

LEGISLATIVE AND REGULATORY UPDATE

BERKS COUNTY WATER AND SEWER ASSOCIATION VIRTUAL CONFERENCE | JULY 29, 2020

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LEGISLATIVE UPDATE



LEGISLATION SIGNED INTO LAW BY GOVERNOR WOLF



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Senate Bill 1030 (Yaw – R) Signed Into Law as Act 34 of 2020 on June 5, 2020

- Amends the Pennsylvania Sewage Facilities Act providing that when proposing a new land development, the applicant must submit and the PA DEP shall accept any conventional sewage system or alternate sewage system that meets site conditions present at the proposed new land development.
- Provides for the use of alternative on-lot sewage systems by applicants by changing the requirements for satisfying site suitability from permissible by a sewage enforcement officer to one that meets site conditions at the proposed new land development.
- Removes the authority of the PA DEP to develop scientific, technical and field-testing standards upon which to establish an evaluation standard for alternative sewage systems. Also removes the ability of PA DEP to undertake a rulemaking to remove the system's classification as an alternative system.
- The Act becomes effective in 60 days.



House Bill 1003 (Gillespie – R) Signed Into Law as Act 39 of 2020 on July 1, 2020

- Strengthens the PA Fish and Boat Commission’s (PFBC) ability to enforce the marking of low head or run-of-the-river dams. The PFBC is charged with ensuring that low-head dams are properly marked both upstream and downstream with signage and buoys. Previously, PFBC could only enforce these provisions through a civil process, which was prolonged, costly and often ineffective.
- Act 39 allows PFBC to directly issue citations to land owners who fail to mark their dams. It also updates the definition of run-of-the-river dams to ensure every one of these structures is adequately marked for public safety.
- Since 1989 forty-nine people have lost their lives in dam-related boating accidents. Most of these accidents occurred near low head dams – which were small, private or municipally owned structures that spanned the width of a waterway. Over 300 of these dams exist in PA. Boaters are often caught in the dangerous hydraulic boil behind the structure, which is often call a “drowning machine”.



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House Bill 1459 (Schlossberg-D) Pa WARN LIABILITY

- Amends Title 35 (Health and Safety) providing liability protection for PaWARN members or non-utilities (i.e., state prisons, boroughs, townships, etc.) when deployed by PEMA (PA Emergency Management Agency).
- Deployment protections – A person that or an agent or employee of an employer who is temporarily deployed by the Commonwealth or provides equipment for the purpose of emergency services activities in response to a mutual aid request by the agency shall be granted immunity except in cases of willful misconduct, gross negligence, recklessness or bad faith, and shall not be liable for the death or injury to persons or for damage to or loss of property as a result of that activity. No immunity, rights, or privileges shall be granted to persons under this subsection unless deployed by the Commonwealth as described:
- Deployment by the Commonwealth – The agency shall promulgate, adopt and enforce rules, regulations, standards, directives and orders as may be deemed necessary to carry out the provisions under the Deployment protections.
- The House concurred in Senate amendments to House Bill 1459 by a vote of 201 – 0. **THIS LEGISLATION IS NOW IN THE GOVERNOR’S OFFICE FOR CONSIDERATION.**



House Bill 1563 (Moul-R)

- Amends Title 53 (Municipalities Generally) providing that the owner of multiple properties or units that are served by a single meter may periodically request the authority to perform a rate study using a minimum of one year of usage data to determine if the rate that the owner is paying is accurate.
- If the rate study determines that an adjustment is needed, the authority shall adjust the rate appropriately and use that rate for a minimum of one year.
- Provides that after an initial rate study, the owner may not request another rate study until one year after the initial rate study has been completed.
- Passed the House 197- 4. In the Senate Local Government Committee, 7/8/2020.



House Bills 2716, 2715, 2714 (Burns-D) American Made Jobs Plan

- **House Bill 2716** - Amends the Underground Utility Line Protection Act to require American-made steel to be used in all construction and repair of underground pipelines.
- Steel is considered American-made if at least 75% of the raw material and production occurs in the United States
- **House Bill 2715** – Requires any construction or repair projects done by a private entity that receives any taxpayer funding to use American-made steel.
- **House Bill 2714** – Provides a 2% bid discount on bids for public projects (such as those carried out by municipalities, school districts and state agencies) when American-made materials are used in the price quote.
- The American Made Jobs Plan has gained wide-spread bipartisan support.



