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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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DEP Proposal to Set Stricter PFAS Limits Approved by Environmental Quality Board

On November 16, 2021, the Pennsylvania Department of Environmental Protection (DEP) announced that the Environmental Quality Board (EQB) approved its proposed rule to set maximum contaminant levels (MCL) of two forms of **per and polyfluoroalkyl substances (PFAS)** https://www.dep.pa.gov/Citizens/My-Water/drinking_water/PFAS/Pages/default.aspx to be protective of adverse developmental and immune system effects. The board approved the rulemaking with a vote of 17 to 2.

"This rulemaking not only protects our environment from elevated levels of contamination and pollution, but also protects the public health of Pennsylvanians," said DEP Secretary Patrick McDonnell.

The proposed rule will set stricter limits compared to the EPA's Health Advisory Level (HAL) for perfluorooctane sulfonic acid (PFOS) and perfluorooctanoic acid (PFOA) from the current HAL of 70 parts per trillion (ppt) to 14 ppt for PFOA, and 18 ppt for PFOS. The proposed MCLs are based on various factors including health effects (as determined by Drexel University's PFAS Advisory Group), occurrence data (generated under

DEP's PFAS Sampling Plan), technical limitations, treatability/available treatment technologies, and costs and benefits.

MCL compliance provisions are also included in the rule including monitoring and reporting requirements, analytical methods, acceptable treatment technologies, and public notification.

The rule applies to all 3,117 community, nontransient, noncommunity, and bottled, vended retail, and bulk water systems.

PFAS are a class of synthetic chemicals used since the 1940s to make water, heat, and stain resistant products such as cookware, carpets, clothing, furniture fabrics, paper packaging for food, and other resistant materials. These chemicals are persistent in the human body and throughout the environment. PFAS are known to cause adverse health effects, but are classified by scientists as emerging chemicals because the risks they pose to human health and the environment are not completely understood.

Pennsylvania state authorities first became aware of PFAS in 2013 when the U.S. Environmental Protection Agency (EPA) included PFOS and PFOA in its Third Unregulated Contaminant Monitoring Rule (UCMR) for drinking water. The UCMR is a federal regulation that is updated every five years to include new contaminants that public water systems must monitor if they serve more than 10,000 customers.

While EPA's process of setting national standards of PFOA and PFOS will take several years to complete, DEP is moving forward with more protective standards to protect public health through this rulemaking.

The proposed rule is anticipated to be published in the PA Bulletin next year for a 60-day public comment period. At least five public hearings will be held.

In September 2018, the governor signed an **executive order** <https://www.governor.pa.gov/newsroom/executive-order-2018-08-perfluoroalkyl-and-polyfluoroalkyl-substances-pfas-action-team/> establishing the PFAS Action Team, moving Pennsylvania to the forefront of states taking proactive steps to address PFAS and other contaminants.

Source: DEP Press Release, 11/16/2021

Senator Collett Reacts to DEP PFAS MCL Plan Announcement

On November 16, 2021, the Pennsylvania Department of Environmental Protection (DEP) **announced** https://www.media.pa.gov/pages/DEP_details.aspx?newsid=1512 that the Environmental Quality Board (EQB) approved its plan to set maximum contaminant levels (MCLs) of two forms of Perfluoroalkyl and Polyfluoroalkyl Substances (PFAS), PFOA and PFOS. Senator Collett shares her reactions to this announcement below:

"I am thankful that Pennsylvania's DEP continues to move forward with the process of setting a statewide maximum contaminant level for PFOA and PFOS, two of the longest-lasting and most dangerous PFAS chemicals and the ones that polluted the soil and water in my district for decades."

"Even though the public drinking water in my district is being made safe through filtration, doing so has come at great cost to our ratepayers, as well as our state and local governments. With an MCL,

we can finally hold the polluters accountable and recoup some of these costs."

"Additionally, in my district, there are still two decommissioned military bases and one active military base where the soil and surface and ground water are testing for PFOA and PFOS at levels well over 100x higher than the MCLs being contemplated by the DEP. Until those MCLs are in place, the polluters (in my district's case, the Department of Defense) are under no obligation to remove or remediate the contaminated soil. As such, the polluted ground and surface water continue to migrate and more families are put at risk."

