and receipts are submitted to PENNVEST for review.

"PENNVEST funding has provided much-needed financial assistance to Pennsylvania's communities for decades, but as the need for costly infrastructure improvements continues to grow, so must our responsibility to be a commensurate partner in those investment increases," said Governor Wolf. "Restore Pennsylvania will bolster existing efforts like these to reach out to more communities and re-establish safe, working infrastructure."

A list of project summaries follows:

Drinking Water Projects

Armstrong County

- **West Kittanning Municipal Authority** - received a \$305,000 loan to replace 600 water meters, providing remote read capability, as well as upgrades to the telemetry for a water tank. The project will aid in water conservation efforts and reduce expected water loss and associated costs for the community.

Clarion County

- **Municipal Authority of the Borough of St. Petersburg*** - received a \$4,400,000 grant to construct a water treatment plant and replace 7,400 feet of asbestos cement waterline, as well as numerous service connections and fire hydrants. The project will replace an aging treatment plant and address public health concerns by eliminating turbidity and residual chlorine deposits.

Erie County

- **Erie City Water Authority*** - received a \$32,000,000 loan to address Capital Improvement Plan upgrades, including a pump station replacement, construction of a one-million-gallon water storage tank, and expansion of a water treatment plant. The project will make significant infrastructure improvements, and increase water pressures, and ensure a continuous source of safe potable water for the community.

Wastewater Projects

Armstrong County

- **Municipal Authority of the Borough of Kittanning** - received a \$435,000 loan to perform upgrades to a sewage treatment plant, including two trickling filter distribution mechanisms, repair of clarifier concrete and a stormwater inlet, and upgrades to a data acquisition system. The project will ensure appropriate treatment of discharge water into the Allegheny River.

Cambria County

- **Jackson East Taylor Sewer Authority**** - received a \$5,500,000 loan to install 22,000 feet

of gravity sewer and 3,000 feet of force main, as well as a new pump station and pump replacement in two pump stations. The project will eliminate the use of failing on-lot systems throughout the area and eliminate pollution of nearby properties and streams.

Dauphin County

- **Capital Region Water**** - received a \$13,000,000 loan to implement four phases of Capital Improvement Plan green infrastructure improvements in South Allison Hill, Camp Curtain, Lower Paxton Creek, and Uptown areas surrounding the city of Harrisburg. The project will reduce wet weather discharges into the Susquehanna River and aid in satisfying a local consent order.

Lancaster County

- **Christiana Borough Authority** - received a \$450,000 loan to rehabilitate and repair 19 existing sanitary sewer manholes and approximately 3,150 feet of main sewer line. The improved system will benefit a small local community and rehabilitate a collection system that has reached the end of its useful life.
- **City of Lancaster**** - received an \$11,200,000 loan to upgrade an existing pump station, replace and expand 5,600 feet of pipe, and upgrade 4,500 feet of interceptor piping. The project will replace a conveyance system at the end of its useful life, but is also part of a long-term control plan to bring the system into compliance with a federal consent decree.

Northumberland County

- **Upper Augusta Township** - received a \$250,326 loan and a grant of \$2,938,720 to install a sanitary sewer system and extension line to service the village of Mount Pleasant. The project will eliminate the use of 46 septic tanks and add 18,700 feet of force main. The project will eliminate the use of a non-compliant wastewater treatment plant and ensure safe and efficient public sewage.

Wyoming County

- **Lemon Township & Tunkhannock Township Joint Municipal Sewer Authority**** - received a \$3,317,652 loan and a grant of \$10,008,698 to construct a wastewater conveyance system and treatment plant, including a low pressure sewage collection system. The project will eliminate the use of contaminated drinking wells and work to improve an impaired local lake.

Storm Water Projects

Delaware County

- **Ridley Township** - received a \$2,287,945 loan to install 8,105 feet of storm sewer, 108 inlets, three manholes, 390 feet of infiltration trench, and a 7,500 square-foot infiltration bed. The projects will eliminate local flooding and install green infrastructure. The project will eliminate local flooding concerns, which pose a threat to public safety, and install green infrastructure, improving water quality.

