

GOVERNMENT RELATIONS

From Milliron and Goodman Government Relations, LLC, Harrisburg, PA

**Berks County
Water & Sewer**
ASSOCIATION

June 3, 2019 Issue 64

Speaker Announces Special Election for 85th Legislative District

On May 28, 2019, Speaker of the House of Representatives Mike Turzai (R-Allegheny) ordered a special election for Tuesday, Aug. 20, to fill the vacant seat in the 85th Legislative District, located in parts of Union and Snyder counties. The special election will fill the seat vacated by Rep. Fred Keller, who recently won election to The United States Congress.

Turzai filed the writ of election, the formal document setting the date of a special election, with the Department of State. A copy of the writ is also being filed with the board of elections in Union and Snyder counties.

Candidates for the office will be selected by a process designated by their respective political parties, and the winner of the special election will take office after the results are certified.

Meanwhile, the 85th Legislative District office, located in the Mifflinburg Government Center, 343 Chestnut St., Suite 1, Mifflinburg, will remain open. Residents can call and make an appointment for assistance at 570-966-0052. The website, <http://www.repfredkeller.com/>, will also redirect constituents to many state documents and other helpful information. **Source:** Speaker Turzai Press Release, 5/28/2019

PUC Damage Prevention Committee Actions Announced Against Underground Facility Owners, Excavators and Project Owners

A total of 97 disciplinary actions, including \$78,700 in administrative penalties, have been taken against 48 underground facility owners, excavators and project owners in the **latest enforcement actions**

http://www.puc.pa.gov/transport/gassafe/pdf/DPC_Agendas/2019/DPC_Case_Summaries051419.pdf by the Public Utility Commission's (PUC's) Damage Prevention Committee (DPC). These actions were taken during the DPC's May 2019 meeting.

The DPC is tasked with enforcing the state's Underground Utility Line Protection Act - also known as the "PA One Call Law."

A comprehensive list of summaries and actions

http://www.puc.pa.gov/utility_industry/transportation/pa_one_call_enforcement/dpc_agendas_Actions.aspx from DPC meetings is available on the PUC's website. Penalties are payable to the Commonwealth of Pennsylvania. The Commission will offset the costs of administering this program through the penalties collected.

Digging Safety - PA One Call

Every year, underground lines across the state are struck more than 6,000 times - which means that during the average workday a pipeline or other vital utility system is hit every 20 minutes. While underground lines are often "out of sight and out of mind," every hit poses a risk to the contractors and homeowners who are doing the digging; to utility workers and emergency responders who are mobilized when lines are struck; and to bystanders who live, work or travel near the locations of the incidents.

State law

<https://www.legis.state.pa.us/cfdocs/legis/li/uconsCheck.cfm?yr=2017&sessInd=0&act=50> requires contractors and residents to contact PA One Call at least three business days prior to excavation - triggering alerts to all utilities within an intended digging area and prompting utilities to mark where their

facilities are located. Pennsylvanians can dial 8-1-1 to connect with the One Call system, while out-of-state residents or businesses can call 1-800-242-1776.

About the DPC

The DPC is part of the PUC's independent Bureau of Investigation and Enforcement, which also includes the Pipeline Safety Division.

Modeled after successful programs in other states, the **focus of the committee** http://www.puc.pa.gov/utility_industry/transportation/pipeline_safety/pa_one_call_enforcement.aspx is a reduction in the number of "hits" on underground utilities.

The DPC meets regularly to review alleged violations of the Act and makes determinations as to the appropriate response including, but not limited to, the issuance of warning letters or administrative penalties. The committee holds public meetings in Hearing Room 1 of the Commonwealth Keystone Building, Harrisburg, and each of the meeting is livestreamed on the PUC's website http://www.puc.pa.gov/about_puc/live_streaming_video.aspx.

About the Bureau of Investigation & Enforcement

As the independent investigation and enforcement bureau of the PUC, I&E enforces state and federal pipeline safety and motor carrier safety laws and regulations and represents the public interest in ratemaking and service matters before the PUC's Office of Administrative Law Judge. I&E has the authority to bring enforcement action, seek emergency orders from the Commission or take other steps to ensure public safety.

