

LEGISLATIVE AND REGULATORY UPDATE

**PA Section AWWA Southeast District and WWOAP Eastern Section
Spring Joint Conference – April 6, 2022**

Presented by: Serena A. DiMagno

WWOAP Legislative/Regulatory Affairs Committee Chairman



SPOTTS | STEVENS | MCCOY

@ssmgroup.com

LEGISLATIVE UPDATE

House and Senate Session Schedule

2022 HOUSE SESSION SCHEDULE

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|-----------|---|
| April | 11, 12, 13, 25, 26, 27 |
| May | 23, 24, 25 |
| June | 7, 8, 9, 13, 14, 15, 20, 21, 22, 23, 24, 27, 28, 29, 30 |
| September | 12, 13, 14, 19, 20, 21 |
| October | 24, 25, 26 |
| November | 14, 15, 16 |

2022 SENATE SESSION SCHEDULE

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|-------|---|
| April | 4, 5, 6, 11, 12, 13 |
| May | 23, 24, 25, |
| June | 6, 7, 8, 13, 14, 15, 20, 21, 22, 23, 24, 27, 28, 29, 30 |

Public Hearings Prior to Acquisitions

- **House Bill 527 - Rep. Cox** (R-Berks) amends Title 53 (Municipalities Generally) in public improvements, utilities and services, providing for public notice and public meeting requirements:
 - Prior to entering into an agreement to sell or lease a water or sewer system owned or operated by a municipal corporation or to sell or lease a water or sewer system currently operated by a municipal authority that would require dissolution by the municipal authority:
 - The municipal corporation shall hold at least one advertised public meeting, not more than 60 days nor fewer than seven days prior to entering into the agreement with the potential purchaser or lessee, and
 - Shall provide public notice of the meeting in all municipalities served by the water or sewer system. And, the potential purchaser or lessee shall attend the meeting.

Public Hearings Prior to Acquisitions - continued

- **House Bill 527 -**
 - Adds a new section that provides that an acquisition of an entity subject to section 5610 (a.1) (relating to governing body) under 66 Pa.C.S. § 1329 (relating to valuation of acquired water and wastewater systems) may not be deemed in the public interest by the Pennsylvania Public Utility Commission without the unanimous consent of the governing body established under section 5610 (a.1).
 - Status: On the House Calendar awaiting final passage.

Clean Streams Law – Spill Reporting

- **House Bill 1842 - Rep. Zimmerman-(R)** amends the Clean Streams Law, in other pollutions and potential pollution, providing for notice of discharge endangering public health or environment.
 - **Notice of Discharge Endangering Public Health or Environment** – 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 a permit from the department and is likely to render the receiving waters harmful to public health or environment as determined by reportable quantities or other readily ascertainable standards adopted by regulation.
 - Requires the Environmental Quality Board (EQB), no later than 60 days after the effective date of the new section, to publish for public comment proposed regulations establishing reportable quantities or other readily ascertainable standards by which a person may determine whether a spill, discharge or release is likely to render receiving waters harmful to public health or environment.
 - Further requires the Board, no later than 180 days after the effective date, to publish final regulations.

Clean Streams Law – Spill Reporting - continued

- **House Bill 1842 –**
 - **NOTE:** Opposition to the bill concerns the elimination of critical safeguards in the Clean Streams Law that protect waterways from spills. The major concern is that this bill will allow polluters to decide whether their spill should be reported to PA DEP.
 - PA DEP is opposed to this bill.
 - **STATUS:** Re-referred to the Senate Appropriations Committee on 2/7/2022.

Delaware River Basin Compact - Voting Power

- **House Bill 2450 – Fritz (R)** – amends the Delaware River Basin Compact, in organization and area, further providing for voting power:
 - Reapportions the voting rights within the Delaware River Basin Commission (DRBC) based on the amount of the basin territory within each state.
 - Pennsylvania will have six votes, New Jersey will have three votes, New York will have two votes and Delaware will have one vote. The Federal Government will have one vote.
 - Some provisions are effective upon publication of the notice and the remainder of this act is effective immediately.
 - STATUS: Reported out of the House Environmental Resources and Energy Committee, 3/28/22.

Delaware River Basin Compact - Regulations and Enforcement

- **House Bill 2450 – Fritz (R)** – amends the Delaware River Basin Compact, in general provisions, further providing for regulations and enforcement.
 - The Delaware River Basin Commission (DRBC) can make and enforce reasonable rules and regulations for the effectuation, application, and enforcement of the Compact provided that the rules and regulations do not impede or interfere with the operation or control of projects, structure, or facilities constructed or used in connection with hydraulic fracturing, or fracking.
 - Section one of this act is effective upon publication of the notice required by section two of this act. The remainder of this act is effective immediately.
 - STATUS: Reported out of the House Environmental Resources and Energy Committee, 3/28/22.

