

LEGISLATIVE AND REGULATORY UPDATE

**PA Section AWWA Southeast District and WWOAP Eastern Section
Spring Joint Conference – March 4, 2020**

Presented by: Serena A. DiMagno

WWOAP Legislative/Regulatory Affairs Committee Chairman



SPOTTS | STEVENS | MCCOY

@ssmgroup.com

LEGISLATIVE UPDATE



House and Senate Session Schedule

<u>2020</u>	<u>HOUSE SESSION SCHEDULE</u>
March	16, 17, 18, 23, 24, 25
April	6, 7, 14, 15, 16
May	4, 5, 6, 11, 13, 18 (Non-voting)
June	1, 2, 3, 8, 9, 10, 15, 16, 17, 22, 23, 24, 25, 26, 29, 30

<u>2020</u>	<u>SENATE SESSION SCHEDULE</u>
March	16, 17, 18, 23, 24, 25
April	6, 7, 8
May	4, 5, 6, 18, 19, 20
June	1, 2, 3, 8, 9, 10, 15, 16, 17, 22, 23, 24, 25, 26, 29, 30



PA General Assembly – Status Update

- **2019-2020 House GOP Majority – 110-90-3 (2/3 =135)**

Special Elections: March 17, 2020

The following Representatives were elected to the Judiciary:

Justin Walsh – (R-Westmoreland)

Gene DiGirolamo – (R-Bucks)

Tedd Nesbit (R-Mercer)

- **2019-2020 Senate GOP Majority 29-21 (2/3=33)**

- **19 Legislators are NOT Seeking Re-Election:**
 - **12 House Republicans and 5 House Democrats**
 - **1 Senate Republican and 1 Senate Democrat**



Governor Wolf's Lead-Free Pennsylvania Initiative

- Governor Wolf first introduced Lead-Free PA initiative in August, 2019
- <https://www.governor.pa.gov/newsroom/gov-wolf-discusses-initiative-for-a-lead-free-Pennsylvania-with-focus-on-testing-and-abatement>
 - Call attention to the need for a law requiring universal blood testing of children according to federal guidelines
 - Convene regional task forces to address specific local needs
- On January 29, 2020 Governor Wolf presented a series of proposed 2020-2021 budget items totaling more than \$1.1 billion to support reducing the risks of lead and asbestos, and remediating existing toxins
 - In schools
 - In daycares
 - Homes
 - **Public water systems**



Governor Wolf's Lead-Free Pennsylvania - Continued

- Governor Wolf is proposing up to \$1 billion in grants from the Redevelopment Assistance Capital Program (RACP) be used for lead and asbestos remediation in schools
- Legislation passed in Congress allows a state to transfer amounts from its clean state revolving fund to its drinking water state revolving fund to address a threat to public health from heightened exposure to lead in drinking water.
 - No more than 5% of the cumulative amount of the federal grant dollars awarded for clean water state revolving fund can be transferred to the drinking water state revolving fund. EPA must also agree to the transfer.
 - PENNVEST may be able to free up to \$90 million for PA to address lead in drinking water by providing grants for lead service line replacement statewide.
 - PENNVEST is proposing to spend the next year working with communities to identify shovel-ready projects that can be funded in 2021. Potential grant recipients will need to do testing, feasibility studies and other consulting work to prepare for projects.



Governor Wolf's Lead-Free Pennsylvania - Continued

- On February 13, 2020 Governor Wolf announced that PA secured a \$1.74 million federal grant for testing lead in drinking water at schools and child care facilities.
- The grant is through the EPA's Water Infrastructure Improvements for the Nation (WIIN) Act, (Section 1459B) of the Safe Drinking Water Act, which authorizes grant funding for reducing lead in drinking water. The EPA funding will cover 100% of the project cost of water testing.
 - PENNVEST will administer the funding in coordination with the departments of
 - Education
 - Health
 - Environmental Protection
 - A competitive RFP will be issued for interested parties to coordinate voluntary testing in targeted schools and child care facilities throughout PA. Approximately 3,000 facilities are targeted.



