

# Drinking Water and Clean Water Joint Advisory Council June 27, 2023



June 2023

*To Protect and Enhance Kentucky's Environment*

# Kentucky Division of Water

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*The mission of the Kentucky Division of Water is to manage, protect and enhance the quality and quantity of the Commonwealth's water resources for present and future generations through voluntary, regulatory and educational programs.*

# Intention of DW/CW Advisory Workgroup

- To provide an opportunity for industry, the regulated community, the engineering community, consumers, and other stakeholders to provide the Cabinet/Department/Division updates and input on drinking water and clean water issues
  - Drinking Water Advisory Workgroup
  - Clean Water Advisory Workgroup





Productivity

# DOW's Priorities for 2023



Accountability

- Strategically inform and influence water infrastructure investments including supporting small, disadvantaged communities
- Support department's PFAS-related work
- Implement the Division's nutrient reduction strategy and Gulf Hypoxia Taskforce participation
- Continue to ensure permits (KPDES, KNDOP, floodplain etc.) – are protective, includes dialog with permittees to support economic development, and are issued timely
- Continue supporting response to natural disasters – Dec. 2021 tornado; July 2022 flood; other incidents
- Conduct flood, dams, and drought risk assessments for state hazard mitigation plan
- Streamline internal processes with documentation (SOPs) to improve efficiency
- Continue enhancing partnerships and collaborations with stakeholders



# 2023 Bills of Interest

- **HB 160 – Water Pollution Control (mixing zones)** – [23RS HB 160 \(ky.gov\)](#) - Amends KRS 224.16-080 to provide that any Kentucky Pollutant Discharge Elimination System (KPDES) permittee seeking to rely on a mixing zone for a bioaccumulative chemical concern assigned before September 8, 2004, include information identifying the mixing zone in its application for a modification or approval of a KPDES permit; amend KRS 224.16-090 to provide that if a KPDES permit applicant requests in their application for a modification or renewal of a permit that the Energy and Environment Cabinet take into account rapid and complete mixing at a wastewater outfall, the Energy and Environment Cabinet shall apply rapid and complete mixing in establishing water quality-based effluent limitations and conditions under the KPDES permit if the discharge occurs through a submerged high-rate multi-port outfall structure.
  - Follow up to HB 386 from 2021 session
- **HB 264 – Regulatory relief** – [23RS HB 264 \(ky.gov\)](#) - the “General Regulatory Sandbox Program” this bill is one of great concern – while streamlining permitting and encouraging innovation are admirable goals, this bill would potentially allow trials that fall outside environmental and other safety regulators in favor of a new agency that is not party to the delegation agreements the Commonwealth has with the EPA. It exposes the Commonwealth to loss of its delegated programs and regulation directly by the federal government. The bill became law without the Governor’s signature.
- **SB 213 – Biosolids** - Creates a new section of Subchapter 50 of KRS Chapter 224 to require the Energy and Environment Cabinet to promulgate new administrative regulations to regulate biosolids from wastewater treatment at a publicly owned treatment works in conformity with and no more stringent than federal standards under 40 C.F.R. pt. 503.
- **SB 226 – Environmental Permitting** – [23RS SB 226 \(ky.gov\)](#) –creates KPDES permitting standards that are not within the authority of the Cabinet and are not aligned with the requirements of the Clean Water Act or the agreements between the EPA and the Commonwealth. It exposes the Commonwealth to loss of its delegated KPDES program and regulation directly by the federal government. The bill was vetoed by the Governor but overridden by the legislature.
- **SB 263 – Regionalization of public water and wastewater services** – [23RS SB 263 \(ky.gov\)](#) - encourages consolidation, merger, and regionalization and will require better asset management planning, etc.
- **SB 277 – Water Resources** - [23RS SB 277 \(ky.gov\)](#) – allows the Energy and Environment Cabinet to establish administrative regulations requiring owners of significant and high hazard dams to develop and maintain emergency action plans.





# PFAS

- EPA proposing a national primary drinking water regulation (NPDWR) to establish legally enforceable levels, called Maximum Contaminant Levels (MCLs) for six PFAS in drinking water:
  - PFOA and PFOS as individual contaminants, and
  - PFHxS, PFNA, PFBS, HFDO-DA (GenX) as a mixture
  - Proposed Final Rule early 2024
  - Requires water systems to monitor and notify, similar to Tier 2 notifications (within 30 days), and treat if necessary
- State primacy updates expected in next 2 years

Compound	Proposed MCLG	Proposed MCL (enforceable levels)
PFOA	0 ppt*	4.0 ppt*
PFOS	0 ppt*	4.0 ppt*
PFNA	1.0 (unitless) Hazard Index	1.0 (unitless) Hazard Index
PFHxS		
PFBS		
HFPO-DA (GenX)		

\*ppt = parts per trillion (ng/L)



# PFAS

- EEC/DEP/DOW launched a PFAS drinking water study in Spring 2023
  - Supplements 2019 drinking water study and UCMR5 data
  - <https://eec.ky.gov/Environmental-Protection/Water/Protection/Pages/PFAS.aspx>
- DOW does not currently have specific PFAS-related requirements on KPDES permits
- EPA Memo addressing PFAS Discharges in **EPA-Issued** NPDES Permits
  - Recommended Permit Conditions for Applicable Industrial Direct Dischargers and Publicly Owned Treatment Works (POTWs):
    - Effluent monitoring for PFAS
    - Best Management Practices (BMPs) for PFAS
    - BMPs to address PFAS-containing firefighting foams for stormwater permits
    - Effluent, influent and biosolids monitoring for PFAS on POTWs



