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# WUC

Water Utility Council of the  
PA-Section, American Water  
Works Association (PA-AWWA)



## GOVERNMENT RELATIONS UPDATE

From Milliron & Goodman Government Relations, LLC.

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### DEP Announces Public Comment Period on New PFAS Drinking Water Regulation

**O**n February 25, 2022, the Pennsylvania Department of Environmental Protection (DEP) announced today a 60-day public comment period that begins Saturday, February 26, 2022, on a new regulation to protect Pennsylvanians' drinking water from PFAS chemicals.

The comment period concerns a proposed rule to set maximum contaminant levels (MCLs) in drinking water for two forms of per- and poly-fluoroalkyl substances (PFAS) - perfluorooctane sulfonic acid (PFOS) and perfluorooctanoic acid (PFOA) [https://www.dep.pa.gov/Citizens/My-Water/drinking\\_water/PFAS/Pages/default.aspx](https://www.dep.pa.gov/Citizens/My-Water/drinking_water/PFAS/Pages/default.aspx) - to protect the public from potential adverse developmental and immune system effects linked to exposure to PFOA and PFOS. The comment period will begin Saturday, February 26, 2022, and close Wednesday, April 27, 2022.

"Since Governor Tom Wolf signed an executive order in 2018, DEP has worked tirelessly to protect Pennsylvanians from these chemicals. This public comment period allows stakeholders to share their feedback and concerns as we continue to put the safety and health of Pennsylvanians first," said DEP Secretary Patrick McDonnell.

The proposed rule would set an MCL of 14 parts per trillion (ppt) for PFOA and an MCL of 18 ppt for PFOS, which are stricter limits compared to the United States Environmental Protection Agency's lifetime Health Advisory Level (HAL) of 70 ppt for PFOS and PFOA combined.

This proposed rulemaking represents an unprecedented step of setting a Pennsylvania-specific MCL for drinking water. In June 2021, DEP's final results from sampling public water systems for PFAS were released (statewide sampling began in July 2019). Due to these efforts, Pennsylvania is at the forefront of states taking proactive steps to address PFAS. More information on Pennsylvania's efforts to address PFAS can be found at this webpage: <https://www.dep.pa.gov/PFAS>.

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 have been associated with 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.

When the comment period opens, comments may be submitted to the Environmental Quality Board (EQB) through DEP's eComment system at <http://www.ahs.dep.pa.gov/eComment>.

Comments may also be submitted via e-mail at [RegComments@pa.gov](mailto:RegComments@pa.gov). Each comment must include a subject heading of the proposed rulemaking and the name and address of the person submitting the comment. Written comments may be mailed to the Environmental Quality Board, P.O. Box 8477, Harrisburg, PA 17105-8477.

The EQB will also hold five virtual public hearings on the proposed rulemaking during the week of March 21, 2022. The public hearings will be held via Webex at the following dates and times:

- Monday, March 21, 2022, at 1:00 PM
- Tuesday, March 22, 2022, at 6:00 PM
- Wednesday, March 23, 2022, at 1:00 PM
- Thursday, March 24, 2022, at 9:00 AM
- Friday, March 25, 2022, at 9:00 AM

Information on how to participate in the hearings will be posted on the EQB's webpage found through the Public Participation tab

<https://www.dep.pa.gov/PublicParticipation/EnvironmentalQuality/Pages/default.aspx> on DEP's website at <http://www.dep.pa.gov/> (select "Public Participation," then "Environmental Quality Board"). Persons who want to present testimony at one of the hearings must contact Jennifer Swan at (717) 783-8727 or [RA-EPEQB@pa.gov](mailto:RA-EPEQB@pa.gov) by 5:00 PM on Friday, March 18, 2022, to reserve a time to present testimony.

Source: DEP Press Release, 2/25/2022

## **PUC Advances Final Rulemaking on Replacement of Lead Service Lines and Damaged Wastewater Service Laterals**

*Sets Uniform, Minimum Standards Under Which PUC Regulated Utilities May Replace Lead Service Lines & Damaged Wastewater Service Laterals*

**T**he Pennsylvania Public Utility Commission (PUC) has advanced a Final Rulemaking on the implementation of Act 120 of 2018 (Act

120) regarding the replacement of lead service lines (LSLs) and damaged wastewater service laterals (DWSLs) and the recovery of associated costs.

The Commission voted 2-1 in support of a motion offered by Commissioner Ralph V. Yanora <https://www.puc.pa.gov/pdocs/1735104.pdf> adopting a Final Rulemaking Order. The Final Rulemaking establishes PUC regulations addressing LSL replacements in Chapter 65 and creating a new Chapter 66 addressing wastewater service and DWSL replacements.

"My motion works to achieve the shared goal of the PUC and DEP to quickly remove 100% of lead service lines from the Commonwealth's drinking water infrastructure," Commissioner Yanora said. "The PUC's recognition of discrete aspects of the DEP-enforced final revised Lead and Copper Rule at this time, including lead service line inventories and associated public outreach requirements, will allow utilities to accelerate lead line replacement throughout the Commonwealth in the most efficient and cost-effective way for utility customers."