Legislation – House Bill 283 – Amends Right-to-Know-Law

- **Rep. Simmons** (R-Lehigh) - **House Bill 283** amends the Right-to-Know Law to permit a state or local agency to charge additional fees for the search, review and duplication of records that have been requested and will be used for a commercial purpose.
 - The fees must be reasonable, must be approved by the Office of Open Records, and may not be established with the intent or effect of excluding or limiting access to records.
 - Allows state and local government agencies to charge a person requesting a record to be used for commercial purposes an additional standard fee for the search, review and duplication of such records
 - Defines “commercial purpose” with regard to a record
- House floor amendment, 1/15/2020 – Establishes that request(s) for records shall not apply to records that are subject to fees established in laws or regulations or from attorneys on behalf of clients if the record is not obtained for a commercial purpose.
- In Second Consideration and re-referred to the House Appropriations Committee



Legislation – House Bill 406 - Public Hearings Prior to Acquisitions

- **Rep. Cox** (R-Berks) - **House Bill 406** amends Title 53 (Municipalities Generally) providing for public notice and public meeting requirements.
- Prior to entering into an agreement to sell or lease a water or sewer system **owned or operated** by a municipal corporation or to sell or lease a water or sewer system currently operated by a municipal authority that would require dissolution by the municipal authority:
 - The municipal corporation shall hold at least one advertised public meeting, not more than 60 days nor fewer than seven days prior to entering into the agreement with the potential purchaser or lessee, and
 - Shall provide public notice of the meeting in all municipalities served by the water or sewer system. The potential purchaser or lessee shall attend the meeting. “Public Notice” shall be published once each week for two successive weeks in newspaper of general circulation.
- Passed House, 193-0, 2/4/2020 – in Senate Consumer Protection and Professional Licensure Committee, 2/29/2020



Legislation – Public Meeting Web Posting

- **Rep. Bernstine - House Bill 1069** amends the Sunshine Act to require a public agency to post public meeting agendas on its website no later than 24 hours prior to a meeting as well as prohibit an agency from taking official action on items not included on the meeting agenda. Changes may be made to the agenda during a meeting upon majority vote of the individuals present and voting. On September 19th, the bill was amended on the House floor requiring that an updated agenda must be posted on a publicly accessible website, if one is available, and at the agency's principal office location no later than the first business day following the meeting.
- The bill passed the House 196-0.



Safety and Marking of Low Head Dams

- **House Bill 1003 – (Gillespie – R)** Amends Title 30 (Fish) to allow the Pennsylvania Fish and Boat Commission (PFBC) to directly issue citations to owners who fail to mark their dams. It also amends the definition of run-of-the-river dam.
- Under current law, failure to mark new and existing run-of-the-river dams is a civil penalty of not less than \$500 nor more than \$5,000. The penalty is recovered by civil suit or process in the name of the Commonwealth.
- Forty-nine individuals have been killed in dam-related boating accidents since 1989; most near low-head dams that span the entire width of a waterway. Currently there are 300 of these dams across the state.
- HB 1300 requires/enforces the marking of new and existing “run-of-the-river” dams above and below the dam and on the banks immediately adjacent to the dam with signs and buoys. The signs and buoys are required to be of a design and content determined by PFBC to warn the swimming, fishing and boating public of the hazards posed by the dam.



Safety and Marking of Low Head Dams - Continued

- Any person who fails to mark new or existing run-of-the-river dams commits a summary offense of the first degree (\$250 fine or up to 90 days in jail) for the first offense and a misdemeanor of the third degree (\$250 to \$5,000 or up to 90 days in jail) for a subsequent offense. Similar penalties are in place with respect to the maintenance of signs and buoys. **The bill was amended to clarify that imprisonment is not applicable to this section of the code 18 Pa. C.S. section 923.**
- The definition of “Run-of-the-river dam” is revised and would still apply to a dam regulated by DEP, but amended to a dam built across a “watercourse and certain flows pass” over the entire dam structure, excluding abutments, to a natural channel downstream. DEP also determines the dam to have hydraulic characteristics such that at certain flows persons may be caught in the hydraulic roller (boil) immediately below the dam.
- Passed the House 194-0, 1/15/2020; In Senate Game and Fisheries, 1/24/2020



