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GOVERNMENT RELATIONS UPDATE

From Milliron & Goodman Government Relations, LLC.

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PA Senator Gene Yaw Introduces Legislation to Boost Agricultural Conservation Efforts

State Sen. Gene Yaw (R-23) has introduced legislation to increase conservation and technical assistance for farmers in order to further reduce pollution impacts on local creeks and streams.

"Agriculture is looked to for significant reductions to meet pollution reduction goals for the Chesapeake Bay and other major watersheds in the state," Sen. Yaw said. "Nevertheless, almost one-third of our Commonwealth's streams do not meet standards for drinking, fishing or recreation, and agriculture remains one of the largest sources of impairment. To meet the challenges, I have introduced legislation to establish an Agricultural Conservation Assistance Program."

The legislation, **Senate Bill 1272** <https://www.legis.state.pa.us/cfdocs/billInfo/billInfo.cfm?sYear=2019&sInd=0&body=S&type=B&bn=1272>, will provide for local county conservation districts (CCD's) throughout the Commonwealth to directly receive and manage funding for agricultural conservation projects determined by local officials in order to significantly improve local water quality. Modeled after the state's Dirt and Gravel Road Program that apportions funding to CCD's based on a formula that considers relative volumes

of dirt roads and impaired streams in each district, the program would apply similar criteria in driving targeted dollars to areas with the highest need for improvement. CCD's would work with participating farmers and landowners to determine the best management practices that will work best for their area.

Senate Bill 1272 is a collaborative effort of governmental and non-governmental representatives, including the Pennsylvania Farm Bureau (PFB), the Chesapeake Bay Foundation (CBF) and Penn State.

"Pennsylvania farmers have long been conservation minded and manage their farms in a way that protects natural resources," said PFB President Rick Ebert. "However, challenges remain in meeting water quality goals, especially within the Chesapeake Bay Watershed. We are pleased that lawmakers such as Senator Yaw acknowledge that farmers cannot go it alone, while also recognizing that environmental challenges are not going away. This agriculture conservation bill will help farmers make conservation improvements on their farm and bring Pennsylvania closer to meeting those water quality goals."

"Farmers are willing to do the right thing and conservation districts are standing by to help. But both lack the resources. CBF thanks Sen. Yaw for an important first step," said Shannon Gority, CBF Executive Director in Pennsylvania. "Everyone wants agriculture to succeed and it is long past time that it gets the resources and technical assistance to

finish the job. Our economy, health, heritage, and quality of life depend on it."

"Agricultural water quality has been a priority issue in Pennsylvania and our college for many years," stated Richard Roush, Dean of the Penn State College of Agricultural Sciences. "We enjoy long-standing relationships with diverse agricultural and conservation associations that share our passion for this issue. We believe arming Pennsylvania farmers with the latest science-based information, best practices, and technical support in their conservation efforts will reap huge dividends for healthy rivers, but also for farmers in making better use of soil and nutrients."

"Given the challenges of meeting a 2025 deadline to have all practices in place to meet the Chesapeake Bay cleanup plan, now is the time for Pennsylvania to enact legislation that will provide a roadmap for meeting those goals," Senator Yaw added. "I look forward to a vote on this bill in the near future."

Senate Bill 1272 has been referred to the Senate Agricultural and Rural Affairs Committee for consideration.

For more state-related news and information, visit Senator Yaw's website at <http://www.senatorgeneyaw.com/>.

Senator Gene Yaw represents Pennsylvania's 23rd Senatorial District, which includes all or portions of Bradford, Lycoming, Sullivan Susquehanna and Union counties.

Source: Senator Yaw Press Release, 9/21/2020

CBF Applauds Senate Cost-Share Bill that Invests in Clean Water Efforts by Pennsylvania Farmers

The Chesapeake Bay Foundation (CBF) is applauding new legislation in the state Senate that will offer financial support that farmers in Pennsylvania want and need so they can

keep soil on the land, reduce polluted runoff into local streams, and protect their long-term viability.

"Farmers are willing to do the right thing and conservation districts are standing by to help. But both lack the resources. We thank Senator Yaw for an important first step," said Shannon Gority, CBF Executive Director in Pennsylvania. "Everyone wants agriculture to succeed and it is long past time that it gets the resources and technical assistance to finish the job. Our economy, health, heritage, and quality of life depend on it."

State Senator Gene Yaw (R-Lycoming) introduced **Senate Bill 1272**

<https://www.legis.state.pa.us/cfdocs/billinfo/billinfo.cfm?year=2019&sind=0&body=S&type=B&BN=1272> , that establishes the Agricultural Conservation Assistance Program (ACAP) and targets funding for local farms through their county conservation districts. ACAP will be administered by the State Conservation Commission.