"In previous conversations with the DEP, they have predicted that their process for setting an MCL is expected to take 2-3 years, whereas the federal EPA's process will likely take 8-10 years, not due to any political or outside factors but simply due to the number of steps in the respective processes. That is one of the reasons it is so important for the Commonwealth to stay engaged in this process."

"As the DEP proceeds, I will continue to push my colleagues in the legislature to bring my bills SB 611 and SB 612 up for a vote. **Senate Bill 611** <https://www.legis.state.pa.us/cfdocs/billInfo/billInfo.cfm?sYear=2021&sInd=0&body=S&type=B&bn=0611> would create an interim MCL for PFOA and PFOS until such time as the DEP or EPA completes its process and sets its own MCL. And **Senate Bill 612** <https://www.legis.state.pa.us/cfdocs/billInfo/billInfo.cfm?sYear=2021&sInd=0&body=S&type=B&bn=0612> would classify these PFAS as hazardous substances under Pennsylvania's Hazardous Sites Cleanup Act (HSCA), creating a legal cause of action for private and public litigants to sue our polluters like they been able to do in other states."

"At the same time, I would like to make sure we don't lose sight of the military men and women and firefighters who were exposed to high volumes of these dangerous chemicals in the form of firefighting foams used in frequent training exercises and even at recreational events, as well as the community members who unknowingly drank water that had been polluted when these foams contaminated the soil over the course of

decades. Pushing full speed ahead here, getting our polluters to clean up and pay up, will ultimately help us study, treat and prevent health conditions connected to PFAS exposure"

Source: Senator Collett Press Release, 11/16/2021

EPA Advances Science to Protect the Public from PFOA and PFOS in Drinking Water

On November 16, 2021, the U.S. Environmental Protection Agency (EPA) is asking the agency's Science Advisory Board to review draft scientific documents regarding the health effects of certain Per- and Polyfluoroalkyl Substances (PFAS). EPA is committed to science-based approaches to protect public health from exposure to Perfluorooctanoic acid (PFOA) and Perfluorooctane sulfonic acid (PFOS), including by quickly updating drinking water health advisories with new peer-reviewed approaches and expeditiously developing National Primary Drinking Water Regulations for these contaminants.

"Under our new PFAS Strategic Roadmap, EPA is moving aggressively on clear, robust, and science-based actions to protect communities suffering from legacy PFOA and PFOS contamination," said EPA Administrator Michael S. Regan. "This action will ensure a rigorous review from experienced scientists to strengthen our understanding of this preliminary information as the agency works toward developing revised health advisories for PFOA and PFOS, and soon establishing regulations that protect communities from these contaminants."

EPA has transmitted to the Science Advisory Board four draft documents with recent scientific data and new analyses that indicate that negative health effects may occur at much lower levels of exposure to PFOA and PFOS than previously understood and that PFOA is a likely carcinogen. The draft documents present EPA's initial analysis and findings with respect to this new information.

Following peer review, this information will be used to inform health advisories and the development of Maximum Contaminant Level Goals and a National Primary Drinking Water Regulation for PFOA and PFOS. EPA is now seeking independent scientific review of these documents. EPA is making these draft documents available to the public to ensure a transparent and robust evaluation of the available information.

EPA will not wait to take action to protect the public from PFAS exposure.

The agency will be actively engaging with its partners regarding PFOA and PFOS in drinking water, including supporting their monitoring and remediation efforts. Importantly, the Bipartisan Infrastructure Law, signed by President Biden on November 15, 2021, invests \$10 billion to help communities test for and clean up PFAS and other emerging contaminants in drinking water and wastewater, and can be used to support projects in disadvantaged communities.

EPA will move as quickly as possible to issue updated health advisories for PFOA and PFOS that reflect this new science and input from the SAB. Concurrently, EPA will continue to develop a proposed PFAS National Primary Drinking Water Regulation for publication in Fall 2022.

