

LEGISLATIVE AND REGULATORY UPDATE

PA AWWA SOUTHEAST DISTRICT & WWOAP EASTERN SECTION MEETING

PENN STATE UNIVERSITY GREAT VALLEY CAMPUS

APRIL 12, 2024

SERENA A. DIMAGNO

WWOAP LEGISLATIVE/REGULATORY AFFAIRS CHAIR



SPOTTS | STEVENS | MCCOY

Engineering, Surveying and Environmental Services

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PENNSYLVANIA LEGISLATIVE UPDATE



House and Senate Session Schedules

2024 House Session Schedule

April 8, 9, 10, 15, 16, 17, 29, 30

May 1, 6, 7, 8, 20, 21, 22

June 3, 4, 5, 10, 11, 12, 17, 18, 24,
25, 26, 27, 28

2024 Senate Session Schedule

April 8, 9, 10, 29, 30

May 1, 6, 7, 8

June 3, 4, 5, 10, 11, 12, 17, 18,
24, 25, 26, 27, 28, 29, 30



State Budget

The Legislature must adopt a balanced budget by June 30th.

Governor Shapiro on February 6, 2024 presented his FY 2024-2025 budget before a joint session.

- **Proposed \$48.3 billion Budget – increased spending by more than \$3.2 billion (7.1%)**
- **DEP's Proposed Budget – over \$10 million to increase permitting staff at regional offices.**
 - **Total 40 new positions for permit modernization**
 - **\$.15 million for lab equipment and 2 staff for PFAS testing.**
 - **Total compliment changes = 71 positions**



House Bill 905– Rep. McNeill Red Flag Water Usage

- **Introduced by Rep. McNeill – would require municipal authorities and public utility companies to provide notice to utility customers if a property’s water usage has increased by 50% in one month.**
 - Also, requires municipal authorities and public utility companies to evaluate whether a consumer has a leak or leaks within the property..
- **Status: The House Majority Policy Committee held** a Public Hearing on April 2, 2024 in Lehigh County. Testimony was presented by Lehigh County Authority and Pennsylvania American Water Company (PAWC) in opposition to the bill.
- Both Lehigh County Authority and PAWC preferred the use of advanced metering infrastructure which requires the customer to monitor their usage. Both LCA and PAWC discussed the costs of another mandate for utilities already dealing with LCRR, PFAS, and other regulated requirements.



House Bill 2145 – Rep. Smith-Wade-EI (D) Legionnaires' Disease Risk Management

- HB 2145 – Amends Title 27 (Environmental Resources), providing for Legionnaires' disease risk management and imposing penalties.
 - **Status:** House Health Committee, March 25, 2024.
 - Requires the Department of Environmental Protection (DEP) to promulgate regulations for the following:
 - Disinfectant or sampling requirements for a public water system to minimize the growth and transmission of Legionella bacteria.
 - The monitoring of a public water system during a planned disruption or unplanned disruption.
 - **Notwithstanding the drinking water standards**, a public water supplier shall have the following duties:
 - Maintain a detectable residual disinfectant of **at least 0.5 mg/l of chlorine**, not to exceed the maximum EPA residual disinfectant level in a public water system.



House Bill 2145 – Rep. Smith-Wade-EI (D)

Legionnaires' Disease Risk Management - Cont'd.

- At frequent and regular intervals, conduct water sampling and analysis of residual disinfectant concentrations to determine the residual disinfectant level of chlorine at each point in a public water system.
- In addition, as soon as practicable, but no later than four hours after a public water supplier becomes aware of a public water system disruption that may result in increased levels of Legionella bacteria in the public water system, the water supplier shall conduct sampling and analysis for all of the following:
 - Legionella bacteria
 - The residual disinfectant level of chlorine

***This legislation provides for substantial civil penalties for a water supplier that is in violation of the act.**



House Bill 2145 – Rep. Smith-Wade-El (D)

Legionnaires' Disease Risk Management - Cont'd.