Water and Wastewater Asset Management Plans

- **Senate Bill 597 – Stephano – (R)** - Amends Title 66 (Public Utilities) providing for water and wastewater asset management plans:
 - **Community water and wastewater system asset management plan:**
 - No later than 12 months after the effective date, a water or wastewater system operator shall annually submit an asset management plan every 3 years to the Public Utility Commission (PUC) for review and approval.
 - The plan shall be designed to inspect, maintain, repair and renew the water or wastewater system operator's infrastructure consistent with federal and state laws.
 - **Critical valve inspections:**
 - A water system operator shall inspect each critical valve in its system (in the asset management plan), no less than every three years and at any time the water system operator installs, repairs or relocates a critical valve.

Water and Wastewater Asset Management Plans – continued:

Senate Bill – 597

– Fire hydrants

- A water system operator shall annually inspect at least 33% of the fire hydrants in the system in a manner that each fire hydrant is exercised over the course of four years to determine each fire hydrant's working condition.
- The water system operator shall formulate and implement a plan for flushing fire hydrants and at dead ends of water mains as water quality needs dictate.
- The water system operator shall keep a record of each inspection, test and flushing for six years.
- The water system operator shall identify the geographic location of each fire hydrant using a global positioning system based on satellite or other location technology.

– Water meters:

- A water meter that has a registration error of more than 2% may not be placed in service and a water meter that has a registration error of more than 4% may not remain in service if water is passing through the meter at certain flow rates (meter size to gallons per minute).

Water and Wastewater Asset Management Plans – continued:

Senate Bill – 597

- **Development of cybersecurity system:**
 - A water system and wastewater system operator shall develop a cybersecurity program that:
 - Is developed by an accredited cybersecurity professional;
 - Implements organizational accountability and responsibilities for cyber risk management activities, and
 - Establishes policies, plans, processes and procedures for identifying, reporting and mitigating cyber risk to the operators' water system and wastewater systems.

- **Contingency for public funding:**
 - Before a water or wastewater system operator may receive a subsidized loan or other financial assistance from the Commonwealth, the system must demonstrate that the operator has developed or is in the process of developing an asset management plan.

Water and Wastewater Asset Management Plans – continued:

Senate Bill – 597

– Enforcement:

- A water system and wastewater system operator that fails to file an asset management plan or comply with a PUC approved plan shall be deemed a public utility and regulated as a public utility.

Status: Senate Consumer Protection & Professional Licensure Committee, 4/22/2021 – Reported, as amended, 5/25/2021 – 1st Consideration, 5/25/2021; Scheduled for 2nd Consideration 9/20/21.

Note: The Water Works Operators' Association of Pennsylvania (WWOAP), The Pennsylvania Rural Water Association (PRWA), The Eastern Pennsylvania Water Pollution Control Operators' Association (EPWPCOA), and the Pennsylvania Water Environmental Association (PWEA) have all submitted letters to the Legislature in Opposition to SB 597.

Water and Wastewater Asset Management Plans – continued:

– ISSUES WITH SB 597-

- Asset Management Plan – requiring community water systems to publish asset management reports on publicly accessible internet websites is in direct violation of security protocols that have been in place since 9/11. Providing descriptions and locations of vulnerable water system infrastructure in a public format is inviting potential security breaches to critical water supply systems and risking public health and welfare.
- Critical Valve Inspections – Community water systems currently follow best management practices recommended by the valve manufacturers and the American Water Works Association (AWWA).
- Water Meters – meter maintenance is dictated by the manufacturers' recommendations. The additional testing mandated in SB597 would require considerable additional costs to water systems. The proposed requirements need to have a value vs. cost analysis completed to assess the benefit provided to water system customers/consumers to justify the requirements.
- Development of Cybersecurity System – Both PA DEP and the Department of Homeland Security have provided self-assessment tools for water systems to evaluate system and cybersecurity vulnerabilities. Further, the America's Water Infrastructure Act (AWIA) strengthened the requirements for systems to self-assess asset and cyber vulnerabilities. The information is specifically NOT TO BE SHARED with EPA or other regulatory entities, but is certified by the system to have been completed. All certified system operators are also required to complete security training. **MOREOVER, NO STANDARD CERTIFICATION EXISTS FOR CYBERSECURITY PROFESSIONALS** as is required under SB597.