Source: PUC Press Release, 5/30/2019

PUC – Standards and Billing Practices for Residential Public Utility Service

The Public Utility Commission amended its existing regulations to protect responsible bill-paying customers from rate increases attributable to the uncollectible accounts of customers by providing public utilities with the collection mechanisms and procedures to promote timelier collections, while protecting vulnerable customers by ensuring that utility service remains available to all customers on reasonable terms and conditions.

The legislation is applicable to electric distribution utilities, water distribution utilities, natural gas distribution utilities, steam heat utilities, and wastewater utilities. Additional information can be found on the Pennsylvania Bulletin.

Source: Pennsylvania Bulletin, 6/1/2019
<https://www.pabulletin.com/secure/data/vol49/49-22/851.html>

Wolf Administration Announces Funding for Improved Water Quality and Sewer Infrastructure in Southwest Pennsylvania

On May 28, 2019, Governor Tom Wolf announced a total of \$2 million in Community Block Grant Development (CDBG) funding to improve water quality and sewer infrastructure in Somerset and Greene Counties.

"One of the biggest challenges our local governments face is how they manage their aging and inadequate infrastructure," Governor Wolf said. "This funding is critical to assist two communities in Somerset and Greene counties that have been struggling with poor water quality and an insufficient sewer system."

Somerset County will receive \$1 million in funding through the Somerset Redevelopment Authority in partnership with the Confluence Borough Municipal Authority. The funding will be used to replace the outdated water line serving Draketown Village that was constructed in the late 1800s. The water line, which is deteriorated and leaking, has contributed to unclean water which has caused the area to be on a boil water notice since 2014. Additionally, the reduced pressure due to the pipe leaking could affect the ability of firefighters to get enough water quickly.

The replacement project will consist of the construction and installation of approximately 12,000 linear feet of new six-inch high-density polyethylene water line. It also includes six new fire hydrants and 42 service connections. The project will completely solve the pipe leaking issues and is necessary to tackle the greater water quality and treatment issue in the area.

The second project is for Greene County, which will receive \$1 million to make improvements and replacements along Waynesburg Borough's sewer system. Currently, deficiencies in the sewer line and

the interceptor - the structure that filters contaminants from the water system - have caused the system to be overloaded. During periods of heavy wet weather, the borough suffers a higher chance of untreated human waste being discharged into the nearby South Fork of Ten Mile Creek. This project will replace at least 630 linear feet of sewer pipeline and repair a further 7,645 linear feet of pipeline along the interceptor.

While programs like CDBG provide important funding to help specific municipalities improve their aging infrastructure, additional resources are needed to address the problem at a comprehensive, statewide level. Governor Wolf's bipartisan Restore Pennsylvania proposal will provide \$4.5 billion to address infrastructure issues like blight, broadband, flood protection, green infrastructure, and contaminant remediation.

For more information, visit the DCED Website <https://dced.pa.gov/>.

Learn more about the **Restore Pennsylvania Plan** <https://www.governor.pa.gov/restore-pennsylvania/>.

Source: Governor Wolf's Press Office, 5/28/2019

June 4 Clean Water Action Lobby Day in Harrisburg to Protect Drinking Water

On June 4 Clean Water Action will host a lobby day in Harrisburg to draw attention to the need to **protect drinking water sources from lead and PFAS contamination.**

The Environmental Rights Amendment in the Pennsylvania's Constitution guarantees us the right to pure water. Yet, people all across Pennsylvania live without access to clean drinking water sources due to contamination from lead and PFAS; their health, households, schools, workplaces and farms are threatened.

Addressing these threats to our drinking water requires strength in numbers. That's why Clean Water Action is taking residents across the Commonwealth to Harrisburg to meet directly with state legislators about these critical water threats and pressuring them to support efforts which uphold Pennsylvanians' right to pure water.

Click here for more information <https://www.cleanwateraction.org/events/join-us-clean-water-lobby-day-capitol> on how you can get involved.

Source: PA Environmental Digest Blog, 6/2/2019

Senate Environmental Committee to Consider Bills June 4 to Pay Drilling Rights Owners, Change Definition of Pollution

The Senate Environmental Resources and Energy Committee is scheduled to meet **June 4** to consider a number of significant and controversial bills in opposition to the fracking moratorium in the Delaware Watershed, nutrient reduction procurement legislation and a bill that would loosen the requirements for reporting spills

and redefine what constitutes pollution under the state Clean Streams Law.