For more information, visit www.epa.gov/pfas.

Source: EPA Press Release, 11/16/2021

EPA and Army Take Action to Provide Certainty for the Definition of WOTUS

On November 18, 2021, the U.S. Environmental Protection Agency (EPA) and U.S. Department of the Army (the agencies) announced a proposed rule to re-establish the pre-2015 definition of "waters of the United States" (WOTUS) which had been in place for decades, updated to reflect consideration of Supreme Court decisions. This action advances the agencies' goal of establishing a durable definition of WOTUS that protects public health, the

environment, and downstream communities while supporting economic opportunity, agriculture, and other industries that depend on clean water. This proposed rule would support a stable implementation of "waters of the United States" while the agencies continue to consult with states, Tribes, local governments, and a broad array of stakeholders in both the implementation of WOTUS and future regulatory actions.

"In recent years, the only constant with WOTUS has been change, creating a whiplash in how to best protect our waters in communities across America," said EPA Administrator Michael S. Regan. "Through our engagement with stakeholders across the country, we've heard overwhelming calls for a durable definition of WOTUS that protects the environment and that is grounded in the experience of those who steward our waters. Today's action advances our process toward a stronger rule that achieves our shared priorities."

"The Army recognizes the importance of our nation's water resources and the role water plays in our communities across the nation," said Acting Assistant Secretary of the Army for Civil Works Jaime A. Pinkham. "We remain committed to working with EPA to develop a rule that is informed by our experience and expertise, as well as that of our co-regulators, is mindful of implementation practices, and is shaped by the lived experience of local communities and stakeholders."

Recent court decisions have reinforced the need for a stable and certain definition of WOTUS. The U.S. District Courts for both Arizona and New Mexico have vacated the Navigable Waters Protection Rule. In light of the court actions, the agencies have been implementing the pre-2015 regulatory regime nationwide since early September 2021. Today's action is an important step because it would solidify the rules of the road for a stable implementation of "waters of the United States" while the agencies continue to consult with stakeholders to refine the definition of WOTUS in both implementation and future regulatory actions.

The proposed rule would maintain the longstanding exclusions of the pre-2015 regulations as well as the exemptions and exclusions in the

Clean Water Act on which the agricultural community has come to rely.

EPA and Army conducted extensive pre-proposal engagement, including Federalism and Tribal consultation, to help inform the content of the proposed rule. The agencies are taking comment on this proposed rule for 60 days beginning on the date it is published in the Federal Register.

For more information on submitting written comment on the proposal or to register for the virtual public hearings on the proposed rule, see www.epa.gov/wotus.

Background

Congress enacted the Clean Water Act in 1972 with the statutory objective "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters." One of the Act's principal tools in achieving that objective is a prohibition on the discharge of pollutants from a point source to "navigable waters" unless otherwise authorized under the Act.

"Navigable waters" are defined in the Act as "the waters of the United States, including the territorial seas." Thus, "waters of the United States" (WOTUS) is a threshold term establishing the geographic scope of federal jurisdiction under the Clean Water Act. The term "waters of the United States" is not defined by the Act but has been defined by EPA and the Army in regulations since the 1970s and jointly implemented in the agencies' respective programmatic activities.

On June 9, 2021, EPA and the Department of the Army announced their intent to revise the definition of WOTUS to better protect our nation's vital water resources that support public health, environmental protection, agricultural activity, and economic growth. Upon review of the 2020 Navigable Waters Protection Rule, the agencies determined that the rule is significantly reducing clean water protections.

Source: EPA Press Release, 11/18/2021

EQB – Rules and Regulations; Administration of Land Recycling Program

The Environmental Quality Board has amended the Land Recycling Program to review new scientific information and regulate new contaminants. This final-form rulemaking was adopted by the Board at its meeting of June 15, 2021. Additional information is available on the Pennsylvania Bulletin.