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



PFOS and PFOA - EPA

- On [February 20, 2020](https://www.epa.gov/pfas), EPA proposed a regulatory determinations for PFOS and PFOA in drinking water as part of the EPA's PFAS Action Plan:
<https://www.epa.gov/pfas>
- EPA is seeking public comment on the proposed regulatory determinations for eight contaminants listed on the fourth Contaminant Candidate List, including PFOS and PFOA and other PFAS substances. EPA is seeking comment on potential monitoring requirements and regulatory approaches that are being considered for PFAS chemicals.
- There will be a 60 day comment period after Notice is published in the Federal Register.
- EPA will propose nationwide drinking water monitoring for PFAS under the next UCMR monitoring cycle.
- EPA is in the early stages of risk assessments for PFOA and PFAS in biosolids to understand potential health impacts.



PFOS and PFOA - EPA - Continued

- For additional information on EPA's PFAS efforts, go to:
<https://www.epa.gov/newsreleases/aggressively-addressing-pfas-epa>
- Additional information is available at: www.epa.gov/safewater
- NOTE: EPA is **not regulating** the following six contaminants:
 - 1,1-dichlorethane
 - Acetochlor,
 - Methyl bromide
 - Metolachlor
 - Nitrobenzene
 - RDX



EPA Proposed Revisions to the Lead and Copper Rule

- On October 10, 2019 EPA announced a proposal for the first major overhaul of the Lead and Copper Rule (LCR) since 1991. The proposed LCR maintains the current Maximum Contaminant Level Goal (MCLG) of zero and the Action Level of 15 ppb and introduces a trigger level of 10 ppb.
- **The public comment period has ended.** EPA expects the Final Rule to be published by the end of the year.
- State implementation by the State will take 3 years after the Final Rule is published.
- PA DEP expects to request an extension for rule development due to the length of time required for the rule process in PA.
- **For more information, go to:**
www.epa.gov/safewater/LCRproposal



EPA Proposed Lead and Copper Rule

- EPA is proposing the first major overhaul of the Lead and Copper Rule (LCR) since 1991. The proposed LCR maintains the current Maximum Contaminant Level Goal (MCLG) of zero and the Action Level of 15 ppb and introduces a trigger level of 10 ppb.
- The proposal focuses on six key areas:
 1. **Identifying the Most Impacted Areas:**
 - Requires water systems to prepare and update a lead service line inventory (LSL)
 - LSL will be publicly available
 - Requires water systems to “find and fix” sources of lead when a sample exceeds 15 parts per billion (ppb).

Under the current LCR

- **Systems are only required to conduct a materials inventory to identify enough sites for tap sampling. Currently do not include the entire system and are not public.**
- **Action only required if more than 10% of tap samples exceed the action level of 15 ppb. No follow-up samples are required at sites with individual tap samples greater than 15 ppb.**



EPA Proposed Lead and Copper Rule - Continued

2. Strengthening Treatment Requirements

- At the trigger level of 10 ppb, systems are required to re-evaluate existing corrosion control treatment or conduct a treatment study to allow a system to respond quickly when necessary.

Under the current LCR

- **Systems serving > 50,000 persons are required to have Corrosion Control Treatment (CCT); while systems serving \leq 50,000 are required to have CCT after an action level exceedance and may discontinue these requirements if the action level is no longer exceeded for two 6-month monitoring periods.**
- **Systems are not required to re-optimize CCT, unless directed to do so by the State, and may only be required to conduct a CCT study when there is an action level exceedance.**



EPA Proposed Lead and Copper Rule - Continued

3. Replacing Lead Service Lines:

- The trigger level is a new flexible provision designed to compel water systems to take proactive actions to plan upgrades to aging infrastructure and reduce levels of lead in drinking water.
- Systems above the proposed trigger level of 10 ppb are required to work with their state to set an annual goal for replacing lead service lines.
- Systems that are above 15 ppb will be required to replace a minimum of 3% of the number of LSLs annually.
- The proposal prevents systems from avoiding lead service line replacements (LSLR) by “testing out” through sampling.
- Partial LSLRs will no longer be allowed except in certain situations (e.g., emergency repair). Partial LSLRs may increase short-term lead exposure.
- Small systems that exceed the trigger and action levels will have flexibility with respect to treatment and lead service line replacement actions.