Non-point Source Water Quality Improvement Projects

Berks County

- **Chester County Conservation District** - received a grant of \$895,700 to construct an agricultural liquid waste storage and collection system as well as a stormwater piping and collection system. The project will reduce nearly 9,000 pounds of nitrogen from a local waterway which serves as a drinking water resource for local communities and will also control agricultural stormwater run-off.

Cumberland County

- **East Pennsboro Township Authority** - received a \$500,000 loan to design and construct a new stormwater system as well as retrofit existing facilities and restore local streams. The project will serve 10,000 residential customers and will reduce siltation due to urban runoff, assisting the community in complying with municipal separate storm sewer system requirements.

Delaware County

- **Stormwater Authority of the City of Chester**** - received a \$9,946,801 loan to install 9,200 feet of pipe, 125 catch basins and 50 manholes. The project will improve water quality in local waterways and drastically reduce siltation.

Lancaster County

- **Chester County Conservation District** - received a grant of \$429,513 to construct a concrete waste storage structure, unloading pad, 200 feet of drain, and various other agricultural improvements. The project will eliminate more than 2,000 pounds of nitrogen, improving local waterways and reducing agricultural stormwater run-off.
- **Chester County Conservation District** - received a grant of \$454,148 to construct a concrete cattle lot, reception pit, and cover for manure storage to reduce run-off. The project will eliminate more than 4,000 pounds of nitrogen, improving a local waterway and controlling agricultural stormwater run-off.

* denotes projects that have Drinking Water State Revolving Funds

** denotes projects that are funded with Clean Water State Revolving Funds

Source: Governor Wolf's Press Office, 10/16/2019

Pennsylvania's Unemployment Rate At 4 Percent for September

On October 18, 2019, the Pennsylvania Department of Labor & Industry (L&I) released its employment situation report for September 2019.

Pennsylvania's unemployment rate was up one-tenth of a percentage point from August to 4 percent, two-tenths of a percentage point above the record low that was held from April through June. The national rate, at 3.5 percent, was down two-tenths from August. Over the year, the

commonwealth's unemployment rate declined by two-tenths of a percentage point.

Pennsylvania's civilian labor force – the estimated number of residents working or looking for work – was up 12,000 over the month to 6,492,000. Employment was up by 6,000 and unemployment rose by 5,000.

The estimated number of jobs in Pennsylvania, referred to as total nonfarm jobs, decreased 5,000 over the month to 6,044,500 in September. Jobs were down in eight of the 11 industry supersectors. The largest supersector movement from August was a decline of 2,900 education & health services jobs. Trade, transportation & utilities had the largest gain, rising 2,800 to a record high of 1,132,700.

Over the year, total nonfarm jobs in Pennsylvania were up 30,200 with gains in 10 of the 11 supersectors. The largest gain from last September was an increase of 9,000 jobs in education & health services.

Additional information is available on the L&I website at www.dli.pa.gov.

Note: The above data are seasonally adjusted. Seasonally adjusted data provide the most valid month-to-month comparison.

Source: PA Department of Labor Press Release, 10/18/2019

Grants Available to Help Farmers and Small Businesses save Money and Reduce Pollution

Grant funding for energy efficiency and pollution prevention projects for small business owners and farmers is still available from the Pennsylvania Department of Environmental Protection (DEP) through the Small Business Advantage Grant program.

"This grant program was created with small businesses and farmers in mind. There are

tremendous monetary savings available to Pennsylvania's small business entrepreneurs by installing energy-efficient equipment, such as LED lighting, and Energy Star rated HVAC and boilers," said Secretary Patrick McDonnell. "Pennsylvania farmers can also benefit from these grants by receiving support for undertaking projects to help them divert sediment and nutrient runoff from our waterways."