"Agricultural practices are some of the most cost-effective ways to reduce nutrient and sediment pollution, and they have the double-benefit of improving soil health, nutrient efficiency, and the long-term viability of farm operations," Senator Yaw said. "Given the challenges of meeting a 2025 deadline to have all practices in place to meet the Chesapeake Bay cleanup plan, now is the time for Pennsylvania to enact legislation that will provide a roadmap for meeting those goals."

Senator Yaw is Majority Chair of the Senate Environmental Resources and Energy Committee. Co-sponsorship of SB1272 includes bipartisan support.

CBF, Pennsylvania Farm Bureau, and Penn State Agriculture and Environmental Center worked jointly to propose the program that would direct funding to conservation districts, and provide the needed technical assistance to farms and the flexibility to determine conservation practices specific to local watershed needs.

"Agriculture is looked to for significant reductions to meet pollution reduction goals for the Chesapeake Bay and other major watersheds in the state," Senator Yaw added. "Nevertheless, almost

one-third of our Commonwealth's streams do not meet standards for drinking, fishing or recreation, and agriculture remains one of the largest sources of impairment."

The Pennsylvania Department of Environmental Protection's (DEP) latest biennial report lists 25,468 miles of Pennsylvania waters, 5,500 miles more than in its 2016 report, as being harmed by pollution.

The DEP report identified agriculture runoff as the source of 5,765 miles of impaired waters.

Farmers in the Keystone State have shown they are willing to invest their time, land, and effort to restore and protect local rivers and streams, but they cannot pay for it all themselves. ACAP is the agricultural cost-share program Pennsylvania sorely needs to get the Commonwealth back on track toward meeting its clean water goals.

Pennsylvania came up short in meeting its 2018-19 milestones for the necessary pollution reductions. It also lags significantly behind in implementing 100 percent of practices by 2025 that would restore local water quality in the Commonwealth and meet its Clean Water Blueprint goals.

Pennsylvania's Phase 3 Watershed Implementation Plan (WIP) would achieve 73 percent of the nitrogen reductions needed to meet its Blueprint goals and has an annual funding shortfall of \$324 million.

The concept of ACAP is modeled after the state's Dirt and Gravel Road program, in which funding is allocated to conservation districts based on a formula that factors in miles of unpaved road and proximity to high-quality streams. It focuses targeted dollars to areas with the greatest need, not through a one-size-fits-all approach. The Dirt and Gravel Road program is funded annually through a gas tax and allocated by the State Conservation Commission.

In ACAP, funding would be prioritized for counties based on factors like the amount of crop acres and livestock near streams impaired by agriculture.

Conservation districts would be required to invest in and approve pollution reduction measures that might include cover crops, streamside trees and more, and devise criteria for which ones will have the most immediate impact on local water quality. Districts would work with farmers and landowners to ensure that conservation practices are installed properly and functioning as designed.

ACAP would authorize a broad spectrum of funding sources to support the program, including state dollars, federal allocations, grants, and private enterprise investments.

SB 1272 has been referred to the Senate Agricultural and Rural Affairs Committee for consideration.

Source: CBF Press Release, 9/25/2020

Gov. Wolf Vetoes Bill that Ignores Dangers of Climate Change

On September 24, 2020, Governor Tom Wolf vetoed House Bill 2025, which would have prevented the Pennsylvania Department of Environmental Protection (DEP) from taking any action to abate, control or limit carbon dioxide emissions in the commonwealth without the prior approval of the General Assembly.

Carbon dioxide is a harmful greenhouse gas and a major contributor to climate change, and this bill would have put a halt to DEP efforts to mitigate the impact climate change has on lives and livelihoods in Pennsylvania, including rulemaking currently being developed to allow Pennsylvania to join the Regional Greenhouse Gas Initiative (RGGI). RGGI is an economically sound program that has a proven record of reducing greenhouse gas emissions in member states.

Higher temperatures, unseasonal changes in precipitation, and more frequent and more extreme storms - all adverse effects of climate change - have already been experienced in Pennsylvania, and we must take action now to prevent worse changes from further endangering Pennsylvanians. This bill

ignores science, and would have hampered the ability of the DEP to protect Pennsylvanians.