For further information contact Michael Maddigan, environmental group manager, Land Recycling Program, PO Box 8471, Rachel Carson State Office Building, Harrisburg, PA 17105-8471, (717) 772-3609; or Nikolina Smith, assistant counsel, Bureau of Regulatory Counsel, Rachel Carson State Office Building, PO Box 8464, Harrisburg, PA 17105-8464, (717) 783-8501. This final-form rulemaking is available on the department's **website** <https://www.dep.pa.gov/Pages/default.aspx> (select "Public Participation," then "Environmental Quality Board" and then June 15, 2021 meeting).

Source: Pennsylvania Bulletin, 11/20/2021
<http://www.pacodeandbulletin.gov/Display/pabull?file=/secure/pabulletin/data/vol51/51-47/1920.html>

SRBC to Hold Public Hearing on Water Project Applications, Proposed Policy and Program Fee Schedule

Written comments accepted through December 13, 2021

The Susquehanna River Basin Commission will hold a public hearing on December 2, 2021. The subjects covered by the hearing include applications for several water withdrawal and consumptive use projects including one Commission-initiated project approval modification and one diversion application. The Commission

will also hear testimony on a proposed policy, Fee Incentives for the Withdrawal and Consumptive Use of AMD Impacted Waters & Treated Wastewater (formerly the draft Use of Lesser Quality Waters Policy), as well as proposals to amend its Regulatory Program Fee Schedule and a proposed Letter of Understanding (LOU) regarding program coordination between the Susquehanna River Basin Commission and the Pennsylvania Department of Environmental Protection (DEP). Such projects and proposals are intended to be scheduled for Commission action at its next business meeting, tentatively scheduled for December 17, 2021, which will be noticed separately.

The public should take note that this public hearing will be the only opportunity to offer oral comment to the Commission for the listed projects and proposals. The deadline for the submission of written comments is December 13, 2021. The Commission will hold this hearing both in-person and telephonically. Hearing will be held at the Commission's headquarters at 4423 North Front Street, Harrisburg, PA, and will begin at 6:30 p.m. and end at 9 p.m. or when public testimony concludes, whichever comes first.

Members of the public who are planning to present oral testimony during the public hearing are strongly encouraged to pre-register prior to the hearing by contacting Jason E. Oyler, General Counsel and Secretary to the Commission, at joyler@srbc.net (717) 238-0423, ext. 1312. Written comments may be sent to Mr. Oyler by mail or Fax: Susquehanna River Basin Commission, 4423 N. Front Street, Harrisburg, PA 17110, Fax: (717) 238-2436.

The list of project applications and Commission-initiated project approval modifications along with options for submitting comments electronically are all accessible on SRBC's Regulatory/Public Comment regulatory/Public Comment web page <https://www.srbc.net/regulatory/public-comment/>.

Source: SRBC Press Release, 11/16/2021

DRBC Releases Data Visualization of Recently

Published Water Use & Demand Report

DRBC published a new report titled Water Withdrawal and Consumptive Use Estimates for the Delaware River Basin (1990-2017) with Projections through 2060. The report analyzes 30 years of historic withdrawal data and projects withdrawal demands to the year 2060.

DRBC staff recently developed an application to explore/visualize all the data in the report. Please visit <https://www.nj.gov/drbc/programs/supply/use-demand-projections2060.html> to check it out. Data can be filtered and also downloaded.

Source: DRBC, 11/16/2021

PUC Reaches Out to Utility Leaders as Part of Ongoing #CallUtilitiesNow Campaign

Urges Consumers and Utilities to Continue Working Together to Keep At-Risk Households Connected and Safe During the Winter

As part of the Pennsylvania Public Utility Commission's (PUC) ongoing #CallUtilitiesNow campaign, the Commissioners **communicated with the CEOs of Pennsylvania's major public utilities** https://www.puc.pa.gov/media/1731/callutilitiesnow_winter2021_ceo-letter_111221.pdf to continue to underscore the importance of consumers, businesses and utilities continuing to work together during this unprecedented time.

"As Pennsylvania consumers, businesses, and public utilities move into another heating season, our state and country continue to face health and economic uncertainty," the PUC letter notes. "The stress on our neighbors and our communities is further compounded by volatile energy prices and forecasts for colder weather."