Pennsylvania farmers and other small business owners with 100 or fewer full-time employees are eligible for the grants. Projects must save the business a minimum of \$500 and 25 percent annually in energy consumption, or pollution-related expenses. Natural resource protection projects are exempt from the minimums; however, the projects must be able to quantify sediment and nutrient reductions into nearby waterways.

"Clean water and healthy soil are the keys to sustaining our farms and feeding our communities," Agriculture Secretary Russell Redding said. "These grants are an investment in our future, and I encourage Pennsylvania farmers to take advantage of this opportunity."

Businesses can apply for 50 percent matching funds for equipment or materials, up to \$7,000, when adopting energy-efficient or pollution prevention equipment or processes. Applications are considered on a first-come, first-served basis, and will be accepted until fiscal year 2019-20 funds are exhausted, or April 12, 2020, whichever occurs first.

The complete grant application package, which includes step-by-step instructions for completing the online application as well as all related forms, is available by visiting the **DEP Small Business Ombudsman's Office site**

<https://www.dep.pa.gov/Citizens/GrantsLoansRebates/SmallBusinessOmbudsmanOffice/Pages/Small%20Business%20Advantage%20Grant.aspx> .

To contact the Small Business Ombudsman's Office, call 717-772-5160 or email epadvantagegrant@pa.gov.

Source: DEP Press Release, 10/18/2019

CBF Applauds NFWF Grants to Improve PA's Water Quality

Harry Campbell, executive director for the Chesapeake Bay Foundation (CBF) in Pennsylvania, issued this statement applauding National Fish and Wildlife Foundation (NFWF) grants totaling more than \$3.1 million to clean and restore polluted rivers and streams in the Commonwealth. About \$4.8 million in matching contributions could produce a total of nearly \$8 million of on-the-ground improvements and protections for Keystone State waters.

Pennsylvania will share an additional \$4 million in grants and matching contributions with other states in the Chesapeake Bay watershed.

These NFWF investments are made through the Chesapeake Bay Stewardship Fund, funded primarily by the Environmental Protection Agency and through the Chesapeake Bay Program. For 2019, the Stewardship Fund will make 47 grants totaling \$12.69 million for projects in the Bay region. An anticipated matching amount of about \$21 million would lead to a total on-the-ground impact of over \$33 million.

Of the NFWF grants to Pennsylvania projects, Mr. Campbell said:

"CBF congratulates the 15 grant winners in Pennsylvania and their projects. Through their endeavors, and that of their partners, Pennsylvania's farm soils will be healthier, communities will be greener, and rivers and streams will be cleaner.

"For instance, small watershed grants will help pay for green infrastructure plans in Northumberland and a watershed restoration plan Schuylkill County. Grants will also support conservation and manure management plans and an updated watershed action plan in Lancaster County. The survivability and maintenance of buffers will also be enhanced through a grant for a correctional vocational training program.

"With roughly 40,000 miles of Commonwealth rivers and streams harmed by pollution, there's a lot of work to be done. Unfortunately, the Commonwealth's budget does not adequately support these and many other partners working tirelessly with family farmers, community leaders, and others to restore and protect our rivers and streams.

"Federal partnerships leveraged by the private sector like those from NFWF and the Chesapeake Bay Program are crucial to restoring water quality in the Commonwealth."

The NFWF press release and specific grant details can be found <https://www.nfwf.org/howeare/mediacenter/pr/Pages/nfwf-announces-nearly-13-million-in-grants-from-the-chesapeake-bay-stewardship-fund-2019-1010.aspx>.

Source: CBF Press Release, 10/18/2019

Senate Environmental Committee Meets Oct. 22 on bills that will Slow Down DEP Permit Reviews, Make it More Complex, Costly

The Senate Environmental Resources and Energy Committee has scheduled a voting meeting on 4 bills for October 22 and at the end of the meeting there will be a briefing and discussion of the **Governor's Executive Order** <https://paenvironmentdaily.blogspot.com/2019/10/gov-wolf-issues-executive-order.html> directing DEP to join the interstate Regional Greenhouse Gas Initiative (RGGI).