Gov. Wolf's **HB 2025 veto message**
<https://www.governor.pa.gov/wp-content/uploads/2020/09/20200924-TWW-HB-2025-Veto-Message.pdf> :

"Addressing the global climate crisis is one of the most important and critical challenges we face. This legislation is extremely harmful to public health and welfare as it prevents the Pennsylvania Department of Environmental Protection (Department) from taking any measure or action to abate, control or limit carbon dioxide emissions, a greenhouse gas and major contributor to climate change impacts, without prior approval of the General Assembly. Like every state in the country, the Commonwealth has already begun to experience adverse impacts from climate change, such as higher temperatures, changes in precipitation, and frequent extreme weather events, including large storms, flooding, heat waves, heavier snowfalls, and periods of drought. Reductions in carbon dioxide emissions are even more significant now as emerging evidence links chronic exposure to air pollution with higher rates of morbidity and mortality from COVID-19.

"This legislation also prohibits the Commonwealth from participating in the Regional Greenhouse Gas Initiative (RGGI), a regional initiative among Northeast and Mid-Atlantic states to reduce greenhouse gas emissions while generating economic growth, unless additional legislation is enacted. RGGI participating states have reduced power sector carbon dioxide pollution by 45 percent since 2005, while the region's per-capita gross domestic product has continued to grow. By joining RGGI, Pennsylvania has the opportunity to make real progress on limiting climate change-causing carbon pollution while generating thousands of new jobs, providing for worker training, and offering future electric bill savings.

"In addition to the legislation's failure to address climate change, the immediate effect of this legislation would be to halt a rulemaking package I directed the Department to develop by executive order pursuant to the authority of the Air Pollution

Control Act to abate, control, or limit carbon dioxide emissions from fossil-fuel-fired electric power generators. The Regulatory Review Act and the Air Pollution Control Act afford the opportunity for extensive public participation, including public comment and public hearings, in the rulemaking process. Members of the General Assembly also have a robust role in the rulemaking process, including through their appointments on advisory committees and the Environmental Quality Board. This legislation creates burdensome and duplicative processes that will thwart the Department's ability to take any action to regulate the greenhouse gas most responsible for climate change in the transportation, industrial, and commercial sectors, as well as the electric power sector.

"The citizens of this Commonwealth cannot afford to wait any longer. Given the urgency of the climate crisis facing Pennsylvania, the Commonwealth must take concrete, economically sound, and immediate steps to reduce greenhouse gas emissions. Allowing this legislation to become law would effectively deny that climate change is an urgent problem that demands prudent solutions."

Source: Governor Wolf's Press Office, 9/24/2020

Struzzi Responds to Governor's Veto of RGGI Bill

On September 24, 2020, state Rep. Jim Struzzi (R-Indiana) issued the following statement in response to Governor Tom Wolf's veto of **House Bill 2025**
<https://www.legis.state.pa.us/cfdocs/billInfo/billInfo.cfm?sYear=2019&sInd=0&body=H&type=B&bn=2025> , which would have required legislative approval before Pennsylvania could enter the Regional Greenhouse Gas Initiative (RGGI) or any similar multi-state compact.

"Once again, this governor's allegiance lies with his own power and his own agenda. Regardless of what the governor says, this bill does not prevent Pennsylvania from joining RGGI. Rather, it ensures the people of Pennsylvania have a say in the

decision. It is meant to ensure proper research is done regarding the impacts RGGI would have on jobs, exports and energy prices. To date, none of that research has been done, and the Wolf administration seemingly has no interest in doing it at any point in the future. My legislation is meant to ensure that the people of Pennsylvania have the opportunity to be heard. So far, they have not. The fundamental principle of American government is that the power lies with the people. Evidently, the governor has forgotten that.

“To the people of Pennsylvania, to the coal and trade workers who will suffer the effects of RGGI, to the consumers who will pay higher prices for their energy, to our local businesses – I am sorry the governor continues to ignore your voices and your will, as was represented by the affirmative votes cast for this legislation. My interest in this matter does not end here with this veto. Know that I will continue this fight in Harrisburg, and I encourage everyone to voice your concerns to the Department of Environmental Protection and Governor Wolf. We cannot let him take our jobs, destroy our economy, and crush our local communities and families.”

Source: Rep. Jim Struzzi Press Release, 9/24/2020

PA Chamber Issues Statement on Governor's Veto of H.B. 2025

PA Chamber President and CEO Gene Barr issued the following statement in regards to Gov. Tom Wolf's veto of H.B. 2025; legislation that would require a more deliberative process with respect to the state's potential participation in the Regional Greenhouse Gas Initiative, a cap-and-trade program for the power generation sector.