- On March 26, 2024 the Water Utility Council of PA-AWWA sent a letter to the Legislative Chairs of the House Health Committee addressing HB 2145:
 - Legionella is a premise plumbing issue that building owners need to address with mitigation and control strategies within the buildings, including where a campus consists of multiple buildings.
 - Public water systems have no regulatory authority to control water systems located within buildings.
 - Public water systems do not have responsibility for water quality beyond the point of connection to the customer's service line, including large buildings and facilities.
 - Current minimum chlorine residual required in public water distribution systems is **0.2 mg/l (free or total residual)**. This residual regulation was established in the revised Disinfection Requirements Rule (DRR) published in the PA Bulletin on April 28, 2018. The rule followed a 2-year regulatory development process:



House Bill 2145 – Rep. Smith-Wade-EI (D)

Legionnaires' Disease Risk Management - Cont'd.

- Including input from scientific and engineering experts
 - Research by PA DEP regarding chlorine policies in other states
 - Significant input from all sectors of the public water supply industry
- Public water systems must balance the effects of raising the minimum chlorine residual in the distribution system with maintaining acceptable levels of disinfectant by-products (DBPs) within regulatory compliance.
 - DBPs are known carcinogens with MCLs mandated by the US EPA and regulated by PA DEP. Higher chlorine residuals will result in higher DBPs. Increased chlorine residuals in the distribution system may result in consumers abandoning tap water for more expensive bottled or vended water.
 - Raising chlorine levels in public distribution systems will not carry that residual throughout the building premise plumbing without additional water treatment within the building due to the overall size and complexity of these systems.



House Bill 1862, 1863, 1864, &1865 – Rep. Matzie Act 12 Reform Package - Acquisition of Water and Wastewater Utilities

Status: The House Consumer Protection, Technology and Utilities Committee met on April 9, 2024 - all bills will now go before the Full House for consideration. The bills package is based on a prior hearing and several stakeholder meetings.

NOTE:

- On February 1, 2024 the Public Utility Commission (PUC) approved the issuance of a Tentative Supplemental Implementation Order that proposes four specific revisions to the Commission’s existing procedures and guidelines for Section 1329 Acquisitions (in response to the Act 12 Reform Bills):
- **Public Meeting/Hearing Requirements** – Requires utilities to hold at least two public meetings **before** signing an asset purchase agreement. The utility would need to provide proof of compliance with this requirement in its initial application.



House Bill 1862, 1863, 1864, &1865 – Rep. Matzie Act 12 Reform Package - Acquisition of Water and Wastewater Utilities – Cont'd.

- **Rate Impact Notice** – Applicants would be required to attest, or declare under affidavit, the following within an initial filing:
 - Both parties acknowledge the seller is aware of the potential impacts the transaction may have on the selling utility's rates, including detailing the overall dollar and percentage impact implicated from the stand-alone rates from the transaction price.
 - The selling utility has publicly communicated such implications on rates through notices issued to existing customers.
 - Both parties understand the PUC may shift rate allocations in manners different from any commitments made in the underlying application.



House Bill 1862, 1863, 1864, &1865 – Rep. Matzie Act 12 Reform Package - Acquisition of Water and Wastewater Utilities – Cont'd.

- **Default Weights for Appraisals-** The PUC seeks to instill consistency in the valuation processes by requiring utilities to weigh the cost, income, and market appraisals equally. Applicants could seek approval to deviate from this requirement but would be required to show good cause to do so.
- **Reasonableness Review Ration** -.Publish a reasonableness review ratio as a guidepost that the PUC can use when it analyzes and eventually makes a final determination on the overall prudence of various 1329 applications. That ratio would be based on publicly available data from investor owned utilities and be compared against the ratio of depreciated original cost of the selling utility and the 1329 transaction price.



House Bill 1862, 1863, 1864, &1865 – Rep. Matzie Act 12 Reform Package - Acquisition of Water and Wastewater Utilities – Cont'd.

Status: Valuation of Acquired Municipal Water and Wastewater Systems – Act 12 of 20216 Implementation Water Service – was published in the PA Bulletin on February 17, 2024. Comments were due March 18, 2024.