Bills

The Committee is scheduled to consider these bills, which together, will slow down DEP's permit review process, make it more complex, impose more costs on DEP staff without addressing the fundamental issues needed to improve the permit process.

The bills include:

- Narrowing Grounds for Citizen Appeals of DEP Permits: Senate Bill 726 (Bartolotta-R-Washington) <https://www.legis.state.pa.us/cfdocs/billinfo/billinfo.cfm?year=2019&ind=0&body=S&type=B&bn=726> which would create a new standard for the review for appeals of DEP permit actions before the Environmental Hearing Board by limiting parties appealing permit decisions-- a company or a citizens group-- to issues raised in and information contained in a record of decision on each permit DEP staff would have to prepare.

This bill alone will significantly slow down the review process for every single DEP permit as staff now has to devote their time to prepare the record of decision. While it may seem like a good idea in an academic sense, the practical impact of the changes isn't hard to figure out-- not good if what you want is to speed up permit reviews.

Click [here](http://www.paenvironmentdigest.com/newsletter/default.asp?NewsletterArticleID=46889&SubjectID=215) for more background on this bill. <http://www.paenvironmentdigest.com/newsletter/default.asp?NewsletterArticleID=46889&SubjectID=215>

- Limit Terms of Environmental Hearing Board Judges: Senate Bill 727 (Bartolotta-R-Washington) <https://www.legis.state.pa.us/cfdocs/billInfo/billInfo.cfm?sYear=2019&sInd=0&body=S&type=B&bn=0727>, a companion bill to Senate Bill 726, would change the term of an Environmental Hearing Board judge from 6 to 5 years and limited judges to serving 2 terms. Any judge sitting on the Board on the effective date of the bill when it is signed into law who has served more than 10 years will have their term expire at the end of their current term.

Click [here](http://www.paenvironmentdigest.com/newsletter/default.asp?NewsletterArticleID=46889&SubjectID=215) for more background on this bill. <http://www.paenvironmentdigest.com/newsletter/default.asp?NewsletterArticleID=46889&SubjectID=215>

- More Complex, Costly, and Less Efficient Permitting: Senate Bill 891 (Yaw-R)

<https://www.legis.state.pa.us/cfdocs/billInfo/billInfo.cfm?sYear=2019&sInd=0&body=S&type=B&bn=0891> authorizing third party review of Chapter 102 (erosion and sedimentation) and Chapter 105 (dam safety and encroachment) permit applications.

The bill requires the Department of Environmental Protection to establish an “Advanced Permit Review Program” which gives applicants the option of using DEP-qualified licensed professionals to review Chapter 102 and 105 permit applications, excluding those related to abandoned mine reclamation.

The ultimate decision on the permit applications would be left to DEP.

The cost of setting up the qualification program for licensed professionals and providing training would all come out of permit fees. These permit fees now do not cover DEP costs to operate the existing programs.

There are no separate appropriations to support this program in the bill, so existing fees would have to increase even more dramatically to cover this special program.

Since DEP is the ultimate “decider” on the permit applications, it would have to conduct its own second review of the application and the licensed professional’s recommendation and any public comments within the 10 days allotted by the bill to make a decision.

DEP is then the one that has to defend that decision in any subsequent legal challenges, even though it did not do the technical review and under the bill does not have adequate time to conduct its own review.

The bottom line is why do 2 reviews? The bill has several significant weaknesses that will ultimately slow down permit reviews without addressing the real issues.

Click here to learn more about this bill.
<https://paenvironmentdaily.blogspot.com/2019/10/sen-yaw-introduces-bill-to-authorize.html>

- **Reauthorization of Federal Abandoned Mine Reclamation Fee: Senate Resolution 191** (Yudichak-D-Luzerne, Yaw-R-Lycoming)
<https://www.legis.state.pa.us/cfdocs/billinfo/billinfo.cfm?year=2019&sInd=0&body=S&type=R&bn=191> urging Congress to reauthorize the federal Abandoned Mine Reclamation Fee which is the primary source of funding for Pennsylvania’s abandoned mine reclamation program (**sponsor summary** <https://www.legis.state.pa.us/cfdocs/Legis/CSM/showMemoPublic.cfm?chamber=S&SPick=20190&cosponId=29861>).