"As we have noted before, the governor's decision to have the Commonwealth join the Regional Greenhouse Gas Initiative could have a sweeping impact on the state's energy and manufacturing sectors. Pennsylvania in its role as an energy leader and innovator has secured significant reductions in emissions through a

competitive market, all while keeping costs low for consumers. Pennsylvania is the largest producer of power in the 13-state PJM grid and is a net exporter of power. It is imperative that Pennsylvania maintains its leadership position in this regard, as well as improve its tax and regulatory climate for manufacturing and industry, as the state implements policy to reduce emissions and address climate change.

"We reiterate our concern that as proposed the rulemaking to join the Regional Greenhouse Gas Initiative does not include a mechanism to control against power generation shifting to other states who do not participate in the program. Such a result would mean there is no net change in emissions in the region, with the state losing out on jobs and investment. The business community looks forward to working with the General Assembly and the administration to address this and other concerns with this proposal, as it will take collaboration between all of us to develop and implement energy policy that protects the environment and grows the economy."

The Pennsylvania Chamber of Business and Industry is the state's largest broad-based business association, with its statewide membership comprising businesses of all sizes and across all industry sectors. The PA Chamber is The Statewide Voice of Business.

Source: PA Chamber Press Release, 9/24/2020

EQB Meeting Cancellation

The Environmental Quality Board's October 20 meeting is cancelled. The next regular meeting of the board is scheduled for November 17 starting at 9:00 a.m. The meeting will be held virtually and information on joining the meeting, as well as agenda and meeting materials, is available on the **board's website** <https://www.dep.pa.gov/PublicParticipation/EnvironmentalQuality/Pages/default.aspx>. Questions concerning the November 17 meeting can be directed to Laura Griffin at laurgriffi@pa.gov or (717) 783-8727.

Source: Pennsylvania Bulletin, 9/26/2020
<http://www.pacodeandbulletin.gov/Display/pabull?file=/secure/pabulletin/data/vol50/50-39/1331.html>

Draft Water Quality Assessment Methodology; Available for Public Comment

The Department of Environmental Protection requests public comment for a draft addition to the assessment and listing methodology for the 2022 Integrated Water Quality Monitoring and Assessment Report. The methodology will be used, when finalized, to assess the quality of the waters in the commonwealth.

The assessment methodology is a compilation of multiple methods used to assess waters that may appear in the integrated report. For the 2022 integrated report, the assessment methodology is being updated to reflect a newly developed methodology. The **draft methodology** is available online <https://www.ahs.dep.pa.gov/eComment/>. For questions, contact the Department of Environmental Protection, Bureau of Clean Water, Water Quality Division, PO Box 8774, Harrisburg, PA 17105-8774 or (717) 787-9637.

Interested persons may submit written comments on this draft water quality assessment methodology by Monday, November 9. Commentators are encouraged to submit comments using the department's online **eComment tool** <https://www.ahs.dep.pa.gov/eComment/> or by email to ecomment@pa.gov. Written comments can be mailed to the Department of Environmental Protection, Policy Office, 400 Market Street, PO Box 2063, Harrisburg, PA 17105-2063. Use "Assessment Methodology" as the subject line of written communication.

Additional information is available on the Pennsylvania Bulletin.

Source: Pennsylvania Bulletin, 9/26/2020
<http://www.pacodeandbulletin.gov/Display/pabull?file=/secure/pabulletin/data/vol50/50-39/1317.html>

Laboratory Accreditation Advisory Committee Rescheduled Meeting

The Department of Environmental Protection's Laboratory Accreditation Advisory Committee meeting scheduled for October 1 has been rescheduled to December 1. The meeting will be held virtually and begins at 9:00 a.m. Information on joining the meeting, as well as agenda and meeting materials, will be provided on the **committee's website** <https://www.dep.pa.gov/PublicParticipation/AdvisoryCommittees/Pages/Lab-Accreditation-Advisory-Committee.aspx>.

Individuals interested in providing public comments during the meeting must sign up prior to the start of the meeting by contacting Annmarie Beach at anbeach@pa.gov or (717) 346-7200. Questions regarding the meeting may be directed at Annmarie Beach.

Source: Pennsylvania Bulletin, 9/26/2020
<http://www.pacodeandbulletin.gov/Display/pabull?file=/secure/pabulletin/data/vol50/50-39/1318.html>

PUC Damage Prevention Committee Actions Announced Against Underground Facility Owners, Excavators and Project Owners

A total of 26 disciplinary actions, including \$72,750 in administrative penalties, have been taken against 57 underground facility owners, excavators and project owners in the **latest enforcement actions** http://www.puc.pa.gov/transport/gassafe/pdf/DPC_Agendas/2020/DPC_Case_Summaries090920.pdf by the Public Utility Commission's (PUC's) Damage Prevention Committee (DPC). These actions were taken during the DPC's September 2020 meeting. The DPC is tasked with enforcing

the state's Underground Utility Line Protection Act - also known as the "PA One Call Law."