Comments were received from;

PAWC

AQUA PA

OCA

OSBA

PMAA

PA STATE ASSOCIATION OF BOROUGHES



Senate Bill 286 – Sen. Yaw (R)

House Bill 551 – Rep. Zimmerman (R)

Spill Reporting

- SB 286 - amends the Clean Stream Law adding a new section providing for notice of discharge endangering public health or environment.
- **Status: Senate Environmental Resources & Energy Committee, 1/21/2023, Reported, 5/21/2023, 1st Consideration, 6/21/2023, laid on the table 9/20/23.**
- A person who spills, discharges or releases a substance into the waters of this Commonwealth, or on a location from which the substance is likely to enter the waters of this Commonwealth, taking into account any control and remedial measures, shall notify the department if the spill, discharge or release is not authorized by permit from the department and is likely to render the receiving waters harmful to public health or the environment as determined by reportable quantities or other readily ascertainable standards adopted by regulation.
- HB 551 - requires the Environmental Quality Board, to publish for public comment proposed regulations establishing reportable quantities or other readily accessible standards by which a person can determine whether a spill, discharge or release is likely to render receiving waters harmful to public health or environment



Senate Bill 286 – Sen. Yaw (R) House Bill 551 – Rep. Zimmerman (R) Spill Reporting – Cont'd.

- HB 551 – Note: There is opposition to this bill due to the elimination of critical safeguards in the Clean Streams Law that protect waterways from spills. This bill would allow polluters to decide whether a spill should be reported to PA DEP. **PA DEP is opposed to this bill.**
- America's Water Infrastructure Act (AWIA) also amended the *Emergency Planning and Community Right-to-Know Act* (EPCRA).
The EPCRA revisions require that community water systems:
 - **Receive prompt notification of any release of a hazardous substance that potentially affects their source water**
 - **have access to hazardous chemical inventory data**

EPCRA requirements went into effect immediately upon signing of the law.



Technical Guidance –

Notification Requirements for Spills, Discharges and Other Incidents That Threaten To Cause Pollution of the Waters of the Commonwealth

DEP ID
383-4200-003

- PA DEP's response to the proposed Spill Notification Bills was to Draft Technical Guidance:
- Provides guidance on the immediate notification requirements for spills, discharges, and other incidents of a substance causing or threatening pollution to waters of the Commonwealth.
- **NOTE: The Draft Final Technical Guidance Document:**
 - Immediate DEP Notification is required for potable water main breaks discharging chloraminated water. Even when dechlorinated, chloraminated water will contain ammonia which cannot be readily removed or inactivated, and which can have adverse impacts on aquatic life and other protected water uses.



**Continued -
Technical
Guidance –**

**Notification
Requirements for
Spills, Discharges
and Other
Incidents That
Threaten To
Cause Pollution of
the Waters of the
Commonwealth**

**DEP ID
383-4200-003**

- Immediate DEP notification is **not required for potable water main breaks, water system maintenance, or hydrant flushing where a *Preparedness, Prevention, and Contingency (PPC) Plan* is in place and implemented, where the discharge can be dechlorinated, and where chloramine is not in use.**
- **DEP Reconsidered the Draft Technical Guidance Document and moved to a regulatory approach:**
- **On October 26, 2023, DEP brought the Draft Proposed Spill Reporting Rulemaking before the TAC Board. TAC voted unanimously to send the proposal to the EQB for consideration**
- **The Draft Proposed Rulemaking is waiting to be brought before the EQB.**



Senate Bill 144 – Sen. Yaw (R)

Fire Fighting Foam Management Act

- **This is a re-introduction of Senate Bill 302 from last session.**
- Amends Title 35 (Health and Safety) – establishes statewide uniform requirements restricting the use of Class B firefighting foams containing PFAS chemicals for training, restricting their use in testing while also allowing for continued sale and use against emergency, real-world fires.
- **STATUS:** Passed Senate, 36-14, 3/7/2023. Referred to Senate Veterans Affairs and Emergency Preparedness Committee, 3/8/2023.
- **Note:** The **House** Veterans Affairs and Emergency Preparedness Committee intends to hold an Informational Meeting on the occupational diseases of firefighting in late October or November 2023 and this bill will be part of the discussion.
- On October 10, 2023, the PA AWWA Section Water Utility Council sent a letter to the House Veterans Affairs & Emergency Preparedness Committee with proposed amendments to Senate Bill 144.



