

### 2022 Environmental and Energy Law Forecast

#### DELAWARE

##### **Governor Carney Unveils Climate Action Plan But is it More Plan than Action?**

***Stephen D. Daly, Esq.***

Governor Carney unveiled Delaware's Climate Action Plan on November 4, 2021 (the "Plan"), continuing his administration's expressed focus on climate change. According to the Governor, the Plan will serve as a roadmap for the State as it pursues goals to both reduce greenhouse gas (GHG) emissions and maximize Delaware's resilience to climate change.

With respect to emissions reductions, the Plan sets a path for achieving the Governor's commitment to reducing state GHG emissions by at least 26 percent by 2025 from 2005 levels. The Plan identifies several potential strategies for achieving these reductions including expanding the availability of clean and renewable energy, phasing out reliance on fossil fuels, improving energy efficiency, transitioning the transportation sector to zero-emission vehicles, and focusing on reductions of "high global warming potential" GHGs like methane. As for improving Delaware's resilience to climate change, the Plan proposes strategies including reviewing and updating existing regulations, coordinating with and supporting local communities and stakeholders, and assisting with Delaware-specific research and monitoring.

None of the Plan's proposed strategies or potential solutions are mandated by law. The Plan itself does not change any existing laws, policies, regulations, or funding levels, according to DNREC. Nor does the Plan call for specific legislative solutions. Rather, the Plan makes repeated reference to taking advantage of existing laws and programs to further its ambitious agenda. In this respect, the Plan tracks similar efforts by DNREC to promote environmental justice, another headlines-grabbing issue, where DNREC has so far eschewed the promulgation of formal rulemaking or guidance, choosing instead to informally incorporate environmental justice considerations into its decision-making.

It therefore remains to be seen what the practical consequences for Delaware and its regulated community will be as a result of the Climate Action Plan.

##### **Delaware PFAS Legislation in 2021 Sets Up PFAS Regulation for 2022**

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Delaware currently follows the EPA's non-enforceable health advisory limit in drinking water of 70 parts per trillion for perfluorooctanoic acid (PFOA) and perfluorooctane sulfonate (PFOS), two prominent types of per- and polyfluoroalkyl substances (PFAS), but that is likely to soon change.

On October 20, 2021, Governor Carney signed into law House Bill No. 8, known as the Drinking Water Protection Act. The Act directs Delaware's Division of Public Health (DPH), in collaboration with DNREC, "to establish state-level maximum contaminant levels (MCLs) for certain contaminants found in public drinking water systems" in the State, specifically PFOA and PFOS. If Delaware adopts stricter MCLs than any EPA limit, the State's standard would control.

The Act sets rigorous deadlines for DPH and DNREC to follow as part of their regulatory processes. The Act gave DNREC and DPH 60 days from the effective date of the Act to begin the regulatory review process, and the Act set a nine-month deadline, now July 2022, for public hearings to be held on proposed regulations. The Act also required DNREC and DPH to conduct a statewide survey on PFAS in drinking water and both report the results of the survey and provide a proposed plan of action by January 1, 2022.

As of the date of this article, the author has not been able to locate a publicly available copy of any statewide survey results or report that have been presented to the Governor or General Assembly. However, in December 2021, the U.S. Geological Survey, in cooperation with DNREC, released the results of a groundwater-quality investigation from 2018 of 30 public water-supply wells in Delaware describing the occurrence and distribution of PFAS. It is unclear whether DNREC intends to rely on the data from the U.S. Geological Survey as the basis for the state-wide survey mandated by the Act.

The Drinking Water Protection Act set in motion what will likely be a very active 2022 for PFAS regulation in Delaware.

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