A comprehensive **list of summaries and actions** http://www.puc.pa.gov/utility_industry/transportation/pa_one_call_enforcement/dpc_agendas_Actions.aspx from DPC meetings is available on the PUC's website. Penalties are payable to the Commonwealth of Pennsylvania. The Commission will offset the costs of administering this program through the penalties collected.

Digging Safety - PA One Call

While underground lines are often "out of sight and out of mind," every hit poses a risk to the contractors and homeowners who are doing the digging; to utility workers and emergency responders who are mobilized when lines are struck; and to bystanders who live, work or travel near the locations of the incidents.

During the first half of 2020, a total of 2,617 line hits were reported to PA One Call, reduction of about 6% from last year, despite a near-record number of line-location calls.

State law requires contractors and residents to contact **PA One Call** <https://www.palcall.org/PA811/Public/> at least three business days prior to excavation - triggering alerts to all utilities within an intended digging area and prompting utilities to mark where their facilities are located. Pennsylvanians can dial 8-1-1 to connect with the One Call system, while out-of-state residents or businesses can call 1-800-242-1776.

When the PUC first took on the role of enforcing the state's One Call Law, underground lines across the state were struck more than 6,000 times per year - but the situation continues to steadily improve, thanks to education, public awareness and enforcement.

About the DPC

The DPC is a peer-based group of 13 representatives, nominated by their industry or affiliated organization and appointed by the PUC. The DPC meets regularly to review alleged

violations of Act 50 and make informal determinations as to the appropriate response including, but not limited to, the issuance of warning letters, mandatory training programs and/or administrative penalties. **Summaries and actions** http://www.puc.pa.gov/utility_industry/transportation/pa_one_call_enforcement/dpc_agendas_Actions.aspx taken at monthly DPC meetings are available on the PUC's website. Creation of the committee was authorized by **Act 50 of 2017** http://www.puc.pa.gov/about_puc/press_releases.aspx?ShowPR=3918, which enhances Pennsylvania's Underground Utility Line Protection Act - also known as the "One Call Law."

About the Bureau of Investigation & Enforcement

As the independent investigation and enforcement bureau of the PUC, I&E enforces state and federal pipeline safety, electric safety and motor carrier safety laws and regulations and represents the public interest in ratemaking and service matters before the PUC's Office of Administrative Law Judge. I&E has the authority to bring enforcement action, seek emergency orders from the Commission or take other steps to ensure public safety.

Source: PUC Press Release, 9/22/2020

Mastriano: Senate Passes Move Over Bill Unanimously

Legislation sponsored by State Senator Doug Mastriano (R-33) and State Senator Kim Ward (R-39) to strengthen the state's Steer Clear Law and better protect tow truck drivers, law enforcement and other first responders received a unanimous vote today from the Senate.

As a result, the bipartisan bill now advances to the House for consideration.

In addition to adding stiffer penalties and raising public awareness, **Senate Bill 1281** <https://www.legis.state.pa.us/cfdocs/billInfo/billInfo.cfm?sYear=2019&sInd=0&body=S&type=B&bn=1281> would rebrand the "Steer Clear Law" as the "Move Over Law" to clarify how motorists should

react when approaching or passing an emergency response area.

"This is a multi-pronged strategy to save lives, and it starts with rebranding the law to send the message," said Mastriano. "We owe it to our first responders to get this bill to the Governor's desk."

Senate Bill 1281 would establish a new point system for a "Move Over" violation; double the fines for a summary offense; strengthen public awareness by requiring PennDOT to educate the public throughout the year; and implement new requirements for drivers approaching an emergency response area.

According to PA State Police, 7,075 citations were issued in 2018-2019 for Steer Clear/Move Over violations, in addition to 3,204 warnings. Already in 2020, 35 first responders have been killed nationwide while working roadside incidents: 17 tow operators/mechanics or Department of Transportation workers, 12 law enforcement officers and three fire/EMS personnel.

Earlier this month, Mastriano and Ward - chairwoman of the Senate Transportation Committee - organized a procession of first responders and rally outside the Capitol, in an effort to urge enactment of the Move Over legislation. The rally included co-sponsor Senator John DiSanto (R-15) and fellow lawmakers, along with first responders injured in roadside crashes and family members of those killed.