EPA Proposed Lead and Copper Rule - Continued

3. (Continued)

Under the current LCR

- **Systems are not required to replace their portion of an LSL when the customer-owned portion of the line is replaced.**
- **No LSLR plan is required. Systems are only required to implement an LSLR program when the lead action level of 15 ppb is exceeded.**
- **Systems can count partial LSLRs and LSLs that have been tested out (samples from the LSL do not exceed 15 ppb) as being replaced to meet the 7% mandatory annual replacement rate.**



EPA Proposed Lead and Copper Rule - Continued

4. Increasing Sampling Reliability

- Requires wide-mouth bottles for sample collection.
- Prohibits flushing and cleaning or removing faucet aerators before sampling.
- Changes the criteria for selecting homes where samples are taken to require sampling in homes with lead service lines.
- Systems with higher levels of lead will sample more frequently.

Under the current LCR

- Systems are not prohibited from instructing samplers to flush before collecting a sample; removing and/or cleaning faucet aerators, and using narrow-mouthed collection bottles. All of which is thought to mask elevated lead levels.
- Systems with LSLs are only required to collect 50% of tap samples from sites served by LSLs.



EPA Proposed Lead and Copper Rule - Continued

6. Protecting Children in Schools:

- Systems will be required to test school and child care facilities.
- Proposes that community water systems sample drinking water outlets at each school and each child care facility served by the system.
- The system would be required to provide the results and information about the actions a school or child care facility can take to reduce lead in drinking water.

Under the current LCR

- **Systems are not currently required to test schools and child care facilities.**
- **Only Non-Transient Non-Community Water Systems must sample for lead and copper.**



Regulatory Change in Manganese Limits

- A provision 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 ensure the standard is met **at the point of intake for water suppliers** (25 PA Code Chapter 96.3).
- The change was requested by the coal industry and would allow the coal industry (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 – Continued

- 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.



Regulatory Change in Manganese Limits – Continued

- Coal companies are not the sole significant dischargers of manganese. PA DEP has issued more than 900 NPDES permits with manganese limits for non-coal mining related dischargers, including chemical companies, metals manufacturers, coal-fired power plants and wastewater treatment plants.
- On July 25, 2019, the Water Resources Advisory Committee voted to have DEP move forward with a proposal to set a new toxic substances health standard **water discharge limit for manganese of 0.3 mg/l, rather than the 1 mg/l.** DEP reviewed the existing literature which determined the 1 mg/l standard is not protective of human health due to the neurotoxic impacts of manganese. The new proposed 0.3 mg/l standard would apply to all discharges going into surface waters.



Regulatory Change in Manganese Limits – Continued

- Water suppliers will still see increased costs to meet the proposed new standard, but compliance costs will still be less than for the 1 mg/l standard advocated by the Legislature.
- DEP noted that of the 340 surface water treatment plants in PA, comments were received from 280 plants indicated they would need to do an evaluation to determine what process changes would be required to meet the Act 40 change.
- **CURRENT STATUS**: On December 17, 2019 the Environmental Quality Board (EQB) adopted the Proposed Rulemaking – Water Quality Standards for Manganese and Implementation – by a vote of 14 to 5. Following publication in the *Pennsylvania Bulletin*, there will be a 45 day comment period (expected March/April, 2020).



Chapter 91 & 92a Fee Amendments – Proposed Rule

- **CURRENT STATUS**: On January 27, 2020 DEP's Agricultural Advisory Board and on January 30, 2020 the Water Resources Advisory met to consider the **final proposed changes** Committee to Water Quality Management (WQM) and National Pollutant Discharge Elimination System (NPDES) Permit Application Fees and Annual Fees (25 PA Code Chapters 91 and 92a).
- DEP is proposing to decrease the fees from what was originally proposed for most of the permits covered in Chapter 91 and 92a.
- DEP is removing provisions related to adjusting the fees every two years based on the U.S. Bureau of Labor Statistics Employment Cost Index for State and Local Government Compensation.



Chapter 91 & 92a – Proposed Rule – Continued

- Many of the changes made to the final proposed rulemaking were a result of The Independent Regulatory Review Commission (IRRC) comments submitted to the EQB on June 13, 2019.
- Next step: PA DEP needs to prepare the final rulemaking package (including the Comment and Response Document) and submit to the EQB.