# Water Infrastructure

- Generational investments in water infrastructure
- Federal and state agencies still ramping up
  - EPA Region 4 undergoing reorganization
- Project scoping, ranking, and implementation ongoing
  - Comprehensive list in addition to WRIS needed
- Opportunities
  - State Revolving Fund
  - Emerging Contaminants for Small or Disadvantaged Communities
  - Closing the Wastewater Gap in Harlan Co.
  - USDA Rural Development Disaster Water Grants
  - US Economic Development Administration 2023 Disaster Supplemental
    - \$160 million for EDA Atlanta Office
    - All presidentially declared events in 2021-2022
    - 80% federal/20% match
  - HUD CDBG-Disaster Recovery
  - FEMA Building Resilient Infrastructure and Communities (BRIC)
  - Earmarks
    - Take from various funding sources





# WOTUS

- The U.S. EPA and the Department of the Army (Army) published the final “Revised Definition of ‘Waters of the United States’” rule in the Federal Register on January 18, 2023; the became effective on March 20, 2023
- Or so we thought...
- Sackett v EPA – May 25, 2023
  - The Clean Water Act extends to only those ‘wetlands with a continuous surface connection to bodies that are “waters of the US” in their own right’, so that they are ‘indistinguishable’ from those waters.”
- Implications
  - Limits CWA protection of some KY wetlands
  - DOW implementing the 2020 Clean Water Act Section 401 Certification Rule
  - No guidance has been released from EPA or USACE for implementation.
    - During the Rapanos decision in 2008 it took 8 months for the feds to release guidance
  - USACE is not processing Approved Jurisdictional Determinations (AJDs). If applicants wish to pursue WOTUS based on Sackett, DOW is withdrawing the WQC applications until guidance is received
  - If applicants wish to proceed with Preliminary Jurisdictional Determinations (PJDs) that assumes all waters are jurisdictional, DOW is processing 401 WQC applications



# Other Interesting Tidbits

- The 2022 CWA 303(d) list (impaired and threatened waters) came off public notice April 22, 2023, and the Division of Water submitted the 2022 Integrated Report to EPA on June 9, 2023
- Nutrients:
  - DOW will have a Nutrient Reduction Strategy kick-off meeting with various partners, including ORSANCO and surrounding states on June 30, 2023 virtually and in-person.
  - DOW is working with EEC Office of Energy Policy to identify (and fund) potential optimization efforts to reduce N and P in wastewater effluent



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# Contact Information

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<b>Drinking Water Branch</b>	Alicia Jacobs, Branch Manager, 502-782-6987, <a href="mailto:Alicia.Jacobs@ky.gov">Alicia.Jacobs@ky.gov</a>	Maintains list of certified laboratories. Provides technical assistance to drinking water facilities. Ensures drinking water complies with federal and state regulations.
<b>Field Operations Branch</b>	Connie Coy, Branch Manager 502-782-6587, <a href="mailto:Constance.Coy@ky.gov">Constance.Coy@ky.gov</a>	Inspects municipal and non-municipal facilities. Responds to reports of spills or bypasses. Investigates citizen's complaints.
<b>Program Planning and Program Support Branch</b>	Heather Baker, Branch Manager, 502-782-7124, <a href="mailto:Heather.Baker@ky.gov">Heather.Baker@ky.gov</a>	Accepts general public inquiries. Manages contracts and grants. Manages Division HR and purchases.
<b>Surface Water Permits Branch</b>	Jason Hurt, Branch Manager, 502-782-6167, <a href="mailto:Jasonm.Hurt@ky.gov">Jasonm.Hurt@ky.gov</a>	Issues KPDES permits to discharge stormwater from construction sites. Issues KPDES permits for wastewater discharges. Oversees pretreatment programs. Oversees Municipal Separate Storm Sewer Systems (MS4) program.
<b>Water Infrastructure Branch</b>	Jory Becker, Branch Manager, 502-782-6887, <a href="mailto:Jory.Becker@ky.gov">Jory.Becker@ky.gov</a>	Issues construction permits for drinking water facilities and distribution lines. Issues construction permits for wastewater treatment facilities. Issues construction permits for sewer lines and extensions.
<b>Water Quality Branch</b>	Nicholas Reif, Branch Manager 502-782-3284, <a href="mailto:Nicholas.reif@ky.gov">Nicholas.reif@ky.gov</a>	Maintains list of special use and impaired waters. Assesses the water quality of rivers, lakes and streams.
<b>Water Resources Branch</b>	Shawn Hokanson, Branch Manager, 502-782-6977, <a href="mailto:Shawn.Hokanson@ky.gov">Shawn.Hokanson@ky.gov</a>	Issues permits for construction in floodplain. Issues permits to construct dams. Issues §401 water quality certifications for construction in waters of the US.
<b>Watershed Management Branch</b>	Joanna Ashford, Branch Manager 502-502-782-2198, <a href="mailto:Joanna.Ashford@ky.gov">Joanna.Ashford@ky.gov</a>	Issues permits to withdraw water. Certifies well drillers and maintains well driller directory. Maintains database of water availability for use (quantity and quality).