

**SEFLUC
Regulatory Update
December 10, 2018**

Updates

- **EPA Requests Comments on Conduit Theory**
 - December 3, 2018 – Supreme Court order inviting solicitor general to file briefs expressing views of the United States as to whether CWA applies under groundwater conduit theory by January 4.
 - August 30, 2018 - Maui case appealed to US Supreme Court
 - Awaiting whether certiorari is granted

- **EPA – Office of Inspector General Report**
 - November 15, 2018 – EPA Unable to Assess the Impact of Hundreds of Unregulated Pollutants in Land-Applied Biosolids on Human Health and Environment (https://www.epa.gov/sites/production/files/2018-11/documents/epaoig_20181115-19-p-0002.pdf)
 - Land Application of biosolids is not adequately regulated to ensure protection of public health and safety.
 - EPA monitored 9 pollutants, but lacked the data or risk assessment tools to make a determination on the 352 pollutants found in biosolids (61 designated acutely hazardous, hazardous, or priority pollutants in other programs)
 - Reduced staff and resources in EPA
 - Recommendations:
 - Address control weaknesses in biosolids research, information sharing with the public, pathogen control and training
 - Improve consistency of compliance monitoring and better record inspection data
 - 5 recommendations unresolved

- **Palm Beach County Inspector General 2019 Audit Plan**
 - **December 5 – Letter Sent to IG Office**
 - Letter to IG office raising concerns regarding statements in 2018 Audit Report against Town of Mangonia Park and 2019 Audit Plan seeking to audit “multiple utilities” cross-connection programs for regulatory compliance with SDWA as exceeding delegated authority and infringing on County Health Department’s enforcement of cross-connection rules

- **FDEP Clarification of Rule 62-550.822 Disinfection Byproducts (DBP) Requirements: TTHM and HAA5**
 - **December 4 - Public Records Request to DEP for communications relating to 21 day rule, technical supporting documents, guidance manual, and alternative treatment options**
 - Coordination with FSAWWAUC
 - **September 27, 2018** – DEP Southeast District Open House, general overview; Broward County Only Meeting re: drinking water assumption
 - Local utilities continuing to be required to provide support for burn
 - **August 30, 2018** – Conference Call with Joni Synatschk and Jamie Shakar (DEP), Chris Pettit, Lisa Wilson Davis, Kevin Carter, Natalia Garcia, Ted Petride (Ops Director, City of Sunrise), Mark Darmanin (Ops Director, Broward County)
 - **DEP is looking for any kind of explanation to show that utilities are burning in excess of 21 days for a reason rather than just because it has always done it that way.**
 - Recommended testing during burn, which SEFLUC described as not appropriate
 - DEP Goal is for utilities to ok at alternate ways to keep disinfection byproducts lower
 - DEP could not offer suggested “alternatives” and we are waiting on them to provide any report containing suggested alternatives. DEP suggested “pretreatment”
 - SEFLUC advised DEP there are no other alternatives other than costly capital improvement projects.
 - Source of 21 day limit was only offered as “EPA recommends no more than 21 days”
 - SEFLUC requested the science supporting 21 days.
 - “You can go more than 21 days IF you provide some type of explanation...” DEP
 - There is no IF because there is no adopted rule or regulation limiting to 21 days.
 - No answer as to what is the penalty if we choose not to provide a justification.
 - State office will work with local regulatory offices to communicate “it’s not a regulation” and recommends we consult with local offices.
 - SEFLUC requested DEP attend the September 27 DEP SE District Open House to discuss this issue with more utilities
 - Follow up Email to DEP after call requesting:
 - Any documents supporting 21 day limit