The Committee will also consider the Senate version of legislation -- **Senate Bill 108** <https://www.legis.state.pa.us/cfdocs/billinfo/billinfo.cfm?year=2019&sInd=0&body=S&type=B&bn=108> (Yaw-R-Lycoming) -- to create a check off on vehicle and driver's licenses for a Keystone Tree Fund to support the development of riparian buffers.

The House version -- **House Bill 374** <https://www.legis.state.pa.us/cfdocs/billinfo/billinfo.cfm?year=2019&sInd=0&body=H&type=B&bn=374> (Everett-R- Lycoming) -- has been stuck on the House Calendar since it was reported out of Committee on February 19.

The other bills include:

- **Compensate Gas Rights Holders In Delaware Watershed: Senate Bill 305** <https://www.legis.state.pa.us/cfdocs/billinfo/billinfo.cfm?year=2019&sInd=0&body=S&type=B&bn=305> (Baker-R-Luzerne) would require the Delaware River Basin Commission to reimburse oil and gas rights holders for the value of their rights if DRBC adopts a moratorium on fracking in the watershed. Similar legislation was reported out of the Committee last session. It is not known whether there will be any amendments to the bill.

The House Environmental Resources and Energy Committee reported out its version of the bill -- **House Bill 827** <https://www.legis.state.pa.us/cfdocs/billinfo/billinfo.cfm?year=2019&sInd=0&body=H&type=B&bn=827> (Fritz-R- Wayne) on March 26 and it is now on the House Calendar for action. Click here

<http://www.paenvironmentdigest.com/newsletter/default.asp?NewsletterArticleID=46212&SubjectID=16> for background on the issue.

- **Nutrient Procurement Program: Senate Bill 575** <https://www.legis.state.pa.us/cfdocs/billinfo/billinfo.cfm?year=2019&sInd=0&body=S&type=B&bn=575> (Yaw-R-Lycoming) was just introduced May 31. It would establish a procurement program for nitrogen, phosphorus and sediment reductions needed to comply with the Chesapeake Bay Watershed pollution reduction goals and only applies to the Chesapeake Bay Watershed in Pennsylvania. It would appropriate \$20 million from the General Fund to buy reductions after a bidding process. It sets aside 20 percent of the reductions (not the funding) to benefit small farmers in most need of financial assistance. It is not known whether there will be any amendments to the bill.

Last September, Matt Johnston of the University of Maryland Chesapeake Bay Program and Dr. Emily Trentacoste of the U.S. Geological Survey presented the PA Chesapeake Bay Watershed Planning Steering Committee with the **list of the top 11 most cost effective practices** <http://www.paenvironmentdigest.com/newsletter/default.asp?NewsletterArticleID=41067> to reduce nitrogen going to the Chesapeake Bay based on all this experience and data in the Chesapeake Bay Program (**page 73 of his presentation** http://files.dep.state.pa.us/Water/ChesapeakeBayOffice/WIP/PA%20PhaseIIIWIP%20SC%209_27_2017%20Draft.pdf).

The practices include alternative crops on farmland at \$1/pound of nitrogen reduced to

exclusion fencing with grass buffers at \$6/pound.

In between are -- less expensive to more -
- were water quality conservation plans, grass buffers on row crops, barnyard runoff control, water control structures, wetland restoration, forest buffers on row crops (\$2/pound), narrow buffers on row crops, narrow forest buffers on row crops and nutrient management on the land.

The small farmers and landowners that need the financial help to install these much cheaper practices per pound of pollutant removed are very, very unlikely to participate in the bidding process set up in this bill because they individually could not deliver the thousands of pounds of reductions envisioned through this process.

Only more expensive nitrogen removal technologies based on per pound of nitrogen removed could afford to bid in this process. If the only people who can bid are the more expensive options, this process will guarantee it presents agencies with the choice of only picking expensive options.

And setting aside some of the more expensive reductions for small farmers do not make them any cheaper.