RGGI Briefing

Sen. Gene Yaw (R-Lycoming), Majority Chair of the Committee, said this in reaction to the Governor’s announcement: “There are a lot of unanswered questions as to what entering RGGI would entail for the citizens of Pennsylvania. Perhaps the most important is “cost.” How is this going to impact industry? We have numerous gas fired power plants, as well as coal. What is the impact going to be on the petrochemical cracker plant in Beaver County?

“I support efforts to reduce greenhouse gas emissions, but it is worth noting that, since RGGI began trading allowances in 2009, the current nine RGGI states have reduced carbon emissions by 17 percent, while Pennsylvania has reduced carbon emissions by 28 percent. This was accomplished all without government mandate and at great savings to consumers.

“Furthermore, it is clear to me we have very little in common with New York, New Jersey, and the New England states. Maybe we have more of an interest with Ohio and West Virginia, especially when it comes to coal and natural gas.

“How can we have a common interest with New York and the New England region when they prohibit the importation of our gas? They thumb their nose at Pennsylvania gas and embrace and purchase gas from Russia.

“For a step of this magnitude, which affects consumers, business, industry and public policy –

the legislature, who represents the citizens of this state, must be involved in the dialogue on joining RGGI. It cannot be a unilateral decision.”

On September 16, Sen. Yaw was part of a group of largely Republican legislators from the Senate and House that **announced plans to introduce legislation**

<https://www.legis.state.pa.us/cfdocs/Legis/CSM/showMemoPublic.cfm?chamber=H&SPick=20190&coSponId=30314> to protect coal-fired power plants from any proposed carbon tax by requiring the approval of the General Assembly to join the Regional Greenhouse Gas Initiative <https://www.rggi.org/> or similar programs.

The sponsors of the bills said, “Since Pennsylvania deregulated its electricity market, 19 coal-fired electric generating units (EGUs) have or are in the process of closing or converting.”

Click here for a copy of the co-sponsor memo. <https://www.legis.state.pa.us/cfdocs/Legis/CSM/showMemoPublic.cfm?chamber=H&SPick=20190&coSponId=30314>

The meeting will be held in Room 8E-A East Wing starting at 9:30. **Click here to watch the meeting live.** <https://environmental.pasenategop.com/102219/>

Sen. Gene Yaw (R-Lycoming) serves as Majority Chair of the Senate Environmental Committee and can be contacted by calling 717-787-3280 or sending email to: gyaw@pasen.gov .

Sen. John Yudichak (D-Luzerne) serves as Minority Chair and can be contacted by calling 717-787-7105 or sending email to: yudichak@pasenate.com .

Source: PA Environmental Digest, 10/21/2019

House Committee to Consider Bill Oct. 22 Guaranteeing Taxpayers Pay the Highest Prices for

Nutrient Reductions; another Pretend Solution

The House State Government Committee is scheduled to meet on October 22 to consider **Senate Bill 575** (Yaw-R-Lycoming) <https://www.legis.state.pa.us/cfdocs/billinfo/billinfo.cfm?year=2019&sInd=0&body=S&type=B&bn=575> establishing a taxpayer funded procurement program for nitrogen, phosphorus and sediment reductions needed to comply with the Chesapeake Bay Watershed pollution reduction goals in all or part of 43 counties in the state.

The bill was introduced with the support of the **Coalition for Affordable Bay Solutions** <http://affordablebaysolutions.org/> , an industry-led coalition of private companies promoting complicated and expensive manure treatment technologies and manure-to-energy processing plants.

As written, Senate Bill 575 would guarantee only large companies with access to lots of resources could take part in the complicated bidding process established in the bill. These companies typically promote higher cost bricks and mortar treatment solutions to deliver nutrient pollution reductions.