- Any documents containing recommended alternatives DEP believes we should be pursuing
 - Address this issue at September 27 DEP SE District Open House
 - Also contacted Kent Edwards (DEP SE District) requesting discussion on this issue be held.
- **July 25 – Follow up Email with DEP (Joni and Jamie)**
 - “We reached out to the (DOH) Offices and discussed the clarification memo.”
 - **Has anyone heard from DOH regarding past alleged violations or clarification of the memo?**
 - **Hollywood/PBC**
- July 5 - DOH in Broward County (DOH-Broward) decided to voluntarily discontinue the delegation of authority from the DEP to DOH-Broward for implementation of the Federal Safe Drinking Water Act and the corresponding Florida Safe Drinking Water Act.
 - **Effective September 12, 2018 all DOH-Broward responsibilities for implementation of SDWA will be fully transferred to DEP.**
- **June 29** – Conference call with DEP (Joni Synatschk, MPH, CPM, Program Administrator, Capacity Development Supervisor/Division of Water Resource Management – Drinking Water and Aquifer Protection Program/Drinking Water and Jamie Shakar, Environmental Administrator/Division of Water Resource Management) to clarify intent of May 10, 2018 Guidance Memo.
 - Items discussed/clarified:
 - Both DEP and EPA are encouraging utilities to develop means/methods other than free chlorine burns to comply with the DBP requirements.
 - Confirmed 21 day max referred to in the memo was intended to be per chlorine burn.
 - Confirmed the 21 day max per/chlorine burn is not based on any adopted rules and is the result of an EPA Work Group. Therefore, the 21 day max per/chlorine burn is only recommended best management practice.
 - 2x per year chlorine burn was not included in memo but raised in verbal communications from DEP to County DOH and is also only a recommended best management practice.
 - Informed DEP that the AWWA manual “A Guide for the Implementation and Use of Chloramines” (2004) was actually a Water Research Foundation Guide and only WRF members can purchase and is not listed in 62-550 F.A.C. They are looking into additional guidance manuals they can reference.

- DEP will reach out to DOH to clarify intent of guidance memo and that it cannot be relied upon for enforcement of 21 day per/chlorine burn / 2x per year limits.

Text from Memo:

- For systems that monitor quarterly, regulatory offices must review DBP monitoring plans to identify the specific week of the quarter that will be sampled. For systems on annual monitoring, schedules must designate the specific month that will be sampled.
 - **e. The length of chlorine burns should be kept to a maximum of 21 days. Whenever possible, systems should try to optimize processes using guidance such as AWWA manual “A Guide for the Implementation and Use of Chloramines” (2004).**
- **WIFIA**
 - REGISTER FOR WEBINAR: <https://www.epa.gov/wifia/wifia-resources#information>
 - December 12, 2018 (2-3:30 pm) – WIFIA Financial Benefits Webinar
 - Learn about the WIFIA’s financial benefits including general information about flexibilities and a case study of one of WIFIA’s closed loans
<https://register.gotowebinar.com/register/4953716992200107009>
 - December 18, 2018 (2-3:30 pm) – WIFIA Application Process Webinar
 - Learn about WIFIA application process, including the Letter of Interest submission, evaluation, and selection
<https://register.gotowebinar.com/register/7007744350862369281>
- **Treasure Coast and South Florida Regional Planning Council**
 - October 12, 2018 meeting
 - Florida’s Water Infrastructure Challenges - Disparity in funding
 - **\$50 billion** – Florida’s need over the next 20 years to adequately manage and protect its water resources. This estimate does not include costs associated with the impact of sea level rise and other climatic changes that are increasing stress on the state’s flood control and water management systems.
 - Over the last 14 years, the percentage of the **State’s budget** dedicated to providing drinking water, wastewater, flood control, pollution reduction, and environmental restoration has averaged merely **four tenths of one percent**. By comparison, the transportation infrastructure budget has averaged approximately 11 percent of the State budget.
 - Biosolids

- South Florida and Treasure Coast Regional Planning councils adoption of Resolution TCSF #18-03 and authorize distribution to local government associations and involved state agencies.
 - Resolution encourages:
 - The State of Florida and its local governments to prioritize the **reduction and eventual elimination of the land application of human wastewater biosolids**; and
 - The State of Florida to establish a Pilot Projects Program for **funding local utilities to implement new state of the art wastewater treatment technologies** to improve recovery and afford more efficient use of human wastewater biosolids resources.

