



Association of Environmental Authorities of New Jersey

Tuesday, August 29, 2023

NJDEP to Hold Q/A Session on newly adopted Inland Flood Protection Rule



Revised Inland Flood Protection Rules adopted in July will be the topic of a virtual Q/A session the NJDEP has scheduled for **Thursday, Aug. 31 from 11 am to noon.**

Three NJDEP officials -- Vincent Mazzei (State Floodplain Administrator), Gabriel Mahon (Stormwater Management Program Manager), and Kunal Patel (State NFIP Coordinator) -- will be on hand to answer questions.

The Microsoft Teams Meeting ID is 258 952 656 678; Passcode pEtisL. [Here is the link.](#)

Phone access is 1-856-338-7074; Passcode: 66825392#

NJPDES Fee Structure to be Revised, Says NJDEP

The NJDEP is proposing revisions to its existing fee structure for NJPDES permits, something the NJDEP started promising to do in 2013.

Over the ensuing years, AEA participated in several stakeholder meetings. AEA has also submitted written comments each year when the fees adoptions were announced. Comments have cited **concerns about fairness of the fees, improving the collection rate for unpaid fees, and accurately representing overhead costs** in fee calculations. The NJDEP has said it would like to make the fees more predictable.

The NJDEP has scheduled "one final stakeholder session" for **Wednesday, Sept. 13, 2023** from 12:30 to 2 pm. AEA will participate in this online stakeholder meeting.

If you would like to participate in the session but have not received a notice,

please either let Peggy know.

Join AEA Session at NJWEA Tech Transfer on Tuesday, Sept. 12

The AEA session at Tech Transfer will take place on Tuesday, Sept. 12. It will feature presentations on:

- Hanover SA's asset management plan
- An AEA-developed Monitoring Plan that wastewater systems can use to voluntarily characterize their PFAS
- Combatting dissolution of an authority
- A workforce development plan involving Hudson County Community College
- A study of the effectiveness of the NJ State Revolving Fund for disadvantaged communities
- An overview of a DCA grant program known as Local Efficiency Achievement Program or LEAP
- An update on biosolids policy at the federal level
- An introduction of a new guide called "Smart Choices for Water and Sewer."

[To find out more, click here.](#)

AEA Executive Director to Participate in Panel on Privatization at Upcoming Pennsylvania Municipal Authorities Association Conference

AEA Executive Director Peggy Gallos has been invited to join a panel exploring privatization in Pennsylvania and New Jersey at the September conference of the Pennsylvania Municipal Authorities Association (PMAA).

The multi-day conference takes place from Sunday, Sept. 17 to Wednesday, Sept. 20 at the Kalahari Resort in the Poconos. The privatization panel will be held at 3 p.m. on Tuesday, Sept. 19. [More info.](#)

Pennsylvania Court Decision Tosses a Cornerstone Argument of Corporations

Earlier this summer, a Pennsylvania Commonwealth Court ruled that the Pennsylvania Utilities Commission misapplied law and erred when it approved the sale of the East Whiteland Township sewer system for \$54.9 million to Aqua Pennsylvania Wastewater. The sale was conducted under Pennsylvania's so-called "fair market value" law, Act 12. As permitted under Act 12, Aqua offered \$54.9 million, which is 64 percent above the system's book value of \$33 million.

The Commonwealth's Consumer Advocate, Patrick M. Cicero, requested that the Court review the July 29, 2022 PUC order approving the sale of the wastewater system that serves 3,895 residents. Cicero argued that the PUC did not properly apply the law when it found that the transaction would provide "affirmative public benefits" that outweigh any potential harms.

Under Act 12, the \$54.9M purchase price would be added to ratebase—and result in a rate increase for East Whiteland (after an initial brief period when rates would not be increased). The cost of the transaction would also be assumed by Aqua's existing sewer customers (45,000 wastewater customers). Under the Pa. law, investor-owned utilities are permitted to spread acquisition costs across their entire ratebase. The East Whiteland rate increase after sale was projected to be at least 66 percent, but could go as high as 132 percent. At the time the decision was issued, Whiteland sewer customers paid about \$33 per month.

The PUC's order approving the East Whiteland/Aqua transaction justified the sale using a talking point used in most (if not all) water and sewer acquisitions. Aqua said its managerial, technical, and financial attributes constituted an "affirmative public benefit." In approving the sale, the PUC said that the transaction would further the PUC policy encouraging regionalization and consolidation, and that, therefore, was an "affirmative public benefit."

The Court agreed with the Consumer Advocate, however. The Court said that Aqua's technical, managerial, and financial capabilities qualified it to be a buyer for this (and any other similar transaction), but that those capabilities did not constitute an "affirmative public benefit" specific to East Whiteland because East Whiteland was not a distressed system. The Court said the customers have good service, and under Aqua, they would presumably also have good service, so they would gain nothing.

Likewise, the Court did not view the furtherance of a PUC consolidation and regionalization policy as a net affirmative public benefit. On the other hand, the Court agreed with Cicero that, in terms of the public benefits analysis, the likely high rate increase would be disadvantageous. The "net" impact on the public would be negative.

The decision was handed down by a three-judge panel. Aqua, East Whiteland, and the Pennsylvania PUC have asked for a review by all seven judges of the Commonwealth Court.

This case is worth watching because it has implications for water and sewer sales. It would be hard to find a water or sewer privatization deal where the buyer did not argue some form of the Aqua argument: its technical, managerial, and financial capabilities constitute gain – "an affirmative public benefit." Utilities commissions in Pennsylvania and in New Jersey lean on that argument when they approve the transactions again and again. If this decision stands, the system buyers may have to make different arguments to justify selling. The case is almost certain to be cited by opponents of water and sewer sales in New Jersey, too.

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Our primary hub of information is [our website](#). There, you can find our [Career Center](#), where we post free job listings for AEA members; our [blog](#), for recent news and updates; various member lists of [AEA members](#) and [associate members](#), with contact information as applicable; updates from select committees, such as our [Safety Committee](#); and much more.

You can also find us on [Twitter](#), [Facebook](#), and [LinkedIn](#), along with select AEA-produced videos on [Youtube](#).

As an adjunct to AEA's web presence, we also host and run [Protect New Jersey Public Water](#), an informational website devoted to educating people on the benefits of public water utilities and the dangers of private takeovers, as well as [New Jersey Water Utility Peer2Peer](#), an initiative to aid in collaboration and information sharing among New Jersey drinking water, wastewater and solid waste agencies.

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