An existing, competitive **Nutrient Credit Auction Program** <https://www.pennvest.pa.gov/Services/nutrient-credit-trading/Pages/default.aspx> run by the PA Infrastructure Investment Authority resulted in nitrogen credit sales of \$2.25 per pound last September. The trouble is, the more expensive pollution reduction technology cannot compete in this program because their costs are too high.

- **Changing Spill Reporting Requirements: Senate Bill 619**

<https://www.legis.state.pa.us/cfdocs/billinfo/billinfo.cfm?year=2019&sInd=0&body=S&type=B&bn=619> (Yaw-R-Lycoming) makes fundamental changes to the definition of water pollution under the state Clean Streams Law by saying an accidental spill only constitutes pollution if it violates a numeric surface water quality standard in DEP's Chapter 93 regulations.

It is not known whether there will be any amendments to the bill to address its weaknesses.

Both DEP and the Fish and Boat Commission use the current definition of pollution to protect water quality in surface and groundwater as well as aquatic life in streams, especially when there is a spill.

The bill also makes changes to spill reporting requirements by saying a person or company who caused a spill must first make a determination if the spill violates water quality criteria under Chapter 93 or if it exceeds federal reporting requirements (1,000 gallons in any one incident or 42 gallons in each of 2 discharges) before reporting a spill and then only after they take into account the steps they have taken to control or remediate the impact of the spill.

Changing Definition of Pollution

The bill would add this language narrowing the definition of pollution in the Clean Streams Law: "*An accidental discharge, spill or release that does not cause a violation of any of the numeric water quality criteria under 25 Pa. Code Ch. 93* <https://www.pacode.com/secure/data/025/chapter93/chap93toc.html> (relating to water quality standards) *for the receiving water does not constitute pollution.*"

As written, the new definition would not consider a spill or discharge to groundwater as pollution, if it does not cause a violation of a numeric surface water standard in Chapter 93.

Chapter 93 protects water quality by protecting the designated water uses of streams and rivers such as for water supply, aquatic life, fishing and recreation. This concept is fundamental to the regulation and reporting of pollution under state and federal law across multiple programs.

Every stream and river and larger stream segment in the Commonwealth is classified in one of 16 protected uses -- Aquatic Life (4), Water Supply (5), Recreation and Fish Consumption (4), Special Protection (2) or Navigation (1) (**Section 93.3** <https://www.pacode.com/secure/data/025/chapter93/s93.3.html>).

In addition, there are a series of 10 Statewide Water Uses protecting all surface waters (**Section 93.4** <https://www.pacode.com/secure/data/025/chapter93/s93.4.html>).

There are very few numeric water quality criteria in Chapter 93, in fact there are only 15 specifically named in **Section 93.7** <https://www.pacode.com/secure/data/025/chapter93/s93.7.html> -- including alkalinity, ammonia nitrogen, bacteria, chloride, color, dissolved oxygen, fluoride, iron, manganese, nitrite plus nitrate, osmotic pressure, pH, Phenolics, sulfate and temperature.

Section 93.7 adds a general requirement that, “The list of specific water quality criteria does not include all possible substances that could cause pollution. For substances not listed, the general criterion that these substances may not be inimical or

injurious to the existing or designated water uses applies.”

Section 93.6

<https://www.pacode.com/secure/data/025/chapter93/s93.6.html> also says “Water may not contain substances attributable to point or nonpoint source discharges in concentration or amounts sufficient to be inimical or harmful to the water uses to be protected or to human, animal, plant or aquatic life.

“In addition to other substances listed within or addressed by this chapter, specific substances to be controlled include, but are not limited to, floating materials, oil, grease, scum and substances that produce color, tastes, odors, turbidity or settle to form deposits.”

Again, not numeric water quality standards.

Chapter 93.4 also protects High Quality and Exceptional Value Waters by saying the stream’s existing water quality cannot be degraded from the chemical and biological values established during a formal assessment of stream water quality.

Again, they are not necessarily all numeric water quality standards, especially for protecting aquatic life, and they are specific to a specific stream, river or specific stream segments.

Under the change in definition of pollution offered in this bill, neither DEP nor the Fish and Boat Commission could require the cleanup of a spill, require the company to fix the problem that caused a spill or take other enforcement actions like assessing penalties or natural resource damages against an individual or company unless a spill violated the “numeric water quality criteria under **25 Pa. Code Ch. 93**

<https://www.pacode.com/secure/data/025/chapter93/chap93toc.html> .”