- **FAA Reauthorization & Disaster Program Reforms (HR 302)**
 - Exempts drones from restrictions to help facilitate post-catastrophic response operations, such as utility restoration
 - Disaster Recovery Reform Act
 - Within 180 days, guidance document for local governments and utilities on
 - (1) the need to prioritize assistance to hospitals, nursing homes, and other long-term care facilities to ensure that such health care facilities remain functioning or return to functioning as soon as practicable during power outages caused by natural hazards, including severe weather events;
 - (2) how hospitals, nursing homes and other long-term care facilities should adequately prepare for power outages during a major disaster or emergency, as those terms are defined in section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122); and
 - (3) how State, local, and Indian tribal governments, first responders, utility companies, hospitals, nursing homes, and other long-term care facilities should develop a strategy to coordinate emergency response plans, including the activation of emergency response plans, in anticipation of a major disaster, including severe weather events
 - Public Assistance Grant Program
 - 60 days after act, must conduct a review of assessment and eligibility process under the public assistance grant program with respect to assistance provided for damaged underground water infrastructure.

- **America’s Water Infrastructure Act of 2018 – Signed into Law October 23, 2018**
 - Title I Water Resources Development

- Expediting Lake O regulation review
 - Kissimmee River Restoration credit opportunity for work by non-Federal sponsor of project for ecosystem restoration
- Title II Drinking Water Infrastructure
 - Drinking Water section that includes some new funding opportunities for resiliency/sustainability (several modest appropriation but as an aggregate appear to be good news)
 - Risk & Vulnerability Assessment Certifications tiered compliance dates and then every 5 years after.
 - Consumer Confidence Reports to biannual starting in 2020
 - School drinking fountain replacement
 - Improved accuracy and availability of monitoring data
 - Asset Management Plan (encouragement not mandate)
 - Disadvantaged community and appears to be some affordability issues addressed
 - SRF, WIFIA
 - Source water protections
 - Monitoring for unregulated contaminants (small utilities- 3,300 to 10,000)
- **Biosolids TAC**
 - **November 28-29, 2018** – Regulatory, compliance and inspection update; case study – blue cypress lake; biosolids-borne trace organics
 - **November 16, 2018** - BMP Update, Fertilizer Labeling and Licensing, Nutrient Management Plans for Biosolids, TMDL and BMAP for Biosolids, Dynamics of Biosolids- Borne Phosphorus in Soils
 - **September 5, 2018** – First TAC meeting; overview of regulations and types of disposal used across Florida
 - TAC will move forward with review of current information and new science regarding land application to address algae blooms and other potential environmental concerns.
 - What are options for biosolids management in the state?
 - Are there better ways to manage biosolids to ensure the environment is protected?
 - Is there a need for research on biosolids management?
 - <https://floridadep.gov/water/domestic-wastewater/content/dep-biosolids-technical-advisory-committee> -
- **Potable Reuse Commission Meeting**
 - **NEXT MEETING December 12, 2018 (9am – 2:30)– Regulatory Group Meeting**
 - **November 16 Meeting** – Framework revisions
 - **October 19 Workshop**

- **September 21** – Discussion of Outreach Plan and Framework; Draft report Outline
- **August 10 Meeting** – Discussion of Potable Reuse Framework Concepts and Recommendations (Best available Technology Approach; Scenarios 3 and 4); Draft Outreach Plan
- **July 25 Workshop** - Water Research Foundation provided a summary of recommendations based on stakeholder input.
 - Active workshop with utilities emphasizing desire to not just implement the same framework from other states; focus on incorporating existing regulations and expanding to address issues with direct/indirect potable reuse
- **July 12 Meeting** – discussed framework
- **June 15 Meeting** – discussed draft outreach plan; consideration of technical, managerial and financial requirements in regulatory framework; operator training and certification; source control; website
- <http://prc.watereuseflorida.com/>
- **SFWMD EAA Storage Reservoir**
 - **November 9** – FWF legal challenge to prevent SFWMD from expediting and completing EAA storage reservoir
 - **November 8** – SFWMD approved land lease terminating agricultural operations on 560 acres in the EAA and gave the District control to begin site work to expedite EAA storage reservoir project

Continuing to Monitor/No Update

- **WOTUS**
 - **September 28, 2018** – Florida Stormwater Association reactivated its November 2015 Complaint challenging the WOTUS rules in Tallahassee federal court and asking court to lift the abeyance on their challenge to the 2015 WOTUS rule
 - **August 16, 2018** - South Carolina court granted motion for summary judgment against the “applicability date” rule. This means the 2015 WOTUS rules will be in effect in 26 states (does not include Florida)
 - Effect – in these 26 states, interpretation of what constitutes a water of the US for permitting purposes is based on the WOTUS rules that we were concerned expanded the prior interpretation to include additional wetlands and small waterways (such as storage treatment ponds and ditches/canals)
- **Amendment 1 Funding**
 - Judge Dodson canceled trial brought by environmental groups challenging the State’s use of Amendment 1 money stating he was finding in favor of the

plaintiffs and the use of Amendment 1 money by the Legislature did violate the Florida Constitution. Order is still pending and State will appeal. This will have significant impact on portions of DEP's and the FWC's budgets.