Water and Wastewater Asset Management Plans – continued:

– **ISSUES WITH SB 597- Continued**

- Annual Information to Customers - water systems already complete and provide to all customers a Consumer Confidence Report (CCR) annually under Chapter 109, Safe Drinking Water Regulations. Moreover, the Public Notification Rule requires one-hour notice to PA DEP and notice to the customers. EPA under the revised Lead and Copper Rule (LCRR) is revising the CCR requirements to require bi-annual reports be submitted to customers.
- Contingency for Public Funding – All Commonwealth funding sources currently require that water systems be in compliance with the Safe Drinking Water Regulations and/or require engineering, feasibility studies and financial analysis for the majority of projects under funding consideration.
- Enforcement – Under no circumstances should a water system be placed under the jurisdiction of the PUC without customers/consumers of that system being given the opportunity to contest their local authority or municipal system being summarily regulated by the Commission.

Status: - SB 597 may be moving the week of April 4th

Bipartisan Legislation – Legionnaires’ Disease

- **Senate Bill 1125 – Senator Fontana - (D) and Senator Pittman (R) –**
 - Would direct both public drinking water providers and certain building owners to assess their respective water systems for risk and adopt simple mitigation measures:
 - Flushing clean water through the system
 - Keeping hot and cold water at appropriate temperatures
 - Monitoring the system regularly
 - Would codify the seven-step industry standard, ASHRAE-188 (currently the standard is only voluntary and not widely adopted).

REGULATORY UPDATE

PA DEP – PFOS and PFOA MCL

- On November 16, 2021, the EQB adopted the Maximum Contaminant Level for Perfluorooctanoic Acid (PFOA) (25 PA Code Chapter 109) proposed rulemaking. (This starts the lengthy regulatory review process).
- Proposed PFOA MCL of 14 ppt.
- Proposed PFOS MCL of 18 ppt.
- Published in the *Pennsylvania Bulletin* on February 26, 2022 - Safe Drinking Water PFAS MCL Rule –
 - 60 day public comment period (**Comments are due April 27, 2022**)
 - Comments may be submitted to the EQB by accessing the eComment at <http://www.ahs.dep.pa.gov/eComment>
 - Comments may be submitted to the EQB by e-mail at RegComments@pa.gov. Include a subject heading of the proposed rulemaking and a return name and address must be included in each transaction.

PA DEP – PFOS and PFOA MCL - continued

- 60 day public comment period (**Comments are due April 27, 2022**)
 - Written comments should be mailed to the Environmental Quality Board, P.O. Box 8477, Harrisburg, PA 17105-8477. Express mail should be sent to the Environmental Quality Board, Rachel Carson State Office Building, 16th Floor, 400 Market Street, Harrisburg, PA 17101-2301.
- 5 Virtual Public Hearings:
 - EQB held five virtual public hearings in March, 2022 for the purpose of accepting comments on the proposed rulemaking.

It is expected that the Final Rule will be presented to the Public Water System Technical Assistance Center Board (TAC) in the Summer, 2022.

Note: EPA is also moving forward with the MCL process for PFOA and PFOS. EPA expects to publish a proposed rule by Fall, 2022 with a Final Rule expected Fall, 2023.

Note: PA DEP is renewing the contract with Drexel University to continue to review any updated health assessment information and provide additional cost and benefit information.

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

- PA DEP published notice in the October, 2021 *PA Bulletin* requesting comments on the proposed Technical Guidance on Notification Requirements for Spills, Discharges and Other Incident That Threaten To Cause Pollution of the Waters of the Commonwealth (*DEP ID: 383-4200-003*).
- The Draft Technical Guidance is not described as addressing the legislation introduced in the Senate and House to amend the Clean Streams Law to change the definition of pollution and put the decision on whether to notify PA DEP of a spill into the hands of the entities doing the spilling. Referenced herein – HB 1842.
- The Technical Guidance pertains to planned and unplanned water system discharges of chlorinated water such as flushing, main breaks, continuous flushing hydrants, etc.

SMALL WATER SYSTEMS TECHNICAL ASSISTANCE (TAC) BOARD

Next TAC Board Meeting – April 21, 2022

- TAC now represents Public Water Systems (all sizes)
- 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>
- The Draft – Final TGD#1 - *Technical Guidance on Notification Requirements for Unauthorized Discharges to Waters of the Commonwealth Under Pennsylvania's Clean Steams Law* will be reviewed and discussed at this meeting.

QUESTIONS

Speaker Contact Information

SERENA A. DiMAGNO

SENIOR ENVIRONMENTAL CONSULTANT

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

701 Creekside Lane

Lititz, PA 19610-0307

CELL PHONE: 717-379-0084

PHONE: 610-621-2000

SERENA.DIMAGNO@SSMGROUP.COM

SADIMAGNO@AOL.COM

www.ssmgroup.com PowerPoint presentation will be posted to the SSM website, to www.woap.org and to www.paawwa.org – Southeast District.