No small farmer, who could install much cheaper Best Management Practices in terms of cost per pound of pollution reduced through the installation of proven green infrastructure, would bother to participate in bidding with all that upfront expense and paperwork.

If the only people who can bid in this complicated process are companies with the more expensive options, this process will guarantee it presents agencies with the choice of only picking more expensive options.

Last September, Matt Johnston of the University of Maryland Chesapeake Bay Program and Dr. Emily Trentacoste from the Chesapeake Bay Program presented the PA Chesapeake Bay Watershed Planning Steering Committee with a **list of the top 11 most cost effective practices** <http://www.paenvironmentdigest.com/newsletter/de>

[fault.asp?NewsletterArticleID=41067](http://www.paenvironmentdigest.com/newsletter/default.asp?NewsletterArticleID=41067) to reduce nitrogen going to the Chesapeake Bay based on all this experience and data in the Chesapeake Bay Program (**page 73 of his presentation** <http://www.paenvironmentdigest.com/newsletter/default.asp?NewsletterArticleID=41067>).

The practices include alternative crops on farmland at \$1/pound of nitrogen reduced to exclusion fencing with grass buffers at \$6/pound. In between are -- less expensive to more -- water quality conservation plans, grass buffers on row crops, barnyard runoff control, water control structures, wetland restoration, forest buffers on row crops (\$2/pound), narrow buffers on row crops, narrow forest buffers on row crops and nutrient management on the land.

None of the top 11 most cost effective practices included bricks and mortar treatment solutions which, in one manure treatment configuration, can need a cost of from \$10 to \$13/pound to operate the promoters have said.

An existing, competitive **Nutrient Credit Auction Program** <https://www.pennvest.pa.gov/Services/nutrient-credit-trading/Pages/default.aspx> run by the PA Infrastructure Investment Authority resulted in nitrogen credit sales of \$2.25 per pound last September.

Since the more expensive pollution reduction technology cannot compete in this market-based program because their costs are too high, a new one had to be created in Senate Bill 575.

Another Pretend Solution

It's a pretend solution to a real problem. It is yet another example of the failure of Pennsylvania's political leadership to invest in real solutions to the Commonwealth's water quality problem.

Pennsylvania needs \$324 million a year for the next 6 years to implement real, cost effective nutrient and sediment reduction practices in the Chesapeake Bay Watershed area.

The **PA Chesapeake Watershed Plan** <https://www.dep.pa.gov/Business/Water/Pennsylvania>

[nia%E2%80%99s%20Chesapeake%20Bay%20Program%20Office/WIP3/Pages/Phase-III-WIP-\(Watershed-Implementation-Plans\).aspx](https://www.dep.pa.gov/Business/Water/Pennsylvania/E2%2080%99s%20Chesapeake%20Bay%20Program%20Office/WIP3/Pages/Phase-III-WIP-(Watershed-Implementation-Plans).aspx) was developed through a stakeholder-driven process from the ground up, not dictated by vendors of manure treatment technologies.

Visit **DEP's Chesapeake Bay webpage** <https://www.dep.pa.gov/Business/Water/Pennsylvania/E2%2080%99s%20Chesapeake%20Bay%20Program%20Office/Pages/default.aspx> for more background on the Plan and Pennsylvania's obligations.

The Committee meeting will be held in Room G-50 of the Irvis Building at the Call of the Chair, which means there is no set time for the meeting. It could happen at any time the House takes a break from session on the Floor.

Rep. Garth Everett (R-Lycoming) serves as Majority Chair of the House State Government Committee and can be contacted by calling 717-787-5270 or sending email to: geverett@pahousegov.com.

Rep. Kevin Boyle (D-Montgomery) serves as Minority Chair and can be contacted by calling 717-783-4944 or sending email to: RepKevinBoyle@pahouse.net.