Senate Bill 144 – Sen. Yaw (R)

Fire Fighting Foam Management Act - *Continued*

The Proposed Water Utility Council Amendments:

- Prohibit a firefighting entity from accepting Class B foam containing PFAS from an airport, individual, manufacturer, government entity, or another firefighting entity.
- Prohibits the use of Class B foam containing PFAS without using an ASSE International approved backflow prevention device installed on apparatus equipment by the firefighting entity. (These devices are inexpensive \$150).
 - Title 35 defines “Apparatus equipment”- Elevated equipment, pumpers, tankers, ladder trucks, utility or special service vehicles, ambulances, rescue vehicles or other large equipment used for firefighting and emergency services.



Senate Bill 144 – Sen. Yaw (R)

Fire Fighting Foam Management Act - *Continued*

- Requires the firefighting entity to annually test and certify the backflow prevention device.
- Requires 1-hour notice to PA DEP and the public water supplier when a Class B foam containing PFAS is used in emergency firefighting or fire suppression operations.
- **The WUC Letter also notified the Committee that the U.S. Federal Aviation Administration (FAA) has notified airports of the availability of Fluorine-Free Foam (F3) that meets Military Specification and has been added to the Navy's Qualified Products List (QPL). The FAA is not requiring airports to use the new F3 products.**



Senate Bill 767 – Sen. Boscola (D) LIHWAP Funding

- Amends the Human Services Code, in general powers and duties of the Department of Public Welfare, providing for Low-Income Household Water Assistance Program.
- **Status:** Senate Consumer Protection & Professional Licensure Committee, 6/14/2023.
- LIHAP funding for heating and cooling has been in place for more than 50 years; funding for water and wastewater was temporary and exhausted quickly. Needs continue to remain. The \$43.2 million in Federal Government Funding was gone by October, 2022 [Covid funding], with over 40,000 Pennsylvanians receiving relief.
- A Coalition, including NAWC & PMAA requested the PA General Assembly appropriate \$60 million to LIHWAP in the FY 2023-2024 budget. The letter was sent to the General Assembly and the Governor on 6/14/2023.



**Senate Bill 767 –
Sen. Boscola (D)
LIHWAP Funding
- *Continued***

- On October 10, 2023, the PA AWWA Section Water Utility Council sent a letter to the Senate Consumer Protection & Professional Licensure Committee supporting Senate Bill 767.
- The Water Utility Council estimated to the Committee that there is a \$60 million need for LIHWAP assistance in PA and strongly supports an assistance program that will help prevent utility shutoffs for water and wastewater system customers.
- **UNLESS THE FEDERAL PROGRAM IS REAUTHORIZED, LIHWAP IS LIKELY TO BE A FY 2024-2025 STATE BUDGET ISSUE.**



Reauthorization of the Pennsylvania Underground Utility Line Protection Act (PA One Call Law)

- Act 50 of 2017 authorizes the PUC to enforce provisions of the PA Underground Utility Line Protection Law, Act 287, known as the “One Call Law”. Under Act 50 all underground facility damages are to be documented and submitted to the PA 1 Call System via a facility damage investigation form (see PUC website and the PA 1 Call System website.
- Act 50 also created the Damage Prevention Committee (DPC) that meets regularly to review alleged violations of the Act and determine the appropriate response, including but not limited to warning letters or administrative penalties.
- **THE ACT EXPIRES ON DECEMBER 31, 2024 SO IT NEEDS TO BE REAUTHORIZED.**
- **Senator Baker and Representative Matzie have introduced co-sponsor memos with various amendments and to re-authorize One Call.**



PENNSYLVANIA REGULATORY UPDATE



Pennsylvania DEP
Safe Drinking
Water PFAS
MCL Rule
(25 Pa. Code
Chapter 109)

