



2020 Environmental and Energy Law Forecast

DELAWARE FORECAST

New Stormwater Regulations Set to Take Effect in Delaware

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The Department of Natural Resources and Environmental Control's (DNREC) revised stormwater regulations went into effect on February 11, 2019. The revision corrected a procedural flaw relating to the DNREC's imposition of mandatory requirements contained in its Technical Documents. The Technical Documents, which prior to the revision were not formally adopted, are now incorporated into the stormwater regulations. Any stormwater management plan that was approved under the previous regulations where construction did not commence by December 31, 2019 must be resubmitted and approved under the new regulation. Construction is deemed commenced when structures or infrastructure is visible. "General earth moving" is not sufficient to be considered commenced construction.

Further, approvals for multi-phase projects which have begun construction are extended, however, any phase which has not commenced construction may only be extended provided that phase's plan was approved with the project's overall stormwater management plan. If the phase was not included in the project's overall plan, then a separate approval must be sought in 2020.

PFAS Contamination Leading to Investigations and Litigation in Delaware

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In December 2019, the U.S. Environmental Protection Agency (EPA), with support from the Delaware Department of Natural Resources and Environmental Control (DNREC), held a public meeting to address the proposed listing of the Blades Groundwater Site in Sussex County, Delaware to the federal Superfund National Priorities List primarily on account of discovery in the local groundwater of elevated concentrations of various contaminants, including PFOA and PFOS, two types of per- and poly-fluoralkyl substances (PFAS). PFAS chemicals have not yet been declared hazardous under the federal Superfund program, although DNREC has identified certain PFAS chemicals, including PFOA and PFOS, as hazardous substances subject to its state cleanup program.

To date, the source of the PFAS contamination in Blades has not been confirmed, although EPA has identified two electroplating facilities in the area, one closed and one still in operation, that may have contributed to the groundwater contamination. In June 2019, residents of Blades filed a putative-class action lawsuit against one of the electroplating companies, Procino Plating Inc., as well as other companies allegedly associated with the manufacture and distribution of PFAS chemicals. The residents claim that they have been exposed to harmful amounts of PFAS through well water and the municipal water supply.

The town of Blades is one of three sites where PFAS chemicals have been detected in elevated concentrations in public water supplies in Delaware. The chemicals have also been found in water supplies in and near the New Castle County Airport as well as the Dover Air Force Base.

Carney Administration Continues to Push Climate Change Initiatives in Delaware

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Since taking office in January 2017, Governor Carney has emphasized the threat that climate change poses to Delaware as the nation's lowest-lying state. In July 2019, Governor Carney continued efforts to curb climate change in the First State by directing Delaware's Department of Natural Resources and Environmental Control (DNREC) to adopt regulations curbing the use of hydrofluorocarbons (HFCs), greenhouse gases that are commonly used in a variety of applications, including refrigeration, air-conditioning, building insulation, fire extinguishing systems, and aerosols. HFCs were adopted by industry as replacements for ozone-depleting substances, although HFCs have high global warming potential, according to the U.S. Environmental Protection Agency.

Governor Carney directed DNREC to propose regulations by March 2020 that will eliminate the use of HFCs in Delaware. Delaware will join several other states that have introduced or are developing HFC phase-out rules, including California, New York, Maryland, Connecticut, Vermont, and Washington.

Meanwhile renewable energy projects continue to develop and expand in and around Delaware. The Bruce A. Henry Solar Farm, which is located outside of Georgetown, Delaware in Sussex County, announced plans to nearly double the size of the 23-acre solar facility. A proposed offshore wind farm project located off the coast of Bethany Beach is also in the works. The current plans for the wind farm involve installing an electric grid under Delaware's Fenwick Island State Park. DNREC is currently reviewing public comments on the proposed changes.

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