- **EPA Toxicological Profile for Perfluoroalkyls**

- Public Comment Closed August 20
- The Agency for Toxic Substances and Disease Registry (ATSDR), within the Department of Health and Human Services (HHS) announces the availability of the Draft Toxicological Profile for Perfluoroalkyls for review and comment. All toxicological profiles issued as "Drafts for Public Comment" represent ATSDR's best efforts to provide important toxicological information on priority hazardous substances.
 - ATSDR is seeking public comments and additional information, reports, and studies about the health effects of these substances. Although ATSDR considers key studies for this substance during the profile development process, this document solicits any relevant, additional studies. ATSDR will evaluate the quality and relevance of such data or studies for possible inclusion into the profile. ATSDR remains committed to providing a comment period for this document as a means to best serve public health.
- The Tox Profile is accompanied by a fact sheet that utilities may find helpful in putting drinking water PFAS exposure in context for customers.
- EPA is expected to release draft toxicity values for perfluoro-2-propoxypropanoic acid (GenX) - a replacement chemical for PFOA, and perfluorobutane sulfonate (PFBS) in August.

- **PFOA/PFAS Standards**

- Currently, the EPA has a **non-enforceable [health advisory level](#)** of 70 parts per trillion for Perfluorooctanoic acid (PFOA) and Per- and polyfluoroalkyl substances ([PFAS](#)) combined.
 - The two compounds are the focus of [several activities](#) at EPA, including a national summit in Washington, D.C., in May. **The agency has committed itself to evaluating PFOA and PFAS for regulation in drinking water.**
 - Community outreach workshops in New Hampshire, Pennsylvania and Colorado.
 - EPA will initiate steps to evaluate the need for a maximum contaminant level (MCL) for PFOA and PFOS. We will convene our federal partners and examine everything we know about PFOA and PFOS in drinking water.
 - EPA is beginning the necessary steps to propose designating PFOA and PFOS as "hazardous substances" through one of the available statutory mechanisms, including potentially CERCLA Section 102.

- EPA is currently developing groundwater cleanup recommendations for PFOA and PFOS at contaminated sites and will complete this task by fall of this year.
 - EPA is taking action in close collaboration with federal and state partners to develop toxicity values for GenX and PFBS by this summer.
 - New Hampshire [signed into law](#) a state bill that will have his state’s Department of Environmental Services set drinking water maximum contaminant level standards for Perfluorooctanoic acid (PFOA) and Per- and polyfluoroalkyl substances ([PFAS](#)) by Jan. 1, 2019.
 - EPA conducted community engagement meeting on July 25
 - [Vermont](#) set its on MCLs for PFOA and PFAS at 20 parts per trillion in late 2016, while [New Jersey](#) set an MCL of 14 parts per trillion for PFOA last November.
- **State Assumption of CWA 404 Permit Program**
 - Trump administration supports delegation of program to all states.
 - FDEP and EPA agreed on MOA identifying each agencies responsibility if Florida assumes 404 Permit Program
 - Waiting on similar additional MOAs
 - ACOE – discussion on what waters are being retained by ACOE
 - CWA states in 404(g)(1) what should be assumed by state and should be retained by ACOE (those waters presently used or susceptible to use for interstate commerce, subject to ebb and flow of time, and wetlands adjacent to waters)
 - Much case law on what this language actually means
 - ACOE retains permitting for waters regulated by Section 10 of Rivers and Harbors Act except those based as Section 10 water solely based on historical use
 - Section 10 waters defined as “navigable waters of the united states”
 - If waters are wholly within one state, will be delegated
 - State v. federal wetland laws differ
 - EPA / FWS – working through endangered species issues
 - Chapter 62-331, FAC rule development; waiting approval by EPA

- Rules cross reference MOAs and therefore final rule approval is delayed until MOAs are finalized.
- Goal to submit full assumption package by end of 2018 and receiving approval early 2019