Upon the entry of a Final Rulemaking Order as modified by the Motion, the rulemaking will be reviewed by the legislative standing committees and Independent Regulatory Review Commission. The rulemaking will then be reviewed by the Office of Attorney General for form and legality, and by the Office of Budget for its fiscal impact. The Final Rulemaking Order will be published in the Pennsylvania Bulletin and become effective on the date of publication.

On Oct. 24, 2018, Governor Tom Wolf signed Act 120 into law, thereby amending 66 Pa.C.S. § 1311(b) to address the accelerated replacement of customer-owned LSLs and DWSLs. Act 120 directs the Commission to establish certain standards, processes, and procedures by regulation. Today's action follows a comprehensive review and consideration process regarding the replacement of LSLs and DWSLs, including stakeholder comment on directed questions regarding the parameters for planning and reporting, communications, replacements, refusals, 66 Pa. C.S. § 1311(b), and rates; a PUC-convened working group for interested stakeholders; and a comment

and reply comment period following the entry of the Sept. 17, 2020 Notice of Proposed Rulemaking Order.

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.

For recent news releases and video of select Commission proceedings or more information about the PUC, visit our website at <http://www.puc.pa.gov/>. Follow the PUC on Twitter - @PA\_PUC for all things utility. "Like" Pennsylvania Public Utility Commission on Facebook for easy access to information on utility issues.

Docket No.: L-2020-3019521

Source: PUC Press Release, 2/25/2022

## **Senate Republicans Seek to Prevent Wolf Administration from Bypassing Legislative Process on RGGI**

**I**n an ongoing effort to protect Pennsylvanians against higher energy bills and job losses in the energy industry, Senate Republican leaders filed a request with the Commonwealth Court today to intervene in a lawsuit the Wolf Administration filed to force Pennsylvania into the Regional Greenhouse Gas Initiative (RGGI).

RGGI is a multi-state compact that would enact a carbon tax on energy producers. The plan is projected to increase electricity rates for consumers, cut energy and manufacturing jobs and lead to the closure of Pennsylvania power plants. One estimate [https://www.caesarrodney.org/pdfs/01Pennsylvania\\_Governors\\_carbon\\_tax\\_plan\\_a\\_bad\\_idea.pdf](https://www.caesarrodney.org/pdfs/01Pennsylvania_Governors_carbon_tax_plan_a_bad_idea.pdf) found the proposal could result in 22,000 lost jobs

and a total loss to the economy as high as \$7.7 billion a year.

Governor Wolf's effort to enter the compact by Executive Order through regulation bypassed the normal legislative process. Pennsylvania is the only state to attempt to enter RGGI without legislative approval.

In response to the Administration's attempt to usurp the General Assembly's authority to approve or disapprove any tax increase on Pennsylvania families and employers, both the Senate and the House of Representatives approved a resolution disapproving Pennsylvania's participation in RGGI.

Governor Wolf vetoed this resolution on January 10. The Senate has 10 legislative days or 30 calendar days - whichever is longer - to vote to override the governor's veto.

Although the Senate still has ample time to bring the veto override up for a vote, Governor Wolf's Department of Environmental Protection recently sued the Legislative Reference Bureau and the Pennsylvania Code and Bulletin to force them to publish his RGGI regulation in the Pennsylvania Bulletin immediately.

If successful, the Wolf Administration's lawsuit would allow the regulation to take immediate effect and prevent the General Assembly from having an opportunity to consider whether to override Governor Wolf's veto.

The request by Senate President Pro Tempore Jake Corman (R-Bellefonte), Senate Majority Leader Kim Ward (R-Westmoreland), Senate Appropriations Committee Chair Pat Browne (R-Lehigh) and Senate Environmental Resources and Energy Committee Chair Gene Yaw (R-Lycoming) today seeks to prevent the Wolf Administration from bypassing the legislative process a second time after the initial refusal to allow the General Assembly to vote on Pennsylvania's entrance into RGGI.

The lawmakers issued the following statement today:

*"It is deeply disturbing that the Wolf Administration continues to ignore the will of the people and is actively working to raise energy taxes and costs on Pennsylvania families and employers. There are clear rules in place to prevent any branch of government from trampling the rights of Pennsylvanians and the authority of the other branches of government. Governor Wolf should not be permitted to ignore those rules just because he thinks those checks and balances are inconvenient to his liberal, anti-energy agenda.*

*"Pennsylvanians deserve to know the truth - any person in this state who pays an energy bill will pay significantly more under RGGI, and thousands of state residents would lose their job if this policy were enacted. We must do everything in our power to prevent that from happening.*

*"It creates a very slippery slope when the Executive Branch tries to create a new tax on Pennsylvania employers without the consent of the General Assembly. We will continue fighting to preserve the General Assembly's authority to legislate and protect consumers against the painful consequences of the Wolf Administration's deeply flawed ideology."*

**Source:** Senate Republican Communications, 2/25/2022

## **EPA seeks explanations, solutions from Hanover Foods for numerous violations at company's wastewater treatment facility**

**T**he U.S. Environmental Protection Agency is taking legal action to get Hanover Foods Corporation to address numerous alleged violations at the company's wastewater treatment facility in Hanover, Pennsylvania that included excessive levels of contaminants as well as floating solids and visible scum in the discharged water and receiving water.