Source: Senator Mastriano Press Release, 9/22/2020

Teleworking and Technology Allow Permitting and Other Critical Activities to Continue Through COVID-19 Pandemic

Investments in technology and the ability to telework have allowed the Department of Environmental Protection (DEP) to continue to

fulfill its mission to protect Pennsylvania's air, land and water during the COVID-19 pandemic

While operating remotely, DEP has maintained oversight of regulated entities and responses to environmental emergencies.

"As an agency, we are doing our part to slow the spread of COVID-19 by transitioning our offices into fully remote operations," said DEP Secretary Patrick McDonnell. "Due to advances in software, DEP employees consistently maintain productivity while working remotely."

Throughout the pandemic, state agencies have followed guidance for businesses issued by the Governor and Secretary of Health, including the recommendation for employees to telework, if possible. Approximately one-third of commonwealth employees are either teleworking full-time or splitting their time between telework and working onsite based on their job duties. The Office of Administration has also developed **resources to support employees and supervisors while teleworking** <https://www.oa.pa.gov/telework/Pages/default.aspx>.

"Telework has been a long-standing practice for many private sector employers, as well as the federal government and many other states," noted Secretary of Administration Michael Newsome. "Teleworking during the pandemic is a proven, common sense way to continue serving Pennsylvanians and protect public health."

"In the future, telework has the potential to reduce costs for things like office space and parking and enable employees to continue working through other types of disruptions."

The DEP employs more than 2,300 people throughout its Central Office in Harrisburg and six regional offices located throughout the commonwealth (Southwest Regional Office, South-central Regional Office, Southeast Regional Office, Northeast Regional Office, North-central Regional Office and the Northwest Regional Office). Additionally, the DEP has several regional district mining offices: Knox, New Stanton, California, Moshannon, Cambria and Pottsville.

From April 1, 2020 through August 31, 2020 DEP has:

- Reviewed and processed 23,368 permit applications and authorizations
- 93 percent of permits with Permit Decision Guarantee were processed on time
- Conducted 31,801 inspections
- Responded to 136 environmental emergencies

Additionally, DEP leveraged its enterprise content management software, OnBase, to fully digitize the routing of all internal documents. OnBase is also being used to accept online applications for permit types that are not yet part of the department's e-permitting system. To date, over 700 uploads have come through this new tool.

Source: DEP Press Release, 9/24/2020

Michael Klein Receives Prestigious 2020 PaWARN Gold Star Award

Michael Klein, an attorney for Cozen O'Connor, recently received the 2020 PaWARN (Pennsylvania Water/Wastewater Agency Response Network) Gold Star Award in recognition of his exceptional commitment to emergency preparedness in the Water Sector and his dedication to protecting the legal integrity of PaWARN and its member utilities.

Over the years, Attorney Klein has provided many hours of pro bono legal advice to PaWARN as a public service. In 2010, he was instrumental in establishing PaWARN as a non-profit corporation operating with a 13-member Board of Directors consisting of Pennsylvania water and wastewater professionals. Since then, he has provided legal advice to PaWARN on a number of issues that have come to the forefront including recent COVID-19 dilemmas affecting the water and wastewater industry.



Michael Klein (right), an attorney with Cozen O'Connor, displays his 2020 PaWARN Gold Star Award he received recently from Mike Snyder, PaWARN Coordinator.

The PaWARN Board of Directors sincerely appreciates Attorney Klein's dedication to PaWARN and Water Sector as a whole.

The PaWARN Gold Star Award is given to an individual who has shown his or her dedication to providing emergency resources to a water/wastewater utility during a crisis or who has worked diligently to further the mission of the mutual aid network.

Source: PaWARN

House Environmental Committee Holds Sept. 30 Info Meeting on Bill Redefining Spills, Discharges to Streams as No Longer Pollution

On September 30, the House Environmental Resources and Energy Committee is scheduled to hold an informational meeting on **Senate Bill 619** (Yaw-R-Lycoming) <https://www.legis.state.pa.us/cfdocs/billinfo/billinfo.cfm?year=2019&sInd=0&body=S&type=B&bn=619> making fundamental changes to the definition of water pollution under the state Clean Streams Law effectively making most spills and discharges to rivers and streams no longer pollution.

It also lets an individual or company who causes pollution to surface or groundwater, rather than DEP, determine if any spill should even be reported to DEP and whether it is pollution in the first place.

The bill passed the Senate by a 26 to 24 vote with Republicans supporting.

The bill would benefit the conventional oil and gas industry, but is being pushed by Merck Sharp & Dohme Corporation which was unhappy with an April 17, 2017 settlement with DEP over an appeal of a stormwater pollution prevention permit for its West Point, Montgomery County plant (**Environmental Hearing Board Docket No. 2015-011-L**) https://ehb.courtapps.com/public/document_shower_pub.php?docketNumber=2015011).