If a spill temporarily or irreparably harmed aquatic life, temporarily or permanently prevented a stream or river from being used according to its designated use, without violating a numeric standard, neither DEP nor the Fish and Boat Commission could take any action.

Importantly, the new language would also rule out taking any action against anyone causing a spill that affected groundwater and not surface water, if the spill did not violate a numeric water quality criteria in Chapter 93.

Spill Reporting

DEP’s regulations in 25 Pa Code **Chapter 91.33** <https://www.pacode.com/secure/data/025/chapter91/s91.33.html> require any individual or company that spills a “toxic substance or another substance which would endanger downstream users of the waters of this Commonwealth, would otherwise result in pollution or create a danger of pollution of the waters, or would damage property, is discharged into these waters—including sewers, drains, ditches or other channels of conveyance into the waters—or is placed so that it might discharge, flow, be washed or fall into them” to notify DEP of the spill.

They must also notify known downstream users of the water, like a drinking water company, a farmer withdrawing water for irrigation or industrial user, of the spill so they can appropriate steps to protect their systems.

The individual or company spilling the substance must also immediately take steps

to prevent injury to property and downstream.

The bill says spills only need to be reported, **NOT** when they “create a danger of pollution of the waters, or would damage property,” but rather only when:

- The individual or company first makes a determination the spill violates surface water quality criteria under Chapter 93; or
- If it exceeds federal reporting requirements (1,000 gallons in any one incident or 42 gallons in each of 2 discharges) and only after they take into account the steps they have taken to control or remediate the impact of the spill; and
- Only after taking into account any control and remedial measures they have taken.

Ironically, the spill reporting requirements would require notification of spills affecting groundwater because it uses the term “waters of the Commonwealth,” but because of the proposed change in the definition of pollution, neither DEP nor the Fish and Boat Commission could take any action against the individual or company responsible for the spill if it did not violate numeric water quality criteria for surface waters.

Determining Violations of Water Quality Standards

The practical realities of making a determination if numeric water quality standards were violated during a spill emergency under this bill would require a company or individual to:

- Know the precise chemical composition of the material being spilled and the amount and if it isn't known, to take, analyze and report those results [getting test results in an emergency timeframe would not be possible and even the amounts are frequently not known at the time of a spill, especially to groundwater];
- Know the classification, designated use and any special numeric water quality standards in place at the precise point the spill would enter a surface water [possible, but unlikely, especially in circumstances where a spill happens from a tank truck, pipeline or similar sources]; and
- Taking, analyzing and reporting the results of water samples upstream, at the point of the spill and downstream of the spill to determine if the numeric standard was violated at the exact time of the spill [not something that can be accomplished during an emergency caused by a spill].

Likewise, if DEP or the Fish and Boat Commission wanted to take any compliance or enforcement action for a spill with the change in definition of pollution proposed in Senate Bill 619, they would have to prove a numeric water quality standard was violated at the exact time of the spill, which would not be possible after the fact.

The sweeping changes made by Senate Bill 619 would fundamentally change the how Pennsylvania's surface and groundwater is protected from pollution, significantly restrict the ability of DEP and the Fish and Boat Commission from taking action to require the cleanup and prevention of spills and to assess penalties and to the requirements for reporting spills.

Click here <https://www.legis.state.pa.us/cfdocs/Legis/CSM/showMemoPublic.cfm?chamber=S&SPick=20190&cosponId=29204> for a sponsor summary of the bill.

The meeting will be held in Room 8E-B East Wing of the Capitol starting at 9:30. **Click here to watch the meeting live online** <https://environmental.pasenategop.com/060419/>.

Sen. Gene Yaw (R-Lycoming) serves as Majority Chair of the Senate Environmental Committee and can be contacted by calling 717-787-3280 or sending email to: gyaw@pasen.gov.

Sen. John Yudichak (D-Luzerne) serves as Minority Chair and can be contacted by calling 717-787-7105 or sending email to: yudichak@pasenate.com.

Source: PA Environmental Digest Blog, 5/31/2019

#####

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.