REGULATORY UPDATE



Regulatory Change in Manganese Limits

- A provision in the Administrative Code bill (HB 118 or Act 40 of 2017) directed the Environmental Quality Board to adopt a proposed manganese standard that includes the 1 milligram/liter manganese standard established under 25 PA Code Chapter 93.7 and ensure the standard is met **at the point of intake for water suppliers** (25 PA Code Chapter 96.3).
- The change was requested by the coal industry and would allow the coal industry (and non-profits) to save millions of dollars in treatment of acid mine drainage.
- Coal interests claimed PA's standards were more stringent than neighboring states and required costly and unnecessary treatment to remove manganese from mine water before discharging it.



Regulatory Change in Manganese Limits – Continued

- Coal companies argued that dilution will protect drinking water sources and that the new standard of 1 milligram per liter (mg/l) will have no impact on drinking water systems.
- The 1 mg/l limit is 20 times the amount permitted in drinking water – 0.05 mg/l. It should be noted that EPA regulates manganese as a secondary water contaminant for aesthetic considerations. In PA, secondary contaminants, including manganese are regulated as enforceable limits.
- EPA is currently re-evaluating manganese limits due to concerns that elevated manganese levels may cause neurological harm to infants and children.



Regulatory Change in Manganese Limits – Continued

- It needs to be noted that coal companies are not the sole significant dischargers of manganese. PA DEP has issued more than 900 NPDES permits with manganese limits for non-coal mining related dischargers, including chemical companies, metals manufacturers, coal-fired power plants and wastewater treatment plants.
- DEP published an **Advance Notice of Proposed Rulemaking** in the January 27, 2018 *Pennsylvania Bulletin*, with a Public Comment Period ending February 26, 2018.
- DEP provided an update and sought input from the PA Agriculture Advisory Board on October 25, 2018; to the Water Resources Advisory Committee (WRAC) on November 29, 2018 and the Small Water Systems Technical Assistance Center (TAC) on January 31, 2019.



Regulatory Change in Manganese Limits – Continued

- On March 29, 2019, Senate President Pro Tempore Joe Scarnati (R) and Senator Gene Yaw (R), Majority Chair of the Senate Environmental Resources and Energy Committee filed a petition asking Commonwealth Court for mandamus relief to compel DEP and the Environmental Quality Board (EQB) to set a water quality standard for manganese as required by an October 2017 rider to an Administrative Code budget bill. On November 12th Commonwealth Court ruled that the Senators lacked standing to file for mandamus relief to compel DEP and the EQB to set a water quality standard for manganese.
- On July 25, 2019, the Water Resources Advisory Committee voted to have DEP move forward with a proposal to set a new toxic substances health standard water discharge limit for manganese of 0.3 mg/l, rather than the 1 mg/l. DEP reviewed the existing literature which determined the 1 mg/l standard is not protective of human health due to the neurotoxic impacts of manganese. The new proposed 0.3 mg/l standard would apply to all discharges going into surface waters.



Regulatory Change in Manganese Limits – Continued

- On August 8, 2019, DEP presented the same proposal to the Small Systems Technical Advisory Committee (TAC) and the TAC Board unanimously approved a motion to support the proposed manganese standard of 0.3 mg/l.
- As of July 7, 2020, the Environmental Quality Board (EQB) has proposed to amend 25 Pa. Code Chapter 93 (relating to water quality standards) and 25 Pa Code Chapter 96 (relating to water quality standards implementation) to delete the existing manganese numeric criterion which was established to protect Potable Water Supply use and add a manganese criterion relating to human health and aquatic life criteria for toxic substances designed to protect human health from the neuro-toxicological effects of manganese.



Regulatory Change in Manganese Limits – Continued

- The amendments propose two alternative points of compliance for the proposed manganese criterion:
 - The first alternative point of compliance moves the point of compliance to the point of all existing or planned surface potable water supply withdrawals.
 - The second alternative point of compliance maintains the existing point of compliance in all surface waters (i.e., at or near the point of discharge),
- **The Proposed Regulations for Manganese present both alternatives for consideration: Proposed Rulemaking #7-553 – Water Quality Standards for Manganese and Implementation, for publication in the PA Bulletin, July 25, 2020. PUBLIC COMMENT PERIOD ENDS – SEPTEMBER 25, 2020.**
- Independent Regulatory Review Commission (IRRC) review due October 26, 2020.



DEP ACTIVITY



SMALL SYSTEMS TECHNICAL ASSISTANCE CENTER BOARD – TAC BOARD

- DRAFT TECHNICAL GUIDANCE – One Hour Reporting Guidance Strategy (TGD1_Draft PDF)
- DRAFT TECHNICAL GUIDANCE – Pennsylvania Capability Enhancement Strategy (TGD2_Draft PDF)
- Go to:
www.dep.pa.gov/PublicParticipation/AdvisoryCommittees/WaterAdvisory/TAC/pages/default.aspx

Select July 23, 2020 TAC Board Meeting.



QUESTIONS





Thanks for joining us!
Download the slides at ssmgroup.com

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