The tentative agenda of witnesses for the hearing include:

- Kevin Sunday, PA Chamber of Business & Industry
- Kenneth Warren, Warren Environmental Counsel, LLP [Counsel for Merck in EHB Case]
- Steve Tarnowski, Office of General Counsel, Merck

Background

The Clean Streams Law now says, “contamination of any waters of the Commonwealth such as will create or is likely to create a nuisance or to render such waters harmful, detrimental or injurious to public health, safety or welfare, or to domestic, municipal, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish or other aquatic life.”

And it is DEP that determines whether a discharge constitutes pollution. The bill shifts the responsibility to make the determination if a spill or discharge causes pollution to the person causing the spill.

The bill also says spills and contamination to groundwater don’t even need to be reported to DEP, NOT when they “create a danger of pollution of the waters, or would damage property,” as in the current regulations, but rather only when:

- The individual or company first makes a determination the spill violates a specific, numeric surface water quality criteria under DEP’s regulations; or
- If it exceeds federal reporting requirements (1,000 gallons in any one incident or 42 gallons in each of 2 discharges) and only after they take into account the steps they have taken to control or remediate the impact of the spill; and
- Only after taking into account any control and remedial measures they have taken.

There are very few numeric water quality standards in DEP’s regulations because judgments are made based on whether pollution harms people, aquatic life or the environment.

Under the change in definition of pollution in this bill, neither DEP nor the Fish and Boat Commission could require the cleanup of a spill, require the company to fix the problem that caused a spill or take other enforcement actions like assessing penalties or natural resource damages against an individual or company unless a spill violated the “numeric water quality criteria under DEP’s regulations.

If a spill temporarily or irreparably harmed aquatic life, temporarily or permanently prevented a stream or river from being used according to its designated use, without violating a numeric standard, neither DEP nor the Fish and Boat Commission could take any action.

Importantly, the new language would also rule out taking any action against anyone causing a spill that affected groundwater and not surface water, if the spill did not violate a numeric water quality criteria in Chapter 93.

The practical realities of making a determination if numeric water quality standards were violated during a spill emergency under this bill would require a company or individual to:

- Know the precise chemical composition of the material being spilled and the amount and if it isn't known, to take, analyze and report those results [getting test results in an emergency timeframe would not be possible and even the amounts are frequently not known at the time of a spill, especially to groundwater];
- Know the classification, designated use and any special numeric water quality standards in place at the precise point the spill would enter a surface water [possible, but unlikely, especially in circumstances where a spill happens from a tank truck, pipeline or similar sources]; and
- Taking, analyzing and reporting the results of water samples upstream, at the point of the spill and downstream of the spill to determine if the numeric standard was violated at the exact time of the spill [not something that can be accomplished during an emergency caused by a spill].

Likewise, if DEP or the Fish and Boat Commission wanted to take any compliance or enforcement action for a spill with the change in definition of pollution proposed in Senate Bill 619, they would have to prove a numeric water quality standard was violated at the exact time of the spill, which would not be possible after the fact.

The sweeping changes made by Senate Bill 619 would fundamentally change how Pennsylvania's surface and groundwater is protected from pollution, significantly restricting the ability of DEP and the Fish and Boat Commission from taking action to require the cleanup and prevention of spills and to assess penalties and to the requirements for reporting spills.

PA Trout Unlimited Chapters, PennFuture and **other groups issued a call to action** https://pennfuture.salsalabs.org/sb619_protectcleanwater/index.html for Pennsylvanians to oppose Senate Bill 619 (Yaw-R- Lycoming) which makes fundamental changes to the definition of water

pollution. **Read more here** <http://www.paenvironmentdigest.com/newsletter/default.asp?NewsletterArticleID=47017>.

The Chesapeake Bay Foundation said, "Senate Bill 619 will make it easier to pollute the Commonwealth's rivers and streams and with fewer consequences. Water quality in Pennsylvania should not be regulated by just the limited list of numeric water quality criteria. Timely response and remediation are critical.

"A spill or discharge caused a fish kill in the Donegal Creek. The Mariner East II liquid natural gas pipeline has been plagued with spills. In 2017, 63,000 gallons of natural gas drilling waste spilled into the tributary of the Loyalsock Creek. If Senate Bill 619 passes, spills like these may go unchecked. "We urge members of the House to consider the consequences Senate Bill 619 could have on aquatic life, recreation, and drinking water supplies."

