

2023 Environmental and Energy Law Forecast

DELAWARE

Delaware Likely to Propose State Drinking Water Standards for PFAS

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Last year, Delaware's Division of Public Health (the "Division"), with assistance from the Department of Natural Resources and Environmental Control (DNREC), proposed maximum contaminant levels (MCLs) for perfluorooctanoic acid (PFOA) and perfluorooctane sulfonic acid (PFOS) in drinking water as required by House Bill 8, signed in October 2021 and as previously reported [here](#). The proposed MCLs for PFOA and PFOS were 21 and 14 parts per trillion (ppt), respectively, with a cumulative standard where both are present of 17 ppt. The proposed MCLs appeared in the August 1, 2022 edition of the Delaware Register of Regulations and were originally anticipated to take effect in early 2023. However, the Division is now expected to revise and republish the proposed MCLs as a result of the interim Health Advisory Levels (HALs) published by EPA in June 2022 of 0.004 ppt for PFOA and 0.02 ppt for PFOS. It remains to be seen how the Division will account for EPA's interim HALs. The Division could stick with its original proposal, but it is more likely that the Division either adopts the much more conservative interim HALs proposed by EPA, or some intermediate value between its original proposal and EPA's. No revised proposal has yet been announced, but this is expected to occur sometime in 2023, at which time the public will likely have another opportunity to comment. Stakeholders will want to monitor any opportunity to submit public comment, even if comments were previously submitted regarding the Division's original proposal. Once the new MCLs go into effect, they will presumably be applied as Hazardous Substance Cleanup Act screening levels for groundwater remediations in Delaware.

DNREC Proposing to Adopt California's Zero-Emission Vehicle Standards

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Under the Clean Air Act, states are generally preempted from adopting state emission standards for mobile source emissions, except that California is afforded a special exemption due to its unique air quality problems. Other states may elect to adopt the more stringent California vehicle emission standards, rather than rely on the federal standards. If a state adopts California's emissions standards, they must do so identically.

Delaware is one of the states that has adopted the California standards, see 7 Del. Admin. C. 1140, but it has not yet adopted California's zero-emission vehicle standards, known as "Advanced Clean Car II," which seek to restrict and later ban the sale of most new vehicles powered by gasoline and diesel. In March 2022, Governor Carney directed DNREC to begin the process of adopting the Advanced Clean Car II standards.

In November and December 2022, DNREC received public input and comment regarding the adoption of these standards, including holding several public workshops. Under these regulations, the sale of traditionally fueled light-duty passenger cars, trucks, and SUVs would be rapidly scaled down in Delaware starting in late 2025, culminating with a total ban on the sale of new gasoline and diesel-powered vehicles by model year 2035. Once the proposed regulatory language is finalized, DNREC will promulgate the draft proposed regulatory language and hold a public hearing, likely in early 2023. DNREC expects that the Secretary's decision/order regarding the adoption of the new regulations will be issued in mid-2023.

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