Source: PA Environmental Digest, 10/21/2019

Sen. Yaw Introduces Bill to Authorize 3rd Party Review of Chapter 102, 105 Permit Applications

On October 15, Sen. Gene Yaw (R-Lycoming), Majority Chair of the Senate Environmental Resources and Energy Committee, introduced **Senate Bill 891** <https://www.legis.state.pa.us/cfdocs/billInfo/billInfo.cfm?sYear=2019&sInd=0&body=S&type=B&bn=0891> authorizing third party review of Chapter 102 (erosion and sedimentation) and Chapter 105 (dam safety and encroachment) permit applications.

The bill requires the Department of Environmental Protection to establish an “Advanced Permit Review Program” which gives applicants the option of using DEP-qualified licensed professionals to review Chapter 102 and 105 permit applications, excluding those related to abandoned mine reclamation.

The ultimate decision on the permit applications would be left to DEP.

The bill is scheduled to be considered by the Senate Environmental Resources and Energy Committee October 22.

Selecting Qualified Professionals

DEP is required to establish a program to select qualified licensed professionals from state-licensed professional engineers, land surveyors or geologists with at least 5 years of relevant environmental experience and which have completed a training program approved by DEP.

General Outline of Program

Under the provisions of the Advanced Permit Review Program, an applicant indicates upfront their desire to participate in the permit review program.

DEP is still required to initially review the application to determine completeness and the payment of the permit application fee. If the application is complete, it will be referred to a qualified licensed professional to conduct a technical review.

Applicants get only one chance to submit a complete application to be part of the program.

DEP may not refer an application to a licensed professional and a licensed professional may not review an application if that professional has done work for the applicant within 3 years of the submission of the application.

If an application, for example for a pipeline project, involves multiple individual permits or general permits, DEP is required to refer the entire application to a licensed professional.

The qualified licensed professional will conduct a technical review of the application and notifies the applicant of any deficiencies.

The bill only authorizes one opportunity for the applicant to correct any deficiencies.

If the licensed professional receives a “timely response,” the professional forwards its recommendation on the application to DEP.

Specific Provisions

All Chapter 102 (erosion and sedimentation) and Chapter 105 (dam safety and encroachment) applicants requesting review under the Advanced Permit Review Program must submit those applications to the appropriate DEP Regional Office [not a conservation district] along with the application fee.

DEP will publish a notice in the PA Bulletin as required by regulation [for the initial public review presumably] saying it intends to refer the application to a qualified licensed professional within 30 days.

The licensed professional has 15 business days to issue a deficiency letter or submit its recommendation to DEP. If a response is received, the licensed professional has an additional 10 days after a response to a deficiency letter is received to send their recommendations to DEP.

There is no deadline for the applicant to get back to the licensed professional other than a general admonition in the bill for a “timely response.”

The licensed professional then submits an invoice to DEP for its services as determined by a fee schedule established by DEP.

DEP then has 10 days [not business days] to act on the recommendation.

DEP is authorized to hold a hearing on the technical merits of the application or the notice of intent, in which case a decision is not required until 30 days after the hearing is conducted.

A special fund is established and appropriated to DEP to fund the administration of the Advanced Permit Review Program from the permit fees received.

The bill was referred to the Senate Environmental Resources and Energy Committee for consideration.

Analysis

The bill offers a new version of third party permit review addressing some of the glaring deficiencies in similar proposals in the past, like adding a conflict of interest provision; however, it's difficult to see how this complicated and costly process will actually speed permit reviews.

Positive Points

In terms of positive points:

- **Narrow Focus:** It is focused on Chapter 102 and 105 permits, rather than every permit issued by DEP.
- **Reject Incomplete Permit Applications Upfront:** As drafted, it would allow DEP to simply reject incomplete permit applications and make them start over and not forward them on to a licensed professional for review.

During recent hearings by the House Environmental Resources and Energy Committee and DEP's own permit review analysis, from 50 to 60 percent of permit applications come in the door incomplete or technically deficient.