The meeting will be held in Room 60 East Wing of the Capitol starting at 10:00 a.m. **Click here to watch online** <http://www.pahousegop.com/livestreams>.

Rep. Daryl Metcalfe (R-Butler) serves as Majority Chair of the House Environmental Committee and can be contacted by calling 717-783-1707 or sending email to: dmetcalf@pahousegop.com. Rep. Greg Vitali (D-Delaware) serves as Minority Chair and can be contacted by calling 717-787-7647 or sending email to: gvitali@pahouse.net.

Source: PA Environmental Digest, 9/27/2020

House Environmental Committee Meets Sept. 30 to Exempt Some Public Water Supplies from Clean Water Standards, Require Recycling of Solar Panels Thru Broken E-Waste Recycling Program

The House Environmental Resources and Energy Committee is scheduled to meet on September 30 to consider legislation to exempt some water supplies used by the public from clean water standards and require the recycling of solar panels through the state's broken electronic waste recycling program.

The bills on the agenda include:

- **Exempting Public Water Supplies: House Bill 707** (Zimmerman-R-Lancaster) <https://www.legis.state.pa.us/cfdocs/billInfo/billInfo.cfm?sYear=2019&sInd=0&body=H&type=B&bn=0707> would exempt any facility owned by a church or an association of churches, including schools, daycare centers and camps, from the need to meet Safe Drinking Water Act clean drinking water standards.

At a June 12, 2019 information meeting on the bill, DEP told the Committee not assuring the drinking water at these facilities serving the public meet safe drinking water standards would put Pennsylvania at risk of losing primary for administering the federal Safe Drinking Water Act which requires the regulation of these water supplies.

If Pennsylvania loses primacy, the \$34 million and more in federal funds the Commonwealth receives each year to fund drinking water system improvements and \$5.5 million in support to pay for inspectors and permit reviewers for the program would be lost.

There would need to be a change in federal law to make the change proposed in House Bill 707.

Read more here

<http://www.paenvironmentdigest.com/newsletter/default.asp?NewsletterArticleID=46967&SubjectID=18>.

- **Recycling Solar Panels in a Broken System: House Bill 2197** (Dush-R-Clearfield) <https://www.legis.state.pa.us/cfdocs/billinfo/billinfo.cfm?syear=2019&sInd=0&body=H&type=B&bn=2197> would add solar panels-- "photovoltaic modules"-- to the state's Electronic Waste Recycling Program -- Covered Device Recycling Act -- requiring

manufacturers to support recycling programs that collect solar panels for recycling.

In April of 2019, the House Environmental Committee held a hearing on recycling, and electronic waste recycling in particular, and heard testimony about how the e-waste program is broken, both for the communities it serves and the electronics product manufacturers that support it.

Read more here

<http://www.paenvironmentdigest.com/newsletter/default.asp?NewsletterArticleID=46429&SubjectID=70>.

The program continues to be broken and needs major changes for it to function.

At a September 16 Committee information meeting on the bill, the PA Recycling Markets Center, the PA Resources Council, the Solar Energy Industries Associates and DEP said the Covered Device Recycling Act is not an appropriate program for recycling solar panels, according to Rep. Greg Vitali (D-Delaware), Minority Chair of the Committee.

Click here for a copy of the **Solar Energy Industries Association comments**

<https://dingo.telicon.com/pa/library/2020/20200916TW.PDF>.

Click here for a copy of the **PA Recycling Markets Center comments**

<https://dingo.telicon.com/pa/library/2020/20200916TY.PDF>.

The issue of recycling solar panels has been brought up frequently by Rep. Dush and other conservatives in hearings on climate change and renewable energy.

They contend the state should not rush into promoting renewable energy until there is a viable way to recycle the panels.

In the Senate, Sen. Gene Yaw (R-Lycoming) is proposing legislation to load up solar energy projects with bonds which will have the effect of killing \$2 billion in private solar investment. **Read more here**

<http://www.paenvironmentdigest.com/newsletter/de>

[fault.asp?NewsletterArticleID=50985&SubjectID=219](http://www.pahousegop.com/fault.asp?NewsletterArticleID=50985&SubjectID=219).

Also on the Committee agenda is **House Bill 2002** (Kaufer-R-Luzerne) <https://www.legis.state.pa.us/cfdocs/billinfo/billinfo.cfm?syear=2019&sInd=0&body=H&type=B&bn=2002> eliminating the obsolete Anthracite Coal Tax Act.

The meeting will be held in Room 60 East Wing of the Capitol starting at 9:00 a.m. Click here to watch online <http://www.pahousegop.com/livestreams>.

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Source: PA Environmental Digest, 9/27/2020

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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.