- **APRIL 10, 2024 EPA ANNOUNCED FINAL NATIONAL PRIMARY DRINKING WATER REGULATION FOR SIX PFAS MCLs.**
- **PA Final Rule** published in the *PA Bulletin* on Jan. 14, 2023.
Note: a correction was published in the *PA Bulletin* on February 18, 2023 regarding monitoring requirements.
- **MCL – PFOA of 14 parts per trillion (ppt);
MCLG of 8 nanograms per litre (ng/L)**
- **MCL – PFOS OF 18 parts per trillion (ppt);
MCLG of 14 nanograms per litre (ng/L)**
- **The final regulation applies to all community, nontransient noncommunity, bottle, vended, retail and bulk hauling systems with **initial monitoring beginning January 1, 2024.****



Pennsylvania DEP
Safe Drinking
Water PFAS
MCL Rule
(25 Pa. Code
Chapter 109)

Continued

- MCL Compliance is based on a running annual average (RAA) for each entry point (EP). If any quarterly result causes the RAA to exceed the MCL, a violation is generated for that quarter.
- Initial monitoring is quarterly at each Entry Point.
- **The MCLs were effective upon publication in the PA Bulletin (January 14, 2023), but routine compliance does not begin until 2024 or 2025.**
- **Any Public Water System that is doing monitoring (whether voluntary or under UCMR 5 or as specified in a permit) that exceeds either MCL value is required to contact PA DEP within 1 hour of discovery.**



Pennsylvania DEP
**Safe Drinking
Water PFAS
MCL Rule
(25 Pa. Code
Chapter 109)**

Continued

- The PFAS MCL Rule also includes the following requirements:
 - **Monitoring**
 - **Reporting**
 - **Public Notification**
 - **Consumer Confidence Reports**
 - **Use of Best Available Technologies**
 - **Analytical Requirements**



Pennsylvania DEP
Public Water
System
Technical
Assistance
Center Board
(TAC)
February 14,
2024

- **TRENCHLESS TECHNOLOGY GUIDANCE – Environmental Considerations for the Construction and Operation of Trenchless Technology**
- **This guidance outlines the steps and options to be considered when using trenchless technology construction methodology.**
- **Trenchless technology is not specifically referenced in regulation.**
- **Guidance document provides recommendations for the use of trenchless technology that meets DEP relevant regulations:**
- **Reference:**
<https://www.dep.pa.gov/PublicParticipation/AdvisoryCommittees/WaterAdvisory/TAC/Pages/default.aspx> - February 14, 2024 Meeting.



Pennsylvania DEP
Public Water
System
Technical
Assistance
Center Board
(TAC)
February 14,
2024

- **PRELIMINARY DRAFT SAFE DRINKING WATER DESIGN STANDARDS FOR PFAS TREATMENT.**
- **The Draft Preliminary Draft PFAS Piloting and Design Standards are intended to be incorporated into DEP's *Public Water Supply Manual –Part II, Community System Design Standards (383-2125-109)*.**
- **Reference:**
<https://www.dep.pa.gov/PublicParticipation/AdvisoryCommittees/WaterAdvisory/TAC/Pages/default.aspx> - February 14, 2024 Meeting.



TAC Board Meetings

- The Public Water Systems Technical Advisory Committee (TAC Board) is the PA DEP advisory committee for public water system regulations, policy and guidance document review.
- TAC represents Public Water Systems (all sizes); formerly the Board was directed to Small Water Systems.
- The Agenda, previous Meeting Minutes and all of the documents and information for discussion can be viewed on the TAC Board website:
<https://www.dep.pa.gov/PublicParticipation/AdvisoryCommittees/WaterAdvisory/TAC/Pages/default.aspx>
- All meetings are open to the public and can be attended virtually.

NEXT TAC BOARD MEETING IS MAY 23, 2024



QUESTIONS



**LINK to
PRESENTATIONS
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Download the slides at
www.paawwa.org or
www.woap.org or ssmgroup.com

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