The Cumberland County Conservation District told the Committee consultants just submit what they have on hand knowing it will come back to them because they are under pressure from their clients.

Right now a lot of DEP and conservation district staff time is spent "handholding" consultants to correct applications and resubmit them.

A once and done rule like envisioned here would be a huge help, even without any legislation. Consultants would be under

tremendous pressure to get it right the very first time.

But if 50 to 60 percent of applications are rejected upfront, how long will it take House and Senate members to start complaining about that? That's just the political nature of things.

- **Only One Opportunity to Correct Deficiencies:** During the review by the licensed professional, the bill provides only one opportunity to correct problems.

Again, a lot of DEP and conservation district staff time is spent "handholding" consultants to correct technical problems with their applications so they can move forward to a decision.

If consultants are given only one chance to submit corrections with only an up or down recommendation by the reviewing professional, it would speed the process.

However, again, how long would it take House and Senate members to start complaining about that? This is just the political nature of things.

Negative Points

- **Time Limits on Application Reviews Unrealistic for Complex Projects:** The 15 business day deadline for a technical review by a licensed professional may be OK for simple project, but falls apart with more complex pipeline and other projects.
- **No Time Limit on Consultant Responses:** There is no time limit set for consultants to respond to the licensed professional's technical deficiency letter other than to say a "timely response."

At a May hearing by the House Environmental Resources and Energy Committee, the Cumberland County Conservation District testified it took an AVERAGE of 33 business days (more than 6 calendar weeks) for a consultant to get back to the District with corrections.

A month and a half - let that sink in.

- **Public Comment Opportunities Muddled:**
Since these provisions would apply to individual projects as well as pipeline projects that could cover several counties, the opportunities for public comment should be crisp and unaffected by the bill.

The bill would seem to preserve the initial comment period on Chapter 102 and 105 permit applications, but it becomes a little muddled later.

The bill says if DEP decides to have a hearing or hearings on an application it has to make a decision within 10 days [not business days] after the last hearing.

Clearly for multi-county pipeline and other complicated projects this simply is not enough time for DEP to absorb and respond to comments in writing as it is required to do. There are numerous examples that could be cited here, Mariner East II Pipeline to mention just one.

Milking a Cow through a Fence

The cost of setting up the qualification program for licensed professionals and providing training would all come out of permit fees. These permit fees now do not cover DEP costs to operate the existing programs.

There are no separate appropriations to support this program in the bill, so existing fees would have to increase even more dramatically to cover this special program.

Since DEP is the ultimate “decider” on the permit applications, it would have to conduct its own second review of the application and the licensed professional’s recommendation and any public comments within the 10 days allotted by the bill to make a decision.

DEP is then the one that has to defend that decision in any subsequent legal challenges, even though it did not do the technical review and under the bill does not have adequate time to conduct its own review.

The bottom line is why do 2 reviews? A significant weakness.

Bottom line

Given the process outlined in this bill, it is very difficult to see where there would be any significant speed-up of permit reviews. The bill also does not anticipate the electronic permitting systems now being developed at DEP.

This is simple.

Why not simply invest money in bolstering electronic permitting systems that work to eliminate incomplete applications completely and speed permit review and allow for more transparency through the entire process?

Tell DEP to adopt administrative rules, if the bill sponsors really meant them, to:

- Give consultants only one chance to submit a complete application, period; and
- Give consultants only one chance to correct permit application deficiencies.

You could adopt this bill, but it would be like milking a cow through a fence. Yes, you could do it, but would you want to?

And chances are you’d get less milk because you’re actually creating barriers to the work that needs to be done.

Sen. Gene Yaw (R-Lycoming) serves as Majority Chair of the Senate Environmental Committee and can be contacted by calling 717-787-3280 or sending email to: gyaw@pasen.gov .

Sen. John Yudichak (D-Luzerne) serves as Minority Chair and can be contacted by calling 717-787-7105 or sending email to: yudichak@pasenate.com .

Source: PA Environmental Digest, 10/21/2019

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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.