We reach out annually to you - our public utility leadership - to encourage your ongoing commitment to identify and assist consumers struggling with

their energy bills. At the same time, the PUC also continues to encourage consumers to #CallUtilitiesNow to explore various utility assistance programs and other options to help manage their energy use and keep bills affordable.

#CallUtilitiesNow

Public utilities are the first and most direct mechanisms to link struggling households with much-needed assistance - whether those financial difficulties are related to the COVID pandemic, the ongoing state and national recovery or other challenging circumstances.

The PUC letter encourages utilities to continue their work in their communities:

- Urging income-qualified consumers to apply for programs designed to help make energy bills more affordable, including Customer Assistance Programs, Low-Income Usage Reduction Programs (LIURPs), the Emergency Rental Assistance Program and other available options.
- Reminding households that they may be eligible for enhanced assistance this year under the federal Low-Income Home Energy Assistance Program (LIHEAP) or Hardship Funds.
- Exercising flexibility when establishing payment arrangement plans for all consumers, including consideration for circumstances such as lost or reduced income, extended illness of a household member or increased household size and accompanying expenses.
- Educating consumers about conservation and ways to reduce energy usage.
- And increasing support and fundraising for utility Hardship Funds and other local programs that assist consumers who need help paying their utility bills.

Last year, Pennsylvania utility customers provided approximately \$362 million in funding for universal service programs, not counting LIHEAP. Collectively, these programs reach over 293,000 electric customers and approximately 167,000 natural gas customers, reducing monthly energy

bills; promoting weatherization and other improvements to cut energy consumption; and supporting hardship programs.

In its CEO letter the Commission wrote that:

The PUC will continue strongly encouraging families to #CallUtilitiesNow to explore all the available options - and we appreciate the work you do answering those calls and connecting people to essential programs. Working together, we want to foster those important conversations between customers and utilities.

PUC Consumer Outreach & Education

The PUC's #CallUtilitiesNow campaign is part of an ongoing effort by the PUC to educate consumers about the availability of income-qualified programs; increase consumer awareness of ways to reduce winter heating costs; educate consumers on energy conservation; encourage consumers to check electric and natural gas bills and supplier contracts; and inform customers about the PUC's **PAPowerSwitch.com** <https://www.papowerswitch.com/> and **PAGasSwitch.com** <https://www.pagasswitch.com/> websites, as resources to shop for energy suppliers and learn more about efficiency and conservation measures.

The PUC **consumer-educator team** https://www.puc.pa.gov/assets/images/consumered/Yellow_brick_road2020.jpg partners with various statewide community groups, state government agencies, legislators, human service providers, utility companies, community based organizations and many other partners to help educate, spread awareness and share many useful programs, tools and resources.

To schedule a virtual presentation or for more information, email the PUC's consumer-education team at PA-PC-CMU_ConsumerEd@pa.gov.

About the PUC

The Pennsylvania Public Utility Commission balances the needs of consumers and utilities; ensures safe and reliable utility service at reasonable rates; protects the public interest;

educates consumers to make independent and informed utility choices; furthers economic development; and fosters new technologies and competitive markets in an environmentally sound manner.

Visit the PUC's website at <http://www.puc.pa.gov/> for recent news releases and video of select proceedings. You can also follow us on Twitter, Facebook, LinkedIn, Instagram and YouTube. Search for the "Pennsylvania Public Utility Commission" or "PA PUC" on your favorite social media channel for updates on utility issues and other helpful consumer information.

Source: PUC Press Release, 11/17/2021

Welby sworn into 113th House seat

Lawmaker sets legislative priorities for upcoming year

On November 17, 2021, state Rep. Thom Welby, D-Lackawanna, took the oath of office in his first term representing the 113th Legislative District.

"It is with great honor to serve constituents in the Northeast Region of the General Assembly," Welby said. "I look forward to working with my colleagues on both side of the aisle for fair education funding and other legislative priorities."

Welby has a long history of volunteer work on many boards and nonprofit organizations throughout Northeastern Pennsylvania for more than 30 years.