New DEP Draft Technical Guidance Document

- ***Draft Guidance on Trenchless Technology – Environmental Considerations for the Construction and Operation of Trenchless Technology***
- ***Guidance developed as part of settlement with the Clean Air Council, Mountain Watershed Association and Delaware Riverkeeper Network – Sunoco Pipeline Case***
- ***Contributors to the Guidance Document:***
 - *DEP’s Regional Permit Coordination Office*
 - *DEP’s Bureau of Oil and Gas*
 - *DEP’s Bureau of Waterways Engineering*
 - *Pennsylvania Public Utility Commission*
 - *Federal Energy Regulatory Commission (FERC)*
 - *Pipeline and Hazardous Materials Safety Administration (PHMSA)*
 - *Oil and Gas Experts*
 - *Drilling Experts*
 - *Clean Air Council*
 - *Mountain Watershed Association*
 - *Delaware Riverkeeper Network*



Draft Technical Guidance Document – Cont'd.

- ***Advisory Committees and Boards that are reviewing the Draft Trenchless Technology Technical Guidance Document:***
 - ***Water Resources Advisory Committee (WRAC)***
 - ***Agricultural Advisory Board (AAB)***
 - ***Small Water Technical Advisory Committee (TAC Board)***
 - ***Citizens Advisory Council (CAC)***
 - ***PA DEP Bureau of Safe Drinking Water***
 - ***Environmental Justice Advisory Board (EJAB)***
 - ***Oil and Gas Technical Advisory Board***
- ***The Guidance (Not Regulation):***
 - ***Sets policies, procedures and best practices to prevent adverse environmental impacts from projects using trenchless technology***
- ***See the August 8, 2019 TAC Board Agenda and Handouts***



Draft Technical Guidance Document – Cont'd.

- *Outlines the steps and options to be considered when a project proposes the use of trenchless technology (any project type – fiber optic, pipeline, etc).*
- *Includes a suitability and feasibility analysis, as well as environmental considerations, a design and permitting section and a construction and compliance section.*
- *Other considerations:*
 - *Inadvertent Returns*
 - *Water Supplies*
 - *Waters of the Commonwealth*
 - *Emergency Response Planning*



Draft Technical Guidance Document – Cont'd.

– *Appendices:*

- *Risk Evaluation*
- *Data Resource List*
- *Bore & HDD Flowchart*
- *Instructions for Determining Public Water Supply Source Locations using eMapPA*
- *Example Template for a PPC Plan – Simple & Complex Projects*
- *Example Notification Letter and Well Construction Questionnaire*
- *Example Letter conveying water quality results and notification of EPA MCL exceedances*
- *Plan Submittal Checklist(s)*



DEP Draft Technical Guidance Document – Cont'd.

The Draft Guidance Document as well as the PA DEP PowerPoint Presentation on the Draft Guidance is available on the PA DEP website: – Go to Public Participation, Advisory Committees, Small Water System Technical Advisory Committee (TAC), and click on the February 26th Meeting date.

DEP is seeking comments prior to publication of the Draft Technical Guidance Document in the *Pennsylvania Bulletin* (expected May, 2020). Comments can be emailed to Andrew Foley at anfoley@pa.gov. Comments prior to the public comment period need to be sent by April 1, 2020. There will be a public comment period following publication in the *Pennsylvania Bulletin*.

PLEASE PROVIDE COMMENTS TO THE TAC BOARD AND PROVIDE THE SAME COMMENTS DURING THE PUBLIC COMMENT PERIOD.



QUESTIONS



Speaker Contact Information

SERENA A. DiMAGNO
SENIOR ENVIRONMENTAL CONSULTANT

SPOTTS | STEVENS | McCOY (SSM GROUP, INC.)

701 Creekside Lane

Lititz, PA 19610-0307

CELL PHONE: 717-379-0084

PHONE: 717-568-2678

PHONE: 610-621-2000

SERENA.DIMAGNO@SSMGROUP.COM

SADIMAGNO@AOL.COM

www.ssmgroup.com