"The number of alleged violations observed during inspections is appalling," said EPA Mid-

Atlantic Regional Administrator Adam Ortiz. "The company needs to identify why this occurred and present a plan to fix this so that the local waters that eventually feed into the Chesapeake Bay are protected."

Under a consent order with EPA, Hanover Foods will conduct a study to determine the cause and how to correct these alleged water pollution violations that were identified during inspections by EPA and the Pennsylvania Department of Environmental Protection.

EPA alleges the company has failed to comply with a state-issued National Pollutant Discharge Elimination System (NPDES) permit to operate its own wastewater treatment facility at 1486 York Street to treat industrial waste before wastewater is discharged to Oil Creek, a tributary of Codorus Creek that feeds into the Susquehanna River in the Chesapeake Bay watershed.

Environmental inspections identified numerous alleged violations at the facility including:

- Discharges of water exceeding permit effluent discharge limitations
- Floating solids and visible scum in wastewater and receiving water
- Violations of the permit's operation and maintenance conditions

In an Administrative Order on Consent, the company has agreed to provide EPA with a complete engineering evaluation and propose and implement a corrective action plan and maintenance plan to correct the alleged violations. This work is a first step in addressing the company's discharge of pollutants into the Chesapeake Bay watershed.

EPA is working with Pennsylvania DEP during the development of this action.

For more information on treating wastewater and the NPDES process, visit: <https://www.epa.gov/npdes>.

**Source:** EPA Press Release, 2/25/2022



# EPA and Army Select 10 Roundtables to Highlight Regional Implications of WOTUS

On February 24, 2022, the U.S. Environmental Protection Agency (EPA) and U.S. Department of the Army (the agencies) announced the selection of ten geographically varied roundtables with participants representing diverse perspectives. The agencies will work with each selected roundtable to facilitate discussion on implementation of “waters of the United States” (WOTUS), while highlighting regional differences.

“EPA and Army are committed to listening to all sides and working to foster a common-ground approach to WOTUS that protects our environment and is informed by the experience of those who steward our waters day-in and day-out,” said EPA Assistant Administrator for Water Radhika Fox. “Through these regional roundtables, we will work toward a shared understanding of the challenges and opportunities to enhance WOTUS implementation to support public health, environmental protection, agricultural activity, and economic growth.”

“The Department of the Army, together with the EPA, is committed to gaining a better understanding of the various regional perspectives through these roundtables to develop an implementation approach that accounts for these diverse voices and regional variations,” said Assistant Secretary of the Army for Civil Works Michael L. Connor. “In addition, the Army hopes to identify implementation considerations and tools that could assist in effective, consistent, and efficient implementation across the nation.”

EPA and Army are announcing the selection of ten roundtables that highlight geographic differences and a range of perspectives—including agriculture, conservation groups, developers, drinking water and wastewater managers, environmental organizations, communities with environmental justice concerns, industry, Tribal

nations, and state and local governments. The ten selected roundtables are:

- Amigos Bravos (Southwest)
- Arizona Farm Bureau (Southwest)
- Cahaba Brewing (Southeast)
- California Farm Bureau (West)
- Kansas Livestock Association (Midwest)
- Natural Resources Defense Council (Northeast)
- National Parks Conservation Association (Midwest)
- North Carolina Farm Bureau (Southeast)
- Regenerative Agriculture Foundation (Midwest)
- Wyoming County Commissioners Association / Montana Association of Counties / Idaho Association of Counties (West)

These regional roundtables are one important mechanism for the agencies to consider the regional variation in implementation of WOTUS, given the diverse water quality and quantity conditions in diverse parts of the United States. The regional roundtables will provide opportunities to discuss geographic similarities and differences, particular water resources that are characteristic of or unique to each region, and site-specific feedback about the ongoing implementation of WOTUS by the agencies. The agencies anticipate hosting these regional roundtables virtually over the spring and summer.

The agencies most recently concluded a public comment period on the proposed rule to re-establish the pre-2015 definition of WOTUS that had been in place for decades, updated to reflect consideration of Supreme Court decisions. The agencies also hosted public hearings on the proposed rule. Prior to proposal, the agencies requested written comments, hosted listening sessions, and conducted Federalism consultation with state and local governments. In addition, the agencies participated in a roundtable organized by the Small Business Administration.

For more information visit: [www.epa.gov/wotus](http://www.epa.gov/wotus).

## Background

The Clean Water Act prohibits 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 July 30, 2021, the agencies announced stakeholder engagement opportunities, including the agencies’ intent to host ten regionally focused roundtables. On October 13, 2021, EPA and Army announced a process for stakeholders to submit nomination letters for a slate of nominees to potentially be selected for one of these geographically focused roundtables. In response to robust interest in these regional roundtables, the agencies extended the deadline for submissions to December 1, 2021.

**Source:** EPA Press Release, 2/24/2022

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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.***