A long-time Pennsylvanian and public servant, he is a passionate advocate for fair education funding, unions, veterans, seniors, small businesses, voting rights and infrastructure improvements.

A graduate of West Scranton High School and Career Academy, a New York City broadcasting school, Welby worked in radio and TV broadcasting for 40 years before serving as chief of staff for former Rep. Marty Flynn for nine years before succeeding him as a state representative.

The 113th Legislative District includes part of Lackawanna County consisting of Scranton, South Abington Township and Clarks Green. The district also includes the Scranton School District and Abington School District.

Welby is married to his wife Kathy, and has a son Thomas Alden, and daughter Emily, and two grandchildren.

Welby's district office is located at 1149 Northern Blvd. Clarks Summit, PA 18411 and he can be reached by phone (570) 342-4348 or by fax (570) 342-4353. The Harrisburg office is 25-B East Wing, PO Box 202113 Harrisburg, PA 17120.

Source: Rep. Welby Press Release, 11/17/2021

Pennsylvania's Unemployment Rate Down to 6.0 Percent in October

On November 19, 2021, the Pennsylvania Department of Labor & Industry (L&I) released its preliminary employment situation report for October 2021.

Pennsylvania's unemployment rate was down two-tenths of a percentage point over the month to 6.0 percent in October. The U.S. rate also fell two-tenths of a percentage point from its September level, down to 4.6 percent. The commonwealth's unemployment rate was 1.0 percentage points below its October 2020 level and the national rate was down 2.3 points over the year.

Pennsylvania's civilian labor force – the estimated number of residents working or looking for work – decreased 6,000 over the month. The unemployment count fell for the eighth consecutive month, with 12,000 fewer unemployed individuals in October.

Pennsylvania's total nonfarm jobs increased by 19,100 over the month to 5,760,800 in October, the sixth consecutive gain. The number of jobs increased from September in seven of the 11 industry supersectors. The largest movement was an increase of 8,600 leisure & hospitality jobs. Over

the year, total nonfarm jobs were up 134,700 with gains in nine of the 11 supersectors. Leisure & hospitality had the largest 12-month gain, adding back 47,300 jobs. All supersectors remained below their February 2020 job levels as of October 2021.

Additional information is available on the L&I website at

<https://www.dlipa.gov/Pages/default.aspx>.

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

Source: PA Department of Labor & Industry Press Release, 11/19/2021

House Approves Legislation to Address Attempts to Toll Bridges

On November 16, 2021, the House sent to the Senate for concurrence with an amendment authored by state Rep. Sheryl Delozier (R-Cumberland) that would pull back the current attempt to place tolls on nine interstate bridges across Pennsylvania, including the John Harris (South) Bridge over the Susquehanna River.

"Senate Bill 382

<https://www.legis.state.pa.us/cfdocs/billInfo/billInfo.cfm?sYear=2021&sInd=0&body=S&type=B&bn=0382> , authored by Sen. Wayne Langerholc (R-35), is a companion bill to my **House Bill 920** <https://www.legis.state.pa.us/cfdocs/billInfo/billInfo.cfm?sYear=2021&sInd=0&body=H&type=B&bn=0920> ," Delozier said. "The legislation would reform the Public-Private Transportation Partnership (P3) statute by making improvements that would increase transparency and clarify the General Assembly's a voice in the process."

"PennDOT knew what it was doing when it announced the selected bridges to be tolled after expiration of the current allotted time period in which the General Assembly could pass a resolution of disapproval," added Delozier. "Senate Bill 382 would prevent that from happening again, in addition to requiring PennDOT to create a detailed

analysis of all P3 proposals to include exact locations and cost estimates, as well as social, economic and environmental impacts before a P3 Board to approve.

"The P3 Board should not be allowed to implement tax or fees independent of the legislative process. We are all elected to represent our area and know the impacts to our communities, businesses and local economy. By the way this transpired, we did not have a voice and neither did our constituents."

Source: Rep. Delozier Press Release, 11/16/2021

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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.